

**MINUTES  
GEORGIA WORLD CONGRESS CENTER AUTHORITY  
BOARD OF GOVERNORS MEETING  
AUTHORITY BOARD ROOM  
FEBRUARY 25, 2020  
12:30 p.m.**

The following thirteen out of fifteen Board members were present:

Steve Adams	Bill Jones
David Allen	Andrew MacCartney
Don Balfour	Jeff Payne
Laura Boalch	Brian Robinson
Stan Conway	Doug Tollett
Brian Daniel	Dexter Warrior
Glenn Hicks	

Vice-Chair Hicks called the meeting to order at 12:30 p.m.

*A motion to approve January 28, 2020 meeting minutes was made by Doug Tollett, seconded by Don Balfour and unanimously approved.*

**JANUARY FINANCIAL REPORTS**

Frank Poe, Executive Director, called on Janet Arsenault for the review of the January financial reports.

**GMP AGREEMENT**

Scott Cannon, Executive VP/GM, Skanska, Theonie Alicandro, COO, and General Counsel, Drew Co., and David Jensen, Shareholder, Greenberg Traurig provided the Board with a detailed review of the Guaranteed Maximum Price (GMP) Agreement which included the following components:

- Bid Package Strategy
- Sub and Vendor Participation
- Overview of Project Budget
- Construction Contract
- Pricing Terms
- Schedule/Contract Time
- Payment Terms
- Completion Conditions
- Indemnity, Insurance, and Bonds
- Warranty
- Termination/Suspension
- EBO Update

*A motion to approve the resolution, a copy of which is attached hereto as Exhibit A, was made by Brian Daniel, seconded by Doug Tollett and unanimously approved.*

## **QMA AND RELATED AGREEMENTS**

Pargen Robertson, Legal Counsel, GWCCA and Nicholas Palmer Legal Counsel, Greenberg Traurig provided an in-depth review of the Qualified Management Agreement (QMA) with Signia Hotel Management LLC which included the following components:

- Material items agreed to with Hilton
- Room Block Agreement

*A motion to approve and execute the Resolution, a copy of which is attached hereto as Exhibit B, was made by Andrew MacCartney, seconded by Stan Conway and unanimously approved.*

## **FINANCING PLAN UPDATE**

William Corrado, Director, Head of Real Estate Group Public Finance Department, Citi, presented the Board with a brief financial update. Items discussed were as follows:

- Standard and Poors Rating
- Key Financing Assumption
- Development Budget and Drawdown Schedule
- Financial Projections

## **SCHEDULE TO BOND CLOSING**

Theonie Alicandro, COO and General Counsel of Drew Co., reviewed the schedule to bond closing.

## **FALCONS/AMBSE BROKERAGE AGREEMENT UPDATE**

Mace Aluia, VP, Corporate Partnership Sales AMB Sports and Entertainment presented to the Board the Team's Annual Advertising Rates and Projected Budget for FY21.

The next meeting is on Tuesday, March 31, 2020.

*With no further business to discuss, a motion to adjourn was made by Stan Conway, seconded by Don Balfour, and unanimously approved.*

RESPECTFULLY SUBMITTED:

APPROVED:

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DEBORAH WADDY  
ASSISTANT SECRETARY

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BRIAN DANIEL  
SECRETARY

**RESOLUTION  
OF  
GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER AUTHORITY  
AUTHORIZING EXECUTION OF  
GUARANTEED MAXIMUM PRICE CONSTRUCTION AGREEMENT WITH  
SKANSKA/SG, A GEORGIA JOINT VENTURE  
FOR HOTEL PROJECT**

WHEREAS, the Geo. L. Smith II Georgia World Congress Center Authority (the “Authority”) operates the convention and tradeshow facility known as the Geo. L. Smith II Georgia World Congress Center, Centennial Olympic Park, and other facilities; and

WHEREAS, pursuant to O.C.G.A. § 10-9-4(a), the general purpose of the Authority is to acquire, construct, equip, maintain, and operate the project, including but not limited to the Georgia World Congress Center, Centennial Olympic Park, and other facilities, in whole or in part, directly or under contract with the Department of Economic Development or others, and to engage in such other activities as the Authority deems appropriate to promote trade shows, conventions, and political, musical, educational, entertainment, recreational, athletic, or other events and related tourism within the state so as to promote the use of the project and the use of the industrial, agricultural, educational, historical, cultural, recreational, commercial, and natural resources of the State of Georgia by those using the project or visiting the state or who may use the project or visit this state; and

WHEREAS, pursuant to O.C.G.A. §10-9-4(b)(6), the Authority has the power to make all contracts and to execute all instruments necessary or convenient to its purposes; and

WHEREAS, pursuant to O.C.G.A. §10-9-7 the management of the business and affairs of the Authority shall be vested in the Board of Governors; and

WHEREAS, pursuant to O.C.G.A. § 10-9-15(a), the Authority is required to operate the project so as to ensure its maximum use, and in connection with and incident to the operation of the project the Authority may engage in such activities as it deems appropriate to promote trade shows, conventions, and tourism within the state so as to promote the use of the project and the use of the industrial, agricultural, educational, historical, cultural, recreational, and natural resources of the State of Georgia by those using or visiting the project; and

WHEREAS, on February 8, 2019, the Authority and Skanska/SG A Georgia Joint Venture (“Skanska”) previously entered into a Pre-Construction Services Agreement, pursuant to which Skanska agreed to provide and did provide those certain pre-construction services in respect of the development of a new, full-service, upper-upscale to luxury convention center hotel and related infrastructure and facilities (the “Hotel”); and

WHEREAS, Skanska is experienced in the construction of hotels and related support facilities and is familiar with and knowledgeable regarding the components that are properly and customarily included within such a project in order to produce a project in accordance with the appropriate standard of care and LEED Gold status; and

WHEREAS, pursuant to Section 5 of Article VII of the Authority’s Bylaws, the Executive Director (as that term is defined in the Bylaws, Article VII, Section 5) is authorized to

conduct, supervise, and manage the operation and maintenance of all facilities of the Authority, and to execute contracts related to the operation, in the ordinary course of business, of the project, including contracts for the use of the Authority's facilities, equipment, and services, but subject to the Bylaws and any policies, forms, and schedules as may be adopted or approved by the Board or Executive Director governing such contracts, and also to sign and execute other contracts in the name of the Authority when authorized to do so by resolution of the Board and to sign and execute contracts in the name of the Authority which are authorized by the Board when no other officer is designated by the Board, and to exercise such other powers and perform such other duties as may be incident to the office of the Executive Director or as may be delegated or prescribed from time to time by the Board, by the Executive Committee, or by the Chair, to the extent such delegation or prescription is consistent with the Authority's Bylaws and to the extent such delegation or prescription is within the authority of that body or officer to direct; and

WHEREAS, pursuant to Section 14 of Article VII of the Authority's Bylaws, except to the extent such authority is conferred upon the Executive Director or other officers of the Authority under or pursuant to the Bylaws, no officer or employee of the Authority is authorized to enter into any written or oral agreement binding upon the Authority.

NOW THEREFORE BE IT RESOLVED by the Board of Governors of the Geo. L. Smith II Georgia World Congress Center Authority that the Executive Director expressly is authorized to continue to negotiate with Skanska regarding the terms and conditions of a proposed Contract Between Owner and Contractor for the Hotel Project ("Agreement") and, in case those negotiations with Skanska are successful, then the Executive Director is authorized, though not required, to take such actions and to execute and deliver such documents as may be necessary or appropriate to affect the execution of the proposed Agreement (which proposed Agreement substantially would be in the form attached hereto as Exhibit A), but only so long as such proposed Agreement complies with applicable law and, in the judgment of the Executive Director, is consistent with the corporate purposes and mission of the Authority and the Authority's sound business practices.

ADOPTED this 25<sup>th</sup> day of February, 2020.

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Bill Russell, Chair, Board of Governors  
Geo. L. Smith II Georgia World Congress Center Authority

Attest: \_\_\_\_\_  
Dale Aiken, Assistant Secretary

{ Authority Seal }

EXHIBIT A

A draft of the GMP Agreement with Skanska follows this page.  
( 68 Pages)

DRAFT 2/20/20

**Exhibit F**  
**Insurance Requirements**

Owner and Contractor have elected to insure the Project under the CCIP as detailed pursuant to Addendum F-1 hereto. In addition to the CCIP, the Contractor and Subcontractors shall provide and be subject to the insurance requirements as set forth below.

**The Contractor shall maintain coverage as outlined below.**

**I. Commercial General Liability (*for off-site activities only*)**

- A.** Contractor shall maintain the following minimum commercial general liability insurance for all off-site operations written on the ISO form CG 00 01 or equivalent, including products and completed operations, on an occurrence basis. The form must state that the general aggregate limit applies on a per-location/per-project basis. The policy shall provide no less than the following minimum limits:

i. General Aggregate-per project	\$4,000,000 general aggregate
ii. Products & Completed Operations	\$4,000,000 annual aggregate
iii. Personal & Advertising Injury	\$2,000,000 each occurrence
iv. Each Occurrence	\$2,000,000 each occurrence
v. Fire Damage Legal Liability	\$1,000,000 each occurrence
vi. Medical Expense	\$ 10,000 any one person

- B.** The policy shall include contractual liability coverage.

- A.** This insurance policy shall include the Owner, together with Drew Company Atlanta, LLC, and the Project lenders, together with their respective, directors, officers, members, trustees, employees, agents and representatives, successors and assigns as Additional Insured.
- C.** as an additional insured with endorsements equivalent to ISO CG 20 10 for ongoing operations and to ISO CG 20 37 for completed operations. This policy shall be primary and non-contributory with respect to any other insurance available to an additional insured.
- D.** The policy shall include a Waiver of Subrogation in favor of the Owner, Drew Company Atlanta, LLC, and the Project lenders, together with their respective, directors, officers, members, trustees, employees, agents and representatives, successors and assigns.
- E.** The commercial general liability insurance policy, inclusive of products-completed operations coverage, shall be renewed annually for the period of time after final completion and acceptance of the Project by the Owner equal to the statute of repose in the jurisdiction where the project is located. Evidence of coverage shall be provided upon request to the Owner annually upon renewal in accordance with the provisions of Section XIII of this Exhibit.

**II. Automobile Liability Insurance**

**DRAFT 2/20/20**

- B. Automobile liability insurance with respect to the operations of any owned, leased, hired and non-owned, vehicles including trailers used in the performance of the work with a minimum \$1,000,000 combined single limit for Bodily Injury & Property Damage.
- C. Policy shall include Owner, together with Drew Company Atlanta, LLC, and the Project lenders, together with their respective, directors, officers, members, trustees, employees, agents and representatives, successors and assigns as Additional Insured.
- D. If hauling contaminants and/or pollutants, the policy shall include a CA 99 48 Broadened Pollution Endorsement or its equivalent. The Contractor must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall contain coverage Form MCS-90.

**III. [OMIT IF COVERED BY CCIP] Worker's Compensation and Employer's Liability Insurance**

The Contractor shall maintain:

- A. Workers' Compensation coverage in compliance with the statutory provisions of the Project's jurisdiction, and
- B. Employers Liability Insurance" to include Stop-Gap Employers' Liability with minimum limits of \$1,000,000 (i) each accident, Bodily Injury by accident; (ii) each employee, Bodily Injury by disease; (iii) policy limit, Bodily Injury by disease

**IV. Umbrella Liability Insurance**

- A. Contractor shall provide Umbrella / Excess Liability insurance that follows form of the primary general liability, automobile liability, and employer's liability required herein with limits of liability no less than the following minimum amounts on a per-project basis:

\$5,000,000 per occurrence  
\$5,000,000 general aggregate

- B. Umbrella / Excess policy shall follow form of the primary.

**V. Professional Liability**

- A. Professional Liability – providing coverage for bodily injury, property damage, and/or financial damages as a result of wrongful acts arising out of the performance or failure to perform professional services in the following minimum amounts:

Each Claim: \$5,000,000  
Aggregate: \$5,000,000

- B. Definition of professional services appropriate to include services provided to Owner, including its affiliated or subsidiary companies, by or on behalf of the Contractors including services in their capacity as a Contractor, project manager, owner's representative, and Contractor.
- C. If written on a claims-made policy form, the policy retroactive date is to be on or before the first date of professional services provided by Contractor to Owner
- D. Named insured Contractor is required to maintain professional liability coverage for the duration of the project and maintain coverage (or purchase an extended reporting period if coverage is not renewed) for at least 3 years post Project completion.

## VI. Pollution Liability

Pollution Liability Insurance for any and all claims for damages due to pollution incidents arising out of construction operations of the Project in the amount of not less than \$5,000,000 per occurrence/aggregate. This insurance shall be maintained during the course of construction of the Project and completed operations coverage for a period not less than 3 years.

- A. Name the Owner and other designated Owner parties (collectively the Owner Parties) as additional insureds for both the ongoing and completed operations of the Contractor.
- B. Stipulate that such insurance is primary and is not contributing with, any other insurance carried by, or for the benefit of the additional insureds.
- C. Waive any and all right of subrogation against all of the Owner Parties.
- D. Provide coverage for mold, fungi, and bacteria related claims arising out of the construction of the Project.
- E. Coverage shall be written on an occurrence basis. If occurrence based coverage forms are not available to the Contractor and coverage is written on a claims-made policy form, the policy retroactive date is to be on or before the first date of operations are performed by the Owner Parties. Claims made coverage will include a three (3) year extended reporting period after final completion of the Work.

## VII. Contractor's Equipment Insurance

Contractor shall be solely responsible for maintaining insurance to cover loss or damage to tools, temporary structures, scaffolding, staging, forms and other personal property and/or equipment, whether owned, rented, leased or in the care, custody or control of Contractor or any Subcontractor, that are used in the construction process but are not actually incorporated into the structure. This insurance shall contain a provision requiring the insurance carrier to waive its rights of subrogation against Owner, Drew Company Atlanta, LLC, and the Project lenders, together with their respective, directors, officers, members, trustees, employees, agents and representatives, successors and assigns.

## VIII. Subcontractor Default Insurance

**Subcontractor Default Insurance [TBD – DETAILS TO BE PROVIDED]**

## IX. CCIP

Contractor shall provide and maintain the CCIP coverages as set forth in Addendum F-1 hereto.

## X. Deductibles or Self-Insured Retentions

Except as expressly provided to the contrary in the Agreement, Contractor and/or subcontractors are solely responsible for the payment of any and all deductibles or retentions under all of the insurance required herein unless the Owner specifically provides a written waiver to the Contractor.

## XI. Primary Insurance Coverage



**DRAFT 2/20/20**

All insurance coverages/policies required of the Contractor hereunder shall contain clauses or endorsements to the effect that such coverages/policies shall a) be primary rather than contributing, secondary or excess of any coverage that the Owner may maintain for other properties or risks, b) contain a severability of interest clause and c) not contain a cross suits liability exclusion related to additional insureds.

**XII. Waiver of Subrogation**

The commercial general liability, vehicle liability, and employer's liability insurance policies maintained by the Contractor shall contain a waiver of subrogation in favor of the Owner and other additional insureds as required hereunder on behalf of any person or organization to whom the Contractor has been obligated to waive their rights of recovery under any contract or agreement entered into prior to a loss.

**XIII. Evidence of Insurance**

Within five (5) business days of the expiration of any insurance coverage required hereunder, the Contractor shall arrange for delivery to the Owner a signed ACORD Form 25 Certificate of Insurance acceptable to the Owner as evidence that coverage required herein is being maintained. Certificate shall indicate that none of the policies shall be cancelled, terminated, not renewed modified unless and until at least 30 days prior written notice is given to the Owner, except 10 days for non-payment.

Certificate acceptance and/or approval by Owner shall not be construed to relieve Contractor of any obligations, responsibilities or liability contained elsewhere within this Contract.

Contractor shall be responsible for all costs and damages to the Owner attributable to any damage to Owner resulting from the Contractor's failure to maintain the insurance required herein.

**XIV. Subcontractors**

The Contractor shall require each subcontractor to maintain insurances as outlined in Addendum F-1. Addendum F-1 controls over any other insurance requirements as set forth in this Exhibit. All subcontractors and sub-subcontractors shall be required to include the Owner as additional insureds, provide primary and non-contributing coverage in favor of Owner, as well as waivers of subrogation in favor of Owner and required additional insureds hereunder.

**XV. Additional Insureds**

The Contractor and subcontractors of every tier shall include the Owner, together with Drew Company Atlanta, LLC, and the Project lenders, together with their respective, directors, officers, members, trustees, employees, agents and representatives, successors and assigns as Additional Insureds for coverages listed in Sections I, II, IV, VI, and IX of this Exhibit F.

**Addendum F-1**  
**CCIP Manual**



# DRAFT AIA® Document A201™ – 2017

## *General Conditions of the Contract for Construction*

**DRAFT 2/4/20**

for the following PROJECT:

Signia Hilton, 159 Northside Drive NE, Atlanta, Georgia 30313 - A full-service, minimum 975 room upper-upscale to luxury convention center hotel and related public meeting space to be the Convention Center's headquarters hotel to host civic, cultural and commercial events, as well as related parking facilities and public infrastructure and facilities to support the new hotel, including new hotel operations offices, kitchens and pantries, public washrooms, dining facilities, building receiving area/loading dock, employee lounge, building services area, engineering office and shops, audio/visual control room, first aid office, public safety office/facilities, and other spaces needed to support the new hotel

### THE OWNER:

Geo. L. Smith II Georgia World Congress Center Authority, an instrumentality of the State of Georgia and a public corporation  
285 Andrew Young International Blvd., NW  
Atlanta, Georgia 30313-1591

### THE CONTRACTOR:

**Skanska/SG, a Georgia joint venture**  
55 Ivan Allen Jr. Boulevard, Suite 600  
Atlanta, Georgia 30308

### THE ARCHITECT:

M. Arthur Gensler Jr. & Associates, Inc., a California corporation  
999 Peachtree Street, Suite 1400  
Atlanta, Georgia 30308  
Attn: Robert M. Fischel

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(Topics and numbers in bold are Section headings.)

\*These General Conditions have been modified without adjustment of this Index

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor to which these General Conditions are appended (hereinafter the "Agreement") and consist of the Agreement, these General Conditions of the Contract (AIA A201-2017), as amended herein ("General Conditions"), other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Owner. The Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, or (3) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, or reasonably inferable therefrom whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, Drawings, Specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

Not used.

#### § 1.1.9 Knowledge

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows, recognizes, or discovers, in all cases exercising and complying with the Standard of Care. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising and complying with the Standard of Care. As used herein, "Standard of Care" means the generally accepted care, practices, methods, skill, diligence, techniques and standards exercised by and expected of nationally

recognized construction contractors in the United States performing similar work under similar situations in a similar geographic area.

## § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

## § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

## § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. References to adjustments to the Contract Sum as set forth herein shall be interpreted to include a corresponding adjustment to the Guaranteed Maximum Price as applicable.

## § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Owner, or the Architect and the Architect's consultants (as set forth in the agreement among the Owner, and the Architect) are the authors and owners of the Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's, the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

## § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

#### § 1.7 Digital Data Use and Transmission

Subject to Section 3.2.2, the parties acknowledge that use and exchange of digital data will be common and prevalent in the course of the Project.

#### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols

#### § 1.9 Confidentiality

Contractor shall maintain in strict confidence, and agree not to disclose to any third party, except when authorized by Owner in writing or when required by applicable law or when required in the performance of the Work, Confidential Business Information that Contractor or any Subcontractor or Sub-subcontractor receives from Owner. "**Confidential Information**" means all non-public information of a sensitive nature concerning Owner, including, but not limited to, the Contract and any other non-public information (whether in writing or retained as mental impressions) concerning research and development; present and future projections; operational costs and processes; pricing, cost or profit factors; quality programs; annual and long-range business plans; marketing plans and methods; customers or suppliers; contracts and bids; and personnel. Confidential Information does not include: (i) information that is, or subsequently may become within the knowledge of the public generally through no fault of Contractor or any Subcontractor, (ii) information that Contractor can show was previously known to it as a matter of record at the time of receipt, (iii) information that Contractor may subsequently obtain lawfully from a third party who has lawfully obtained the information free of any confidentiality obligations, (iv) information that Contractor may subsequently develop as a matter of record, independently of disclosure by Owner, or (v) information required to be disclosed by law. Owner and Contractor further agree to maintain in strict confidence, and agree not to use or disclose except as authorized in writing by Owner, trade secrets as defined by applicable state law. Contractor covenants and warrants that Contractor and its officers, employees, representatives and agents, will comply with the confidentiality obligations set forth above, and Contractor will require its Subcontractors and Sub-subcontractors to comply with such confidentiality obligations. These confidentiality obligations shall survive the termination of the Contract. Nothing herein shall be interpreted to prevent or restrict any disclosure required by Contractor or Owner on account of any public financing and/or governmental, regulatory, or legal reporting requirements, including, but not limited to, any NASDAQ, Securities and Exchange Commission disclosures or reporting or other similar requirements.

### ARTICLE 2 OWNER

#### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

#### § 2.2 Intentionally omitted.

#### § 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2, the cost of which is included in the Cost of the Work under Section 7.5.4 of the Agreement and subject to the Guaranteed Maximum Price.

#### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Any such reasonable and substantiated costs or expenses incurred by the Owner in furtherance of this Section may be deducted from payments then or thereafter due the Contractor, including Owner's reasonable expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Where such actions are required subsequent to Final Payment by the Owner, the Contractor shall pay the Owner any such amounts due as set forth herein within ten (10) days of the Owner's written demand for same. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents, at law or in equity.

§ 2.6.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents by activities or duties of the Owner in the Owner's administration of the Contract, the Architect's obligations under the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

## § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with known and observable local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents and has reviewed the Contract Documents, including all such reference materials as identified within the Exhibits to the Agreement. Execution of the Contract by the Contractor is also a representation that the Contractor has evaluated and satisfied itself as to the known and observable condition and limitations under which the Work is to be performed, including, without limitation, (i) the known and observable location, condition, layout, and nature of the Project site and surrounding areas, (ii) known and observable generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar known and observable issues. Subject to Section 3.7.4, the Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any existing improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe place for the performance of the Work.

§ 3.2.2 In its capacity as the Contractor and not as a design professional, the Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2.3 and shall at once report in writing to the Owner known errors, inconsistencies or omissions. The Contractor shall not be liable to the Owner for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and failed to report it to the Owner. If the Contractor performs any construction activity involving an error, inconsistency or omission in the Contract Documents which the Contractor recognized and without having given written notice to the Owner, the Contractor shall assume proportionate responsibility for such performance and shall bear the proportionate amount of all reasonable and substantiated costs for correction that could have been avoided by the giving of timely notice. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 The Contractor shall take reasonable field measurements and verify reasonable field conditions and shall carefully compare such field measurements and conditions and other information available to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported in writing to the Owner at once. Contractor's liability and responsibility with respect to errors, inconsistencies or omissions in the Contract Documents under this Section shall be in accordance with Section 3.2.2.

§ 3.2.5 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant, the Contractor shall submit Claims as provided in Article 15. If the Contractor performs the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

## § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The



Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect or the Owner objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### § 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Each request for substitution shall state any proposed amount of change to the Guaranteed Maximum Price and shall be accompanied by information known at such time on both the specified item and the proposed substitution, plus any samples as may be required by Owner before its incorporation into the Work. The Contractor shall submit requests for substitution as soon as practicable after the need for the substitution is determined to allow for adequate consideration of such request and to minimize delay in the progress of the Work.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use its commercially reasonable efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

§ 3.4.4.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of a conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

#### § 3.5 Warranty

§ 3.5.1 The Contractor's Work, including all materials and equipment installed, will be of good quality and new unless the Contract Documents require or permit otherwise and will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's representations and warranty, including any obligations pursuant to Article 12, excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Owner may, without Contractor's permission, freely assign to any person or entity the warranty created by this Section.

§ 3.5.1.1 All warranties for materials or equipment furnished to the Contractor, Subcontractors or Sub-subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of the Owner. Such guarantees and warranties, with duly executed instruments assigning the guarantees and warranties to the Owner, shall be delivered to the Owner prior to final payment for the Work.

§ 3.5.1.2 The warranties contained in the Contract and elsewhere in the Contract Documents shall not be construed to modify or limit in any way any rights or remedies which the Owner may otherwise have against the Contractor.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted at the time of execution of the GMP, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless Owner, in the exercise of its sole discretion, elects to obtain any permits for the Work, the Contractor shall secure and pay for the building permit and all other construction related permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work as defined in the GMP.

Contractor shall provide copies of all such permits and other documents to the Owner when obtained.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, requirements of public utilities serving the Project, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### § 3.7.4 Concealed or Unknown Conditions

If conditions are encountered by Contractor at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. The Architect will promptly investigate such conditions and shall make recommendations to Owner if the Architect believes that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, then the Architect will recommend an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect recommends to Owner, in its reasonable judgment, that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, then no change in the Contract Sum or Contract Time will be provided. If, on the other hand, the Architect reasonably recommends that the conditions encountered are materially different, the Owner shall grant an equitable adjustment the Contract Sum and Contract Time to be implemented by Change Order. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed by the (i) Contractor's prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews performed consistent with the Contractor's preconstruction services performed pursuant to separate engagement with the Owner in connection with the Project. Prior to the execution of a Change Order, Contractor may dispute Architect's recommendations and/or Owner's determinations under this Section 3.7.4 in accordance with the procedures set forth in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§3.7.6 Attached as **Exhibit D** of the Agreement is the Owner's equal business opportunity plan ("EBO Plan") for the Project for enlisting and monitoring participation of minority and female business enterprises ("M/FBE") in all business opportunities that relate to the design and construction of the Project. Contractor and all Subcontractors (and Sub-Subcontractors) must comply with the EBO Plan, with a minimum goal of at least thirty one percent (31%)

participation by M/FBE in connection with the construction of the Project through, by way of example only, outreach efforts, invitations to bid or solicitations to quote directed to M/FBEs, and procedures to ensure that complete information is provided to M/FBEs and that inquiries, reviews and requests for information are handled promptly and thoroughly.

§3.7.7 Contractor shall take into account and consider (i) the City of Atlanta's First Source Jobs Program in connection with the performance of the Work, and (ii) adopting and implementing a workforce training and participation program.

### § 3.8 Allowances

§ 3.8.1 If any, items are covered by allowances, those items shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Project Executive shall represent the Contractor, and communications given to the Project Executive shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 Attached as **Exhibit C** to the Agreement is the Construction Schedule prepared by Contractor together with the GMP and taking into account the requirements of the Contract Documents. The Contractor represents that the Construction Schedule includes a logical sequence all activities of Work for the Project, including, but not limited to, construction and procurement activities prepared in a critical-path-method format, necessary to achieve the critical milestones as set forth in **Exhibit B** to the Agreement, including the Substantial Completion Date and Final Completion Date. Within five (5) days of the delivery of the NTP, the Contractor shall revise, to the extent required to reflect adjustment for the actual date of commencement of the Work, and submit for the Owner's approval the updated Construction Schedule, which as and to the extent approved by the Owner shall then replace the Construction Schedule as attached as **Exhibit C** of the Agreement, such update to be consistent with Section 4.2 (and subsections thereto) of the Agreement. The major milestones contained in **Exhibit B** of the Agreement and the Construction Schedule shall not be modified without reasonable approval of the Owner and the execution of a Change Order.

§ 3.10.2 The Contractor shall regularly update the Construction Schedule and maintain progress reports, including look ahead projections, which shall be available for review by Owner as may be reasonably

requested. Contractor shall, on a monthly basis, prepare and provide to the Owner a progress report which includes a schedule which shows the actual progress of the critical path activities of the Work correlated to the Cost of the Work. Schedule and all monthly updated schedules shall clearly identify which items of the Work are on the critical path.

§ 3.10.3 On not less than a monthly basis but with such greater frequency as Owner may reasonably require, the parties, the Contractor shall have scheduling meetings with the Owner, the Architect and any pertinent Subcontractors or consultants as approved by the Owner. Contractor and the attendees of such meetings will update the Construction Schedule during such meetings; provided, however, Contractor may not modify the Substantial Completion Date or the Final Completion Date without a Change Order being executed in accordance with the Contract.

§ 3.10.4 Contractor shall prepare and keep current, for the Owner's review or approval, a schedule of submittals that is coordinated with the Schedule and allows the Owner reasonable time to review and/or approve the submittals.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form and/or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has reviewed them and confirmed generally that the information contained within such submittals complies with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the

Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents they shall be delivered by a design-build subcontractor and the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form reasonably specified by the Architect.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.1 Only materials and equipment that are to be used in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be removed as quickly as possible from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.2 The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which consent shall not be unreasonably withheld.

§ 3.13.3 Without limitation of any other provision of the Contract Documents, the Contractor shall use commercially reasonable efforts to (i) minimize any substantial interference with the occupancy of any areas and buildings adjacent to the site of the Work; (ii) minimize vehicular and pedestrian access to the remainder of the Owner's streets, buildings and other public infrastructure and facilities. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

§ 3.13.3.1 The Contractor's site access, staging and use shall be subject to the site logistics plan as set forth in **Exhibit H** of the Agreement, as may be modified with the Owner's written approval. Without limitation of any

other provision of the Contract Documents, the Contractor shall use its commercially reasonable efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site. The Contractor shall comply with all Work-related requirements of the adjacent site access and license agreements as are identified pursuant to **Exhibit I** of the Agreement. On-site parking shall be available only to Contractor's personnel. The cost of finding and using off-site parking for all Subcontractors or Sub-subcontractors shall be included in the Cost of the Work under Article 7 of the Agreement and subject to the Guaranteed Maximum Price.

§ 3.13.3.2 The Contractor shall also comply with all insurance requirements as defined herein.

§ 3.13.4 Except as elsewhere set forth in the Contract, the Contractor shall coordinate site security with the Owner within designated areas under construction as part of Cost of Work.

### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to proportionate and substantiated reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner, Owner's Representatives, and other persons or parties such as Project Lenders, and Architect with access to the Work in preparation and progress wherever located, provided any visiting parties agree to reasonable and customary site safety protocols and requirements.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished in writing to the Architect and Owner.

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, and subject to the terms and conditions of the Contract Documents, the Contractor shall indemnify, defend, and hold harmless the Owner, Drew Company, Inc., as well as any such persons or parties as are required to be included as additional insureds pursuant to **Exhibit F** of the Agreement (but excluding all licensed professionals) from and against claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, to the extent arising out of or resulting from performance of the Work, and/or to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, including without limitation third party personal injury, death, and/or property damage (other than the Work itself but such exclusion not limiting any applicable insurance coverage for same as may be available), provided nothing herein shall be interpreted or imply

an obligation for indemnity to the extent of any claims, damages, losses, and expenses are caused by indemnitees hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.1.1 Provided the Owner makes payment of undisputed amounts under the Contract Documents, should any Subcontractor or Sub-subcontractor or any other entity acting through Contractor or under any of them file a lien or other encumbrance against all or any portion of the Work or the Site, Contractor shall, at its sole cost and expense, remove and discharge, by payment, bond or otherwise, such lien or encumbrance within ten (10) days of receipt of written notice from the Owner demanding discharge of such lien or encumbrance. If Contractor fails to remove and discharge any such lien or encumbrance within such ten (10) day period, then Owner may, in its sole discretion, remove and discharge such lien and encumbrance. Contractor shall be liable to Owner for all proportionate and substantiated damages, costs, losses and expenses (including, without limitation, all proportionate and substantiated attorneys' fees, consultant fees, litigation expenses and settlement payments) incurred by Owner arising out of or relating to such removal and discharge. Contractor's obligation under this Section 3.18.1.1 is a separate, distinct and independent covenant. If it is subsequently determined that any such lien or encumbrance was due to the failure of the Owner to pay disputed amounts that were properly due under the Contract, and the Owner demanded discharge of same and the Contractor discharged same in accordance with this Section 3.18.1.1, then the Owner shall be liable to the Contractor for all damages related to Contractor's defense of such lien or encumbrance and premium costs for bonding off such lien or encumbrance, as well as attorneys' fees, consultants' fees, etc.

§ 3.18.1.2 Contractor acknowledges and agrees that the Work and all labor and materials herein contracted for are being provided solely for the construction of the Work and that any claim of lien of Contractor or its Subcontractors or Sub-subcontractors (pursuant to Section 44-14-360 et seq. of the Official Code of Georgia Annotated or otherwise) with respect to labor or materials furnished for the improvement of the Project is, and shall be, subordinate and inferior to the lien and security title of any deed to secure debt and security agreement encumbering the Project and given prior to execution of the Contract to secure any indebtedness now or hereafter incurred by Owner, to provide financing for all or any portion of the Project. Such subordination is and shall be effective without the need for any further written agreement or instrument of Contractor; but Contractor nonetheless agrees promptly to execute and deliver, in recordable form, any such reasonable written lien subordination agreement or acknowledgement which the Owner may from time to time request. Contractor agrees to require each Subcontractor to assume, toward the Contractor, the subordination of lien rights set forth in this Section 3.18.1.2. For the purposes of this Section 3.18.1.2, any valid claim of lien shall be deemed to encumber the Project or Site on the date on which it was properly filed.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§3.18.3 The indemnity and defense obligations set forth in this Section 3.18 shall survive completion of the Work and/or any termination of this Contract.

## ARTICLE 4 ARCHITECT

### § 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written notice to the Contractor.

### § 4.2 Administration of the Contract

§ 4.2.1 The Architect will perform duties as described in the Contract Documents. The Owner may at any time by written notice to the Contractor either expand or reduce the Architect's responsibilities and authority under this Contract.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Owner nor the Architect will have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, Sub-subcontractors or their respective agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 Communications

Communications by and with the Architect's consultants shall be through the Architect. Other than Section 12.1.4.1 of the Agreement, communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment (including in accordance with the "pencil copy" review pursuant to Section 12.1.2.1 of the Agreement), the Architect will review and provide certification as to the amounts requested to be paid by the Contractor.

§ 4.2.6 Owner, on its own initiation or with the Architect's recommendation, has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or Owner considers it necessary or advisable, the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and recommend for approval, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness (generally not more than ten (10) business days) while allowing sufficient time to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review and the Owner's approval (or lack thereof) of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review and the Owner's approval (or lack thereof) shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Contractor will prepare Change Order requests and the Owner will prepare Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Owner (with the Architect's assistance if requested by the Owner) will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; unless otherwise instructed by the Owner, the Architect will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor; and will certify upon Owner's approval a final Certificate for Payment upon compliance with the requirements of the Contract Documents.



§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Drawings and Specifications on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness (generally not more than five (5) days).

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Drawings and Specifications and will be in writing or in the form of drawings.

§ 4.2.13 The Architect's initial decisions on matters relating to aesthetic effect are subject to Owner's decision if consistent with the intent expressed in the Drawings and Specifications.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information (generally not more than five (5) days).

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity, including without limitation, an equipment supplier or vendor, who has a direct contract with the Contractor to perform a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity, including without limitation, an equipment supplier or vendor, who has a direct or indirect contract with a Subcontractor to perform a portion of the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 The Contractor shall, as soon as practicable after the execution of the Contract and thereafter until all subcontracts have been executed for the Work, furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each and every Subcontractor who has executed a subcontract with the Contractor and (ii) a copy of each such subcontract. Each such bi-weekly list shall be a cumulative list, listing all Subcontractors who have executed subcontracts with the Contractor to the date of such bi-weekly list.

§ 5.2.2. The Contractor shall not enter into a subcontract without first providing the Owner at least fourteen (14) days prior written notice of the Contractor's intent to enter into the subcontract, along with the information required under Section 5.2.1 with respect to the subcontract, provided that Owner shall undertake to expeditiously review and process same based on schedule requirements as may be applicable. The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not contract with any proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection, subject to Section 10.2 of the Agreement. If the proposed but rejected Subcontractor was reasonably capable of performing the Work (and the scope of Work was the same), then the Contractor may submit a Claim seeking an increase or decrease by the difference, if any, in the Contract Sum and Contract Time occasioned by such change.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontract agreement shall contain provisions substantially similar to Section 14.4 of these General Conditions, permitting the subcontract's termination for convenience by Owner.

### § 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that assignment is effective only after termination by the Owner pursuant to Article 14 (except that no such assignment shall be permitted without the Contractor's consent in the event of the Owner's termination for convenience of the Contract within the first six (6) months from the date of commencement) and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing. When the Owner accepts the assignment of a subcontract agreement following a termination by the Owner for convenience, the Owner assumes all of the Contractor's rights and obligations under the subcontract. When the Owner assumes subcontracts following the Owner's termination for cause, each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights of conditional assignment.

§ 5.4.2 If the Work in connection with a subcontract has been suspended for more than 30 days after termination of the Contract by the Owner pursuant to either Section 14.2 or Section 14.4 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors by Owner retained under Conditions of the Contract generally similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation, but taking into account the nature of such engagements and work. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its Construction Schedule deemed necessary after a joint review and mutual agreement. The Construction Schedule shall then constitute the schedule to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

## § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. The Contractor agrees that it is the responsibility of the Contractor and the Owner's Separate Contractors to schedule and coordinate, each with respect to the other, their respective activities at the Site so as not to interfere with or to delay the Work or the work of such Separate Contractors. The Contractor agrees to provide such coordination and scheduling without increase in the Guaranteed Maximum Price, where possible. If the proper execution of any part of the Work depends upon the work of the Owner's Separate Contractors, the Contractor shall inspect and promptly report to the Owner any known discrepancies in such work that renders it unsuitable for such proper execution and results. Failure of the Contractor to report any known discrepancies to the Owner shall constitute an acceptance of the Owner's other contractor's work as fit and proper to receive the Work of the Contractor, except as to defects not apparent at the time of the Contractor's inspection of such work.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for reasonable and verifiable costs the Owner incurs that are payable to any of Owner's Separate Contractors because of the Contractor's delays, improperly timed activities or defective construction of the Contractor. Provided that the Contractor properly and reasonably coordinates the Work as required with Separate Contractors and cooperates with same, the Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the proportionate and substantiated cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement between the Owner and Contractor. A Construction Change Directive shall be issued by the Owner and may or may not be agreed to by the Contractor, and an order for a minor change in the Work shall be issued by the Architect.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. A change in the Guaranteed Maximum Price or the Contract Time shall be accomplished only by Change Order, and no other method shall be allowable to Contractor other than that permitted pursuant to a Construction Change Directive.

## § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument signed by the Owner and Contractor stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum and Guaranteed Maximum Price; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Any Change Order accepted by Owner and Contractor constitutes a full and final settlement and accord and satisfaction of all effects of the change upon any and all aspects of the Contract Documents and will compensate Contractor fully.

## § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be based upon the reasonable expenditures and savings attributable to the change, as determined in accordance with Article 7 of the Agreement for determining the Cost of the Work and the Contractor's Fee in Section 5.1.2 of the Agreement. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Owner, in consultation with the Architect, will make a reasonable interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Owner determines, in the Owner's judgment, to be reasonably justified. The Owner's interim determination of cost shall adjust the Guaranteed Maximum Price on the same basis as a Change Order, subject to the right of Contractor to disagree and assert a Claim in accordance with Article 15.

§ 7.3.9 When the Contractor agrees with a determination made by the Owner concerning the adjustments in the Guaranteed Maximum Price, Contract Sum, and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

## ARTICLE 8 TIME

### § 8.1 Definitions

§ 8.1.1 The Contract Time has the meaning specified in Section 4.1 of the Agreement.

§ 8.1.2 The date of commencement of the Work is the Start Date as defined in Section 4.1 of the Agreement.

§ 8.1.3 The date of Substantial Completion is the date when all requirements under the Contract have been achieved by Contractor for Substantial Completion of the entire Work.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day, respectively, unless otherwise specifically defined.

### § 8.2 Progress and Completion

§ 8.2.1 The Contract Time, including milestones as set forth in Section 4.2 and **Exhibit B** of the Agreement, and in the Construction Schedule, including without limitation the Substantial Completion Date, any or all as may be adjusted pursuant to the Contract, are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of any Work impacts the critical path of Work as provided in the Construction Schedule for any cause beyond the control of the Contractor, Contractor's Subcontractors or Sub-subcontractors, Owner, Architect or a Separate Contractor or consultant employed by the Owner, including, but not limited to, causes of fire or other casualty, riots, strikes or other combined action of the workers or others, or adverse weather conditions, then the Contractor's remedy for such delay shall be an extension of the Contract Time (subject to Section 4.1.2.3 of the Agreement) for such reasonable period as the Owner may reasonably determine, which shall be implemented by Change Order; provided, however, Contractor shall not be entitled to any extension of the Contract Time (i) if the Contractor fails to comply with notice requirements in Section 15.1.2, or (ii) if the Contractor fails to take steps to work around and mitigate the delay where such steps would not have caused Contractor to incur additional costs, provided that Contractor may use Contingency which shall not be deemed additional costs. If an event described above causes a suspension of the Work for a period greater than seven (7) days and the Owner requests that the Contractor maintain some or all of its personnel, facilities and equipment on standby during such suspension, then the Contractor shall provide the Owner with an estimate of the cost per day of maintaining such personnel, facilities and equipment on standby. If the Owner thereafter instructs the Contractor to keep such personnel, facilities and equipment on standby, then the Contractor shall be entitled to the cost per day of maintaining such personnel, facilities and equipment on standby.

§ 8.3.2. The extension in time specifically provided for in Section 8.3.1 of this Contract shall be the Contractor's sole and exclusive remedy for delay, except to the extent specifically allowed by this Section 8.3.2. If the Contractor is delayed in the performance of the Work whether in excess of the Delay Allowance, or to the extent caused by an act or omission of the Owner, the Architect, the Owner's or Architect's consultants or the Owner's Separate Contractors, then Contractor shall be entitled to an extension in the Contract Time and an adjustment to the Contract Sum and Guaranteed Maximum Price for costs incurred in performing the Work to the extent such delay or delays are not attributable to a breach of Contractor's obligations pursuant to the Contract Documents or due to the negligence of Contractor or Contractor's Subcontractors or Sub-subcontractor. Any adjustment to the Contract Sum, Guaranteed Maximum Price or Contract Time shall be for such reasonable amount and period as the Owner may reasonably determine. The parties agree that this Section 8.3.2 shall not be interpreted to limit the Contractor's right to request a

Change Order for an extension in the Contract Time or an adjustment to the Guaranteed Maximum Price for any changes in the scope of Work requested in such Change Order request that would cause a delay.

§ 8.3.3 If in the reasonable opinion of the Owner, the Contractor or any Subcontractor or Sub-Subcontractor is solely responsible for any delays in the Substantial Completion Date, Contractor shall, on its own initiative or at Owner's written directive, employ such additional forces, obtain such additional equipment, employ such additional supervision, pay such additional overtime wages, and use such priority freight as may be required to bring its Work back on schedule, in order to meet the scheduled Substantial Completion Date. If, in the opinion of the Owner, the Contractor's progress of the Work is more than ten (10) days behind any milestones as are identified pursuant to Section 4.2 of the Agreement, Owner may, in addition to any other remedies available to it under the Contract Documents, at law or equity, also require in writing that Contractor submit, within five (5) days of Owner's written notice and for Owner's approval, a recovery plan to Owner detailing Contractor's proposal for bringing the Work back on schedule to meet the Substantial Completion Date. Where the Owner based on evaluation of such recovery plan believes that further measures be implemented with respect to such recovery plan, including without limitation, resequencing of the Work, the Owner may so direct the Contractor, subject to the Contractor's rights with respect to a Claim pursuant to the terms of this Contract.

§ 8.3.4 Even if the Work is otherwise in compliance with the Construction Schedule, Owner may, at any time, direct Contractor in writing by Construction Change Directive or Change Order to accelerate the Work and perform additional shifts or overtime and provide additional equipment. In this event, the Contractor will, within ten (10) days of receiving such Construction Change Directive or Change Order, submit to the Owner a proposal for the cost of acceleration of the Work based upon how many days the Owner wants to accelerate the Work. Any adjustment in the Contract Sum, Contract Time, or Guaranteed Maximum Price for Owner's acceleration of Contractor's performance of the Work shall be implemented by such Construction Change Directive or Change Order as the case may be.

§ 8.3.5 For the purposes of Section 8.3, the term "delays" shall include hindrances, disruptions, obstructions lost production, or any other similar term in the industry.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Guaranteed Maximum Price

§ 9.1.1 The Guaranteed Maximum Price is stated in the Agreement and, including authorized adjustments, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

The Contractor shall submit a schedule of values generally in the form acceptable to the Owner with a copy to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The Contractor is not required to guarantee that each line item in the schedule of values will not be exceeded. The schedule of values shall be used as a basis for reviewing the Contractor's Application for Payment. The schedule of values shall be updated for any changes in the Work approved by Change Order.

### § 9.3 Applications for Payment

§ 9.3.1 The Contractor shall submit Applications for Payment as required by Section 12.1 of the Agreement.

§ 9.3.1.1 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such

materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work incorporated into the Project or for which payments have been received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect shall, together with the Owner's Representative, review the Contractor's Application for Payment pursuant to Section 12.1.2.1 of the Agreement. The Architect shall, prior to the date any such payment would otherwise become due, issue to the Owner a Certificate for Payment for such amount as agreed pursuant to Section 12.1.2.1 of the Agreement or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Architect shall provide any such notice of withholding to Contractor, Owner, and Owner's Representative within fourteen days (14) of receipt of Contractor's Application for Payment.

§ 9.4.2 The signature by the Architect on a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the signature by the Architect on a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid to the Contractor.

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not promptly remedied after receiving written notice;
- .2 third party claims filed unless the claim is covered by insurance maintained by Owner or Contractor pursuant to the requirements of the Contract Documents or unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments when due to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the tangible property of Owner or a Separate Contractor, unless the damage is covered by insurance maintained by Owner or Contractor pursuant to the requirements of the Contract Documents or the claim for such damage is waived by Owner pursuant to Section 11.4;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance of the Contract Sum would not be adequate to cover liquidated damages for the anticipated delay; or

.7 on account of amounts for which Contractor is obligated to reimburse Owner pursuant to the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification or payment as provided in Section 9.5.3 below are removed, certification and/or payment, as the case may be, will promptly be made for amounts previously withheld.

§ 9.5.3 Notwithstanding any such determination by the Architect with respect to the certification of payment as provided in this Section 9.5, the Owner, subject to Section 12.1.4.1 of the Agreement, reserves the right to withhold from payment upon Owner's determination of any of the reasons as provided herein, provided that the Owner provides the Contractor with written notice of such withholding.

## § 9.6 Progress Payments

§ 9.6.1 The Owner shall make payment in the manner and within the time provided in the Contract Documents.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Contractor's submission of each Application for Payment lien waivers as required in accordance therewith shall constitute Contractor's representation to the Owner that (i) all such amounts are account of Work performed pursuant to the Contract, (ii) that all amounts received from the Owner on account of an Application for Payment shall be properly and timely disbursed and remitted by the Contractor to Subcontractors and suppliers performing such Work, and (iii) that the Contractor has, with respect to all payments remitted to the Contractor by the Owner on account of prior Applications for Payment, paid all Subcontractors and suppliers.

§ 9.6.3 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.4 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2 and 9.6.3.

§ 9.6.5 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.6 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.7 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## § 9.7 Failure of Payment

§ 9.7.1 If, through no fault of the Contractor, Owner does not pay the Contractor within ten (10) days after the date established in the Contract Documents those amounts requested in Contractor's completed Application for Payment for which no dispute then exists, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, stop the Work until payment of the undisputed amount has been received. The Contract Time



shall be extended appropriately and the Contract Sum and Guaranteed Maximum Price shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. Contractor shall not have a right to stop Work other than that permitted in this Section 9.7.1.

## § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, including (i) proper operation and commissioning of all systems, (ii) delivery to Owner of all approvals, sign-offs or certifications relating to the Work and occupancy (including, if applicable, a temporary certificate of occupancy), (iii) the only remaining Work consists of minor items, adjustments or corrections which have no material effect upon the utilization or function of the Project and are deemed "Punchlist" items, and (iv) the Architect has issued its certificate of Substantial Completion. Notwithstanding the aforementioned, where Substantial Completion has not been achieved solely due to a delay either (a) in completion of commissioning, or (b) in obtaining any (b) approvals, sign-offs or certifications relating to the Work required for occupancy, that is not attributable to the Contractor, the Contractor shall not be subject to Liquidated Damages pursuant to Section 4.3 of the Agreement for the period of any such delay.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's proposed "Punchlist", the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or the Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and establish the "Punchlist" and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.4.1 Prior to Substantial Completion of the Work, the Contractor shall perform the initial start-up, testing and operation of the Project's equipment and systems needed for occupancy to ensure that all components of the Project are operational and perform as intended in conjunction with all other components of the Project. This shall include, but not be limited to, the HVAC system, plumbing, sprinkler, electrical and fire alarm work. The Contractor shall advise the Owner in advance of such procedures, start-up, and testing and the Owner shall be afforded opportunity to observe same. The Contractor shall make all testing date, information and related documentation readily available to the Owner. The Contractor will coordinate this Work with the Owner's designated commissioning agent, as applicable.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated as Substantially Completed or otherwise by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer if so required under Section 11.3.1.5, and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete. In such case, the Owner and Contractor shall establish the responsibilities

assigned to each of them, if any, for security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work, such conditions to be documented by Contractor and shall provide copies of such report to Owner and Architect for confirmation and approval.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.9.4 In addition to Section 9.9.1 and in furtherance of Article 6, prior to final acceptance of the Work, and subject to securing a Final Certificate of Occupancy, the Owner shall, in its reasonable discretion, after coordination with Contractor, be permitted to use, operate or occupy the Project or any part thereof which is completed or partly completed, to place or install therein equipment and furnishings. The Contractor shall not interfere with or object to such use, operation or occupancy by the Owner nor shall such use, operation or occupancy give rise to a claim for an increase in the Contract Sum, provided such use or occupancy does not delay the progress of the Work. Such use, operation or occupancy (i) shall not constitute final acceptance of space, systems, materials or elements of the Work; (ii) shall not affect the start of any warranty or guarantee period; and (iii) shall not affect the obligations of the Contractor for the Work. The Contractor shall continue the performance of Work in a manner which shall not unreasonably interfere with such use, occupancy and operation by the Owner.

## § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Final Completion” means when the following conditions have been satisfied: (i) all conditions for Substantial Completion have been satisfied, (ii) all “Punchlist” items have been fully completed and approved by Owner, (iii) delivery to Owner of all permit sign-offs (including elevator, plumbing, sprinkler and fire alarm) and other approvals and certifications on account of the Contractor’s Work as required for issuance of the final certificate of occupancy, and (iv) the Architect has issued its Certificate of Final Completion. Upon receipt of the Contractor’s written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect’s knowledge, information and belief, and on the basis of the Architect’s on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect’s final Certificate for Payment will constitute a further representation that conditions listed in Sections 9.10.1.1 and 9.10.2 as precedent to the Contractor’s being entitled to final payment have been fulfilled.

§ 9.10.1.1 The Contractor shall keep marked “as-built” drawings up-to-date concurrently as the Work progresses and shall prior to submitting its application for final payment, and together with its Subcontractors, provide a complete set of such “as-built” drawings to the Owner and the Architect for its review. The Contractor shall maintain an accurate record of all deviations from the Construction Documents which occur in the Work as actually constructed, and shall submit to the Owner electronic files of same, including descriptions, drawings, sketches, marked prints, and similar data, indicating the “as-built” conditions. Such information shall also be submitted in electronic format (DWG, PDF) acceptable to the Owner, together with one hard copy following Final Completion.

§ 9.10.2 Neither Final Payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) the Contractor has delivered all

warranties, manuals, instructions, Project logs, as-built drawings, and other close-out documents to the Owner (one hard copy set and also in electronic form), (6) Contractor has caused all training of Owner representatives on necessary systems to be completed, (7) all life safety certifications from alarm subcontractors and electricians, (8) Contractor's certification setting forth all subcontractors and suppliers having performed or provided the Work, (9) final lien waivers and releases from all parties providing or performing any portion of the Work consistent with Section 12.1.4 of the Agreement, (10) if requested by the Owner, Contractor has submitted to Owner other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of security interest or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner; (11) Contractor has provided any reporting/documentation as may be required in accordance with the LEED Responsibility Matrix; (12) Contractor has completed all Work on the punchlist of items requiring correction or completion created pursuant to Section 9.8; and (13) Contractor has completed all other obligations required under the Contract Documents, except for those obligations which survive the expiration or termination of the Contract, including, but not limited to, Contractor's obligation to correct Work pursuant to Section 12.2 of the General Conditions. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final Completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall (i) exercise utmost care and carry on such activities under supervision of properly qualified personnel and (ii) give the Owner and Architect reasonable advance written notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in

whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's EH&S Manager unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 Injury or Damage to Person or Property

The Contractor shall be responsible for development of a safety program for the Work which will be administered by the Contractor. Such safety program shall provide for procedures to be followed by the Contractor, all Subcontractors and their Sub-subcontractors in connection with the Work, including, without limitation, the timing, extent, and documentation of the safety program. The Owner reserves the right, but does not have the obligation, to periodically review the Project while under construction and, if necessary, make recommendations to the Contractor regarding implementation of safety measures by Contractor. Owner's review shall not relieve Contractor of its responsibility for safety.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause, and be entitled to submit and a proposed a Change Order for such additional costs and time as required under the circumstances (such approval not unreasonably withheld or conditioned).

§ 10.2.10 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are causes, the accident shall be reported immediately by telephone or email to the Owner and the Architect. The Owner, similarly, shall promptly report in writing to the Contractor all accidents arising out of or in connection with the Work of which the Owner has knowledge (other than by or through the Contractor).

#### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum and the Guaranteed Maximum Price shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible and reimburse Contractor for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.4 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.5 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the **Exhibit F** of the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner and such persons and parties as required pursuant to **Exhibit F** of the Agreement shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. The insurance coverages and limits as set forth in this Article 11 and **Exhibit F** of the Agreement shall be supplemented by the Contractor and Subcontractors as the case may be, as and to extent applicable laws, codes, regulations, or Contract Documents require coverages and/or limits not otherwise set forth in **Exhibit F** of the Agreement with respect to the performance of the Work.

§ 11.1.2 The Contractor shall provide payment and performance bonds for the surety bonds of the types, for such penal sums, and subject to such terms and conditions as required, including obligee endorsements, as provided in **Exhibit E** of the Agreement.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon

receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Guaranteed Maximum Price and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Guaranteed Maximum Price shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner and made to the Owner, subject to the interests of other insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.]

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's and Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, Contractor shall receive and adjustment for costs of uncovering and replacement, by appropriate Change Order. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be payable as a Cost of the Work to the extent permitted under Article 7 of the Agreement, subject to, and without any increase in, the Guaranteed Maximum Price.

#### § 12.2.2 After Final Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period, if the Owner fails to promptly notify the Contractor and give the Contractor in writing an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach by Contractor pursuant to this Section 12.2.2. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Guaranteed Maximum Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

### § 12.4 Manufacturer Warranties

The Contractor shall obtain and furnish directly to the Owner, subject to approval by the Architect and before final acceptance by the Owner, any written guarantees and warranties called for in the Contract Documents or applicable to any portion of the Work. The Contractor agrees to assign to the Owner at the time of Final Completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. The Contractor shall, in addition, furnish all special warranties as may be required by the Contract Documents, and the provisions of these General Conditions. Where such manufacturer warranties limit the Owner's rights to exercise the warranties in any manner, the Contractor covenants to assist the Owner in presentment of any such warranty claims. All such warranties shall be in addition to Contractor's warranty obligations as required pursuant to this Contract and shall not otherwise limit such obligations. Where extended manufacturers' warranties are available, Contractor shall promptly advise Owner of the right to purchase any such extended warranties prior to expiration of such option rights.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the laws of the State of Georgia, without regard to its conflict of law principles.

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor but with prior notice thereto, assign the Contract to any affiliate of Owner (other authorized government body, agency, and/or instrumentality, or to a lender providing construction financing for the Project, if the assignee assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents and other documents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.



## § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The Owner shall bear costs of (i) tests, inspections, or approvals that do not become requirements until after execution of this Agreement, and (ii) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all reasonable and substantiated costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect or Owner is to observe tests, inspections, or approvals required by the Contract Documents, the Architect or Owner will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## § 13.6 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.

§ 13.7 Any Work performed by Contractor shall be in that party's capacity as an independent contractor. Contractor shall not be deemed, or hold itself out to be the agent of Owner for any purpose.

§ 13.8 It is the intention of the parties that all terms of this Contract are to be considered as complementary. All parties have been counseled by able attorneys in entering into this Contract. Accordingly, none of the terms of this Contract shall be construed against any party on account of any party being considered the drafter of the Contract.

§ 13.9 The Article and Section headings in this Contract are for ease of reference only and shall not be used to interpret the meaning thereof. References to a Section shall be deemed to include all relevant subsections unless otherwise indicated.

§ 13.10 Except as expressly set forth in this Contract, nothing in this Contract creates any rights in any other party not a signatory to or expressly set forth as a third-party beneficiary to this Contract. No Subcontractor, Sub-Subcontractor, supplier, vendor, delivery entity, or any employee, agent, or representative of any of them, shall be a third-party beneficiary of this Contract.

§ 13.12 Each person executing this Contract warrants, in his or her individual capacity, that he or she has full and legal authority to execute this Contract for and on behalf of the respective designated corporations and to bind such corporations to all terms and provisions of the Contract.

§ 13.11 The rights, obligations and representations and warranties undertaken by the parties and obligations under Article 11 and Sections 14.2, 14.6.1, 14.6.2, and 14.6.3 of the Agreement and Articles 11, 12, 14 and 15, and Sections 1.7.1, 3.5.1, 3.13.4, 3.17, 3.18, 4.5, 9.3.3, 9.7.2, 13.6, 13.2, and 13.4 of the General Conditions shall survive the consummation of the transaction contemplated herein.

§ 13.12 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa.

§ 13.13 Whenever possible, each provision of this Contract shall be interpreted in a manner to be effective and valid under applicable law. It: however, any provision of this Contract, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Contract or valid portions of such provision, which are hereby deemed severable.

#### §13.15 FCPA PROHIBITIONS

The Contractor represents and warrants to the Owner that it is familiar with the U.S. Foreign Corrupt Practice Act of 1977 (as amended, the “FCPA”) and its purposes, including its prohibition against making corrupt Payments to obtain an improper advantage for the Owner or in order to obtain, retain, or direct business to the Owner. “Payment” as used in this Section means any offer, payment, promise to pay or authorization of the payment of anything of value, including but not limited to cash, checks, wire transfers, tangible and intangible gifts, favors and services; the term includes entertainment and travel expenses that go beyond what is reasonable and customary and of modest value and includes what are sometimes referred to a “facilitating payments.” “Government Official” means an executive, director, official, officer, employee, minister or agent of any (i) governmental department, agency or instrumentality, (ii) wholly or partially government owned or controlled company, authority or business, (iii) political party or (iv) public international organization (for example, the International Monetary Fund or the World Bank); the term Government Official includes any candidate for political office. The Contractor represents and warrants that, to its knowledge, it is not now, nor has it been investigated or accused by any governmental authority or former client of having made a Payment to any Government Official for the purpose of and covenants that it shall not make any such Payment, used or to be used for the purpose of: (i) influencing any act, decision or failure to act by a Government Official in his or her official capacity, (ii) inducing a Government Official to use his or her influence with a government or instrumentality of government to affect any act or decision of such government or instrumentality; or (iii) securing an improper advantage. The Contractor represents and warrants that it is now in compliance with the anti-bribery and anti-corruption laws of the jurisdiction in which the Project is located, and will remain in compliance with such laws. If the Contractor is now subject to the FCPA, Contractor represents and warrants that it is and will remain in compliance with the FCPA. The Contractor represents and warrants that if it is awarded work by the Owner, no part of the funds received by Contractor from the Owner will be used for any purpose that could constitute a violation of the laws of the jurisdiction in which the Project is located or the FCPA and shall not be in violation of the commercial bribery laws of the jurisdiction in which the Project is located, or otherwise used to cause a person who is not a Government Official to breach his or her obligations of loyalty and faithfulness to his employer.

§13.15.1 The Contractor represents that it is not a Government Official, and, if applicable, none of its officers, directors, senior managers, partners, owners, or principals are Government Officials. Contractor agrees that if it or any officers, directors, senior managers, partners, owners, or principals becomes a Government Official, then Contractor will promptly notify the Owner in writing. On receipt of a written notice, the Contractor and the Owner will consult together to address concerns with the FCPA or the laws of the jurisdiction in which the Project is located and determine whether those concerns can be satisfactorily resolved. If, after consultation, any such concerns cannot be resolved in the good faith and reasonable judgment of the Owner, then the Owner, on written notice to Contractor, may withdraw from or terminate the Contract.

§13.15.2 The Contractor agrees that should it learn or have reason to know of any Payment that would violate the FCPA, other laws of the United States, or the laws of the jurisdiction of where the Project is located, it shall immediately disclose it to the Owner. On receipt of such notice, Contractor and the Owner will consult together to address concerns with the Payment and determine whether those concerns can be satisfactorily resolved. If, after consultation, any such concerns cannot be resolved in the good faith and reasonable judgment of the Owner, then the Owner, on written notice to Contractor, may withdraw from or terminate the Agreement.

§13.15.3 Notwithstanding any other provision to the contrary in the Agreement, the Owner may withhold payments under the Agreement and/or suspend or terminate the Agreement (without limiting any other right, without liability and without notice) upon learning information giving it a reasonable belief that Contractor may have violated, or may have caused the Owner or any of its affiliates to have violated the FCPA or any other law intended to prevent corruption or bribery.

§13.15.4 The Contractor further agrees to the following additional steps in order to address any potential FCPA-related concerns:

§13.15.4.1 All payments from the Owner to Contractor shall be by check, bank transfer, credit card or similar documented form of payment and be made payable to the Contractor in the jurisdiction in which the Project is located.

§13.15.4.2 All payments by the Contractor in connection with work under the Agreement shall be by check, bank transfer, credit card or similar documented form of payment unless by governmental regulation such payment may only be made in cash.

§13.15.4.3 All payments made to any governmental department, agency or instrumentality, or to any wholly or partially government-owned or government-controlled company, authority or business, shall be documented by receipts from the recipient and shall be made only on the basis of rates published by the recipient.

§13.15.4.4 All travel and entertainment expenses (if provided for under the Agreement) will be reimbursed only when approved by the Owner and supported by appropriately detailed records.

§13.15.4.5 Upon request of the Owner, the Contractor shall provide periodic written reports detailing the work performed.

§13.15.4.6 In so far as is relevant to transactions performed for the Owner, the Owner shall have reasonable access to the Contractor's books and records and the right to audit them on a periodic basis, provided that nothing herein or otherwise in the Agreement shall afford the right to audit stipulated rates, lump sum amounts or agreed-to percentages agreed by the Owner and Contractor.

§13.15.4.7 The Contractor shall inform any subcontractors of the FCPA requirements stated herein, and shall include the above covenants in any subcontractor agreements pertaining to the Work. The Contractor shall remain liable for any acts or omissions in violation of the FCPA requirements by any subcontractors.

§13.15.5 The terms of the Contract may be disclosed to the United States government and to the government of the jurisdiction in which the Project is located, and any other relevant government agencies if deemed appropriate by the Owner.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for (a) a period of sixty (60) consecutive days or otherwise for aggregated period of ninety (90) days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work due to (i) issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; (ii) an act of government, such as a declaration of national emergency, that requires all Work to be stopped; or, (iii) the Owner orders the Contractor to suspend, delay or interrupt the Work pursuant to Section 14.3, or (b) if the Work is stopped for a period of thirty (30) consecutive days because (i) the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents, or (ii) Contractor has properly stopped the Work pursuant to Section 9.7.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 90 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

## § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly or otherwise in a material regard refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards material applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority which effect the performance of the Work, or otherwise repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority which effect the performance of the Work; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including reasonable and substantiated compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, and the respective obligation for payment shall survive termination of the Contract.

## § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 Guaranteed Maximum Price and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Guaranteed Maximum Price shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

## § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work so terminated; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, and except for Work not so terminated, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. In no event shall Contractor be entitled to unearned profit with respect to Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by the Contractor or Owner during the term of this Contract with respect to an adjustment of the Contract Sum and/or Contract Time, including arising from a disputed Construction Change Directive or determination of the Owner, Owner's Representative or of the Architect hereunder. Claims by the claiming party must be initiated by written notice in strict accordance with the provisions of this Article 15 or otherwise as expressly provided in the Contract. The claiming party shall be responsible to substantiate Claims.

#### § 15.1.2 NOTICE OF CLAIMS

Claims must be initiated within fourteen (14) days after the claiming party's knowledge of the event giving rise to such Claim. Claims must be initiated by written notice to the other party detailing the Claim and the event giving rise to such Claim and setting forth an estimate of the cost and of probable effect of delay and impact on the progress of the Work, if known. Where the actual impact to either the Contract Sum and/or Contract Time cannot be fully determined at the time of such Claim submission, the claiming party shall, promptly upon such final determination, provide the other party with such claimed adjustments to Contract Sum and/or Contract Time, as the case, may be.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Contract and will not directly or indirectly stop, slow down or delay any Work or part of its Work provided the Owner shall continue to make payments in accordance with the Contract Documents.

#### § 15.1.4 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Guaranteed Maximum Price, notice as provided in Section 15.1.2 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 Claims for Additional Time

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 15.1.2 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary; provided that Contractor provides a final accounting as required under Section 15.1.2.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. A work day is considered lost due to adverse weather when the Contractor reasonably demonstrates that adverse weather conditions or their ongoing effects prevented the normal labor and equipment force from working at least five (5) hours of an otherwise available and scheduled work day on critical path activities (in other words, more than three hours of critical path work was lost). Moreover, a work day may also be deemed lost due to adverse weather if the Contractor obtains the Owner's approval to dismiss field labor that work day due to anticipated weather conditions, such approval to be evidenced by an e-mail or other writing from the Owner. The Contractor shall notify the Owner of any days lost due

to adverse weather (together with dates, description of work activities impacted, etc.) at the construction meeting, and shall review and justify to the Owner that the adverse weather delayed the critical path.

#### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract, except (i) as provided in Section 4.3 of the Agreement and its subsections, (ii) with respect to Contractor's indemnity obligations to Owner limited only to bodily injury or property damage of third parties, and (iii) to the extent such consequential damages are caused by the gross negligence or intentional misconduct of the Contractor. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except earned profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 Initial Decision

[Not Used.]

#### § 15.3 Disputes

§ 15.3.1 Disputes shall be resolved in accordance with Article 13 of the Agreement.

#### § 15.4 Arbitration

[Not Used.]

# DRAFT AIA® Document A102™ – 2017

***Standard Form of Agreement Between Owner and Contractor  
where the basis of payment is the Cost of the Work Plus a  
Fee with a Guaranteed Maximum Price***

***DRAFT 1/29/20***

AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_ in the year 2020

BETWEEN the Owner:

**Geo. L. Smith II Georgia World Congress Center Authority, an instrumentality of the State of Georgia and a public corporation**  
285 Andrew Young International Blvd., NW  
Atlanta, Georgia 30313-1591

and the Contractor:

**Skanska/SG, a Georgia joint venture**  
55 Ivan Allen Jr. Boulevard, Suite 600  
Atlanta, Georgia 30308

for the following Project:

Signia Hilton, 159 Northside Drive NE, Atlanta, Georgia 30313 - A full-service, minimum 975 room upper-upscale to luxury convention center hotel and related public meeting space to be the Convention Center's headquarters hotel to host civic, cultural and commercial events, as well as related parking facilities and public infrastructure and facilities to support the new hotel, including new hotel operations offices, kitchens and pantries, public washrooms, dining facilities, building receiving area/loading dock, employee lounge, building services area, engineering office and shops, audio/visual control room, first aid office, public safety office/facilities, and other spaces needed to support the new hotel

The Architect:  
M. Arthur Gensler Jr. & Associates, Inc., a California corporation  
999 Peachtree Street, Suite 1400  
Atlanta, Georgia 30308  
Attn: Robert M. Fischel

The Owner and Contractor agree as follows.

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### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the General Conditions as set forth as **Exhibit A** hereto, as modified, Drawings, Specifications, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16. The Exhibits as referenced herein, together with such documents as are identified in such Exhibits are incorporated by reference into the Contract. References to the AIA Document A201-2017 General Conditions of the Contract for Construction, the AIA A201-2017, the A201, the General Conditions of the Contract, the General Conditions or other similar derivations or abbreviations thereof, shall mean the General Conditions as appended to this Agreement as **Exhibit A** (the "General Conditions"). In the event of any conflict between or among the Contract Documents, the Documents shall be construed according to the following priorities:

First Priority: Amendments and Change Orders, with later date having greater priority; Second Priority: Contractor's Qualifications, Assumptions and Exclusions as contained in Rider G-3, provided that any provisions therein that are in conflict with or contrary to express provisions set forth in this Agreement or the General Conditions shall not be afforded precedence unless such specific provisions in **Exhibit G** have been initialed by both Owner and Contractor; Third Priority: this Agreement; Fourth Priority: Addenda, with later date having greater priority; Fifth Priority: Plans, with detailed drawings taking precedence over large scale drawings, and drawings taking precedence of written specifications. If and to the extent of any inconsistency, ambiguity, discrepancy or error in the Contract Documents, the Contractor shall immediately seek clarification from the Owner.



## ARTICLE 2 THE WORK OF THIS CONTRACT

Except as specifically indicated in the Contract Documents to be the responsibility of others, the Contractor shall fully execute the Work described in and in accordance with the Contract Documents, including all Work reasonably inferable as being necessary to produce the results indicated by the Contract Documents. The Work shall be completed by qualified, trained, experienced and competent personnel in a professional and workmanlike manner in accordance with: (i) the Contract Documents and generally prevailing and accepted industry standards; (ii) all requirements of any warranties applicable to the Work; and (iii) all laws, ordinances, codes, regulations, rules and orders that bear upon the Contractor's performance of the Work. The Contractor represents and warrants to the Owner that it is experienced in the construction of hotels and related support facilities and that it is familiar with and knowledgeable regarding the components that are properly and customarily included within such a project in order to produce a project in accordance with the Standard of Care as described in Section 1.1.9 of the General Conditions, and LEED standard for LEED Gold status pursuant to the LEED Responsibility Matrix as included in the Architect's specifications. The Contractor represents and warrants that the Guaranteed Maximum Price includes all work, materials, equipment, labor and operations that are required for the Work, as set forth in the Contract Documents, in accordance with the foregoing.

## ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor is an independent contractor and covenants with the Owner to cooperate with the Architect, Owner, and Owner's third-party representatives, agents, or other contractors or vendors (collectively known as "Owner Entities") and exercise the Contractor's best skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

## ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The "Contract Time" is the time afforded pursuant to the Contract Documents for the entire and complete performance of the Work, including with respect to Substantial Completion and other critical milestones, such time being measured from the date of commencement of the Work, as such time may be adjusted pursuant to the Contract Documents. The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

[ N/A ] The date of this Agreement.

[ X ] A date set forth in a notice to proceed issued by the Owner, subject to Section 4.1.1 and Section 4.1.2 below.

[ N/A ] Established as follows: N/A

§ 4.1.1 Owner acknowledges that the date of commencement of the Work as shall be identified in a notice to proceed ("NTP") shall be subject to (i) Owner having obtained any permits or approvals as needed for such Work then required (Contractor acknowledges a final permit is expected on or about May 2020), (ii) Owner having provided reasonable evidence of Project financing, (iii) Owner affording Contractor access to such portion and areas of the Project site as necessary for the performance of the Work at the time, and (iv) evidence of insurance to be provided by Owner pursuant to **Exhibit F** and Article 11 of the General Conditions (Contractor's failure to procure required insurance by the required date of commencement shall not toll such date but shall restrict Contractor's performance of Work until obtained).

§ 4.1.2.1 If Owner has not issued effective NTP within thirty (30) days after mutual execution of this Agreement (as measured by the date of the last signatory), Contractor shall have no obligation to commence the Work, or any part of the Work, until Contractor and Owner (a) reach agreement on the scope and nature of equitable adjustment to the Guaranteed Maximum Price and Contract Time, including full compensation to Contractor for the delay in issuing the NTP and; (b) Owner satisfies all of the above conditions precedent to the effectiveness of the NTP.

§ 4.1.2.2 In furtherance of the Contract Time as detailed herein, Contractor has prepared the construction schedule as set forth as **Exhibit C** hereto (the "Construction Schedule"), which takes into account Contractor's GMP and other Contract Document requirements and conditions relative to the timing and performance of the Work.

§ 4.1.2.3 The Construction Schedule and Contract Time include a twenty-eight (28) day “delay” allowance for delays as set forth pursuant to Section 8.3 of the General Conditions (the “Delay Allowance”). The Contractor’s GMP includes the allowance for extended general conditions costs for the Delay Allowance calculated based on the existing Project Schedule, such allowance being adjusted for actual documented general conditions costs on account of any such delays. No extension of the Contract Time shall be afforded with respect to delays as set forth in Section 8.3 of the General Conditions except and unless such delays are in excess of the Delay Allowance.

§ 4.2 Contractor shall diligently prosecute the Work consistent with the Construction Schedule, and achieve completion of all milestones as set forth in **Exhibit B** hereto and as provided in Sections 4.2.1 and 4.2.2 below, all being subject to adjustments of the Contract Time as provided in the Contract Documents.

§ 4.2.1 Contractor shall achieve Substantial Completion of the entire Work no later than \_\_\_\_\_ days from the date of commencement, as such time period may be adjusted pursuant to the Contract Documents (“Substantial Completion Date”).

§ 4.2.2 Final Completion of the entire Work shall be achieved no later than sixty (60) days, as such time period may be adjusted pursuant to the Contract Documents, following the date that is the earlier of the (i) Substantial Completion Date, and (ii) the actual date of Substantial Completion (“Final Completion Date”).

### § 4.3 Liquidated Damages

Contractor acknowledges that the Work is urgently needed by the Owner and that TIME IS OF THE ESSENCE of Contractor’s obligation to achieve Substantial Completion of the Work by the Substantial Completion Date, as it may be adjusted pursuant to the terms of the Contract Documents. Contractor further acknowledges that its failure to achieve Substantial Completion of the entire Work by the Substantial Completion Date (as may be modified by Change Order pursuant to the Contract Documents) will result in substantial damages to Owner. Therefore, if Contractor fails to achieve Substantial Completion of the entire Work on or before the Substantial Completion Date, then Owner shall be entitled to recover liquidated damages in the amount of Sixty Thousand Dollars (\$60,000) per day, up to a maximum amount not in excess of the amount of Contractor’s Fee (the “Liquidated Damages”). It is expressly agreed that the Liquidated Damages payable under this Contract represent the parties’ good faith attempt to estimate Owner’s consequential delay damages and do not constitute a penalty and that the Parties, having negotiated in good faith for such specific Liquidated Damages and having agreed that the amount of such Liquidated damages is reasonable in light of the anticipated harm caused by the breach related thereto and the difficulties of proof of loss and inconvenience or non-feasibility of obtaining any adequate remedy, are estopped from contesting the validity or enforceability of such Liquidated Damages. Owner and Contractor each agree not to challenge the enforceability of the Liquidated Damages provisions contained herein. Owner may deduct Liquidated Damages for delay from any unpaid amounts then or thereafter due to Contractor under the Contract Documents. Any damages not so deducted from any unpaid amounts then or thereafter due Contractor shall be payable immediately to Owner upon Owner’s demand. The foregoing Liquidated Damages are Owner’s sole and exclusive damages for Contractor’s delay provided that the foregoing limitation does not limit Contractor’s other obligations or liabilities under this Contract.

## ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor’s Fee.

§ 5.1.1 The Contractor’s “Fee”:

(i) Three percent (3.00%) of the Cost of the Work as included in the Original GMP (as defined below) as of the date of execution of this Agreement, and (ii) two and three quarters percent (2.75%) of the Cost of the Work for increases in the Costs of the Work that are in excess of the Fee Threshold (as defined below).

§ 5.1.2 The method of adjustment of the Contractor’s Fee for changes in the Work:

Contractor’s Fee for Work added by Change Order shall be two and three quarters percent (2.75%) of increased net changes to the Cost of the Work that cause the GMP as stated of the date of execution of this Agreement (the “Original GMP”) to be exceeded by more than One Million Five Hundred Thousand Dollars (\$1,500,000) (the “Fee Threshold”). Alternates as may be selected by Owner shall be subject to adjustment for Fee without regard to the Fee Threshold, and any such adjustments to the GMP on account of alternates shall not be included in any

calculation of the Fee Threshold. Allowance items included in the GMP shall be aggregated so that the Contractor's Fee on account of allowance items shall only be at a rate of three percent (3.0%), except where the aggregated adjustments for all allowance items as set forth in the initial GMP are exceeded, and thereafter any adjustments on account of allowances shall be subject to a Fee of 2.75% unless the Fee Threshold has been exceeded.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

The compensation payable to Subcontractors shall, unless other approved in writing by the Owner, be limited to actual costs, plus the following percentage for overhead and profit: 10% for overhead and 5% for fee and profit, except for unit prices previously agreed to in the Subcontract and approved by the Owner.

The parties hereby agree that the provisions stated in this Contract and elsewhere in the Contract Documents with respect to payment(s), withholding of payment(s), interest applicable to payment(s) and recovery of attorneys' fees in relation to collection of payment(s) supersede and control over the terms of the Georgia Prompt Pay Act, O.C.G.A. Section 13-11-1, et seq.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed eighty percent (80%) of the standard rental rate (i.e., Associated Equipment Dealers rate) paid at the place of the Project at the time of its commitment to the Work.

§ 5.1.5 Unit prices, if any: As identified in **Exhibit G**.

§ 5.1.6 Other:

§ 5.1.6.1 Shared Savings

If the actual Cost of the Work, plus the Contractor's Fee shall be less than the established Guaranteed Maximum Price, as adjusted, the Contractor, as a bonus, provided that the Substantial Completion Date has been achieved, shall be entitled to Twenty-Five percent (25%) of such amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00), taking into account any such adjustments of Contingency as reflected in in Section 5.2.7 (the "Shared Savings"). Any Shared Savings payable to the Contractor shall not become due and payable until, and together with, Final Payment.

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the "Guaranteed Maximum Price". Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. The allocation of the Contractor's Guaranteed Maximum Price (also referred to as the "GMP"), is set forth in the GMP attached as **Exhibit G** hereto (the "GMP Book").

§ 5.2.2 Alternates

§ 5.2.2.1 Alternates, if any, included in the Guaranteed Maximum Price: As set forth in **Exhibit G**.

§ 5.2.2.2 Subject to the conditions noted below, the alternates as set forth in **Exhibit G**, may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

§ 5.2.3 Allowances, if any, included in the Guaranteed Maximum Price: As set forth in **Exhibit G**.

§ 5.2.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based: As set forth in **Exhibit G**.

§ 5.2.5 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract Documents to

the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

### § 5.2.7 Contingency

§ 5.2.7.1 The Original GMP shall include an amount for the construction contingency (“Initial Contingency”) equal to three percent (3%) of the Cost of the Work, which Initial Contingency shall be adjusted pursuant to this Section 5.2.7 and the related subsections (the “Contingency”). The Initial Contingency (but not the Guaranteed Maximum Price) shall be adjusted, as the case may require, to reflect net savings (or overruns) resulting from the award of Subcontracts. The amount of the adjustment to the Initial Contingency shall be determined by adjusted buy-out amounts relative to the corresponding line items in the schedule of values.

§ 5.2.7.2 The Contractor shall notify the Owner, through Owner’s representative, in writing as soon as practicable prior to any proposed use of the Contingency, or any portion thereof, and shall supply the Owner with detailed information relative to such proposed use and the Contractor’s analyses of the remaining contingency and the adequacy of such Contingency for the balance of the Work to be performed. The Contractor shall not use any portion of the Contingency without the Owner’s Representatives prior approval, which approval shall be provided to the Construction Manager within five (5) business days of receipt of a properly supported request and shall not be unreasonably withheld, delayed or conditioned and be documented in a form reasonably acceptable to Owner’s Representative. Owner acknowledges that Contractor may be entitled to rely on Owner’s Representatives pre-approval of such Contingency draws. Notwithstanding the aforementioned, Contractor acknowledges that all funding of Contingency shall be subject to the same terms and conditions set forth in this Contract with respect to Owner’s approval of Applications for Payment and payment on account thereof, such approved Contingency draws to be included in the current monthly submission of such Application for Payment by Contractor.

§ 5.2.7.2 Subject to obtaining the Owner’s approval as provided in Section 5.2.7.1, the Contractor is authorized to spend the Contingency to defray any Cost of the Work that is reimbursable or authorized under Article 7. The Contractor shall keep the Owner fully advised, on a monthly basis, of all anticipated charges against the Contingency. For example, the Contingency may be used for remedying or repairing defective Work, or for acceleration or premium time costs to recover time lost resulting from error or fault by any Subcontractor or Sub-Subcontractor, resulting from to poor performance or non-performance of the Work. If applicable, the Contractor shall use commercially reasonable efforts to recover the costs for non-performing or defaulting Subcontractors from the Subcontractors or from their applicable insurance or bonds. If Contingency is used for a cost and the Contractor subsequently recovers the cost from a Subcontractor or its insurance or bonds, then Contractor shall credit such recovered amount to the Contingency.

§ 5.2.7.3 In no event shall any portion of the Contingency be used to pay any costs or expenses resulting from any defaults by Subcontractors that are recovered from the Subcontractor or from any insurance. With respect to costs or expenses resulting from any defaults by Subcontractors that are not recovered from the Subcontractor or from any insurance, Contractor may use the Contingency for those costs only if Contractor makes commercially reasonable efforts to recover the costs or expenses from any applicable insurance, sureties, Subcontractors, suppliers or others, and the costs of repair or expenses are not recovered from any such entities despite the commercially reasonable efforts. In the event of a default by any Subcontractors, the Contractor shall enforce its rights and pursue its remedies in accordance with the terms of the subcontract with such Subcontractor. If Contingency is used for a cost and the Contractor subsequently recovers the costs from a Subcontractor or its insurance or bonds, then Contractor shall credit such recovered amount to the Contingency.

§ 5.2.7.4 The amount of the unallocated Contingency shall not exceed the percentages set forth in this section at the following milestones:

- .1 Upon delivery by the Architect of the 100% Construction Documents, the amount of the Contingency shall be reduced by an amount equal to five percent (5%) of the then established Contingency, such adjustment to be confirmed and further reflected by Change Order;
- .2 Following Contractor’s buyout of all Subcontracts, the amount of the Contingency shall be reduced by an amount equal to five percent (5%) of the then established Contingency, such adjustment to be confirmed and further reflected by Change Order;
- .3 Upon completion of the superstructure (“topping-off”), the amount of the Contingency shall be reduced by an amount equal to five percent (5%) of the then established Contingency, such adjustment to be confirmed and further reflected by Change Order; and

- 4 On the date that is ninety (90) days prior to date that is the earlier of (a) the scheduled date for Substantial Completion, or (b) the Substantial Completion Date, the amount of the Contingency shall be reduced by an amount equal to five percent (5%) of the then established Contingency, such adjustment to be confirmed and further reflected by Change Order.

## ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work shall be determined in accordance with Article 7 of the General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of the General Conditions, as they refer to “cost” and “fee,” and not by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of the General Conditions shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Contractor’s Fee as defined in Section 5.1.1 of this Agreement.

## ARTICLE 7 COSTS TO BE REIMBURSED

### § 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in good faith for the proper performance of the Work only as set forth in this Article 7 (all as further detailed in the GMP Book) and subject to the limitations as otherwise provided in the Contract Documents. In no event shall Contractor be permitted or shall the Cost of the Work include any charge or expense that is otherwise duplicative of any agreed stipulated rate or amount for items consisting of general conditions costs, general requirements costs, insurance allocations, or other established costs as otherwise described in this Article 7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Contractor shall obtain such reasonable approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior written approval of the Owner.

### § 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops, except for those persons identified in **Exhibit G**, including the exhibits and attachments thereto.

§ 7.2.2 Costs paid or incurred by Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of Work under Article 7.2.1. For salary personnel, Contractor and Owner agree that the employee benefits and payroll burdens described herein will be converted into a fixed stipulated rate that will be agreed upon between Owner and Contractor as set forth in the GMP Book, such stipulated rates not being subject to audit.

§ 7.2.3 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

### § 7.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

### § 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction, including materials and equipment stored off the site, subject to Section 12.1.7.1.2 and Section 12.1.9 of this Agreement and Section 9.3.2 of the General Conditions.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage.

### § 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from Contractor or others, including installation, minor repairs, and replacements, dismantling, removal, transportation, and delivery costs thereof. Rental charges shall be consistent with those generally prevailing in the location of the Project. Contractor shall obtain bids for all machinery and equipment to be rented from no fewer than two (2) responsible suppliers other than Contractor itself or an Affiliate (as defined in Section 10.4) or Subcontractors.

### § 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract at the following stipulated rates:

1. Two and sixty-three hundredths percent (2.63%) of the GMP, plus the installed cost of any Owner-furnished equipment within the meaning of Section 5.1.1. of this Agreement for Contractor's Controlled Insurance Program which consists of Commercial General Liability and Worker's Compensation Insurance ("CCIP");
2. One and one-quarter percent (1.25%) of the Cost of the Work, less General Conditions Costs for Subcontractor Default Insurance, if approved by Owner pursuant to Section 11.5 of the AIA Document A201-2017, as modified; and
3. Payment and Performance bonds at a rate of sixty-five hundredths percent (.65%).

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other construction related permits, licenses (except business licenses), and inspections, for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work, with the Owner's prior written approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal costs, including reasonable attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and only with the Owner's prior written approval, which shall not be unreasonably withheld. In no event, however, shall any costs under this Section 7.6.9 cause an increase in the Guaranteed Maximum Price. Should the Contractor recover legal costs or attorneys' fees from another party, Contractor shall pay to the Owner such recovered legal costs and attorneys' fees up to the amount paid by the Owner under this Section 7.6.9.

§ 7.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

#### § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's reasonable prior written approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of the General Conditions.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that Contractor has made a good faith effort to recover the costs of repair or correction from any applicable insurance, sureties, Subcontractors, suppliers or others, and the costs of repair or correction are not recovered from any such entities despite the good faith effort.

§ 7.8 The Contractor's general conditions and general requirements costs, as specifically set forth in **Exhibit G**, including as provided in the Sections above.

### ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically included as part of the Contractor's general conditions and staffing included in the GMP Book attached as **Exhibit G**;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval, except as provided in the GMP Book;
- .3 Expenses of the Contractor's principal office and offices other than the site office or as listed in Article 7 or the GMP Book;
- .4 Overhead and general expenses except as provided in the GMP Book;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article 7, including, but not limited to, labor costs of Contractor, Subcontractors or Sub-subcontractors incurred after final completion for correcting, replacing, or modifying Work which is covered under a warranty or guaranty;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Bonuses for any of Contractor's employees except as provided in the GMP Book;
- .10 The costs of all fines, reinspection fees and penalties, including interest thereon, assessed against Contractor by any federal, state, or local governmental or quasi-governmental authority, except to the extent such fines, reinspection fees or penalties and interest thereon result from Owner's failure to pay undisputed amounts under the Contract Documents or are otherwise due to the fault of the Owner;
- .11 The costs of bonds to discharge liens arising out of claims against the Project which liens have been filed by Subcontractors or Sub-subcontractors, except to the extent such bond claim or lien is filed due to Owner's non-payment;
- .12 The cost of defending and losses in suits or claims of infringement of copyright or patent rights pursuant to Section 3.17 of the General Conditions or indemnity obligations pursuant to Section 3.18 of the General Conditions; and
- .13 Any cost for which Contractor is reimbursed or entitled to be reimbursed under any insurance policy unless approved in advance in writing by Owner.

## ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained. Contractor shall not obtain for its own benefit any discounts, rebates, or refunds in connection with the Work prior to providing Owner with seven (7) days' prior written notice of the potential discounts, rebates, or refund and an opportunity to furnish funds necessary to obtain such discount, rebate, or refund on behalf of Owner in accordance with the requirements of this Section 9.1. In addition, Contractor shall endeavor to combine material and equipment requirements and take such other steps as are necessary to permit the obtaining of all material and equipment at the best possible prices through volume purchasing. Contractor agrees to use all commercially reasonable efforts to procure services and materials from local suppliers in the locality of the Project site, to the extent necessary to maximize tax relief and benefits from local governmental entities.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1. Contractor shall provide all necessary services related to the bidding of Subcontracts for the construction of the Work, including, without limitation, the following: (a) preparing lists of prospective bidders; (b) preparing appropriate bid documents, including, without limitation, proposed forms of subcontract and purchase orders; (c) establishing bid schedules; (d) advertising for bids and developing bidder interest; (e) furnishing information concerning the Project to prospective bidders; (f) conducting pre-bid conferences; (g) receiving bids, as described below, and analyzing bids; (h) negotiating with Subcontractors concerning any matter related to the Project; and (i) such other services required by Owner with respect to the bidding process. Contractor shall obtain not less than three (3) qualified bids for each designated trade and element of the Work, except where specialty Work or other circumstances prevent or make qualification of three (3) bidders impractical. All bidding, bid leveling, and awards shall be conducted on an open-book basis with Owner's participation in such exercises as the Owner may elect. Contractor shall promptly provide copies of all bids to Architect and Owner. Each and every subcontract between Contractor and a Subcontractor shall be based on a lump sum price, unless otherwise agreed in writing by Owner.

§ 10.1.1 Subcontractors are subject to the provisions of this Agreement, and Contractor shall insert in Contractor's subcontracts all provisions required by the Contract Documents or necessary to enable Contractor to comply with the terms of this Contract. Subcontracting by Contractor shall not abrogate any obligation of Contractor under this Contract. Contractor shall not retain any Subcontractor to whom Owner makes a reasonable and timely objection during the procurement process to be developed by Contractor, which process is subject to Owner's written approval, not to be unreasonably withheld. When a specific bidder to whom no reasonable and timely objection has been made (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that a higher bid be accepted, then the Contractor may require that a Change Order be issued to increase the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner. Contractor shall not be required to retain any Subcontractor to whom Contractor has reasonable objection.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Contract, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

§ 10.3 Contractor shall be responsible for the management and coordination of Subcontractors in the performance of their work.

§ 10.4 Except as otherwise agreed in writing by both parties hereto, Contractor must competitively bid any trade work that Contractor wishes to perform with Contractor's own forces, or through an Affiliate, as defined below, and shall obtain no less than two (2) additional responsive bids from responsible subcontractors acceptable to the Owner. Contractor, or an Affiliate, shall be permitted to perform such trade work only if (i) Owner consents thereto in



writing after full disclosure in writing by Contractor to Owner of the affiliation or relationship of Affiliate to Contractor; (ii) Owner approves in writing any subcontract, contract, purchase order, Contract or other arrangement between the Contractor and such Affiliate in form and substance; and (iii) Contractor has given due consideration to the applicable EBO Plan as per **Exhibit D**. The term "Affiliate" means any entity related to or affiliated with Contractor or in which Contractor has direct or indirect ownership or control, including, without limitation, (i) any entity owned in whole or in part by Contractor; (ii) any entity with more than a fifty percent (50%) interest in Contractor and (iii) any entity in which any officer, director, employee, partner, or shareholder of Contractor, or any Affiliate, has a direct or indirect interest.

#### ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. Subject to the requirements herein, the Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers and other data solely relating to this Contract. The Contractor shall preserve these records for a period of five years after final payment, or for such longer period as may be required by law. Nothing herein or otherwise in the Agreement shall afford the Owner the right to audit any stipulated rates, agreed-to percentages, or lump sum amounts adopted between the Owner and Contractor for the composition of such rates but only for the application of such amounts.

#### ARTICLE 12 PAYMENTS

##### § 12.1 Progress Payments

§ 12.1.1 Based upon complete Applications for Payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month.

§ 12.1.2.1 The Contractor shall ten (10) days prior to the end of each monthly billing period shall submit to Owner's Representative and Architect a draft (aka "pencil copy") of the monthly Application for Payment, including estimates for the balance of the monthly period. The Architect and Owner's Representative shall review the pencil copy and schedule to meet to review the Work in place and the pencil copy with the Contractor to either provide for adjustments and/or to approve the draft. The Contractor acknowledges and agrees delivery of the "pencil copy" shall not constitute delivery of an Application of Payment. The Contractor, following the pencil copy review, shall then provide any such adjustments based on the pencil copy review and submit its Application for Payment to Architect and Owner's Representative for review, certification and approval, and delivery to Owner. Any disputed amounts not included in the Application for Payment shall be reserved. Notwithstanding the aforementioned or anything to the contrary in the Contract Documents, the Owner shall make final decisions on whether to make payment to the Contractor in accordance with the Contractor's Application for Payment.

§ 12.1.3 Provided that an Application for Payment is received by the Architect and Owner's Representative consistent with any adjustments required pursuant to Section 12.1.2.1, the Owner shall make payment of the approved amount not later than the 30th day of the following month. If an Application for Payment is received after the application date fixed above, payment of the approved amount shall be made by the Owner not later than thirty (30) days after the Owner's Representative and Architect receive the Application for Payment.

§ 12.1.4 In addition to the requirements of Section 12.1.3, the Contractor shall submit with each Application for Payment (except as otherwise provided in Section 12.2 for Final Payment): (a) a progress lien waiver fully executed by Contractor, which shall be current through the date of the Application for Payment; (b) a progress lien waiver fully executed by each (or any) Subcontractor who has performed Work with respect to the Application for Payment, which shall be current through the date of the Application for Payment; (c) if requested by Owner, progress lien waivers fully executed by each (or any) Sub-subcontractor who has performed Work with respect to the Application for Payment. For final payment the Contractor shall provide duly executed unconditional final lien waivers for itself and all Subcontractors (and any Sub-Subcontractors as the Owner require upon reasonable prior notice to the Contractor). The form of all such lien waivers shall be consistent with the requirements of applicable

law with any modifications thereto as may be permitted under applicable law being subject to the approval of the Owner and the Contractor.

§ 12.1.4.1 In addition to the Owner's rights to withhold payment under Section 9.5.1 of the General Conditions and any other provision in the Contract, the Owner reserves the right to refuse disbursement of (a) all of any progress payment until it has received the waiver and release required to be executed by the Contractor under this Section, or (b) the portion of a progress payment for which it has failed to receive a waiver and release required to be executed by a Subcontractor or, if requested by the Owner, a Sub-Subcontractor under this Section. The Owner also reserves the right to communicate directly with Subcontractors and/or to issue joint payee checks in the name of Contractor and any unpaid party, or to otherwise withhold funds from payments to secure payment to proper parties, provided that the Owner has given the Contractor written notice, and, based on information available to it (including any information provided by the Contractor), Owner has a reasonable belief that Contractor has not or will not continue to pay its Subcontractors pursuant to its subcontracts and Contractor fails or refuses to provide Owner adequate assurances within seven (7) days of receiving such written notice that Contractor has and will continue to satisfy its payment obligations to its Subcontractors. In no event shall any joint payment be construed to create any (a) contract between the Owner and a Subcontractor of any tier, (b) obligations from the Owner to such Subcontractor, or (c) rights in such Subcontractor against the Owner.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents and consistent with **Exhibit J** hereto. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data (including, without limitation, a schedule of values from each Subcontractor and material supplier) to substantiate its accuracy as the Owner may reasonably require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may reasonably require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 12.1.5.3 When the Contractor allocates costs from Contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Owner.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 12.1.7 In accordance with the General Conditions and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 12.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1.

§ 12.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;

- 2 The amount, if any, for Work that remains uncorrected and for which the Owner may withhold payment or nullified a Certificate for Payment as provided in Article 9 of the General Conditions;
- 3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- 4 For Work performed or defects discovered since the last payment application, any amount for which the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of the General Conditions;
- 5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment; and
- 6 Retainage withheld pursuant to Section 12.1.8.

#### § 12.1.8 Retainage

§ 12.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

With respect to all amounts due under each Application for Payment, Owner shall withhold (i) twenty percent (20%) of the Contractor's Fee, and (ii) (10%) retainage on all amounts due the Contractor for Costs of the Work performed, excluding the Contractor's bonds, insurance and general conditions amounts up to and through fifty percent (50%) of Work in place as measured against the Guaranteed Maximum Price (the "Retainage"). Retainage, except for the amount that is equal to two times the value of the then remaining Work (and any other such amounts for which Owner may be entitled to withhold payment pursuant to the Contract Documents), shall be released to Contractor by Owner together with payment on account of Substantial Completion. Owner shall remit unpaid Retainage less two hundred percent (200%) of the value of all punchlist items requiring correction or completion prior to Final Payment as required under Section 9.8 of the General Conditions, as determined by the Owner. All remaining Retainage shall be due and payable together with Final Payment.

§ 12.1.9 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 12.1.10 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, subject to retainage held on Subcontracts consistent with Section 12.1.8.1 above except where the Owner expressly agrees to the contrary, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.11 In taking action on the Contractor's Applications for Payment the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and Owner's approval or payment or Architect's certification shall not be deemed to be a representation that (1) the Owner's Representative or Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Sections 12.1.3 and 12.1.4 or other supporting data; (2) that the Owner or Architect has made exhaustive or continuous on-site inspections; or (3) that the Owner or Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, may be performed by the Owner's accountants or auditors acting in the sole interest of the Owner. No payment, in whole or in part, by the Owner of any Application for Payment shall be construed as an acceptance of any Work covered by such Application for Payment.

#### § 12.2 Final Payment

§ 12.2.1 Owner shall make final payment of the entire unpaid balance of the Contract Sum, including Retainage, to Contractor pursuant to Section 12.2.3 provided that: (a) all of the requirements for Substantial Completion of the entire Work has been achieved as required under the Contract, and (b) Contractor has satisfied all requirements for Final Payment pursuant to Section 9.10.2 of the General Conditions.

§ 12.2.2 Within fourteen (14) days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall advise Contractor if it intends to conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit. Any such audit shall be completed not later than thirty (30) days subject to Contractor's cooperation and delivery of required information and materials. If the Owner conducts an audit of the Cost of the Work, the Owner shall, within ten (10) days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 12.2.2.1 Within seven (7) days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of the General Conditions. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of the General Conditions. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.2 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of the General Conditions. A request for mediation shall be made by the Contractor within thirty (30) days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.3 Subject to Section 12.2.2, the Owner's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment and the Contractor's satisfaction for all conditions of final payment, including as provided in Section 12.2.1 above and Section 9.10.2 of the General Conditions.

§ 12.2.4 If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price and subject to offset for any Shared Savings paid to the Contractor. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 12.2.4 in determining the net amount to be paid by the Owner to the Contractor.

### § 12.3 Interest

Payments due and unpaid under the Contract shall bear interest at the rate of 4% per annum, unless applicable law otherwise requires another rate in which case such rate shall then apply, provided that the Contractor has provided the Owner with written notice of such intended late charge and the Owner has failed to cure same within ten (10) days of receipt of such notice.

## ARTICLE 13 DISPUTE RESOLUTION

### § 13.1 NEGOTIATION

As a condition precedent to the institution of legal or equitable proceedings by any Party, the Parties' representatives shall attempt to resolve any claim or dispute arising out of or related to this Agreement through negotiation. If the Parties' representatives cannot resolve such claim or dispute within thirty (30) days, each Party shall immediately designate a senior executive of authority to resolve the claim or dispute. The designated senior executives shall promptly begin discussion in an effort to agree upon a resolution of the claim or dispute within twenty-one (21) days of reference therein. If the senior executives cannot resolve the claim or dispute within such twenty-one (21) day period, then any Party may initiate legal or equitable proceedings in accordance with Section 13.2. All such negotiations shall be held in Atlanta, Georgia or at another location designated by Owner (in its reasonable discretion).

### § 13.2 LITIGATION

The Parties agree that any action, suit, or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement may be brought against any of the Parties hereto only in the Superior Court of Fulton County, Georgia, and each of the Parties hereby consents to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives any objection to venue laid therein. Pending resolution of any dispute arising under this Agreement, Contractor shall, except as provided under Section 9.7.1 of the General Conditions, proceed diligently with the performance of this Agreement.

## ARTICLE 14 TERMINATION OR SUSPENSION

### § 14.1 Termination

§ 14.1.1 The Contract may be terminated by the Contractor for cause as provided in Section 14.1 of the General Conditions attached as **Exhibit A**.

## § 14.1.2 Termination by the Owner for Cause

§ 14.1.2.1 If the Owner terminates the Contract for cause as provided in Section 14.2 of the General Conditions attached as **Exhibit A**, the amount, if any, to be paid to the Contractor under Article 14 of the General Conditions shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of the General Conditions.

§ 14.1.2.2 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

## § 14.1.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of the General Conditions, then the Owner shall pay the Contractor a termination fee as follows:

Payment for Work executed, including any proven actual out-of-pocket loss sustained upon any materials, equipment, tools, construction equipment and machinery, cancellation charges existing on obligations of the Contractor, reasonable demobilization costs and a percentage of the Fee of the Contractor equal to that percentage of the Work fully performed to the date of termination, less any prior payments of any portion of such Fee.

## § 14.2 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of the General Conditions, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Article 5 and Section 6.4 of this Agreement.

## ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.1.1 As used in this Contract, the terms "herein," "herewith," "hereunder" and "hereof" are references to this Contract taken as a whole, and the terms "include," "includes" and "including" mean "including, without limitation," or variant thereof. References to an Article or Section in this Agreement or the General Conditions includes the Sections or sub-Sections within the Article or Section, unless expressly stated otherwise.

## § 15.2 OWNER'S AUTHORIZED SIGNATORY AND OWNER'S REPRESENTATIVE

Owner has designated and identified the designated "Owner's Representative" and "Owner's Authorized Signatory" each as respectively set forth below. All notices as provided herein shall be addressed and delivered to the respective parties for Owner as set forth herein. Owner's Representative shall not, except as expressly stated in this Contract have authority to bind the Owner, including with respect to any Modifications of this Contract. All approvals of the Owner pursuant to this Contract shall require the signature of the Owner's Authorized Signatory. The Owner reserves the right to change or to appoint such authorized signatories or other representatives upon prior written notice to the Contractor. For the avoidance of doubt, no individual designated by Owner to serve as its authorized signatory or representative shall have any personal liability to the Contractor, including without limitation for any amounts due to the Contractor on account of its Work.

The Owner's Representative(s):

J. Austin Bell, AIA  
Senior Director and Development Manager  
Drew Company Atlanta, LLC  
c/o Drew Company, Inc.  
2 Seaport Lane  
Boston Massachusetts  
Telephone: 404-860-4546  
Email: Austin.bell@drewcompany.com

The Owner's Authorized Signatory:

\_\_\_\_\_  
Geo. L. Smith II Georgia World Congress Center Authority  
285 Andrew Young International Blvd., NW  
Atlanta, Georgia 30313-1591  
Telephone:  
Email:

§ 15.3 The Contractor's representative:

\_\_\_\_\_  
§ 15.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior written notice to the other party.

§ 15.4.1 All notices as provided herein shall be addressed and delivered to the respective parties as set forth in Sections 15.2 and 15.3 above, with copy for the Owner as provided below. All such notices, requests, consents and approvals shall be deemed to be given when (a) delivered, if personally delivered, (b) upon receipt (as evidenced by the date set forth on the confirming delivery receipt), if sent by certified mail or overnight delivery service, or (c) if delivered by email upon confirmation of such electronic delivery provided overnight or personal delivery is also thereafter confirmed as required pursuant to subpart (b) herein.

If to Owner, in addition to Section 15.2, to:

Pargen Robertson, Legal Counsel  
Geo. L. Smith II Georgia World Congress Center Authority  
285 Andrew Young International Blvd., NW  
Atlanta, Georgia 30313-1591  
Telephone: 404-223-4060  
Email: probertson@gwcc.com

§ 15.5 Insurance and Bonds

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance and bonds as required pursuant to Article 11 of the General Conditions and **Exhibit E** and **Exhibit F** hereto.

§15.6 Project Lenders

The Contractor acknowledges that Owner may be financing all or part of the Work and the Contractor agrees to comply with the commercially reasonable requirements of the any such lenders that bear upon the performance of the Work and/or this Contract, including without limitation executing acknowledgements and consents as lenders may reasonably require.

§ 15.7 Other provisions:

§15.7.1 Severability

If any provision of this Contract is invalid or unenforceable as against any person, party or under certain circumstances, the remainder of this Agreement and the applicability of such provision to other persons, parties or circumstances shall not be affected thereby.

### §15.7.2 No Waiver

No provision of the Contract Documents shall be deemed to have been waived by either party, either expressly, impliedly or by course of conduct, unless such waiver is in writing and signed by such party, which waiver shall apply only to the matter described in the writing and not to any subsequent rights of such party. Except as expressly set forth in this Contract, no failure on the part of either party to exercise and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by either party of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right.

### §15.7.3 No Presumption Against Drafting Party

This Contract shall be construed without regard to any presumption or other rule requiring construction against the party causing this Contract to be drafted. In the event of any action, suit, dispute or proceeding affecting the terms of this Contract, no weight shall be given to any deletions or striking out of any of the terms of this Contract contained in any draft of this Agreement and no such deletion or strike out shall be entered into evidence in any such action, suit, dispute or proceeding nor given any weight therein.

### §15.7.4 Counterparts; Electronic Signatures

This Agreement and the Contract Documents may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page by facsimile or other generally accepted electronic means shall be effective as delivery of a manually executed counterpart of such document.

## ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement includes the following Exhibits (and documents as referenced therein):

- Exhibit A – General Conditions**
- Exhibit B – Key Milestones**
- Exhibit C – Construction Schedule**
- Exhibit D – EBO Plan**
- Exhibit E – Form of Payment and Performance Bonds**
- Exhibit F – Insurance and Bond Requirements**
- Exhibit G – GMP Book**
  - Rider G-1: GMP Pricing Summary**
  - Rider G-2: G&A Cost Breakdown and Billing Rates for Personnel**
  - Rider G-3: GMP Qualifications, Assumptions and Exclusions**
  - Rider G-4: Index of Construction Documents**
  - Rider G-5: Staffing Matrix**
- Exhibit H – Logistics Plan**
- Exhibit I – License Agreements**
- Exhibit J – Form of Schedule of Values**

This Agreement entered into as of the day and year first written above.

**OWNER:**

**GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER AUTHORITY,  
an instrumentality of the State of Georgia and a public corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CONTRACTOR:**

**SKANSKA/SG, A GEORGIA JOINT VENTURE**

**By: SKANSKA USA BUILDING INC.**

A joint venture member jointly and severally liable

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

and

**By: SG CONTRACTING INC.**

A joint venture member jointly and severally liable

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**A RESOLUTION**  
**OF**  
**GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER AUTHORITY**  
**AUTHORIZING EXECUTION OF HOTEL PROJECT QUALIFIED MANAGEMENT**  
**AGREEMENT, ROOM BLOCK AGREEMENT, PRE-OPENING SERVICES**  
**AGREEMENT AND TECHNICAL SERVICES AGREEMENT**

WHEREAS, the Geo. L. Smith II Georgia World Congress Center Authority (the “Authority”) operates the convention and tradeshow facility known as the Geo. L. Smith II Georgia World Congress Center, Centennial Olympic Park, and other facilities; and

WHEREAS, pursuant to O.C.G.A. § 10-9-4(a), the general purpose of the Authority is to acquire, construct, equip, maintain, and operate the project, including but not limited to the Georgia World Congress Center, Centennial Olympic Park, and other facilities, in whole or in part, directly or under contract with the Department of Economic Development or others, and to engage in such other activities as the Authority deems appropriate to promote trade shows, conventions, and political, musical, educational, entertainment, recreational, athletic, or other events and related tourism within the state so as to promote the use of the project and the use of the industrial, agricultural, educational, historical, cultural, recreational, commercial, and natural resources of the State of Georgia by those using the project or visiting the state or who may use the project or visit this state; and

WHEREAS, pursuant to O.C.G.A. §10-9-4(b)(6), the Authority has the power to make all contracts and to execute all instruments necessary or convenient to its purposes; and

WHEREAS, pursuant to O.C.G.A. §10-9-7 the management of the business and affairs of the Authority shall be vested in the Board of Governors, and the Board of Governors shall have the power to make bylaws, rules, and regulations for the operation, management, and maintenance of the Georgia World Congress Center, Centennial Olympic Park, and all other projects and properties of the Authority or as may be under the management and control of the Authority; and

WHEREAS, pursuant to O.C.G.A. § 10-9-15(a), the Authority is required to operate the project so as to ensure its maximum use, and in connection with and incident to the operation of the project the Authority may engage in such activities as it deems appropriate to promote trade shows, conventions, and tourism within the state so as to promote the use of the project and the use of the industrial, agricultural, educational, historical, cultural, recreational, and natural resources of the State of Georgia by those using or visiting the project; and

WHEREAS, on March 27, 2018, Authority and Drew Company, Inc. (the “Developer”) previously entered into a Hotel Development Agreement pursuant to which the Authority essentially engaged the Developer to assist with the planning, design, construction and commissioning of a new full-service convention center hotel and related infrastructure and facilities as more particularly described therein (the “Development Agreement”); and

WHEREAS, on December 4, 2018, the Authority and Hilton Management LLC (the “Manager”) executed a Term Sheet for the Hotel Project, pursuant to which the Manager essentially agreed to supervise, direct and control the operation of a new full-service convention center hotel and related infrastructure and facilities (the “Hotel”) as more particularly described therein (the “Term Sheet”); and

WHEREAS, Manager is knowledgeable and experienced in managing, operating and promoting first-class hotels and resorts, including specifically convention center hotels; and

WHEREAS, Authority seeks pursuant to a Qualified Management Agreement (in compliance with applicable requirements of Section 141 of the Internal Revenue Code, as amended, and Rev. Proc. 2017-13) to engage Manager to manage and operate the Authority’s interest in the Hotel as a Brand Name hotel, which will be an upper upscale, convention quality hotel having approximately 975 guest rooms, 75,000 square feet of meeting, indoor banquet space and pre-function space, two (2) full-service restaurants, including a market/deli/café, a lobby bar, parking facilities, appropriate support facilities such as food preparation facilities, and other amenities and features and supporting back-of-house areas characteristic of a full-service hotel, including but not limited to a swimming pool, fitness facilities, business center and gift shop, which will function as the Georgia World Congress Center’s headquarters hotel and is intended to be developed on the Site, all of which will be detailed in the Approved Plans; and

WHEREAS, contemporaneously with the Qualified Management Agreement Authority seeks also to execute with the Manager a Room Block & Meeting Space Agreement (the “Room Block Agreement”), pursuant to which the Authority and Manager would agree essentially that specific percentages of the Hotel’s guest rooms and suites will be reserved for specific periods of time for attendees, participants, and planners of conventions, trade shows, and similar events to be held at the Georgia World Congress Center pursuant to the terms set forth therein; and

WHEREAS, contemporaneously with the Qualified Management Agreement, the Authority, and the Manager seek also to enter into a Technical Services Agreement (the “Technical Services Agreement”) and a Pre-Opening Services Agreement (the “Pre-Opening Services Agreement”), pursuant to which Manager will, as an independent contractor, perform certain review, inspection and coordination services in connection with the design and construction of the Hotel, and certain pre-opening services in preparation for the Opening of the Hotel; and

WHEREAS, pursuant to Section 5 of Article VII of the Authority’s Bylaws, the Executive Director (as that term is defined in the Bylaws, Article VII, Section 5) is authorized to conduct, supervise, and manage the operation and maintenance of all facilities of the Authority, and to execute contracts related to the operation, in the ordinary course of business, of the project, including contracts for the use of the Authority’s facilities, equipment, and services, but subject to the Bylaws and any policies, forms, and schedules as may be adopted or approved by the Board or Executive Director governing such contracts, and also to sign and execute other contracts in the name of the Authority when authorized to do so by resolution of the Board and to sign and execute contracts in the name of the Authority which are authorized by the Board when no other officer is designated by the Board, and to exercise such other powers and perform such

other duties as may be incident to the office of the Executive Director or as may be delegated or prescribed from time to time by the Board, by the Executive Committee, or by the Chair, to the extent such delegation or prescription is consistent with the Authority's Bylaws and to the extent such delegation or prescription is within the authority of that body or officer to direct; and

WHEREAS, pursuant to Section 14 of Article VII of the Authority's Bylaws, except to the extent such authority is conferred upon the Executive Director or other officers of the Authority under or pursuant to the Bylaws, no officer or employee of the Authority is authorized to enter into any written or oral agreement binding upon the Authority.

NOW THEREFORE BE IT RESOLVED by the Board of Governors of the Geo. L. Smith II Georgia World Congress Center Authority that the Executive Director expressly is authorized to continue to negotiate with Signia Hotel Management, LLC regarding the terms and conditions of a proposed Qualified Management Agreement and, in case those negotiations with Signia Hotel Management LLC are successful, then the Executive Director is authorized, though not required, to take such actions and to execute and deliver such documents as may be necessary or appropriate to effect the Qualified Management Agreement (which Qualified Management Agreement would be in substantially the same form as the copy attached hereto as Exhibit A), but only so long as such Qualified Management Agreement complies with applicable law and, in the judgment of the Executive Director, is consistent with the corporate purposes and mission of the Authority and the Authority's sound business practices.

BE IT FURTHER RESOLVED by the Board of Governors of the Geo. L. Smith II Georgia World Congress Center Authority that the Executive Director expressly is authorized to continue to negotiate with Signia Hotel Management, LLC regarding the terms and conditions of a proposed Room Block Agreement and, in case those negotiations with Signia Hotel Management LLC are successful, then the Executive Director is authorized, though not required, to take such actions and to execute and deliver such documents as may be necessary or appropriate to effect the Room Block Agreement (which Room Block Agreement would be in substantially the same form as the copy attached hereto as Exhibit B), but only so long as such Room Block Agreement complies with applicable law and, in the judgment of the Executive Director, is consistent with the corporate purposes and mission of the Authority and the Authority's sound business practices.

BE IT FURTHER RESOLVED by the Board of Governors of the Geo. L. Smith II Georgia World Congress Center Authority that the Executive Director expressly is authorized to continue to negotiate with Signia Hotel Management, LLC regarding the terms and conditions of a proposed Pre-Opening Services Agreement and, in case those negotiations with Signia Hotel Management LLC are successful, then the Executive Director is authorized, though not required, to take such actions and to execute and deliver such documents as may be necessary or appropriate to effect the Pre-Opening Services Agreement (which Pre-Opening Services Agreement would be in substantially the same form as the copy attached hereto as Exhibit C), but only so long as such Pre-Opening Services Agreement complies with applicable law and, in the judgment of the Executive Director, is consistent with the corporate purposes and mission of the Authority and the Authority's sound business practices.

BE IT FURTHER RESOLVED by the Board of Governors of the Geo. L. Smith II

Georgia World Congress Center Authority that the Executive Director expressly is authorized to continue to negotiate with Signia Hotel Management, LLC regarding the terms and conditions of a proposed Technical Services Agreement and, in case those negotiations with Signia Hotel Management LLC are successful, then the Executive Director is authorized, though not required, to take such actions and to execute and deliver such documents as may be necessary or appropriate to effect the Technical Services Agreement (which Technical Services Agreement would be in substantially the same form as the copy attached hereto as Exhibit D), but only so long as such Technical Services Agreement complies with applicable law and, in the judgment of the Executive Director, is consistent with the corporate purposes and mission of the Authority and the Authority's sound business practices.

ADOPTED this 25<sup>th</sup> day of February, 2020.

---

Bill Russell, Chair, Board of Governors  
Geo. L. Smith II Georgia World Congress Center Authority

Attest: \_\_\_\_\_  
Dale Aiken, Assistant Secretary

{ Authority Seal }

EXHIBIT A

A draft of the Qualified Management Agreement follows this page.  
(149 Pages)

**QUALIFIED HOTEL MANAGEMENT AGREEMENT<sup>1</sup>**

Between

**GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER AUTHORITY**

**“Owner”**

And

**SIGNIA HOTEL MANAGEMENT LLC**

**“Manager”**

**(Signia by Hilton Atlanta – Georgia World Congress Center)**

Dated: \_\_\_\_\_, 2020

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**<sup>1</sup> NTD: ALL FORMATTING, DEFINED TERMS AND SECTION REFERENCES TO BE CONFORMED IN FINAL VERSION. BC TO PROVIDE “MASTER GLOSSARY” FOR ALL DOCUMENTS.**

*{- Signia by Hilton QMA - Hilton Comments (1-31).doc; 1}*

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**[NTD: SUBJECT TO FURTHER REVIEW AND APPROVAL BY OWNER'S BOND  
COUNSEL, DOAS AND OTHER CONSULTANTS.]**

**QUALIFIED HOTEL MANAGEMENT AGREEMENT**

This QUALIFIED HOTEL MANAGEMENT AGREEMENT (this "**Agreement**") is made as of \_\_\_\_\_, 2020 (the "**Effective Date**"), by and between GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER AUTHORITY, an instrumentality of the State of Georgia and a public corporation, in its capacity as owner ("**Owner**") and SIGNIA HOTEL MANAGEMENT LLC, a Delaware limited liability company ("**Manager**"). Owner and Manager are herein collectively referred to as the "**Parties**" and individually as a "**Party**."

**RECITALS**

A. All capitalized terms used in this Agreement have the meanings assigned to such terms in the Master Glossary of Terms attached as **Exhibit A** to this Agreement.

B. The Owner owns and operates the convention center facility known generally as the Georgia World Congress Center (together with all alterations, expansions, reconfigurations or replacements of the same and any and all other structures or improvements from time to time constructed thereto regardless of the use or purpose thereof, the "**Convention Center**") for the benefit of the State of Georgia (the "**State**") and its residents in order to attract trade shows, conventions and public cultural and entertainment events.

C. The Owner has determined that it is in the best interests of the Owner and the Convention Center to construct, furnish and equip a premier, full service convention center headquarters hotel and related improvements constructed on the Site, as more specifically described in **Exhibit B** hereto.

D. The Owner considers the ownership and operation of its Convention Center, with an accompanying Hotel to be in the best interests of the Owner, the State and its citizens and consistent with the purposes and objectives of the Owner.

E. Owner has entered into a Hotel Development Agreement with Drew Company, Inc. ("**Developer**"), dated as of March 27, 2018, a copy of which Hotel Development Agreement is attached hereto as **Exhibit C** and incorporated herein by this reference for all purposes, which requires the Developer to design, develop, construct, equip, furnish, fully complete and open, or cause to be designed, developed, constructed, equipped and furnished, fully completed and opened, the Hotel Project Improvements (as defined in the Hotel Development Agreement) at and within the Site.

F. Manager is knowledgeable and experienced in managing, operating and promoting first class hotels and resorts, including specifically convention center hotels.

G. Owner desires to engage Manager to manage and operate Owner's interest in the Hotel as a Brand Name hotel. The Hotel will be an upper upscale, convention quality hotel having approximately 975 guest rooms, 75,000 square feet of meeting, indoor banquet space and pre-function space, two (2) full-service restaurants, including a market/deli/café, a lobby bar,

parking facilities, appropriate support facilities such as food preparation facilities, and other amenities and features and supporting back-of-house areas characteristic of a full-service hotel, including but not limited to a swimming pool, fitness facilities, business center and gift shop, which will function as the Convention Center's headquarters hotel and is intended to be developed on the Site (the "**Required Scope of the Hotel**"), all of which will be detailed in the Approved Plans.

H. To finance the costs (i) to develop, construct and equip the Hotel (including, without limitation, FF&E), (ii) to pay for certain pre-opening and marketing expenses, costs of issuance and initial start-up and operating costs and (iii) to fund certain reserves, Owner has issued or will issue its hotel revenue bonds (the "**Bonds**") in accordance with the terms of the Indenture.

I. The parties understand that the interest on the Bonds is intended to be excludible from gross income for federal income tax purposes (i.e., tax-exempt bonds). In connection therewith, the parties acknowledge that Owner will make certain covenants to the Bondholders intended to assure that the Bonds remain tax-exempt bonds. The parties understand that this Agreement, and other agreements that may be entered into by Manager acting under the authority granted to it under this Agreement, are instrumental to Owner satisfying those covenants provided; however, that Manager's obligations relating to the operation of the Hotel are limited to the terms and provisions of this Agreement, the Technical Services Agreement and Pre-Opening Services Agreement, and the terms of any documents relating to the Bonds will in no event be deemed to result in direct liability of the Manager to the Bondholders or the Trustee or to limit Manager's Rights or expand Manager's obligations hereunder. Owner and Manager further intend that this Agreement constitute, and this Agreement shall constitute, a "**Qualified Management Agreement**" in compliance with applicable requirements of Section 141 of the Internal Revenue Code, as amended, and Rev. Proc. 2017-13, and shall be interpreted in accordance with such requirements.

J. Contemporaneously with this Agreement, Manager and Owner have entered into that certain Technical Services Agreement (the "**Technical Services Agreement**") and that certain Pre-Opening Services Agreement (the "**Pre-Opening Services Agreement**"), each dated of even date herewith, pursuant to which Manager will, as an independent contractor, perform certain review, inspection and coordination services in connection with the design and construction of the Hotel, and certain pre-opening services in preparation for the Opening of the Hotel.

K. Contemporaneously with this Agreement, Manager and Owner have entered into that certain Room Block & Meeting Space Agreement ("**Room Block Agreement**"), dated of even date herewith, in the form attached as **Exhibit Q** hereto, pursuant to which Manager and Owner have agreed that specific percentages of the Hotel's guest rooms and suites will be reserved for specific periods of time for attendees, participants, and planners of conventions, trade shows and similar events to be held at the Convention Center pursuant to the terms set forth therein.

## AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

### 1. THE HOTEL

1.1 Required Scope of the Hotel. The Parties accept the Required Scope of the Hotel, which shall not be materially changed except in accordance with the Technical Services Agreement and subject to Owner's and Manager's approval, which shall not be unreasonably withheld, conditioned or delayed.

1.2 Plans and Specifications. Manager has approved the preliminary drawings for the [Hotel more particularly described in **Exhibit D** attached hereto (the "Approved Plans")]. Manager shall have the right to review and approve further plans and specifications for the design and construction of the Hotel in accordance with the provisions of the Technical Services Agreement. Manager's approval of the plans and specifications in the manner provided in the Technical Services Agreement will signify Manager's satisfaction with each phase of the design and construction process that the applicable item or matter approved by Manager is in substantial conformance, at that time, with the applicable portions of the Brand Standards (more specifically defined below). The Hotel will be designed, constructed, furnished and equipped by Owner in accordance with the Approved Plans and the terms and conditions of the Technical Services Agreement. During the pre-opening period, the pre-opening services will be provided by Operator and paid for by Owner pursuant to the terms and conditions of the Pre-Opening Services Agreement.

[NTD: Documentation of approved plans remains under review].

### 2. GENERAL MANAGEMENT DUTIES AND RESPONSIBILITIES OF MANAGER.

#### 2.1 Engagement of Manager.

2.1.1 Exclusive Manager. Subject to the provisions of this Agreement, including Section 13.20, Owner hereby engages Manager, and Manager hereby agrees to be engaged by Owner and does hereby undertake to supervise, direct, and control the management, operation, and promotion of the Hotel as the agent of Owner and as the exclusive manager and operator of the Hotel during the Operating Term. Manager shall have the sole and exclusive authority and duty during the Operating Term to direct, supervise, manage and operate the Hotel on a day-to-day basis in accordance with the Operating Standard and subject to the terms of this Agreement. Subject to the provisions of this Agreement and the other Hotel Agreements, Manager shall have the sole authority and responsibility to: (i) determine operating policy, standards of operation, quality of service, the maintenance and physical appearance of the Hotel and any other matters affecting operations and management; (ii) supervise and direct all phases of advertising, sales, and business promotion for the Hotel; and (iii) carry out all programs consistent with the Budget. Notwithstanding the forgoing, Manager's obligations hereunder shall be subject to the provisions



of this Agreement, as applicable, including but not limited to: (i) the limitations of Legal Requirements; (ii) any Force Majeure Event; and (iii) compliance with the Brand Standards. Furthermore, Manager shall be excused from its performance of any obligation under this Agreement to the extent prevented by Owner's failure to cooperate with Manager and provide all resources reasonably necessary for Manager to operate the Hotel in accordance with this Agreement.

2.1.2 Qualified Management Agreement. This Agreement is intended to and shall constitute a “**qualified management agreement**” in compliance with applicable requirements of Section 141 of the Internal Revenue Code, as amended (the “**Code**”), the Treasury Regulations promulgated thereunder, and Rev. Proc. 2017-13 (together, the “**QMA Rules**”), and shall be interpreted in accordance with such requirements. Manager has reviewed and is familiar with the applicable requirements of the QMA Rules but has not independently determined that this Agreement satisfies the safe harbors contained in the QMA Rules. For Manager's informational purposes only, Owner shall deliver to Manager a copy of an opinion of Bond Counsel, addressed to Owner, simultaneously with the execution of this Agreement indicating that interest on the Bonds is excludable from gross income for federal income tax purposes.

2.1.3 Tax Covenant. Manager agrees that it will operate and manage the Hotel in a manner which, to the extent of its rights and authority under this Agreement and as otherwise authorized by Owner in writing, preserves the tax-exempt status Bonds and, in particular, to the extent of its rights and authority under this Agreement and as otherwise authorized by Owner in writing, will comply with the requirements of section 141(b) of the Code, section 1.141-3 of the Treasury Regulations and Revenue Procedure 2017-13 relating to conditions under which tax-exempt bond-financed property will be considered used for an impermissible private business use; provided, however that the foregoing shall not require Manager to breach any of the provisions of this Agreement unless such action is authorized and such breach is waived in writing in advance by Owner. In the event that it becomes necessary to amend this Agreement in order to preserve the tax-exempt status of the Bonds or such requirements impose a material adverse financial burden on Manager not otherwise contemplated by this Agreement, Manager and Owner agree to negotiate in good faith and amend this Agreement, including if necessary the compensation to be paid to Manager, in a manner which maintains or restores to both Owner and Manager, to the greatest extent possible within the requirements of this Section 2.1.3, the benefits expected to be received by each of Owner and Manager pursuant to the original terms of this Agreement; provided, however, that the Manager may, in its reasonable discretion, (i) reject such proposed amendment (including the rejection of the amendment on the basis that such amendment will impose a material adverse financial burden on the Manager for which the Owner is unable or unwilling to reimburse) or (ii) require any such reasonable amendment that compensates Manager in a manner which maintains or restores the benefits expected to be received by it pursuant to the original terms of the Agreement (and in no event will any such rejection or compelling of an amendment be deemed to violate Manager's obligations under this Agreement to operate or manage the Hotel in accordance with or consistent with Revenue Procedure 2017-13 or Section 141 of the Internal Revenue Code; provided, further, however, in no event shall Manager be permitted to terminate this Agreement as a result of an amendment required in order to preserve the tax-exempt status of the Bonds. If Manager receives from Bond Counsel, or if Owner confirms to Manager in

writing that Owner has received from Bond Counsel, written approval with respect to Manager's entry into a contract, agreement, or arrangement with a third party pursuant to the provisions of Section 2.1.4, Manager shall be deemed to have complied with Section 141 of the Code and the Revenue Procedure with respect to the contract, agreement, or arrangement in question. Notwithstanding the foregoing, any inadvertent lack of compliance with this Section 2.1.3 by Manager will not constitute an Event of Default hereunder, provided, however, Manager shall have an obligation to promptly correct such lack of compliance. Without limiting the foregoing, Manager represents and warrants:

2.1.3.1 Manager is not entitled to, and agrees that it will not take, any tax position that is inconsistent with being a service provider to the Owner with respect to the Hotel;

2.1.3.2 Manager agrees not to claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the Hotel; and

2.1.3.3 the amount paid to Manager from Hotel revenues to reimburse Manager for compensation paid to its employees will not be based on a share of net profits of the Hotel itself which such representation is subject to the terms and conditions of Section 2.20.6.

2.1.4 Submission of Contracts for Bond Counsel Review. Manager shall be permitted, at its option, to submit inquiries to Owner to ascertain whether an agreement, written contract or other arrangement contemplated to be entered into by Manager on behalf of the Owner, which is not otherwise required to be approved by Bond Counsel pursuant to Section 2.4.7, could have an adverse effect on the tax-exempt status of the Bonds or is consistent with Revenue Procedure 2017-13 and Section 141 of the Internal Revenue Code, it being expressly agreed that all such agreements will be in the form of a “**qualified management agreement**” drafted by counsel selected by Manager and approved by Owner and Bond Counsel. Owner may seek the advice of Bond Counsel with respect to each such inquiry or contract so submitted and the fees and expenses of Bond Counsel with respect thereto shall be paid as an Owner Expense. Owner shall advise Manager whether it is of the opinion (which may be based on advice from Bond Counsel) that such agreement, contract or other arrangement could have an adverse effect on the tax-exempt status of the Bonds. In the event the Manager takes action based on the advice of the Owner, Manager shall be relieved from any liability to Owner with respect to any such action, insofar as such liability relates to the tax-exempt status of the Bonds. Owner shall use its best efforts to make or obtain such determination within ten (10) business days of such submission but in no event later than thirty (30) days of such submission. If Owner fails to obtain such determination within thirty (30) days of such submission, Manager may send a notice to Owner (with a courtesy copy to Bond Counsel) reminding Owner that such determination is pending and informing Owner that if Owner fails to respond in writing with respect to such determination within five (5) days from receipt of such notice, Manager shall be permitted to enter into the contract, agreement, or arrangement in question and shall be relieved from any liability to Owner with respect to such action.

2.2 Operating Standards. Manager agrees that, subject to the provisions of this Agreement, including, without limitation, Section 2.20, and the applicable approved Capital Budget, Manager shall, as the agent of Owner, and subject to availability of Sufficient Funds, cause the Hotel to be operated, (a) in accordance with written specifications, standards and requirements issued from time to time by Manager or its Affiliates applicable, constructing, designing, equipping, furnishing, supplying, operating, maintaining and marketing hotels operating under the Brand Name and any branded ancillary operations associated with Manager or its Affiliates, including the Standard Practices (“**Brand Standards**”), (b) to the extent not inconsistent with clause (a), in a prudent and efficient manner consistent with the requirements and limitations set forth in this Agreement (including those relating to the applicable Approved Operating Plan and Budget and the applicable approved Capital Budget), (c) to the extent not inconsistent with the requirements of clause (a), as a first-class, full service, convention oriented Hotel, taking into account the character, size and location of the facility, operated at a level of service and quality generally considered in the hotel industry to be first class and full service upper upscale (e.g., as of the Effective Date this would be consistent with the Upper Upscale Chain category of Smith Travel Research, or a similar third party and report prepared by a successor organization agreed to by the Parties); and (d) to the extent not inconsistent with clause (a) in a manner reasonably calculated to: (i) protect and preserve the assets that comprise the Hotel subject to and in the manner described in this Agreement (i.e., day-to-day ordinary maintenance, security and upkeep obligations, but excluding items that would constitute Capital Expenses), (ii) maximize over the Operating Term the financial return to Owner from ownership and operation of the Hotel as a first class, convention center headquarters hotel, after taking into consideration the Room Block Agreement; and (iii) control items described in clause (a) of the Operating Expenses definition (the standards described in clauses (a) through (d) above being referred to collectively as either the “**Operating Standards**” or the “**Operating Standard**”). Owner hereby acknowledges that Manager and its Affiliates own, franchise, license and/or operate other hotels in the Atlanta area and other convention center hotels in the United States. Owner hereby agrees and acknowledges that, subject to Section 13.25, such ownership, operation, franchising, licensing, management and promotion of all such other hotels shall not be deemed a violation of any of the provisions of this Agreement.

2.3 Establishing Rates, Rents, etc. The Range of Rates (as defined in the Room Block Agreement) will be established consistent with Section 3.01 of the Room Block Agreement. Subject to Section 3.01 of the Room Block Agreement relating to the Range of Rates established for Event Blocks, Manager will establish room rates factoring in, amongst other things, then-current and anticipated market conditions, occupancy rates, and rates at comparable and similarly situated hotels with a goal of, amongst other things, achieving applicable budgeted revenue goals.

#### 2.4 Negotiation of Contracts.

2.4.1 Concession Agreements. Subject to the Approved Operating Plan and Budget and Sections 2.4.6 and 2.4.7, Manager shall negotiate, submit to Owner’s Contract Representative for approval and execution in accordance with Sections 2.4.6 and 2.4.7 and, if so approved and executed by Owner, administer in Owner’s name and for the benefit of the Hotel, any agreement with a concessionaire relating to management and operation of any portion of the Hotel (individually, a “**Concession Agreement**” and collectively, “**Concession Agreements**”),

including for the operation of restaurants, shops, spas and other retail venues within the Hotel. Prior to entering into any such Concession Agreement (or any other similar occupancy agreement), Manager shall have received an opinion from Bond Counsel, paid for as an Operating Expense, to the effect that such Concession Agreement will not adversely affect the Hotel's exemption from ad valorem taxes, which opinion shall run for the benefit of Owner and Manager, and Manager shall be able to rely upon such opinion. Manager shall use good faith efforts to enforce the terms and of any applicable Concession Agreement. Manager will use good faith efforts to include in such contracts commercially reasonable termination provisions, commercially reasonable indemnification provisions and commercially reasonable limitation on liability provisions in favor of the Owner as determined by Manager in discretion; provided however, that such contracting guidelines will not apply to Excluded Contracts. In no event shall any Concession Agreement be in the form of a lease or otherwise grant an interest in real property without Owner's express prior consent, which may be granted or withheld in Owner's sole and absolute discretion. Notwithstanding anything contained herein to the contrary, Owner and Bond Counsel shall review all third-party contracts submitted to it by Manager pursuant to Section 2.1.4 as same relate to issues regarding tax exemption of the interest on the Bonds, and Owner shall be responsible for confirming that such third-party contracts submitted to Owner for review comply with all tax requirements as provided in Section 2.4.7. Manager shall submit all proposed Concession Agreements for Owner's review, approval and execution pursuant to Section 2.4.6. For the avoidance of doubt, notwithstanding any other provision of this Agreement to the contrary, Manager acknowledges and agrees that all Concession Agreements shall be subject to Owner's review and approval, which may be granted or withheld in Owner's sole and absolute discretion.

#### 2.4.2 Reserved.

2.4.3 Service and Goods Contracts. Subject to the Approved Operating Plan and Budget with any permitted variances from the Approved Operating Plan and Budget contemplated in this Agreement, and subject to Sections 2.4.6 and 2.4.7, Manager shall negotiate, submit to Owner's Contract Representative for approval (if Owner's approval is required pursuant to Section 2.4.6 below) and/or execution, as applicable, in accordance with Section 2.4.6 and, if so approved and/or executed by Owner, administer, in Owner's name and for the benefit of the Hotel, contracts for services and goods, inventory, supplies and consumables, as appropriate, for Hotel operations, which may include (without limitation) contracts for supply and inventory contracts, health and safety systems maintenance, transportation, audio-visual, electricity, gas, telephone, cleaning, elevator and boiler maintenance, air conditioning maintenance, laundry and dry cleaning, master television service, broadband, high-speed internet access and other technological services as they are developed, use of copyrighted materials (such as music and videos), entertainment, and other services or goods Manager deems advisable and in accordance with the Operating Standard. Manager shall use good faith efforts to include in such contracts a commercially reasonable termination provisions, commercially reasonable indemnification provisions and commercially reasonable limitation on liability provisions in favor of the Owner as determined by Manager in discretion; provided however, that such contracting guidelines will not apply to Excluded Contracts. Notwithstanding anything contained herein to the contrary, Owner and Bond Counsel shall review all third-party contracts submitted to it by Manager pursuant to Section 2.1.4 as same relate to issues regarding tax exemption of the interest on the Bonds, and Owner shall be

responsible for confirming that such third-party contracts submitted to Owner for review comply with all tax requirements as provided in Section 2.1.4.

2.4.4 Banquet and Meeting Facility Contracts. Subject to the Approved Operating Plan and Budget with any permitted variances from the Approved Operating Plan and Budget contemplated in this Agreement, Section 2.4.6, and the Room Block Agreement, Manager shall negotiate, submit to Owner's Contract Representative for approval (if Owner's approval is required pursuant to Section 2.4.6 below) and/or execution, as applicable, in accordance with Section 2.4.6, and, if so approved and/or executed by Owner, administer, in Owner's name and for the benefit of the Hotel, contracts for the use of banquet and meeting facilities and guest rooms by groups and individuals. Manager shall use good faith efforts to include in such contracts a commercially reasonable termination provisions, commercially reasonable indemnification provisions and commercially reasonable limitation on liability provisions in favor of the Owner as determined by Manager in discretion; provided however, that such contracting guidelines will not apply to Excluded Contracts.

2.4.5 Licenses and Permits. Subject to the other provisions of this Agreement, including Section 2.1.3 and 2.4.6, Manager shall, on behalf of Owner, obtain or cause to be obtained all licenses and permits required for the management and operation of the Hotel or the making of Capital Improvements (unless such Capital Improvements are Owner's responsibility in which case Owner will be responsible for obtaining all licenses and permits in connection with the making of such Capital Improvements), as and when required under the Legal Requirements; provided that Manager shall have no obligation to obtain a Temporary Certificate of Occupancy or a Certificate of Occupancy. Such licenses and permits shall include, as may be applicable and by way of example and not limitation, licenses and permits for health and safety systems maintenance, electricity, gas, telephone, cleaning, elevator and boiler maintenance, air conditioning maintenance, laundry and dry cleaning, restaurant equipment, master television service, use of copyrighted materials (such as music and videos), entertainment, alterations (unless Owner is responsible for such alterations in which case it will be Owner's responsibility), parking and other services Manager deems advisable. Without in any way limiting the foregoing, Manager shall be responsible for obtaining and maintaining Liquor Licenses and permits required for the operation of the Hotel, and for compliance with all laws and regulations that apply to the operation of the Hotel under such Liquor Licenses and permits. The Liquor Licenses shall be in the name of Manager or an Affiliate of Manager unless otherwise required pursuant to Legal Requirements. Subject to all applicable Legal Requirements, Manager or such Affiliate, as applicable, will, if required by the Trustee, commit to transfer such Liquor Licenses to the Trustee in the event Trustee acquires title to the Hotel. Owner shall cooperate with Manager in all reasonable respects in connection with the foregoing.

2.4.6 Approval of Certain Contracts. Owner's approval (which shall not be unreasonably withheld, conditioned or delayed) shall be required for the execution of any equipment lease or any other contract or license for goods or services (including, without limitation, contracts and licenses for health and safety systems maintenance, telephone, cleaning, elevator and boiler maintenance, air conditioning maintenance, laundry and dry cleaning, master television service, broadband, high-speed internet access and other technological services as they are developed, use of copyrighted materials (such as music and videos) entertainment, and other services), that (i) has a term (including renewal terms) in excess of one (1) year or a term which

is equal to or less than one (1) year but is automatically renewable unless terminated (unless such equipment lease or other contract can be terminated without penalty upon notice of thirty (30) days or less), or (ii) requires aggregate annual payments in excess of One Hundred Thousand Dollars (\$100,000) and is other than a contract (1) for which the cost of performance is included in the Approved Operating Plan and Budget or approved Capital Budget (as adjusted by any permitted deviations therefrom expressly contemplated by this Agreement), (2) for the provision of utilities, (3) for the provision of employee benefits or (4) for booking and other similar agreements entered into by Manager in the normal course of business (including, without limitation, group sales contracts, catering contracts and similar agreements). Notwithstanding any provision herein to the contrary, all equipment leases, contracts and licenses, goods and services shall comply with the requirements of Sections 2.1.3, 2.29 and 2.31 of this Agreement. Manager shall generally comply with its Standard Practices (including competitive bidding) in the selection of vendors under contracts for goods and services, subject to the requirements of Section 2.31. In recognition that there may be efficiencies gained by utilizing certain vendors providing who provide certain in-house services elsewhere on the Facilities, Manager will reasonably work with Owner to solicit bids from such vendors for similar types of in-house services at the Hotel; and Manager shall reasonably consider any such bids. In addition, Owner's approval, in Owner's sole and absolute discretion, shall be required for the execution of any so-called "pouring rights" agreements related to the sale or service of non-alcoholic beverages at the Hotel.

2.4.6.1 Contracts for Owner's and Bond Counsel's Approval and Owner's Execution. In the event that, pursuant to the terms of this Agreement, a Contract is subject to Owner's and/or Bond Counsel's approval, Owner and/or Bond Counsel, as applicable, shall have (10) Business Days from the date of Manager's first written request to Owner's Contract Representative for approval to approve any such Contract. In the event Owner or Bond Counsel (as applicable) fails to respond within such ten (10) Business Day period, Manager may send a second written request for approval to Bond Counsel and/or Owner's Contract Representative. Owner or Bond Counsel (as applicable) shall either approve or disapprove of such Contract, and if so approved, Owner shall execute such Contract within ten (10) Business Days from the date of Manager's second written request for approval. Each such second written request for approval shall prominently display a notation that Owner has ten (10) Business Days to approve or disapprove of such Contract. If Owner or Bond Counsel (as applicable) does not respond within such second ten (10) Business Day Period, such Contract will be deemed approved and promptly executed by Owner's Contract Representative. Any written request for approval provided by Manager with respect to any such Contract shall prominently state that such Contract is subject to Owner's and/or Bond Counsel's approval, as applicable.

2.4.6.2 Contracts for Owner's Execution. In the event that, pursuant to the terms of this Agreement, a Contract is not subject to Owner's or Bond Counsel's approval, Owner's Contract Representative will execute such Contract promptly upon receipt thereof. Manager shall clearly indicate to Owner's Contract Representative that the applicable Contract is not subject to Owner's or Bond Counsel's approval and indicate that that Owner's execution thereof is required. For the avoidance of doubt, in

the event Manager incorrectly states that Owner's or Bond Counsel's approval is not required, the same shall be a default by Manager under this Agreement.

2.4.6.3 Effectiveness. Except for contracts that do not otherwise require Owner's approval, or except as otherwise set forth in this Agreement regarding deemed approval of Contracts, in no event shall any Contract be deemed approved by Owner until such Contract is executed by Owner or Owner's Contract Representative. Furthermore, and for the avoidance of doubt, in no event will any Contract be deemed binding against Owner until such Contract is executed by Owner or Owner's Contract Representative and returned to Manager; provided, however, that the foregoing does not otherwise limit Owner's obligation (via its Owner's Contract Representative) to promptly execute approved contracts pursuant to Section 2.4.6.1 or promptly execute contracts for which approval is not required pursuant to Section 2.4.6.2. [NTD: Per discussions with Nick, this section is intended to make it clear that we are not entitled to sign as agent for the Authority...which we are in agreement of. But we would like to keep in these proposed concepts in order make it clear that it does not override the obligation to sign once approved.]

2.4.6.4 Owner's Contract Representative.

(a) Owner will be the employer of the Owner's Contract Representative and will report to the Owner.

(b) The Owner's Contract Representative will be located at the Hotel or at other offices of Owner and will interact with Hotel Personnel based on policies and procedures reasonably agreed to by Owner and Manager.

(c) All employment costs of the Owner's Contract Representative will be set by Owner and within "market" ranges for such costs and shall be subject to Manager's confirmation, in its reasonable discretion, that such employment costs are within "market" ranges.

(d) Payment and administration of all employment costs of the Owner's Contract Representative will be the Owner's responsibility and Manager shall have no responsibility for the same; provided, however, that Owner shall be entitled to reimbursement of such employment costs from the Lockbox Fund and such reimbursement to Owner will be considered an Operating Expense of the Hotel. In the event the Owner's Contract Representative performs other duties for Owner in addition to performing the Contract review and approval functions contemplated by this Agreement, the employment costs reimbursed by the Hotel as an Operating Expense will be reasonably prorated as mutually agreed upon by Owner and Manager.

(e) Owner will take reasonable efforts to make Owner's Contract Representative available in order to meet the above-referenced time frames for approving (if approval is required) and/or executing the applicable Contracts.

(f) Owner's Contract Representative will not be considered employees of Manager within the meaning or application of any Legal Requirements and will not be

entitled to benefits programs that may be afforded from time to time to Hotel Personnel or other employees of Manager or its Affiliates including it being acknowledged that such benefits will be provided by Owner.

2.4.7 Certain Limitations – Approval by Bond Counsel. Notwithstanding any other provision of this Agreement to the contrary, Manager will not enter into contracts with unrelated third parties for the management, operation or use of any portion of the Hotel without first submitting such contracts for review and approval by Bond Counsel, pursuant to Section 2.4.6.1, to ascertain whether such contracts could adversely affect the exemption from federal income tax of interest on the Bonds. However, contracts with unrelated third parties which satisfy the following criteria need not be submitted for review and approval:

1. Contracts for services that are solely incidental to the primary governmental function or functions of the Hotel (for example, contracts for janitorial, equipment repair, billing or similar services, utilities, landscaping, maintenance and upkeep, laundry or dry cleaning services, intellectual property licenses, software licenses and servicing, billing services, trash removal, cleaning services, telephone and internet services and maintenance contracts, food and beverage supply contracts, advertising services for the Hotel, armored car services, pest control services, music services, audio visual and supply services, television and entertainment services, life safety monitoring and upkeep services entered into by Manager in the normal course of business); or

2. Contracts to provide services if the only compensation is the reimbursement of the service provider (or Manager) for actual and direct expenses paid by the service provider to unrelated parties (or by Manager to unrelated third parties); or

3. Arrangements provided for use that are available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied (unless the term of the arrangement, including all renewal options, is greater than 180 days); or

4. Contracts involving the payment of a total aggregate amount of less than \$100,000; or

5. Contracts necessary to handle or prevent Emergency situations; or

6. booking and other similar agreements entered into by Manager in the normal course of business (including, without limitation, group sales contracts, catering contracts and similar agreements); provided, however, that Manager shall self-audit such bookings and other similar agreements on an annual basis, based on reasonable methodology, to ensure that the aggregate amount of bookings and other similar agreements do not result in an impermissible business use;

7. for all contracts for use not otherwise contemplated in this Section 2.4.7, any contracts, arrangements, or agreements for use for a period not greater than 50 days (including renewal options) if the arrangement is a negotiated arms-length arrangement and compensation is at fair market value; or



8. Any other contracts that Owner has notified Manager in writing that it no longer is necessary to submit to Owner.

Any inadvertent and immaterial lack of compliance with the provisions of this Section 2.4.7 will not constitute an Event of Default by Manager hereunder. Manager will, however, have an obligation to correct any such inadvertent and immaterial lack of compliance.

2.4.8 Contracts with Related Parties. Notwithstanding anything to the contrary herein contained, Manager shall not enter into any contract, as a result of which Manager, or any Affiliate of Manager, receives, any Direct or Indirect Profit, including without limitation any rebate, kick-back, revenue sharing, royalty, profit participation, equity participation, barter consideration in the form of goods or services, or any other device, however denominated, and whether similar or dissimilar to any of the foregoing. Any inadvertent lack of compliance will not constitute an Event of Default hereunder. Manager shall, however, have an obligation to correct such lack of compliance and refund to Owner any Direct or Indirect Profit received with respect to purchases for or on behalf of the Hotel.

2.5 Maintenance of Hotel and FF&E. Subject to availability of Sufficient Funds for such purposes, Manager shall keep the Hotel and the FF&E that serves the Hotel in good operating order, repair, and condition in accordance with the Operating Standard set forth in Section 2.2 herein and Section 2.7 below, including making necessary replacements, improvements, additions, and substitutions thereto and, in connection therewith, and formulating and implementing preventative maintenance and other programs designed to efficiently and effectively maintain the condition of the Hotel, including all “**back of the house**” areas, HVAC serving the Hotel, fire and life safety, plumbing and other building systems provided, however, that any required Major Capital Expenses will be the responsibility of Owner as per Section 2.7. Without limiting the foregoing, Manager shall enter into maintenance contracts for elevators, escalators and other people movers, major life safety systems, chillers and other major HVAC equipment and such other equipment and systems as Manager determines appropriate to the extent serving the Hotel. Notwithstanding Manager’s rights and obligations under the preceding provisions of this Section, Owner shall have the right to hire an outside consultant to independently inspect the Hotel and the FF&E upon reasonable notice to Manager (and further provided that such inspection will not materially interfere with the operation of the Hotel and Manager shall be permitted to accompany any such outside consultant), the cost of which shall be paid from the Surplus Revenue Fund, but if there are not sufficient funds available in the Surplus Revenue Fund, the amount of the insufficiency shall be an expense of Owner.

2.6 Supervision and Coordination of Repair and Maintenance. Manager shall subject to availability of Sufficient Funds for such purposes, (a) supervise and coordinate ordinary repairs and maintenance to keep the Hotel in good repair and condition (fair wear and tear excepted), including routine maintenance and servicing of plant machinery and equipment at the Hotel and (b) make FF&E expenditures in accordance with the Capital Budget.

2.7 Works Requirement Major Capital Expenses. Owner will be responsible for carrying out alterations, additions or improvements to the Hotel that constitute Major Capital Expenses contemplated in the Capital Budget. Any such Major Capital Expenses are subject to

Manager's approval. In connection therewith, Manager will (a) reasonably cooperate with Developer, Trustee and Owner and their respective designees and consultants with any related design review and project oversight undertaken by any of them; and (b) cooperate with and render assistance, as reasonably necessary, to each of them and their respective employees, agents, contractors, and representatives in connection with any such work.

2.8 Purchase of Inventories, Supplies and Consumables. Manager shall, subject to availability of Sufficient Funds for such purposes and provisions of Sections 2.4.3 and 2.4.6 regarding execution of contracts related thereto, purchase, or arrange for the purchase of, all inventories, provisions, consumable supplies, goods and operating supplies that are reasonably necessary to maintain and operate the Hotel (including any gift or sundry store within the Hotel) in accordance with the Operating Standard, use the same in the management and operation of the Hotel, and act in a commercially reasonable and economical manner in purchasing such items, provided that ownership of all such inventories, provisions, consumable supplies, and operating supplies shall be in the name of Owner. The cost of such purchases shall be an Operating Expense.

2.9 Cooperation with Owner's Purchasers, Mortgagees and Consultants. Manager shall reasonably cooperate with Owner, its consultants and any actual or prospective purchaser, lessee, surety, Mortgagee, Trustee, or other lender in connection with any proposed sale, lease, or financing of or relating to the Hotel but shall not be required to release any information that is confidential or proprietary to Manager or its Affiliates. Owner shall reimburse Manager for any costs and expenses incurred for extraordinary cooperation (i.e. refinancing the Bonds), but any reasonable cooperation by Manager shall be at no costs to Owner.

## 2.10 Legal Services.

2.10.1 Retention of Legal Counsel. Manager shall, without limiting Owner's rights set forth in Section 2.10.2 below, retain legal counsel for the Hotel to perform legal services in the ordinary course of business of the Hotel under Manager's direction and in Manager's name with respect to any matter regarding the operation of the Hotel in which Manager or its Affiliates is a named party with respect to (i) uninsured claims, (ii) insured claims which are covered by Manager-purchased insurance programs and (iii) at Manager's option, insured claims which are not covered by Manager-purchased insurance programs. In addition, Manager shall, as an Operating Expense: (a) commence ordinary collection lawsuits to collect charges, rent or other income derived from the Hotel's operations; (b) commence legal actions or proceedings or other actions, as Manager prudently and reasonably deems appropriate (i) to enforce or terminate any contract or other agreements related to the Hotel's operations and under which the third party contractor is in default, provided Owner has received written notice of such default prior to such enforcement and termination, (ii) to oust or dispossess guests, tenants, or other persons in possession who are not entitled to occupy the portion of the Hotel which they occupy, and (iii) to cancel or terminate any license or Concession Agreement covering a portion of the Hotel for the breach thereof or default thereunder by the licensee or concessionaire, provided Owner has received written notice of such default prior to such cancellation or termination; (c) take appropriate steps (as determined by Manager in its reasonable and prudent discretion) to challenge, protest, appeal and/or litigate to final decision in any appropriate court or forum any counterclaims related to the foregoing; and (d) defend, or submit to the appropriate

insurance carrier for defense of, all claims against the Hotel related to personal injury, employment, or other claims filed against the Hotel, Owner or Manager related to the operation of the Hotel; provided that if such counterclaim names Owner, then such counterclaim shall be subject to the provisions of Section 2.10.2 below. Manager shall, as an Operating Expense, use reasonable efforts to institute the foregoing actions in Manager's name; provided, however, that in the event Manager is not able to do so, then (i) such failure shall not be deemed a default under this Agreement, (ii) Manager shall promptly notify Owner that it is not permitted to institute such actions in Manager's name and (iii) such action shall instead be subject to the provisions of Section 2.10.2 below. Manager shall, without otherwise limiting Owner's rights set forth in Section 2.10.2, also control the defense, including settlement, of any legal action involving Mandatory Guest Fees, multiple hotels managed by Manager or its Affiliates or business practices of Manager or its Affiliates applicable to multiple hotels, and allocate the costs of defense, settlement, and liability to the Hotel in its reasonable and equitable discretion according to the relative legal risk faced by the Hotel, and in connection therewith, Manager shall keep Owner reasonably informed of any developments with respect to such legal action to the extent that it directly impacts Owner (collectively, a "**Manager System Legal Proceeding**").

2.10.2 **Owner Representation.** Notwithstanding any provision to the contrary contained in Section 2.10.1 of this Agreement, in all such cases where Owner is a named or becomes a named or indispensable party to any such proceeding or action in connection with the Hotel, the Attorney General of the State of Georgia (the "**Attorney General**") or a Special Assistant Attorney General so appointed by the Attorney General (which may include counsel recommended by Manager at the Attorney General's sole and absolute discretion) shall be the only party authorized to represent the interests of Owner in any legal matter in which Owner is a party or may be liable for payments or damages (whether by court decision, settlement or otherwise) In such event, the Attorney General will (a) select separate counsel that will represent Owner, (b) make all determinations with regard to case management strategy with respect to Owner's interest in such case (but without otherwise limiting Manager's ability to control case management strategy with respect to matters relating to Manager, its Affiliates or other hotels managed by Manager or its Affiliates), (c) have the right to review pertinent documents prior to submission to court by Manager, and (d) participate in and control any settlement discussions on behalf of Owner without otherwise limiting Manager's ability to settle on behalf of itself, its Affiliates or other hotels managed by Manager or its Affiliates. Each Party agrees that it shall act reasonably and in good faith to the extent any settlement affects the liability of the other Party hereto. Notwithstanding the foregoing, if any legal proceeding names Manager or any of its Affiliates, is a Manager System Legal Proceeding, or if the resolution of the claim would have a material adverse effect on the Manager's ability to operate the Hotel in accordance with the provisions of this Agreement (including, without limitation, in accordance with the Brand Standards), Manager shall have the right to retain separate counsel to represent Manager's or any of its Affiliate's as well as the interests of any other hotels managed by Manager or its Affiliates (even if Manager is not a named party in respect of the applicable claim or claims relating to such other hotels managed by Manager or its Affiliates). Manager will be permitted to reasonably allocate the costs incurred by Manager or its Affiliates in connection with any such claims (including reasonable legal fees and the cost of any settlement) back to the Hotel as an Operating Expense (which, in the event of a claim that relates to multiple hotels will be allocated by Manager to the Hotel in its reasonable and equitable discretion according to the relative legal risk faced by the Hotel). Each Party agrees that in the event they are represented by separate

counsels and/or any settlement affects the liability of the other Party (or any hotel managed by Manager or its Affiliates) hereto, then the Parties will reasonably cooperate with each other and act in good faith when representing their separate interests or when considering settlement discussions. Nothing in this subsection will prohibit either Party from settling any legal proceeding for and on behalf of itself (or its Affiliates) or, in the case of Manager, for and on behalf of any other Hotel managed by Manager or its Affiliates.

2.10.3 Settlement of Claims. Notwithstanding any provision to the contrary contained in Section 2.10.1 or Section 2.10.2, Manager shall obtain Owner's prior consent for the settlement of an action for which the aggregate liability to Owner is anticipated to exceed \$50,000 (as adjusted for increases in the Index from January 1, 2019). Owner shall respond promptly and reasonably to any request for its consent pursuant to this Section 2.10.3; provided however, that so long as Owner is acting in good faith, nothing herein shall be construed as limiting Owner's ability to act in its own economic interest. Owner shall be deemed to have disapproved any proposed settlement unless Owner delivers to Manager a written notice approving such settlement in writing within five (5) Business Days after Manager delivers to Owner a written request for Owner's consent to such settlement, together with a detailed description of the proposed settlement. Such request for consent shall prominently display a note that Owner has five (5) Business Days to respond. The foregoing will in no event prohibit Manager from otherwise settling any legal proceeding for and on behalf of itself (or its Affiliates) or on behalf of any other Hotel managed by Manager or its Affiliates. In the event Manager settles such case, it will be permitted to reasonably allocate the costs incurred by Manager in connection with such settlement (including reasonable legal fees, legal liabilities and the cost of such settlement) back to the Hotel in its reasonable and equitable discretion according to the relative legal risk faced by the Hotel.

2.11 Availability of Key Employees. Manager shall cause the Key Employees to be available as often as Owner reasonably requests, to consult with and advise Owner and Hotel Consultant and any of their respective representatives and designees concerning the operation of the Hotel; provided (i) Owner shall endeavor in good faith to provide prior notice to the general manager (even, if informally), (ii) any such meeting shall not unreasonably disrupt the operations of the Hotel, and (iii) Owner shall conduct such meetings in accordance with professional business practices. Manager will give good faith consideration to all suggestions that Owner and Owner's representatives, including without limitation the Hotel Consultant, may offer with respect thereto from time to time, but shall retain its prerogative to agree or not agree pursuant to its authority to operate the Hotel in accordance with this Agreement.

2.12 Cooperation with Owner Regarding Legal Requirements. With respect to Legal Requirements that are to be complied with by Owner, Manager will reasonably cooperate with Owner and promptly deliver to Owner copies of any of the Hotel's books and records requested by Owner to facilitate Owner's compliance with Legal Requirements required of Owner.

### 2.13 Taxes.

2.13.1 Remitting Sales and other Similar Taxes. Manager shall collect on behalf of Owner and account for and remit to Governmental Authorities all Gross Receipts Taxes. If any such Gross Receipts Taxes are deposited in the Lockbox Fund, Manager shall have the right

to withdraw the amount of such deposited taxes in order to remit same to the applicable Governmental Authorities and in no event will the any amounts collected for Gross Receipts Taxes be subject to any sweep of funds to the Revenue Fund held by Trustee.

2.13.2 Ad Valorem Taxes and Personal Property Taxes. Owner shall be responsible for rendering, payments to the applicable taxing authority of all ad valorem, real property and personal property taxes, to the extent required under any Legal Requirement. Manager shall handle as an expense of Hotel any tax disputes involving the Hotel and shall periodically report to Owner as to the status of any such tax disputes; provided, however, that Manager will have no obligation to handle tax disputes related to any ad valorem, personal property or real estate taxes related to the Hotel.

2.13.3 Owner Obligations Regarding Taxes. The Owner acknowledges that Manager is not a tax advisor and is not acting as such in connection with any involvement in the review of tax bills or written recommendations made pursuant to this Section [2.13] and agrees to promptly notify Manager in writing of any changes to the tax status of the Hotel. If any gross receipts, sales, use, excise or similar tax that is based upon gross income or revenues is imposed upon Manager for the receipt of any payments under this Section [2.13] (other than with respect to federal income or corporate taxes owed by Manager on such amounts), then Owner shall also pay Manager an amount equal to such tax.

2.14 Internal Control Structures. Manager shall maintain an internal control structure in accordance with this Standard Practices that are reasonably designed to provide assurance that the Hotel and Hotel assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with Manager's authority, and that financial records are reliable for the purposes of timely preparing financial statements. The internal control structure shall be supported by the selection, training, and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures. Such internal control structures shall be supported by written policies and procedures; provided, however, Owner recognizes that such policies and procedures are strictly confidential and proprietary and, except as otherwise required by Legal Requirements, Manager shall not be obligated to provide such written policies and procedures to Owner or any other Party. Owner agrees and acknowledges that although such internal control policies are generally intended to safeguard the Hotel and Hotel assets from theft or unauthorized use and ensure that financial records are reliable, such policies provide no guaranty that such theft or unauthorized use will be prevented or that such financial records will be reliable and merely represent Manager's good faith efforts to (a) operate the Hotel in a manner to prevent theft or unauthorized use and (b) provide reliable financial records.

2.15 Collection of Rents. Manager shall collect all charges, rent, and other amounts due from guests, lessees, and concessionaires of the Hotel and deposit those funds in accordance with that certain Cash Management Agreement, a copy of which is attached hereto as **Exhibit E**, and the Indenture. This agreement of Manager shall survive the termination or expiration of this Agreement until all uncollected amounts due during the Operating Term of this Agreement are collected or otherwise accounted for to the reasonable satisfaction of Owner.

2.16 Cooperation with Convention Center; Joint Marketing. Manager shall reasonably and in good faith cooperate with Owner's representatives, and will actively participate with Owner's representatives in joint marketing for conventions and other events scheduled at the Convention Center and the Hotel provided, Manager shall not be obligated to cooperate if such cooperation is contrary to the performance of Manager's obligations under this Agreement or would derogate from Manager's ability to operate the Hotel in accordance with the Brand Standards. The Manager will make the general manager and director of sales and marketing of the Hotel will meet no less often than monthly with representatives of Owner to discuss potential joint marketing opportunities and results of joint marketing efforts. Manager will consider in good faith specific marketing plans suggested by representatives of Owner but shall retain ultimately authority to implement such specific marketing plans pursuant to its authority to operate the Hotel pursuant and subject to the terms of this Agreement.

2.17 Third-Party Advertisements. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, but subject to Section 2.18 in all respects, (a) Manager shall control and have approval rights over any internal proposed billboards, third-party advertisements and other signage on the interior common areas of the Hotel (collectively, "**Interior Third-Party Advertisements**"), and (b) except as contemplated in Section 2.18 with respect to Special Events, all proposed signage, displays, marketing or advertising located on the exterior portions of the Hotel (collectively, "**Exterior Third-Party Advertisements**", and together with Interior Third-Party Advertisements, the "**Third-Party Advertisements**") for events or general commercial purposes shall be marketed and sold upon the mutual agreement of Owner and Manager. Manager will reasonably cooperate with Owner in connection with the installation, replacement, maintenance and removal of any such Exterior Third-Party Advertisements, with such costs imposed by Manager being paid by the applicable Event Sponsor or advertiser or, with Owner's prior approval, as an Operating Expense of the Hotel. For purposes of this Agreement, all revenue generated by Interior Third-Party Advertisements shall be *included* in Total Operating Revenue and all revenue generated by Exterior Third-Party Advertisements shall be distributed amongst the parties in the following manner: (i) fifty percent (50%) directly to Owner and *excluded* from Total Operating Revenue, and (ii) fifty percent (50%) shall be included in Total Operating Revenue, but shall be deposited into the Surplus Revenue Fund held by Trustee. The revenue distribution described above applies only to revenues received from signage, displays, marketing or advertising on advertising facilities available on the exterior portions of the Hotel as of the Opening Date.

2.18 Clean Campus. Manager acknowledges that, in connection with Special Events being held at the Facilities, certain Event Sponsors may require "clean-campus" standards with respect to the Facilities. In furtherance of the foregoing, Owner and Manager agree as follows:

2.18.1 Special Events – Dimming Rights. Owner may, or may cause Manager to (at the applicable Event Sponsor's or advertiser's sole cost and expense or, as an Operating Expense of the Hotel if not paid for by the applicable Event Sponsor or advertiser), dim illumination, not illuminate, or cover so as to preclude viewing any or all Third-Party Advertisements during a Special Event (but not replace the Third-Party Advertisements or permit substitute advertising in the Third-Party Advertisements' locations by others) under the following circumstances:

(a) Owner may, or may cause Manager to (at the applicable Event Sponsor's or advertiser's sole cost and expense or, as an Operating Expense of the Hotel if not paid for by the applicable Event Sponsor or advertiser), take any such action if such action is required in the good faith judgment of Owner for the safe and orderly operation of the Facilities; or

(b) Where (1) such illumination or display during a Special Event is in the good faith judgment of Owner inconsistent with the nature of the Special Event, such as a religious, political, or professional convention, or trade show; and (2) the Event Sponsor requests that such action be taken, and (3) such action is taken as to all similarly situated advertisements located within the Facilities; or

(c) In the case of Third-Party Advertisements where (1) such illumination or display during a Special Event is in the good faith judgment of Owner inconsistent with the staging requirements of the Special Event (regardless of whether the Event Sponsor requests that such action be taken); and (2) such action is taken uniformly as to all similarly located advertisements located within the Facilities other than advertisements of the Event Sponsor or of a person who has provided funding or substantial underwriting of the Special Event and (3) such action is limited to such times as is deemed required by Owner in good faith but otherwise in Owner's sole discretion; or

(d) Where Owner's agreement with an Event Sponsor (1) requires that all advertisements, either on Owner's campus as a whole or in the area of Owner's campus in which Third-Party Advertisements are located, other than the Event Sponsor's advertisements, be not illuminated or be covered or be not displayed, or (2) requires that all Third-Party Advertisements advertising goods or services of a category be not illuminated or be covered or be not displayed.

Notwithstanding the foregoing or anything to the contrary in this Agreement, Manager shall have no obligation to dim illumination, not illuminate, remove or cover (or permit superimposition over) its Trademarks or other hotel brand marks owned directly or indirectly by Hilton Worldwide Holdings Inc. (and its successors) or other marks owned directly or indirectly by Hilton Worldwide Holdings Inc. (and its successors) related to Hotel operations including any marks related to spa operations, Hilton Honors or restaurant marks to the extent such restaurant marks are used in connection with the operation of the Hotel and are owned directly or indirectly by Hilton Worldwide Holdings Inc. (or its successors).

#### 2.18.2 Special Events - Right to Cover/Replace Advertisements and Right to Exclusive Advertisement.

(a) Exclusive Advertising and Covering Rights. In addition, Owner may, or may cause Manager to (at the applicable Event Sponsor's or advertiser's sole cost and expense or, as an Operating Expense of the Hotel if not paid for by the Event Sponsor or advertiser), not illuminate, cover or remove and replace or permit any Third-Party Advertisements or other advertising to be superimposed on Third-Party Advertisements during a Special Event and is not required to display any Third-Party Advertising during a Special Event where (1) the event is a Special Event; and (2) such action is required

under the terms of Owner's contract with an Event Sponsor for the Special Event; and (3) Owner's acceptance of such requirement was essential, in Owner's good faith judgment, to Owner's ability to contract with an Event Sponsor for such Special Event; and (4) Owner has agreed not to sell or has ceded to the Event Sponsor the right to sell advertising during such Event; and (5) Owner gives written notice to Manager that the event is being characterized as a Special Event for purposes of this Agreement, and in such cases Owner may sell to the Event Sponsor the exclusive right to display or the exclusive right to sell the right to display or distributed advertising of any type.

(b) Manager Approval or Consultation. Notwithstanding any exclusive right granted to any Event Sponsor to display or the exclusive right to sell the right to display or distribute advertising, Owner will provide Manager with proposed displays or advertising on the exterior or interior portions of the Hotel as and to the extent they have been provided to Owner. Owner will use reasonable efforts to obtain proposed displays or advertising from the applicable Event Sponsor or its representatives. Manager shall have the right to disapprove any such display or advertising in its sole discretion upon confirmation that such display or advertising is illegal or violates a Legal Requirement. Furthermore, with respect to advertising on the exterior or interior portions of the Hotel that is otherwise legal and does not violate a Legal Requirement, Manager shall have the right to consult with Owner regarding Event Sponsors proposed displays or advertising to address any concerns Manager may have with such displays or advertising and Owner will discuss such concerns with Event Sponsors. Nothing in the preceding sentence grants Manager the right to prevent such displays or advertising and sole discretion to do so shall remain with the Owner.

(c) Competitor Advertisement. In the case of a Special Event where the Event Sponsor is a Competitor, or the Special Event is funded or underwritten in whole or in substantial part by a Competitor, then Owner may permit, solely for the duration of the Event, reasonably limited advertising by competitor. "Reasonably limited" means limited reasonably by size, location, duration, frequency and other similar relevant considerations so that permitted advertising is not substantially equivalent to or greater than Manager's advertising.

### 2.18.3 Additional Provisions.

(a) Attendee Advertising. Owner agrees that subject to applicable law, its public safety department will enforce, or permit Manager to enforce, its policies prohibiting: (1) the unauthorized sale of any goods or services to be provided or transferred within the Hotel; (2) the unauthorized delivery of any goods within the Hotel or the performance of any service made within the Hotel pursuant to a transaction outside the Hotel; (3) the unauthorized public display or public distribution within the Hotel of any sign, handbill, placard, or similar material or object proposing or soliciting the sale or purchase of goods or services; (4) the unauthorized public solicitation or offering, by hawking, public announcement, broadcast, peddling, or similar activity within the Hotel proposing or soliciting the sale or purchase of goods or services; (5) the unauthorized distribution within the Hotel of money, money equivalents, non-expressive items which have monetary value, including transit cards or tokens, meal tickets, lodging tickets,



tickets for admission to any place, and similar items, unless such action is a casual and isolated event; and (6) the unauthorized use of the Hotel for any activity conducted as part of a profit or not for profit enterprise, unless such use is casual and isolated. For purposes of this paragraph “unauthorized” means any such action specified in the foregoing clauses (1) through (6) taking place in public areas of the Hotel that is in violation of any Event requirements or restrictions at the Facilities. Owner and Manager will not enforce its policies contemplated above with respect to any such action that is expressly permitted by contract.

(b) Event Marketing. Subject to Subsection (c) below, Owner may market a Non-Special Event, and shall not be required to prohibit or prevent the marketing of a Non-Special Event by any person, which advertising may include the name of a Competitor, in whatever form (including designation as a sponsor), in the name or description of the Non-Special Event; provided, however, that marketing of a Non-Special Event on or within the Hotel will be subject to Manager’s approval.

(c) Event Names. Owner may grant the right to conduct a Non-Special Event to any person under any name containing the name of a Competitor; provided, however, that any such Non-Special Event within the Hotel will be subject to Manager’s approval.

2.18.4 Group Booking Addendum. Owner and Manager agree and acknowledge that the language on Exhibit [EE] will be included in group booking arrangements unless Owner consents to its omission or modification.

2.19 Customary and Usual Tasks. Manager shall perform such administrative, management, reporting, cooperation, coordination, supervision, and oversight tasks, in addition to those set forth in Article 2 of this Agreement, as are customary and usual in Manager and its Affiliate’s operation of a hotel of a class and standing consistent with the Hotel’s facilities and the Operating Standard.

2.20 Approval/Disapproval of Budgets.

2.20.1 Delivery of Budgets. At least sixty (60) days before the beginning of each Operating Year, Manager shall prepare and deliver to Owner and, at Owner’s request, its applicable designees and consultants identified by Owner a Proposed Operating Plan and Budget for the next ensuing Operating Year. The Proposed Operating Plan and Budget shall be subject to the review and approval process set forth in Section [2.20.4] of this Agreement.

2.20.2 Preparation Standards. Manager shall act reasonably and exercise prudent business judgment in preparing each Proposed Operating Plan and Budget and any revisions thereto, and shall include all required information and projections required in this Agreement, including, without limitation, Section 2.20.3. In addition, Manager agrees that:

(a) each Proposed Operating Plan and Budget must be prepared giving due consideration to all relevant factors, including, without limitation, existing market and economic conditions, and operation of the Hotel in a manner that is consistent with the Operating Standard and the Room Block Agreement;

(b) each Proposed Operating Plan and Budget shall be prepared in accordance with the Uniform System and in the form used by Manager at substantially all Other Managed Hotels at the time of preparation of the applicable budget, with such additions and modifications as set forth in this Agreement or as otherwise reasonably requested by Owner from time to time.

2.20.3 Required Information and Projections. Each Proposed Operating Plan and Budget shall include the following:

(a) annualized projections of Total Operating Revenue, Operating Expenses, Gross Operating Profit, and EBITDA Less Replacement Reserve for that Operating Year;

(b) for each month, the estimated results of operations (including estimated Total Operating Revenue, Operating Expenses, Gross Operating Profit, and EBITDA Less Replacement Reserve);

(c) for each month, a statement of cash flow, including a schedule of any anticipated requirements for funding from Total Operating Revenue, the Operating Expense Reserve Fund, the Senior FF&E Reserve Fund, the Subordinate FF&E Reserve Fund and the Surplus Revenue Fund;

(d) if the Proposed Operating Plan and Budget will result in a Debt Service Coverage Ratio of less than the Debt Service Coverage Requirement, Manager shall include with its delivery of the applicable Proposed Operating Plan and Budget a reasonably detailed explanation as to why Manager has not budgeted to attain such ratios;

(e) for each month, estimates of total labor costs;

(f) for each month, estimates of the occupancy and average room rates;

(g) for each month, the Centralized Services Fees and Charges and Reimbursable Expenses;

(h) a marketing plan, which shall contain a summary of the marketing strategies and tactics for each market sector, including: (1) a description of the Hotel's target markets, (2) the Hotel's relative position in those markets, (3) the proposed room rate structures for each market segment, with a comparison of the room rate structures and a general description of the methodology for determining such rates, (4) the current and future sales and marketing plans for the Hotel (including specifically the marketing of rooms to be used in connection with the Convention Center), (5) the advertising and public relations plan for the Hotel (including specifically advertising and public relations programs to be used in connection with the Convention Center), (6) the proposed staffing for the sales and marketing activities of the Hotel (including specifically sales and marketing activities pertaining the availability of rooms for the Convention Center) and (7) the proposed room rate structures and other published operating information for the hotels in the Competitive Set;

(i) the rate schedule;

(j) Manager's Initial Projected Event Block Rate Schedule and Subsequent Projected Event Block Rate Schedule (each as defined in the Room Block Agreement), and any other items required to be provided under the Room Block Agreement;

(k) a proposed Capital Budget, which shall contain: (1) a five-year forecast of Capital Expenses and FF&E needs for the Hotel, (2) a five-year forecast of estimated available funds in the Senior FF&E Reserve Fund and the Subordinate FF&E Reserve Fund, and (3) a detailed description of the requested Capital Expenses for the Hotel, associated costs and funding plans for the upcoming Operating Year; and

(l) such other items as Owner may reasonably request.

#### 2.20.4 Approval of Budgets.

2.20.4.1 Approval of Proposed Operating Plan and Budget. Manager shall make the Senior Executive Personnel and its regional operational executive available to meet with Owner within fifteen (15) days after delivery of the Proposed Operating Plan and Budget for any Operating Year to review and discuss the Proposed Operating Plan and Budget, including a comparison with the previous year's performance, a discussion of marketing strategy, identity of markets, composition of and proposed adjustments to the Competitive Set, and proposed expenditures. Owner will either approve or disapprove of the Proposed Operating Plan and Budget within twenty (20) days of its delivery acting reasonably and using prudent business judgment. If Owner does not approve or disapprove of the Proposed Operating Plan and Budget within such [20] day period, Manager may deliver to Owner a second written request for approval. Each second written request for approval shall prominently display a notation that Owner has ten (10) days to respond or shall be deemed to have approved of such Proposed Operating Plan and Budget. In the event Owner fails to deliver any objections at the end of such ten (10) day period, the Proposed Operating Plan and Budget will be deemed approved. At such time as Owner delivers its objections to such Proposed Operating Plan and Budget, such disapproval shall specifically include the items disapproved (which disapproved items may include objections that Owner receives from the Hotel Consultant). Any line item not specifically disapproved by Owner will be deemed approved. During the ten (10) day period following Manager's receipt of Owner's items of disapproval, Owner, Manager and the Hotel Consultant will meet to discuss the disapproved items. Within five (5) days after the expiration of such 10-day period, Manager shall submit to Owner and the Hotel Consultant a revised Proposed Operating Plan and Budget, as applicable, incorporating such revisions as Owner and Manager agreed upon during such 10-day period. If the Parties do not agree upon such revisions, then the Parties shall engage in the procedure described in Section 2.20.7 to resolve such dispute.

2.20.5 Budget Review Standards. Subject to Section 2.20.4 above and 2.20.6 below, Owner shall have the right to object to any aspect of any Proposed Operating Plan and Budget for any reason, including, without limitation:

(a) the Proposed Operating Plan and Budget is not consistent with the requirements of the Room Block Agreement or rates approved by Manager and Owner for a Room Block pursuant to the Room Block Agreement;

(b) the Proposed Operating Plan and Budget will result in a Debt Service Coverage Ratio of less than the Debt Service Coverage Requirement;

(c) as to a proposed Capital Budget, there are not Sufficient Funds available to make the proposed Capital Improvement set forth therein;

(d) as to a proposed Capital Budget, any proposed upgrades to the quality of the facilities of the Hotel would (i) require material alterations to the gross square footage of the Hotel, load bearing structure of the Hotel or material change in the standard guest room size or configuration as a result of any modifications in Brand Standards made by Manager after Consultant's (as defined in the Technical Services Agreement) approval of the relevant Review Materials approving the gross square footage of the Hotel, load bearing structure of the Hotel, standard guest rooms size or standard guest room configuration (as applicable) pursuant to the Technical Services Agreement, except as necessary to correct an Emergency or to comply with Legal Requirements; (ii) be imprudent based upon a reasonable weighing of the costs and benefits to the Hotel of the upgrades (taking into account the cost and impact on Hotel revenue and expense of the upgrades, the useful life of the upgrades, and the remaining term of this Agreement) or (iii) render funds in the Senior FF&E Reserve Fund, the Subordinate FF&E Reserve Fund, Supplemental Reserve Fund, or Surplus Revenue Fund inadequate for other necessary Capital Expenses or funding of other amounts as contemplated by this Agreement or an existing approved Capital Budget. The foregoing shall not in any way limit Owner's right to approve or disapprove a proposed Capital Budget as to reasonableness of specifications and cost of implementing any upgrade set forth therein.

#### 2.20.6 Limitations on Owner's Approval Rights

2.20.6.1 Owner shall not have the right to withhold approval of the following expenditures: (a) subject to Section 2.20.6.2, expenditures necessary to comply with the Brand Standards; (b) expenditures necessary to prevent a threat to life, health or safety of persons or damage to the Hotel; (c) expenditures required by this Agreement, including the forecasted fees and reimbursements under Section 3; and (d) without duplication of the costs encompassed by this Section 2.20.6.1, Hotel Personnel Costs to the extent such Hotel Personnel Costs (i) pertain to the compensation and/or benefits of any particular individual, (ii) are necessary to comply with Brand Standards and/or (iii) are associated with the Standard Practices (for example and including, but not limited to, Hotel Personnel Costs associated with employee benefit plans, incentive compensation and relocation benefits). Clause (a) of this Section 2.20.6.1 will not preclude Owner from objecting to whether any expenditure in a proposed budget is actually necessary to comply with Brand Standards but, for the avoidance of doubt, Owner may not object to (i) the Brand Standards themselves or (ii) Brand Standard

expenditures that are otherwise also necessary to cure or prevent any violation of Legal Requirement.

2.20.6.2 Notwithstanding the foregoing or any other provision of this Agreement to the contrary, in the event Manager modifies Brand Standards relating to design, construction, furnishing, equipping, fit out or decorating of the Hotel (“**AC&R Brand Standards**”), Owner shall have the right to object to, and elect to not to implement, any such proposed modification (other than modifications to Critical Brand Standards which owner may not object to and must implement) made by Manager after Consultant’s approval of the relevant Review Materials relating to such changed AC&R Brand Standard pursuant to the Technical Services Agreement, until the earlier of (a) the fifth (5<sup>th</sup>) anniversary of the Opening Date, or (b) the seventh (7<sup>th</sup>) anniversary of Consultant’s approval of the relevant Review Materials relating to such changes AC&R Brand Standard pursuant to the Technical Services Agreement.

2.20.6.3 Manager shall consider in good faith any comments or suggestions regarding forecasted demand, room rates, or revenue, but shall have the final authority over those items in its sole discretion. Furthermore, in determining Hotel Personnel Costs, Manager will consider, in good faith, the location of the Hotel as well as the market in which the Hotel is located, but shall have final authority over the Hotel Personnel Costs.

2.20.7 Right to Request Dispute Resolution Procedure.

2.20.7.1 Right to Request Dispute Resolution Procedure. If (i) the Parties, despite their good faith efforts, are unable to reach final agreement on the Proposed Operating Plan and Budget for an Operating Year by December 1 of the prior Operating Year, the Parties shall invoke the “**Dispute Resolution Procedures**” as follows: (1) to the extent Owner, Hotel Consultant, or Manager have an approval right that is subject to disagreement among the Parties, the Parties shall within ten (10) days meet and confer about the disagreement and attempt to resolve such disagreement; and (2) if the Parties do not resolve their differences at this meeting, all matters remaining in dispute shall be resolved pursuant to Section 10.1 hereof.

2.20.7.2 Operation of Budgets Pending Results from Expert. If the Parties, despite their good faith efforts, are unable to reach final agreement on the Proposed Operating Plan and Budget for an Operating Year by December 31 of the prior Operating Year, then, until the disputed items in the Proposed Operating Plan and Budget are resolved in accordance with Section 10.1 or otherwise by mutual agreement of the Parties, the Proposed Operating Plan and Budget shall govern the areas of operations not in dispute and the prior year’s Approved Operating Plan and Budget (as increased by the percentage change between the Index on January 1 of the Operating Year immediately preceding the Operating Year in question and the CIP on January 1 of the Operating Year in question) shall govern the areas in dispute.

2.20.7.3 Capital Budget Pending Results from Expert. If the Parties, despite their good faith efforts, are unable to reach final agreement on the proposed Capital Budget by December 31 of the prior Operating Year, then, until the disputed items in the proposed Capital Budget are resolved in accordance with Section 10.1 or otherwise by mutual agreement of the Parties, the proposed Capital Budget shall govern the areas of operations not in dispute and Manager may not incur a Capital Expense for a disputed Capital Improvement included in a proposed Capital Budget unless the Capital Expense is necessary to eliminate or remove an Emergency or which such Capital Expense is necessary to continue ongoing Capital Improvements from the prior Operating Year, in which case Manager shall notify Owner in writing of any such Capital Expenses as soon as practicable and describe the reasons therefor.

2.20.8 Permitted Variations from Budget. During the Operating Term, Manager shall operate the Hotel consistent with each applicable Approved Operating Plan and Budget and each approved Capital Budget, subject only to the permitted deviations expressly set forth in this Section 2.20.8. Accordingly: (i) Manager shall not deviate from the budgeted Capital Expenses in an approved Capital Budget unless Manager obtains the prior written consent of Owner, provided, however, that Manager may reallocate expenditures between line items in the Capital Budget so long as the total authorized expenditures are not exceeded and the projects included in the Capital Budget are completed in accordance with the provisions of the Capital Budget (i.e., no use of substandard materials) and (ii) (a) Manager may pay all taxes, utilities, insurance premiums and charges provided for in contracts and leases entered into pursuant to this Agreement that are not within Manager's ability to control, (b) Manager may make reasonable Emergency Expenses necessary to avoid or mitigate an Emergency provided that Manager notifies Owner as promptly as reasonably possible, (c) Manager may make expenditures reasonably necessary to comply with, or to cure or prevent any violation of, Legal Requirements, (d) Manager may make expenditures necessary to comply with Critical Brand Standards, (e) Manager may make expenditures expressly authorized by this Agreement, (f) Owner acknowledges that certain of the expenses described in the Approved Operating Plan and Budget (but not the approved Capital Budget) for any Operating Year will vary based on the occupancy of the Hotel and, accordingly, to the extent that the occupancy of the Hotel for any Operating Year exceeds or falls below the occupancy projected in the Approved Operating Plan and Budget for such Operating Year, the Approved Operating Plan and Budget shall be deemed to include corresponding increases or decreases in such Variable Expenses, as applicable, (g) Manager may otherwise deviate from each applicable Approved Operating Plan and Budget by no more than five percent (5%) in excess of the above-referenced permitted deviations, in the aggregate, and (h) Manager may be paid for any other loss, damage or related costs incurred by Manager or its Affiliates that is considered an Operating Expense under this Agreement pursuant to clause (b) of the Operating Expense definition. The term "**Variable Expenses**" shall mean Operating Expenses covered by an Approved Operating Plan and Budget that reasonably fluctuate as a direct result of business volumes, including food and beverage expenses, other merchandise expenses, operating supply expenses, and energy costs.

2.20.9 Characteristics of Budgets. Owner acknowledges that (a) the Proposed or Approved Operating Plan and Budget is intended by Manager to be a reasonable estimate of income only; (b) Manager does not give any guarantee, warranty or representation whatsoever in connection with any Approved Operating Plan and Budget, other than that Manager prepared

same in good faith, utilizing all available facts and commercially prudent business methods; and (c) a failure of the Hotel to achieve any Approved Operating Plan and Budget for any Operating Year shall not in and of itself constitute an Event of Default or breach by Manager hereunder. The preceding sentence shall not, however, be construed as a limitation on (i) Manager's obligations (and Manager shall be in breach of this Agreement if Manager fails) (1) subject to the availability of Sufficient Funds, the last sentence of Section 2.1.1 and the permitted variances contemplated in Section 2.20.8, to operate the Hotel consistent with the Approved Operating Plan and Budget, or (2) except as expressly set forth in this Agreement, to obtain Owner's approval prior to making expenditures that exceed the amounts set forth in the applicable Approved Operating Plan and Budget, or (ii) Owner's right to terminate this Agreement under any provision of this Agreement, including, without limitation, by reason of a Performance Termination Event or an Event of Default under this Agreement.

2.20.10 Hotel Consultant.<sup>2</sup> Manager acknowledges that Owner is authorized to retain a Hotel Consultant to make recommendations with respect to the Hotel, including, without limitation, under each of the following circumstances:

(a) if the Proposed Operating Plan and Budget will not result in the Debt Service Coverage Requirement being met, Owner shall request the Hotel Consultant to make written recommendations as to the operations, management, marketing, improvement, condition or use of the Hotel or any part thereof that the Hotel Consultant believes could result in satisfying the Debt Service Coverage Requirement or improving the total amount of EBITDA Less Replacement Reserve available to pay Debt Service;

(b) if the actual Debt Service Coverage Ratios with respect to the Bonds for any four (4) consecutive quarters is less than the Debt Service Coverage Requirement, Owner shall request the Hotel Consultant (within thirty (30) days of the receipt by Owner of the monthly report from Manager which reflects that such ratio was less than the Debt Service Coverage Requirement for the prior four consecutive quarters) to make written recommendations as to the operation, management, marketing, improvement, condition or use of the Hotel or any part thereof that the Hotel Consultant believes could result in satisfying the Debt Service Coverage Requirement or improving the total amount of EBITDA Less Replacement Reserve available to pay Debt Service; and

(c) if the Certified Financial Statements delivered to Owner pursuant to Section 2.22.3 of this Agreement reflects that the Debt Service Coverage Requirement was not achieved, then Owner shall request the Hotel Consultant (within thirty (30) days, of Owner's receipt of such audited annual financial statement) to make written recommendations as to the operation, management, marketing, improvement, condition or use of the Hotel or any part thereof that the Hotel Consultant believes could result in satisfying the Debt Service Coverage Requirement or improving the total amount of EBITDA Less Replacement Reserve available to pay Debt Service.

Owner shall deliver the Hotel Consultant's reports and findings to Manager and Trustee within three (3) Business Days of receipt thereof by Owner. Manager will study and review such

reports and any written recommendations made by the Hotel Consultant. Manager shall also, upon the request of Owner or Trustee, meet with the Hotel Consultant to discuss the Hotel Consultant's reports, findings and written recommendations. Manager shall consider in good faith the Hotel Consultant's written recommendations, but shall have no obligation to implement such written recommendation in the event Manager believes in good faith that such recommendations are not in the best interests of the Hotel; provided further that Manager will have no obligation to consider any such recommendations (i) which require an expenditure of funds greater than the amount available for such purpose under the Indenture, (ii) which could, in the opinion of Bond Counsel, adversely affect the tax-exempt status of the interest on the Bonds, or (iii) which would violate the Brand Standards. In the event that the Hotel Consultant is engaged for one of the reasons described in Section 2.20.10 (a) (b) or (c), then the fees and expenses of the Hotel Consultant shall be paid by as an Operating Expense. In the event the Hotel Consultant is engaged for any other reason, then the fees and expenses of the Hotel Consultant shall be paid by Owner as an Administrative Expense (subject to the cap on Administrative Expenses set forth in the definition thereof) and if not paid for an Administrative Expense, as an Owner expense payable from the Surplus Revenue Fund. Each Party shall deliver to the other Party at no additional charge copies of any information, correspondence or documents delivered to the Hotel Consultant contemporaneously with delivering such information, correspondence or documents to the Hotel Consultant provided, however, that Manager shall not be obligated to deliver to the Hotel Consultant or any other Party information that is of a proprietary or confidential nature or which would otherwise result in a violation of any Legal Requirement by Manager. Manager shall perform quality assurance inspections of the Hotel in accordance with this its then-current Standard Practices and, upon request, will forward any such quality assurance inspections to the Trustee and any Hotel Consultant hired pursuant to this Section 2.20.10.

2.21 Capital Expenses. During the Operating Term, the remaining provisions of this Section 2.21 shall apply as to the maintenance, repair, and improvement of the Hotel.

2.21.1 Generally. To the extent set forth in Section 2.5, the Hotel (including all grounds that comprise the Site, FF&E and hotel equipment and operating supplies) shall be maintained, repaired, and improved by Manager, as an expense of the Hotel payable from the appropriate Funds as described in the Indenture and this Agreement (or, with respect to routine maintenance and repair to be handled by Manager pursuant to this Agreement, from the Lockbox Fund, provided that Capital Expenses made from the Lockbox Fund may be reimbursed or replenished from the appropriate Funds described in the Cash Management Agreement and Indenture upon request from Manager), as contemplated in the approved Capital Budget in effect from time to time with such deviations as are expressly permitted pursuant to the terms of this Agreement.

2.21.2 Senior FF&E Reserve Fund and Subordinate FF&E Reserve Fund. Owner shall use commercially reasonable efforts (including enforcement of its rights under the Indenture) to cause Trustee (subject to and in accordance with the provisions in the Indenture) to set aside from Total Operating Revenue on a monthly basis (in arrears) the Senior FF&E Reserve Set Aside Amount into the Senior FF&E Reserve Fund and the Subordinate FF&E Set Aside Amount into the Subordinate FF&E Reserve Fund. Owner shall use commercially reasonable efforts (including enforcement of its rights under the Indenture) to cause Trustee to maintain as



required by the Indenture the Senior FF&E Reserve Fund and the Subordinate FF&E Reserve Fund, and to invest the balance thereof in accordance with the Indenture, with all interest on the investment to accrue in the Senior FF&E Reserve Fund or Subordinate FF&E Reserve Fund, as applicable. After no Bonds are Outstanding, Owner shall use commercially reasonable efforts to cause the Trustee to transfer the contents of the Senior FF&E Reserve Fund and Subordinate FF&E Reserve Fund to a newly created FF&E reserve fund (the “**Post-Bond FF&E Reserve Fund**”) established and maintained by Manager, in Owner’s name and on behalf of Owner, and Manager will, concurrently with the delivery of the monthly reports required under this Agreement, deposit the Senior FF&E Reserve Set Aside Amount and Subordinate FF&E Set Aside Amount into the Post-Bond FF&E Reserve Fund. Manager would maintain the Post-Bond FF&E Reserve Fund in an interest-bearing account with any interest earned being added to such Post-Bond FF&E Reserve Fund (and which shall be generally available for the types of expenditures for which the Senior FF&E Reserve Fund and Subordinate FF&E Reserve Fund was otherwise utilized for pursuant to the terms of this Agreement). To the extent amounts in the Senior FF&E Reserve Fund or Subordinate FF&E Reserve Fund are not expended in an Operating Year, such amounts shall be accumulated for expenditure in future years, but any such amounts shall not be credited against the amount of the Senior FF&E Reserve Fund or Subordinate FF&E Reserve Fund contribution for the next Operating Year. Notwithstanding any provision of this Agreement to the contrary, Manager shall not incur Capital Expenses to the extent expenditures exceed an approved Capital Budget, except (a) for Capital Expenses incurred by Manager in connection with an Emergency pursuant to and subject to the limitations and requirements of Section 2.21.3 of this Agreement, (b) Capital Expenses which are incurred by Manager pursuant to a provision of this Agreement that clearly and expressly permits Manager to incur such expense without the prior written consent of Owner, (c) Capital Expenses that Manager incurs with Owner’s prior written approval, (d) Capital Expenses for Critical Brand Standards and (e) Capital Expenses reasonably determined by Manager to be necessary to comply, mitigate or prevent a violation of any Legal Requirement. All requests for Capital Expenses from the Senior FF&E Reserve Fund or Subordinate FF&E Reserve Fund shall be in the forms contemplated by the terms of the Indenture.

2.21.3 Use of Senior and Subordinate FF&E Reserve Funds, Operating Expense Reserve Fund, Supplemental Reserve Fund and Surplus Revenue Fund for Capital Expenses. The Senior FF&E Reserve Fund and Subordinate FF&E Reserve Fund, subject to Section 2.21.4 of this Agreement, shall be used for the purposes of funding FF&E and Capital Expenses which are included in the approved Capital Budget or otherwise clearly and expressly authorized by this Agreement or pre-approved in writing by Owner. The Senior FF&E Reserve Fund and the Subordinate FF&E Reserve Fund shall also be available to pay Debt Service on the First Tier Bonds, and shall also be available to pay Debt Service on the Second Tier Bonds, to the extent set forth in the Indenture. However, the Senior FF&E Reserve Fund shall not be used for the purposes set forth in the first sentence of this Section 2.21.3 unless the Subordinate FF&E Reserve Fund is not sufficient to satisfy the matters described in such sentence. Capital Expenses for unbudgeted Emergency Expenses or unbudgeted Capital Expenses necessary to comply with Legal Requirements will be satisfied first from the Surplus Revenue Fund to the extent funds are available, second from the Subordinate FF&E Reserve Fund to the extent funds are available, third from the Senior FF&E Reserve Fund to the extent funds are available, , fourth, from the Supplemental Reserve Fund and lastly, at Manager’s option, from the Operating Expense Reserve Fund. In connection with any Emergency Expenses or unbudgeted Capital

Expenses necessary to comply with Legal Requirements from the Senior FF&E Reserve Fund, the Subordinate FF&E Reserve Fund, the Operating Expense Reserve Fund, the Surplus Revenue Fund, or the Supplemental Reserve Fund, that were not specifically contemplated in the approved Capital Budget, Manager shall use good faith efforts to attempt to notify Owner prior to the time that the expenditures in question are made and shall in any event notify Owner in writing as soon as possible after such expenditures are made. Neither the Surplus Revenue Fund nor the Supplemental Reserve Fund shall be used for Capital Expenses, except as permitted by the preceding provisions of this subsection or to satisfy Capital Expenses included in the approved Capital Budget and then only to the extent that such Capital Expenses exceed the balance of the Senior FF&E Reserve Fund and the Subordinate FF&E Reserve Fund.

If funds in the Senior FF&E Reserve Fund, the Subordinate FF&E Reserve Fund and the Surplus Revenue Fund are insufficient to pay for budgeted Capital Improvements, and if Manager does not elect to utilize funds in the Operating Expense Reserve for such items, then funds from the Supplemental Reserve Fund may be used to complete such Capital Improvements.

2.21.4 Defective and Dangerous Conditions. If the design or construction of the Hotel is defective and the defective condition causes damage to the Hotel, poses a risk of injury to people or property, or is not in material compliance with one or more Legal Requirements including, without limitation, the provisions of a Temporary Certificate of Occupancy or a Certificate of Occupancy, Owner shall, subject to any limitations on warranties contained in the Hotel Development Agreement and/or the Construction Documents, make immediate demand on, and use commercially reasonable efforts to cause, the Developer to expeditiously remedy such defect or cause such defect to be remedied; provided, however, Owner shall maintain the right to challenge in good faith the existence of any alleged defective condition and/or the materiality of such alleged defect and/or any Legal Requirement (for so long as such challenge does not otherwise create a material risk to the life or safety of any persons at the Hotel or otherwise exposes Manager to a material risk of penalty or civil or criminal liability), and unless and until such challenge is settled, Owner shall have no obligation to pursue Developer regarding such alleged defect. Any amounts expended by Owner under this Section 2.21.4 to remedy any defective or dangerous condition shall not be paid from Total Operating Revenue and, without the prior consent of Manager, shall not be paid out of the Subordinate FF&E Reserve Fund, the Senior FF&E Reserve Fund, Supplemental Reserve Fund, the Letter of Credit Reduction Account of the Surplus Revenue Fund or Operating Expense Revenue Fund and will instead be funded through Surplus Revenue Fund. If withdrawn from any such Fund, any recovery which Owner receives from Developer or any other party on account of such amounts shall be deposited into the Funds from which monies were withdrawn in order to cure the defective condition (in the reverse order as the monies were withdrawn). Owner's obligations under this Section 2.21.4 shall not be subject to whether or when insurance proceeds may be available to cover necessary expenditures. In the event Owner fails to comply with this provision, Manager may terminate this agreement in accordance with Section 4.1.4.

2.21.5 Supervision of Capital Improvements. Responsibility for Capital Improvements is more specifically set forth in Sections 2.5, 2.6 and 2.7 above. If, however, Manager agrees to arrange for and supervise Major Capital Expenses on behalf of Owner,

Manager shall be paid a supervisory fee in connection therewith to be mutually agreed upon by Owner and Manager.

2.21.6 Owner's Source of Funds for Capital Expenses. Until the Bonds are no longer Outstanding, (i) except as otherwise provided in Section 2.21.4 above, Owner's obligations to provide funds for Capital Expenses shall be limited to funds in the following priority: (a) the Senior FF&E Reserve Fund, (b) the Subordinate FF&E Reserve Fund, (c) the Supplemental Reserve Fund, (d) the Surplus Revenue Fund, and (e) at Manager's option, the Operating Expense Reserve Fund, and (ii) the availability of funds for Capital Expenses shall be limited to the extent provided in the Indenture. After the Bonds are no longer Outstanding, Owner's obligations to provide funds for Capital Expenses shall continue to be limited to funds in the following priority: (a) the Senior FF&E Reserve Fund, (b) the Subordinate FF&E Reserve Fund, (c) the Supplemental Reserve Fund, (d) the Surplus Revenue Fund, and (e) at Manager's option, the Operating Expense Reserve Fund, or otherwise by their replacement accounts as mutually agreed by the parties.

2.21.7 Reasonable Cooperation by Manager. Manager shall use commercially reasonable efforts, but without otherwise limiting Manager's rights or Owner's obligations under this Agreement, to schedule and budget for Capital Expenses in a manner that does not require use of funds in the Supplemental Reserve Fund, Surplus Fund (to the extent Owner makes such funds available) or the Operating Expense Reserve Fund.

## 2.22 Books and Records; Financial Statements; Continuing Disclosure.

2.22.1 Books and Records. During the Operating Term, in accordance with the current Standard Practices, Manager or its Affiliate shall keep full, complete and accurate books of account, front office records, guest information and other records to be prepared to reflect the operation of the Hotel and the results of operations of the Hotel, including, but not limited to accounts and records pertaining to accounts payable, general ledger and payroll. Owner shall make available to Manager, or its representatives, all books and records, including contract documents, invoices and all other construction records pertaining to the initial development of the Hotel and any Capital Expense. Owner acknowledges that, if such books and records are not made available to Manager, Manager may be unable to keep books of account which fully and adequately reflect the results of the operation of the Hotel. All such books of account and records shall be kept in accordance with the Uniform System of Accounts and Generally Accepted Accounting Principles, consistently applied. All books and records shall be reported in the format that Manager uses in accordance with its Standard Practices and in such other format and including such additional information as may be required in the Indenture, in the Continuing Disclosure Agreement and as may be reasonably required by Owner, Trustee or Mortgagee. All of the financial books and records pertaining to the Hotel, including books of account, front office records, and guest records and information, but excluding Hotel Guest Data, shall be the property of Owner, and shall be available at all reasonable times for inspection and copying by Owner, Hotel Consultant, and their respective representatives subject to Section 2.22.5 below; provided, however, that (a) files pertaining solely to Manager's Intellectual Property and Manager's Proprietary Information shall be Manager's sole property, and (b) employee records of Hotel Personnel shall be Manager's property (except that Owner shall have the right to review such employee records in connection with an audit, a financing or a purchase of the Hotel, but

only to the extent of the following: employee contracts, employment applications, I-9 forms and information pertaining thereto, initial hire date, current salary, wage and benefits, and employment positions and any other information that Owner is permitted by law to review for any reasonable purpose). Upon Termination of this Agreement, all of such books of account and financial records (excluding confidential files relating to Manager's Intellectual Property) shall be turned over forthwith to Owner or Owner's designee so as to ensure the orderly continuance of the operation of the Hotel. In addition to the Hotel's books and records, Manager shall maintain any guest profiles, contact information, histories and other information obtained or collected by Manager at the Hotel in the ordinary course of business from guests of the Hotel relating specifically to such guests' stay at the Hotel (the "**Hotel Guest Data**"). During and after the Term, Manager shall retain, use and otherwise process the Hotel Guest Data in accordance with its publicly posted privacy policy, as amended from time to time. Owner shall not be permitted to use the Hotel Guest Data for any purpose during the Term. Upon the expiration or earlier termination of this Agreement, Manager will assist with the generation of a set of hotel termination reports that will, among other things, allow Owner to honor any reservations on the books following expiration or termination of this Agreement. During and after the Term, Owner shall: (a) comply with all Legal Requirements applicable to Hotel Guest Data, (b) provide at least the same level of privacy protection as is required by the relevant US-EU Safe Harbor Privacy Principles, currently located at <http://www.commerce.gov/page/eu-us-privacy-shield>, as they may be amended from time to time, with respect to Hotel Guest Data originating from the European Union or Switzerland that Owner receives from Manager, and (c) refrain from any action or inaction that could cause Manager to breach any Legal Requirements with respect to the Hotel Guest Data

2.22.2 Monthly. Within twenty days after the end of each calendar month during the Operating Period, Manager shall deliver to Owner the following statements, substantially in the form used at Other Managed Hotels, with such modifications and including such additional information as may be required by the Indenture and the Continuing Disclosure Agreement:

2.22.2.1 a balance sheet;

2.22.2.2 a related profit and loss statement showing the results of operation of the Hotel for such month and the year-to-date, including a comparison to the Approved Operating Plan and Budget and previous Operating Year, a re-forecast of the current Operating Year, and a computation of the Management Fee for such month;

2.22.2.3 a related statement of cash flows of the Hotel for such month and the year-to-date, as well as a projection of required working capital funds;

2.22.2.4 a statement of departmental operations, for such month and year-to-date;

2.22.2.5 then-current Debt Service Coverage Ratios and Debt Service Coverage Ratios for the prior four consecutive calendar quarters to the extent

information is made available to Manager to calculate such Debt Service Coverage Ratios;

2.22.2.6 such other information or materials that Owner, Trustee, any Mortgagee or any surety may reasonably request.

2.22.3 Annual Report and Certified Financial Statements. Within ninety (90) days after the end of each Operating Year, Manager shall cause to be prepared and delivered to Owner an annual report containing the following information in addition to the information contained in the monthly report for the last month of such Operating Year: (i) any year-end adjustments to the year-to-date information included in the last monthly report for the applicable Operating Year and the REVPAR Index for the preceding Operating Year. If Owner requests, or is otherwise required by the terms of the Indenture, Manager will cooperate in obtaining Certified Financial Statements for the preceding Operating Year with the cost thereof being funded from the Surplus Revenue Fund or, if there are insufficient funds therein, as an Operating Expense of the Hotel provided that such Operating Expense will be disregarded for purposes of calculating whether there has been a Performance Termination Event. Owner shall supply to Manager, within twenty (20) days after written request from Manager so to do, information in Owner's possession (and not in Manager's possession) necessary for Manager to cause the Certified Financial Statements to be prepared and delivered.

2.22.4 Destruction of Records. Unless subject to a Legal Requirement, Manager shall not destroy any books and records, without identifying the records to Owner and obtaining Owner's prior written approval of the destruction of such identified records.

2.22.5 Owner's Audit Rights. Owner, Hotel Consultant, Trustee and their designees shall, at any time throughout the Operating Term upon reasonable prior notice to Manager, have additional rights to audit and verify the books and records of the Hotel and the operations of the Hotel. Any audit and verification pursuant to this Section 2.22.5 shall be conducted in such a fashion as to interfere as little as reasonably practicable with Manager's normal business operations. Manager shall cooperate with Owner and its designees in connection with such audit and shall promptly make available to Owner and its designees any and all information relating to the Hotel that they may reasonably request in connection with such audit. Owner shall not be responsible for failure to discover any defalcations during any audit or inspection of the financial records. The cost of any such audit will be funded from the Surplus Revenue Fund. If there is any insufficiency of funds in the Surplus Revenue Fund, such insufficiency shall be funded from Total Operating Revenue as an Operating Expense. And if such Total Operating Revenue is insufficient, then it shall be funded from the Operating Expense Reserve Fund; provided that if the cost of such audit is an Operating Expense it will be disregarded for purposes of calculating whether there has been a Performance Termination Event.

2.23 Personnel. During the Operating Term, Manager shall manage all aspects of the Hotel's human resources functions and shall implement at the Hotel the personnel policies and procedures in accordance with its Standard Practices. In connection with the management of the Hotel's human resources functions, Manager shall have the responsibilities and exercise the rights set forth in Sections 2.23.1 through 2.23.6.

### 2.23.1 Employment of Hotel Personnel.

2.23.1.1 Responsible Party. Subject to Owner's rights under Section 2.23.1.4 below, Manager shall recruit, hire, relocate, pay, supervise, and dismiss all Hotel Personnel (including the Key Employees), with the understanding that all Hotel Personnel shall be the employees of Manager, and not Owner.

2.23.1.2 Personnel Policies. Manager shall determine and implement all personnel policies and practices relating to the Hotel, including the following: (i) policies and practices relating to terms and conditions of employment, screening, selection, training, supervision, compensation, bonuses, severance, pension plans and other employee benefits, discipline, dismissal, and replacement; and (ii) policies and practices relating to the exercise by any Hotel Personnel of rights under any applicable labor laws in relation to the Hotel.

2.23.1.3 Sufficient Personnel. Manager shall use reasonable efforts in accordance with its Standard Practices to so that the number of Hotel Personnel is sufficient, in Manager's reasonable opinion, to operate the Hotel in accordance with the Operating Standard. Manager shall supervise through the Senior Executive Personnel and other Key Employees the hiring, discharging, promotion and work performance of all other operating and service employees of the Hotel. Manager shall use reasonable efforts in accordance with its Standard Practices to hire members of the Senior Executive Personnel and other Key Employees that are properly qualified for their positions.

2.23.1.4 Selection of Senior Executive Personnel and Other Key Employees. Notwithstanding anything contained in this Agreement to the contrary, with respect to the hiring of the Senior Executive Personnel, Owner shall have the right to interview and approve the selection of any such individual for the positions of the Senior Executive Personnel; provided that Owner shall be deemed to have approved the appointment of any such individual unless Owner delivers notice of its disapproval of such appointment within seven (7) Business Days after Manager's delivery to Owner of (a) a written summary of such individual's professional experience and qualifications, and (b) Owner's participation in an interview (as an Operating Expense of the Hotel) between Owner and such individual at the Hotel or at another mutually acceptable location (it being agreed that Owner will forego its right to interview any such individual if Owner is unwilling or unable to have an authorized representative participate in the interview within seven (7) Business Days following Manager's notice to Owner of Manager's desire to arrange such an interview). Owner acknowledges that it may not reject more than three candidates proposed by Manager for the applicable Senior Executive Personnel position each time the position is being filled and if Owner disapproves three proposed candidates, Manager may hire any of the three candidates in its sole discretion. Furthermore, Owner shall have the right to interview and consult with Manager regarding the individuals selected by Manager as the Key Employees other than the Senior Executive Personnel, and Manager will consider Owner's recommendations in good faith prior to their appointment. Manager shall deliver to Owner the following information at least seven (7) Business Days prior to Manager's decision to hire any Key Employees other than the Senior Executive Personnel, in order to allow Owner to review

such information and consult with Manager concerning Owner's views on the hiring of such candidate: (i) a written summary of each such individual's professional experience and qualifications, and (ii) notice of Manager's desire to arrange an interview between Owner and such individual at the Hotel or at another mutually acceptable location (it being agreed that Owner will forego its right to interview any such individual if Owner is unwilling or unable to have an authorized representative participate in the interview within seven (7) Business Days following Manager's notice to Owner of Manager's desire to arrange such an interview); provided, further, Owner acknowledges Manager shall have final say over the hiring of such Key Employee and Manager will be cognizant that reasonable consistency in the Key Employees is important to the success of the Hotel. Manager agrees that if there is a vacancy in any Key Employee position, Manager shall make commercially reasonable efforts to find a permanent replacement within a reasonable period of time thereafter.

2.23.1.5 Relocation of Senior Executive Personnel. During the first twenty-four (24) months after the Opening Date, Manager agrees that it shall not transfer the general manager or director of sales and marketing to any other location without the prior written consent of Owner, not to be unreasonably withheld. Subject to the foregoing, if Manager relocates any Senior Executive Personnel to another hotel or position within twenty-four (24) months after his/her arrival at the Hotel without Owner's consent, Manager shall pay, from its own funds, for the relocation expenses, and the search and recruiting expenses incurred in relocating such individual's replacement to the Hotel. It is understood and agreed that the Hotel shall not incur any relocation expenses of any departing Senior Executive Personnel to his or her new position, regardless of the length of time any such individual is employed at the Hotel.

2.23.1.6 Employee Benefits; Compensation. Manager shall have the right to provide the employees of the Hotel, who are eligible therefor and who are not covered by collective bargaining or similar arrangements, with benefits of (i) incentive plans, (ii) pension, profit sharing or other employee retirement, and/or (iii) disability, health or welfare or other benefit plan or plans now or hereafter applicable to employees of other hotels managed by Manager and its Affiliates in the United States. Manager shall charge the Hotel with its pro rata share of the costs and expenses of such plan or plans allocated to the Hotel on the same basis as allocated to other hotels participating in the same types of benefit plans provided to the employees of the Hotel. All costs associated with such employee benefit plans shall be Operating Expenses. The terms of employment, including hiring, training, compensation, bonuses, employee benefits, discharge, and replacement of all Hotel Personnel, shall be established and administered by Manager consistent with its Standard Practices the applicable Approved Operating Plan and Budget (with such variations from the Approved Operating Plan and Budget as may be permitted hereunder). All such compensation, bonuses, employee benefits shall be established using Manager's compensation policies and guidelines consistent with its Standard Practices (taking into consideration the location of the Hotel and Other Managed Hotels). Furthermore, as part of the annual budget process, Owner shall have the right to consult with Manager, and Manager will consider Owner's recommendations in good faith, with respect to the total aggregated compensation of the Senior Executive Personnel. In addition, Owner shall have the right to consult with Manager, and Manager

will consider Owner's recommendations in good faith, with respect to the discretionary elements of the general manager's compensation. As part of the process of hiring a general manager in accordance with Section 2.23.1.4, Manager shall verbally share details regarding such discretionary elements of proposed general manager compensation with Owner, but Manager shall not be obligated to provide such information in writing to Owner.

2.23.1.7 Equal Opportunity Employment. Manager shall use reasonable efforts to ensure that its general hiring policies and the discharge of all Hotel Personnel are compliant with all "**Equal Employment Opportunity**" and "**Occupational Health and Safety Administration**" laws and regulations and that its practices reasonably comply with all laws, regulations and ordinances regarding the employment and payment of Hotel Personnel. Manager shall maintain insurance related to employment claims in accordance with Section 5 of this Agreement.

2.23.1.8 Complimentary and Discounted Rates. Employees and representatives of Owner, Manager and their Affiliates who travel to the Hotel on a temporary basis to provide technical assistance or other services (including legal, operational and consulting services) shall be permitted to stay at the Hotel, without charge and on a space available basis, and use its facilities (including restaurants and lounges), provided further that in no event shall Manager displace a paying guest or group with an existing reservation. Other employees of Manager, and certain Affiliates of Manager, shall be permitted to stay at the Hotel, on a space available basis, for non-business purposes at reduced rates or on a complimentary basis in accordance with Manager and its Affiliates' then-current employee travel program. In addition, upon Owner's reasonable request from time to time throughout each Operating Year, Manager shall make available to Owner's employees or designees additional reduced rate or complimentary rooms or services on a space available basis, and in no event displacing a paying guest or group with an existing reservation.

2.23.2 Employee Status. None of the Hotel Personnel shall be considered employees of Owner or Trustee. All Hotel Personnel Costs shall be Operating Expenses and the responsibility of Owner. Manager shall pay all Hotel Personnel Costs of such employees and the amount of payments shall be reimbursed to Manager by Owner in accordance with Section 3.4 hereof out of the Lockbox Fund.

### 2.23.3 Advance Notice Regarding Termination.

2.23.3.1 Notwithstanding any contrary provision of this Agreement, in connection with any termination of this Agreement, other than pursuant to any termination notice received by Manager that expressly requests Manager to comply with any Employee Termination Notice Requirements and specifies a termination date not less than fifteen days plus the number of days necessary for Manager to comply with any Employee Termination Notice Requirements after the notice is delivered, Owner shall take, or shall cause to be taken, any and all action necessary with respect to Hotel Personnel (including rehiring, or causing to be rehired, the Hotel Personnel) so that the Manager will not be required to comply with any Employee Termination Notice Requirements.



2.23.3.2 If, in connection with a termination of this Agreement, Owner expressly requests Manager to comply with any Employee Termination Notice Requirements or Manager is otherwise required to comply with any Employee Termination Notice Requirements, the termination date relating to any such termination shall automatically be deemed extended, to the extent necessary, to the date equal to fifteen days plus the number of days necessary for Manager to comply with any Employee Termination Notice Requirements. Manager may waive this automatic extension for any termination based on Event of Default by Owner.

2.23.4 Labor Relations. Manager shall have the exclusive authority to negotiate any agreements or contracts with or concerning labor unions representing Hotel Personnel, provided Manager shall act at all times in the best interest of Owner regarding all labor relations matters involving Hotel Personnel. Owner shall have no authority to negotiate or enter into (and shall not negotiate or enter into) any such agreements or contracts with or concerning labor unions representing Hotel Personnel on behalf of Manager or in connection with the Hotel. With respect to labor negotiations not involving multi-employer bargaining arrangements applicable to the Hotel and other hotel properties not owned or operated by Manager, Manager shall consult with Owner in advance of, and, to the extent practicable, during the course of, negotiations with any labor union as to the terms of any collective bargaining agreement or labor contract being negotiated and shall give due consideration to any recommendations, advice or other input of Owner with respect to such negotiations. Further, should any labor union propose a neutrality or card check agreement to the Hotel seeking to represent any Hotel Personnel, Manager shall discuss and consult with Owner prior to signing of such agreement.

2.23.5 Personnel. If Manager shall reasonably deem it advisable, Manager may, subject to the other provisions of this Section 2.23, select the Senior Executive Personnel of the Hotel from the employees of Manager and its Affiliates or from the staff of Other Managed Hotels.

2.23.6 Executive Staff Bonuses. Owner and Manager hereby acknowledge the terms and provisions of Attachment I which are incorporated herein by reference. In the event Manager desires to modify the Original Metrics set forth in Attachment I, it will notify Owner as part of the yearly Budget approval process and provide Owner with reasonable information regarding the proposed Changed Metrics. To the extent Owner agrees with such Changed Metrics as part of the yearly Budget approval process, such Changed Metrics will not constitute, under existing law regulations, rulings and court decisions, a violation of Section 2.1.3. of this Agreement. Owner agrees, in addition, that any court decision that incentive compensation payments based on factors substantially similar to the Changed Metrics do result in a share of net profits of a managed facility for purposes of Section 141 of the Internal Revenue Code shall not constitute a breach by Manager under this Agreement or subject Manager to any liability under this Agreement.

## 2.24 Centralized Services.

2.24.1 Generally. Manager shall furnish or cause its Affiliates to furnish to the Hotel the benefits of the Centralized Services, and Owner hereby agrees that the Hotel shall participate all mandatory Centralized Services. Owner shall have the option to participate in, or

opt out of, any optional Centralized Services as part of the yearly budget approval process set forth in this Agreement. Owner acknowledges that the Centralized Services are an integral part of Manager's marketing and operation of hotels and resorts under the Brand Name, and Manager requires the flexibility to modify the Centralized Services to respond to the market trends, competitive conditions, customer demands, economic conditions, technological advances and other factors affecting the marketing and operation of hotels under the Brand Name (including the costs associated with maintaining and upgrading such Centralized Services). Accordingly, Owner agrees that subject to the terms of this Agreement, Manager shall have the right to: (a) modify the structure, scope, delivery, fees, costs and terms of any Centralized Services; (b) add new, or discontinue existing Centralized Services; or (c) make mandatory Centralized Services optional, or make optional Centralized Services mandatory, as Manager deems advisable from time to time, each such change to be implemented upon no less than sixty days' notice to Owner. Without limiting the generality of the foregoing, Manager will provide centralized marketing, sales and reservation services as follows:

2.24.1.1 Centralized Marketing Program. Manager acknowledges that as part of the Centralized Services it shall maintain a national marketing and national sales program that promotes the "**Signia by Hilton**" brand identity of Manager and its Affiliates, advertises to Manager's and its Affiliates' markets and secures bookings for hotels and resorts, including the Hotel, operated under the Brand Name (the "**Centralized Marketing Program**"). In addition, Manager shall coordinate the Hotel's individual marketing program with the Centralized Marketing Program and, as Manager and its Affiliates deem appropriate, include the Hotel in the brand identity and national advertising programs conducted as part of the Centralized Marketing Program.

2.24.1.2 Centralized Reservation Program. Manager further acknowledges that as part of the Centralized Services, it shall secure bookings for the Hotel through Manager's sales and reservations offices and other distribution and sales systems (the "**Centralized Reservation Program**") and shall encourage the use of the Hotel by tourists, special groups, travel congresses, travel agencies, airlines, and other recognized sources of hotel business. Manager shall develop a sales program for the Hotel as part of its management responsibilities hereunder. In addition, Manager shall process reservations for the Hotel through Manager's and its Affiliates' worldwide communications network.

2.24.2 Required Representations. In connection with and as a condition to providing Centralized Services, Manager represents and warrants to Owner the following: (a) while recognizing that the total Centralized Services Fees and Charges for Centralized Services collected by Manager and its Affiliates from all the hotels that pay such Centralized Services Fees and Charges for Centralized Services in a particular year may differ from the actual costs paid by Manager and its Affiliates in that year for the provision of such Centralized Services, the Centralized Services Fees and Charges for the applicable Centralized Services, when considered over an extended period, are intended to represent reimbursement of costs paid by Manager or its Affiliates to unrelated third parties, (b) Manager and its Affiliates actively manage the Centralized Services Fees with the intent to maximize the use of the Centralized Services Fees and benefit the Hotel and other Hotels that pay such Centralized Services Fees, (c) the costs related to the provision of Centralized Services shall be charged on a fair and equitable basis

consistently applied considering the factors that Manager or its Affiliate deems most relevant, including the nature of the Services provided, the benefit received, competitive forces and the marginal cost of providing the Services to different classes of hotels (recognizing that one or more of such hotels may have unique characteristics or circumstances justifying a different basis), (d) the Centralized Services Fees may include amounts reasonably calculated to cover the overhead and other costs incurred by Manager or its Affiliate, including: (i) recovery of development costs and promotion costs for such Centralized Services; (ii) costs of equipment employed in providing the Centralized Services; (iii) costs of operating, maintaining and upgrading the Centralized Services; (iv) the costs for the installation and maintenance of any equipment and technology systems at the Hotel used in connection with the Centralized Services; and (v) compensation and employee benefits of Corporate Personnel involved in providing the Services; (e) the Centralized Services Fees and Charges for the applicable Centralized Services, including amounts paid to reimburse Manager or its Affiliates for payments to Manager's employees, do not include any Direct or Indirect Profit. Owner acknowledges that from time to time there might be a current surplus or current or current deficit of funds for any one or more Centralized Services and that any retention of such funds for use at a later date will not constitute any Direct or Indirect Profit; provided, however, that Manager represents that any such surplus (including interest earned thereon) shall be retained (except to the extent, if any, that Manager refunds all or a portion of such surplus to hotels that have paid or are paying the Centralized Services) and used to pay the costs of the Centralized Services and shall not constitute a Direct or Indirect Profit.

2.24.3 Required Certificate. Upon the request of Owner (not more than twice in any Operating Year), Manager shall deliver a certificate to Owner reaffirming its representations set forth in Section 2.24.2 above.

## 2.25 Hotel Marketing Program.

2.25.1 Development and Implementation of Hotel Marketing Program. Subject to the availability of Sufficient Funds, in addition to affiliating the Hotel with the Centralized Marketing Program, Manager shall, for no additional fee or compensation, develop and implement a specific marketing program for the Hotel, following Manager's policies and guidelines, which will provide for the planning, publicity, internal communications, organizing, and budgeting activities to be undertaken, and which shall include the following:

- (a) production, distribution, and placement of promotional materials relating to the Hotel;
- (b) development and implementation of promotional offers or programs that benefit the Hotel and are undertaken by Manager or by a group of Other Managed Hotels that includes the Hotel;
- (c) attendance of Hotel Personnel at conventions, meetings, seminars, conferences, and travel congresses;
- (d) selection of and guidance to, as required, advertising agency and public relations personnel; and

(e) preparation and dissemination of news releases for national and international trade and consumer publications.

2.25.2 Responsibility for Development of Marketing Plan. Development and implementation of the Hotel's individual marketing program will be accomplished substantially by Hotel Personnel, with periodic assistance from Corporate Personnel with marketing sales expertise. Any such assistance rendered by Corporate Personnel shall be at no cost to Owner or the Hotel (except to the extent factored into the Centralized Services Fees) for such Corporate Personnel's time, but Owner shall pay for the reasonable Out-of-Pocket Expenses (which shall be Operating Expenses) incurred by Manager in connection with such assistance, subject, however, to approval by Owner of such Out-of-Pocket Expenses in connection with the approval the Proposed Operating Plan and Budget in accordance with the provisions of Section 2.20 of this Agreement. The program shall comply with Manager's sales, advertising, and public relations policies and corporate identity requirements, as they may be modified from time to time, except to the extent such cost is included in costs allocable to the Hotel and reimbursable to Manager under Section 3.4 of this Agreement. For the first 36 months after the Opening Date, at least twenty-five percent (25%) of the total Brand Services Fee paid by Owner shall be devoted to the Hotel's specific marketing program. Any such proposed Hotel-specific marketing (whether proposed by Manager or Owner), including creative concepts, materials and media used in the programs, placement and allocation of advertising, and selection of promotional programs, will be subject to Manager's corporate review and approval in its sole discretion, provided, however, that Manager will reasonably collaborate with Owner with respect to such Hotel-specific marketing and consider in good faith any proposals made by Owner

2.26 Automation. The Hotel shall utilize all automation systems necessary to enable the Hotel to function as any Other Managed Hotel in accordance with its Standard Practices, including, without limitation, the property management system, time keeping and payroll system, human resource system, revenue management system and links to central reservation system utilized by Other Managed Hotels, as the same may be modified or updated from time to time.

## 2.27 Purchasing.

2.27.1 National Vendors. In the performance of its obligations under Section 2.8 of this Agreement (as well as in connection with its procurement of insurance through Manager-purchased insurance programs required pursuant to Section 5.1.3, or other Manager-purchased insurance programs, if applicable), Manager may elect to purchase the items described therein under vendor contracts available to Manager under the centralized purchasing program of Manager and its Affiliates for so long as such a program is maintained. Owner shall have the right to opt out of all or a portion of such centralized purchasing program as part of the yearly budgeting process contemplated in this Agreement. In the event Owner opts out of the centralized purchasing program (or portion thereof), it will only be permitted to opt back into the program (or portion thereof) as part of the yearly budgeting process contemplated in this Agreement. Notwithstanding the preceding sentence, Manager shall use its commercially reasonable efforts to purchase products from those vendors who have the needed items available, at the lowest price, subject to the provisions of Section 2.31 and the Operating Standards. Owner authorizes Manager to mark up its costs, and receive and retain remuneration and other benefits from vendors and service providers based on such purchases, provided that: (a) the total cost of

goods and services (including any mark-up, fees and other remuneration) is generally on terms no less favorable to Owner than that which would be available through unrelated third party vendors in an arms-length transaction; and (b) Manager shall, on an annual basis, remit to the Lockbox Fund the proportionate share of the pre-tax profits earned by Manager and its Affiliates through such purchases by hotels participating in the purchasing programs, after deducting all operating expenses and capital costs attributable to providing such services. For purposes of calculating Owner's proportionate share of such pre-tax profits, Manager shall allocate proportionate share in a manner that reasonably approximates the proportionate share of purchases made by the Hotel in relation to the total purchases made by all hotels participating in Manager's purchasing services. Manager represents and warrants that Manager will not use any National Vendor to supply goods and/or services to the Hotel if such use would result in Manager, or any Affiliate of or party related to Manager, receiving any Direct or Indirect Profit from any such use. Any inadvertent lack of compliance will not constitute an Event of Default by Manager hereunder. Manager shall, however, have an obligation to correct such lack of compliance and refund to Owner any Direct or Indirect Profit received with respect to purchases for or on behalf of the Hotel.

2.27.2 Local Vendors. Notwithstanding anything to the contrary in this Agreement, Owner may require that Manager give preference to local vendors (including minority owned business enterprises and women owned business enterprises) with respect to any services that are provided by third party vendors, other than Centralized Services, exclusive providers and other services or goods that are provided "system-wide" to the Hotel and any of the Other Managed Hotels or through the centralized purchasing program highlighted in Section 2.27.1, provided that such local vendors can offer goods and services that (i) satisfy the Operating Standard and Brand Standards, (ii) are of a quality that are at least equivalent to that provided by non-local vendors and (iii) are at prices not in excess of those being charged by non-local vendors.

2.27.3 Affiliates. Manager may provide any service (including Centralized Services, Manager-purchased insurance programs and the centralized purchasing program contemplated in Section 2.27.1) required by this Agreement through an Affiliate. If Manager arranges for an Affiliate of Manager to perform services Manager is required to provide, Manager is ultimately responsible to Owner, and Owner shall not pay more for the Affiliate's services and expenses than Manager would have been entitled to receive under this Agreement had Manager performed the services and Manager further covenants that it will not earn any Direct or Indirect Profit in connection therewith. Furthermore, in addition to services provided by Manager hereunder (including the Centralized Services, Manager-purchased insurance programs and centralized purchasing program referred to in Section 2.27.1) Manager may enter into contracts for goods and services with its Affiliates or related parties for goods and services normally provided by third party vendors ("**Third Party Goods and Services**"), so long as, in connection with such Third Party Goods and Services,: (i) such contracts do not provide for a price in excess of the market price for such goods and/or services and the goods and/or services are of a quality that would: (a) be at least equivalent to that provided by an unrelated third party contractor pursuant to an arms-length contract for the same price as is charged by the Affiliate or related party; (b) satisfy the Operating Standard, (ii) such contracts do not result in any such Affiliate or related party receiving any Direct or Indirect Profit by reason thereof, (iii) Manager complies with the requirements of Sections 2.4.6 and 2.4.7 and obtains Owner's and/or Bond

Counsel's approval before entering into such contracts with Affiliates to the extent approval is required pursuant to Section 2.4.6 or 2.4.7. Any inadvertent and immaterial lack of compliance with the provisions of this Section 2.27.3 will not constitute an Event of Default hereunder and as manager, Manager will correct such lack of compliance.

2.28 Hotel Parking. Manager shall be responsible for operation and maintenance of the Garage as a department of the Hotel. Manager may engage a third-party parking manager to manage and operate the Garage, provided that (i) Owner and Trustee shall have the right to approve any such third-party parking manager (which approval shall not be unreasonably withheld, conditioned or delayed), and (ii) the third-party parking management agreement will be in the form of a “**qualified management agreement**” drafted by counsel selected by Manager and approved by Owner and Bond Counsel. In addition, Manager shall reasonably cooperate with Owner regarding integration of the Garage with the overall parking program, from time to time, serving all of Owner's campus. All revenue generated by the Garage shall be included in Total Operating Revenue and all operating expenses incurred in connection with the management and operation of the Garage shall be included in Operating Expenses.

2.29 Compliance with Legal Requirements. Manager shall use its reasonable efforts to comply with Legal Requirements and Approvals relating to its obligations under this Agreement in connection with the operation, management and maintenance of the Hotel as an Operating Expense or Capital Expense as applicable; provided that Manager shall have no obligation to acquire any Temporary Certificate of Occupancy or Certificate of Occupancy, such obligation to be solely the obligation of the Developer under the Hotel Development Agreement. Manager shall use its reasonable efforts to ensure that the business being conducted at the Hotel is in full compliance with all Legal Requirements that are applicable to operation of the Hotel as an Operating Expense or Capital Expense as applicable. Manager does not in any way assume any of Owner's obligations to comply with the Legal Requirements or Developer's obligations to comply with Legal Requirements or any other laws, rules or regulations or obligations of Developer under the Hotel Development Agreement including, without limitation, Developer's obligation to acquire any Temporary Certificate of Occupancy or Certificate of Occupancy. Notwithstanding any provision herein to the contrary, Manager shall, at its own expense, comply with all Legal Requirements with which Manager would be required to comply in order to be duly authorized and approved to do business in the State of Georgia even if Manager was not a party to this Agreement. This Article shall not be construed to limit the right of either Owner or Manager to contest the applicability of any Legal Requirements so long as such contest does not expose the other Party to material risk of criminal sanctions, or civil sanctions.

2.30 Prohibition on Borrowing and Other Credit Obligations. Other than the extension of credit to customers in the ordinary course of business and entering into contracts authorized under the preceding provisions of this Section 2 (including for trade payables and accounts payable incurred in the ordinary course of business of operating the Hotel in accordance with this Agreement) and except as otherwise expressly set forth in this Agreement, Manager shall not borrow any money or execute any credit obligation in the name and on behalf of Owner or pledge the credit of Owner without Owner's prior written consent, which may be given or withheld in Owner's sole discretion.

2.31 Minority Business Enterprises and Women Business Enterprises. Manager shall employ an openly advertised, competitive, and non-discriminatory process to select its contractors and consultants to provide small, minority and woman-owned business enterprises with the maximum practical opportunity in the performance of public contracts, as further described in the “EBO Plan” attached hereto as Exhibit K. Manager hereby agrees that in connection with the performance of its obligations hereunder, Manager shall meet the commitments it has made to the Owner in Exhibit K, and abide by all applicable terms and conditions of the policies as attached in Exhibit K; provided, however, any inadvertent lack of compliance will not constitute an Event of Default hereunder and as manager, Manager will correct such lack of compliance. This commitment is not intended to limit Manager’s express rights under this Agreement, but to serve as Manager’s good faith commitment to use its commercially reasonable efforts to meet the goals established jointly by Manager and the Owner as identified in Exhibit K, using the methods described in Exhibit K, in the course of all of Manager’s duties as operator of the Hotel. Owner acknowledges that Manager will be permitted to engage a third-party consultant to assist in complying with the EBO Plan and that the cost of such third-party consultant will be a Pre-Opening Expense (in connection with work done prior to the Opening Date) or an Operating Expense (in connection with work done following the Opening Date), in each case, to the extent set forth in the applicable Pre-Opening Budget or Approved Operating Plan and Budget. Owner will not be permitted to object to the reasonable costs for such third-party consultant set forth in the proposed Pre-Opening Budget or Approved Operating Plan and Budget (as applicable).

2.32 Intentionally Omitted. [NTD: this is not intended to get rid of this section altogether. It is just that it is stated in two different places (here and the EoD section) in the same exact way. We address the compromise language (which we understand was agreed to) in the EoD section.

2.33 Certain Limitations on Manager’s Duties, Obligations and Rights.

2.33.1 Sufficient Funds. Notwithstanding anything else set forth in this Agreement, Manager’s obligations, duties, covenants, agreements and responsibilities under this Agreement that require the expenditure of funds which constitute an Operating Expense, Capital Expense, fixed expenses under the Uniform System of Accounts, Excluded Taxes and Other Charges and amounts required to be paid (but which are not paid) under the Hotel Development Agreement are subject to Sufficient Funds being available to Manager. Additionally, Manager shall be excused from its performance hereunder to the extent prevented by Owner’s failure to reasonably cooperate with Manager to the extent such cooperation is reasonably required for Manager’s performance hereunder.

2.33.2 Insurance Coverage Recommendations. Owner agrees to rely exclusively on its own insurance advisors with respect to all insurance matters. In the event that Owner disagrees with decisions made by Manager in connection with insurance procured by Manager, Owner shall have the right to disagree and require Manager to purchase the insurance recommended by Owner’s insurance advisors; provided, however, that the foregoing, shall in no event limit Owner’s obligations or Manager’s rights under Article V or otherwise require Manager to modify any Manager-purchased insurance programs for which Owner elects to participate in pursuant to Article V or is required to participate pursuant to Article V.

### 2.33.3 Reserved.

2.33.4 Accuracy of Predictions in Financial Reports. Any and all financial projections and budgets prepared by Manager under this Agreement, including those contained in the annual Proposed and/or Approved Operating Plan and Budget are to be prepared by Manager as accurately as is reasonably possible, using good faith, information then available to Manager and Manager's prudent business judgment. Manager acknowledges that the same will be used by Owner and given to Owner's lenders and their financial, professional and legal advisors. Manager does not guarantee the accuracy of the projections and budgets, nor does it guarantee the results of such projections and budgets. Except as expressly provided in this Agreement, Owner acknowledges that Manager shall not be held responsible by Owner for any divergence between such projections and budgets and actual operating results achieved, so long as such budgets are prepared by Manager in good faith and Manager, in the preparation of such budgets, uses prudent business judgment and all relevant information then available to Manager. In no event will this paragraph be construed to interfere in any way with Owner's right to terminate this Agreement in the event of a failed Performance Test or an Event of Default by Manager or relieve Manager from any of its duties, obligations covenants, agreements, and responsibilities set forth in this Agreement.

2.33.5 Responsibility for Environmental, Construction and Other Real Property Issues. If any environmental, construction, or real property-related problem exists at the Hotel during the Operating Term Manager's management services under this Agreement shall not extend to management of any abatement or other correction of such problems; provided, however, that Manager shall reasonably cooperate with Owner or any of its consultants or contractors in connection with any such abatement or correction of such problems. Notwithstanding the foregoing, except with respect to any environmental matters or matters relating to construction deficiencies at the Hotel or other items which the Developer is responsible for under the Hotel Development Agreement, if Manager determines that any such problem materially impairs or has the capacity to materially impair operations at the Hotel (including, without limitation, any problem which might result in negative publicity or lower occupancy rates), then Manager shall have the right and the obligation to consult with Owner in pursuit of solutions to such problem and Manager may elect, at its option and if approved by Owner, to assume management of such problem as part of its management duties and responsibilities under this Agreement for no additional compensation.

### 2.33.6 Environmental Matters.

2.33.6.1 At all times during the Operating Term, Manager shall use reasonable efforts to materially comply with Environmental Laws applicable to the Hotel and its operations.

2.33.6.2 To the extent known by Owner or Manager, Manager and Owner each agrees to give the other prompt written notice of (1) all Environmental Liabilities; (2) all pending, threatened or anticipated proceedings, and all notices, demands, requests or investigations, relating to any Environmental Liability or relating to the issuance, revocation or change in any environmental authorization required for operation of the Hotel; (3) all releases of Hazardous



Materials at, on, in, under or in any way affecting the Hotel, or any release of Hazardous Materials known by Owner or Manager, as the case may be, at, on, in or under any property adjacent to the Hotel; and (4) all facts, events or conditions that Manager or Owner, as the case may be, knows could reasonably lead to the occurrence of any of the above-referenced matters

2.34 Mandatory Guest Fees. Before Manager assesses any Mandatory Guest Fees at the Hotel, Owner must execute an acknowledgment, in form mutually and reasonably agreed upon by Owner and Manager, authorizing and directing Manager to charge such Mandatory Guest Fees.

### 3. FEES AND EXPENSES

#### 3.1 Management Fee.

3.1.1 Obligation for Management Fee. In consideration for performing all of its management, administrative, oversight, cooperation, and coordination services under this Agreement, Owner shall pay for each Operating Year, a “**Management Fee**”, which is hereby defined to mean the sum of the Base Management Fee and the Subordinate Management Fee, each payable and calculable as set forth in this Article 3.

Owner and Manager agree that, except for the Management Fee, Centralized Services Fees and Charges, LOC Fee [NTD: I believe LOC Fee is the correct term used throughout as opposed to “Letter of Credit Fee”]. and Reimbursable Expenses, Manager shall not be entitled directly or indirectly to any other fees or compensation in connection with the delivery of services which Manager is required to provide to the Hotel pursuant to this Agreement. The Subordinate Management Fee, so long as any Bonds remain Outstanding under the Indenture, shall be subordinate to the Subordinated Fee Hurdle and be payable solely from amounts rightfully on deposit in the Subordinate Management Fee Fund held by Trustee under the Indenture (which such Subordinate Management Fee Fund will be funded to the extent EBITDA Less Replacement Reserve exceeds the Subordinated Fee Hurdle).

Unless otherwise specified in this Agreement, all amounts payable to Manager or its Affiliates under this Agreement shall be paid to Manager in United States Dollars, in immediately available funds (i.e. by wire transfer or cashier’s check) (“**Immediately Available Funds**”), without reduction for any withholding tax, value added tax or any other assessment, tax, duty, levy or charge required under the applicable laws of any applicable jurisdiction, provided that Manager shall be solely responsible for taxes which are in form or substance in the nature of a income tax or income levy against Manager’s income. If any gross receipts, sales, use, excise or similar tax that is based upon gross income or revenues is imposed upon Manager for the receipt of any payments under this Agreement, then Owner shall also pay Manager an amount equal to such tax. If any gross receipts, sales, use, excise or similar tax that is based upon gross income or revenues is imposed upon the payment made pursuant to this Agreement, the amount due will be such that the net amount retained by Manager, after payment of such tax, equals the amount payable to Manager under this Agreement as if no gross receipts, sales, use, excise or similar tax had been imposed upon Manager for the receipts of any payments under this Agreement.

### 3.1.2 Base Management Fee.

3.1.2.1 Definition of Base Management Fee. The “**Base Management Fee**” shall mean an amount equal to the applicable percentage of Total Operating Revenue for each Operating Year, as follows:

<u>Full Operating Year</u>	<u>% of Total Operating Revenue</u>
First (and preceding short Operating Year)	1.0%
Second	1.5%
Third	2.0%
Fourth	2.5%
Fifth and subsequent Operating Years	3.0%

3.1.2.2 Payment of Base Management Fee. The Base Management Fee for each month shall be paid, in arrears, concurrently with the delivery of the monthly report under Section 2.22.2. Owner hereby authorizes Manager to withdraw the monthly installment of the Base Management Fee on such date from the Lockbox Fund.

### 3.1.3 Subordinate Management Fee.

3.1.3.1 Definition of Subordinate Management Fee. The “**Subordinate Management Fee**” an amount equal to 1.0% of Total Operating Revenue for each Operating Year.

3.1.3.2 Payment of Subordinate Management Fee. The Subordinate Management Fee for each Operating Year shall be paid, in arrears, concurrently with the delivery of the annual report under Section 2.22.3 (each such installment, an “**Annual Installment of the Subordinate Management Fee**”) to the extent there are funds in the Subordinate Management Fee Fund. Owner hereby authorizes Manager to request payment from the Trustee of such Annual Installment of the Subordinate Management Fee on such date from the Subordinate Management Fee Fund and will cause the Trustee to pay Manager the Annual Installment of the Subordinate Management Fee. Notwithstanding the preceding sentence, each Annual Installment of the Subordinate Management Fee shall be paid only to the extent EBITDA Less Replacement Reserve in the applicable Operating Year exceeds the Subordinated Fee Hurdle for such Operating Year, provided, however, for the first Operating Year, the Subordinate Management Fee

shall be paid in full regardless of whether the Subordinated Fee Hurdle is achieved. If EBITDA Less Replacement Reserve for the applicable Operating Year fails to exceed the Subordinated Fee Hurdle for such Operating Year or any portion of the Subordinate Management Fee for the applicable Operating Year is not fully paid, the unpaid portion of the Subordinate Management Fee shall accrue, bear interest equal to the Prime Rate plus 2%, and shall be paid upon the earlier of (a) when funds become available in the Subordinate Management Fee Fund in subsequent years, (b) on the date five years after the date such payment would have otherwise been due, or (c) upon expiration or termination of this Agreement. After the Bonds are no longer Outstanding, any Subordinate Management Fees not previously paid to Manager shall be paid out of the Lockbox Fund on a monthly basis to the extent the Subordinated Fee Hurdle is met for the applicable Operating Year. Notwithstanding any provision to the contrary herein contained, the Subordinate Management Fee is subordinate and inferior to Debt Service. For purposes hereof, “**Subordinated Fee Hurdle**” means \$34,000,000, which amount shall be increased by the Index on an annual basis, commencing with the first Operating Year to occur after all Letters of Credit have been terminated and no unreimbursed draws thereunder remain outstanding.

### 3.2 Centralized Services Fees

3.2.1 Payment of Centralized Services Fees. Each time that Manager withdraws funds from the Lockbox Fund pursuant to this Agreement for the payment of Centralized Services Fees, Manager shall be deemed to have made the representations set forth in Section 2.24.2 to each of Owner and Trustee.

3.3 Partial Years. The Subordinated Fee Hurdle shall be pro-rated, on a fair and equitable basis mutually agreed to by Owner and Manager factoring in, amongst other things, the number of calendar days elapsed in the applicable Operating Year, for any partial Operating Year of less than twelve full calendar months. In addition, if the Hotel operations are ceased due to a casualty, condemnation, emergency, or Force Majeure Event, a failure, revocation, lapse, non-issuance, non-reissuance or non-renewal of any Temporary Certificate of Occupancy, or any other reason beyond the control of Owner for a period of more than thirty (30) days, the Subordinated Fee Hurdle shall be further pro-rated on a daily basis based on the number of days during which Hotel operations have ceased

### 3.4 Reimbursable Expenses.

3.4.1 Reimbursable Expenses Defined. Subject to the limitations of this Agreement and the Approved Operating Plan and Budget (with any permitted variations from the Approved Operating Plan and Budget to the extent set forth in this Agreement or as otherwise approved by Owner), Manager shall be entitled to reimburse itself from the Lockbox Fund for all reasonable out of pocket costs and expenses incurred by Manager and paid to non-Affiliates (and, if permitted under this Agreement, Affiliates of Manager) that were incurred in the ordinary course of managing the Hotel pursuant to this Agreement (collectively, “**Reimbursable Expenses**”), including the following:

(a) all Hotel Personnel Costs incurred in accordance with standard personnel policies applicable to Other Managed Hotels (as they may be amended from time to time) with respect to any Hotel Personnel employed directly by Manager or its Affiliates;

(b) pay and benefits and all reasonable costs and expenses (including, without limitation, all travel and lodging expenses) for personnel of Manager or its Affiliates not employed at the Hotel and assigned to special projects for the Hotel or traveling on assignment for the specific benefit of the Hotel, which amounts shall not exceed the proportionate share of Hotel Personnel Costs and direct out-of-pocket expenses incurred by or with respect to such personnel while on assignment for the specific benefit of the Hotel;

(c) all reasonable Out-of-Pocket Expenses incurred by Manager directly in connection with its management of the Hotel for the specific benefit of the Hotel;

(d) reasonable travel and entertainment expenses of all employees of Manager and its Affiliates incurred in performing Manager’s duties hereunder in connection with the operation of the Hotel in accordance with the policies of Manager then in effect;

(e) the Hotel’s properly and reasonably allocated share of all costs and charge payable or incurred to third parties in connection with the provision of Centralized Services in accordance with this Agreement or for independent third party consultants rendering services to the Hotel;

(f) payments made or incurred by Manager or its Affiliates, or its or their employees to third parties for goods and services in the ordinary course of business in the operation of the Hotel;

(g) without otherwise limiting the terms and provisions of Section 2.10, reasonable legal fees incurred by Manager in connection with the operation of the Hotel;

(h) all premiums for any insurance maintained by Manager through Manager-purchased programs pursuant to Section 5;

(i) all taxes and similar assessments (other than sales taxes and Manager’s income taxes) levied against the Management Fees, Centralized Services Fees or any

reimbursements payable to Manager under this Agreement for expenses incurred for Owner's account; and

(j) any other loss, damage or related costs incurred by Manager or its Affiliates that is an considered an Operating Expense under this Agreement pursuant to clause (b) of the Operating Expense definition.

(k) all other expenditures which are authorized, permitted or required under the provisions of this Agreement which have been paid or funded by Manager on Owner's behalf.

Manager shall keep good and adequate records (including invoices and statements) to evidence that Manager incurred and paid the Reimbursable Expenses and such records shall constitute a part of the books and records of Owner.

3.4.2 Payment of Reimbursable Expenses/Working Funds Request. Until the Bonds are no longer Outstanding, Reimbursable Expenses properly documented in accordance with Section 3.4.1 of this Agreement shall be paid as Operating Expenses, with the understandings that (a) Reimbursable Expenses shall be subject to the provisions of Section 3.3 of this Agreement and (b) any Reimbursable Expenses in excess of amounts available in the Lockbox Fund shall be paid to Manager from the Operating Expense Reserve Fund (and, if the Operating Expense Reserve Fund is insufficient, then the insufficiency shall be paid from the Surplus Revenue Fund, and if the Surplus Revenue Funds is insufficient, then the insufficiency shall be paid from the Supplemental Reserve Fund, and if the Supplemental Reserve Fund is insufficient, then such insufficiency shall be paid from the Subordinate FF&E Reserve Fund and if the Subordinate FF&E Reserve Fund is insufficient, then such insufficiency shall be paid from the Senior FF&E Reserve Fund) within ten (10) days after Manager delivers to Owner of a request supported by invoices and statements evidencing the applicable Reimbursable Expenses, provided the same is consistent with the applicable terms and conditions of this Agreement and provided there are sufficient funds in the Operating Expense Reserve Fund, the Surplus Revenue Fund, the Supplemental Reserve Fund, the Subordinated FF&E Reserve Fund or Senior FF&E Reserve Fund. Manager shall further be permitted to submit a request for funding (a "**Working Fund Request**") from the Operating Expense Reserve Fund (or the Surplus Revenue Fund, Supplemental Reserve Fund, Subordinate FF&E Reserve Fund or Senior FF&E Reserve Fund in such priority as noted in the previous sentence) in the event it reasonably anticipates, based on cash flow forecasts, there will be insufficient funds in the Lockbox Fund to continue the efficient and uninterrupted operations of the Hotel (including insufficient funds to pay Reimbursable Expenses) which such funds shall be funded within ten (10) days of Manager's request provided Manager provides a reasonable explanation and reasonable back-up regarding the needs for such funds. Without otherwise limiting Manager's rights under Section 4.1.5.2 to terminate this Agreement, if there are not sufficient funds in the Operating Expense Reserve Fund, the Surplus Revenue Fund, Supplemental Reserve Fund, Subordinate FF&E Reserve Fund or Senior FF&E Reserve Fund within the required 10-day period and the Bonds are still Outstanding, then any Reimbursable Expenses or Working Fund Request shall be paid as soon as there are funds in the Lockbox Fund, the Operating Expense Reserve Fund, Surplus Revenue Fund, Supplemental Reserve Fund, Subordinate FF&E Reserve Fund or Senior FF&E Reserve Fund, and any amounts not paid shall bear interest as provided in Section 13.26 of this Agreement until paid.

After the Bonds are no longer Outstanding, any Reimbursable Expenses in excess of amounts available in the Lockbox Fund, or any Working Fund Request, shall be paid within ten (10) days of the delivery to Owner of an invoice evidencing the applicable Reimbursable Expenses (or the reasonable explanation for the need for working funds, as applicable).

3.4.3 Required Representations. Except with respect to the provisions of Centralized Services (which is otherwise governed by Manager's representations set forth in Section 2.24.2 above), In connection with and as a condition to being paid Reimbursable Expenses, Manager represents and warrants to Owner the following: (i) Reimbursable Expenses represent reimbursement of costs paid by Manager or its Affiliates to unrelated third parties or payments of salaries, wages, compensations and benefits payable to Manager's employees) for the reasonable and actual costs of providing services, supplies, goods, products or equipment hereunder to the Hotel and all Other Managed Hotels, (ii) the Reimbursable Expenses (including employee compensation) do not include any Direct or Indirect Profit received by Manager, an Affiliate of Manager or an employee of Manager, (iii) to the extent Reimbursable Expenses represent an allocation of costs between the Hotel and Other Managed Hotels, such allocation among the Hotel and all Other Managed Hotels will be based on a fair, reasonable and equitable allocation established in accordance with reasonable accounting procedures, consistently applied (which accounting procedures shall at all times comply with the requirements of Section 2.22.1), and (iv) without limiting clause (iii) preceding, the Hotel's allocated share and each Other Managed Hotel's allocated share of any such allocated Reimbursable Expenses are and shall be determined using fair, reasonable and equitable variables consistently applied.

### 3.5 Establishing Bank Accounts and Letters of Credit.

3.5.1 Accounts. Manager has, on behalf of and in the name of Owner, establish the Lockbox Fund for the purpose of settling electronic transactions effected with bank and non-bank credit cards and depositing all monies received from the operation of the Hotel; provided, however, that the discount and other fees charged by the Depository Bank and each bank at which a Clearing Bank Account is established, as well as payment terms must be competitive with the charges for such services and timeliness of payment prevailing at other Managed Hotels provided further that Manager shall notify Owner and Trustee in writing of the name and location of each banking institution at which Manager maintains such accounts, together with such information as Owner shall reasonably request in order to permit a security interest to be established in such account or accounts (provided, however, that Owner acknowledges, and shall cause any person or entity acquiring a security interest to acknowledge that, no such person or entity with a security interest will be permitted to enforce their rights in the accounts in a manner that would otherwise result in any interference with Manager's exclusive right to control such accounts as contemplated hereunder or permit anyone other than signatories of Manager to be authorized signatories on the accounts). As part of the process of depositing all Total Operating Revenues into the Lockbox Fund, Manager may also establish one or more segregated deposit or disbursement accounts (collectively, the "Clearing Bank Accounts") including, by way of example, the deposit of cash received at the Hotel and disbursement of funds via check or similar method of payment. Any Clearing Bank Account established for the deposit of Total Operating Revenues will be established so that, on the end of each Business Day, all amounts contained therein (except for de minimis amounts or amounts reasonably determined by Manager to be necessary for potential returned items, chargebacks or

offsets) shall be automatically withdrawn and transferred to the Lockbox Fund and other than as provided in the following sentence or herein no other withdrawals from such Clearing Bank Account established for the deposit of the Gross Operating Revenues shall be permitted. Any Clearing Bank Account established for the disbursements of funds via check or similar method of payment will be funded from amounts in the Lockbox Fund and will remain in such disbursement account until such checks or similar method of payment has cleared. During the entire Operating Term, subject to and in compliance with the Cash Management Agreement, Manager shall promptly deposit each Business Day (other than with respect to cash on hand at the Hotel which may (less the Petty Cash Amount (as defined in the Indenture) take up to three (3) Business Days) all Total Operating Revenue (in excess of the Petty Cash Amount (as defined in the Indenture) retained at the Hotel) into the Lockbox Fund. Manager shall have unrestricted access to amounts on deposit in the Lockbox Fund or any Clearing Bank Account (and so long as this Agreement has not been terminated, Manager's designees will be the only signatories authorized to draw on such accounts), and Manager may make deposits in all Lockbox Fund and Clearing Bank Accounts, in accordance with the terms of this Agreement and Manager's standard accounting policies and practices. Manager shall establish controls to ensure accurate reporting of all transactions involving the Lockbox Fund and Clearing Bank Accounts.

### 3.5.2 Letters of Credit.

(a) Manager will provide, on or prior to the Bond issuance, one or more letters of credit (collectively, the "**Letters of Credit**") in the total amount of \$[ ] that will be available, initially, in lieu of the Owner's obligation to fund the First Tier Debt Service Reserve Fund and the Second Tier Debt Service Reserve Fund from Bond proceeds. The amount of the First Tier Letter of Credit issued in lieu of the First Tier Debt Service Reserve Fund will be equal to [\$ ] and the amount of the Second Tier Letter of Credit issued in lieu of the Second Tier Debt Service Reserve Fund will be equal to [\$ ]. Draws on the Letters of Credit, and funding of the First Tier Debt Service Reserve Fund and the Second Tier Debt Service Reserve Fund (and related reduction in the amounts available to be drawn on the Letters of Credit) are governed by the terms of this Agreement and the Indenture. The obligation to provide such Letters of Credit will terminate on the earlier of (i) 10 years from the initial issuance of the Bonds or (ii) (a) with respect to the First Tier Letter of Credit, the date on which the amounts available to be drawn on the First Tier Letter of Credit has been irrevocably reduced to \$0 pursuant Section 3.5.2(d) below and (b) with respect to the Second Tier Letter of Credit, the date on which the amounts available to be drawn on the Second Tier Letter of Credit has been irrevocably reduced to \$0 pursuant to Section 3.5.2(d) below. Subject to the prior sentence, each individual Letter of Credit must have a term of at least one year, and must allow for a final draw on the Letter of Credit for its entire available amount to be drawn on the day prior to its expiration date, unless either a replacement Letter of Credit has been provided to the Trustee. Amounts received by the Trustee from any such final draw of funds on the First Tier Letter of Credit must be deposited by Owner into the First Tier Debt Service Reserve Fund and amounts received from any such final draw of funds on the Second Tier Letter of Credit must be deposited by the Owner into the Second Tier Debt Service Reserve Fund. Furthermore, any such final draw of funds on a Letter of Credit contemplated in the previous two sentences will result in an irrevocable reduction in the amount available to be drawn on of such Letter of Credit and once reduced, will

not increase under any circumstances including the reimbursement of any such draw. If the issuer of a Letter of Credit fails to maintain at least an A credit rating, Manager will replace the applicable Letter of Credit with one issued by an issuer with at least an A credit rating.

(b) Except as otherwise expressly permitted in, and subject to the conditions in, clause (a) above in connection with a final draw on a Letter of Credit on the day prior to its expiration date, any Letter of Credit may only be drawn in order to pay a debt service shortfall and then only in the event:

(i) There is a true shortfall in funds necessary to pay debt service (i.e. not simply because a coverage covenant or non-monetary default is triggered under the applicable Bond Documents); and

(ii) There are insufficient funds available in the Funds established under the Indenture available for the payment of such debt service based on the priorities more specifically set forth in Section 5.06 of the Indenture.

(c) Reimbursement for drawings on the Letter of Credit and any interest accrued thereon, shall be funded in the order of priority set forth in Section 5.05(b) of the Indenture; provided, however, that for the avoidance of doubt, Letter of Credit drawings and any interest accrued thereon shall be reimbursed prior to the replenishment of cash withdrawn from the First Tier Debt Service Reserve Fund (with respect to the First Tier Letter of Credit) or from the Second Tier Debt Service Reserve Fund (with respect to the Second Tier Letter of Credit).

(d) In the event of a drawing under the First Tier Letter of Credit pursuant to Section 5.06(a) of the Indenture, the amount available to be drawn thereunder will be automatically reinstated following a reimbursement of such drawing by the Trustee with the transfers provided by *Sixth* under the Section 5.05(b); provided, however, that notwithstanding the foregoing or anything else to the contrary in this Agreement, (i) the deposit of amounts from the Letter of Credit Reduction Fund to the First Tier Debt Service Reserve Fund pursuant to Section 5.16(a) of the Indenture (together with any Investment Securities or other amounts contributed to the First Tier Debt Service Reserve Fund (other than to replenish a withdrawal of cash from the First Tier Debt Service Reserve Fund pursuant to Section 5.05(b), *Seventh*)) will result in the irrevocable reduction, on a dollar for dollar basis, of the amount available to be drawn on the First Tier Letter of Credit and (ii) the final draw on the First Tier Letter of Credit on the business day prior to its expiration as contemplated in 3.5.2(a) above will result in the irrevocable reduction in the amount available to be drawn on the First Tier Letter of Credit to zero, and once reduced pursuant to the foregoing clause (i) and (ii) will not be increased or automatically reinstated under any circumstances. In the event of a drawing under the Second Tier Letter of Credit pursuant to Section 5.06(b) of the Indenture, the amount available to be drawn thereunder will be automatically reinstated following a reimbursement of such drawing by the Trustee with the transfers provided by *Ninth* under the Section 5.05(b); provided, however, that notwithstanding the foregoing or anything else to the contrary in this Agreement, (i) the deposit of amounts from the Letter of Credit



Reduction Fund to the Second Tier Debt Service Reserve Fund pursuant to Section 5.16(a) of the Indenture (together with any Investment Securities or other amounts contributed to the Second Tier Debt Service Reserve Fund (other than to replenish a withdrawal of cash from the Second Tier Debt Service Reserve Fund pursuant to Section 5.05(b), *Tenth*)) will result in the irrevocable reduction, on a dollar for dollar basis, of the amount available to be drawn on the Second Tier Letter of Credit and (ii) the final draw on the Second Tier Letter of Credit on the business day prior to its expiration as contemplated in 3.5.2(a) above will result in the irrevocable reduction in the amount available to be drawn on the Second Tier Letter of Credit to zero, and once reduced pursuant to the foregoing clause (i) and (ii) will not be increased or automatically reinstated under any circumstances. Until such time as the amount available to be drawn on the First Tier Letter of Credit and the Second Tier Letter of Credit is reduced to zero, funds in the Letter of Credit Reduction Account will be deposited into the the First Tier Debt Service Reserve Fund and Second Tier Debt Service Reserve Fund pursuant to Section 5.16(a) of the Indenture.

(e) The cost to Owner for the Letters of Credit (the “**LOC Fee**”), which shall constitute an Administrative Expense, shall be 0.5% of the undrawn total per year. Such LOC Fee will be due and payable by Owner to Manager on a monthly basis. And any draws from the Letters of Credit shall bear interest at the rate provided in the Letters of Credit and on such terms as shall be mutually agreed to by Manager and Owner, and shall be payable by Owner in the order of priority as contemplated in clause (c) above.

(f) Upon the termination of this Agreement for any reason, (i) any outstanding unreimbursed draws on the Letters of Credit will be due any payable to Manager and (ii) Owner will cause the Trustee for the Bonds to surrender the Letters of Credit to Manager. Such payment and return of the Letters of Credit will be a condition to termination of this Agreement by Owner and, at Manager’s option, a condition to termination of this Agreement by Manager.

(g) In the event of a refinancing of the Bonds that (a) occurs during such time that either (i) Manager is obligated to provide the Letters of Credit or (ii) there are any unreimbursed draws on any of the Letters of Credit (the “**LOC Refinancing Period**”), and (b) will not materially increase the risk that any Letter of Credit will be drawn or that any drawing on a Letter of Credit will not be reimbursed on a timely basis, Manager’s obligation to provide such Letters of Credit shall survive any such refinancing, subject to and in accordance with the terms and conditions set forth above. In the event of a refinancing of the Bonds that (a) occurs during the LOC Refinancing Period and (b) materially increases the risk that any Letter of Credit will be drawn or that any drawing on a Letter of Credit will not be reimbursed on a timely basis, then Manager will be reimbursed for any outstanding draws on the Letters of Credit and the Letters of Credit will be returned to the Manager. For purposes of the foregoing, a refinancing of the Bonds shall be considered to materially increase the risk that any Letter of Credit will be drawn or that any drawing on a Letter of Credit will not be reimbursed on a timely basis if such refinancing results in an increase in the amount of debt service payable in the aggregate on all series of Bonds in any year, results in an increase in the amount of debt service on First Tier Bonds or Second Tier Bonds in any year (regardless of whether

aggregate debt service on all Bonds is increased), or changes the priority of drawing on the Letters of Credit or the priority of payment for reimbursement of drawings on the Letters of Credit.

### 3.6 Working Capital, Distributions and Operating Expense Reserve Fund.

3.6.1 No later than the Required Opening Date and from the proceeds of the Bonds or the Key Money, Owner shall deposit (or cause to be deposited) \$2,000 per guest room as initial working capital into the Lockbox Fund (“**Initial Working Capital Amount**”). Such Initial Working Capital Amount will be adjusted upwards annually on January 1<sup>st</sup> of each Operating Year based on percentage increases (but for the avoidance of doubt not decreases) in the Index from the immediately preceding Operating Year (the Initial Working Capital Amount, as so increased pursuant to this Section 3.6.1 on a year to year basis, is referred to herein as the “**Working Capital Amount**”). Such increases based on the Index will be cumulative based on the Working Capital Amount in the Operating Year immediately preceding the Index adjustment. Manager shall be entitled to retain the Initial Working Capital Amount or applicable Working Capital Amount (as applicable) in the Lockbox Fund as working capital funds for the Hotel.

3.6.2 Concurrently with the delivery of the monthly report contemplated in Section 2.22.2, Manager shall distribute from the Lockbox Fund funds in excess of (i) the then-current Working Capital Amount to the Revenue Fund held by the Trustee, (ii) the Petty Cash Amount (as defined in the Indenture), and (iii) funds held by Manager for the remittance of Excluded Taxes and Other Charges to the Revenue Fund to be applied to the various funds held by the Trustee pursuant to Section 5.05 of the Indenture.

3.6.3 Owner agrees that the Operating Expense Reserve Account will be funded up to an amount that is, in the first year of the Operating Term, no less than an amount equal to, \$5,000,000. For each subsequent Operating Year, the amount to be funded into the Operating Expense Reserve Account pursuant to the Indenture will be increased to the applicable Operating Expense Reserve Requirement.

3.6.4 Manager shall have access to the Operating Expense Reserve Account and other funds and accounts as provided in Section 3.4.2 and as contemplated in Section 3.7 below. Owner acknowledges that the Operating Expense Reserve Account will not be made available for any other purposes.

3.7 Payment of Operating Expenses. At all times during the Operating Term, Manager shall have the right to withdraw funds from the Lockbox Fund and Operating Expense Reserve Account solely for the purpose of (i) paying Operating Expenses (including, without limitation, the Base Management Fee), subject, however, to the terms, provisions and limitations of this Agreement, and, with respect to the Operating Expense Reserve Account, the applicable provisions of the Indenture, (ii) for the payment of ordinary course Capital Expenses related to maintenance repair and upkeep of the Hotel or (iii) for all other purposes expressly set forth in this Agreement. All persons whom Manager authorizes as signatories to the Lockbox Fund shall conduct themselves in accordance with Manager’s standard accounting policies and practices.

3.8 Funds, Accounts and Disbursements Prior to Payment of all Bonds. While some or all of the Bonds remain Outstanding, Manager agrees that the Cash Management Agreement and the applicable provisions of the Indenture shall control and govern the use of Total Operating Revenue in the event of a conflict with this Agreement. Without limiting the preceding sentence, Manager acknowledges that the various Funds established under the Indenture are funded in the particular order and priority stated therein, with any excess being deposited into the Surplus Revenue Fund.

(a) Funds, Accounts and Disbursements After Redemption of Bonds. At such time as no Bonds are Outstanding, Funds formerly held by the Trustee shall be deposited into the Lockbox Fund maintained by Manager for application to the payment of expenses related to the Hotel in such order and priority as Manager may determine; provided that, (i) Manager shall separately maintain the Post-Bond FF&E Reserve Fund pursuant to Section 2.21.2, (ii) Manager shall separately maintain the Operating Expense Reserve Fund (which Manager shall have the right to replenish prior to any distribution of funds to Owner pursuant to the following clause (iii) in the event the balance falls below the amount that otherwise would have been required to be in the Operating Expenses Reserve Fund pursuant to Section 3.6.3 above, and (iii) subject to reasonable holdback of working funds for the Hotel, Manager will distribute excess funds in the Lockbox Fund to Owner on a monthly basis, if any, promptly following delivery of the monthly reports contemplated in this Agreement. Owner and Manager acknowledge that at such time as no Bonds are Outstanding, the Cash Management Agreement and Indenture will be of no further force and effect.

3.9 Disbursements after No Bonds Outstanding. After there are no Bonds Outstanding, the following provisions (in addition to other provisions which apply throughout the Operating Term) shall apply:

3.9.1 Reserved.

3.9.2 Funding of Capital Expenses and Emergency Expenses. Prior to the date no Bonds are Outstanding, Manager, in order to pay for (or reimburse the Lockbox Fund for) Capital Improvements authorized under the then current approved Capital Budget or otherwise permitted by this Agreement, shall be permitted to submit a fund request to the Trustee in the forms of Exhibits [D], [E], [F] or [H] of the Indenture (to the extent Manager is expressly permitted to requisition funds from the appropriate Funds pursuant to the terms of this Agreement), on the first day of each month covering the Capital Expenses and Emergency Expenses then incurred related to the Hotel. At such time as no Bonds remain Outstanding, Trustee shall transfer funds in the Senior FF&E Reserve Fund and Subordinate FF&E Reserve Fund to the Post-Bond FF&E Reserve Fund maintained by Manager on behalf of Owner.

3.10 Limitation on Owner's Obligations. Notwithstanding anything contained herein to the contrary, Manager acknowledges that Owner shall have no responsibility or liability for Trustee's failure to honor any requests of Owner to disburse amounts from any of the Funds pursuant to the Indenture, but Owner shall use commercially reasonable efforts to enforce Trustee's obligations under the Indenture. Regardless of whether or not any of the Bonds remain Outstanding, the Operating Expenses of the Hotel (including the Management Fee) will

be funded solely from Total Operating Revenue of the Hotel, the Operating Expense Reserve Fund, Supplemental Reserve Fund, the Lockbox Fund, Clearing Bank Accounts, to the extent expressly set forth in this Agreement the Senior FF&E Reserve Fund and Subordinate FF&E Reserve Fund and to the extent expressly set forth in the Indenture, the Surplus Revenue Fund. For the avoidance of doubt, nothing herein contained in this Agreement, other than the provisions of Section 3.12, 10.4, and 13.24 will be deemed to limit Manager's ability to seek or collect damages or remedies against Owner as a result of a breach under this Agreement even, for example, with respect to such damages that may be characterized as an "Operating Expense" under this Agreement.

3.11 Certain Representations. Manager and Owner represent that the Management Fee was negotiated at arm's length and, given the terms of this agreement, is reasonable.

3.12 No Personal Liability.

3.12.1 To the extent permitted by law, and except as contemplated in Section 3.12.2 below, Manager shall look solely to Owner's and Trustee's interest and equity (including, for the avoidance of doubt, Owner's or Trustee's residual value in the Hotel and Owner's or Trustee's interest in any Total Operating Revenues, Lockbox Fund, Clearing Bank Accounts, Operating Expense Reserve Fund, Surplus Revenue Fund, Senior FF&E Reserve Fund, Supplemental Reserve Fund, Subordinate FF&E Reserve Fund and other funds established under the Indenture) for the payment and performance of the duties, obligations, covenants, agreements, responsibilities and representations contained in this Agreement. Without limiting the foregoing, to the extent Owner's and Trustee's interest and equity in the Hotel and the various funds described herein are not sufficient to satisfy any liability of Owner hereunder or otherwise or any judgment entered against Owner or Trustee, neither Owner nor Trustee shall be liable for such deficiency.

3.12.2 Notwithstanding anything to the contrary set forth in this Agreement (including, without limitation, Section 3.12.1 above), nothing will limit or be deemed to limit Manager's ability to seek remedies or collect damages against *all assets* of Owner to the extent such damages or remedies arise out of Owner's failure to repay Manager any unamortized Key Money upon a termination of this Agreement (for any reason other than an Egregious Manager Event of Default) prior to the Opening Date.

#### 4. TERM AND TERMINATION; KEY MONEY

4.1 Term.

4.1.1 Operating Term. Unless sooner terminated pursuant to the provisions of this Article 4, the term of this Agreement shall commence on the Effective Date and expire at 11:59 p.m. on the 30<sup>th</sup> anniversary of the Opening Date (as may renewed or extended pursuant hereto, the "**Term**" or the "**Operating Term**"). Notwithstanding the preceding sentence, from the Effective Date through the Opening Date, only the following sections of this Agreement shall be in effect: [2.1, 3.12, 4.1, 4.2, 4.3, 4.4, 4.7, 4.8, 4.9, 4.10, 4.11, 5 (with respect to Brand Insurance Requirements relating to the pre-opening period), 6, 9, 10, 11 and 12]<sup>3</sup>. On the

<sup>3</sup> Note: All section references to be confirmed and conformed in final version.

Opening Date, Manager and Owner shall commence full performance of their respective obligations hereunder.

4.1.2 Extension of Operating Term. Owner and Manager shall have the option, exercisable by the mutual, written agreement of the Parties prior to the end of the initial Term and each Renewal Term thereafter, as applicable, to extend the Agreement for up to three (3) additional consecutive periods of ten (10) years each (each, a “**Renewal Term**”).

4.1.3 Termination of Agreement Prior to Opening Date.

4.1.3.1 Owner shall have the right to terminate this Agreement, without termination penalty, prior to the Opening Date if the Technical Services Agreement or the Pre-Opening Services Agreement is terminated in accordance with its terms (other than as a result of a default by Owner under the Technical Services Agreement or the Pre-Opening Services Agreement or the natural expiration of the term as provided for therein).

4.1.3.2 Manager shall have the right to terminate this Agreement, without termination penalty to Owner, prior to the Opening Date, as a result of any of the following:

(a) Commencement of Construction does not start by the Construction Commencement Date for any reason not caused by the act or omission of Manager;

(b) the Opening Date does not occur by the Required Opening Date for any reason not caused by the act or omission of Manager. Notwithstanding the foregoing, if the Opening Date does not occur because of delays in the construction, furnishing and equipping of the Hotel due to a Force Majeure Event, then the Required Opening Date shall be adjourned by a period of time equal to the length of such Force Majeure Event, but the Required Opening Date shall not be adjourned for any reason beyond the Outside Opening Date;

(c) Owner fails to diligently and continuously carry on the construction and development of the Hotel so that the Opening Date is not reasonably expected to occur on or before the Required Opening Date, or if a Force Majeure Event occurs, on or before the Outside Opening Date; or

(d) the Technical Services Agreement or the Pre-Opening Services Agreement is terminated in accordance with its terms (other than as a result of a default by Manager under the Technical Services Agreement or the Pre-Opening Services Agreement or the natural expiration of the term as provided for therein).

In the event, within three (3) years of a termination pursuant to this Section 4.1.3, Owner elects to construct the Hotel, desires to open the Hotel or is able to complete the Bond financing, the Bond Holders agree to the material terms of this Agreement, and/or the Hotel is determined to be economically viable, Owner shall give Manager the right to reinstate this Agreement and related agreements on substantially similar terms, subject to modifications as mutually agreed by the parties to address any programming, economic or other changes to the Hotel.

4.1.4 Termination by Manager Subsequent to Opening Date. Manager may terminate this Agreement, without penalty to Owner, upon 90 days prior notice to Owner in the event that Owner is unable to satisfy its obligation under Section 2.21.4 to remedy defective and dangerous conditions so as to prevent a threat to life, health or safety of persons or damage to the Hotel.

4.1.5 Additional Termination Rights of Owner and Manager.

4.1.5.1 Room Block Termination. Owner shall have the right to terminate this Agreement, without termination penalty to Manager, if Manager defaults under its obligations in Section 2.04(e)(i) on at least three (3) separate occasions during any consecutive 2-year period and fails to cure all such defaults pursuant to all applicable cure periods in the Room Block Agreement.

4.1.5.2 Failure to Pay Reimbursable Expenses. Manager shall have the right to terminate this Agreement, without termination penalty to Owner, if:

(e) at any time following the 2<sup>nd</sup> anniversary of the Opening Date Manager fails, or has failed to be, to be reimbursed for any Reimbursable Expenses as contemplated in this Agreement and such failure continues for a period of ten (10) days after Manager delivers written notice to Owner specifying such failure.

(f) at any time prior to the 2<sup>nd</sup> anniversary of the Opening Date Manager fails to be reimbursed for any Reimbursable Expenses as contemplated in this Agreement to the extent the aggregate balance of such unreimbursed Reimbursable Expenses is in excess of \$250,000 and such failure continues for a period of ten (10) days after Manager delivers written notice to Owner specifying such failure,

For the avoidance of doubt, a Manager termination or Owner termination, as applicable, under Section 4.1.3, 4.1.4 or 4.1.5 shall not constitute a breach of this Agreement. All accrued and unpaid amounts due and owing to Manager through the effective date of termination (including any unamortized Key Money pursuant to Section 4.2 below, unreimbursed Letter of Credit amounts and accrued and unpaid Subordinate Management Fees) will be due and payable upon such termination.

4.2 Key Money Contribution. Manager shall commit to funding an amount of key money (“Key Money”) based on the final number of guest rooms included as part of the Hotel, as follows:

<u>Total Number of Guest Rooms</u>	<u>Key Money</u>
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950 or more	\$25,000,000.
900-949	\$25,000 per guest room.
899 or less	\$20,000 per guest room.

The Key Money will be contributed to Owner in connection with the construction of the Hotel. Manager shall pay the Key Money to Owner no later than the date that is reasonably determined by Manager to be [ ] days prior to the Opening Date. The Key Money will be deposited into the account designated by Owner. The Key Money, shall, starting on the Opening Date, amortize on a monthly straight-line basis starting on the Opening Date until the end of the 15<sup>th</sup> full Operating Year of the Term and shall be considered to have been fully earned by Owner on December 31<sup>st</sup> of the 15<sup>th</sup> full Operating Year. For the avoidance of doubt, the Key Money will not amortize prior to the Opening Date. If this Agreement is terminated for any reason other than an Egregious Manager Event of Default prior to the conclusion of the 15<sup>th</sup> full Operating Year, the unamortized portion of the Key Money, based on the amortization schedule calculated on a straight-line and monthly basis from and after the date it is paid to Owner to and including December 31<sup>st</sup> of the 15<sup>th</sup> full Operating Year, shall be refunded to Manager and such Termination shall be conditioned, at Manager's option, upon payment of the unamortized Key Money.

In connection with this Agreement or the performance of its obligations under this Agreement, Owner will not use any portion of the Key Money to (a) make, provide, offer to make, or authorize, directly or indirectly, an improper payment, contribution, gift, business courtesy, bribe, rebate, kickback, or giving of any other thing of value, regardless of form or amount, to obtain a competitive advantage for any party or to receive favorable treatment in obtaining or retaining business, (b) engage in any acts or transactions otherwise violating any Anti-Corruption Laws or (c) transfer or provide the Key Money to or from a Specially Designated National or Blocked Person. If Manager has any basis for a reasonable belief that Owner has used the Key Money in violation of any Anti-Corruption Laws, Manager shall advise Owner of this belief and Owner will cooperate with any and all reasonable information and document requests, including requests for execution of certificates of compliance, and will permit inspection at all reasonable times and upon reasonable prior notice of its books and records relating to this Agreement.

4.3 Reserved.

4.4 Termination of Temporary Certificate of Occupancy. Notwithstanding anything herein to the contrary, if after the Opening Date, Manager is required to cease all or a portion of the operations of the Hotel due to the failure, revocation, lapse, non-issuance or nonreissuance or non-renewal of any Temporary Certificate of Occupancy or permanent certificate of occupancy that is not caused by Manager, then all duties, responsibilities and obligations of Manager hereunder shall be suspended, excused and tolled day for day for the period of such failure with respect to such portion of the Hotel until Manager is able to commence full operations of the Hotel; provided that Manager and Owner shall continue to be obligated to maintain insurance as required under Article 5 herein and shall continue to comply with its covenant set forth in

Section 13.25 herein. Notwithstanding the foregoing, (i) Manager shall have the right to terminate this Agreement in the event the Temporary Certificate of Occupancy or permanent certificate of occupancy is no longer in valid or in effect for a period of more than ninety (90) days. Manager shall have no liability for any claims associated with or resulting from such failure, revocation, lapse, non-issuance or non-reissuance or non-renewal of the Temporary Certificate of Occupancy or permanent certificate of occupancy except to the extent caused by Manager. If after the Opening Date, there is a failure, revocation, lapse, non-issuance or non-renewal of any Temporary Certificate of Occupancy or permanent certificate of occupancy which results in the impediment of operations of less than all of the Hotel, Manager shall continue to lawfully operate and manage that portion of the Hotel which it is able to continue to operate and manage in the manner set forth herein provided there is no material risk of liability to Manager or its Affiliates.

4.5 Events of Default by Manager. An Event of Default shall occur with respect to Manager if:

(a) without limiting other provisions of this Section 4.5, Manager breaches or fails to perform any covenant or agreement made by Manager hereunder and fails to cure such breach or failure within thirty (30) days after Manager's receipt of a written notice from Owner or Trustee specifying the breach or failure to perform (however, that if more than thirty (30) days is reasonably required to effectuate such cure, then Manager shall have an additional ninety (90) days to cure);

(b) Manager fails to obtain or maintain all insurance required under the terms of this Agreement at any time;

(c) Owner determines, based on an opinion of Bond Counsel, that, due to Manager's actions in contravention with the terms of this Agreement or failure to act in accordance with the terms set forth herein, this Agreement violates the covenants made by Owner in connection with the Bonds issued to finance the Hotel, provided however, that if such actions or failure to act can be cured within one hundred and eighty (180) days of notice thereof to Manager, and Bond Counsel is of the opinion that the interest on the Bonds will not be includible in gross income of the holders thereof for federal income tax purposes during such one hundred and eighty (180) days, then Manager shall have one hundred and eighty (180) days to cure such default;

(d) If Manager defaults (i) under its obligations in the last sentence of Section 2.01 of the Room Block Agreement on at least three (3) separate occasions during any consecutive 2-year period and fails to cure all such defaults pursuant to all applicable cure periods in the Room Block Agreement, or (ii) under its obligations in the first two sentences of Section 3.02 of the Room Block Agreement on at least three (3) separate occasions during any consecutive 2-year period and fails to cure all such defaults pursuant to all applicable cure periods in the Room Block Agreement;

(e) Manager fails to pay any amounts due to Owner (including, without limitation, any amounts owed to Owner under an indemnity, hold harmless or



reimbursement clause contained herein) on the date required hereunder and such failure continues for a period of ten (10) days after Manager receives written notice thereof;

(f) any representation or warranty made by Manager herein is false or misleading in any material respect and (i) there is no reasonable action which Manager could take to cause such representation or warranty to be true, correct and not misleading in all material respects within thirty (30) days after receiving written notice thereof or (ii) if such a reasonable action exists, Manager fails to have caused such representation or warranty to be true, correct and not misleading in all material respects prior to the end of such 30-day period, and in either case, Owner is materially damaged as a result of such false or materially misleading representation or warranty;

(g) Manager assigns or purports to assign this Agreement or any of its rights hereunder in violation of the provisions of Section 9.2 of this Agreement;

(h) Manager fails to continuously operate the Hotel during the Operating Term, seven days a week, twenty-four hours a day, provided that the failure to continuously operate did not occur directly by reason of any of the following: (i) Force Majeure Event or any other reason that is outside of Manager's reasonable control; (ii) lack of Sufficient Funds for (1) Operating Expenses, Capital Expenses or fixed expenses under the Uniform System (2) Taxes, Excluded Taxes and Other Charges (but only to the extent that Manager has deposited in the Lockbox Fund collections that are attributable to such Excluded Taxes and Other Charges), or (3) Insurance; (iii) the limitations of Legal Requirements; (iv) the performance of a Capital Improvement; (v) an Event of Default by Owner; or (vi) the cause of such failure to operate is the result of any action or inaction of Owner or its representatives; and further provided that the closing of the shops, restaurants and lounges after normal business hours for shops, lounges and restaurants, respectively, shall not constitute an Event of Default;

(i) any of the following occur or exist (an "**Insolvency Event**"):

(i) Manager files a voluntary case concerning itself under the Bankruptcy Code;

(ii) an involuntary case is filed against Manager under the Bankruptcy Code, and such involuntary case is not dismissed within ninety (90) days after the filing thereof;

(iii) the appointment of a custodian (as defined in the Bankruptcy Code) or a receiver for, or a custodian or receiver taking charge of all or any substantial part of the property of Manager, and such appointment is not revoked or dismissed within ninety (90) days after such appointment is made;

(iv) Manager commences any proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect, or any such proceeding is commenced against Manager and is not dismissed within ninety (90) days after the commencement thereof;

- (v) Manager is adjudicated insolvent or bankrupt;
- (vi) Manager calls a general meeting of substantially all of its creditors (either in number or in amount) with a view to arranging a composition or adjustment of its debts;
- (vii) all or a substantial part of the property of Manager is attached, and such attachment or levy is not released within ninety (90) days thereafter; or
- (viii) Manager takes any corporate or partnership action for the purpose of effecting any of the foregoing.
- (j) Manager fails to pay to Owner and deposit into the Operating Account the Key Money on the contemplated in Section 4.2 above; or
- (k) Manager fails to provide any Letter of Credit on the date that such Letter of Credit is required to be provided under this Agreement.

Manager shall keep Owner and the Hotel Consultant reasonable informed of all actions that Manager is taking in order to cure a breach or failure and to satisfy the requirements regarding commencing, pursuing and curing the applicable breach or failure, including, without limitation, satisfaction of time lines regarding the proposed cure and satisfaction of the curative procedure and steps.

4.6 Event of Default by Owner. An Event of Default shall occur with respect to Owner if:

- (a) without limiting any other provision of this Section 4.6, Owner breaches or fails to perform any covenant or agreement made by Owner hereunder in a material respect and fails to cure such breach or failure within thirty (30) days after Owner's receipt of written notice from Manager specifying the breach or failure to perform; (however, that if more than thirty (30) days is reasonably required to effectuate such cure, then Owner shall have an additional ninety (90) days to cure);
- (b) Owner fails to pay or Manager fails to receive any sums due to Manager (other than Reimbursable Expenses which such failure is addressed in Section 4.1.5.2 above) in accordance with this Agreement within the time required hereunder and such failure continues for a period of ten (10) days after Manager delivers written notice to Owner specifying such failure;<sup>4</sup>
- (c) any representation or warranty made by Owner hereunder is false or misleading in any material respect and (i) there is no reasonable action which Owner could take to cause such representation or warranty to be true, correct and not misleading in all material respects within thirty (30) days after receiving written notice thereof or (ii) if such a reasonable action exists, Owner fails to have caused such representation or warranty to be true, correct and not misleading in all material respects prior to the end of

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<sup>4</sup> **NTD: Open. Discuss with Sections 3.6 and 4.1.5.2.**

such 30-day period, and in either case, Manager is materially damaged as a result of such false or materially misleading representation or warranty;

- (d) an Insolvency Event occurs with respect to Owner;
- (e) Manager is unable to operate and maintain the Hotel according to the Brand Standards due to any action or inaction by Owner and such inability is not remedied within thirty (30) days after notice is received from Manager;
- (f) Owner permits to lapse the insurance coverages required to be maintained by Owner;
- (g) Owner makes a representation or warranty to Manager hereunder knowing such representation or warranty is not true or is misleading in a material respect; or
- (h) Owner assigns or purports to assign this Agreement or any of its rights hereunder in violation of the provisions of Section 9.3 of this Agreement.

4.7 Rights and Remedies of Non-Defaulting Party; Remedies. Subject in all respect to Section 2.23.3 upon the occurrence of an Event of Default by Manager or Owner, the non-defaulting Party shall have the right, but not the obligation, to terminate this Agreement by giving written notice to the other Party specifying a date, (i) not more than seventy-five (75) days after notice is delivered based on a default resulting from a failure to comply with Sections 13.32 or 13.33, as applicable (ii) not less than five (5) days nor more than seventy-five (75) days after notice is delivered for a default specified in 4.5(e) or 4.6(b), as applicable, and (iii) for any other default, no earlier than ninety (90) days and no later than one hundred and eighty (180) days after the giving of such notice, when the Agreement shall terminate. In addition, the non-defaulting party shall be entitled to pursue all other remedies available to it under applicable law as a result of such Event of Default. At the same time as Manager delivers a notice to Owner, including without limitation any notice to Owner under Section 4.6 of this Agreement, Manager shall provide Trustee with a copy of the notice, including any notice of a default (failing which the notice of default to Owner shall be deemed ineffective) and Trustee shall have the right but not the obligation to cure any such default to the same extent and for the same period of time afforded to Owner to cure such default under Section 4.6 of this Agreement. Owner's and Trustee's time period for cure of any default shall not commence until a copy of such notice of default is delivered to both Owner and Trustee, and Manager shall not exercise its right to terminate this Agreement under this Section 4.7.1 until the applicable cure period has elapsed; provided that if one or more additional defaults shall occur during the cure period for a default, the cure period for each of the later defaults shall be each cure period applicable to each such default and not the cure period applicable to any other default. Manager shall accept any performance by Trustee of any of Owner's covenants or agreements under this Agreement, and any cure of Owner's defaults, as if performed by Owner. If Owner's default is one that cannot be cured by Trustee's payment of money, then until such time as Trustee has obtained possession of the Hotel from Owner or exercised such other remedy which would allow Trustee to cure Owner's defaults, the time period which Trustee shall have to cure Owner's default shall be extended by the time necessary for Trustee to obtain possession of the Hotel or take such action, as the case may be (such time to not be extended more than ninety (90) days, plus a reasonable

time thereafter (but not to exceed ninety (90) days), provided Trustee is diligently pursuing such actions.

#### 4.8 Performance Termination.

4.8.1 Right to Terminate. In addition to any termination right that Owner has pursuant to this Agreement, Owner shall have the right to terminate this Agreement (with Trustee's consent so long as any Bonds remain Outstanding) if there are two (2) consecutive Operating Years, both of which occur after the fourth (4<sup>th</sup>) full Operating Year (each, a "Measurement Year") where for each Measurement Year (each such occurrence, a "Performance Termination Event"):

(a) EBITDA Less Replacement Reserve does not exceed Owner's Preferred Return for such Operating Years; and

(b) the REVPAR Performance Standard is not satisfied.

#### 4.8.2 Exceptions to Performance Termination Event.

4.8.2.1 Manager's Cure Right. Notwithstanding Section 4.8.1, Manager will have the right to cure a failure of a Performance Termination Event upon payment of the difference between EBITDA Less Replacement Reserve and Owner's Preferred Return for the second of the two (2) consecutive failed Operating Years within sixty (60) days after receipt of Owner's notice exercising its right pursuant to Section 4.8.3 below; provided further however, this right may be exercised by Manager not more than four (4) times during the Term. If Manager makes a cure payment pursuant to this Section 4.8.2.1, Owner will not have a right to terminate this Agreement pursuant to Section 4.8.1 unless the Measurement Years relate to the two consecutive full Operating Years after the two Measurement Years to which the cured Performance Termination Event was related.

4.8.2.2 No Termination. Notwithstanding Section 4.8.1 of this Agreement, Owner will not have the right to terminate this Agreement if the Performance Termination Event is not met as a result of: (1) a Force Majeure Event, (2) a major renovation to the Hotel, (3) a taking of all or substantially all of the Hotel by eminent domain, condemnation or similar proceeding, (4) substantial casualty to the Hotel, (5) an uncured Event of Default by Owner, (6) impact of the Room Block Agreement, (7) Owner's failure to replace soft goods and casegoods in accordance with the soft good/casegood replacement cycle requirements set forth in the Brand Standards, (8) a Legal Requirement, or (9) insufficient funds being available for operation of the Hotel in accordance with this Agreement.

4.8.3 Owner's Exercise of Its Termination Rights. Owner shall exercise its termination rights pursuant to Section 4.8.1 of this Agreement, if at all, by giving notice of such Termination to Manager within ninety (90) days following the scheduled deadline for Manager's delivery of the annual report pursuant to Section 2.22.3 for the Operating Year on which the Termination is based; provided however, that if Manager does not deliver the annual report by the scheduled deadline, the period of time to exercise such termination right shall be extended by the number of days that Manager is late with such delivery. Any such notice under this Section

4.8.3 shall specify the effective date of Termination, which date shall be no earlier than ninety (90) days and no later than three hundred one hundred and eighty (180) days following the date of Owner's notice of Termination. If Owner fails to deliver notice to Manager within the required ninety (90) day period under this Section 4.8.3, Owner's right to terminate this Agreement pursuant to this Section shall expire as to the Performance Termination Event in question.

#### 4.8.4 Changes to the Competitive Set.

4.8.4.1 Request for Removal and Replacement. Notwithstanding anything to the contrary contained in this Agreement, if at any time after the Opening Date: (a) a hotel in the then existing Competitive Set is no longer operating at a level substantially equivalent to the Operating Standard; (b) information with respect to a hotel in the then existing Competitive Set is no longer available through the Smith Travel Research (or such other reputable independent third party market research firm as may be mutually approved by Owner and Manager); and/or (c) a material change to a hotel in the then existing Competitive Set occurs, including the cessation of operation of a hotel, then either party may request that the other party consent to the removal and replacement of such hotel in the Competitive Set.

4.8.4.2 Selection of Replacement. In the event that the removal of a hotel from the Competitive Set is requested by either party and the other party consents to such removal, Owner and Manager, each acting reasonably, endeavor to agree upon one or more replacement hotels to be included in the Competitive Set that consist of hotels in the Hotel's immediate market area that are most comparable to the Hotel in quality, price and market position (with due consideration given to location, age, quality, size, amenities, amount of meeting space and business mix); provided that: (a) any replacement hotel must have been in operation for at least three full years; (b) the Competitive Set includes at least four hotels (not including the Hotel) and no more than six hotels, (c) a single hotel in the Competitive Set does not account for more than 30% of the total guest rooms of all hotels included in the Competitive Set and (d) the Competitive Set otherwise meets all current requirements of Smith Travel Research (or such other reputable independent third party market research firm as may be mutually approved by Owner and Manager). If the parties are unable to reach agreement as to: (i) whether a hotel should be removed from the Competitive Set, and/or (ii) which hotels are to be included in the Competitive Set, either party may submit the matter to the Dispute Resolution Procedure for resolution in accordance with Section 10.1.

4.8.4.3 Adjustment to RevPAR Performance Standard. In connection with the removal of a hotel from the Competitive Set or the selection of a replacement hotel or hotels for the Competitive Set, either Party may also request that the RevPAR Performance Standard be modified to account for the changes to the Competitive Set. If the Parties are unable to reach agreement as to a modification of the RevPAR Performance Standard, either party may submit the matter to the Dispute Resolution Procedure for resolution in accordance with Section 10.1.

4.8.4.4 Adjustment to Competitive Set and RevPAR Performance Standard. In the event a hotel or hotels are removed from the Competitive Set pursuant to the procedure set forth in this Section 4.8.4, and the Parties determine that the immediate market area does not include a replacement hotel which meets requirements under Section 4.8.4.2, either Party may propose: (a) a replacement hotel which does not meet the replacement hotel requirements for the other Party's consideration; and (b) in connection with such proposal, a modification to the RevPAR Performance Standard to account for the changes to the Competitive Set that result from the addition of a hotel which does not meet the replacement hotel requirements. If the Parties are unable to reach agreement as to: (i) the inclusion of a hotel which does not meet the replacement hotel requirements, and/or (ii) a modification to the RevPAR Performance Standard in connection therewith, either party may submit the matter to the Dispute Resolution Procedure for resolution in accordance with Section 10.1.

4.9 Reserved.

4.10 Reserved.

4.11 Non Waiver. If Owner, Trustee or any Mortgagee or the purchaser at a foreclosure sale fails or elects not to exercise its right to terminate this Agreement due to the occurrence of one or more uncured Performance Termination Events or for any other reason hereunder, such failure to exercise shall not constitute a waiver by Owner, Trustee, Mortgagee or such purchaser of its right to terminate on account of a subsequent Performance Termination Event or any other subsequent right to terminate this Agreement.

4.12 Actions to be Taken on Termination. Upon Termination of this Agreement for any reason, the following shall be applicable (in addition to and without limitation of, the rights of the non-defaulting Party to pursue all other remedies available to it under applicable law):

4.12.1 Payment of Out-of-Pocket Expenses. All actual Out-of-Pocket Expenses arising as a result of such Termination or as a result of the cessation of Hotel operations shall be reimbursed to Manager within thirty (30) days after receipt of any invoice (together with such reasonable supporting documentation as Owner may request) from Manager therefor, including, but not limited to, expenses arising from or in connection with the severing of Hotel Personnel (with severance benefits calculated according to Legal Requirements and policies applicable generally to employees of Other Managed Hotels) incurred by Manager in the course of effecting the Termination of this Agreement or the cessation of Hotel operations. Manager acknowledges that Owner may, at its election and in consultation with Manager, following Owner's formal notice of the prospective Termination of this Agreement, extend offers to Hotel Personnel for continued employment, and Manager further agrees to cooperate with Owner to minimize any and all expenses that Owner incurs under this Section 4.12.1.

4.12.2 Final Accounting. Within forty-five (45) days after Termination of this Agreement, Manager shall provide to Owner a final and full accounting through the date of Termination of all Management Fees, Centralized Services Fees and Charges, Reimbursable Expenses, and other payments due Manager under the terms of this Agreement through the Termination date; and within forty-five (45) days of Owner's receipt of such final and full

accounting, Owner shall pay Manager all Management Fees, Centralized Services Fees and Charges, Reimbursable Expenses, and other payments due Manager under the terms of this Agreement through the Termination date or provide Owner's objections thereto. Manager shall also provide financial and other records related to the operation of the Hotel to Owner through the date of Termination and shall continue to provide assistance to Owner after the Termination of this Agreement to the extent necessary for any requested Certified Financial Statements to be prepared. This obligation is unconditional and shall survive the Termination of this Agreement. Notwithstanding that this Agreement and the Cash Management Agreement may have been terminated, Manager shall nonetheless have the right to be paid the foregoing amounts from the Lockbox Fund. Manager shall have reasonable access to the Hotel books and records necessary to provide the final accounting.

4.12.3 Vacating Hotel. Manager shall peacefully vacate and surrender the Hotel to Owner, using reasonable efforts to leave the least possible physical damage to the Hotel caused as a result of Manager's removal of signs and other items bearing the Trademarks (to the extent Manager exercises its right to make such removal pursuant to Section 4.12.17).

4.12.4 Books and Records. Manager shall deliver to Owner all of the books and records respecting the Hotel and all contracts, Concession Agreements, and other documents respecting the Hotel that are not Manager's Proprietary Information, Hotel Guest Data (except to the extent contemplated in Section 2.22.1 or confidential employee personnel files not permitted by law to be released by Manager to Owner, maintained by Manager and that are in the custody and control of Manager, including those provided for in Section 2.4 of this Agreement. The Manager will also deliver to Trustee an explanation indicating each bookkeeping account code used by Manager in connection with its management of the Hotel which is not defined in the Uniform System of Accounts, together with a brief description of each coded account.

4.12.5 Licenses and Permits. Manager shall deliver to Owner all of the liquor, restaurant, and all other licenses and permits held by Manager or an Affiliate in connection with the operation of the Hotel. In addition, Manager shall assign to Owner (but only to the extent assignable) all of Manager's right, title, and interest in and to all such licenses and permits, provided, however, if Manager has expended any of its own funds in the acquisition of licenses or permits, Owner shall reimburse Manager for such expended funds (to the extent not previously received by Manager), amortized to the extent any such license or permit is for a fixed term. Manager recognizes that all licenses held for the operation of the Hotel are held for the benefit of Owner and Manager has no ownership therein, except in order to fulfill its obligations hereunder. Upon the Termination of this Agreement, Manager and the entity holding the Liquor Licenses will reasonably cooperate with Owner of the Hotel or an entity designated by Owner in their attempts to transfer existing licenses and permits or obtain new Liquor Licenses for the Hotel.

4.12.6 Assignment of Contracts. Manager shall, to the extent permissible, assign to Owner its interest (if any) in, and Owner shall assume and confirm in writing its continuing responsibility for all obligations and liabilities relating to, any and all contracts (including collective bargaining agreements to the extent required thereunder, licenses or Concession Agreements, and maintenance and service contracts) in effect with respect to the Hotel as of the

date of Termination of this Agreement. Manager acknowledges that Owner may further assign such interests to Trustee.

4.12.7 Trademarks. If this Agreement is Terminated in accordance with the terms hereof or for any other reason whatsoever, Owner shall, at its cost, immediately take all steps reasonably requested by Manager to disassociate the Hotel and Owner from the Trademarks (including the removal of all signage bearing the name or mark of Manager). Owner shall in any event delete all Trademarks from the Hotel name and cease to use all FF&E and operating supplies bearing any of the Trademarks within a reasonable period of time after the Termination (it being understood that Owner has the right to use any and all items of operating equipment and operating supplies then on hand bearing any of the Trademarks but shall not have the right to reorder any such items). If Owner fails to remove Trademark-bearing Hotel signage on or prior to the effective date of the Termination, Manager has the right to enter the Hotel and remove and retain or dispose of all such interior or exterior signage, at Owner's cost. Manager shall have the right to remove from the Hotel, on or before the effective date of the Termination, all operations manuals which constitute Manager's Proprietary Information, policy statements, any other of Manager's Proprietary Information, and all other written materials bearing the Trademarks. Under no circumstances shall Owner copy, reproduce or retain any of these materials.

4.12.8 Proprietary Software. As of the effective date of the Termination, Manager shall remove all Manager's Proprietary Software from the Hotel and shall disconnect the Hotel from the reservations systems and their related software applications. Manager shall provide reasonable assistance to Owner in facilitating the orderly transfer of Owner's records and data that Owner is entitled to pursuant to the terms of this Agreement contained in Manager's Proprietary Software. Manager shall reasonably cooperate with Owner in order to avoid disruption in the operation of the Hotel in connection with the transition from Manager Proprietary Software to one or more replacement systems and Manager shall be reimbursed for its reasonable costs incurred in connection with such cooperation.

4.12.9 Protection of Guest Lists. Manager shall not contact any Hotel guests that have booked Hotel rooms or Hotel facilities for the purpose of soliciting such Hotel guests to cancel their previously booked Hotel rooms and transfer such business to any other transient lodging; provided, however, that Manager may inform such Hotel guests that the Hotel will no longer be associated with the Brand Name or Hilton Worldwide Holdings Inc.

4.12.10 Termination of Manager Provided Insurance. If, immediately preceding the date of Termination of this Agreement, the Hotel is included in Manager's insurance program, such participation will be terminated as of the effective date of Termination of this Agreement for the periods after such Termination date (but without in any way destroying or altering the occurrence base nature of any such policies), and Manager shall have the right to reimburse itself for such premiums which may have accrued to the date of Termination by withdrawing the appropriate amount thereof from the Taxes and Insurance Fund (with the understanding that if the Taxes and Insurance Fund is insufficient, Owner will advance the insufficiency from the Surplus Revenue Fund). If Owner pays its pro rata share of premiums under the chain-wide policies of insurance or the self-insurance program of Manager in advance, Manager shall reimburse Owner for the unearned portion of insurance premiums of Manager.



Owner consents to the termination of the insurance program with respect to the Hotel as of the effective date of Termination of this Agreement and agrees that Manager shall have no further obligation, after the effective date of such Termination, to provide or obtain any additional insurance coverage for the benefit of Owner or the Hotel thereafter.

4.12.11 Transition. In addition to the actions set forth in this Agreement which are to be taken by the parties upon the Termination of this Agreement, upon the expiration or earlier Termination of this Agreement, Manager and Owner will reasonably cooperate with each other and act in a professional manner to effect an orderly transition of management functions from Manager to Owner, any transferee of Owner or to any managing agent designated by Owner or any transferee of Owner for a period of up to ninety (90) days from the date of notice of Termination (the "**Transition Period**").

4.12.12 Receivables and Payables. All receivables and payables of the Hotel outstanding as of the effective date of Termination, including, without limitation, guest ledger receivables, shall continue to be the property or responsibility, as applicable, of Owner. Manager will cooperate with Owner in all reasonable respects, but at Owner's sole cost and expense, in the collection of any receivables, and will turn over to Owner any receivables of the Hotel collected directly by Manager after the effective date of Termination. Manager shall, on the effective date of Termination or as soon thereafter as reasonably practicable, but in no event later than five (5) days after the date of Termination, provide Owner with a complete list of (a) all bookings for future reservations or use of Hotel rooms or facilities which may have been accepted or entered into by Manager on or at any time prior to the Termination of this Agreement, (b) the terms applicable thereto, and (c) the amount of advance deposits (if any) received with respect to each such booking.

4.12.13 Survival. The provisions contained in this Section 4.12 shall survive the Termination of this Agreement.

## 5. INSURANCE

### 5.1 Maintenance of Insurance Coverage.

5.1.1 Required Insurance. Owner shall obtain and maintain insurance in accordance with the terms of the Brand Standards (the "**Brand Insurance Requirements**"). In addition to the Brand Insurance Requirements, Owner and Manager shall be bound by the terms contained in this Article 5, which will supersede anything to the contrary contained in the Brand Insurance Requirements.

5.1.2 Specific Requirements. Without limiting the generality of the foregoing:  
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5.1.2.1 the general liability and auto liability limits shall be no less than US\$100,000,000;

5.1.2.2 the crime insurance limit for employee dishonesty shall be no less than US\$2,000,000 (it being acknowledged by Manager that its employee dishonesty program satisfies such limit); and

5.1.2.3 employment practices liability insurance shall be obtained in an amount no less than US\$2,000,000. Such insurance shall include coverage for "mass"/class action multi-party claims, and shall specifically amend the definition of "Employer" to include both Owner and Manager, regardless of who is the statutory employer (it being acknowledged that its employment practices liability program satisfies such requirements);

5.1.3 Responsibility for Maintaining Insurance. Owner is responsible for maintaining insurance meeting the requirements of this Article 5. However, notwithstanding the requirements of Section [5.1.2] to the contrary, Manager, as the statutory employer of the employees of the Hotel, must procure and maintain, at Owner's expense, crime insurance for employee dishonesty, employment practices liability insurance, workers' compensation and employer's liability coverage. Owner may request Manager, at the expense of Owner, to procure and maintain the other types of required insurance including general liability and property coverage through Manager-purchased insurance programs. If Owner so requests, the following shall apply:

5.1.3.1 Manager shall not be obligated to purchase insurance programs on behalf of Owner;

5.1.3.2 Upon termination or assignment of this Agreement, insurance coverage under any and all Manager-purchased insurance programs shall terminate with respect to Owner and Owner's property and Owner's insurance risks in the same manner as if the insurance had expired on the date of such termination, assignment or breach;

5.1.3.3 Participation in a Manager-purchased insurance program shall require a commitment of at least three annual policy periods by Owner, after which Owner shall again have the option to purchase its own insurance or continue in the Manager-purchased insurance program, subject always to the terms of paragraphs 5.1.3.1 and 5.1.3.2 above. However, if Owner obtains financing under the terms of which a lender requires insurance of a type or quality which a Manager-purchased insurance program does not satisfy in whole or part, then Owner shall be relieved from its three year commitment hereunder with respect to the insurance program that does not satisfy such lender requirements;

5.1.3.4 Manager-purchased insurance programs, if any, maintained by Manager under this Section 5.1.3 may, at Manager's option, be effected under policies of blanket insurance which also cover other hotels managed by Manager and its Affiliates. Manager shall have the right to charge the Hotel a share of the total cost paid by Manager, such share to be allocated to the Hotel using the same methodology or formula as used to allocate to other participating hotels. The "total cost" will include all costs associated with the procurement and

maintenance of that insurance program, including premiums, taxes, assessments, agent/broker fees, agent/broker commissions, claims within deductibles, administrative costs of risk management and claims personnel of Manager, actuarial fees, collateral costs, and claims administration fees;

5.1.3.5 Manager-purchased insurance programs, if any, maintained by Manager under this Section 5.1.3 may contain deductible or retention provisions for which Owner shall be entirely responsible. If such a deductible or retention expense is incurred, Manager may either invoice Owner with the payment to be made directly by Owner or Manager may initially pay the expense on behalf of Owner and then charge the cost back to Owner either directly or through the allocation of costs as provided in paragraph 5.1.3.4 above;

5.1.3.6 Manager-purchased insurance programs, if any, maintained by Manager under this Section 5.1.3 may use elements of self-insurance or self-assumption including the use of captives or other forms of alternative risk financing;

5.1.3.7 Manager does not warrant that the insurance programs it purchases, if any, will be more advantageous or competitive relative to the alternatives Owner may be able to procure; however, such programs will be provided to the Hotel on the same terms as any hotels managed by Manager and its Affiliates;

5.1.3.8 Manager acknowledges that any changes to carrier, type or amount of any insurance obtained through Manager-purchased programs will apply to other similarly situated hotels participating in such Manager-purchased programs;

5.1.4 Reserved

5.1.5 Reserved

5.1.6 Special Conditions or Hazards. Owner shall disclose to Manager prior to the commencement of the Operating Term the presence of any condition or hazard (i) existing as of the commencement of the Operating Term, (ii) that is known to Owner and (iii) that is reasonably likely to create or contribute to any claims, damages, losses, or expenses not typically insured against by the coverages required pursuant to Section 5.1.1 or 5.1.2 of this Agreement. If any such condition or hazard requires removal, abatement, or any other special procedures, such special procedures shall be performed by Owner in compliance with all Legal Requirements. Conditions or hazards to which this Section 5.1.6 refers include the following: latent risks to health such as asbestos, silicosis, toxic or hazardous chemicals, and waste products; hazards to the environment such as underground storage tanks; and latent or patent toxic, nontoxic, abrasive, or irritant pollutants. As an expense of the Hotel, Manager shall reasonably assist Owner to obtain appropriate insurance coverages against such conditions and hazards to protect the interests of Manager, Owner and Trustee. Notwithstanding anything contained herein to the contrary, if the existence of any condition or hazard as described above

causes Manager to be unable to operate the Hotel as intended, or causes the Termination or temporary suspension of this Agreement, Owner shall not be liable to Manager or any Affiliate of Manager for any consequential damages in the nature of opportunity cost (e.g., Manager's alleged damages based on the argument that it would have taken another opportunity in the Hotel's market had it known of such condition or hazard).

5.2 Parties Insured and Standard of Insurance. The carriers of all insurance policies required under this Agreement shall be subject to Manager's approval, which approval shall not be unreasonably withheld. All insurance policies provided for in this Section 5 shall be rated no less than A VIII, in the most recent "**Best**" insurance guide and shall be authorized or eligible to do business in the state of Georgia (if required) and shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved to the extent not otherwise required by this Agreement or the Bond Documents. Without in any way limiting the foregoing, the insurance shall conform to all subsections of this Section 5.2.

5.2.1 Named Insureds. Any insurance policies obtained by Manager on behalf of Owner will show Manager or Manager's Affiliate as the principal insured or first named insured and Owner and Trustee (for the benefit of the Bondholders) as additional named insureds. Any insurance policies obtained by Owner will show Owner as the principal insured or first named insured and Manager (or Manager's Affiliate) and Trustee (for the benefit of the Bondholders) as additional named insureds; provided that any property insurance shall also (a) include (if appropriate) a mortgagee endorsement clause in favor of mortgagees, as their interests may appear, and (b) if the property insurance is obtained by Owner, provide coverage for Manager and Trustee (for the benefit of the Bondholders), solely with respect to as their interests may appear as insureds.

5.2.2 Waiver of Subrogation Requirements. Neither Manager nor Owner shall assert against the other, and both Manager and Owner hereby waive with respect to each other, or against any related entity or person, or against the Trustee and the Bondholders, and on behalf of their insurers, any claims for any losses, damages, liability or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property arising out of the ownership, development, construction, completion, operation or maintenance of the Hotel, to the extent that the same are covered by the insurance required under this Article V. Each policy of insurance shall contain a waiver of subrogation reflecting the provisions of this Section 5.2.2.

5.2.3 Notice of Termination. Each insurance policy shall include a requirement that the insurer provide at least thirty (30) days' written notice of cancellation or material change in the terms and provisions of the applicable policy to Owner and Trustee.

5.2.4 Severability of Interests. Each insurance policy where obtainable shall include coverage for severability of interests.

5.3 Changes to Insurance Policies. If Owner desires to make a change in the carrier, type or amount of any of the insurance policies to be maintained under this Agreement previously approved by Manager not otherwise procured through a Manager-purchased program, it shall notify Manager of the desired change at least sixty (60) days in advance of the expiration

of the current policy proposed to be changed (provided, however, that no such notification shall be required in the event, with respect to Owner-purchased insurance, Owner is otherwise complying with the Brand Insurance Standards and the terms of this Article V). The Parties shall promptly thereafter meet to discuss and resolve any questions or disagreements with respect to the proposed change, and each Party agrees not to withhold or delay its consent unreasonably to any such proposed change requested by the other party so long as such requested change is consistent with the standards described in this Article 5. In any event, the parties agree to work diligently and in good faith to resolve any disagreements with respect to the proposed change as quickly as possible so that a determination of the coverage to be maintained for any period of time can be made at least thirty (30) days in advance of the expiration date of the policy or policies proposed to be changed. If the Parties are unable to resolve any disagreement under this Section 5.3, either Party may request arbitration as set forth in Section 10 hereof.

5.4 Binders and Certificates. As soon as practicable prior to the effective date of the applicable coverages, the Party obtaining the insurance coverages under this Article 5 shall provide the other Party with binders evidencing that the applicable insurance requirements of this Agreement have been satisfied and, as soon as practicable thereafter, shall provide certified copies of policies for such insurance or certificates of insurance. As soon as practicable following to the renewal date of each such policy, the Party obtaining such insurance shall provide the other Party with certificates evidencing renewal of existing or acquisition of new coverages.

5.5 Schedule of Insurance. On request, the Party obtaining insurance under this Article shall furnish the other with certificates of insurance, listing the policy numbers of the insurance obtained, the names of the companies issuing such policies, the names of the parties insured, the amounts of coverage, the expiration date or dates of such policies, and the risks covered thereby.

5.6 Duties of Manager. Manager shall promptly:

(a) cause to be reasonably investigated all accidents and claims for damage relating to the operation and maintenance of the Hotel, as they become known to Managers;

(b) cause to be investigated all damage to or destruction of the Hotel, as it becomes known to Manager, shall report to Owner any such incident that is material, together with the estimated cost of repair thereof;

(c) to the extent relating to Manager-purchased programs in which the Hotel is participating, prepare any and all reports required by any insurance company as the result of an incident mentioned in this Section 5.6, acting as the sole agent for all other named insureds, additional insureds, mortgagees, and loss payees; and with respect to Owner-purchased programs, assist Owner's representative in preparing such reports required by any insurance company as a result of an incident mentioned in this Section 5.6; and

(d) reasonably assist Owner and its consultants and experts, including architects, engineers, contractors, accountants, and attorneys, as needed, and as an expense of the Hotel unless otherwise covered as part of the applicable insurance policy, assist in analyzing any loss or damage, determining the nature and cost of repair, and preparing and presenting any proofs of loss or claims to any insurers.

5.7 Review of Insurance. All insurance policy limits provided under this Article 5 shall, at the request of either Party, be reviewed every year following the commencement of the Operating Term, to determine the suitability of such insurance limits in view of exposures reasonably anticipated over the ensuing year. Owner and Manager hereby acknowledge that changing practices in the insurance industry and changes in the local law and custom may necessitate additions to types or amounts of coverage during the Operating Term. Owner agrees to comply with any additional insurance requirements Manager reasonably requests in order to protect the Hotel and the respective interests of Owner and Manager; provided, however, so long as any Bonds are Outstanding, that Owner shall not be required to comply with any such additional insurance requirements in excess of that required by this Agreement requested by Manager to the extent the same would violate the Bond Documents.

5.8 Subcontractor's and Vendor's Insurance. Manager will require each contractor, subcontractor and vendor which provides services on-site at the Hotel to produce a certificate of insurance commensurate with the risk in accordance with Hilton's global insurance provider policy. With respect to any contractor, subcontractor and vendor which provides services on-site-at the Hotel for a period of seven (7) or more consecutive days, Manager will endeavor to require each such Party to name Manager and Owner as additional insureds under such Party's commercial general liability insurance policy.

## **6. MORTGAGES**

### **6.1 Authorization to Encumber Hotel.**

6.1.1 Right to Encumber. Subject to the provisions of Sections 3.5.2(g), 6.1 and 6.2 and to the extent permitted by law, Owner shall have the absolute and unrestricted right from time to time in its sole and absolute discretion to encumber all of the assets that comprise the Hotel, any part thereof, or any interest therein, including the real estate on which the Hotel is constructed, the Hotel building and all improvements thereto, all FF&E and hotel equipment and operating supplies placed in or used in connection with the operation of the Hotel, and all accounts, receivables and other personal property relating to the Hotel, as contemplated in any Bonds or Mortgage that is entered into by Owner or its successor-in-interest, and to assign to any holders or such Bonds or Mortgagee as collateral security for any loan secured by the Mortgage, all of Owner's or its successor-in-interest's right, title, and interest in and to this Agreement; provided, however, notwithstanding the foregoing, the prior written consent of Manager shall be required with respect to any Mortgage placed on any part of the Hotel (other than additional bonds and refunding bonds as contemplated under subsection 6.1.2 below), if (i) the Loan-to-Value Ratio (when aggregated with any other Mortgages) exceeds 75% or (ii) the forecasted Additional Mortgage Debt Service Coverage (when aggregated with any other Mortgages) is less than 1.2. The following shall apply to each such Mortgage: (i) a copy of the Mortgage and other loan documents shall be delivered to Manager upon execution; (ii) any security interest in the

Lockbox Funds, Clearing Bank Accounts, the Senior FF&E Reserve Fund, Subordinate FF&E Reserve Fund, the Operating Expense Reserve Fund, Supplemental Reserve Fund, and the Surplus Revenue Fund or any other fund created pursuant to this Agreement or the Indenture shall be subject to the terms of this Agreement as well as Manager's rights in such accounts as set forth in this Agreement; (iii) no security interest shall be given in business interruption proceeds to be used either for Hotel operations or allocated to Manager and (iv) the Mortgagee must enter into a Subordination, Non-Disturbance and Attornment Agreement. Owner or its successor-in-interest shall provide Manager with the name and address of any Mortgagee. Any lien and security interest of Mortgagee in the Hotel shall be senior to any liens claimed by Manager in and to the Hotel by virtue of this Agreement, subject to the terms of any Subordination, Non-Disturbance and Attornment Agreement. Nothing in this Section shall be construed to prohibit the issuance of additional bonds under the Indenture or any Supplemental Indenture and to have secured by the Bond Documents or new security instruments subject in all respects to the terms of Section 3.5.2(g) and 6.1.2.

6.1.2 Additional Bonds. Subject in all respects to Section 3.5.2(g), but notwithstanding any other provision to the contrary herein contained, Owner shall have the absolute right (without any restriction or condition) to issue (i) additional bonds secured by the Hotel, provided the standards set forth in the Indenture are satisfied and (ii) refunding bonds pursuant to and under the Indenture or pursuant to another indenture, provided, however, notwithstanding the foregoing, if in the reasonable opinion of Manager delivered within fifteen (15) business days after the receipt of the proposed indenture and other bond documents, the new indenture, additional bonds or bond documents materially alter any rights or obligations of Manager under this Agreement, or impose any additional material obligations or economic burdens on Manager, then Owner shall not issue its additional bonds or refunding bonds until the Indenture and related bond documents are in a form that does not materially alter any rights or impose any additional material or economic burdens on Manager. Owner shall deliver to Manager a copy of any new indenture and related bond documents promptly after the execution thereof.

6.1.3 Mortgagee's Right to Inspect Hotel and Books. On reasonable advance notice from a Mortgagee, Manager shall accord to such Mortgagee and its agents the right to enter on any part of the Hotel at any reasonable time for the purposes of inspecting the Hotel and examining, inspecting, or making extracts from the books of account and financial records of the Hotel to the same extent Owner has such rights to inspect, examine and extract the books of account and financial records of the Hotel pursuant to this Agreement; provided, however, that any expense incurred in the Hotel's name in connection with such activities shall be at Owner's Expense; and provided, further, that Manager shall have the right to schedule such activities at times that are not disruptive to Hotel operations and when a member of the Senior Executive Personnel is at the Hotel and available to coordinate the activities of such Mortgagee or its agents.

6.1.4 Existing Mortgages. Owner represents and warrants that, as of the date hereof, there is no existing Mortgage. Subject to Section 6.1.1 of this Agreement, Manager hereby acknowledges the existence of the Indenture securing the Bonds and agrees that the Management Agreement does not create a lien in or on the Hotel or the personal property comprising the Hotel, and any lien in favor of any receipts, revenues, or contract rights relating

to the Hotel in favor of Manager by virtue of this Agreement shall be subordinate to the lien of such Indenture. The foregoing will not be deemed to otherwise limit Manager's right to seek or obtain a judgment lien against the Hotel, personal property comprising the Hotel or any receipts, revenues or contract rights relating to the Hotel in support of the payment of any loss, damage or claim against the Owner as a result of a dispute under any Hotel Agreement; it being acknowledged that any such lien would be subordinate to the lien of the Indenture. Owner shall deliver to Manager a true and complete copy of the final form of Bond Documents promptly after the execution thereof.

6.1.5 No Individual Liability. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any officer, agent, employee or representative of Owner or Manager, and neither the officers, agents, employees or representatives of Owner or Manager, nor any person executing or authenticating the Bonds shall be personally liable thereon or be subject to any personal liability or accountability by reason of the issuance thereof, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the acceptance of this Agreement and the issuance of the Bonds.

## 6.2 Subordination; Non-Disturbance.

6.2.1 Subordination. Manager hereby disclaims any lien it may have in and to the Hotel by virtue of this Agreement. The foregoing will not be deemed to otherwise limit Manager's right to seek or obtain a judgment lien against the Hotel, personal property comprising the Hotel or any receipts, revenues or contract rights relating to the Hotel in support of the payment of any loss, damage or claim against the Owner as a result of a dispute under any Hotel Agreement; it being acknowledged that any such lien would be subordinate to the lien of the Indenture. Without limiting the foregoing, Manager agrees that Trustee shall have the absolute right to consent to and approve all matters hereunder to which Owner has the right to approve hereunder, to the same extent that Trustee has the right to consent to or approve of such matters under the Indenture or any other Bond Document.

6.2.2 Execution of Subordination, Non-Disturbance and Attornment Agreement. In connection with any future Mortgage (related to the Bonds or otherwise), the Owner, Manager and applicable secured party will enter into a Subordination, Non-Disturbance and Attornment Agreement in a form reasonably acceptable to such parties (a "**Subordination, Non-Disturbance and Attornment Agreement**") that will, amongst other the things:

6.2.2.1 subordinates any lien claimed or held by Manager in and to the Hotel by virtue of this Agreement, to the lien and security interests created for the benefit of the Bond Holders under the Indenture and other Bond Documents (or any lien and security interest created for each Mortgage hereafter granted against the Hotel, as applicable);

6.2.2.2 include the protections in favor of Manager as specifically set forth herein



6.2.2.3 include a provision which provides that the Trustee (on behalf of the Bond Holders) or Mortgagee, as applicable, shall not be liable for any defaults by Owner or any amounts owed to Manager prior to the date of foreclosure (other than non-monetary defaults capable of cure by such Mortgagee);

6.2.2.4 include a provision which permits the Trustee (on behalf of the Bond Holders) or Mortgagee to cure any default hereunder;

6.2.2.5 include a provision that this Agreement, Pre-Opening Services Agreement and Technical Services Agreement will survive the through foreclosure, deed in lieu of foreclosure or the exercise or waiver of exercise of any other remedy under the Indenture or the Bond Documents or Mortgage, as applicable (herein, “**Foreclosure Event**”) and that this Agreement, the Pre-Opening Services Agreement and Technical Services Agreement shall be binding upon the purchaser or designee at any Foreclosure Event;

6.2.2.6 include a provision that upon a Foreclosure Event, Manager shall attorn to Trustee, Mortgagee (or Affiliate designee of Trustee or Mortgagee) or such other Person such as a Foreclosure Purchaser, as the case may be, and both Manager, Trustee (or Affiliate designee of Trustee or Mortgagee) or such other Person, as the case may be, shall be bound by all of the terms, covenants and conditions of this Agreement (including Key Money obligations), Pre-Opening Services Agreement and Technical Services Agreement for the balance of the term thereof remaining and any extensions or renewals thereof, with the same force and effect as if Trustee, Mortgagee (or Affiliate designee of Trustee or Mortgagee) or such other Person, as the case may be, were a party to this Agreement; provided that Trustee shall not be liable for any prior defaults of Owner other than non-monetary defaults of Owner capable of cure. Said attornment and non-disturbance shall be effective and self-operative as an agreement between Manager and Trustee, Mortgagee (such Affiliate designee of the Mortgagee or Trustee) or such other Person, as the case may be, without the execution of any further instruments on the part of any party provided, that upon the election of and demand from Trustee or Manager, Manager shall execute an instrument in confirmation of said attornment and non-disturbance; provided further, that Manager shall have no obligation to attorn to someone to whom Owner would not have been entitled, without Manager’s consent, to transfer the Hotel and assign this Agreement pursuant to the terms of this Agreement;

Owner shall pay the reasonable fee charged by Manager for execution of such Subordination, Non-Disturbance and Attornment Agreement.

6.2.3 Manager’s Agreements. Manager covenants and agrees, represents and warrants with and to Owner and for the benefit of Trustee that:

(a) Manager has no right or option of any nature whatsoever, whether pursuant to this Agreement or otherwise, to purchase the Hotel or any portion or any

interest therein, and to the extent that Manager has had, or hereafter acquires, any such right or option, the same is acknowledged to be subject and subordinate to the Indenture and the Bonds in all respects and is hereby waived and released as against Trustee or any interest of Trustee.

(b) Manager has no right or option of any nature whatsoever to own or acquire, directly or indirectly, any of Developer or its Affiliates or any interest therein and, to the extent that Manager has had, or hereafter acquires, any such right or option, the same is acknowledged to be subject and subordinate to the Indenture and the Bonds in all respects and is hereby waived and released as against Trustee or any interest of Trustee.

(c) Manager shall not materially modify, amend or terminate this Agreement without Trustee's prior written consent. Manager shall not receive or accept any fees, charges or reimbursements from Owner in excess of the amounts contemplated in this Agreement and the Cash Management Agreement at any time. Any sums received by Manager in contravention of this Section 6.2.3 or the Indenture shall be held by Manager as trustee for Trustee and Manager shall pay Trustee, forthwith, any such amounts.

(d) A notice in writing by Trustee to Manager advising it that all future performance under this Agreement be made to Trustee (or its agent), shall be construed as conclusive authority to Manager that such performance is to be made to Trustee (or its agent) and Manager shall be fully protected in making such performance to Trustee; and Owner hereby irrevocably constitutes and appoints Trustee the attorney-in-fact and agent of Owner for the purpose of endorsing the consent of Owner on any such notice. The foregoing power is coupled with an interest and shall survive the liquidation, bankruptcy or insolvency of Owner and is in addition to and not in lieu of any terms to such effect contained in the Indenture. Notwithstanding anything to the contrary, following such notice either the Trustee or Owner must continue to satisfy the obligations of Owner hereunder and in no event will such notice to Manager otherwise limit Manager's rights as set forth under this Agreement.

(e) In no event shall Trustee be bound by any amendment, modification, extension, expansion, assignment, termination, cancellation or surrender of this Agreement, unless, the same has been expressly approved in writing by Trustee or permitted pursuant to the terms of the Indenture.

6.2.4 Proceeds. Manager covenants and agrees to collect and disburse cash revenues, insurance proceeds and other amounts received in connection with the operation of the Hotel in accordance with the provisions of this Agreement, the Indenture and the Cash Management Agreement. Should any payment or distribution or security or proceeds thereof be received by Manager contrary to the provisions of this Agreement, the Indenture, or the Cash Management Agreement, Manager will forthwith deliver the same to Trustee in precisely the form received for application in accordance with the Indenture and, until so delivered, the same shall be held in trust by Manager as property of Trustee.

6.3 Transfers by Trustee. Subject to Section 9.3 of this Agreement, the rights in favor of Trustee and any Mortgagee provided for in this Agreement shall inure to the benefit of, and bind the parties hereto and their respective successors and assigns, and is the complete agreement of the parties with respect to the subject matter hereof. In the event of transfer or assignment of the interest of Trustee or any Mortgagee (whether by direct assignment, through foreclosure or otherwise), all continuing obligations and liabilities shall be the responsibility of the party to whom such Trustee's or Mortgagee's interest is assigned or transferred. Trustee may assign any or all of its rights and interests in this Agreement, to a third party in connection with transfer and assignment of any Mortgage, the Bonds and/or the Indenture, with reasonable prior written notice to Manager provided that such transferee is not a Specially Designated National or Blocked Person.

6.3.1 Assignment of Claims. Manager will not assign or transfer to others any claim which it has or may hereafter have against Owner while any of the Bonds (including without limitation, post-petition interest) and any other sums due under any of the Bond Documents remain unpaid, unless such assignment or transfer is made expressly subject to the terms and conditions hereof.

## 7. DESTRUCTION; TAKING

### 7.1 Destruction, Permanent Taking During the Period when Bonds are Outstanding.

7.1.1 Owner to Restore with Sufficient Available Casualty/Condemnation Amounts. If during the period any Bonds are Outstanding, the whole or any part of the Hotel is damaged or destroyed by fire or other casualty required to be insured against under Section 5 above or Taken, then the Casualty Proceeds and/or the Condemnation Proceeds, as, applicable, shall be paid immediately to Trustee (with the understanding that any Casualty Proceeds and Condemnation Proceeds received by Manager, Owner or other named insured parties shall be immediately turned over to Trustee) for deposit in the Insurance and Condemnation Proceeds Fund; provided, however, the foregoing shall be subject to the rights of Trustee under the Bond Documents to apply the Casualty Proceeds and Condemnation Proceeds to the redemption of some or all of the Bonds. Notwithstanding the foregoing and subject to Section 7.1.2 of this Agreement, Owner shall be under no obligation to, engage a contractor to perform the repair and restoration of the Hotel if (a) the total cost of repairing and/or replacing the damaged portion of the Hotel to the same condition as existed prior to such damage, destruction or Taking would be fifty percent (50%) or more of the then total replacement cost of the Hotel ("**Total Casualty**"), as determined by the Independent Architect and (b) Trustee, pursuant to and in accordance with Section 7.23 of the Indenture, does not make the Casualty Proceeds and/or Condemnation Proceeds available for repair or reconstruction.

7.1.2 Insufficient Available Amounts - Owner's Option to Terminate or Restore. If Owner does not elect to repair, restore, replace, or rebuild the Hotel pursuant to its rights set forth in Section 7.1.1, then Owner may terminate this Agreement by giving notice to Manager (which shall be effective ninety (90) days after its delivery pursuant to Section 13.13 below) within ninety (90) days of the occurrence of the Casualty or condemnation. If Owner does not elect to terminate this Agreement pursuant to Section 7.11, Owner shall diligently commence and complete the restoration of the Hotel to at least the condition and character of the Hotel

immediately before the casualty or condemnation occurred. If Owner does not commence restoration within one hundred twenty days after receipt of insurance proceeds to rebuild and restore the Hotel, complete restoration within two years after the commencement of restoration or complete restoration within three years after the casualty occurs, then Manager shall have the right to terminate the Agreement upon no less than thirty (30) and no more than one hundred and eighty (180) days written notice to Owner

7.2 Casualty or Destruction After Bonds Are No Longer Outstanding; Owner to Restore After Insured Casualty. If, after the Bonds are no longer Outstanding, the Hotel or any part thereof is damaged or destroyed by fire or other casualty required to be covered by the insurance described in Section 5 of this Agreement, then Owner shall repair, restore, replace, or rebuild the Hotel ("**Casualty Restoration**") as nearly as is reasonably possible to the condition and character of the Hotel immediately prior to the occurrence of the damage or destruction, provided that Owner will have no obligation to restore or rebuild the Hotel, and shall be permitted to terminate this Agreement subject to satisfaction of all of the following conditions precedent: (a) the holder of any Mortgage then existing against all or any of the Hotel does not allow the Available Casualty and Condemnation Proceeds to be used for the repair and reconstruction of the Hotel, (b) the repair of the Hotel is reasonably anticipated by the independent architect to exceed six (6) months and (c) the total cost of repairing and/or replacing the damaged portion of the Hotel to the same condition as existed prior to such damage, destruction or Taking is fifty percent (50%) or more of the then total replacement cost of the Hotel. If the conditions set forth in (a), (b) and (c) are satisfied, Owner shall not be required to repair any damage or destruction of the Hotel and if Owner elects not to repair the Hotel then Owner may terminate this Agreement by giving notice to the other Party (which shall be effective ninety (90) days after its delivery pursuant to Section 13.13 of this Agreement) within thirty (30) days after the report is delivered by such independent licensed architect (which report must happen within one hundred twenty (120) days of the applicable Casualty). Manager shall cooperate with Owner in obtaining all property damage insurance proceeds payable with respect to the Casualty Restoration so that the same shall be available to Owner as the Casualty Restoration progresses. Owner shall use commercially reasonable efforts to negotiate provisions in any Mortgage to provide that all insurance proceeds covering damage or destruction to any real or personal property used in the operation of the Hotel shall be available for and used exclusively for the funding of the Casualty Restoration. If Owner does not terminate this Agreement pursuant to this Section 7.3, Owner shall diligently commence and complete the restoration of the Hotel to at least the condition and character of the Hotel immediately before the casualty occurred. If Owner does not commence restoration within one hundred twenty days after receipt of insurance proceeds to rebuild and restore the Hotel, complete restoration within two years after the commencement of restoration or complete restoration within three years after the casualty occurs, then Manager shall have the right to terminate the Agreement upon no less than thirty (30) and no more than one hundred and eighty (180) days written notice to Owner.

7.3 Repair. Upon Owner's request, Manager will reasonably assist Owner to proceed to process claims with the applicable insurance carriers and make arrangements with contractors and suppliers to repair and replace the damaged portion of the Hotel.

7.4 Permanent Taking After Bonds are no Longer Outstanding.

7.5 Termination Right/Substantial Taking. If after all Bonds are no longer Outstanding, any portion of the Hotel is Taken as to make it infeasible or imprudent, in the reasonable opinion of Owner or Manager (a) for the remaining portion of the Hotel to be restored to economically feasible usefulness; or (b) to operate the remaining portion of the Hotel in accordance with the Operating Standard this Agreement shall terminate within sixty (60) days after the date of such Taking. If this Agreement is not terminated in accordance with the preceding sentence, then, either Owner or a third party (at Owner's election) shall coordinate such alterations or modifications to the Hotel, or any part thereof, as approved by Operator, as shall be reasonably necessary to make the Hotel a satisfactory architectural unit as a first class hotel substantially of the type immediately preceding such taking or condemnation (the "**Required Alteration Standard**"). If Owner does not complete the applicable restoration within two years after the Taking, then Manager shall have the right to terminate this Agreement upon no less than thirty (30) and no more than one hundred and eighty (180) days written notice to Owner. Owner and Manager will agree upon a fair and equitable apportionment of any resulting award to compensate each of them for their respective loss of income resulting from the Taking, with priority to Owner's recoupment of its investment in the Hotel, or failing agreement, the amount determined in accordance with the Dispute Resolution provisions of this Agreement.

7.5.1 Effect of Temporary Taking. Upon a Taking of all or part of the Hotel for temporary use and provided this Agreement is not terminated pursuant to Section 7.4 of this Agreement, this Agreement shall remain in full force and effect and the awards or other proceeds on account of the Taking (including any interest included or paid with respect to such awards or proceeds), other than any portion of such awards or proceeds attributable to compensation for alterations or physical damage to the real or personal property used in the operation of the Hotel, shall not be included in Total Operating Revenue for the Operating Year or Years in which received.

7.6 Reinstatement. If within three (3) years following any termination of this Agreement pursuant to Article 7, Owner, any of its Affiliates or any future third-party purchaser of the Hotel intends to commence the restoration or rebuilding of the Hotel, or open the building to the public as a hotel, (collectively, a "**Restoration**"), Owner shall promptly give notice to Manager in writing of such intention (or cause the applicable future third-party owner to give notice to Manager in writing of such intention), and at Manager's election (exercisable by giving written notice to Owner (or the applicable future third-party owner) within 90 days of the date upon of the date upon which Manager receives notice from Owner (or applicable future third-party owner) of such intention to commence Restoration), this Agreement shall be deemed reinstated in accordance with all the terms and conditions hereof as between Manager and Owner (or its Affiliate) or future third-party owner. Notwithstanding anything to the contrary contained in this Section 7.6, if this Agreement is reinstated pursuant to this Section 7.6, Manager's duties shall be suspended until the Hotel is substantially reopened and the termination date (and Term) shall be extended to reflect the period of time the Hotel is closed. The provisions of this Section 7.6 shall survive the expiration or sooner termination of this Agreement.

## 8. BUSINESS INTERRUPTION

### 8.1 Business Interruption.

8.1.1 Manager's Compensation During Business Interruption. If the Hotel suffers damage or loss that results in an interruption in the operations of the Hotel, Manager shall continue to be obligated to perform its obligations hereunder and shall also reasonably assist Owner in connection with its efforts in the repair and rebuilding of the Hotel; accordingly, Manager shall continue to receive all amounts that would be due to Manager under this Agreement had such damage or loss not occurred, including the Management Fee, the Centralized Services Fees and Charges and all Reimbursable Expenses, for the period of the business interruption.

8.1.2 Owner's Obligations During Partial Operation. If the Hotel suffers damage or loss that results in an interruption in the operation of the Hotel, Owner shall nevertheless be obligated to pay all expenses of maintaining the Hotel (at the level which is reasonably necessary determined by Manager and Owner to be practicable given the damage or loss that has occurred), regardless of whether there are funds available to Owner from any Business Interruption Insurance proceeds to cover such amounts, and Owner shall be responsible for depositing all such amounts necessary for the maintenance of the Hotel in the Lockbox Fund during the period of the business interruption.

### 8.2 Proceeds of Business Interruption Insurance.

8.2.1 Allocation of Proceeds of Insurance. If the business of the Hotel is interrupted by any event or peril covered by Business Interruption Insurance, the proceeds of any such insurance shall be paid to Trustee, for the payment of Hotel expenses pursuant to this Agreement. The Parties intend that Manager have a separate, independent, insurable interest in the receipt of such amounts, which insurable interest will exist throughout the covered period of any business interruption, regardless of whether this Agreement may be earlier terminated as a result of the event giving rise to such proceeds. The insurance proceeds received by Manager in accordance with this Section 8.2 shall satisfy the applicable amounts that Owner would otherwise be required to pay in accordance with Section 8.1.

8.2.2 Deposit of Proceeds of Business Interruption Insurance During Period Bonds are Outstanding. Notwithstanding any other provision hereof, Owner shall cause any proceeds of business interruption insurance maintained pursuant to this Agreement ("**Business Interruption Proceeds**") which are not paid directly to Manager, so long as any Bonds are Outstanding, to be deposited by Trustee when and as received into the Lockbox Fund to be applied in accordance with this Agreement, the Cash Management Agreement and the Indenture.

- (a) to the Lockbox Fund, an amount equal to Operating Expenses then due (including the Base Management Fee);
- (b) to the Debt Service Account, an amount equal to Debt Service then due on the Bonds;

(c) to the Property Taxes Fund, an amount equal to the property taxes then due with respect to ownership of the Hotel;

(d) to the Insurance Premium Fund, an amount equal to insurance premiums then due with respect to ownership and operation of the Hotel;

(e) once insurance proceeds for any Claim are fully funded, to the Subordinate Management Fee Fund, an amount for payment of the Subordinate Management Fee when due;

(f) to the payment of Administration Expenses when due; and

(g) to the Revenue Fund, the balance, if any for application by Trustee as provided in Article V of the Indenture.

8.2.3 Reduction in Deposits/Amounts Directly Received. Notwithstanding the foregoing, so long as some Bonds are Outstanding, the amounts required to be transferred pursuant to Section 8.2.2 of this Agreement shall be reduced to the extent the insurance carrier has directly paid Business Interruption Proceeds to either Manager or Owner, which reduction shall be allocated in the priority specified in Section 8.2.2.

8.2.4 Characterization of Business Interruption Proceeds. Business Interruption Proceeds received shall be deemed Total Operating Revenue and, so long as any Bonds are Outstanding, shall be deposited in accordance with the foregoing and distributed in accordance with the Indenture.

8.2.5 Deposit of Business Interruption Proceeds after No Bonds Outstanding. After there are no Bonds Outstanding, Owner shall deposit any Business Interruption Proceeds received by Owner, and Manager shall deposit any proceeds of Business Interruption Insurance received by Manager, into the Lockbox Fund immediately upon receipt.

## **9. ASSIGNMENTS**

9.1 Restrictions on Assignment by Manager. Except as provided in Section 9.2, Manager shall not assign this Agreement without the prior written consent of Owner. Any consent granted by Owner to an assignment shall not be deemed a waiver of the covenant herein contained against assignment in any subsequent case. Any Assignment by Manager in violation of the terms of this Section 9 shall be a material and non-curable breach of this Agreement by Manager, governed by the terms of Section 4 of this Agreement.

9.2 Permitted Assignment by Manager. Manager, without the consent of Owner, but upon 5 days' prior notice to Owner (provided such notice does not violate Legal Requirements), has the right to assign this Agreement to: (a) any Affiliate of Manager; (b) any entity which may become an Affiliate as a result of a related and substantially concurrent transaction; (c) any successor or assign of Manager which may result from any merger, consolidation or reorganization involving Manager; or (d) a corporation or other entity which shall acquire all or substantially all of the business and assets of Manager, provided any such assignee shall have, at

the time of such assignment, the necessary experience(directly, through its Affiliates, by contract or otherwise) to perform this Agreement.

### 9.3 Assignment by Owner.

9.3.1 Except as expressly provided in Section 9.3.2 Agreement, Owner will not sell, lease or otherwise transfer or convey any interest in the Hotel or this Agreement without the prior consent of Manager. Notwithstanding the foregoing or any other provision to the contrary contained herein, Owner may assign certain of its rights in this Agreement to Trustee for the benefit of the Bondholders pursuant to the terms of an Assignment and Subordination of Agreement reasonably approved by Manager, as security for Owner's obligations under the Indenture and other documents securing the repayment of the Bonds. Any Assignment by Owner in violation of the terms of this Section 9 shall be a material and non-curable breach of this Agreement by Owner, governed by the terms of Section 4 of this Agreement.

9.3.2 Certain Permitted Assignments. Notwithstanding anything to the contrary in this Agreement, Owner may sell, transfer, assign, or convey the Hotel or any part thereof interest in Owner, and effect an assignment of this Agreement, or any interest therein, to any Person who:

- (a) is not generally recognized in the community as being of ill repute and is not in any other manner a Person with whom a prudent businessperson would not wish to associate in a commercial venture or a Person that, in Manager's reasonable determination, would be considered by regulators in the gaming industry to be an unsuitable business associate of Manager and its Affiliates;
- (b) has the ability to fulfill Owner's financial obligations hereunder; and
- (c) is not, nor are its Affiliates, the owner of a trade name of a change of hotels which competes with the Brand Name.

To the fullest practical extent, Owner shall give to Manager sufficient written notice of the date on and place at which such sale, lease, transfer or conveyance is to be consummated in order to give Manager an opportunity to confirm the above and to prepare appropriate transfer documents, which notice shall identify in reasonable detail Ownership of the proposed transferee or assignee. Manager shall have the right to require as additional conditions precedent of the consummation of any such sale or lease that: (i) the Manager maintains control of the Senior FF&E Reserve Fund, Subordinate FF&E Reserve Fund, the Supplemental Reserve Fund, the Operating Expense Reserve Fund, and the Surplus Revenue Fund, (ii) all existing defaults by Owner be cured, or that arrangements reasonable satisfactory to Manager for curing of said defaults be made and that evidence satisfactory to Manager from the purchaser or transferee is furnished showing that insurance as required hereunder is in full force and effect from and after the closing date and (iii) evidence of insurance in accordance with the terms of this Agreement be provided to Manager. Notwithstanding the foregoing, so long as no Bonds remain Outstanding, if a Mortgagee or any Affiliate of a Mortgagee is the purchaser of the Hotel at a foreclosure sale, such Mortgagee or Affiliate shall not be required to cure such prior defaults, other than non-monetary defaults of a continuing nature capable of cure. In the case of a sale,



conveyance or transfer of the Hotel and an assignment of this Agreement, the proposed transferee or assignee shall execute an assignment and assumption agreement in form and substance reasonably acceptable to Manager pursuant to which such assignee/transferee assumes and agrees to be bound by all of the terms and provisions of this Agreement.

9.3.3 Transfer of Interests in Owner. The voluntary or involuntary sale, assignment, transfer or other disposition, or transfer by operation of law (other than by will or the laws of intestate succession) of (a) any of direct or indirect ownership interests in Owner if, after such transaction, twenty-five percent (25%) or more of the direct or indirect ownership interests in Owner will have changed hands since the Effective Date, or (b) a Controlling Interest shall be deemed a sale or lease of the Hotel with respect to Sections 9.03.1 and 9.03.2, and shall be subject to the same rights of Manager as set forth in such Sections. Notwithstanding the foregoing, neither any transfer of publicly traded stock nor any public offering of equity ownership interests (whether partnership interest, corporate stock, shares or otherwise) in either party or by its parent company or other owner of such party, or entity that itself or through its ownership of legal or beneficial interests in one or more other entities holds legal or beneficial interests or voting power in such an owner, shall be deemed to be a sale, lease or assignment under this Section 9.03, unless such transfer or offering is of a Controlling Interest. Owner from time to time, upon the written request of Manager, shall promptly furnish Manager with a list of the names and addresses of the owners of at least 10% of the capital stock, partnership interests or other proprietary interests in Owner. Owner shall notify Manager of any contemplated sale or other disposition of a Controlling Interest in writing with the names and addresses of the transferee or transferees of such Controlling Interest.

9.4 Effect of Permitted Assignments. A consent to any particular assignment shall not be deemed to be a consent to any other assignment or a waiver of the requirement that consent be obtained in the case of any other assignment. Except as otherwise provided under Section 9.3 of this Agreement, as of any permitted assignment by Owner or, in the case of an assignment under Section 9.2. of this Agreement, Manager (if the terms and conditions thereof are complied with), the assigning Party shall be relieved of all liabilities and obligations under this Agreement accruing after the effective date of such assignment; provided, however, notwithstanding the foregoing or anything to the contrary in Sections 9.2 or 9.3 of this Agreement, no such assignment shall relieve the assigning Party from its liabilities or obligations under this Agreement accruing prior to the effective date of the assignment; provided further, in the event of an Assignment by Owner, if the assigning Party does not rehire the employees of the Hotel, Owner or the assigning Party shall pay for vacation, sick leave, severance, and other similar benefits (based on length of service) accrued for Hotel Personnel as of the effective date of the assignment.

## **10. DISPUTES.**

10.1 Dispute Resolution Procedure. Solely with respect to disputes related to a budgetary matter under Section 2.20, or a matter specifically identified in this Agreement as subject to the Dispute Resolution Procedure, the Parties agree to resolve the dispute in accordance with this Section 10.1. In the event that a Party provides notice of its election to use the Dispute Resolution Procedure, the Party shall notify the other Party and the Hotel Consultant by written notice of such election. The party initiating the Dispute Resolution Procedure shall

give written notice to the other party setting out the items to be determined. Within five Business Days, the parties shall agree upon a mutually-acceptable Expert. If the parties are unable to agree upon an Expert, the initiating party shall submit the matter to the Chairman of the International Society of Hospitality Consultants (“ISHC”), who shall designate an individual as the Expert. The Expert shall establish in its sole discretion the procedure for resolving the dispute, including what evidence to consider, whether to allow written submissions, and whether to hold a hearing, subject to the following:

(a) Each party shall be entitled to make written submissions to the Expert, and if a party makes any submission it shall also provide a copy to the other party and the other party shall have the right to comment on such submission (all within the time periods established pursuant to clause (c)). The parties shall make available to the Expert all books and records relating to the issue in dispute and shall render to the Expert any assistance requested of the parties.

(b) During the pendency of the Dispute Resolution Procedure, the parties shall share equally the fees and expenses of the Expert. In rendering its decision, the Expert shall designate the party whose position is substantially upheld, who shall recover from the other party its share of the fees and costs so paid. The Expert may determine that neither party's position was substantially upheld. The parties shall otherwise bear their own costs and expenses of the Dispute Resolution Procedure;

(c) The Expert shall make its decision with respect to the matter referred for determination by applying the standard set forth in this Agreement regarding such matter. If this Agreement does not contain a specific standard regarding such matter, then the Expert shall apply the standards applicable to first class hotels in accordance with the Operating Standards, taking into consideration the Operating Standards agreed to by the parties in Section 2.2;

(d) The terms of engagement of the Expert shall include an obligation on the part of the Expert to: (i) notify the parties in writing of decision within thirty (30) days from the date on which the Expert has been selected (or such other period as the parties may agree or as set forth herein); and (ii) establish a timetable for the making of submissions and replies;

(e) The decision of the Expert, absent fraud, shall be final and binding on the parties.

10.2 Other Disputes. Except for disputes resolved in accordance with Section 10.1, and in addition to any other rights or remedies, except as otherwise specifically provided in this Agreement, any Party may institute litigation to recover damages for any Event of Default or to obtain any other remedy at law or in equity (including specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy) consistent with the purposes of this Agreement. The existence of any claim or cause of action of a Party against another Party, whether predicated on this Agreement or otherwise, shall not (i) constitute a defense to specific enforcement of the obligations of such other Party under this Agreement or (ii) bar the availability of injunctive relief.

10.3 Venue and Jurisdiction. The venue of any legal action by any party arising under this Agreement shall be, and any judicial proceedings shall be, in Fulton County, Georgia. Each Party irrevocably submits to the jurisdiction of the federal and state courts located in Fulton County, Georgia.

10.4 Limitation on Remedies. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS AGREEMENT OR THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, TO THE FULLEST EXTENT NOT PROHIBITED BY APPLICABLE LAW, OTHER THAN AND EXCLUDING (i) THE RESPECTIVE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER SECTION 13.14 OF THIS AGREEMENT (INDEMNIFICATION) AND (ii) ANY OTHER INDEMNIFICATION OR DEFENSE OBLIGATIONS OF A PARTY UNDER THIS AGREEMENT IN THE CASE OF UNAFFILIATED THIRD PARTY CLAIMS ("INDEMNIFICATION EXCLUSION"), NEITHER PARTY (INCLUDING ANY RELATED PARTY) SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR TREBLE DAMAGES OR LOSSES INCURRED BY THE OTHER PARTY OR ANY OF ITS RELATED PARTIES ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCTS OR STRICT LIABILITY OR ANY OTHER FORM OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES (COLLECTIVELY "CONSEQUENTIAL DAMAGES"); AND SUBJECT TO THE INDEMNIFICATION EXCLUSION ABOVE, EACH PARTY HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES AND RELEASES ANY RIGHT, POWER OR PRIVILEGE EITHER MAY HAVE TO CLAIM OR RECEIVE FROM THE OTHER PARTY HERETO ANY SUCH CONSEQUENTIAL DAMAGES. FOR THE AVOIDANCE OF DOUBT, THIS LIMITATION OF LIABILITIES SECTION SHALL NOT BE APPLICABLE TO ANY DIRECT DAMAGE CLAIMS BETWEEN THE PARTIES. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE REMEDIES HEREIN PROVIDED, AND OTHER REMEDIES AT LAW AND IN EQUITY, SHALL IN ALL CIRCUMSTANCES BE ADEQUATE (INCLUDING THE RIGHT TO RECOVER DIRECT DAMAGES). THE FOREGOING WAIVER AND RELEASE SHALL APPLY IN ALL ACTIONS OR PROCEEDINGS BETWEEN THE PARTIES (INCLUDING ANY EXPERT OR ARBITRATION PROCEEDING) AND FOR ALL CAUSES OF ACTION OR THEORIES OF LIABILITY, WHETHER FOR BREACH OF THIS AGREEMENT OR FOR VIOLATION OF ANY OTHER DUTY OWING BY EITHER PARTY TO THE OTHER WHICH MAY IN ANY WAY RELATE TO MANAGER'S MANAGEMENT OR OPERATION OF THE HOTEL OTHER THAN AND EXCLUDING THE INDEMNIFICATION EXCLUSION. BOTH PARTIES FURTHER ACKNOWLEDGE THAT THEY ARE EXPERIENCED IN NEGOTIATING AGREEMENTS OF THIS SORT, HAVE HAD THE ADVICE OF COUNSEL IN CONNECTION HERewith, AND HAVE BEEN ADVISED AS TO, AND FULLY UNDERSTAND, THE NATURE OF THE WAIVERS CONTAINED IN THIS SECTION 10.4 AND IN SECTION 13.21. FURTHERMORE AND NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IF MANAGER BREACHES ANY AGENCY DUTY, OWNER SHALL NOT BE ENTITLED TO: (A) DISGORGEMENT, FORFEITURE OR RESTITUTION OF ANY COMPENSATION PAID BY OWNER TO MANAGER; (B) DISGORGEMENT, FORFEITURE OR RESTITUTION OF ANY BENEFIT RECEIVED BY MANAGER IN CONNECTION WITH ANY TRANSACTION ON BEHALF OF OWNER OR

THE HOTEL UNLESS THE MONETARY VALUE OF SUCH BENEFIT COULD HAVE BEEN CALCULATED AND PASSED THROUGH TO OWNER IN A COMMERCIALY REASONABLE MANNER; (C) DIVESTITURE OF ANY FINANCIAL OR OTHER INTEREST HELD BY MANAGER; OR (D) ANY RELIEF THAT DOES NOT TAKE INTO ACCOUNT THE BENEFITS RECEIVED BY OWNER FROM THE SERVICES PROVIDED BY MANAGER.

## **11. TRADEMARKS AND OTHER PROPRIETARY MATERIALS**

11.1 Ownership of Trademark. Manager represents that it has the right to use the Trademarks in connection with the operation of the Hotel. Owner acknowledges and agrees it has no rights to or interest in the Trademarks, and agree not to contest the rights of Manager or its Affiliates in respect of the Trademarks, including any additions or improvements to the Trademarks by whoever developed.

11.2 Use of Trademarks. As part of the services to be provided under the terms of this Agreement, Manager will use the Trademarks as it deems appropriate and advisable in operating the Hotel consistent with the terms of this Agreement, subject to the following terms:

11.2.1 Prohibition on Use of Trademarks. Owner may not itself use the Trademarks or apply for international, United States federal or state or territorial registration of any rights in the Trademarks. Without Manager's prior consent (which may be withheld in Manager's sole discretion), Owner may not use any of the Trademarks as all or part of its legal name or any other trade or assumed name under which Owner does business, and Owner shall disclose in any trade or assumed name filing that the Hotel is independently managed and that Owner has no ownership rights in the Trademarks. Except as provided in Section 11.4 of this Agreement, no other letter, word, design, symbol, or other matter of any kind shall be superimposed on, associated with, or shown in such proximity to the Trademarks so as to alter or dilute them and Owner shall not combine any of the Trademarks with any other trademark, service mark or logo, nor shall it use any of the Trademarks in association with any of its other businesses or ventures without first obtaining Manager's consent.

11.2.2 Manager's Rights Regarding Trademarks. Manager reserves the sole right and discretion to:

- (a) determine how and on what materials the Trademarks may be used;
- (b) require the signing of secrecy agreements by Hotel Personnel and third parties to protect the confidentiality and the proprietary nature of the Trademarks;
- (c) subject to any limitations on contracts set forth in this Agreement, including Section 2.4 of this Agreement, set standards for and designate approved third-party suppliers of products bearing any of the Trademarks, and receive third-party commissions, fees, or royalty payments from field of use licenses; and

(d) handle disputes and control actual or threatened litigation with third parties relating to any part of the Trademarks.

11.3 Removal of Trademarks. On the expiration or earlier Termination of this Agreement, Owner shall promptly remove from the Hotel all exterior and interior signs containing any Trademarks and all forms of advertising, stationery, folio, menus, invoices, contract forms, brochures and other promotional material using any Trademarks. Owner shall discontinue all use of the Trademarks, including without limitation, any such Trademarks on all of the foregoing. Moreover, Owner shall not be responsible for causing billboard companies to remove any Trademarks from its billboards except to the extent such removal is otherwise in Owner's reasonable control.

11.4 Name of Hotel. Manager shall operate the Hotel under the name "Signia by Hilton Atlanta – Georgia World Congress Center. Any change in the name of the Hotel by Manager that does not use either the "Signia by Hilton Atlanta – Georgia World Congress Center" name shall be approved by Owner and Trustee, in writing. No default of Manager or any provision of this Agreement confers upon Owner, or its successors or assigns, the right to the name of the Hotel for any purpose.

11.5 Obligations of Owner.

11.5.1 Cooperation with Manager. Owner will work together with Manager to develop advertising for the Hotel.

11.5.2 Trademark Litigation. Owner shall promptly notify Manager of any litigation filed or threatened against Owner involving the Trademarks, as well as any apparent third-party infringement of the Trademarks of which Owner becomes aware and, at Manager's expense, shall cooperate fully with Manager on such matters.

11.5.3 Use of Trademark.

(a) Owner shall receive Manager's prior written approval prior to using Manager's Trademarks in its sole discretion. Notwithstanding the foregoing, Manager's approval shall not be unreasonably withheld, conditioned or delayed, prior to using Manager's Trademarks in advertising promotions for the Project so long as Owner's use is in compliance with then-current Brand Standards and brand identification guidelines. Subject to Section 11.5.3(b), any such approval shall apply to all future distributions by Owner in identical form, size and medium.

(b) Notwithstanding the foregoing: (i) use of Manager's Trademarks will not be permitted following the expiration or earlier termination of this Agreement; provided that Manager will allow Owner a commercially reasonable period of time (not to exceed 120 days), to remove Manager's Trademarks from such promotions after the expiration or earlier termination of this Agreement; and (ii) any pre-approved use of Manager's Trademarks must comply with the Brand Standards and Manager's then-current brand identification guidelines relating to use of Manager's Trademarks as provided to Owner (including any future modification to the Brand Standards and Manager's then-current policies and procedures), unless otherwise expressly approved by Manager.

11.6 Proprietary Information. Owner acknowledges that Manager or one of its Affiliates is or will become owner or licensee of certain intellectual property (the “**Manager’s Intellectual Property**”) including (a) software in use at one or more Other Managed Hotels and all source and object code versions thereof and all related documentation, flow charts, user manuals, listing, and service/operator manuals and any enhancements, modification, or substitutions thereof, and (b) Manager’s Proprietary Information. Manager shall utilize Manager’s Intellectual Property in connection with the operation of the Hotel to the extent that it deems appropriate for the purpose of carrying out its agreements and obligations hereunder, but such use shall be strictly on a non-exclusive basis, and neither such use nor anything contained in this Agreement shall confer any proprietary or other rights in Manager’s Intellectual Property upon Owner or any third parties.

11.7 Owner’s Mark(s). Owner has the right, and hereby grants, to Manager, the right to use the Owner’s Mark in **Exhibit DD** and any Owner IP, alone or in conjunction with the Trademarks, in its performance of the Hotel Agreements, including the use, marketing, sale and distribution of marketing materials, promotional materials, supplies and merchandise in all forms and formats that now exist or are invented in the future. Manager may grant sublicenses to permit any Persons to use the Owner’s Mark for these purposes. Manager shall not use any other trademark of Owner without Owner’s prior written approval. Notwithstanding anything to the contrary, the Owner’s Mark is presently and shall continue to be the property of Owner and/or its Affiliates following Termination. Owner and/or its Affiliates shall not claim that Owner and/or its Affiliates have acquired any ownership or other right to the Trademarks on the basis that Owner’s Mark is used in close proximity to or association with the Trademark.

11.8 Prohibitions on Owner Activities. For so long as this Agreement is in effect, neither Owner, nor any of its Affiliates, shall use any part of the Hotel, nor otherwise take any action in connection with the Hotel, to further or promote: (a) any lodging facility or business (including any other hotel owned and/or operated by Owner or an Affiliate, or of which a principal of Owner or an Affiliate holds an interest) operated under a trade name or trademark not owned by or licensed to Manager, including advertising or promotion of hotels, vacation or time-sharing facilities (or any similar product sold on a fractional or other basis with use rights on a weekly or other periodic basis), conference centers or other lodging products; or (b) any other business or concession of Owner or its Affiliates, or any of their principals, such rights of promotion being strictly reserved to Manager and its Affiliates.

## **12. OWNER GOVERNMENTAL AUTHORITY**

12.1 No Relinquishment of Regulatory Authority. Notwithstanding anything contained in this Agreement to the contrary, the Owner’s review and (if applicable, approval) of any submittals from Manager or other persons in connection with this Agreement shall constitute approval for purposes of this Agreement only, and not be deemed to constitute approval, or replace, the Owner’s right to review and approve same, under Owner’s regulatory authority and/or police power under State or local law, provided, however, that (i) the foregoing provision does not apply to budget and other approvals of “Owner” under this Agreement, and (ii) to the extent Owner’s exercise of Governmental Functions causes Manager to breach this Agreement, such breach shall not constitute an Event of Default by Manager.

12.2 No Limitation on Owner's Governmental Functions. Manager recognizes the authority of the Owner under its enabling statute to exercise its police powers in accordance with State or local law to protect the public health, safety, and welfare. Subject to the provisions hereof, Manager recognizes the Owner's authority to take appropriate enforcement action in accordance with State or local law to provide such protection. Whenever, in the Owner's judgment such action is required, the Owner shall immediately notify Manager. No lawful action taken by the Owner pursuant to these police powers shall subject the Owner to any liability under this Agreement provided that any such actions shall be taken by Owner at its sole cost and expense.

12.3 Owner Governmental Functions. The parties acknowledge that all references to "Owner" herein (which, for the purposes of this provision, shall be deemed to include any references in this Agreement to Owner as the owner of the fee interest in the Site) shall refer only to Owner in its capacity as owner of the Site. The term "Owner" and the duties and rights assigned to it under this Agreement, thus exclude any action, omission or duty of the Owner when performing its Governmental Functions. Any action, omission or circumstance arising out of the performance of the Owner of its Governmental Functions may prevent Owner from performing its obligations under the Agreement and shall not cause or constitute a default by Owner under this Agreement or give rise to any rights or claims against the Owner in its capacity as a party to this Agreement, it being acknowledged that Manager's remedies for any injury, damage or other claim resulting from any such action, omission or circumstances arising out of the Governmental Functions of the Owner shall be governed by the laws and regulations concerning claims against the Owner as a State governmental entity. In the event that Owner exercises its Governmental Functions in a discriminatory manner with respect to Manager or the Hotel, Manager shall have the right to terminate this Agreement upon no less than forty-five (45) days' notice to Owner. In addition, no setoff, reduction, withholding, deduction or recoupment shall be made in or against any payment due by Manager to Owner under this Agreement as a result of any action or omission of the Owner when performing its Governmental Function.

12.4 No Waiver. No representation, consent, approval or agreement by Owner shall be binding upon, constitute a waiver by or estop the Owner from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of any action by the Owner's designee be deemed to waive any immunities granted to the Owner when performing its Governmental Functions, which are provided under Applicable Law. Further, any consent to jurisdiction by Owner is only with respect to matters arising in its capacity as a party to the Agreement and expressly does not constitute a waiver of the Owner's governmental immunity or a consent to jurisdiction for any actions, omissions or circumstances, in each case arising out of the performance of the Governmental Functions of the Owner.

### **13. MISCELLANEOUS**

13.1 Interpretation; Recitals and Exhibits. Except as otherwise specifically indicated, all references to Articles, Sections and paragraphs refer to Articles, Sections and paragraphs of this Agreement, and all references to Exhibits refer to the Exhibits attached hereto. Unless expressly stated to the contrary, reference to any Section includes the subsections thereof. Article and Section headings are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision. Pronouns and their variations refer

to the masculine, feminine, neuter, singular or plural, as appropriate. Neither Party shall be deemed to have drafted this Agreement, and no provision shall be interpreted in favor of or against either Party as drafter. The Recitals set forth at the beginning of this Agreement and all Exhibit attached to this Agreement are hereby incorporated in and made a part, of this Agreement.

13.1.2 Covenants Versus Condition. Unless the language specifies or the context implies that a term of this Agreement is a condition, all of the terms of this Agreement shall be deemed and construed to be covenants to be performed by the designated Party.

13.1.3 Certain Terms. The use of the terms “**including**,” “**include**,” and “**includes**” followed by one or more examples is intended to be illustrative and shall not be deemed or construed to limit the scope of the classification or category to the examples listed. The words “**herein**,” “**hereof**,” “**hereunder**,” “**hereinafter**” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or paragraph.

13.1.4 Section References. In this Agreement, any reference to a Section or an Article is a reference to a Section or Article of this Agreement, unless otherwise specified.

13.2 Timely Decisions and Consents. Unless expressly stated otherwise in this Agreement, whenever a matter is submitted to a Party for approval or consent in accordance with the terms of this Agreement, that Party has a duty to act so as to not unreasonably withhold, condition or delay rendering a decision on the matter.

13.3 Table of Contents. The Table of Contents and captions to the Articles and Sections of this Agreement are for convenience of reference only and in no way define, limit, describe, or affect the scope or intent of any part of this Agreement.

13.4 Meaning of “Consistent With”. Whenever a provision in this Agreement specifies that an expenditure or an action shall be “**consistent with**” the Approved Operating Plan and Budget or the approved Capital Budget, the determination of consistency shall be made in light of the level of detail set out in the Approved Operating Plan and Budget and the approved Capital Budget, as applicable, with respect to the type of expenditure or action at issue.

13.5 Representations and Warranties of Manager. Manager represents and warrants to and covenants with Owner as of the Effective Date and as of the Opening Date as follows:

13.5.1 Due Organization, Etc. Manager is duly organized, validly existing, and in good standing, is duly qualified to do business in the State of Georgia, and has full power, authority, and legal right to execute, perform, and timely observe all of the provisions of this Agreement Manager’s execution, delivery, and performance of this Agreement have been duly authorized.

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



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

13.5.4 Maintaining Legal Existence. Manager shall, at its own expense, keep in full force and effect throughout the Operating Term its legal existence and the rights required for it timely to observe all of the terms and conditions of this Agreement.

13.5.5 No Litigation. There is no litigation or proceeding pending or threatened against Manager that could adversely affect the validity of this Agreement or the ability of Manager to comply with its obligations under this Agreement.

13.5.6 No Hazardous Materials. Manager shall not knowingly use or occupy, the Hotel or any part thereof to be used or occupied, for any unlawful, or ultra-hazardous use (including the prohibited or unlawful use, storage or disposal of Hazardous Substances), or operate or conduct the business of the Hotel in any manner known to constitute or give rise to a nuisance of any kind; provided that Owner recognizes and agrees that operations of the Hotel in the ordinary course of business and the holding of events in the Hotel shall not, in and of itself, constitute a nuisance.

13.6 Reserved.

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

13.7.1 Due Organization, etc. Owner is duly organized, validly existing, and in good standing and is duly qualified to do business in the State of Georgia, and has full power, authority, and legal right to execute, perform, and timely observe all of the provisions of this Agreement. Owner's execution, delivery, and performance of this Agreement have been duly authorized.

13.7.2 Valid and Binding Obligation. This Agreement constitutes a valid and binding obligation of Owner and does not constitute a breach of or default under the corporate documents or bylaws of Owner or the terms, conditions, or provisions of any law, order, rule, regulation, judgment, decree, agreement, or instrument to which Owner is a party or by which it or any of its assets is bound or affected.

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

13.7.4 Required Approvals. Owner shall maintain throughout the Operating Term all Approvals that are required to be in its name and that are necessary to own and the Hotel, but the foregoing shall not relieve Manager from obtaining permits, licenses, authorizations and other Approvals required hereunder.

13.7.5 No Adverse Litigation/Condemnation. There is no litigation or proceeding pending or threatened against Owner, or to the knowledge of Owner, against the Site, that could adversely affect the validity of this Agreement or the ability of Owner to comply with its obligations under this Agreement. Owner is not aware of any condemnation proceeding pending or threatened against the Site or any portion thereof.

13.7.6 Environmental. Except as disclosed in the Environmental Site Assessments delivered to Manager, Owner has no actual knowledge that the Site violates any environmental Legal Requirement and is not aware of any Hazardous Materials present in or have been released from the Hotel. Manager hereby acknowledges receipt of the Environmental Site Assessments.

13.7.7 Rights to Purchase. Owner has not granted any other person the right to purchase the Hotel, except as may be contained in the Bond Documents.

13.7.8 Owner of Hotel. Owner is the sole owner of the Site on which the Hotel building is to be built. Owner has full power, authority and legal right to own or lease, as applicable, the Hotel and all of its contents.

13.8 Use of Affiliates by Manager. Subject to the terms of this Agreement, in fulfilling its obligations under this Agreement, Manager may, from time to time upon notice to Owner, delegate certain of its obligations to one or more Affiliates, provided that, if an Affiliate performs services which Manager is required to provide pursuant to this Agreement, Manager shall be ultimately responsible to Owner for the Affiliate's performance, and Owner shall not pay more for the Affiliate's services and expenses than Manager would have been entitled to receive pursuant to this Agreement had Manager performed the services. If an Affiliate otherwise performs services for or provides goods to the Hotel, such goods or services shall be of a quality and supplied at prices and on terms at least as favorable to the Hotel as generally available in the relevant market.

13.9 The Policy Committee; Formation of Committee. Owner and Manager shall establish a policy committee (the "**Committee**") to coordinate the performance by Owner and Manager of their respective obligations under this Agreement so that the operation and promotion of the Hotel may be conducted in an efficient manner and under the terms and provisions of this Agreement. The purpose of the Committee is more fully set forth in Section 13.9.3 of this Agreement. Owner and Manager shall each appoint three (3) representatives ("**Representatives**") to serve on the Committee. Either Party may, at any time and from time to time, on notice to the other Party, name an alternate for one or more meetings or remove any of its Representatives and appoint a successor or successors; in addition, Owner's designees and consultants shall have the right to attend and observe any Committee meeting and shall receive notice simultaneously with the other Parties of the time and place for such Committee meetings.

13.9.2 Meetings. The Committee shall hold periodic meetings not less frequently than monthly on no less than ten (10) days' notice from either Party to the other. Meetings shall be held at the Hotel or at any other location agreeable to both Parties as set forth in the notice. No more than two (2) of the Representatives of each Party shall be required to attend any meeting. If the Committee so chooses, it may appoint a secretary to keep minutes of its

meetings, and the minutes shall be distributed to all Representatives within thirty (30) days after each meeting.

13.9.3 Purpose of Committee. The purpose of the Committee meetings is to provide Manager and Owner with a forum in which to discuss any aspect of the Hotel's operations. Manager agrees to discuss with Owner, among other topics, the following: Manager's selection of the Senior Executive Personnel; policies that materially affect Hotel Personnel; special projects recommended by Manager or Owner; the annual Proposed and/or Approved Operating Plan and Budget and the proposed and/or approved Capital Budget and the periodic updates thereto prepared by Manager; and the marketing program for the Hotel as proposed by Manager from time to time.

13.10 Governing Law. This Agreement and all disputes relating to the performance or interpretation of any term of this Agreement shall be construed under and governed by the laws of the State of Georgia. To the extent permitted by law, Manager hereby irrevocably:

(a) consents to any suit, action or proceeding with respect to this Agreement being brought in any state or federal court of competent jurisdiction located in a judicial district which includes Fulton County;

(b) waives any objection that it may have now or hereafter to the venue of any such suit, action or proceeding in any such court and any claim that any of the foregoing have been brought in an inconvenient forum;

(c) (1) acknowledges the competence of any such court, (2) submits to the jurisdiction of any such court in any such suit, action or proceeding, and (3) agrees that the final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon it and may be enforced in any court to the jurisdiction of which it is or may be subject by a suit upon such judgment, a certified copy of which shall be conclusive evidence of its liability;

(d) with respect to any such suit, submits to the non-exclusive jurisdiction or the State or Federal Courts in Fulton County, as applicable, and agrees that service of process in any suit, action or proceeding may be made upon Manager's Registered Agent at the address as follows:

\_\_\_\_\_,  
together with a copy to each address set forth herein, or such other address of which Manager shall have given by written notice to Trustee and agrees that such service shall in every respect be deemed to be effective service upon it in any suit, action or proceeding and shall be taken and held to be valid personal service upon or personal delivery to it, to the fullest extent permitted by law.

13.11 Waivers, Modifications, Remedies. No failure or delay by a Party to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed

by the Party against whom the enforcement of the change, waiver, or Termination is sought and, so long as any Bonds remain Outstanding, with the written consent of Trustee. Owner shall notify Manager of any revisions, amendments, supplements, modifications or other changes to the Indenture and the Cash Management Agreement prior to the effectiveness thereof. Owner acknowledges that Manager shall have the right to consent to such revisions, amendments, supplements, modifications or other changes to the extent set forth in such Article \_\_\_. No waiver of any breach shall affect or alter this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach of this Agreement. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

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

13.13 Notices. Notices, consents, determinations, requests, approvals, demands, reports, objections, directions, and all other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given and to be effective on the date on which such communications are delivered by personal delivery, Federal Express, or other similar courier service or by the United States Postal Service or its successor after being deposited with the United States Postal Service as Express Mail or as registered or certified matter, postage prepaid, return receipt requested, addressed to the Parties at the addresses specified below, or at such other address as the Party to whom the notice is sent has designated in accordance with this Section 13.13. All such communications from Manager to Owner shall also be given by Manager to Trustee in the same manner as given to Owner. Until a Party provides a change in address in accordance with this Section 13.13, notices will be sent to the following addresses:

To Manager:

SIGNIA HOTEL MANAGEMENT LLC  
c/o Hilton Worldwide Holdings Inc.  
7930 Jones Branch Drive  
McLean, Virginia 22102  
Attn: General Counsel

SIGNIA HOTEL Management LLC  
[insert hotel address]  
Attn: General Manager

With a copy to:

Hunton Andrews Kurth LLP  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202  
Attn: Kathleen J. Wu, Esq.

Fax: (214) 880-0011

To Owner:

Geo. L. Smith II Georgia World Congress  
Center Authority  
285 Andrew Young International Blvd., NW  
Atlanta, Georgia 30313-1591  
Attn: Executive Director  
Fax: (404) 223-4011

With a copy to Trustee:

[\_\_\_\_\_]  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Fax: \_\_\_\_\_

With a copy to:

Office of the Attorney General  
40 Capitol Square, SW  
Atlanta, Georgia 30334  
Attn: Attorney General  
Fax: (404) 657-3239

With a copy to:

Geo. L. Smith II Georgia World Congress  
Center Authority  
285 Andrew Young International Blvd., NW  
Atlanta, Georgia 30313-1591  
Attn: J. Pargen Robertson, Jr.  
Fax: (404) 223-4011

With a copy to:

King & Spalding LLP  
1180 Peachtree Street NE  
Atlanta, Georgia 30309  
Attn: Matthew W. Nichols  
Fax: (404) \_\_\_\_ - \_\_\_\_

With a copy to:

Greenberg Traurig, LLP  
1000 Louisiana Street, Suite 1700  
Houston, Texas 77002  
Attention: Franklin D.R. Jones, Jr.  
Fax: (713) 754-7530

13.14 Indemnity.

13.14.1 Manager's Indemnity. To the extent permitted by law, Manager shall Indemnify Owner and its Related Parties (collectively, "**Owner Parties**") from and against, and reimburse Owner Parties for, any and all claims, demands, damages, judgments, costs, losses, penalties, fines, liens, suits, expenses, and liabilities, including, without limitation, reasonable attorneys' fees and costs and expenses incident thereto (collectively, "**Claims**"), which any Owner Party may have alleged against them, incur, become responsible for, or pay out for any reason, but only to the extent arising out of Manager's Gross Negligence or Willful Acts. Notwithstanding the foregoing, in no event will Manager's indemnity, hold harmless or defense agreements extend to (i) any breach of any of Owner's obligations, covenants, agreements or representations contained in this Agreement or the Room Block Agreement, or (ii) an Event of Default by Owner under this Agreement.

13.14.2 Reserved.

13.14.3 Indemnification Procedures.

(a) If Owner or any Owner Party receives notice of any action or proceeding of any Claim for which it is seeking indemnity under Section 13.14.1, Owner, or such Owner Party as applicable, shall within twenty (20) days following service of process or other written notification of such Claim (or within such shorter time as may be necessary to give Manager a reasonable opportunity to respond to such service process or notice of Claim), and within twenty (20) days after any other such notice, notify Manager in writing thereof together with a statement of such information respecting such matter as Owner, or such Owner Party as applicable, then has; provided, however, the failure to notify Manager shall not relieve Manager from any liability which it may have to Owner, or such Owner Party, except and solely to the extent that such failure or delay in notification shall have adversely affected Manager's ability to defend against, settle or satisfy any such Claim or will have caused Manager to have incurred additional costs, fees or damages as a result of such failure or delay.

(b) Not later than fifteen (15) days after receipt by Manager of written notice from Owner or any Owner Party of a Claim for which it is seeking indemnity under Section 13.14.1, Manager shall (without limiting its right to dispute whether an indemnification obligation exists under Section 13.14.1), at Manager's own cost and expense, assume on behalf of Owner and Owner Indemnitees and conduct with due diligence and in good faith the defense thereof with counsel selected by Manager and reasonably satisfactory to Owner or such Owner Party; provided, however, that in all such cases where Owner is a named or becomes a named or indispensable party to any such proceeding or action, the Attorney General or a Special Assistant Attorney General so appointed by the Attorney General (which may include counsel recommended by Manager at the Attorney General's sole and absolute discretion) shall be the only party authorized to represent the interests of Owner in any legal matter in which Owner is a party or may be liable for payments or damages (whether by court decision, settlement or otherwise) (referred to herein as the "**GWCCA Defense Limitations and Rights**"); provided further, that in all such cases where Owner or any Owner Party is a named or becomes a named or indispensable party to any such proceeding or action, Owner, or such Owner Party as applicable, shall have the right to be represented therein by advisory

counsel of its own selection, and at its own expense. Manager shall have the separate right to be represented by separate counsel to participate in the defense of such action or proceeding on its own behalf, at the expense of Manager. For all purposes hereof and for purposes of clarification, except as stated above with respect to Owner or Owner Party's right to be represented by advisory counsel, any and all reasonable legal costs and expenses incurred or allocated by Owner that relate to matters covered by Manager's indemnification in Section 13.14.1 shall, in all cases, be timely reimbursed by Manager. Failure to timely pay such reimbursable legal costs and expenses to an Owner Party shall be treated like damages and be subject to the payment of interest, collection and other applicable charges. In the event of the failure of Manager to perform fully in accordance with the defense obligations under this Section 13.14.2(b), Owner or any such Owner Party may, at its option, and without relieving Manager of its obligations hereunder, so perform, but all damages so incurred by Owner or any such Owner Party in that event shall be reimbursed by Manager to Owner or such Owner Party.

(c) Owner, or such Owner Party as applicable, shall, at no cost or expense to Owner or such Owner Party, cooperate with Manager and shall provide Manager with such information and assistance as Manager shall reasonably request in connection with such Claim. The obligations of Manager shall not extend to any loss, damage and expense of whatever kind and nature (including all related costs and expenses) to the extent the same results from the taking by Owner, or such Owner Party, of any action (unless required by law or applicable legal process) which prejudices the successful defense of the Claim, without, in any such case, the prior written consent of Manager (such consent not to be required in a case where Manager has not assumed the defense of the Claim but without otherwise limiting Manager's rights to be represented by separated counsel as set forth in Section 13.14.1(b)). Owner, or such Owner Party, agrees to use its good faith efforts to afford Manager and its counsel the opportunity to be present at, and to participate in, conferences with all Persons, including Governmental Authorities, asserting any Claim against Owner or such Owner Party covered by the indemnity contained in this Section 13.14 or conferences with representatives of or counsel for such Person. Upon the approval of the Attorney General, Manager shall have the right to settle, compromise or pay any Claim being defended by Manager without Owner's consent so long as such settlement or compromise does not cause Owner to incur any present or future costs, expense, obligation or liability of any kind or nature, or require any admission or action or forbearance from action by Owner. The foregoing will in no event prohibit Manager from otherwise settling any Claims for and on behalf of itself (or its Affiliates) or on behalf of any other Hotel managed by Manager or its Affiliates.

(d) It is understood and agreed by Manager that if Owner or any Owner Party is made a defendant in any Claim for which it is entitled to be indemnified pursuant to this Section 13.14, and Manager fails or refuses to assume the defense thereof (subject to the GWCCA Defense Limitations and Rights set forth in Section 13.14.2(b)), after having received notice by Owner or any Owner Party of its obligation hereunder to do so, Owner or said Owner Party may compromise or settle or defend any such Claim, and Manager shall be bound and obligated to reimburse Owner and/or said Owner Party for the amount expended by Owner and/or Owner Party in settling and compromising any such Claim, or for the amount expended by Owner and/or any Owner Party in paying any

judgment rendered therein, together with all reasonable attorneys' fees incurred by Owner and/or any Owner Party for defense or settlement of such Claim. Owner and/or Owner Party use reasonable efforts and business judgment when compromising, settling or defending such claim. Any judgment rendered against Owner and/or any Owner Party or amount expended by Owner and/or any Owner Party in compromising or settling such Claim shall be conclusive as determining the amount for which Manager is liable to reimburse Owner and/or any Owner Party hereunder so long as Owner and/or Owner Party (as applicable) used reasonable efforts and business judgment when compromising, settling or defending such claim. To the extent that Owner and/or any Owner Party has the right to, and in fact does, assume the defense of such Claim pursuant to this clause (d), Owner and/or each other Owner Party shall have the right, at its expense, to employ independent legal counsel in connection with any Claim, and Manager shall cooperate with such counsel in all reasonable respects at no cost to Owner or any Owner Party.

13.14.4 Survival/Insurance Proceeds. The obligations contained in this Section 13.14 will survive the expiration or earlier termination of this Agreement but only with respect to an event that may give rise to a Claim that in turn gives rise to a right of indemnification under this Section 13.14 and which such event occurs prior to such expiration or termination. Notwithstanding any contrary provision of this Section 13.14, Owner and Manager mutually agree for the benefit of each other to look first to the appropriate insurance coverages in effect pursuant to this Agreement in the event any Claim or liability occurs as a result of injury to person or damage to property, regardless of the cause of such Claim or liability.

13.15 Force Majeure Events. If, at any time during the Operating Term, Owner or Manager is unable to perform its obligations under this Agreement due to a Force Majeure Event, or if it becomes necessary, in the reasonable opinion of either Owner or Manager (with the understanding that if the situation is not an Emergency), to cease operation of the Hotel in order to protect the Hotel and/or the health, safety and welfare of the guests and/or employees of the Hotel due to the occurrence of a Force Majeure Event, then Manager may, and Owner may direct Manager to, close and cease or partially cease operation of all or any part of the Hotel as necessary based on the occurrence of the Force Majeure Event, reopening and recommencing operation of the Hotel when Manager and Owner deem that the re-opening and re-commencement of operations may be done pursuant to applicable Legal Requirements and without jeopardy to the Hotel, its guests or Hotel Personnel. Except as otherwise expressly provided in this Agreement, the time within which a Party is required to perform an obligation (other than the payment of money) shall be extended for a period of time equivalent to the period of delay caused by a Force Majeure Event.

13.16 Successors and Assigns. Subject to the provisions of Articles 6 and 9, this Agreement shall inure to the benefit of and shall be binding on the successors and assigns of the Parties, and the terms "**Owner**" and "**Manager**" as used in this Agreement shall include all permitted successors and assigns of the original Parties.

13.17 Estoppel Certificates. On request at any time and from time to time during the Operating Term (but no more than twice in any Operating Year or in connection with a financing of the Hotel), either Party shall execute, acknowledge, and deliver to the other Party within twenty (20) days following such Party's receipt of written request therefor, a certificate: (a)



certifying that this Agreement has not been modified in writing and is in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and specifying the modifications), (b) stating whether, to the best knowledge of the signatory of such certificate, any Event of Default exists, and if so, specifying each Event of Default of which the signatory may have knowledge; and (c) providing any additional information and statements reasonably requested; provided, however, that in no event shall Manager be required to agree to any modifications or waivers with respect to this Agreement or other agreements in effect between the Parties.

13.18 Entire Agreement. Subject to Section 6.2.2 herein, this Agreement, the applicable surviving provisions of the Technical Services Agreement, the Pre-Opening Services Agreement and the Room Block Agreement constitutes the entire written contract between the Parties relating to the operation of the Hotel and supersedes all prior contracts and understandings, written or oral. To the extent any provision of this Agreement is inconsistent with the Room Block Agreement, the Room Block Agreement shall control. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to the execution of this Agreement except as expressly stated in this Agreement.

13.19 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

13.20 Relationship of the Parties. Manager and Owner acknowledge and agree that this Agreement creates an independent contractor relationship, with certain agency rights specifically set forth herein; provided that, (a) Manager's authority is subject to the terms and conditions of this Agreement, and (b) nothing contained in this Agreement shall create an agency coupled with an interest. Nothing contained in this Agreement shall constitute, or be construed to be or to create, a partnership, joint venture, or lease between Manager and Owner with respect to the Hotel or the operation thereof. This Agreement shall not be construed at any time to be an interest in real estate or a lien or security interest of any nature against the Hotel, the Hotel or any other land used in connection with the Hotel, or any equipment, fixtures, inventory, motor vehicles, contracts, documents, accounts, notes, drafts, acceptances, instruments, chattel paper, general intangibles or other personal property now existing or that may hereafter be acquired or entered into with respect to the Hotel or the operation thereof. Notwithstanding anything to the contrary in this Agreement or otherwise, in no event shall Manager have any right to bind Owner except as expressly set forth in this Agreement. Owner acknowledges that Manager operates Other Managed Hotels that may be competitive to the Hotel.

13.21 Limitations on Fiduciary Duties. To the extent any agency relationship between the Parties does exist, the following provisions shall apply:

13.21.1 This Agreement shall be interpreted in accordance with general principles of contract interpretation without regard to the common law principles of agency (except as expressly provided for in this Agreement), and shall establish and create only duties and obligations enforceable against the parties. It is the intent and desire of the parties that any

liability between them shall be based solely on principles of contract law and the express provisions of this Agreement. To the extent any duties, fiduciary or otherwise, that exist or may be implied for any reason whatsoever, including those resulting from the relationship between the parties, and including all duties of loyalty, good faith, fair dealing, care, full disclosure, or any other duty deemed to exist under the common law principles of agency or otherwise, but specifically excluding Corporate Personnel's handling of Owner's funds and the covenant of good faith and fair dealing (unless the Agreement specifically states that a party may perform a duty or obligation in that party's sole discretion) (collectively, the "Implied Fiduciary Duties"), are inconsistent with, or would have the effect of modifying, limiting or restricting, the express provisions of this Agreement, the terms of this Agreement prevail.

13.21.2 For purposes of assessing Manager's duties and obligations under this Agreement, and subject to Section 13.21.1, the parties acknowledge that the terms and provisions of this Agreement and the duties and obligations set out in this Agreement are intended to satisfy any fiduciary duties which may exist between the parties. The parties also hereby unconditionally and irrevocably waive and release any right, power or privilege either may have to claim or receive from the other party any punitive, exemplary, statutory, or treble damages or any incidental or consequential damages with respect to any breach of the Implied Fiduciary Duties. Furthermore, Owner specifically consents to all transactions and conduct by Manager and its Affiliates described in this Agreement, including those set out below, and waives any Implied Fiduciary Duties which Manager may owe to Owner now, or which may arise in the future, in connection with such transactions or conduct.

13.21.2.1 Except as provided in Section 13.25, Manager and its Affiliates may establish or engage in any business of any kind or participate in any investment of any kind, whether using any of the Trademarks or any of the other proprietary information of Manager, at any location, in Manager's sole discretion. Furthermore, Manager and its Affiliates may exercise such rights even though these businesses or investments may directly or indirectly compete with the Hotel, with Owner or its Affiliates, or with any other business or investment of Owner or its Affiliates.

13.21.2.2 Subject to Section 2.27.3, Manager may elect to use the services of its Affiliates in fulfilling its obligations under this Agreement, as specifically described in this Agreement.

13.21.2.3 Subject to Section 2.24, Manager and its Affiliates may receive the fees, charges and reimbursements specifically described in this Agreement in connection with the provision of its management services and its Centralized Services to the Hotel and for other properties operated, managed, licensed or owned by Manager or its Affiliates.

13.21.2.4 Subject to Section 2.27, Manager and its Affiliates may receive the payments, fees, commissions and reimbursements from vendors in connection with Manager's purchasing services described in this Agreement for the Hotel and for other properties operated, managed, licensed or owned by Manager or its Affiliates.

13.21.2.5 Manager and its Affiliates may use the Hotel Guest Data in any manner; however, Owner's use of the Hotel Guest Data is restricted during the and after the Term as described in this Agreement.

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

13.21.2.7 Subject to Section 2.10, Manager is permitted to institute, prosecute and settle the legal actions or proceedings described in this Agreement, in its name or in the name of Owner, as described in this Agreement.

13.21.2.8 Subject to Section 2.23, Manager has the right to determine all Hotel Personnel policies, including transferring Hotel Personnel of the Hotel to other properties owned, operated or licensed by Manager from time to time.

13.21.2.9 Subject to Section 2.23.4, Manager has the authority to negotiate and make agreement with any labor unions and enter into or amend or modify in any material respect any collective bargaining agreements with labor unions in connection with the Hotel, as described in this Agreement.

Owner acknowledges and agrees that its consent to the transactions and conduct by Manager described in this Agreement, including those specifically set out above, and its waiver of any Implied Fiduciary Duties otherwise owed by Manager: (i) has been obtained by Manager in good faith; (ii) is made knowingly by Owner based on its adequate informed judgment as a sophisticated party after seeking the advice of competent and informed counsel; and (iii) arises from the Owner's knowledge and understanding of the specific transactions and actions or inactions of operators that are normal, customary, and reasonably expected in the hotel industry generally, and also arises from those specific transactions and action or inactions of Manager that are normal, customary and reasonably expected by Owner under this Agreement (the "Customary Actions").

Manager Initials	Owner Initials

13.22 Confidentiality/Georgia Open Records Laws.

13.22.1 Subject to Sections 13.22.2 and 13.22.3 of this Agreement and any disclosure required pursuant to the Indenture or pursuant to any applicable Legal Requirement, each Party agrees to keep confidential all information of a proprietary or confidential nature about or belonging to the other Party to which the other Party gains or has access by virtue of the

relationship between the Parties. Manager has familiarized itself with the Georgia Open Records Act (O.C.G.A. § 50-18-70, et seq.) and the Georgia Open Meetings Act (O.C.G.A. § 50-14-1, et seq.) (collectively, the “**Open Government Laws**”) applicable to the issues of confidentiality and public information. The Owner will advise Manager as to the nature or content of documents entitled to protection from disclosure under the Open Government Laws, as to the interpretation of such laws, or as to definition of “confidential” or “proprietary” as such terms are used under the Open Government Laws or other applicable provisions of law. However, the Owner will review and give reasonable (albeit non-binding) consideration to Manager’s designation of any correspondence, emails, plans, business records or reports, exhibits, photographs, reports, printed material, tapes, electronic discs, and other graphic and visual aids submitted to the Owner during the advancement of the Hotel as confidential or proprietary (the “**Confidential Material**”). Manager shall be solely responsible for clearly identifying and labeling as “Confidential” or “Proprietary” any such Confidential Material (including, if requested by Owner, submission of an affirmative affidavit regarding such confidential and/or proprietary information) which it asserts is exempt from disclosure under Section 50-18-72 of the Open Government Laws or any other applicable law. However, Manager is advised that such designations on any such Confidential Material shall not be binding on the Owner or determinative of any issue relating to confidentiality. Blanket “Confidential” and “Proprietary” designations by Manager are strongly discouraged. In no event shall the Owner or any of its agents, representatives, consultants, directors, officers or employees be liable to Manager for the disclosure of all or a portion of any such Confidential Material or other information pursuant to a request under the Open Government Laws. If the Owner receives a request for public disclosure of all or any portion of any Confidential Material identified as “Confidential” or “Proprietary” by Manager in connection with Hotel, the Owner will promptly notify Manager of the request in sufficient time to allow Manager to review such request and take whatever action it shall deem appropriate to protect any such Confidential Material; *provided, however*, Manager shall bear the sole responsibility for the costs and expenses of all such actions. Among others, Manager may seek a protective order or other appropriate remedy. If the Owner determines in good faith that the Confidential Material identified as “Confidential” or “Proprietary” is not exempt from disclosure under the Open Government Laws, then, unless otherwise ordered by a court of competent jurisdiction, the Owner will release the requested information. In the absence of a protective or other similar order rendered by a court of competent jurisdiction, the Owner shall make the final determination regarding whether the requested Confidential Material is to be disclosed or withheld. Subject to applicable law (including the Open Government Laws) and to Subsections 13.22.2 and 13.22.3 above, each Party agrees that it will hold in confidence and not disclose to any third party any and all information of the other Party that it obtains in connection with the financing, construction, development and operation of the Hotel and will not disclose, publish or make use of such information for any purpose other than as contemplated by this Agreement without the prior written consent of such Party; provided, however, that Manager and its Affiliates may use information obtained through the operation of the Hotel in the operation of other hotels provided that such use is not to Owner’s material detriment. The obligation of the Parties under this Subsection 13.22.5 will not (i) restrict a Party from making any information available to any of its advisers who have been advised of the confidential nature of such information and agree to maintain its confidentiality or (ii) apply to any information that is on the date hereof or hereafter becomes publicly known and in the public domain through means that do not involve a breach by any Party of this Agreement. The obligations set forth in this Section

13.22 shall survive any Termination of this Agreement following such Termination. In addition (subject to the exceptions set forth above), Manager shall not disclose any specific information regarding financial performance of the Hotel (i.e., occupancy, average daily rate, Gross Operating Profit, etc.) to any third party, except Smith Travel Research (STAR Report) unless approved in writing by Owner. Owner and Manager shall cooperate with one another on all public statements, whether written or oral and no matter how disseminated, regarding their contractual relationship as set forth in this Agreement or the performance of their respective obligations under this Agreement.

13.22.7 Open Records Information. If Manager receives a request under the Georgia Open Records Act pertaining to the Hotel, Manager will promptly inform Owner thereof.

13.22.8 Certain Permitted Disclosures. Notwithstanding anything to the contrary in the foregoing, this Agreement, and any and all of the terms and conditions herein and therein, may be disclosed to investors and potential investors in connection with any, financing or sale of the Hotel, including without limitation to potential Bondholders and their legal counsel and other representatives reviewing this Agreement on their behalf (provided, however, that any descriptions of this Agreement set forth in an prospectus or offering memorandum shall be subject to Manager's review and approval), and in connection with any due diligence review conducted by a financial institution as a part of a financial restructuring, reorganization, merger, consolidation, purchase or sale of assets involving Manager or any of its Affiliates. Owner and Manager shall make every effort to ensure that such information is not disclosed to the press or to any other third person without the prior consent of the other Party.

13.23 Limitation on Pledging Owner's Credit. Except as is necessary or advisable for the purchase of goods and services or the extension of credit to customers in the ordinary course of business in the operation and management of the Hotel within the scope of this Agreement, Manager shall not borrow any money or execute any credit obligation in the name and on behalf of Owner or pledge the credit of Owner, without Owner's prior written and express consent.

13.24 Exculpation. None of Owner's Affiliates, officers, directors, employees or agents of the same, nor any of their respective heirs, administrators, executors, personal representatives, successors and assigns, shall have any personal liability or other personal obligation with respect to any payment, performance or observance of any amount, obligation, or liability to be paid, performed or observed under this Agreement or any of the representations, warranties, covenants, indemnifications or other undertakings of Owner hereunder and, except as otherwise expressly provided in this Agreement or the provisions of any Assignment and Subordination of Management Agreement between Manager and Trustee, Manager agrees it shall not seek to obtain a money judgment against Trustee, Bondholders or Affiliates of any thereof, or against any officer, director, employee or agent of the same, or against any of their respective heirs, administrators, executors, personal representatives, successors or assigns.

13.25 Restricted Areas.

13.25.1 Until the expiration or prior Termination of this Agreement, and as a material inducement to Owner entering into this Agreement, Manager and its Affiliates shall not,

without the prior written consent of Owner, open (whether by ownership, lease, operation, management, license or franchise) a Brand Name hotel within the City of Atlanta (as such boundaries of the City of Atlanta are in effect as of the Effective Date and is shown on Exhibit [ ]) (the “**First Restricted Area**”).

13.25.2 Until the expiration of the 10<sup>th</sup> full Operating Year, and as a material inducement to Owner entering into this Agreement, Manager and its Affiliates shall not, without the prior written consent of Owner, open (whether by ownership, lease, operation, management, license or franchise), any hotel which is operated under the Hilton Brand Name and includes more than 500 rooms or more than 35,000 square feet of meeting space, within a 2-mile radius from the front door of the Hotel as shown on Exhibit [ ] (the “**Second Restricted Area**”).

13.25.3 Until the expiration of the 5<sup>th</sup> full Operating Year, and as a material inducement to Owner entering into this Agreement, Manager and its Affiliates shall not, without the prior written consent of Owner, open (whether by ownership, lease, operation, management, license or franchise), a Restricted Hotel within a 2.5-mile radius from the front door of the Hotel as shown on Exhibit [ ] (the “**Third Restricted Area**”, and together with the First Restricted Area and Second Restricted Area, the “**Restricted Areas**”).

13.25.4 Notwithstanding the foregoing, in the event that the existing Hilton Downtown Atlanta is no longer operated, licensed or franchised by Manager or any of its Affiliates under the Hilton brand, the foregoing will not preclude Manager or its Affiliates from replacing such hotel with one or more hotels operating under the Hilton Brand Name (provided that the aggregate room count of such replacement Hilton branded hotels will not exceed the number of rooms in the Hilton Downtown Atlanta as of the Effective Date) within the Second Restricted Area or Third Restricted Area, as applicable, at any time, provided, that such replacement Hilton Brand Name hotel or hotels are not located within a 3,600-foot radius from the front door of the Hotel as shown on Exhibit [ ].

13.25.5 The foregoing restriction shall not apply to (a) shared ownership properties commonly known as vacation ownership or timeshare ownership (or similar real estate projects), (b) extended stay product lines which would be non-competitive with the Hotel or (c) gaming oriented hotels or facilities.

13.25.6 The foregoing restriction shall not prohibit Manager or its Affiliates from entering into agreements to construct, own, lease, operate, manage, license or franchise a Restricted Hotel within the Restricted Areas as long as such other hotel does not open as a Restricted Hotel during within such Restricted Area during the restriction period.

13.26 **Interest**. Except as otherwise specifically provided herein to the contrary, any and all amounts that may become due from one Party to the other under this Agreement (including, but not limited to, any obligation of Owner to pay interest on any unpaid Management Fee) shall bear interest from and after the respective due dates thereof (but in no event earlier than date upon which the Party making the claim for payment notifies the other Party thereof) until the date on which the amount is received in the designated bank account, at an annual rate of interest equal to the rate as specifically set forth herein related to such overdue amount, or if none is specified, then at the prevailing lending rate of the primary bank at which the Hotel maintains its

accounts plus three percent (3%); provided that no interest shall be payable on amounts owed by Owner to Manager which Manager is authorized to pay directly to itself under the terms of this Agreement (unless there are insufficient funds in the applicable account(s) therefore and Owner has failed to provide adequate funds following request by Manager in accordance with this Agreement). In no event will Owner be entitled to pay or charge interest in excess of any statutory limitations on interest applicable to Owner.

13.27 Further Assurance. The Parties shall do and procure to be done all such acts, matters and things and shall execute and deliver all such documents and instruments as shall be required to enable the Parties to perform their respective obligations under, and to give effect to the transactions contemplated by, this Agreement. Owner hereby consents to the execution and delivery by Owner and Manager of this Agreement.

13.28 Third Parties. Except as provided in this Section, none of the obligations hereunder of either party shall run to or be enforceable by any party other than the party to this Agreement or by a party deriving rights hereunder as a result of an assignment permitted pursuant to the terms hereof. Trustee shall have the right to enforce its rights hereunder and exercise any rights it has with respect to the Hotel under the Indenture to the extent set forth in any Assignment and Subordination of Management Agreement reasonably approved by Manager; provided that other than as expressly provided herein or as set forth in any Assignment and Subordination of Management Agreement, Trustee shall have no additional or different rights than Owner has hereunder. Manager acknowledges that Trustee has certain approval rights to the consents, approvals and other actions by Owner in this Agreement.

13.29 Sale of Securities. In the event Owner, or any person controlling Owner (a "**Controlling Person**") shall, at any time or from time to time, sell or offer to sell, any securities (including the Bonds) issued by Owner, Owner shall clearly disclose to all purchasers and offerors that (i) neither Manager nor any of its Affiliates or their respective officers, directors, agents or employees shall in any way be deemed an issuer or underwriter of said securities and that (ii) Manager or its Affiliates and said officers, directors, agents and employees shall not have any liability whatsoever arising out of or relating to any financial statements, prospectuses or other financial information contained in any prospectus or similar written or oral communication other than that which pertains to Manager and/or its operation. Manager shall cooperate in providing adequate disclosure regarding it in such prospectus. Owner shall obtain Manager's advance approval for any description of Manager, or any description of this Agreement or of Owner's relationship with Manager hereunder, contained in any prospectus or similar communication to be delivered in connection with the sale or offer by Owner or any Controlling Person of any securities. Manager may condition its approval upon changes in such descriptions prior to the delivery therefor to any prospective purchaser; any such descriptive materials, and any changes therein, shall be submitted to Manager at least thirty days in advance of the proposed usage in connection with a sale or offer of securities. All terms used in this Section 13.29 shall have the same meaning as in the Securities Act of 1933, as amended.

13.30 Survivability. The indemnity, hold harmless and defense obligations contained in this Agreement, as well as any provision that by its nature requires performance after Termination of this Agreement, shall survive the Termination of this Agreement.

13.31 Delivery of Information for Approvals Generally. With respect to approvals to be obtained from either Owner or Manager hereunder, the applicable time period within which the party receiving the request (the “**Receiving Party**”) is required to give its approval or disapproval shall not commence until after the Receiving Party has received (i) a written request for its approval, which shall expressly set forth all items (with specificity) for which the Receiving Party’s approval is requested and (ii) all reasonable information that the Receiving Party has requested in order to deliver its approval or disapproval.

13.32 Anti-Bribery Laws.

13.32.1 Owner and its Affiliates, subsidiaries, directors, officers, employees, representatives, consultants, agents and all other persons having a Controlling Interest in Owner or otherwise acting on its behalf (collectively, the “Owner Interested Parties”) shall, in connection with activities associated with this Agreement, comply with any applicable anti-corruption laws, including but not limited to, the U.S. Foreign Corrupt Practices Act, and the U.K. Bribery Act (collectively, the “Anti-Corruption Laws”). In connection with any aspect of this Agreement, Owner represents, warrants and covenants, on a continuing basis, that neither Owner nor any Owner Interested Party shall take any action, directly or indirectly, that would be reasonably likely to result in a violation of the Anti-Corruption Laws by Owner or Manager, including, without limitation, making, offering, authorizing, or promising any payment, contribution, gift, business courtesy, bribe, rebate, kickback, or giving of any other thing of value, regardless of form or amount, to any (a) foreign or domestic Government Official, (b) employee of a foreign or domestic government-owned or government-controlled entity, (c) foreign or domestic political party, political official, or candidate for political office, or (d) any officer or employee of a public international organization, to obtain a competitive advantage for any party or to receive favorable treatment in obtaining or retaining business. Owner shall ensure, on behalf of themselves and their respective Owner Interested Parties, that any of its respective Owner Interested Parties who may be considered a Government Official (other than an Owner Interested Party who owns a non-controlling direct or indirect interest through publicly traded shares) do not improperly use their status or position to influence official actions or decisions or to secure improper advantages to or for the benefit of the Hotel or Manager and do not directly or indirectly make, offer to make, or authorize any improper payment or engage in acts or transactions otherwise in violation of any Anti-Corruption Laws. Should Owner learn that conduct has or may have occurred in violation of this provision, it will immediately notify Manager.

13.32.2 Manager and its subsidiaries, directors, officers, employees, representatives, consultants, agents and all other Affiliates of Manager having a controlling interest in Manager or otherwise acting on its behalf (collectively, the “Manager Interested Parties”) shall, in connection with activities associated with this Agreement, comply with any applicable Anti-Corruption Laws. In connection with any aspect of this Agreement, Manager represents, warrants and covenants, on a continuing basis, that neither Manager nor any Manager Interested Party shall take any action, directly or indirectly, that would be reasonably likely to result in a violation of the Anti-Corruption Laws by Owner or Manager, including, without limitation, making, offering, authorizing, or promising any payment, contribution, gift, business courtesy, bribe, rebate, kickback, or giving of any other thing of value, regardless of form or amount, to any (a) foreign or domestic Government Official, (b) employee of a foreign or



domestic government-owned or government-controlled entity, (c) foreign or domestic political party, political official, or candidate for political office, or (d) any officer or employee of a public international organization, to obtain a competitive advantage for any party or to receive favorable treatment in obtaining or retaining business. Manager shall ensure, on behalf of themselves and their respective Manager Interested Parties, that any of its respective Manager Interested Parties who may be considered a Government Official (other than a Manager Interested Party who owns a non-controlling direct or indirect interest through publicly traded shares) do not improperly use their status or position to influence official actions or decisions or to secure improper advantages to or for the benefit of the Hotel and do not directly or indirectly make, offer to make, or authorize any improper payment or engage in acts or transactions otherwise in violation of any Anti-Corruption Laws. Should Manager learn that conduct has or may have occurred in violation of this provision, it will immediately notify Owner.

13.32.3 Owner represents, warrants and covenants, on a continuing basis, to Manager that funds received or paid in connection with entry into or performance of this Agreement have not been and will not be derived from or commingled with the proceeds of any activities that are proscribed and punishable under the criminal laws of the United States and that it is not engaging in this transaction in furtherance of a criminal act, including acts in violation of applicable Anti-Corruption Laws. Should Owner learn that conduct has or may have occurred in violation of this provision, it will immediately notify Manager.

13.32.4 Manager represents, warrants and covenants, on a continuing basis, to Owner that funds received or paid in connection with entry into or performance of this Agreement have not been and will not be derived from or commingled with the proceeds of any activities that are proscribed and punishable under the criminal laws of the United States and that it is not engaging in this transaction in furtherance of a criminal act, including acts in violation of applicable Anti-Corruption Laws. Should Manager learn that conduct has or may have occurred in violation of this provision, it will immediately notify Owner.

13.32.5 In the event that Manager has any basis for a reasonable belief that Owner may not be in compliance with any of the foregoing representations, warranties, covenants, undertakings, obligations or conditions set forth in this Section 13.32, Manager shall advise Owner of such belief and Owner shall cooperate with any and all reasonable information and other documentation requests, including requests for execution of certificates of compliance, and inquiries in connection therewith, and shall permit inspection at all reasonable times and upon reasonable prior notice of books and records pertaining to development, ownership and use of the Hotel.

13.32.6 In the event that Owner has any basis for a reasonable belief that Manager may not be in compliance with any of the foregoing representations, warranties, covenants, undertakings, obligations or conditions set forth in this Section 13.32, Owner shall advise Manager of such belief and Manager shall cooperate with any and all reasonable information and other documentation requests, including requests for execution of certificates of compliance, and inquiries in connection therewith, and shall permit inspection at all reasonable times and upon reasonable prior notice of books and records pertaining to development, ownership and use of the Hotel.

### 13.33 Blocked Persons or Entities.

13.33.1 Owner represents and warrants to Manager that, as of the date of this Agreement, to Owner's knowledge: (i) neither Owner (including its directors and officers) nor any of its Affiliates is a Specially Designated National or Blocked Person; (ii) neither Owner nor any of its Affiliates is directly or indirectly owned or controlled by the government of any country that is subject to an embargo or economic or trade sanctions by the United States government; (iii) neither Owner nor any of its Affiliates is acting on behalf of a government of any country that is subject to such an embargo; and (iv) neither Owner nor any of its Affiliates is involved in business arrangements or otherwise engaged in transactions with countries subject to economic or trade sanctions imposed by the United States government. Owner shall notify Manager in writing immediately upon becoming aware of the occurrence of any event which renders the foregoing representations and warranties of this paragraph incorrect.

13.33.2 Manager represents and warrants to Owner that, as of the date of this Agreement, to Manager's knowledge: (i) neither Manager (including its directors and officers) nor any of its Affiliates is a Specially Designated National or Blocked Person; (ii) neither Manager nor any of its Affiliates is directly or indirectly owned or controlled by the government of any country that is subject to an embargo or economic or trade sanctions by the United States government; (iii) neither Manager nor any of its Affiliates is acting on behalf of a government of any country that is subject to such an embargo; and (iv) neither Manager nor any of its Affiliates is involved in business arrangements or otherwise engaged in transactions with countries subject to economic or trade sanctions imposed by the United States government. Manager shall notify Owner in writing immediately upon becoming aware of the occurrence of any event which renders the foregoing representations and warranties of this paragraph incorrect.

13.33.3 Notwithstanding anything to the contrary in this Agreement, Owner shall not permit the direct or indirect transfer of Owner's interest in the Hotel or in this Agreement, or any direct or indirect ownership interest in Owner, the result of which is that either (i) the Owner becomes a Specially Designated National or Blocked Person, or (ii) a Specially Designated National or Blocked Person owns either a twenty-five percent (25%) or more direct or indirect ownership interest, or a direct or indirect Controlling Interest, in the Hotel, Owner or Owner's interest in this Agreement.

13.33.4 Notwithstanding anything to the contrary in this Agreement, Manager shall not permit the direct or indirect transfer of Manager's interest in this Agreement or any direct or indirect ownership interest in Manager, the result of which is that either (i) the Manager becomes a Specially Designated National or Blocked Person, or (ii) a Specially Designated National or Blocked Person owns either a twenty-five percent (25%) or more direct or indirect ownership interest, or a direct or indirect Controlling Interest, in Manager or Manager's interest in this Agreement.

13.34 Exhibits. The Exhibits which are attached to this Agreement and made a part of this Agreement for all purposes are as follows: **[NTD: ALL EXHIBITS TO BE CONFIRMED AND ATTACHED AND REMAIN SUBJECT TO REVIEW AND APPROVAL OF ALL PARTIES.]**

Exhibit A	--	Master Glossary of Terms
Exhibit B	--	Legal Description of the Site
Exhibit C	--	Hotel Development Agreement
Exhibit D	--	Preliminary Plans and Specifications
Exhibit E	--	Cash Management Agreement
Exhibit F	--	Current Format of Proposed Operating Plan and Budget
Exhibit G	--	Reserved
Exhibit H	--	Hotel Consultant Evaluation Criteria Exhibit
Exhibit I	--	Reserved
Exhibit J	--	Annual Chief Financial Officer Certificate re Centralized Services
Exhibit K	--	EBO Plan
Exhibit L	--	Reserved
Exhibit M	--	Reserved
Exhibit N	--	Reserved
Exhibit O	--	List of Insurance and Insurance Requirements (including subrogation provisions)
Exhibit P	--	Reserved
Exhibit Q	--	Room Block Agreement
Exhibit R	--	Manager's and Owner's Representatives on Committee
Exhibit S	--	Reserved
Exhibit T	--	Reserved
Exhibit U	--	Reserved
Exhibit V	--	Reserved
Exhibit W	--	Reserved
Exhibit X		Independent Accountant's Certificate (Group Services Fees and Charges)
Exhibit Y		Reserved
Exhibit Z		Reserved
Exhibit AA		Reserved
Exhibit BB		Reserved
Exhibit CC		Reserved
Exhibit DD		Owner's Mark(s)
Exhibit EE		Group Booking Addendum
Exhibit [ ]		First Restricted Area
Exhibit [ ]		Second Restricted Area
Exhibit [ ]		Third Restricted Area
Attachment 1		Metrics

13.35 Amendments to Indenture. At least fifteen (15) Business Days prior to agreeing to any amendment to the Indenture or other Bond Documents, Owner will deliver to Manager copies thereof. Owner will not agree to any provision in any such amendment if in the reasonable opinion of Manager delivered within fifteen (15) Business Days after the receipt of the proposed amendments to the Indenture and other Bond Documents such amendments will have the effect of imposing additional material obligations or any economic burdens on Manager

or otherwise materially modify Manager's rights or obligations, without Manager's prior written consent which consent may not be unreasonably withheld.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

**MANAGER:**

**SIGNIA HOTEL MANAGEMENT LLC**

**By: Hilton Domestic Operating Company Inc., as  
“Operator”**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**OWNER:**

**GEO. L. SMITH II GEORGIA WORLD  
CONGRESS CENTER AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**  
**Master Glossary of Terms**

**[NTD: TO BE FURTHER REVISED AS APPROPRIATE TO CONFORM TO DEFINITIONS IN INDENTURE, TSA AND FINAL VERSION OF THIS AGREEMENT.]**

**[NOTE: BC TO PROVIDE “MASTER GLOSSARY” FOR ALL DOCUMENTS.]**

As used throughout this Agreement and the attached Exhibits, the following terms shall have the respective meanings set forth below, such definitions to be applicable equally to the singular and plural forms, and to the masculine and feminine forms, of such terms:

Account or Accounts — means any one or more of the accounts from time to time created in any of the Funds established by the Indenture or by any Supplemental Indenture.

Additional Invested Capital – means all additional funds advanced or invested by Owner from time to time throughout the Term for: (i) capital improvements, replacements and refurbishments to the Hotel (including FF&E) that are not funded from Senior FF&E Reserve Fund, and Subordinate FF&E Reserve Fund, Operating Expenses Reserve Fund, Lockbox Fund, Clearing Bank Accounts, Surplus Revenue Fund, Supplemental Reserve Fund or any other Fund created pursuant to the terms of the Indenture, (ii) contributions to the Senior FF&E Reserve Fund, or Subordinate FF&E Reserve Fund in excess of the required amounts set forth herein, and (iii) additional working capital contributed by Owner from funds (other than from Total Operating Revenues or funds in any of the Funds established pursuant to the Indenture, the Lockbox Fund or Clearing Bank Accounts) in excess of the Initial Working Capital Amount funded pursuant to Section 3.6.

Additional Mortgage Debt Service Coverage – the ratio of EBITDA Less Replacement Reserve to total interest and principal payable under a Mortgage over a given time period.

Administrative Expenses — means (i) the reasonable fees and expenses of the Trustee and Owner, paid in accordance with the Indenture and directly relating to the Hotel which amount shall be capped at \$25,000 per year, plus (ii) the LOC Fee.

Affiliate or Affiliates — means, with respect to Manager and Owner as of the relevant date in question, any other Person directly or indirectly controlling, controlled by, or under common control with Manager or Owner, as the case may be, and any Person directly or indirectly controlling, controlled by or under common control with such entities. The term “**control**” (including “**controls**,” “**controlled by**,” and “**under common control with**”) shall mean the ability through ownership, direct or indirect, of voting stock or other equity interests, to direct or cause the direction of the management and policies of a person, partnership, corporation, limited liability company or other entity. Without limiting the generality of the foregoing, Affiliate shall include (a) any Person which beneficially owns or holds fifty percent (50%) or more of any class of voting securities of such designated Person or fifty percent (50%) or more of the equity interest in such designated Person and (b) any Person of which such designated Person beneficially owns or holds fifty percent (50%) or more of any class of voting

securities or in which such designated Person beneficially owns or holds fifty percent (50%) or more of the equity interest. Notwithstanding the foregoing, an Affiliate or Affiliates of Manager shall refer only to subsidiaries owned more than 50% (directly or indirectly) ,or controlled by, Hilton Worldwide Holdings, Inc. (or its successor or assign). Under no circumstances shall the Trustee or any Bondholder be deemed to be an Affiliate of the Owner.

Agreement -- has the meaning set forth in the preamble.

Anti-Corruption Laws – has the meaning assigned to it in Section 13.32.1.

Approvals – means licenses, approvals, permits, authorizations, registrations, and the like required by any governmental or regulatory organization or unit having jurisdiction over Owner or the Hotel.

Approved Operating Plan and Budget — means the annual marketing and operating plan and proposed budget for the Hotel prepared by Manager and approved by Owner in accordance with the terms of Section 2.20 of the Agreement.

Approved Plans — means the plans and specifications approved by Signia Hotel Management LLC pursuant to the terms of the Technical Services Agreement.

Assignment and Subordination of Management Agreement - means the agreement of that name among the Authority, the Trustee and the Manager, pursuant to which the Authority has collaterally assigned to the Trustee certain of its rights under this Agreement.

Available Casualty/Condemnation Amounts — has the meaning set forth in Section 7.1.1 of the Agreement.

Bankruptcy Code — means the Bankruptcy Reform Act of 1978, as amended, from time to time, and codified at title 11 of the United States Code.

Base Management Fee — has the meaning assigned to in Section 3.1.2.1 of the Agreement.

Bond or Bonds — means any bonds issued by the Owner pursuant to the Indenture, and any refunding bonds issued by the Owner in replacement of all or any of the Bonds.

Bond Counsel — shall mean King & Spalding LLP, or such other legal counsel as is designated by Owner for the purposes described in this Agreement.

Bond Documents — shall mean the Indenture, the Cash Management Agreement, Assignment and Subordination of Management Agreement and any other agreement relating to the Bonds and any agreements relating to any other Bonds.

Bondholder -- means the person in whose name any of the Bonds are registered on the books kept and maintained by the Trustee as bond registrar.

Brand Name – The Brand Name will be “Signia by Hilton”, as that name is used to identify the chain of hotels operated under the Brand Standards. The Brand Name does not mean Hilton Worldwide Holdings Inc., its Affiliates, or any other brands, product lines, or chains of hotels that include the words “Signia” or “Hilton” as any part of their brand name.

Brand Services – mean the mandatory programs and services provided by Manager and its Affiliates to substantially all hotels (whether owned, operated, leased or franchised) operating under the Brand Name and which are paid for by the Brand Services Fee (including by way of example, central reservations and centralized marketing).

Brand Services Fee – means the fee payable for the Brand Services, as determined by Manager or its Affiliates from time to time. As of the Effective Date, the Brand Services Fee is equal to 4% of Total Rooms Revenue; provided, however, such fee may be increased by Manager or its Affiliates during the Term but by no more than 1%; further, provided, in the event that Manager and its Affiliates reduce the standard Brand Services Fee generally offered to prospective Brand Name hotels in the United States (whether owned, operated, leased or franchised) during an Operating Year to an amount less than the amounts set forth in any applicable Approved Operating Plan and Budget, Manager will reduce the Brand Services Fee to Owner accordingly.

Brand Standards -- has the meaning set forth in Section 2.2 of the Agreement.

Budget — shall mean the Approved Operating Plan and Budget and the Capital Budget for the applicable Operating Year.

Building Systems – any mechanical, electrical, plumbing, heating, ventilating, air conditioning, sanitation, water treatment, sewer treatment and disposal, life safety systems, vertical transportation systems and other similar systems and items of equipment installed in or upon, and affixed to, the Hotel.

Business Day — means a day of the year that is not a Saturday, Sunday, a legal holiday or a day on which commercial banks are not required or authorized to close in the City of Atlanta, Georgia, the City of New York, New York, or the city in which the operations office of the Trustee (with respect to payment of the Bonds) is located.

Business Interruption Account — has the meaning set forth in Section 8.2.2 of the Agreement.

Business Interruption Insurance — means insurance coverage against “Business Interruption and Extra Expense” (as that phrase is used within the United States insurance industry for application to transient lodging facilities).

Business Interruption Proceeds — has the meaning assigned to it in Section 8.2.2 of the Agreement.

Capital Budget — means that portion of the Proposed Operating Plan and Budget setting forth all proposed Capital Improvements and Capital Expenses for the Hotel for the relevant



Operating Year, prepared in accordance with the terms of Section 2.20 of the Agreement, and subject to Owner's approval.

Capital Expense — means any item of expense that, according to the Uniform System and Generally Accepted Accounting Principles, is not properly deducted as a current expense on the books of the Hotel, but rather should be capitalized, including expenses that are capital in nature for any alterations, improvements, replacements and additions to the Hotel Building, the Building Systems and FF&E.

Capital Improvement — means an item of any nature incorporated into the Hotel, the cost of which is a Capital Expense.

Cash Management Agreement — means that certain Cash Management Agreement by and among [ ].

Casualty — shall mean the damage or destruction of the Hotel at any time or times during the Operating Term by fire or other casualty.

Casualty Proceeds — shall mean the proceeds (excluding Business Interruption Proceeds) paid under any casualty and property insurance policy maintained by Manager or Owner with respect to the Hotel, in accordance with the terms of this Agreement, as a result of damage to or destruction of the Hotel arising as a result of a fire or other casualty.

Casualty Restoration — shall have the meaning assigned to it in Section 7.2 of the Agreement.

Centralized Marketing Program — shall mean the marketing and sales program described in Section 2.24.1.1 of the Agreement.

Centralized Services — shall mean the Brand Services, the Other Brand Services and the Management Services.

Centralized Services Fees and Charges — shall mean the sum of the Brand Services Fee, the Other Brand Services Fee and the Management Services Fee.

Certificate of Occupancy — shall mean a certificate or certificates, as applicable, issued by the City that permits full, complete, and permanent beneficial occupancy, operation and use of the Project, without any qualification as to the permanent occupancy, operation and use of the Project and without qualification which would materially and adversely affect the Project or the use or operation thereof.

Certified Financial Statements – means audited financial statements consisting of a balance sheet, a statement of earnings and retained earnings, a statement of cash flows and such other matters as set forth in the Indenture and a certificate of the Independent Accountant to the effect that, subject to any qualifications contained therein, the financial statements fairly present, in conformity with Generally Accepted Accounting Principles, the financial position, results of operations, and cash flows of the Hotel for the Operating Year then ended.

City -- means the City of Atlanta, Georgia, a political subdivision and home-rule municipality of the State of Georgia, principally situated in Fulton County, Georgia.

Claims — has the meaning given it in Section 13.14.1 of the Agreement.

Clearing Bank Account(s) – has the meaning given to it in Section 3.5.1 of the Agreement.

Commencement of Construction – the start of installation of foundation systems necessary for the construction of the Hotel.

Construction Commencement Date – [\_\_\_\_\_]. **[NTD: All dates to be confirmed.]**

Committee — means the policy committee established in accordance with Section 13.9 of the Agreement.

Competitive Set — means the hotels that for any given Operating Year are most comparable to the Hotel in quality, price, geographic market, and target market segments (with due consideration given to age, quality, size, amenities, amount of meeting space and mix of business) and against which the Hotel's performance can most accurately and fairly be measured, initially consisting of the Marriott Marquis Atlanta; Westin Peachtree Plaza Downtown; Hilton Downtown Atlanta; Hyatt Regency Atlanta; and Omni Hotel at CNN Center and subject to changes from time to time in accordance with Section 4.8.4.

Competitor – means a person engaged (or who has publicly announced its intent to engage), directly or indirectly through an Affiliate, in the business of owning, operating, licensing (as licensor), franchising (as franchisor), or managing a hotel brand or lodging system of hotels as the material component of its business activities that are competitive with Manager and its Affiliates' brand hotels.

Concession Agreement – has the meaning given it in Section 2.4.1 of this Agreement.

Condemnation Proceeds — means the proceeds payable in respect of any Taking of all or a portion of the Project.

Conrad Brand Name - "Conrad", as that name is used to identify the chain of hotels operated under the brand standards for Conrad hotels. The Conrad Brand Name does not mean Hilton Worldwide Holdings Inc., its Affiliates, or any other brands, product lines, or chains of hotels that include the words "Conrad" or "Hilton" as any part of their brand name.

Contracts — means all contracts, agreements and licenses entered into by Owner related to the operating of the Hotel pursuant to the terms of this Agreement.

Contract Representative – means the individual(s) employed and designated by Owner, from time to time, to approve and/or execute Contracts on behalf of Owner.

Construction Documents — has the meaning assigned to it in the Hotel Development Agreement.

Continuing Disclosure Agreement -- means the Disclosure Dissemination Agent Agreement, dated as of \_\_\_\_\_, 2020, by and between Owner and Digital Assurance Certification, L.L.C. for the benefit of the holders of the Bonds relating to the obligation of Owner to provide certain continuing disclosure information as required pursuant to Rule 15c2-12 promulgated by the Securities and Exchange Commission.

Controlling Interest - the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Owner, whether through the ownership of voting securities or by contract or otherwise.

Convention Center — has the meaning given it in Recital B of this Agreement.

Corporate Personnel — means any personnel from the corporate or regional offices of Manager and its Affiliates or who are otherwise area supervisors for Manager who perform activities in connection with the services provided by Manager under this Agreement.

Critical Brand Standards – those Brand Standards that concern information technology, fire, health, life of safety and/or security, compliance with Legal Requirements and Hotel operations.

Debt Service — means, for any Debt Service Payment Date, the amount required to pay the principal of (whether pursuant to a stated maturity or redemption requirements applicable thereto) and/or interest on Outstanding Bonds coming due on such Debt Service Payment Date, in accordance with the terms of the Indenture.

Debt Service Coverage Ratios -- means, for any Operating Year, the actual amount of EBITDA Less Replacement Reserve for such Operating Year, as a percentage of the Debt Service payable for such Operating Year.

Debt Service Coverage Requirement -- means, for any Operating Year, a Debt Service Coverage Ratio which is not less than [1.2:1.0] with respect to the outstanding First Tier Bonds and outstanding Second Tier Bonds.

Debt Service Payment Date — means, with respect to the Bonds, \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_, 20\_\_, and with respect to any Refunding Bonds, the date on which principal or interest is due and payable thereon.

Developer — means Drew Company, Inc., a Massachusetts corporation, and any permitted successor or assign under the Hotel Development Agreement.

Direct or Indirect Profit – means any form of compensation, other than for the reasonable and actual costs of providing goods, services, supplies, products or equipment (including carrying costs of facilities) received by Manager or any of its Affiliates in excess of (i) the Management Fee, and (ii) any other direct or indirect compensation to which Manager is entitled under this Agreement, including without limitation, any of the following: (a) amounts in

excess of Manager's Out-of-Pocket Expenses and (b) any mark-up retained by the Manager or its Affiliates for goods or services provided to the Hotel. For purposes of this definition, none of the following shall be considered a Direct or Indirect Profit to Manager and/or its Affiliates:

(a) any payment received from a vendor or other third party for services provided by Manager and/or its Affiliates directly to such vendor or other third party in its ordinary course of business, such as market research, collection of purchasing data or participation in co-marketing or advertising programs with such vendor; provided that such payment for such services is reasonable;

(b) any rebate or other amount received by Manager or its Affiliates which is applied to reduce the cost of Manager's national purchasing operations which reduction in cost is passed through to the Hotel and Other Managed Hotels which are included in such national purchasing operations;

(c) any rebate or other payment received by Manager or its Affiliates which is otherwise available to the Hotel and Other Managed Hotels, without being included in such national purchasing operations, so long as the reduction in cost is allocated in the same manner among such hotels as allocated to the Hotel or any Direct or Indirect Profit derived from such payment is redistributed among such hotels in the same manner as redistributed to the Hotel;

(d) any other reduction in cost or payment to Manager or its Affiliates in the form of cash, goods or services to the extent the Hotel is allocated its proportionate share of such reduction in cost or payment (with the allocation to the Hotel and to Other Managed Hotels determined using the same formula, including fair, reasonable and equitable variables consistently applied or using different formulas for each type of Hotel provided that the use of multiple formulas does not result in the Hotel being allocated a materially disproportionate share of such reduction in cost or payment to Manager or its Affiliates);

(e) any amount which could otherwise be considered Direct or Indirect Profit to Manager or its Affiliates if the Hotel is allocated its proportionate share of such amount in the form of cash, goods, services or a credit (with the allocation to the Hotel and to Other Managed Hotels determined using the same formula, including fair, reasonable and equitable variables consistently applied or using different formulas for each type of Hotel provided that the use of multiple formulas does not result in the Hotel being allocated a materially disproportionate share of such costs);

(f) reserved;

(g) any payment for hotel rooms, food or other services received by any hotel owned in whole or in part or managed by Manager or any of its Affiliates in connection with any meetings or other travel involving representatives of Manager, its Affiliates or the Hotel (i.e. national sales meetings) which payment is paid out of the Services Fees or directly by the Hotel, provided such payment represents a reasonable charge for such

services and is allocated to the Hotel in the same manner as to comparable Other Managed Hotels; and

(h) any increase in the value of any equity investment by Manager or any of its Affiliates in any entity providing goods and/or services to the Hotel.

EBITDA Less Replacement Reserve – shall have the meaning given to such term in the Uniform System; provided, however, that (i) contributions to the Subordinate FF&E Reserve Fund will be disregarded for purposes of calculating EBITDA Less Replacement Reserve and (ii) for purposes of determining whether there is a Performance Termination Event, EBITDA Less Replacement Reserve shall disregard any item that is characterized as an Operating Expense pursuant to clause (b) of the definition of Operating Expenses.<sup>5</sup>

Effective Date — has the meaning ascribed to it in the preamble.

Egregious Manager Event of Default – mean Manager’s failure to keep, observe or perform any material covenant, agreement, term or provision of this Agreement arising from acts of Manager or its Affiliates or the Corporate Personnel of Manager that were fraudulent, malicious or based on a sinister intention to harm or act in bad faith (e.g. (a) an intentional uncured breach by Manager of the Restricted Areas, or (b) the intentional removal of the Hotel from the Manager’s centralized reservation systems in bad faith with the intent to impact the Hotel’s occupancy). The acts or omissions of Hotel Personnel or Owner’s personnel will not be imputed to Manager or its Affiliates for purposes of determining whether an Egregious Manager Event of Default has occurred.

Emergency — means a situation imminently threatening life, health, or safety or imminently threatening serious risk or damage to the Hotel or the Site.

Emergency Expenses — mean the expenses incurred to remove the existence of an Emergency.

Employee Termination Notice Requirements - any obligation under federal, state or local law to give advance notice of employment termination, including obligations under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §2101 *et seq.*, as amended, and any similar federal or state statute

Environmental Laws – means, collectively, (1) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 *et. Seq.*, as amended, (2) the regulations promulgated thereunder, from time to time, (3) all federal, state and local laws, rules and regulations (now or hereafter in effect) dealing with the use, generation, treatment, storage, disposal or abatement of Hazardous Materials, and (4) the regulations promulgated thereunder, from time to time.

Environmental Liabilities – means any liabilities incurred by Manager or Owner with respect to the Site.

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<sup>5</sup> **NTD: Bond Counsel / CITI to confirm.**

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Environmental Site Assessments — means [\_\_\_\_\_]. [PLEASE PROVIDE WHEN AVAILABLE]

Event of Default — means any of the events so defined in Sections 4.5 and 4.6 of the Agreement, as applicable.

Event Sponsor – means the person to whom Owner has granted the right to conduct a Non-Special Event or a Special Event.

Excluded Contracts – (i) contracts related to transactions between Manager and an Affiliate, (ii) contracts related to the provision of Centralized Services, (iii) centralized purchasing services, (iv) contracts on forms provided “system wide” to the Hotel and any other hotel managed by Manager or its Affiliates, (v) booking, sales and distribution, and other similar agreements entered into by Manager in the normal course of business, (vi) insurance policies required to be provided by Manager hereunder or (vii) collective bargaining agreements or other labor contracts.

Excluded Taxes and Other Charges — means any (a) Gross Receipts Taxes; (b) withholding tax or other employment related taxes; (c) wage, child support or spousal support garnishments; or (d) unclaimed property or wages.

Expert – means the individual selected by the Parties in accordance with Section 10.1: (a) having not less than ten years' experience in the hospitality industry; (b) in good standing in the ISHC; (c) not having had any direct relationship with either party in the preceding twenty-four month period, except to the extent disclosed and accepted by the other party; (d) having demonstrated knowledge of the hotel market where the Hotel is located; and (e) having demonstrated knowledge of the operation and marketing of hotels in the Hotel's market segment.

Facilities – means all buildings and grounds owned, controlled, or operated by the Geo. L. Smith II Georgia World Congress Center Authority including the Georgia World Congress Center and Centennial Olympic Park. However, for all purposes of this Agreement the term “Facilities” shall not include the College Football Hall of Fame or the Stadium.

FF&E — means all items of furniture, furnishing, fixtures, and equipment and other personal property used or held for use in storage in the ordinary course of operating the Hotel, the cost of which is ordinarily a Capital Expense, but a portion of which may be currently expensed such as smaller items thereof, or expenditures which are ancillary thereto but which are properly chargeable as an Operating Expense to Property Operations and Maintenance under the Uniform System.

First Tier Bonds – means the first tier bonds issued by the Owner pursuant to the Indenture.

First Tier Debt Service Reserve Fund – means the “First Tier Debt Service Reserve Fund” established by the Indenture pursuant to Section 5.02(a) thereof.

First Tier Letter of Credit – the letter of credit provided by the Manager in lieu of Owner’s initial deposit of the First Tier Debt Service Reserve Fund pursuant to Section 3.5.2 of the Management Agreement and meeting the requirements of Section 5.08 of the Indenture.

Force Majeure Event — means fire, storm, earthquake, flood, natural disaster, and other casualty events; war, terrorist attacks; strikes, lockouts or other labor interruptions; insurrection, rebellion, riots or other civil unrest; epidemics, quarantine restrictions or other public health restrictions or advisories; disruption to local, national or international transport services; embargoes, lack of materials, water, power or telephone transmissions necessary for the operation of the Hotel in accordance with this Agreement; failure of any applicable Governmental Authority to issue any approvals, or the suspension, termination or revocation of any material approvals, required for the operation of the Hotel; or a combination of any of the foregoing beyond a party’s reasonable control that materially adversely affects, directly or indirectly, the ability of a party to perform, but not in any event market or economic conditions.

Foreclosure Event — has the meaning assigned to it in Section 6.2.2.5.

Foreclosure Purchaser — means a purchaser of the Project pursuant to a sale, deed in lieu or other right or remedy conducted pursuant to any Mortgage.

Fund or Funds — means any one or more, as the case may be, of the separate, special funds established by the Indenture or, after repayment of the Bonds, established by Owner and Manager to fund specific portions of the expenses incurred in connection with the ownership, financing, operation and maintenance of the Hotel.

Garage — means the parking garage (or portion there) located at the Hotel, from time to time, that contains Hotel-dedicated parking spaces.

Generally Accepted Accounting Principles — means those conventions, rules, procedures, and practices, consistently applied, affecting all aspects of recording and reporting financial transactions which are generally accepted by major independent accounting firms in the United States. If Owner and Manager cannot agree on what constitutes Generally Accepted Accounting Principles, then the accounting firm then or most recently engaged to prepare the Certified Financial Statements for the Hotel in accordance with Section 2.22.3 of the Agreement shall make the determination on the request of either Party unless the accounting firm is the audit firm for Manager, in which case a different nationally recognized accounting firm shall make such determination. Any financial or accounting terms not otherwise defined herein shall be construed and applied according to Generally Accepted Accounting Principles.

Government or Governmental Authority — means any agency, instrumentality, subdivision or other body (including judicial and quasi-judicial) of any national, regional, local or other government; any commercial or similar entities owned or controlled by such government, including any state-owned and state-operated companies; any political party; any public international organization; or any additional legal authorities having jurisdiction over Owner, Manager, or the Hotel.

Governmental Function – means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which the Owner is authorized or required to perform in its capacity as a Governmental Authority in accordance with Legal Requirements. The entering into this Agreement and the performance by the Owner of its obligations under this Agreement shall not be considered a “Governmental Function.”

Government Official - includes the following: (a) officers and employees of any national, regional, local or other Government; (b) officers or employees of companies in which a Government owns an interest; (c) any private person acting in an official capacity for or on behalf of any Government or Governmental Authority (such as a consultant retained by a government agency); (d) candidates for political office at any level; (e) political parties and their officials; or (f) officers, employees or official representatives of public (quasi-governmental) international organizations (including the United Nations, World Bank or International Monetary Fund).

Gross Operating Profit — as defined in the Uniform System.

Gross Receipts Taxes — means applicable excise, sales, occupancy and use taxes, or similar government taxes, duties, levies or charges collected directly from patrons or guests, or as a part of the sales price of any goods, services, or displays, such as gross receipts, admission, or similar or equivalent taxes, including, but not limited to, any transaction tax, head tax, occupancy tax, amusement tax, beverage tax, or local or state sales tax.

Hazardous Materials -- means any substance or material containing one or more of any of the following: “hazardous material,” “hazardous waste,” “hazardous substance,” “regulated substance,” “petroleum,” “pollutant,” “contaminant,” “polychlorinated biphenyls,” “lead or lead-based paint” or “asbestos” as such terms are defined in any Environmental Law, in such concentration(s) or amount(s) as may impose clean-up, removal, monitoring or other responsibility under any applicable Environmental Law or which may present a significant risk of harm to Hotel Personnel, guests, or invitees of the Hotel.

Hilton Brand Name - "Hilton", as that name is used to identify the chain of hotels operated under the brand standards for the Hilton Hotels & Resorts brand. The Hilton Brand Name does not mean Hilton Worldwide Holdings Inc., its Affiliates, or any other brands, product lines, or chains of hotels that include the word "Hilton" as any part of their brand name.

HVAC — means the heating, ventilating and air conditioning systems of the Hotel.

Hotel — means that certain hotel to be operated under the Brand Name, and land upon which it is situated, to be constructed pursuant to the Technical Services Agreement and Hotel Development Agreement and having the components and facilities described in Recital G of this Agreement, amongst others. [NOTE: THE HOTEL WAS ACTUALLY NOT DEFINED IN RECITAL D, SO THIS IS CLEAN UP].

Hotel Agreements – means this Agreement, the Room Block Agreement, the Technical Services Agreement and the Pre-Opening Services Agreement.



Hotel Building – means the Hotel building (including all roof coverings and exterior facades and any walkways and bridges) and all structural elements of such building, all of which are a fixture on the Land.

Hotel Consultant — means an independent, nationally recognized consulting firm [who has not performed any significant work on behalf of Manager or its Affiliates within the past [\_\_\_\_ (\_\_) years]], with substantial and significant experience in the first-class convention hotel segment, as chosen by Owner.

Hotel Development Agreement – that certain agreement referred to in Recital E of this Agreement and attached hereto as Exhibit C.

Hotel Guest Data – shall have the meaning set forth in Section 2.22.1 of the Agreement.

Hotel Personnel -- means all individuals performing services at the Hotel employed by Manager or an Affiliate of Manager or both, other than Corporate Personnel.

Hotel Personnel Costs -- means all costs associated with the employment, management or termination of Hotel Personnel, including training expenses, recruitment and relocation expenses, wages and salaries, incentive compensation (to be originally based on metrics described in Attachment 1), contributions required pursuant to any Legal Requirement, pension fund contributions, group life, accident and health insurance premiums, long-term incentive benefits, retirement benefits, disability benefits and other compensation and benefits, employment taxes, training, and severance payments, all in accordance with Legal Requirements and Manager’s policies for substantially all Other Managed Hotels.

Immediately Available Funds – shall have the meaning set forth in Section 3.1 of the Agreement.

Indemnification Exclusion – shall have the meaning set forth in Section 10.4.

Indemnified Party — shall have the meaning set forth in Section 13.14.3 of the Agreement.

Indemnify, Indemnity and Indemnification (or any variation) - collectively, to indemnify, hold harmless and defend.

Indenture — means the Indenture of Trust, dated as of \_\_\_\_\_, 20\_\_, by and between the Owner and the Trustee pursuant to which the Bonds are issued, together with any Supplements or amendments thereto.

Independent Accountant —a national firm of independent certified public accountants mutually acceptable to Owner and Manager.

Independent Architect — shall have the meaning set forth in Section 7.1.1 of the Agreement.

Index — means the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, Atlanta, Georgia Average, All Items (1982 - 1984 = 100); provided that (i) in the event that the Consumer Price Index is not available for Atlanta, Georgia but rather is only available for a larger geographical area, the next smallest geographical area which includes Atlanta, Georgia shall be substituted as the Consumer Price Index and (ii) in the event the Consumer Price Index is discontinued, Owner shall select comparable statistics on the purchasing power of the consumer's dollar in Atlanta, Georgia as published at the time of said discontinuation by a responsible periodical of recognized authority, with such comparable statistic to be subject to the approval of Manager, which approval may not be unreasonably withheld.

Insurance and Condemnation Proceeds Fund — means the Fund of such name created pursuant to and described in the Indenture.

Insurance Consultant — means an insurance consultant mutually acceptable to Manager and Owner.

Insurance Costs — means insurance premiums relating to liability and casualty coverage and Business Interruption Insurance policies and other insurance policies and coverages maintained with respect to the Hotel as required pursuant to Article 5.

Insurance Premium Fund -- means the Fund of such name created pursuant to the Indenture and further described in the Indenture.

Key Employees — means the following positions for the Hotel: the Senior Executive Personnel, the director of human resources, and the director of engineering.

Key Money -- has the meaning set forth in Section 4.2 of the Agreement.

Legal Requirements — means all laws, statutes, acts (including, without limitation, the Georgia Open Records Act), ordinances, rules, regulations, permits, licenses, authorizations, directives, orders and requirements of all Governmental Authorities or regulatory authorities, that now or hereafter may be applicable to, (i) the Hotel and the operation thereof, including those relating to employees, zoning, building, health, safety and environmental matters, and accessibility of public facilities, (ii) Manager, (iii) Manager's business operations, and/or (iv) Owner and (b) the requirements of all documents properly filed in the real property records against the Hotel as of the date of this Agreement and delivered to Manager prior to the Effective Date.

Letters of Credit – has the meaning set forth in Section 3.5.2 of the Agreement.

Letter of Credit Reduction Fund - means the fund of that name established pursuant to Section 5.02(a) of the Indenture.

Liquor Licenses — means the liquor licenses issued for the Hotel in the name of Manager pursuant to Section 2.4.5 of the Agreement.

Loan-To-Value Ratio - the ratio between: (a) the aggregate amount of indebtedness secured by a Mortgage and all other indebtedness secured by the liens against the Hotel or secured by liens against interests in Owner; and (b) the then-appraised value of the Hotel as determined by mortgagee in connection with its underwriting of the loan secured by such Mortgage

LOC Fee – has the meaning set forth in Section 3.5.2(e) of this Agreement.

Lockbox Fund -- means the Fund or Funds of such name established and created pursuant to the Cash Management Agreement.

Major Capital Expenses – Capital Expenses pertaining to the Hotel Building and Building Systems other than those items contemplated in Section [2.5] of the Agreement.

Management Fee — has the meaning set forth in Section 3.1.1 of the Agreement.

Management Services – collectively: (a) all mandatory programs and services provided by Manager and its Affiliates to substantially all hotels managed by Manager under the Brand Name (but excluding the Brand Services and Other Brand Services) in the United States (including, by way of example, payroll services); and (b) all optional programs and services offered to substantially all hotels managed by Manager under the Brand Name in the United States, which such optional programs and services are subject to Owner’s approval as part of the yearly budget approval process set forth in this Agreement.

Management Services Fee – the charges payable for the Management Services, as determined by Manager from time to time, provided, that, for the avoidance of doubt, in the event that Manager increase or reduces the Management Services Fee during an Operating Year to an amount greater than or less than the amounts set forth in any applicable Approved Operating Plan and Budget, Manager will increase or reduce the Management Services Fee to Owner accordingly.

Manager — has the meaning ascribed to it in the preamble.

Manager Interested Parties – has the meaning assigned to it in Section 13.32.2.

Manager's Gross Negligence or Willful Acts — means any acts or omissions constituting fraud, gross negligence, or willful misconduct on the part of Manager or its Affiliates or the Corporate Personnel in the performance of its duties under this Agreement including the gross negligence or willful misconduct of the Corporate Personnel in hiring or supervising Hotel Personnel. Notwithstanding the foregoing, acts or omissions of Hotel Personnel shall be excluded from Manager's Gross Negligence or Willful Acts.

Manager’s Intellectual Property — has the meaning ascribed to it in Section 11.6 of the Agreement.

Manager’s Proprietary Information — means (a) Manager’s and its Affiliates’ know-how, trade secrets, documents, designs, plans, reports, guest lists, and studies; (b) information Manager reasonably identifies from time to time as confidential; and

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(c) information that should be treated as confidential under the circumstances surrounding its disclosure including guest history information, Hotel Guest Data, sales and marketing information, account information or could cause competitive harm to Manager or any of its Affiliates relating to Manager or its Affiliate's other managed, owned, licensed or franchised Hotels and other proprietary information relative to the operating methods, procedures and policies distinctive to Other Managed Hotels, including without limitation, the contents of the Manager operating manuals, information and methodologies relating to Manager's loyalty or other similar programs and all commercial or financial information (including without limitation, all expenses, calculations and apportionments) relating thereto, and System information.

Manager's Subsequent Projected Event Block Rate Schedule – has the meaning set forth in the Room Block Agreement.

Mandatory Guest Fees - means any separate fee that a patron or guest is charged for in addition to the base room rate for a guest room, including but not limited to resort fees, facility fees, destination fees, amenity fees, urban destination fees, or any other similar fee. Mandatory Guest Fees do not include employee gratuities, state or local mandatory taxes, and other tax-like fees and assessments that are levied on a stay and that are passed through to a third party (such as tourism public improvement district fees, tourism or improvement assessments, and convention center fees).

Mortgage — means any real estate, leasehold, chattel mortgage, deed of trust, trust deed, security agreement, or similar document or instrument encumbering the Hotel or any part thereof, together with all promissory notes, loan agreements or other documents relating thereto.

Mortgagee — means any holder of a Mortgage.

National Vendor — means any vendor providing goods or services to the Hotel and Other Managed Hotels under a purchasing program or a contractual arrangement with Manager or any of its Affiliates available to or for the benefit of the Hotel and Other Managed Hotels.

Non-Special Events - means a meeting, trade show, exhibition, convention, public show, or any other function, without limitation, taking place in the Facilities, the College Football Hall of Fame or the Stadium. For the avoidance of doubt, even though Non-Special Event is defined to include activities that may also have activities occurring at the College Football Hall of Fame or the Stadium, this Agreement does not apply to advertising at those venues, which are or will be governed by separate advertising agreements.

Subordination, Non-Disturbance and Attornment Agreement — has the meaning set forth in Section [6.2.2] of the Agreement.

Opening Date – the date on which the Hotel is fully operational with all guest rooms and all other areas of the Hotel having been completed in accordance with the Technical Services Agreement and this Agreement, such that Manager determines the Hotel may be operated in accordance with the Brand Standards, or such earlier date as Manager may elect.

Operating Expenses — (a) all expenses, fees and charges included in the calculation of Gross Operating Profit under the Uniform System and in accordance with GAAP except where otherwise specified in this Agreement as well any other items specifically categorized as Operating Expenses pursuant to the terms of this Agreement, and (b) to the extent permitted by law, all other uninsured losses (which shall include, for the avoidance of doubt, any payment of a deductible or coinsurance), damages or related costs incurred by Manager or any of its Affiliates resulting from (i) the development or operation of the Hotel that are not otherwise the result of Manager's Gross Negligence or Willful Acts and/or (ii) any other uninsured losses, damages or related costs incurred by Manager or any of its Affiliates resulting from Owner's failure to comply with Employee Termination Notice Requirements or failure to take, or cause to be taken, action necessary with respect to Hotel Personnel so that Manager will not be required to comply with any Employee Termination Notice Requirements.

Operating Expense Reserve Fund — means the Fund of such name created pursuant to the Indenture and further described in the Indenture.

Operating Expense Reserve Requirement means \$5,000,000 as adjusted upwards annually starting with January 1st of the second Operating Year and continuing on January 1st of each Operating Year thereafter) based on percentage increases (but for the avoidance of doubt not decreases) in the Index from the immediately preceding Operating Year.

Operating Standard or Standards — means the standard of management of the Hotel described in Section 2.2 of the Agreement.

Operating Term or Term — means the term of this Agreement, as defined in Section 4.1 of the Agreement.

Operating Year — means each full or partial calendar year occurring after the Opening Date during the Operating Term. A "full Operating Year" as used in this Agreement means an Operating Year consisting of twelve full calendar months beginning on January 1 and ending on December 31.

Other Brand Services – collectively: (a) the mandatory programs and services provided by Manager and its Affiliates to substantially all hotels (whether owned, operated, leased, or franchised) operating under the Brand Name (but excluding the Brand Services and Management Services) (including, by way of example, the Honors program); and (b) all optional programs and services offered to substantially all hotels (whether owned, operated, leased, or franchised) operating under the Brand Name, which optional programs and services are subject to Owner's approval as part of the yearly budget approval process set forth in this Agreement.

Other Brand Services Fee – means the charges payable for the Other Brand Services, as determined by Manager or its Affiliates from time to time, provided that, for the avoidance of doubt, in the event that Manager increases or reduces the Other Brand Services Fees charged for the provision of Other Brand Services during an Operating Year to an amount greater than or less than the amounts set forth in any applicable Approved Operating Plan and Budget, Manager will increase or reduce the Other Brand Services Fee to Owner accordingly.

Other Managed Hotels — hotels within the United States other than the Hotel that are operated by Manager or its Affiliates under the Brand Name.

Owner Interested Parties – has the meaning assigned to it in Section 13.32.1.

Out-of-Pocket Expenses — means the out of pocket costs paid to non-Affiliates of Manager (with no mark-up or Direct or Indirect Profit to Manager) incurred directly by Manager or any Affiliate providing services to the Hotel under this Agreement, including, without limitation, reasonable air and ground transportation, meals, lodging, reasonable business entertainment expenses, taxis, gratuities, computer services, document reproduction, printing, promotional materials, stationery, postage, long-distance telephone calls, and facsimiles or such other out-of-pocket costs or expenses which were incurred in conformance with Manager's Standard Practices from time to time; provided that the following expenses shall not be reimbursable to Manager under this Agreement except to the extent otherwise captured in any of the Centralized Services Fees or Management Fees: Manager's overhead or general expenses, including but not limited to costs, expenses, salaries, wages or other compensation of Corporate Personnel of Manager, telephone, facsimile, telecommunications, computer, duplicating, stationery and postage and any other office expenses incurred at Manager's principal office, any part of Manager's capital expenses, and any costs for which Manager is liable under this Agreement.

Outside Opening Date – [\_\_\_\_\_]. **[NTD: Does the GWCCA have any issues with the date previously proposed by Hilton a few drafts ago (i.e. 12/31/2024).]**

Outstanding — means, as of the date of determination, all Bonds issued and delivered under the Indenture except: (i) Bonds cancelled by the Trustee or delivered to the Trustee for cancellation; (ii) Bonds which matured and been paid in full or have been defeased in accordance with the provisions of the Indenture; (iii) Bonds issued in exchange for or in lieu of which other Bonds have been registered and delivered pursuant to the Indenture; and (iv) Bonds alleged to have been mutilated, destroyed, lost, or stolen which have been paid as provided in the Indenture.

Owner — has the meaning ascribed to it in the preamble.

Owner IP – has the meaning ascribed to it in Section 11.8 of this Agreement.

Owner's Preferred Return – means, for each Operating Year, an amount equal to the sum of (i) \$[actual debt service to be used], plus (ii) 10% of all Additional Invested Capital.

Party or Parties — means either or collectively Owner and the Manager.

Performance Termination Event — has the meaning assigned to it in Section 4.8.1 of the Agreement.

Performance Test — means the tests to determine if a Performance Termination Event has occurred.

Person — means any individual, public or private corporation, partnership, limited liability company, county, district, authority, municipality, political subdivision or other entity of the State of Georgia or the United States of America, and any partnership, association, firm, trust, estate or any other entity or organization whatsoever.

Prime Rate - means the prime or base rate of interest quoted or published from time to time by the Wall Street Journal. If the Wall Street Journal ceases to publish the “Prime Rate,” Hilton shall select an equivalent publication that publishes such “Prime Rate,” and if such “Prime Rates” are no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then the Parties shall select a reasonably comparable interest rate index.

Project — means the Hotel and the Site.

Proposed Operating Plan and Budget — means the annual marketing and operating plan and proposed budget for the Hotel prepared by Manager for approval by Owner in accordance with the terms of Section 2.20 of the Agreement.

Proprietary Information — means information pertaining to Proprietary Software or Manager’s Intellectual Property, but only to the extent such information is not in the public domain.

Proprietary Software — means certain computer software specially developed by or for Manager and its Affiliates for use in hotels and resorts managed by Manager and its Affiliates or for use in Other Managed Hotels.

Publicly Ticketed Event – means any Non-Special Event or Special Event for which admissions are offered for sale to the general public.

Punch List Work -- means work required to be performed by Developer under the Hotel Development Agreement that is of a minor nature and the non-completion of which will not interfere with the opening of the Hotel, the safe operation and use thereof by guests and Hotel Personnel, without material disruption by the contractors performing such minor work.

Qualified Management Agreement — has the meaning set forth in Recital I of the Agreement.

Receiving Party —has the meaning assigned to it in Section 13.31.

Reimbursable Expenses — means all costs and expenses reimbursable to Manager pursuant to Section 3.4.1 of the Agreement.

Related Parties - a party’s respective Affiliates and its and their respective directors, partners, members, managers, officers and employees.

Revenue Fund -- means the Fund of such name created pursuant to the Indenture and further described in the Indenture.

Representatives — means the individuals appointed by Owner and Manager in accordance with Section 13.9 of the Agreement to serve on the Committee.

Required Opening Date – [\_\_\_\_\_] [NTD: Does the Owner have any issues with the date proposed by Hilton a few drafts ago (i.e. 12/31/2023)?]

Required Scope of the Hotel — has the meaning ascribed to it in Recital G of the Agreement.

Restricted Areas — has the meaning assigned to it in Section 13.25 of the Agreement.

Restricted Hotel — means any hotel which is (i) operated under the Hilton Brand Name, Conrad Brand Name or Waldorf Astoria Brand Name and (ii) includes more than 500 rooms or more than 35,000 square feet of meeting space.

REVPAR — “Rooms RevPAR” as defined in the Uniform System.

REVPAR Index – the ratio, expressed as a percentage of (a) the Hotel’s REVPAR to (b) the average REVPAR of the Competitive Set.

REVPAR Performance Standard — means that the REVPAR Index for the applicable Operating Year is at least one hundred and ten percent (110%).

Room Block Agreement — has the meaning assigned to it in Recital K of this Agreement.

Room Block — has the meaning assigned to it in the Room Block Agreement.

Second Tier Bonds – means the second tier bonds issued by the Owner pursuant to the Indenture.

Second Tier Debt Service Reserve Fund – means the “Second Tier Debt Service Reserve Fund” established by the Indenture pursuant to Section 5.02 (a) thereof.

Second Tier Letter of Credit – the letter of credit provided by the Manager in lieu of Owner’s initial deposit of the Second Tier Debt Service Reserve Fund pursuant to Section 3.5.2 of the Management Agreement and meeting the requirements of Section 5.15 of the Indenture.

Senior Executive Personnel — means the individuals employed from time to time as the Hotel’s general manager, director of finance, director of sales and marketing, director of revenue management, and director of food and beverage, or any other persons performing such functions regardless of their title.

Senior FF&E Reserve Fund — means the Fund of such name created pursuant to the Indenture and further described in the Indenture.

Senior FF&E Reserve Set Aside Amount — means the following percentage of the Total Operating Revenue generated in the preceding month:



1 <sup>st</sup> full Operating Year (and preceding partial Operating Year)	-	1% of Total Operating Revenue
2 <sup>nd</sup> full Operating Year	-	2% of Total Operating Revenue
3 <sup>rd</sup> full Operating Year	-	3% of Total Operating Revenue
4 <sup>th</sup> full Operating Year	-	4% of Total Operating Revenue
Thereafter	-	5% of Total Operating Revenue

Site -- means the land on which the Hotel is to be developed, as more specifically described in **Exhibit B** of the Agreement.

Special Event – means an event which meets all of the following criteria:

(a) The event is either:

(i) A Publicly Ticketed Event, such as an event staged as part of the Olympic Games, World Cup, a National Football League Super Bowl, NCAA national championship event or event series, an NCAA conference championship event or event series, or other event (of whatever type) which in the good faith judgment of Owner is of comparable international, national or regional import, for which Owner, in its good faith judgment, is required to or does make special arrangements with an Event Sponsor in order to obtain a contract for such event with an Event Sponsor; or

(ii) An event, such as a Democratic or Republican national convention at which a presidential candidate of such party is elected or confirmed, which is of international or national import, for which Owner is required to or does make special arrangements with Event Sponsor concerning advertising in order to obtain a contract for such event with an Event Sponsor, but not including normal trade shows or professional, trade, business or religious conventions; and

(b) Owner gives written notice to Manager that the event is to be treated as a Special Event for purposes of this Agreement; and

(c) Either (a) the Manager in writing consents to such treatment, which consent shall be given or withheld in the reasonable discretion of Manager; or (b) the number of events which have occurred in the twelve (12) months preceding the scheduled date of the event in question which have been characterized by Owner as Special Events without Manager's consent does not exceed twelve (12) such events.

Specially Designated National or Blocked Person - either: (a) a person or entity designated by the U.S. Department of Treasury's Office of Foreign Assets Control from time to time as a "specially designated national or blocked person" or similar status; (b) a person or entity described in Section 1 of U.S. Executive Order 13224, issued on September 23, 2001; or

(c) a person or entity otherwise identified by government or legal authority as a person with whom Manager or Owner is prohibited from transacting business.

Standard Practices – the policies, practices and standards generally employed by Manager or its Affiliates in operating Other Managed Hotels.

Subordinated Fee Hurdle – has the meaning assigned to it in Section 3.1.3.2.

Subordinate FF&E Reserve Fund — means the Fund of such name created pursuant to the Indenture and further described in the Indenture.

Subordinate FF&E Set Aside Amount – means beginning with the 5<sup>th</sup> Operating Year, 3% of Total Operating Revenue; provided, however, that on January 1 of the Operating Year immediately following the full reduction of the face amount of all Letters of Credit to \$0 (even, for clarification purposes, in the event such reduction of all Letters of Credit occurs prior to the 5<sup>th</sup> Operating Year), and for each Operating Year thereafter, 4% of Total Operating Revenue.

Subordinate Management Fee — has the meaning assigned to it in Section 3.1.3.1 of the Agreement.

Subordinate Management Fee Fund — means the Fund of such name created pursuant to the Indenture and further described in the Indenture.

Substantial Completion or Substantially Complete — shall have the meaning set for in the Hotel Development Agreement.

Sufficient Funds — shall mean the following:

A. with respect to the payment of Operating Expenses, there are sufficient amounts in the Lockbox Fund (or other funds that are made available to Manager for the payment of Operating Expenses) for the payment of such Operating Expenses;

B. with respect to the payment of Capital Expenses in connection with unbudgeted Capital Improvements or an Emergency, there are sufficient funds in the Operating Expense Reserve Fund, Senior FF&E Reserve Fund, Subordinate FF&E Reserve Fund, Supplemental Reserve Fund and Surplus Revenue Fund to pay for such Capital Expenses;

C. with respect to property taxes, there shall be sufficient balances in the Property Tax Fund to pay for such costs;

D. with respect to insurance premiums, there shall be sufficient balances in the Insurance Premium Fund to pay or reimburse Manager for such costs;

E. with respect to Gross Receipts Taxes, there shall be funds available in the Lockbox Fund to pay such taxes at least equal to the collections deposited by Manager into the Lockbox Fund that are attributable to such Gross Receipts Taxes;

F. with respect to the payment of costs to repair and/or replace FF&E or Capital Expenses in connection with budgeted capital improvements, there are sufficient funds in the Senior FF&E Reserve Fund, the Subordinate FF&E Reserve Fund, the Surplus Revenue Fund or Supplemental Reserve Fund to pay for such costs and Capital Expenses; and

G. with respect to the payment of amounts which were required to have been paid (but were not paid) under the Development Agreement, there shall be amounts available in the Lockbox Fund to pay such amounts.

Supplemental Reserve Fund – means the Fund of such name created pursuant to the Indenture and further described in the Indenture.

Surplus Revenue Fund -- means the Fund of such name created pursuant to the Indenture and further described in the Indenture.

System — means, collectively, the elements uniformly designated from time to time to identify structures, facilities, appurtenances, furniture, fixtures, equipment that provide to the consuming public a similar, distinctive, high quality hotel service identified with the Brand Name, in whole or in part; including licensed brands associated with the Brand Name, trademarks, logos, servicemarks and the like, access to Manager’s reservation system, publicity and marketing, training, standards, specifications, policies, inspection programs and manuals containing standards and requirements for the operation of Brand Name hotels.

Taking or Taken — means a taking as a result of compulsory purchase or acquisition of all or part of the Project, any taking by any governmental authority (or any authority or entity acting on behalf of or purporting to act on behalf of any governmental authority) for any purpose whatsoever or a conveyance by Owner in lieu thereof.

Taxes — means all taxes, including ad valorem taxes on real property, personal property taxes relating to or assessed in connection with the ownership or operation of the Project, except for Excluded Taxes and Other Charges.

Technical Services Agreement — has the meaning ascribed to it in Recital J.

Temporary Certificate of Occupancy — means a certificate or certificates, as applicable, issued by the City of Atlanta that permits temporary beneficial occupancy, operation and use of all or a portion of the Project, subject to qualification as to the permanent occupancy, operation and use of the Project.

Termination or termination — when used with respect to this Agreement, means the expiration or sooner cessation or termination of the Agreement for any reason whatsoever and by any person or entity or by operation of law, as the case may be.

Third-Party Advertisements – has the meaning ascribed to it in Section 2.18 of this Agreement.

Total Operating Revenue — shall have the meaning given to such term in the Uniform System, but in all cases, including or excluding (as applicable) funds from “Total Operating Revenues” as contemplated by each of Sections 2.17, 2.28, 7.5.1 and 8.2.4. of this Agreement.

Trademarks — means the Brand Name and all other business names, copyrights, designs, distinguishing characteristics, domain names, emblems, insignia, logos, slogans, service marks, symbols, trademarks, trade dress and trade names (whether registered or unregistered) used in the System, as such trademarks, trade names, service marks, and copyrights exist as of, or following, the date of this Agreement and as may be modernized during the term of this Agreement, together with the right to use any and all slogans, derivations, trade secrets, know-how, and trade dress, and all other proprietary rights associated with such names, marks and slogans.

Transition Period — has the meaning ascribed to it in Section 4.12.13 of the Agreement.

Trustee — means \_\_\_\_\_, or its successor as Trustee as provided in the Indenture.

Uniform System of Accounts — means the latest edition of the Uniform System of Accounts for the Lodging Industry that is published by the Hotel Association of New York City, Inc. and approved by the American Hotel & Motel Association (currently, the 11th Revised Edition, 2014) except that (i) in calculating the Management Fee and all other fees payable to Manager and its Affiliates under this Agreement and (ii) in calculating whether there is a Performance Termination Event, the parties shall rely on the 11<sup>th</sup> Revised Edition, 2014 without giving effect to any subsequent revisions of editions of the Uniform System of Accounts.

Variable Expenses -- has the meaning set forth in Section 2.20.8 of the Agreement.

Waldorf Astoria Brand Name- "Waldorf Astoria," as that name is used to identify the chain of hotels operated under the brand standards for Waldorf Astoria hotels. The Waldorf Astoria Brand Name does not mean Hilton Worldwide Holdings Inc., its Affiliates, or any other brands, product lines, or chains of hotels that include the words “Waldorf”, “Astoria”, or “Hilton” as any part of their brand name.

**Exhibit B**  
**Description of Site**

**Exhibit C**  
**Hotel Development Agreement**

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## Exhibit EE

### Group Booking Addendum

**Displays and Decorations; Group's Property; Special Events. [LANGUAGE IN YELLOW TO BE INCLUDED ONLY IF (I) THE GROUP EVENT DATES ARE MORE THAN 18 MONTHS FROM DATE OF EXECUTION OR (II) A SPECIAL EVENT IS ALREADY SCHEDULED DURING THE GROUP EVENT DATES]**

Group may, at Group's option, purchase insurance to cover Group's personal property, including decorations, special objects and other property. To the fullest extent permitted by law, Hotel is not responsible for any loss or damage to property belonging to Group or Group's attendees, and Hotel does not maintain insurance covering such personal property.

All displays and/or decorations will be subject to Hotel's prior written approval and Hotel reserves the right to contract and charge for Hotel staff to provide the labor for any installations or removals of such displays and/or decorations. Hotel can advise Group of such potential charges upon request.

The Hotel is owned by the same "Owner" entity that owns the adjacent Georgia World Congress Center. Group has been advised by the Hotel that the Owner requires additional terms and conditions that will be applicable during all Special Events (defined below) that take place at the Georgia World Congress Center at any time over the Group's Event dates (including any load in and load out dates).

With respect to Group's advertising, decorations, marketing, promotional or other publicity materials and signage related in any manner whatsoever to the Group or to the Group's Event (including, but not limited to, any sponsors or exhibitors that participate in the Group's Event) (collectively, a "Display") that could be posted anywhere within or on the Hotel premises (including on the exterior of the Hotel, elevator wraps, reader boards, etc.), Group understands and agrees that the Owner has the unconditional right to cover or remove and replace or permit an advertising panel or other advertising to be superimposed on each Display during the Special Event.

For purposes of this clause, the term "Special Event" includes (i) a publicly ticketed event, such as an event staged as part of the Olympic Games, World Cup, a National Football League Super Bowl, NCAA national championship event or event series, an NCAA conference championship event or event series, or other event (of whatever type) of comparable international, national or regional import, for which Owner is required to or does make special arrangements in order to obtain such event; or (ii) an event, such as a Democratic or Republican national convention at which a presidential candidate of such party is elected or confirmed, which is of international or national import, for which Owner is required to or does make special arrangements in order to obtain such event.

**[OPTION 1 – NO CURRENT SPECIAL EVENTS]** As of the date of the signing of this Agreement, Hotel confirms that there are no Special Events currently booked to take place at the Georgia World Congress Center at any time over the Group's Event dates. If after this Agreement is signed, Hotel confirms at least 18 months prior to the Group Event dates, that a Special Event will take place over the Group's Event dates, then Hotel agrees to inform Group in writing within a reasonable amount of time thereafter of such Special Event including the dates of the Special Event. In the event there is no Special Event booked to take place at the Georgia World Congress Center on the date that is 18 months prior to the Group Event dates, Group will not be subject to the restrictions and limitations, or Owner's rights, included in the prior three paragraphs.

**[OPTION 2 – A SPECIAL EVENT IS SCHEDULED OVER THE GROUP'S EVENT DATES]** As of the date of the signing of this Agreement, Hotel confirms that the following Special Event is currently booked to take place at the Georgia World Congress Center over the Group's Event dates: **[ ENTER NAME OF SPECIAL EVENT AND THE ANTICIPATED DATES ]**. If this scheduled Special Event changes, Hotel will advise Group within a reasonable amount of time but no later than prior to the Group's first arrival date.



## ATTACHMENT 1

### METRICS

Manager has represented to Owner that its incentive compensation payments to Manager's employees will be based solely and exclusively upon the metrics set forth below (the “**Original Metrics**”), unless and until Manager provides notification to Owner (as part of the yearly budget process) of its desire to change the applicable Metrics or unless Owner provides written notification to Manager that the applicable Metrics must be changed in response to a change in law, regulations, rulings or court decisions (“**Changed Metrics**”):

<u>METRIC</u>	<u>DESCRIPTION</u>
RevPAR	Revenue Per Available Room
RevPAR Index	A measurement of the hotel's RevPAR in relation to the RevPAR of a set of competitive hotels. as determined by Smith Travel Research.
Forecast Accuracy	A measurement of how accurately the hotel department, or applicable team member forecasted the actual RevPAR and Total Operating Revenue of the hotel.
SALT Overall Experience	A measurement of guests' aggregate ratings of their hotel stays in the "Satisfaction And Loyalty Tracking" study, with a focus on how the guests answer the following attribute: "Your Overall Experience as a Guest".
HHonors	A measurement of how effectively the hotel is enrolling "non-honors-member transient guests" into the Hilton Honors Program.
Leadership Index	A numerical index based on how leaders within certain subsets of the Hilton organization are rated by team members Leadership Index within that organizational subset based on a rating system that does not include reference either to profits of any component of Hotel Operations or expenses of any component of Hotel Operations.
Great Places to Work	A measurement based on Hilton's annual ranking by the "Great Places To Work" organization.
Talent Management	A measurement of HR Director performance in the areas of Diversity and Inclusion. Learning & Development, Succession Planning and Career Growth Results

Owner agrees that incentive compensation payments determined pursuant to formulas whose sole variables are the Original Metrics as described above will not constitute, under existing law regulations, rulings and court decisions, a violation of Section 2.1.3. of this Agreement. Owner agrees, in addition, that any court decision that incentive compensation payments based on factors substantially similar to the Original Metrics do result in a share of net profits of a managed facility for purposes of Section 141 of the Internal Revenue Code shall not constitute a breach by Manager under this Agreement or subject Manager to any liability under this Agreement. Manager agrees that, if notified by Owner that a change in law, regulations, rulings or court decisions subsequent to the Effective Date may reasonably cause use of the Original Metrics to constitute a share of net profits of any component of the Hotel, it shall adopt Changed Metrics reasonably requested by Owner to eliminate the resulting private business use.

**EXHIBIT B**

A draft of the Room Block Agreement follows this page.  
(25 Pages)

**ROOM BLOCK & MEETING SPACE AGREEMENT**

**by and between**

**GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER AUTHORITY**

**as OWNER (“GWCCA”)**

**and**

**SIGNIA HOTEL MANAGEMENT LLC**

**as MANAGER (“Manager”)**

**(Signia by Hilton Atlanta – GWCCA Convention Center)**

**Dated as of \_\_\_\_\_, 2020**

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## ROOM BLOCK & MEETING SPACE AGREEMENT

**THIS ROOM BLOCK & MEETING SPACE AGREEMENT** (this “**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2020 (the “**Effective Date**”), by and between **GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER AUTHORITY**, an instrumentality of the State of Georgia and a public corporation, in its capacity as owner (the “**GWCCA**”), and **SIGNIA HOTEL MANAGEMENT LLC**, a Delaware limited liability company (the “**Manager**”). The GWCCA and the Manager are sometimes referred to herein individually as a “**Party**”, and collectively as the “**Parties**”.

### RECITALS

WHEREAS, the GWCCA owns and operates the Georgia World Congress Center (the “**Convention Center**”) for the benefit of the State of Georgia and its residents in order to attract trade shows, conventions and public cultural and entertainment events.

WHEREAS, the GWCCA intends to construct the Hotel for the purposes of maximizing the performance and quality of convention business attracted to the Convention Center and encouraging convention and tourism business in the State of Georgia.

WHEREAS, the GWCCA has determined that it is in the best interests of the GWCCA and the Convention Center to construct a Signia by Hilton branded, upper upscale, convention quality hotel having approximately 975 guest rooms, 75,000 square feet of meeting space, indoor banquet space and pre-function space, two (2) full-service restaurants, including a market/deli/café, a lobby bar, parking facilities, appropriate support facilities such as food preparation facilities, and other amenities and features and supporting back-of-house areas characteristic of a full-service hotel, including but not limited to a swimming pool, fitness facilities, which will function as the Convention Center’s headquarters hotel (the “**Hotel**”) on a portion of the former site of the Georgia Dome (the “**Hotel Site**”), as generally depicted on Exhibit A attached hereto.

WHEREAS, the GWCCA has engaged the Manager to manage and operate the GWCCA’s interest in the Hotel to be developed on the Hotel Site under the terms of the Qualified Hotel Management Agreement, dated of even date herewith, by and between the GWCCA and the Manager (the “**Hotel Management Agreement**”).

WHEREAS, as a condition to entering into the Hotel Management Agreement, the GWCCA requires that the Manager enter into a room block agreement pursuant to which specific percentages of the Hotel’s guest rooms and suites will be reserved for specific periods of time for attendees, participants and planners of conventions and/or trade shows at the Convention Center, and the GWCCA and the Manager agree that this Agreement satisfies such requirement.

## AGREEMENTS

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged and confessed by the parties hereto, the GWCCA and the Manager hereby covenant and agree with each other as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.01 Preamble. The findings set forth in the recitals of this Agreement are hereby found to be true and correct.

Section 1.02 Definitions. The terms in this Section 1.02 shall have the respective meanings indicated herein. All capitalized terms used, but not otherwise defined, shall have the respective meanings set forth in the Hotel Management Agreement.

**“Active Negotiations”** means that the GWCCA or Manager, on the one hand, and a Potential Convention Center Customer, on the other hand, have exchanged written correspondence between them that reflects an indication of mutual interest for consummating a City-Wide Event and neither the GWCCA, on the one hand, nor such Potential Convention Center Customer, on the other hand, has indicated that it no longer has any interest in pursuing such negotiations.

**“Agreement”** means this Room Block & Meeting Space Agreement by and between the GWCCA and the Manager.

**“Block Offer”** shall have the meaning ascribed to it in Section 2.03 of this Agreement.

**“Booking Period”** means those periods of time set forth in column “A” of the table included in the Maximum Event Room Block definition.

**“Business Day”** means a day of the year that is not a Saturday, Sunday, a legal holiday or a day on which commercial banks are not required or authorized to close in the City of Atlanta, Georgia.

**“City”** shall mean the City of Atlanta, Georgia.

**“City-Wide Event”** shall mean either (a) a convention, trade show or other event during which a Potential Convention Center Customer (i) requires the use of a minimum of 100,000 gross square feet of exhibit or meeting space in the Convention Center for one or more days and (ii) in connection with such event, requiring 2,500 or more guest rooms on peak be made available in at least three (3) hotels in the City (including the Hotel), or (b) a Special Event.

**“Consumer Price Index”** means the Consumer Price Index for All Urban Consumers, All Items, for the market area that includes the Hotel, as published by the Bureau of Labor Statistics of the United States Department of Labor or, if such index is discontinued, the most comparable



index published by a federal Governmental Authority on which the duties in connection with such index shall devolve or such other official index as agreed by the Parties.

“**Convention Center**” shall have the meaning given to it in the first paragraph of this Agreement.

“**Convention Center Facilities**” means space and facilities within the Convention Center.

“**Definite Status**” means the status of a City-Wide Event which has an executed and binding contract for both the Hotel rooms and, if applicable, a commensurate amount of Convention Center Facilities.

“**Effective Date**” shall have the meaning given to it in the preamble of this Agreement.

“**Event Night**” means any night during a City-Wide Event (but excluding, for the avoidance of doubt, any Load-In/Load-Out Day related to such event) for which (i) GWCCA has exercised its rights under Section 2.03 by giving a Room Block Request Notice to the Manager and (ii) in response to such Room Block Request Notice, rooms have been booked, blocked or reserved by the Manager either (i) pursuant to a contract with the Potential Convention Center Customer or (ii) pursuant to Block Offers or Amended Offers that have been accepted or are still outstanding (and, if such contracts are terminated or any of such offers are subsequently terminated or rejected, then any of the blocked rooms that were subject thereto shall no longer be considered blocked for purposes of this definition).

“**Event of Default**” or “**Events of Default**” is defined in Article 5.

“**Event Room Block**” shall have the meaning set forth in Section 2.03(b) herein.

“**Governmental Authority**” means any Federal, state or local governmental entity, authority (including any taxing authority) or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), pursuant to the terms of the Hotel Management Agreement or by agreement of the Parties.

“**Governmental Rule**” means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court or other Governmental Authority. Governmental Rule shall include, but not be limited to, state law, city codes and ordinances.

“**GWCCA**” shall have the meaning given to it in the preamble of this Agreement.

“**Hotel**” shall have the meaning given to it in the recitals of this Agreement.

“**Hotel Meeting Facilities**” means all meeting rooms and banquet space located within the Hotel.

“**Hotel Management Agreement**” shall have the meaning given to it in the recitals of this Agreement.

“**Hotel In-House Group Event**” means any group event requiring a block of rooms at the Hotel that does not constitute a City-Wide Event.

“**Hotel Site**” shall have the meaning given to it in the recitals of this Agreement.

“**Load-In/Load-Out Day**” means any load-in/load-out day for a City-Wide Event for which at least 80% of the Convention Center’s meeting space in Buildings B and C, in the aggregate, is booked.

“**Manager**” means Signia Hotel Management LLC, a Delaware limited liability company, and its permitted successors and assigns under the Hotel Management Agreement.

“**Maximum Event Room Block**” means a set aside and commitment of Hotel guest rooms (including suites) and Hotel Meeting Facilities on a right of first refusal basis at the Hotel for City-Wide Events in accordance with the following terms:

A	B
The Booking Period as defined by the number of months in Advance of the City-Wide Event that Potential Convention Center Customer requests a Hotel room block	Rooms and Hotel Meeting Facilities Available Under Room Block Agreement for City-Wide Events
36+	80% of rooms and Hotel Meeting Facilities on any particular night
24-35	50% of the rooms and Hotel Meeting Facilities on any particular night
Less than 24	0% of the rooms and Hotel Meeting Facilities on any particular night

“**Opening**” means the date upon which the Hotel is open to the public for business.

“**Potential Convention Center Customer**” means a person, entity, group or association (or any combination thereof, which, for the avoidance of doubt, may include the GWCCA) who is planning or coordinating a City-Wide Event (including a Special Event) for which Hotel rooms are sought to be booked pursuant to Article II of this Agreement.

“**Range of Rates**” shall have the meaning set forth in Section 3.01 of this Agreement.

“**Rate Quote**” shall have the meaning ascribed to it in Section 2.03 of this Agreement.

**“Required Room Block Size”** means the applicable number of rooms and Hotel Meeting Facilities in each Booking Period for which Manager is required to reserve for Potential Convention Center Customers as shown in column “B” in the table included in the Maximum Event Room Block definition.

**“Room Block Request Notice”** shall have the meaning ascribed to it in Section 2.03 of this Agreement.

**“Sales Representative”** shall mean any management, sales or booking representative(s) designated by the GWCCA to act as primary contact(s) for hotel booking correspondence related to Convention Center bookings.

**“Special Event”** shall have the meaning ascribed to it in the Management Agreement: .

**“Tentative Status”** shall mean the status of a City-Wide Event where the Block Offer or Amended Offer, as applicable, still remains open for acceptance under Section 2.04(a) of this Agreement, or where the Potential Convention Center Customer has accepted in writing the Block Offer or the Amended Offer, as applicable, but has not yet executed a binding contract for both the Hotel rooms and Convention Center Facilities in accordance with such offer, provided such accepted offer has not theretofore been withdrawn by the Manager under Section 2.04(b) of this Agreement.

**“Term”** shall have the meaning ascribed to it in Section 6.01 of this Agreement.

## ARTICLE II

### ROOM BLOCK COMMITMENT

Section 2.01 Room Blocking Rights. The GWCCA and the Manager expressly acknowledge and agree that each party shall have the room booking and blocking rights generally described in this Agreement. The Manager retains the blocking rights described in Section 2.05 below. At all times during the Term, but subject to the remaining provisions of this Agreement, Manager shall reserve rooms for use by Potential Convention Center Customers, any given day up to the applicable Required Room Block Size corresponding to the applicable Booking Period.

Section 2.02 Cooperation of Parties. The GWCCA and the Manager each agree to cooperate together and coordinate their efforts on a day-to-day basis to administer bookings at the Hotel for the City-Wide Events and Potential Convention Center Customers in accordance with the terms of this Agreement. Furthermore, the GWCCA and the Manager will each agree to participate, upon request of either party, monthly “lead meetings” to review and coordinate room block commitments made to Potential Convention Center Customers.

Section 2.03 Default Room Block Request and Response Procedures. Unless the parties agree to other policies and procedures from time to time, the right to require that the Manager offer the Event Room Block (defined below) pursuant to this Agreement will be exercised in accordance with the following request procedures:

(a) Room Block Request Notice. A Sales Representative will send a request to the Manager that the GWCCA is exercising its room block rights hereunder with respect to a Potential Convention Center customer for a City-Wide Event (the “**Room Block Request Notice**”). The Room Block Request Notice will be made in such manner and shall include such information as the GWCCA and the Manager may mutually agree upon from time to time. As of the Effective Date, the parties contemplate and agree that the Room Block Request Notice will specify (i) the name and nature of business of the Potential Convention Center Customer or Special Event, (ii) the specific date or dates for which the Potential Convention Center Customer or Special Event will require blocks of guest rooms (including those dates commonly known as “move in” and “move out” dates) as well as any proposed alternate dates if applicable; (iii) the number of guest rooms the Potential Convention Center Customer is seeking to block on each of the specific dates; and (iv) that the requested Event Room Block will not cause the violation of any provision contained in this Agreement. The Room Block Request Notice will be communicated to the Manager in writing or electronic communication.

(b) Block Offer. Subject to the provisions of Section 2.03(b), within five (5) Business Days after receipt of a Room Block Request Notice, provided that a booking of any such Room Block Request Notice would not result in any of the Maximum Event Room Block commitment parameters being exceeded, the Manager shall deliver to the Sales Representative working with such Potential Convention Center Customer, a written offer to book Hotel rooms for such Potential Convention Center Customer (a “**Block Offer**”). Each Block Offer shall (i) include an offer to block, on each specific date that the Potential Convention Center Customer required a block of guest rooms as specified in the Room Block Request Notice, the actual number of the guest rooms in the Room Block Request Notice for each specific date, (the “**Event Room Block**”); and (ii) quote a specific room rate for both a standard single and double room, as well as a suite, if applicable, such rates to be determined in Manager’s good faith discretion with reference to the provisions contained in Article III (the “**Rate Quote**”).

(c) Notwithstanding the foregoing or any provision of this Agreement to the Contrary, if (i) prior to the delivery of the Block Offer to the Potential Convention Center Customer, or (ii) acceptance of the Block Offer (or any amendment thereto voluntarily offered by the Manager to the GWCCA and/or Potential Convention Center Customer), the GWCCA reasonably and in good faith believes that it might be in the GWCCA’s or the City’s best interest to compel the Manager to offer the Potential Convention Center Customer an alternative rate structure, GWCCA may, after consultation with the Manager and within thirty (30) days following receipt of the Block Offer, elect to request that the Manager to offer to the Potential Convention Center Customer a rate lower or higher than the rate in the Block Offer, provided such rate is within the Range of Rates (such written election, the “**Block Notice**”). Manager shall consider such Block Notice in its reasonable good faith, but shall not be obligated to offer the Potential Convention Center Customer a rate lower or higher than in the Block Offer. Upon receipt of the Block Notice, and Manager’s agreement to modify the rate, the Manager shall, within two (2) Business Days thereafter, amend the Block Offer by substituting the rate specified by the GWCCA (the “**Amended Offer**”).

(d) Insufficient Room Availability. In the event (i) the Manager has booked previous commitments for a night or nights during the requested Event Room Block or is in Active Negotiations regarding same or has previously offered the rooms to be booked, blocked or reserved under offers that have either been accepted or are still outstanding, which will prevent the Manager from offering to book any or all of the guest rooms requested under the Room Block Request Notice, and (ii) provided all such commitments by the Manager are permitted under the terms of this Agreement, then, in lieu of the Block Offer, the Manager shall, within five (5) Business Days of the Manager's receipt of the Room Block Request Notice, provide notice to the applicable Sales Representative that the Manager is unable to fulfill all or any portion of the requested Event Room Block, which notice may be given by verbal or email communication as part of Manager and GWCCA's cooperation obligations in Section 2.02 above.

(e) Potential Convention Center Customer Response Time. If an outstanding Block Offer or Amended Offer is not accepted in writing by the Potential Convention Center Customer within thirty (30) days following issuance of same, such Block Offer or Amended Offer, as applicable, shall be deemed withdrawn.

Section 2.04 Potential Convention Center Customer Bookings. Bookings for Hotel room nights with Potential Convention Center Customers for City-Wide Events will be subject to the following procedures unless the GWCCA and Manager agree to other policies and procedures from time to time:

(a) Written Acceptance of Block Offer or Amended Offer. Subject to Section 2.03(c), any Block Offer or Amended Offer will be promptly submitted by the Sales Representative to the Potential Convention Center Customer. The Block Offer or Amended Offer shall remain open for acceptance in writing by the Potential Convention Center Customer for a period of thirty (30) days. If either the Block Offer or the Amended Offer is accepted by the Potential Convention Center Customer, the Manager shall promptly negotiate a binding contract (a "**Room Block Contract**") with the Potential Convention Center Customer applying the Manager's customary booking policies, including policies relating to contracts, utilization of banquet and meeting space at the Hotel, advance deposits, cancellation and attrition clauses, provided that these policies shall be usual and customary for Manager and adhere in all material respects to the general customs employed by the Manager at Other Managed Hotels.

(b) Execution of a Contract. If, after accepting in writing a Block Offer or an Amended Offer hereunder, a Potential Convention Center Customer has not (for any reason other than the Manager's breach of its obligations hereunder) signed a Room Block Contract with the Manager within thirty (30) days of the date of the Potential Convention Center Customer's acceptance of the offer, the Manager may elect at any time thereafter, at its reasonable discretion and in consultation with the GWCCA, by written, electronic or telephonic notice to the GWCCA, to withdraw the Block Offer or Amended Offer, as the case may be, whereupon the Manager shall have no further obligation to the GWCCA or the Potential Convention Center Customer in regard to such City-Wide Event, except to the extent that the GWCCA again provides a Room Block Request Notice with respect to the same City-Wide Event, in which case, the procedures set for in Section 2.03 and this Section 2.04 shall apply to such Room Block Request Notice as if it was provided to Manager in the first instance. The foregoing will not limit Manager from including,

in any such Room Block Contract for the period of time that is 24 through 35 months in advance of the event, a 72-hour first option hold providing that in the event there is alternative group interested in the same dates, the Potential Convention Center Customer will have 72 hours to accept the Room Block Contract after which Manager may offer the other customer the applicable space.

(c) Termination of Contract. If a Potential Convention Center Customer signs a Room Block Contract with the Manager, but later provides a written notice to the Manager that it is terminating the Room Block Contract (for any reason other than the Manager's breach of its obligations hereunder), the Manager, after notice to the GWCCA, will have no further obligation to the GWCCA in regard to the Event Nights covered by such Room Block Contract, provided the GWCCA will have such booking and block rights with respect to such rooms for another Potential Convention Center Customer as are otherwise available to the GWCCA in accordance with the provisions hereof at the time of such termination for rooms on the nights covered by such Room Block Contract. Nothing in this provision shall limit in any way any Potential Convention Center Customer's liability to the GWCCA pursuant to any attrition clause or other clause in the Room Block Contract with that Potential Convention Center Customer. A Potential Convention Center Customer shall not be relieved of its hotel cancellation, attrition or other obligations under a Room Block Contract with the Manager solely by terminating any agreement(s) such Potential Convention Center Customer has with the GWCCA in connection with a City-Wide Event.

(d) If a Potential Convention Center Customer signs a Room Block Contract with the Manager, then the Manager will reserve rooms included in an Event Room Block for such customer for purchase by the persons attending the applicable event in accordance with Manager's standard and customary practices. The individual rooms subject to a Room Block Contract with a Potential Convention Center Customer booked under this Agreement may be guaranteed by the Potential Convention Center Customer in accordance with Manager's standard and customary practices. Nothing in this provision shall limit, however, in any way any Potential Convention Center Customer's liability to the GWCCA pursuant to any attrition, cancellation or other clause in the Room Block Contract with that Potential Convention Center Customer. A Potential Convention Center Customer shall not be relieved of its hotel cancellation, attrition or other obligations under a Room Block Contract with the Manager solely by terminating any agreement(s) such Potential Convention Center Customer has with the GWCCA in connection with a City-Wide Event.

(e) No-Walk Designation.

(i) Subject to clauses (ii) – (vi) below, the GWCCA may, concurrently with the delivery of a Room Block Request Notice relating to a potential Room Block Contract with a Potential Convention Center Customer that is attending a City-Wide Event, designate such Potential Convention Center Customer as “no-walk group” (a “**No-Walk Group**”). In the event a Room Block Contract is signed with a No-Walk Group, Manager will not be permitted to “walk” a Hotel guest that will be occupying a room reserved under a Room Block Contract executed with such No-Walk Group.

(ii) In no event will the GWCCA be permitted to designate more than twelve (12) No-Walk Groups attending the Hotel in any calendar year.

(iii) The GWCCA and Manager acknowledge that Manager may, but is not obligated to, allow a No-Walk Group to occupy rooms in excess of the applicable Maximum Event Room Block (such excess rooms being referred to herein as “**No-Walk Excess Rooms**”). The foregoing restriction set forth in clause (i) will not apply to No-Walk Excess Rooms.

(iv) For the avoidance of doubt, the restriction set forth in clause (i) does not apply to Hotel guests that will be occupying a room not otherwise reserved under a Room Block Contract (even if such guest is associated with the No-Walk Group or otherwise attending the applicable City-Wide Event).

(v) Manager will be excused from the restriction in clause (i) in the event Manager “walks” a guest in a No-Walk Group as a result of the removal of rooms from Hotel inventory for any reason or in order to comply with a Legal Requirement (including, by way of example, any “overstay laws”).

#### Section 2.05 The Manager’s Booking Rights.

(a) The Manager has the unrestricted right to commit to booking rooms or blocks of rooms in the Hotel, subject to the provisions of this Agreement. Nothing in this Agreement shall limit Manager’s ability to commit rooms to Potential Convention Center Customers based on leads generated by Manager or any other party, to the extent approved by the GWCCA, and such bookings will count towards the Maximum Event Room Block amounts. Furthermore, Manager shall also be permitted to request approval from the GWCCA to book rooms that would otherwise have the effect of limiting the Maximum Event Room Block amounts GWCCA is entitled to pursuant to the terms of this Agreement. GWCCA will consider such requests for approval in good faith, however, GWCCA retains the right to consent, or withhold consent, to such request in its sole discretion.

(b) Renovation/Force Majeure. In connection with the operation of the Hotel, the Hotel may be operated from time to time or there may be periods of time where rooms are not included in the Hotel inventory as a result of a casualty, condemnation or Force Majeure Event. In the event of such renovation, casualty, condemnation or Force Majeure Event, the Required Room Block Size subject to the commitment obligations set forth in this Agreement will be decreased proportionately by the percentage of rooms in the Hotel subject to renovation or impacted by casualty, condemnation or Force Majeure Event.

(c) Known Release Dates. The GWCCA will provide the Manager with a list of known release dates on a periodic basis listing all future dates the Convention Center cannot accommodate a City-Wide Event because less than one hundred thousand (100,000) square feet of meeting and/or exhibit space is available on such day for use by a Potential Convention Center Customer or for any other reason (“**Known Release Dates**”). Manager will be free to book 100%

of the rooms on any of these dates. If a Known Release Date is removed on a subsequent list, the date(s) will fall back under the terms of this Agreement except to the extent of any bookings that the Manager has made prior to its receipt of such subsequent list.

(d) Load-In/Load-Out Days. Manager will be free to book 100% of the rooms on any Load-In/Load-Out Days.

Section 2.06 The Manager's Discretion; Prior Room Block History.

(a) Manager may request that any Room Block Request Notice be supplemented by reasonable documentation related to the creditworthiness of the Potential Convention Center Customer and/or history of the Potential Convention Center Customer's room block requirements (which information may include (i) dates and place of prior room block history, (ii) approximate day-by-day rooms occupied including peak night room pick-up and (iii) comparison of room block commitments for each event and the approximate rooms occupied in total pursuant to such room block commitments. If Manager chooses to require any such information, the Manager will, within five (5) Business Days after receipt of a Room Block Request Notice, provide notice to the applicable Sales Representative of the specific information requested and GWCCA will use commercially reasonable efforts to obtain and provide such information to the Manager.

(b) If the Manager can demonstrate that (i) the Potential Convention Center Customer has a documented history of causing property damage or unusually heavy wear and tear in connection with group events, (ii) the Potential Convention Center Customer has poor credit, or (iii) the historical data reflects that the aggregate occupied room nights by the Potential Convention Center Customer are less than 60% of the reserve room nights for applicable events, (iv) the Potential Convention Center Customer poses a significant security threat to the Hotel, Hotel Personnel or hotel guests or (v) the Potential Convention Center Customer is a Specially Designated National or Blocked Person, then Manager shall have the right, upon consultation with the GWCCA, to either (a) include in its Block Offer to such Potential Convention Center Customer security, damage or other deposit requirements that, in the Manager's judgment exercised in good faith, would prevent material disruption of Hotel operations, promote safety of Hotel guests and/or personnel, or would compensate the GWCCA for damage, wear and tear or failure to pay or (b) elect not to issue a Block Offer unless such refusal is illegal. In the event of any disagreement, the parties will promptly meet and confer and attempt to reach agreement as to the additional security, damage or facility deposit requirements, if any, that will be placed on any Block Offer given to such customer and, failing such agreement, GWCCA's determination shall control; provided, however, that in no event will Manager be required to issue a Block Offer to a Specially Designated National or Blocked Person. In the event the GWCCA overrules Manager's request for additional security or facility damage deposit requirements to be passed onto the Potential Convention Center Customer, and, notwithstanding such request, the Hotel incurs additional costs or expenses related to safety, security and/or facility damage, then such additional costs or expenses will be disregarded for purposes of calculating whether there has been a Performance Termination Event.

(c) The Manager shall book the guest rooms and Hotel Meeting Facilities in compliance with applicable antidiscrimination, equal treatment, free speech and similar



Governmental Rule and otherwise in accordance with Manager's national standards and policies for hotels it or its Affiliates operate.

Section 2.07 GWCCA's Request for Additional Rooms for City-Wide Event. At any time, the GWCCA may request by notice to the Manager that the Manager grant a requested booking for a City-Wide Event(s) which exceeds the Maximum Event Room Block parameters. Manager will consider such request in good faith, but Manager is under no obligation to honor such requested booking.

Section 2.08 Reporting of Event Nights. On a monthly basis, and as part of the monthly reports required to be provided to the GWCCA under the Hotel Management Agreement, the Manager shall provide to the GWCCA a five-year rolling report of (i) committed Event Nights for all Tentative Status and Definite Status dates, and (ii) committed event nights for Hotel In-House Group Events not subject to the Maximum Event Room Block (provided, however, that for the avoidance of doubt, subject to any applicable Legal Requirements, the names of such In-House Group Events and other data relating to such In-House Group Events will not be included in such reporting obligations), and (iii) projected group average daily rate in the aggregate (collectively, the "Five-Year Forecast").

### ARTICLE III

#### ROOM BLOCK PRICING

##### Section 3.01 Event Block Rates.

(a) The Manager's Initial Projected Event Block Rate Schedule and each Manager's Subsequent Projected Event Block Rate Schedule will include a range of varying group rates (as applicable for a period, the "Range of Rates") for room type and for periods within each applicable calendar year to account for seasonality and day of the week (e.g., Midweek, Weekend). The range for each season (and for weekend vs. weekday within each season) will be a 10% premium (on the low end) and 35% premium (on the high-end) above the average group rates charged, in the aggregate, by the hotels that comprise the Competitive Set during each applicable season (and for weekend vs. weekday within each season), based on a trailing 12-month average.

(b) Concurrent with the execution hereof, the Manager has provided to the GWCCA a schedule of the projected Range of Rates for the first Operating Year after the Opening ("Manager's Initial Projected Event Block Rate Schedule"). The rates included in Manager's Initial Projected Event Block Rate Schedule shall represent the Manager's good faith forecast of the rates that will be included in the Proposed Operating Plan and Budget for such year and are the projections and forecasts being used by the Manager in making its decisions, and planning for, bookings in the operation of the Hotel and the conduct of the Manager's business generally.

(c) At least 45 days before each Operating Year commencing after the Opening Date, the Manager shall provide the GWCCA with a schedule of the projected Range of Rates for the subsequent Operating Year (each such schedule, a "Manager's Subsequent Projected Event Block Rate Schedule"), and shall be included as part of the Proposed Operating Plan and Budget

for such Operating Year in accordance with the Hotel Management Agreement. The GWCCA will be permitted to review and confirm that Manager has calculated the Manager's Subsequent Projected Event Block Rate Schedule correctly.

(d) If a Block Notice is issued for a City-Wide Event where the first Event Night will occur on a date in a calendar year that is not covered by the then current Manager's Subsequent Projected Event Block Rate Schedule, the Range of Rates reflected in the then current Manager's Subsequent Projected Event Block Rate Schedule shall be used but shall be increased by 2% - 5%, in Manager's reasonable discretion, for each year up to and including the year in which the City-Wide Event is to occur.

(e) Suites and "Signia Club Rooms" will not be subject to the above-referenced Range of Rates parameters and will be priced in accordance with Manager's standard pricing policies. Furthermore, Manager will have the ability to price 30% of the designated room block for upgraded room type inventory, based on availability, at an increased rate, which maybe in excess of the 10%-35% premium range. Upgraded room type inventory are rooms within the Hotel that have comparably better characteristics (such as higher floors, better locations or better views) than the typical room in the Hotel.

Section 3.02 Hotel Meeting Facilities Rates. Based on availability, and provided further that a request for Hotel Meeting Facilities would not result in any of the Maximum Event Room Block commitment parameters being exceeded, a Potential Convention Center Customer may request use of Hotel Meeting Facilities in the Hotel. Availability, booking and cancellation of Hotel Meeting Facilities for Potential Convention Center Customers shall be made on the same basis as Hotel rooms, as set forth in Articles II and III; provided that the GWCCA and the Manager may agree to different terms on a case-by-case basis. Meeting room rental rates, when charged, shall be at the prevailing rates at the Hotel, in Manager's good faith judgment, for the specified Hotel Meeting Facilities, with the understanding that the amount of Hotel Meeting Facilities committed to a particular Potential Convention Center customer (assuming such customer is willing to meet a TGCC Minimum (as defined below) or meeting room rental equivalent) will be proportionate to the percentage of rooms sold to the customer. Use of the Hotel Meeting Facilities would be contingent on the customer agreeing to a catering contribution equal to at least the average group catering contribution per group room night over the trailing 3 years (a "**TGCC Minimum**"). If the customer is not willing to commit to the TGCC Minimum, then such customer would be required to pay additional meeting room rental revenues equal to at least 40% of the Estimated TGCC Revenue. Estimated TGCC Revenue means (i) then-current budgeted banquet food, banquet beverage and room rental in a particular month divided by the total number of group rooms in such given month multiplied by (ii) the total number of group room nights requested by the customer. Such Estimated TGCC Revenue will be increased by 2% - 5%, in Manager's reasonable discretion, for each year up to and including the year in which the Hotel Meeting Facilities are being requested to be reserved.

## ARTICLE IV

### NO LIABILITY FOR POTENTIAL CONVENTION CENTER CUSTOMERS

Section 4.01 NO LIABILITY FOR POTENTIAL CONVENTION CENTER CUSTOMERS. IN NO EVENT SHALL THE GWCCA, THE STATE OF GEORGIA, ANY AFFILIATES THEREOF, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, BE IN ANY WAY RESPONSIBLE OR LIABLE FOR THE PERFORMANCE BY ANY POTENTIAL CONVENTION CENTER CUSTOMER (EXCEPT IN SUCH PARTY'S CAPACITY AS A POTENTIAL CONVENTION CENTER CUSTOMER PURSUANT TO A ROOM BLOCK CONTRACT) OF SUCH CUSTOMER'S OBLIGATIONS UNDER ITS ROOM BLOCK CONTRACT FOR ANY CHARGES, LIABILITIES OR OTHER SUMS OWED BY, OR LIABILITIES OF, SUCH POTENTIAL CONVENTION CENTER CUSTOMER (OR FOR THOSE FOR WHOM IT BLOCKS ROOMS) UNDER SUCH ROOM BLOCK CONTRACT. LIKEWISE, IN NO EVENT SHALL THE MANAGER BE IN ANY WAY RESPONSIBLE OR LIABLE FOR THE PERFORMANCE BY ANY POTENTIAL CONVENTION CENTER CUSTOMER (EXCEPT IN MANAGER'S CAPACITY AS A POTENTIAL CONVENTION CENTER CUSTOMER PURSUANT TO A ROOM BLOCK CONTRACT) OF SUCH CUSTOMER'S OBLIGATIONS UNDER ANY CONTRACT WITH THE GWCCA OR FOR ANY CHARGES, LIABILITIES OR OTHER SUMS OWED BY, OR LIABILITIES OF, SUCH POTENTIAL CONVENTION CENTER CUSTOMER TO THE GWCCA.

Section 4.02 Exculpation. Notwithstanding any provision to the contrary herein contained, the State of Georgia, nor Affiliates thereof (other than GWCCA), nor any officer, director, employee or agent of the same, nor any officer, director employee or agent of GWCCA, nor any of their respective heirs, administrators, executors, personal representatives, successors and assigns, shall have any personal liability or other personal obligation with respect to any payment, performance or observance of any amount, obligation, or liability to be paid, performed or observed under this Agreement or any of the representations, warranties, covenants or other undertakings of the GWCCA hereunder and Manager agrees it shall not seek to obtain a money judgment against the State of Georgia, nor Affiliates thereof, nor against any officer, director, employee or agent of the same, nor against any officer, director employee or agent of GWCCA, or against any of their respective heirs, administrators, executors, personal representatives, successors or assigns.

Nothing within this Section 4.02 shall limit the right of any party to seek specific performance of the terms and provisions of this Agreement as provided in Article V.

## ARTICLE V

### EVENTS OF DEFAULT

Section 5.01 Default.

(a) An event of default under the terms of this Agreement shall occur if any party hereto shall default in the performance of any of the terms, conditions or covenants contained

in this Agreement to be performed or observed by it, and such party does not remedy such default within thirty (30) days after notice thereof or, if the default is of such character as to require more than thirty (30) days to remedy, then if such party fails to commence to cure and correct the default within said thirty (30)-day period and thereafter prosecute such corrective action diligently and without interruption and complete the cure thereof within ninety (90) days following the original notice of such default (an “**Event of Default**”).

(b) Note: concepts are now captured directly in the QMA, so this provision is not necessary.

**Section 5.02 Remedies for an Manager Event of Default.** If a Manager Event of Default shall occur, then the GWCCA shall have the right, at any time after the occurrence of said Event of Default, to pursue all remedies available to it under this Agreement or applicable law as a result of such Event of Default, including to (i) initiate and thereafter prosecute an action in equity for the specific performance of any covenants or obligations to be performed by the Manager hereunder or (ii) exercise such other rights as shall be available at law or in equity, subject in all respects to limitation set forth in **Section 5.04** below. Manager acknowledges and agrees that its covenants, obligations and agreements set forth in this Agreement are a material and fundamental inducement to the GWCCA’s agreement to enter into this Agreement and the Hotel Management Agreement, such that actual damages may not be an adequate remedy at law for the breach hereof by the Manager. Accordingly, the GWCCA shall be entitled to seek relief mandating action by the Manager hereunder in accordance with this Agreement. The GWCCA may restrain and enjoin any breach or threatened breach of any covenant, duty or obligation of the Manager contained in this Agreement without the necessity of (i) posting a bond or other security, (ii) any showing of irreparable harm, balance of harms, consideration of public interest or the inadequacy of monetary damages as a remedy, or (iii) that the administration of an order for injunctive relief would be impracticable.

**Section 5.03 Remedies for a GWCCA Event of Default.** Subject to **Section 5.04** below, if a GWCCA Event of Default shall occur, then the Manager shall have the right, at any time after the occurrence of said Event of Default, to pursue all remedies as shall be available at law or in equity as a result of such Event of Default, provided, however, for purposes of clarity, in no event shall Manager be entitled to terminate this Agreement be terminated due to an GWCCA Event of Default.

**Section 5.04 Limitation on Damages.** . NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS AGREEMENT OR THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, TO THE FULLEST EXTENT NOT PROHIBITED BY APPLICABLE LAW, OTHER THAN AND EXCLUDING (i) THE RESPECTIVE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER SECTION 13.14 OF THE MANAGEMENT AGREEMENT (INDEMNIFICATION) AND (ii) ANY OTHER INDEMNIFICATION OR DEFENSE OBLIGATIONS OF A PARTY UNDER THIS AGREEMENT OR MANAGEMENT AGREEMENT IN THE CASE OF UNAFFILIATED THIRD PARTY CLAIMS (“INDEMNIFICATION EXCLUSION”), NEITHER PARTY (INCLUDING ANY RELATED PARTY) SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR TREBLE DAMAGES OR LOSSES

INCURRED BY THE OTHER PARTY OR ANY OF ITS RELATED PARTIES ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCTS OR STRICT LIABILITY OR ANY OTHER FORM OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES (COLLECTIVELY "CONSEQUENTIAL DAMAGES"); AND SUBJECT TO THE INDEMNIFICATION EXCLUSION ABOVE, EACH PARTY HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES AND RELEASES ANY RIGHT, POWER OR PRIVILEGE EITHER MAY HAVE TO CLAIM OR RECEIVE FROM THE OTHER PARTY HERETO ANY SUCH CONSEQUENTIAL DAMAGES. FOR THE AVOIDANCE OF DOUBT, THIS LIMITATION OF LIABILITIES SECTION SHALL NOT BE APPLICABLE TO ANY DIRECT DAMAGE CLAIMS BETWEEN THE PARTIES. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE REMEDIES HEREIN PROVIDED, AND OTHER REMEDIES AT LAW AND IN EQUITY, SHALL IN ALL CIRCUMSTANCES BE ADEQUATE (INCLUDING THE RIGHT TO RECOVER DIRECT DAMAGES). THE FOREGOING WAIVER AND RELEASE SHALL APPLY IN ALL ACTIONS OR PROCEEDINGS BETWEEN THE PARTIES (INCLUDING ANY EXPERT OR ARBITRATION PROCEEDING) AND FOR ALL CAUSES OF ACTION OR THEORIES OF LIABILITY, WHETHER FOR BREACH OF THIS AGREEMENT OR FOR VIOLATION OF ANY OTHER DUTY OWING BY EITHER PARTY TO THE OTHER WHICH MAY IN ANY WAY RELATE TO MANAGER'S MANAGEMENT OR OPERATION OF THE HOTEL OTHER THAN AND EXCLUDING THE INDEMNIFICATION EXCLUSION. BOTH PARTIES FURTHER ACKNOWLEDGE THAT THEY ARE EXPERIENCED IN NEGOTIATING AGREEMENTS OF THIS SORT, HAVE HAD THE ADVICE OF COUNSEL IN CONNECTION HERewith, AND HAVE BEEN ADVISED AS TO, AND FULLY UNDERSTAND, THE NATURE OF THE WAIVERS CONTAINED IN THIS SECTION 5.04 AND IN SECTION 13.21 OF THE MANAGEMENT AGREEMENT. FURTHERMORE AND NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IF MANAGER BREACHES ANY AGENCY DUTY, OWNER SHALL NOT BE ENTITLED TO: (A) DISGORGEMENT, FORFEITURE OR RESTITUTION OF ANY COMPENSATION PAID BY OWNER TO MANAGER; (B) DISGORGEMENT, FORFEITURE OR RESTITUTION OF ANY BENEFIT RECEIVED BY MANAGER IN CONNECTION WITH ANY TRANSACTION ON BEHALF OF OWNER OR THE HOTEL UNLESS THE MONETARY VALUE OF SUCH BENEFIT COULD HAVE BEEN CALCULATED AND PASSED THROUGH TO OWNER IN A COMMERCIALY REASONABLE MANNER; (C) DIVESTITURE OF ANY FINANCIAL OR OTHER INTEREST HELD BY MANAGER; OR (D) ANY RELIEF THAT DOES NOT TAKE INTO ACCOUNT THE BENEFITS RECEIVED BY OWNER FROM THE SERVICES PROVIDED BY MANAGER.

Section 5.05 Reservation of Rights. Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall in no way limit the GWCCA's or the Manager's rights and remedies against a Potential Convention Center Customer resulting from such Potential Convention Center Customer's default under a contract with the GWCCA or the Manager.

Section 5.06 GWCCA Governmental Authority.

(a) No Relinquishment of Regulatory Authority. Notwithstanding anything contained in this Agreement to the contrary, the GWCCA's review and (if applicable, approval) of any submittals from the Manager or other Persons in connection with this Agreement shall constitute approval for purposes of this Agreement only, and not be deemed to constitute approval, or replace, the GWCCA's right to review and approve same, under the GWCCA's regulatory authority and/or police power under State or local law; provided, however, that (i) the foregoing provision does not apply to approvals of "Owner" under this Agreement, and (ii) to the extent Owner's exercise of Governmental Functions causes Manager to breach this Agreement, such breach shall not constitute an Event of Default by Manager.

(b) No Limitation on GWCCA's Governmental Functions. The Manager recognizes the authority of the GWCCA under its enabling statute to exercise its police powers in accordance with State or local law to protect the public health, safety, and welfare. Subject to the provisions hereof, the Manager recognizes the GWCCA's authority to take appropriate enforcement action in accordance with State or local law to provide such protection. Whenever, in the GWCCA's judgment such action is required, the GWCCA shall immediately notify the Manager. No lawful action taken by the GWCCA pursuant to these police powers shall subject the GWCCA to any liability under this Agreement provided that any such actions shall be taken by the GWCCA at its sole cost and expense.

(c) GWCCA Governmental Functions. The Parties acknowledge that all references to "GWCCA" herein (which, for the purposes of this provision, shall be deemed to include any references in this Agreement to the GWCCA as the owner of the fee interest in the Site) shall refer only to the GWCCA in its capacity as owner of the Site. The term "GWCCA" and the duties and rights assigned to it under this Agreement, thus exclude any action, omission or duty of the GWCCA when performing its Governmental Functions. Any action, omission or circumstance arising out of the performance of the GWCCA of its Governmental Functions may prevent the GWCCA from performing its obligations under the Agreement and shall not cause or constitute a default by the GWCCA under this Agreement or give rise to any rights or claims against the GWCCA in its capacity as a party to this Agreement, it being acknowledged that the Manager's remedies for any injury, damage or other claim resulting from any such action, omission or circumstances arising out of the Governmental Functions of the GWCCA shall be governed by the laws and regulations concerning claims against the GWCCA as a State governmental entity. In addition, no setoff, reduction, withholding, deduction or recoupment shall be made in or against any payment due by the Manager to the GWCCA under this Agreement as a result of any action or omission of the GWCCA when performing its Governmental Function.

(d) No Waiver. No representation, consent, approval or agreement by the GWCCA shall be binding upon, constitute a waiver by or estop the GWCCA from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of any action by the GWCCA's designee be deemed to waive any immunities granted to the GWCCA when performing its Governmental Functions, which are provided under Applicable Law. Further, any consent to jurisdiction by the GWCCA is only with respect to matters arising in its capacity as a party to the Agreement and expressly does not constitute a waiver of the GWCCA's governmental immunity or a consent to jurisdiction for any actions, omissions or

circumstances, in each case arising out of the performance of the Governmental Functions of the GWCCA.

## ARTICLE VI

### ADDITIONAL PROVISIONS

Section 6.01 Term. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and continue until the expiration or earlier termination of the Hotel Management Agreement.

Section 6.02 Notices. All notices, consents, determinations, requests, approvals, demands, reports, objections, directions, and all other communications required or permitted to be given under this Agreement shall be in writing and shall be given (and deemed to be given) in the same manner as required by and in accordance with the requirements of Section 13.13 of the Hotel Management Agreement.

Section 6.03 Transfer of Manager’s Interest. In the event of a permitted assignment of the Hotel Management Agreement by Manager, then such assignee shall, in all respects, be bound by the terms and provisions contained in this Agreement, be obligated to honor any contract or agreement previously executed with a Potential Convention Center Customer, and shall be bound by any outstanding Block Offers or Amended Offers, each Room Block Request Notice and the Rates Range then in effect.

Section 6.04 No Vested Rights. The Manager acknowledges and agrees that this Agreement is not intended to and shall not be construed to grant, amend, extend, or vest any rights of ownership, possession or occupancy in the Hotel Site or Convention Center.

Section 6.05 Assignment. This Agreement and the duties and obligations set forth hereunder are not assignable by any Party except in connection with a permitted assignment of the Hotel Management Agreement, in which case, this Agreement shall be contemporaneously assigned with the Hotel Management Agreement to the same permitted assignee.

Section 6.06 No Reliance. Each Party has entered into this Agreement upon the advice of advisors of their own choosing, and each Party warrants and represents that it is not relying on any statement or advice of or from any other Party or any advisor of any other Party not expressly set forth herein. Each Party is entering into this Agreement freely and voluntarily and each desires to be bound by this Agreement. Each Party has been fully informed of the terms, conditions and effects of this Agreement.

Section 6.07 Confidentiality/Georgia Open Records Laws.

(a) The Manager has familiarized itself with the Georgia Open Records Act (O.C.G.A. § 50-18-70, et seq.) and the Georgia Open Meetings Act (O.C.G.A. § 50-14-1, et seq.) (collectively, the “**Open Government Laws**”) applicable to the issues of confidentiality and public information. The GWCCA will advise the Manager as to the nature or content of documents

entitled to protection from disclosure under the Open Government Laws, as to the interpretation of such laws, or as to definition of “confidential” or “proprietary” as such terms are used under the Open Government Laws or other applicable provisions of law. However, the GWCCA will review and give reasonable (albeit non-binding) consideration to the Manager’s designation of any correspondence, emails, plans, business records or reports, exhibits, photographs, reports, printed material, tapes, electronic discs, and other graphic and visual aids submitted to the GWCCA during the advancement of the Hotel as confidential or proprietary (the “**Confidential Material**”). The Manager shall be solely responsible for clearly identifying and labeling as “Confidential” or “Proprietary” any such Confidential Material (including, if requested by the GWCCA, submission of an affirmative affidavit regarding such confidential and/or proprietary information) which it asserts is exempt from disclosure under Section 50-18-72 of the Open Government Laws or any other applicable law. However, the Manager is advised that such designations on any such Confidential Material shall not be binding on the GWCCA or determinative of any issue relating to confidentiality. Blanket “Confidential” and “Proprietary” designations by the Manager are strongly discouraged.

(b) In no event shall the GWCCA or any of its agents, representatives, consultants, directors, officers or employees be liable to the Manager for the disclosure of all or a portion of any such Confidential Material or other information pursuant to a request under the Open Government Laws.

(c) If the GWCCA receives a request for public disclosure of all or any portion of any Confidential Material identified as “Confidential” or “Proprietary” by the Manager in connection with Hotel, the GWCCA will endeavor to notify the Manager of the request in sufficient time to allow the Manager to review such request and take whatever action it shall deem appropriate to protect any such Confidential Material; provided, however, the Manager shall bear the sole responsibility for the costs and expenses of all such actions. Among others, the Manager may seek a protective order or other appropriate remedy. If the GWCCA determines in good faith that the Confidential Material identified as “Confidential” or “Proprietary” is not exempt from disclosure under the Open Government Laws, then, unless otherwise ordered by a court of competent jurisdiction, the GWCCA will release the requested information. In the absence of a protective or other similar order rendered by a court of competent jurisdiction, the GWCCA shall make the final determination regarding whether the requested Confidential Material is to be disclosed or withheld.

(d) Subject to applicable law (including the Open Government Laws) and to Subsections (b) and (c) above, each Party agrees that it will hold in confidence and not disclose to any third party any and all information of the other Party that it obtains in connection with the financing, construction, development and operation of the Hotel and will not disclose, publish or make use of such information for any purpose other than as contemplated by this Agreement without the prior written consent of such Party. The obligation of the Parties under this Subsection (d) will not (i) restrict a Party from making any information available to any of its advisers who have been advised of the confidential nature of such information and agree to maintain its confidentiality or (ii) apply to any information that is on the date hereof or hereafter becomes



publicly known and in the public domain through means that do not involve a breach by any Party of this Agreement.

Section 6.08 Exhibits. Each exhibit referred to in this Agreement is attached to and incorporated by reference in this Agreement.

Section 6.09 Governing Law. THIS AGREEMENT AND THE ACTIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF GEORGIA (EXCLUDING PRINCIPLES OF CONFLICT OF LAWS).

Section 6.10 Venue for Actions. No litigation by either Party may be brought against the other Party except in the Superior Court of Fulton County, State of Georgia (as stipulated by State of Georgia law (O.C.G.A. Section 10-9-11 with respect to the GWCCA).

Section 6.11 Waiver, Modification or Amendment. This Agreement may not be waived, modified or amended unless pursuant to a signed writing executed by each of the parties hereto. Failure of either party hereto to enforce any provision of this Agreement shall not be construed to be a waiver of such provision or its right thereafter to enforce such provision or any other provision contained herein.

Section 6.12 Severability. If any clause or provision of this Agreement is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected.

Section 6.13 Headings. Headings used in this Agreement are for purposes of convenience of reference only and shall in no way limit or affect the meaning or interpretation of any of the terms hereof.

Section 6.14 Entire Agreement. This Agreement, together with the other Hotel Agreements, constitutes the entire agreement between the Parties with respect to the subject matter as of the date hereof and supersedes all prior understandings and writings and this Agreement may be amended or modified only by a writing signed by the GWCCA and the Manager.

Section 6.15 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 6.16 No Joint Venture. It is acknowledged and agreed by and among the Parties that the terms hereof are not intended to, and shall not be deemed to, create any partnership or joint venture among the Parties. The past, present and future officers, elected officials, employees and agents of the GWCCA do not assume any responsibilities or liabilities to any third party in connection with the use and operation the facilities contemplated by this Agreement. In addition, the Manager acknowledges and agrees that there shall be no recourse against any of the aforesaid parties, none of whom will incur any liability in respect to any claims based upon or relating to the Agreement.

Section 6.17 Survival. All covenants, representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement. No action taken pursuant to or related to this Agreement, including any investigation by or on behalf of a Party shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition or agreement in this Agreement.

[Execution Page Follows]

**IN WITNESS WHEREOF**, the parties have executed this instrument as of the day and year first above written.

**GEO. L. SMITH II GEORGIA WORLD  
CONGRESS CENTER AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SIGNIA HOTEL MANAGEMENT LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A  
HOTEL SITE

*{ - Room Block Agreement - Hilton No Walk Comments.docx; 1} Exhibit A  
Hotel Site*

EXHIBIT C

A draft of the Pre-Opening Services Agreement follows this page.  
(24 Pages)

GT Comments 2/18/2020

## PRE-OPENING SERVICES AGREEMENT

**THIS PRE-OPENING SERVICES AGREEMENT** (this “**Agreement**”) is made as of [ ], 2020, by and between **GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER AUTHORITY** (the “**Owner**”) and **HILTON MANAGEMENT LLC** (the “**Pre-Opening Manager**”). Owner and Pre-Opening Manager are sometimes referred to collectively in this Agreement as the “**Parties**” and individually as a “**Party**.”

### RECITALS:

A. Contemporaneously with the execution of this Agreement, Owner and Pre-Opening Manager, in its capacity of “Manager”, are entering into a Qualified Hotel Management Agreement (the “**Management Agreement**”), pursuant to which Manager will agree to operate the Hotel (as defined in the Management Agreement) on behalf of and for the benefit of the Owner. Capitalized terms used herein but not otherwise defined will have the meanings given to them in the Management Agreement.

B. Owner intends to construct the Hotel on the land described on the attached **Exhibit A** (the “**Project Site**”), as more fully detailed in that certain Technical Services Agreement dated as of the date hereof by and between Owner and Pre-Opening Manager, in its capacity as “Consultant” (the “**Technical Services Agreement**”).

C. Owner desires to engage Pre-Opening Manager to perform certain specified pre-opening services in respect to the Hotel and Pre-Opening Manager desires to accept such engagement.

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby recognized, the Parties agree as follows:

1. **Engagement of Pre-Opening Manager.** Owner hereby engages Pre-Opening Manager to perform the pre-opening services hereinafter described.

2. **Price.**

(a) **Pre-Opening Budget.** Pre-Opening Manager shall prepare and submit for Owner’s approval a pre-opening budget (the “**Proposed Pre-Opening Budget**”) at least [thirty-two (32) months]<sup>1</sup> prior to the anticipated Opening Date. The Proposed Pre-Opening Budget will include cost estimates for all pre-opening expenses to be incurred prior to the Opening Date including, but not limited to, (i) Hotel Personnel Costs; (ii) training; (iii) sales and promotion; and (iv) promotion of the Hotel opening (collectively, “**Pre-Opening Expenses**”). Owner and Pre-Opening Manager will endeavor in good faith to agree to the Proposed Pre-Opening Budget by the date that is at least thirty (30) months prior to the anticipated Opening Date (which anticipated Opening Date is to be

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<sup>1</sup> **NTD: Confirm status and timing.**

reasonably determined by Manager and Owner). The Proposed Pre-Opening Budget as approved by Owner shall be referred to herein as the “**Pre-Opening Budget**”. Pre-Opening Manager will not to exceed the Pre-Opening Budget without the prior approval of Owner, provided, however, from time to time during the Pre-Opening Period, Pre-Opening Manager may make changes in the allocations of line items or budget categories within the approved Pre-Opening Budget resulting in a difference of less than ten percent (10%) for any individual line item, but without increasing the aggregate Pre-Opening Budget or the Pre-Opening Management Services Fee, based on changes in circumstances or for other reasons that in Pre-Opening Manager’s reasonable business judgment warrant a reallocation of the budgeted funds; provided that such changes shall not (i) cause a delay in the opening of the Hotel, or (ii) otherwise impair the quality of the Hotel. Pre-Opening Manager shall not adjust individual budget line items more than ten percent (10%) without the prior written consent of Owner. Pre-Opening Manager estimates that the Pre-Opening Budget will total approximately \$10,000 per guest room.

(b) **Dispute Resolution.** In the event Owner and Pre-Opening Manager are unable to agree on the Pre-Opening Budget by the date that is thirty (30) months prior to the anticipated Opening Date, either party shall have the right to submit the disputed items to an Expert for expert determination pursuant to [Article 10]<sup>2</sup> of the Management Agreement.

### 3. **Pre-Opening Matters.**

(a) **Pre-Opening Services.** During the period following the date hereof and prior to the Opening Date (the “**Pre-Opening Period**”), in order to facilitate a proper and orderly opening of the Hotel, Pre-Opening Manager shall, subject to the Pre-Opening Budget, take all steps necessary to prepare the Hotel for opening including (collectively, the “**Pre-Opening Services**”):

- (i) prepare and implement a plan for the sales promotion for the Hotel;
- (ii) implement programs to secure reservations for the Hotel's facilities;
- (iii) implement programs to secure and consummate arrangements with concessionaires, licensees, tenants and other intended users of the facilities of the Hotel (subject to any approvals required by Owner as set forth in the Management Agreement);
- (iv) recruit and train the initial Hotel Personnel (subject to Owner’s participation in the recruitment of any Senior Executive Personnel and other Key

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<sup>2</sup> **NTD: Global comment. All QMA section references to be confirmed and conformed.**

Employees to the extent set forth in Section [2.20.1.4] of the Management Agreement);

(v) test the proposed operation of the Hotel by preparing and serving food and beverages, and generally operating the Hotel, to the extent practicable, for a test period of not more than thirty days immediately prior to the Opening Date;

(vi) prepare and carry out [a program promoting the opening of the Hotel, which program shall be subject to review and approval by Owner (such approval not to be unreasonably withheld or delayed)]<sup>3</sup>;

(vii) negotiate concession contracts and leases for retail and lobby space (subject to any approvals required by Owner as set forth in the Management Agreement);

(viii) obtain the license(s) for serving and selling alcoholic beverages at the Hotel;

(ix) assist Owner in obtaining all other initial licenses for operation of the Hotel;

(x) coordinate with the Convention Center and its representatives in the manner set forth in the Management Agreement and the Room Block Agreement;

(xi) render such other services incidental to the preparation and organization of the Hotel operations, as may be reasonably required for the Hotel to be adequately staged and capable of operating on the Opening Date in accordance with the Brand Standards; and

(xii) Pre-Opening Manager will allow Owner to have access to the pre-opening operational, sales and food and beverage critical paths to follow opening progress by department. In addition, Pre-Opening manager will agree to meet with Owner quarterly to report out on pre-opening sales goal progress and key milestone achievements.

(b) *Services*. Pre-Opening Manager shall provide the Hotel such Centralized Services<sup>4</sup> as may be appropriate prior to the Opening Date.

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<sup>3</sup> **NTD: Parties to discuss. GWCCA assumes this includes a marketing plan? Hilton to explain and clarify meaning of “program”. There should be an extensive MARCOMM—Marketing Communications Plan in place within the first 90 days of the pre-opening manager in place, and updated monthly with all mediums being addressed—industry pubs, ACVB, social media, website built, industry travel schedule, hiring schedule, sales goals/pace etc.**



4. **Opening of the Hotel.** Pre-Opening Manager will cause the Hotel to be open on the date all guest rooms delivered to Pre-Opening Manager and the remainder of the Hotel have been substantially completed in accordance with the Technical Services Agreement, such that Pre-Opening Manager determines the Hotel may be operated in accordance with the Brand Standards, or such earlier date as Pre-Opening Manager may elect.

5. **Fees, Expenses and Payments to Pre-Opening Manager.**

(a) ***Pre-Opening Fee.*** Pre-Opening Manager shall be entitled to a fee (the “**Pre-Opening Services Management Fee**”) equal to a total of \$200,000. The Pre-Opening Services Management Fee shall be disbursed to Pre-Opening Manager in 30 equal monthly installments of \$6,666.67 on the first day of each month commencing with the month anticipated to be 30 months prior to the anticipated Opening Date (as reasonably determined by Pre-Opening Manager and Owner) and ending on the month in which the actual Opening Date occurs (or such earlier month as the foregoing monthly installments results in the Pre-Opening Services Management Fee being paid in full). In the event the actual Opening Date occurs prior to the Pre-Opening Services Management Fee being paid in full, then the remaining balance of the Pre-Opening Services Management Fee will be due and payable in full on the Opening Date.

(b) ***Payment of Pre-Opening Expenses.*** In addition to the Pre-Opening Services Management Fee, all Pre-Opening Expenses set forth in the Pre-Opening Budget shall be borne by Owner. Payment by Owner of the Pre-Opening Services Management Fee and payment (or reimbursement to Pre-Opening Manager) of any Pre-Opening Expenses will be accomplished as set forth in the remaining provisions of this Section 5(b).

**[Note: Mechanism for payment of pre-opening fees/expenses to be further discussed based on anticipated flow of bond proceeds. Hilton would prefer to receive a deposit of pre-opening funds in a pre-opening account held directly by Hilton, but we have also been a party to arrangements where amounts get funded into a Pre-Opening Account designated only for pre-opening expenses where Hilton can directly requisition funds.]**

(c) ***Certain Representations.***

(i) ***Representation Regarding Centralized Services Fees.*** With respect to the portion of the Pre-Opening Expenses that constitute Centralized Services Fees and Charges, Pre-Opening Manager makes to Owner the representations and warranties made by Manager in Section [2.21.2] of the Management Agreement with respect to such Centralized Services Fees and Charges.

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<sup>4</sup> **NTD: Parties to discuss with QMA Section 2.25. This needs to be more specific. Hilton to clarify what Centralized Services are to be provided during pre-opening. Does this include revenue management, marketing support, accounting or any other back of house support—IT etc.?**

(ii) *Owner Audit Rights.* Owner and Owner's designees and consultants shall, at any time throughout the term of this Agreement, have the right upon reasonable prior written notice to Pre-Opening Manager, for the purpose of verifying Pre-Opening Expenses, to audit and verify all books and records of Pre-Opening Manager, pertaining to Pre-Opening Expenses. Any audit and verification pursuant to this Section 5(c)(ii) shall be conducted in such a fashion as to interfere as little as reasonably practicable with Pre-Opening Manager's normal business operations and during normal business hours. Pre-Opening Manager shall cooperate with Owner and its respective auditors in connection with such audit and shall promptly make available to Owner and its auditors any and all information relating to the Hotel that they may reasonably request in connection with such audit. [The cost of any such audit will be funded from the [Hotel Project Improvements Budget (as defined in the Development Agreement)]. [If there is any insufficiency of funds in the Hotel Project Improvements Budget, such insufficiency shall be funded from [\_\_\_\_\_].]<sup>5</sup>

(iii) *Affiliates and Related Parties.*

(A) Pre-Opening Manager may, pursuant to the Pre-Opening Budget, furnish centralized purchasing programs for goods, supplies, equipment and services for the Hotel, including Operating Supplies, Operating Equipment, insurance and long distance telephone services, to the same extent furnished to Other Managed Hotels pursuant to and subject to the terms of Section [2.24] and Section 2.27 of the Management Agreement, which are incorporated herein by reference, *mutadis mutandis*, and made a part hereof.

(B) Pre-Opening Manager will use commercially reasonable efforts to make all purchases for or on behalf of the Hotel on the best commercial terms available and in accordance with Section 2.27 of the Management Agreement, which is incorporated herein by reference, *mutadis mutandis*, and made a part hereof.

(C) The terms and provisions of [Section 2.24 and 2.27] of the Management Agreement are incorporated herein by reference *mutadis mutandis*, and a part hereof.

(iv) *Payments on Termination for Reasons other than an Event of Default.* On the effective date of any termination of this Agreement prior to the Opening Date (other than for an Event of Default by Pre-Opening Manager or as a result of the Bonds failing to be issued), Owner shall pay Pre-Opening Manager: (A) the unpaid amount, if any, of the Pre-Opening Services Management Fee through the date of termination; and (B) Pre-Opening Expenses incurred through

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<sup>5</sup> **NTD: Discuss and confirm. Global comment. Confirm and conform to Indenture.**

the date of termination. After payment and receipt of the amount due to Pre-Opening Manager in accordance with the preceding sentence, neither Pre-Opening Manager nor Owner shall have any rights against the other under this Agreement, subject to any reinstatement rights Pre-Opening Manager may retain under this Agreement and to any obligations that, by their nature or pursuant to the express terms of this Agreement are clearly intended to survive such termination.

(v) *Qualified Management Agreement.* This Agreement is intended to and shall constitute a “**qualified management agreement**” in compliance with applicable requirements of Section 141 of the Internal Revenue Code, as amended (the “**Code**”), the Treasury Regulations promulgated thereunder, and Rev. Proc. 2017-13 (together, the “**OMA Rules**”), and shall be interpreted in accordance with such requirements. Pre-Opening Manager has reviewed and is familiar with the applicable requirements of the QMA Rules but has not independently determined that this Agreement satisfies the safe harbors contained in the QMA Rules. For Pre-Opening Manager’s informational purposes only, Owner shall deliver to Pre-Opening Manager a copy of an opinion of Bond Counsel, addressed to Owner, simultaneously with the execution of this Agreement indicating that interest on the Bonds is excludable from gross income for federal income tax purposes.

(vi) *Tax Covenant.* Pre-Opening Manager agrees that it will operate and manage the Hotel in a manner which, to the extent of its rights and authority under this Agreement and as otherwise authorized by Owner in writing, preserves the tax-exempt status Bonds and, in particular, to the extent of its rights and authority under this Agreement and as otherwise authorized by Owner in writing, will comply with the requirements of section 141(b) of the Code, section 1.141-3 of the Treasury Regulations and Revenue Procedure 2017-13 relating to conditions under which tax-exempt bond-financed property will be considered used for an impermissible private business use; provided, however that the foregoing shall not require Pre-Opening Manager to breach any of the provisions of this Agreement unless such action is authorized and such breach is waived in writing in advance by Owner. In the event that such requirements impose a material adverse financial burden on Manager not otherwise contemplated by this Agreement, or if it becomes necessary to amend this Agreement in order to preserve the tax-exempt status of the Bonds, Pre-Opening Manager and Owner agree to negotiate in good faith and amend this Agreement, including if necessary the compensation to be paid to Pre-Opening Manager, in a manner which maintains or restores to both Owner and Pre-Opening Manager, to the greatest extent possible within the requirements of this Section 5(c)(vi), the benefits expected to be received by each of Owner and Pre-Opening Manager pursuant to the original terms of this Agreement; provided, however, that the Pre-Opening Manager may, in its reasonable discretion, reject such proposed amendment (including the rejection of the amendment on the basis that such amendment will

impose a material adverse financial burden on the Pre-Opening Manager for which the Owner is unable or unwilling to reimburse), in which event either Party may terminate this Agreement as such Party's sole and exclusive remedy. If Pre-Opening Manager fails to operate and manage the Hotel in accordance with the Revenue Procedure 2017-13 and as a result the Hotel is considered used for an impermissible private business use or otherwise materially adversely affects the status of the Bonds as federally tax-exempt bonds, the same shall not be deemed an Event of Default by Manager but Owner may terminate this Agreement as its sole and exclusive remedy. If Pre-Opening Manager receives from Bond Counsel, or if Owner confirms to Pre-Opening Manager in writing that Owner has received from Bond Counsel, written approval with respect to Manager's entry into a contract, agreement, or arrangement with a third party pursuant to the provisions of [Section 2.1.4 and 2.3.7] of the Management Agreement (which is incorporated herein by reference *mutadis mutandis* and made a part hereof), Pre-Opening Manager shall be deemed to have complied with Section 141 of the Code and the Revenue Procedure with respect to the contract, agreement, or arrangement in question. Without limiting the foregoing, Pre-Opening Manager represents and warrants:

(A) Pre-Opening Manager is not entitled to, and agrees that it will not take, any tax position that is inconsistent with being a service provider to the Owner with respect to the Hotel; and

(B) Pre-Opening Manager agrees not to claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the Hotel.

(d) **No Offset.** All payments by Owner under this Agreement and all related agreements between the Parties or their respective Affiliates shall be made pursuant to independent covenants, and Owner shall not set off any claim for damages or money due from Pre-Opening Manager or any of its Affiliates to Owner.

## 6. Events of Default.

(a) **Events of Default by Pre-Opening Manager.** An "**Event of Default**" shall occur with respect to Pre-Opening Manager if and only if:

(i) Pre-Opening Manager fails to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by Pre-Opening Manager and such default continues for thirty (30) days after notice is received from the Owner;

(ii) an Insolvency Event occurs with respect to Pre-Opening Manager;  
or

(iii) a material breach by Pre-Opening Manager of any representation or warranty expressly set forth in this Agreement.

(b) ***Event of Default by Owner.*** An “**Event of Default**” shall occur with respect to Owner if and only if:

(i) Owner fails to keep, observe or perform any other material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by the Owner, and the failure continues for thirty (30) days after notice is received from Pre-Opening Manager;

(ii) an Insolvency Event occurs with respect to Owner;

(iii) Owner fails to pay within the time required hereunder (A) any amounts owed to Pre-Opening Manager under this Agreement and such failure continues for a period of fourteen (14) days after Pre-Opening Manager delivers written notice to Owner specifying such failure; or

(iv) a material breach by Pre-Opening Manager of any representation or warranty expressly set forth in this Agreement.

(c) ***Rights and Remedies of Non-Defaulting Party.***<sup>6</sup>

(i) *Remedies.* Upon the occurrence of an Event of Default by Pre-Opening Manager or Owner, the non-defaulting Party shall have the right, but not the obligation, to terminate this Agreement by giving written notice to the other Party specifying a date, no earlier than twenty-five (25) days and no later than seventy-five (75) days after the giving of such notice, when the Agreement shall terminate. In addition to its right of termination, the non-defaulting Party shall, except as provided in Section 4 above, be entitled to pursue all other remedies available to it under applicable law as a result of such Event of Default; neither the right of termination nor the right to sue for damages nor any other remedies given hereunder now or hereafter existing at law and/or in equity shall be exclusive of any other remedy.

(ii) *Payments on Termination Due to Event of Default.* Upon any such termination of this Agreement for an Event of Default if Owner is the defaulting Party, Owner shall pay Pre-Opening Manager the entire unpaid amount of the Pre-Opening Services Management Fee and all Pre-Opening Expenses incurred by Pre-Opening Manager prior to the termination date.

(iii) *Effect of Termination.* The termination of this Agreement under this Section 6 shall not affect the rights of the terminating party with respect to

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<sup>6</sup> **Note: Conform to final rights and remedies provision in the other Hotel Agreements.**

any damages it has suffered as a result of any breach of this Agreement, nor shall it affect the rights of either party with respect to liability or claims accrued, or arising out of events occurring, prior to the date of termination.

7. **Assignments/Mortgages.**

(a) **Restrictions on Assignment.** Except as otherwise provided in this Section, neither Party may effect an assignment without the prior consent of the other Party.

(b) **Permitted Assignments.** Pre-Opening Manager has the right to assign this Agreement without consent of Owner to the same extent as “Manager” has the right to assign the Management Agreement as set forth in Section 9.3.2 of the Management Agreement.

(c) **Assignment by Owner.** Owner shall not have the right to delegate, assign or otherwise transfer any or all of its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of Pre-Opening Manager, except to any person to whom Owner contemporaneously assigns its interest in the Management Agreement in accordance with the terms of the Management Agreement.

(d) **Effect of Permitted Assignments.** A consent to any particular assignment shall not be deemed to be a consent to any other Assignment or a waiver of the requirement that consent be obtained in the case of any other Assignment.

(e) **Mortgagee’s Right to Inspect Hotel and Books.** On reasonable advance notice from a Mortgagee, Pre-Opening Manager shall accord to such Mortgagee and its agents the right to enter on any part of the Hotel at any reasonable time for the purposes of inspecting the Hotel and examining, inspecting, or making extracts from the books of account and financial records of the Hotel to the extent Owner has such rights to inspect, examine and extract the books of account and financial records of the Hotel pursuant to this Agreement; provided, however, that any expense incurred in the Hotel’s name in connection with such activities shall be deemed to be at Owner’s expense; and provided, further, that Pre-Opening Manager shall have the right to schedule such activities at times that are not disruptive to Hotel operations when a member of the Senior Executive Personnel is at the Hotel and available to coordinate the activities of such Mortgagee or its agents.

(f) **Subordination, Non-Disturbance and Attornment Agreement.** The terms and provisions of Sections 6.2 and 6.3 of the Management Agreement are incorporated herein by reference *mutadis mutandis*, and made a part hereof.

8. (a) **Disputes.** Except as otherwise specifically provided herein, all disputes arising out of or relating to the relationship created by this Agreement shall be resolved in the same manner as provided in [Article 10] of the Management Agreement; provided, the matters to be resolved by the Expert shall be:

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Pre-Opening Services Agreement

- (i) computation of the Pre-Opening Services Fee;
- (ii) reserved;
- (iii) approval or modification of the Pre-Opening Budget, except where required to comply with Brand Standards; and
- (iv) amounts due to Pre-Opening Manager or the Owner on termination of this Agreement (excluding damages).

(b) **Venue and Jurisdiction.** Each Party submits to the non-exclusive jurisdiction of the state and federal courts of the county or district in which the Hotel is located, and waives any objection it may have to such venue being an inconvenient forum.

(c) **Limitation on Remedies.** NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS AGREEMENT OR THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, TO THE FULLEST EXTENT NOT PROHIBITED BY APPLICABLE LAW, OTHER THAN AND EXCLUDING (i) THE RESPECTIVE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER SECTION 9 OF THIS AGREEMENT (INDEMNIFICATION) AND (ii) ANY OTHER INDEMNIFICATION OR DEFENSE OBLIGATIONS OF A PARTY UNDER THIS AGREEMENT IN THE CASE OF UNAFFILIATED THIRD PARTY CLAIMS ("INDEMNIFICATION EXCLUSION"), NEITHER PARTY (INCLUDING ANY RELATED PARTY) SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR TREBLE DAMAGES OR LOSSES INCURRED BY THE OTHER PARTY OR ANY OF ITS RELATED PARTIES ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCTS OR STRICT LIABILITY OR ANY OTHER FORM OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES (COLLECTIVELY "CONSEQUENTIAL DAMAGES"); AND SUBJECT TO THE INDEMNIFICATION EXCLUSION ABOVE, EACH PARTY HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES AND RELEASES ANY RIGHT, POWER OR PRIVILEGE EITHER MAY HAVE TO CLAIM OR RECEIVE FROM THE OTHER PARTY HERETO ANY SUCH CONSEQUENTIAL DAMAGES. FOR THE AVOIDANCE OF DOUBT, THIS LIMITATION OF LIABILITIES SECTION SHALL NOT BE APPLICABLE TO ANY DIRECT DAMAGE CLAIMS BETWEEN THE PARTIES. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE REMEDIES HEREIN PROVIDED, AND OTHER REMEDIES AT LAW AND IN EQUITY, SHALL IN ALL CIRCUMSTANCES BE ADEQUATE (INCLUDING THE RIGHT TO RECOVER DIRECT DAMAGES). THE FOREGOING WAIVER AND RELEASE SHALL APPLY IN ALL ACTIONS OR PROCEEDINGS BETWEEN THE PARTIES (INCLUDING ANY EXPERT OR ARBITRATION PROCEEDING) AND FOR ALL CAUSES OF ACTION OR THEORIES OF

LIABILITY, WHETHER FOR BREACH OF THIS AGREEMENT OR FOR VIOLATION OF ANY OTHER DUTY OWING BY EITHER PARTY TO THE OTHER WHICH MAY IN ANY WAY RELATE TO PRE-OPENING MANAGER'S MANAGEMENT OR OPERATION OF THE HOTEL OTHER THAN AND EXCLUDING THE INDEMNIFICATION EXCLUSION. BOTH PARTIES FURTHER ACKNOWLEDGE THAT THEY ARE EXPERIENCED IN NEGOTIATING AGREEMENTS OF THIS SORT, HAVE HAD THE ADVICE OF COUNSEL IN CONNECTION HEREWITH, AND HAVE BEEN ADVISED AS TO, AND FULLY UNDERSTAND, THE NATURE OF THE WAIVERS CONTAINED IN THIS SECTION 8(c) AND IN SECTION 10(n). FURTHERMORE AND NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IF PRE-OPENING MANAGER BREACHES ANY AGENCY DUTY, OWNER SHALL NOT BE ENTITLED TO: (A) DISGORGEMENT, FORFEITURE OR RESTITUTION OF ANY COMPENSATION PAID BY OWNER TO PRE-OPENING MANAGER; (B) DISGORGEMENT, FORFEITURE OR RESTITUTION OF ANY BENEFIT RECEIVED BY PRE-OPENING MANAGER IN CONNECTION WITH ANY TRANSACTION ON BEHALF OF OWNER OR THE HOTEL UNLESS THE MONETARY VALUE OF SUCH BENEFIT COULD HAVE BEEN CALCULATED AND PASSED THROUGH TO OWNER IN A COMMERCIALY REASONABLE MANNER; (C) DIVESTITURE OF ANY FINANCIAL OR OTHER INTEREST HELD BY PRE-OPENING MANAGER; OR (D) ANY RELIEF THAT DOES NOT TAKE INTO ACCOUNT THE BENEFITS RECEIVED BY OWNER FROM THE SERVICES PROVIDED BY PRE-OPENING MANAGER.

(d) **Legal Proceedings.** Except for disputes resolved in accordance with Section 8(a), and in addition to any other rights or remedies, except as otherwise specifically provided in this Agreement, any Party may institute litigation to recover damages for any Event of Default or to obtain any other remedy at law or in equity (including specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy) consistent with the purposes of this Agreement. The existence of any claim or cause of action of a Party against another Party, whether predicated on this Agreement or otherwise, shall not (i) constitute a defense to specific enforcement of the obligations of such other Party under this Agreement or (ii) bar the availability of injunctive relief.

## 9. **Indemnity by Parties.**

(a) **Pre-Opening Manager's Indemnity.** To the extent permitted by law, Manager shall Indemnify Owner and its Related Parties (collectively, "**Owner Parties**") from and against, and reimburse Owner Parties for, any and all claims, demands, damages, judgments, costs, losses, penalties, fines, liens, suits, expenses, and liabilities, including, without limitation, reasonable attorneys' fees and costs and expenses incident thereto (collectively, "**Claims**"), which any Owner Party may have alleged against them, incur, become responsible for, or pay out for any reason, but only to the extent arising out of Pre-Opening Manager's Gross Negligence or Willful Acts (which, for the avoidance of



doubt, are the same as Manager's Grossly Negligent or Willful Acts set forth in the Management Agreement). Notwithstanding the foregoing, in no event will Pre-Opening Manager's indemnity, hold harmless or defense agreements extend to (i) any breach of any of Owner's obligations, covenants, agreements or representations contained in this Agreement or the Room Block Agreement, or (ii) an Event of Default by Owner under this Agreement.

(b) ***Reserved.***

(c) ***Indemnified Parties.*** The indemnities contained in this Section shall run to the benefit of Owner, its Affiliates, and their respective directors, partners, members, managers, officers and employees.

(d) ***Survival.*** The provisions of this Section shall survive any cancellation, termination or expiration of this Agreement and shall remain in full force and effect until such time as the applicable statute of limitation shall cut off all demands, claims, actions, damages, losses, liabilities or expenses which are the subject of this Section.

(e) ***Indemnification Procedure.*** The provisions of [Section 13.14.3] of the Management Agreement are hereby, by this reference, incorporated in this Agreement, *mutadis mutandis*, and made applicable to the indemnities provided by Pre-Opening Manager under this Agreement.

## 10. **Miscellaneous.**

(a) ***Interpretation.***

(i) ***Recitals.*** The Recitals set forth at the beginning of this Agreement and the **Exhibits** attached to this Agreement are hereby incorporated in and made a part of this Agreement.

(ii) ***Covenants Versus Condition.*** Unless the language specifies or the context implies that a term of this Agreement is a condition, all of the terms of this Agreement shall be deemed and construed to be covenants to be performed by the designated Party.

(iii) ***Certain Terms.*** The use of the terms "including," "include," and "includes" followed by one or more examples is intended to be illustrative and shall not be deemed or construed to limit the scope of the classification or category to the examples listed.

(iv) ***Section References.*** In this Agreement, any reference to a Section or an Article is a reference to a Section or Article of this Agreement, unless otherwise specified.

(b) ***Timely Decisions and Consents.*** Unless expressly stated otherwise in this Agreement, whenever a matter is submitted to a Party for approval or consent in accordance with the terms of this Agreement, that Party has a duty to act so as to not unreasonably withhold, condition or delay rendering a decision on the matter. With respect to approvals to be obtained from either the Owner or Pre-Opening Manager hereunder, the applicable time period within which the party receiving the request (the "**receiving party**") is required to give its approval or disapproval shall not commence until after the receiving party has received (a) a written request for its approval, which shall expressly set forth all items (with reasonable specificity) for which the receiving party's approval is requested; and (b) all reasonable information that the receiving party has requested in order to deliver its approval or disapproval.

(c) ***Representations and Warranties of Pre-Opening Manager.*** Pre-Opening Manager represents and warrants to and covenants with Owner as of the Effective Date as follows:

(i) ***Due Organization, Etc.*** Pre-Opening Manager is duly organized, validly existing, and in good standing, is duly qualified to do business in the State of Georgia, and has full power, authority, and legal right to execute, perform, and timely observe all of the provisions of this Agreement and the Management Agreement. Pre-Opening Manager's execution, delivery, and performance of this Agreement and the Management Agreement have been duly authorized.

(ii) ***Valid and Binding Obligations.*** This Agreement and the Management Agreement constitute the valid and binding obligations of Owner and do not and will not constitute a breach of or default under the corporate documents or bylaws of Pre-Opening Manager or the terms, conditions, or provisions of any law, order, rule, regulation, judgment, decree, agreement, or instrument to which Pre-Opening Manager is a party or by which it or any of its assets is bound or affected.

(iii) ***No Third-Party Approval Required.*** No approval of any third party is required for Pre-Opening Manager's execution or performance of this Agreement or the Management Agreement that has not been obtained prior to the execution of this Agreement.

(iv) ***Maintaining Legal Existence.*** Pre-Opening Manager shall, at its own expense, keep in full force and effect throughout the term of this Agreement its legal existence and the rights required for it timely to observe all of the terms and conditions of this Agreement and the Management Agreement.

(v) ***No Adverse Litigation.*** There is no litigation or proceeding pending or, to Pre-Opening Manager's knowledge, threatened against Pre-Opening Manager that could adversely affect the validity of this Agreement or the

ability of Pre-Opening Manager to comply with its obligations under this Agreement and the Management Agreement.

(vi) *No Discrimination.* No covenant, agreement, lease, conveyance, or other instrument shall be effected or executed by Pre-Opening Manager, or any of its successors or assigns, whereby the Hotel or any portion thereof is restricted by Pre-Opening Manager, or any successor in interest, upon the basis of race, color, religion, national origin, ancestry, sex, marital status, physical or mental disability, or sexual orientation in the sale, lease, use, or occupancy thereof. Pre-Opening Manager will comply with Federal, State, and local laws prohibiting discrimination upon the basis of race, color, religion, national origin, ancestry, sex, marital status, physical or mental disability, or sexual orientation in the providing of public accommodations, the sale, lease, rental, use, or occupancy of the Hotel, or the operation of the Hotel.

(d) *Representations and Warranties of Owner.* Owner represents and warrants to Pre-Opening Manager as of the Effective Date, as follows:

(i) *Due Organization, Etc.* The Owner has full power, authority, and legal right to execute, perform, and timely observe all of the provisions of this Agreement and the Management Agreement. Owner's execution, delivery, and performance of this Agreement and the Management Agreement have been duly authorized.

(ii) *Valid and Binding Obligation.* This Agreement and the Management Agreement constitute a valid and binding obligations of Owner and do not constitute a breach of or default under the corporate documents or bylaws of Owner or the terms, conditions or provisions of any law, order, rule, regulation, judgment, decree, agreement or instrument to which Owner is a party or by which it or any of its assets is bound or affected.

(iii) *No Third-Party Approval Required.* No approval of any third party (including any ground lessor or lessee or the holder of any Mortgage) is required for Owner's execution and performance of this Agreement or the Management Agreement that has not been obtained prior to the execution of this Agreement.

(iv) *No Adverse Litigation.* There is no litigation or proceeding pending or, to Owner's knowledge, threatened against Owner, or to the knowledge of Owner, against the Project Site, that could adversely affect the validity of this Agreement, the Management Agreement or the ability of Owner to comply with its obligations under this Agreement or the Management Agreement. Owner is not aware of any condemnation proceeding pending or threatened against the Land or any portion thereof.

(e) *Intentionally Omitted.*

(f) **Governing Law.** This Agreement and all disputes relating to the performance or interpretation of any term of this Agreement shall be construed under and governed by the laws of the State of Georgia.

(g) **Waivers, Modifications, Remedies.** No failure or delay by a Party to insist on the strict performance of any term of this Agreement or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. Neither this Agreement nor any of its terms may be changed or modified, waived or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by the Party against whom the enforcement of the change, waiver, or termination is sought. No waiver of any breach shall affect or alter this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

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

(i) **Notices.** Notices, consents, determinations, requests, approvals, demands, reports, objections, directions and all other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given and to be effective and deemed received (a) on the date on which such communications are delivered by personal delivery, (b) one business day after deposit with a nationally recognized overnight courier service if sent overnight delivery, or (c) three days after deposit with the United States Postal Service, postage prepaid, as registered or certified matter, postage prepaid, return receipt requested; in any case addressed to the Parties at the addresses specified below, or at such other address as the Party to whom the notice is sent has designated in accordance with this Section 10(i). All such communications shall be deemed to have been received by the intended recipient (i) in the case of air courier services, on the next business day after deposit with such air courier service with a request for next day service; (ii) upon personal delivery thereof to the other Party; and (iii) in the case of first-class mail, three (3) business days after the deposit with the United States Postal Service. Until a Party provides a change in address in accordance with this Section 10(i), notices will be sent to the following addresses:

If to Owner:                      Geo. L. Smith II Georgia World Congress Center  
   Authority  
   285 Andrew Young International Blvd., NW  
   Atlanta, Georgia 30313-1591  
   Attn: Executive Director  
   Fax: (404) 223-4011

and to: Office of the Attorney General  
40 Capitol Square, SW  
Atlanta, Georgia 30334  
Attn: Attorney General  
Fax: (404) 657-3239

and to: Geo. L. Smith II Georgia World Congress Center  
Authority  
285 Andrew Young International Blvd., NW  
Atlanta, Georgia 30313-1591  
Attn: J. Pargen Robertson, Jr.  
Fax: (404) 223-4011

and to: King & Spalding LLP  
1180 Peachtree Street NE  
Atlanta, Georgia 30309  
Attn: Matthew W. Nichols  
Fax: (404) \_\_\_\_ - \_\_\_\_

and to: Greenberg Traurig, LLP  
1000 Louisiana Street, Suite 1700  
Houston, Texas 77002  
Attention: Franklin D.R. Jones, Jr.  
Fax: (713) 754-7530

and to: Drew Company Atlanta, LLC  
2 Seaport Lane, 9<sup>th</sup> Floor  
Boston, MA 02210  
Attn: Theonie Alicandro

with a copy to [ ]  
Trustee:

If to Pre-Opening  
Manager: Hilton Management LLC  
7930 Jones Branch Drive  
McLean, Virginia 22102  
Attention: General Counsel

After Opening  
Date, with a copy [ ]  
to: Signia Hilton Atlanta  
Attention: General Manager

(j) **Successors and Assigns.** Subject to the provisions of Section 7 of this Agreement, this Agreement shall inure to the benefit of and shall be binding on the successors and assigns of the Parties, and the terms “Owner” and “Pre-Opening Manager” as used in this Agreement shall include all permitted successors and assigns of the original Parties.

(k) **Estoppel Certificates.** [Section 13.17] of the Management Agreement is incorporated herein by reference *mutadis mutandis*.

(l) **Entire Agreement.** This Agreement (including the attached **Exhibits**, all of which are incorporated into this Agreement by this reference), the Management Agreement, the Technical Services Agreement, and the Room Block Agreement (collectively, the “**Hotel Agreements**”) constitute the entire contract between the Parties relating to the operation of the Hotel and supersedes all prior contracts and understandings, written or oral. Except as provided otherwise, in entering into this Agreement, neither Owner nor Pre-Opening Manager is relying upon any statement, representation or promise, or the failure to make any statement, representation or promise, of the other (or of any officer, agent, employee, representative or attorney for the other).

(m) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

(n) **Relationship of the Parties/Limitations on Fiduciary Duties.**

(i) **Relationship.** Pre-Opening Manager and Owner acknowledge and agree that this Agreement creates an independent contractor relationship, with certain agency rights specifically set forth herein; provided that, (a) Pre-Opening Manager’s authority is subject to the terms and conditions of this Agreement, and (b) nothing contained in this Agreement shall create an agency coupled with an interest. Nothing contained in this Agreement shall constitute, or be construed to be or to create, a partnership, joint venture, or lease between Pre-Opening Manager and Owner with respect to the Hotel or the operation thereof. This Agreement shall not be construed at any time to be an interest in real estate or a lien or security interest of any nature against the Hotel, the Hotel or any other land used in connection with the Hotel, or any equipment, fixtures, inventory, motor vehicles, contracts, documents, accounts, notes, drafts, acceptances, instruments, chattel paper, general intangibles or other personal property now existing or that may hereafter be acquired or entered into with respect to the Hotel or the operation thereof. Notwithstanding anything to the contrary in this Agreement or otherwise, in no event shall Pre-Opening Manager have any right to bind Owner except as expressly set forth in this Agreement. Owner acknowledges that Pre-Opening Manager operates other hotels that may be competitive to the Hotel.

(ii) **Limitations on Fiduciary Duties.** To the extent any agency relationship between the Parties does exist, the following provisions shall apply:

(A) This Agreement shall be interpreted in accordance with general principles of contract interpretation without regard to the common law principles of agency (except as expressly provided for in this Agreement), and shall establish and create only duties and obligations enforceable against the parties. It is the intent and desire of the parties that any liability between them shall be based solely on principles of contract law and the express provisions of this Agreement. To the extent any duties, fiduciary or otherwise, that exist or may be implied for any reason whatsoever, including those resulting from the relationship between the parties, and including all duties of loyalty, good faith, fair dealing, care, full disclosure, or any other duty deemed to exist under the common law principles of agency or otherwise, but specifically excluding Corporate Personnel's handling of Owner's funds and the covenant of good faith and fair dealing (unless the Agreement specifically states that a party may perform a duty or obligation in that party's sole discretion) (collectively, the "**Implied Fiduciary Duties**"), are inconsistent with, or would have the effect of modifying, limiting or restricting, the express provisions of this Agreement, the terms of this Agreement prevail.

(B) For purposes of assessing Manager's duties and obligations under this Agreement, and subject to Section 10(n)(ii)(A), the Parties acknowledge that the terms and provisions of this Agreement and the duties and obligations set out in this Agreement are intended to satisfy any fiduciary duties which may exist between the parties. The Parties also hereby unconditionally and irrevocably waive and release any right, power or privilege either may have to claim or receive from the other Party any punitive, exemplary, statutory, or treble damages or any incidental or consequential damages with respect to any breach of the Implied Fiduciary Duties. Furthermore, Owner specifically consents to all transactions and conduct by Pre-Opening Manager and its Affiliates described in this Agreement, including those set out below, and waives any Implied Fiduciary Duties which Pre-Opening Manager may owe to Owner now, or which may arise in the future, in connection with such transactions or conduct.

(i) Except as provided in [Section 13.25] of the Management Agreement, Pre-Opening Manager and its Affiliates may establish or engage in any business of any kind or participate in any investment of any kind, whether using any of the Trademarks or any of the other proprietary information of Pre-Opening Manager, at any

location, in Pre-Opening Manager's sole discretion. Furthermore, Pre-Opening Manager and its Affiliates may exercise such rights even though these businesses or investments may directly or indirectly compete with the Hotel, with Owner or its Affiliates, or with any other business or investment of Owner or its Affiliates;

- (ii) Subject to Section 5(c)(iii), Pre-Opening Manager may elect to use the services of its Affiliates in fulfilling its obligations under this Agreement, as specifically described in this Agreement;
- (iii) Subject to [Section 5(c)(i)] of the Management Agreement, Pre-Opening Manager and its Affiliates may receive the fees, charges and reimbursements specifically described in this Agreement in connection with the provision of its management services and its Centralized Services to the Hotel and for other properties operated, managed, licensed or owned by Pre-Opening Manager or its Affiliates;
- (iv) Subject to Section 5(c)(i) and (iii), Pre-Opening Manager and its Affiliates may receive the payments, fees, commissions and reimbursements from vendors in connection with Pre-Opening Manager's purchasing services described in this Agreement for the Hotel and for other properties operated, managed, licensed or owned by Pre-Opening Manager or its Affiliates;
- (v) Pre-Opening Manager and its Affiliates may use the Hotel Guest Data in any manner; however, Owner's use of the Hotel Guest Data is restricted during the and after the Term as described in the Management Agreement;
- (vi) Pre-Opening Manager is permitted to use the funds in the various [pre-opening accounts] for the purposes described in this Agreement (including payment to Pre-Opening Manager or its Affiliates of all fees, charges and reimbursements described in this Agreement);



- (vii) Subject to [Section 2.20] of the Management Agreement, Manager has the right to determine all Hotel Personnel policies, including transferring Hotel Personnel of the Hotel to other properties owned, operated or licensed by Manager from time to time.
- (viii) Subject to [Section 2.20.4] of the Management Agreement, Manager has the authority to negotiate and make agreement with any labor unions and enter into or amend or modify in any material respect any collective bargaining agreements with labor unions in connection with the Hotel, as described in this Agreement.

(o) **Confidentiality/Georgia Open Records Laws.** The Confidentiality/Georgia Open Records Laws provisions set forth in Section [13.22] of the Management Agreement are hereby incorporated by reference, *mutadis mutandis*, and made a part hereof.

(p) **Interest.** If any amount due by Owner to Pre-Opening Manager or its Affiliates has not been paid within ten (10) days after payment is due, Owner shall pay, in addition to the amount due, interest at a rate equal to the lesser of (i) 18% per annum or (ii) the highest rate allowable by law, starting with the date on which said amount become overdue until the date payment is received. The foregoing shall be in addition to and not in lieu of any other remedies available under the terms of this Agreement.

(q) **Further Assurance.** The Parties shall do and procure to be done all such acts, matters and things and shall execute and deliver all such documents and instruments as shall be required to enable the Parties to perform their respective obligations under, and to give effect to the transactions contemplated by, this Agreement. Owner hereby consents to the execution and delivery by Owner and Pre-Opening Manager of this Agreement.

(r) **Third Parties.** Except as provided in the last two sentences of this Section, none of the obligations hereunder of either party shall run to or be enforceable by any party other than the party to this Agreement or by a party deriving rights hereunder as a result of an assignment permitted pursuant to the terms hereof. Pre-Opening Manager acknowledges that Trustee has certain approval rights to the consents, approvals and other actions by Owner in this Agreement.

(s) **Sale of Securities.** In the event Owner, or any person controlling Owner (a “**Controlling Person**”) shall, at any time or from time to time, sell or offer to sell, any securities (including the Bonds) issued by Owner, Owner shall clearly disclose to all purchasers and offerors that (i) neither Pre-Opening Manager nor any of its Affiliates or

their respective officers, directors, agents or employees shall in any way be deemed an issuer or underwriter of said securities and that (ii) Pre-Opening Manager or its Affiliates and said officers, directors, agents and employees shall not have any liability whatsoever arising out of or relating to any financial statements, prospectuses or other financial information contained in any prospectus or similar written or oral communication other than that which pertains to Pre-Opening Manager and/or its operation. Pre-Opening Manager shall cooperate in providing adequate disclosure regarding it in such prospectus. Owner shall obtain Pre-Opening Manager's advance approval for any description of Pre-Opening Manager, or any description of this Agreement or of Owner's relationship with Manager hereunder, contained in any prospectus or similar communication to be delivered in connection with the sale or offer by Owner or any Controlling Person of any securities. Pre-Opening Manager may condition its approval upon changes in such descriptions prior to the delivery therefor to any prospective purchaser; any such descriptive materials, and any changes therein, shall be submitted to Pre-Opening Manager at least thirty days in advance of the proposed usage in connection with a sale or offer of securities. All terms used in this Section 10(s) shall have the same meaning as in the Securities Act of 1933, as amended.

(t) **Survivability.** The indemnity, hold harmless and defense obligations contained in this Agreement, as well as any provision that by its nature requires performance after termination of this Agreement, shall survive the termination of this Agreement.

(u) **No Reliance and No Liability.** Notwithstanding anything to the contrary, Pre-Opening Manager may make available to the Owner or the Owner may otherwise obtain certain information, reports, forecasts, projections, budgets and other materials in connection with the Hotel or pursuant to the terms hereof. The Owner understands and acknowledges that, any information, reports forecasts, projections, budgets and other materials which are prepared at the request of or by Pre-Opening Manager or otherwise provided by Pre-Opening Manager or otherwise obtained by the Owner from any source are provided without any agreement, covenant, representation or warranty as to the completeness or accuracy of the facts, presumptions, conclusions or any other information contained therein, and the Owner shall not rely on same to any extent. The Owner relies solely on its own investigation and evaluation of all such information, reports, forecasts, projections, budgets and other materials and any such items are as a courtesy and convenience only without any liability, obligation or other responsibility being imposed, in whole or in part, to any extent on Pre-Opening Manager or any of Pre-Opening Manager's Parties.

(v) **Limitation on Personal Liability.** Except as otherwise provided herein, none of Owner's Affiliates, officers, directors, employees or agents of the same, nor any of their respective heirs, administrators, executors, personal representatives, successors and assigns, shall have any personal liability or other personal obligation with respect to any payment, performance or observance of any amount, obligation, or liability to be paid, performed or observed under this Agreement or any of the representations,

warranties, covenants, indemnifications or other undertakings of Owner hereunder and, except as otherwise expressly provided in this Agreement, Manager agrees it shall not seek to obtain a money judgment against Trustee, Bondholders or Affiliates of any thereof, or against any officer, director, employee or agent of the same, or against any of their respective heirs, administrators, executors, personal representatives, successors or assigns.

(w) ***Cross-Termination.*** Notwithstanding anything to the contrary in this Agreement, if the Management Agreement expires or is otherwise terminated, then this Agreement shall terminate on the date of such termination without further act or notice. The Parties shall retain any remedies hereunder and thereunder as a result of an event of default under any of the Hotel Agreements.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

**OWNER:**

**GEO. L. SMITH II GEORGIA WORLD  
CONGRESS CENTER AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PRE-OPENING MANAGER:**

**HILTON MANAGEMENT LLC**

By: Hilton Domestic Operating Company Inc.,  
as "Operator"

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**PROJECT SITE**

EXHIBIT D

A draft of the echnical Services Agreement follows this page.  
(33 Pages)

**TECHNICAL SERVICES AGREEMENT**

**BETWEEN**

**SIGNIA HOTEL MANAGEMENT LLC**

**AND**

**GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER AUTHORITY**

**[\_\_\_\_\_, 2020]**

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## TECHNICAL SERVICES AGREEMENT

This Technical Services Agreement (“Agreement”) is made and entered into effective as of this [ ] day of [ ], 2020 (the “Effective Date”) by and between **SIGNIA HOTEL MANAGEMENT LLC** (“Consultant”), a Delaware limited liability company, and **GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER AUTHORITY** (“Owner”) an instrumentality of the State of Georgia and a public corporation. Consultant and Owner are sometimes referred to collectively in this Agreement as the “Parties” and each individually as a “Party”.

### RECITALS

A. Contemporaneously with the execution of this Agreement, Owner and Consultant (in its capacity as manager, the “Manager”) are entering into a Management Agreement (the “Management Agreement”), Pre-Opening Services Agreement (the “Pre-Opening Services Agreement”), and Room Block & Meeting Space Agreement (the “RBA”); this Agreement, together with the Management Agreement, Pre-Opening Services Agreement and RBA, collectively, the “Hotel Agreements”) pursuant to which Manager will agree to provide certain services with respect to the operation of the Hotel (as defined below). Capitalized terms used herein but not otherwise defined will have the meanings given to them in the Management Agreement.

B. Owner owns the real property described in Exhibit A (the “Land”), on which land Owner intends to develop and construct at its sole cost and expense a hotel with approximately 975 guest rooms and certain other improvements, FF&E, signage, parking, and other improvements, facilities and amenities related thereto including the facilities and amenities described on Exhibit B (collectively, the “Hotel”).

B. Consultant is experienced in assisting with the planning, designing, equipping, decorating and furnishing of similar projects, and in assisting third parties in connection with such activities.

C. Owner desires to engage Consultant as an independent contractor to assist Owner and its architects, engineers, designers and consultants in the planning, designing, equipping, decorating and furnishing of the Hotel, and Consultant desires to perform such services, subject to the terms of this Agreement.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Consultant agree as follows:

#### **1 DEFINITIONS**

1.1 Affiliate - as defined in the Management Agreement.

1.2 Agreement - as defined in the introductory paragraph.

- 1.3 Brand Name - as defined in the Management Agreement.
- 1.4 Brand Standards - as defined in the Management Agreement, which includes, without limitation, the Construction Standards.
- 1.5 Claims – as defined in the Management Agreement.
- 1.6 Commencement of Construction - the date identified in a notice to proceed (“NTP”) issued by the Owner to the Owner’s Contractor. Such Notice shall be issued concurrent with the execution of the construction agreement with Owner’s Contractor. **[NTD: THE NOTICE TO PROCEED ALLOWS SKANKSA TIME TO MOBILIZE SO THEY CAN PHYSICALLY START CONSTRUCTION. WE EXPECT TO ISSUE THE NTP WHEN WE SIGN THE CONSTRUCTION AGREEMENT AND CLOSE ON THE BONDS SO SKANKSA WILL START APPROXIMATELY 10 BUSINESS DAYS FROM THEN.]**
- 1.7 Construction Commencement Date - **[Insert Date]**.
- 1.8 Construction Standards - The Design and Construction Standards in effect from time to time for hotels or projects operated under the Brand Name; provided, however, for purposes of Owner’s obligations under this Agreement, the Construction Standards shall be those Construction Standards in effect as of the Effective Date, except with respect to any matters that involve Legal Requirements, life safety or information technology. **[NTD: DISCUSS. GWCCA CANNOT AGREE TO HILTON’S CHANGE. THE CRITICAL BRAND STANDARDS DEFINITION IN THE QMA IS TOO BROAD: IT INCLUDES INFORMATION TECHNOLOGY, FIRE, HEALTH, LIFE OF SAFETY AND/OR SECURITY, COMPLIANCE WITH LEGAL REQUIREMENTS AND HOTEL OPERATIONS. COMPLIANCE WITH LEGAL REQUIREMENTS IS FINE, BUT GWCCA CANNOT AGREE TO ANY CHANGES HILTON MAY INCORPORATE THAT CHANGE INFORMATION TECHNOLOGY OVER THE NEXT 3 YEARS. ALSO, HILTON TO CLARIFY WHAT “HOTEL OPERATIONS” WOULD MEAN.]**
- 1.9 Consultant - as defined in the introductory paragraph.
- 1.10 Consultant’s Grossly Negligent or Willful Acts - any acts or omissions constituting fraud, gross negligence or willful misconduct on the part of Consultant or its Affiliates or the Corporate Personnel in the performance of Consultant’s duties under this Agreement including the gross negligence or willful misconduct of the Corporate Personnel in hiring or supervising Hotel Personnel. Notwithstanding the foregoing, acts or omissions of Hotel Personnel shall be excluded from Consultant’s Grossly Negligent or Willful Acts.
- 1.11 Consultant’s Parties – as defined in Section 13.1.
- 1.12 Corporate Personnel - any personnel from the corporate offices of Consultant or its Affiliates who perform services under this Agreement.
- 1.13 Effective Date - as defined in the introductory paragraph.
- 1.14 Event of Default - as defined in Section 10.1.

- 1.15 FF&E - as defined in the Management Agreement.
- 1.16 Force Majeure Event - as defined in the Management Agreement.
- 1.17 Hotel - as defined in Recital B.
- 1.18 Hotel Agreements - as defined in Recital A.
- 1.19 Land - as defined in Recital B.
- 1.20 Legal Requirements - as defined in the Management Agreement.
- 1.21 Management Agreement - as defined in Recital A.
- 1.22 Opening Date -shall mean the date on which the Hotel is fully operational with all guest rooms and all other areas of the Hotel having been completed in accordance with this Agreement and with the conditions described in Section 4.9 having been satisfied, such that Consultant determines that the Hotel may be operated in accordance with the Brand Standards.
- 1.23 Operating Equipment - non-consumable items used in, or held in storage for use in the operation of the Hotel, including all china, glassware, linens, silverware, uniforms and other similar items, but not including FF&E.
- 1.24 Operating Supplies - consumable items used in, or held in storage for use in the operation of the Hotel, including food and beverages, guest amenities, fuel, cleaning materials, printed materials, and other similar items.
- 1.25 OS&E - the Operating Supplies and Operating Equipment.
- 1.26 Outside Opening Date - [**Insert Date**].
- 1.27 Owner - as defined in the introductory paragraph.
- 1.28 Owner's Parties – as defined in Section 13.2.
- 1.29 Owner's Representative - as defined in Section 4.6.
- 1.30 Party or Parties - as defined in the introductory paragraph.
- 1.31 Project Budget - the budget for the development and construction of the Hotel to be prepared by Owner, setting forth, in reasonable detail, the break-down of the total estimated costs of the development and construction of the Hotel and all appropriate categories of costs.
- 1.32 Project Schedule - the schedule for the design, development, and construction of the Hotel to be prepared by the Owner's contractor and delivered by Owner to Consultant.
- 1.33 Review Matters - as defined in Section 5.2.
- 1.34 Services - as defined in Section 3.1.

1.35 Services Fee - as defined in Section 7.1.

1.36 Substantial Completion – the date in which construction of the Hotel is substantially completed in accordance with the Hotel Development Agreement.

1.37 Term - as defined in ARTICLE Two.

1.38 Trademarks - as defined in the Management Agreement.

## **2 TERM OF AGREEMENT**

This Agreement shall be for a period commencing on the Effective Date and expiring without notice six (6) months after the Opening Date (the “Term”), unless terminated earlier in accordance with the terms of this Agreement.

## **3 CONSULTANT’S RESPONSIBILITIES**

3.1 Services Provided by Consultant. Consultant shall provide, in consideration for the Services Fee, technical advisory services and assistance including: (i) advising the Owner regarding compliance with the Brand Standards in the preparation and completion of the architectural and interior design of the Hotel; (ii) advising the Owner regarding compliance with the Brand Standards in connection with the architectural aspects, engineering, interior design and construction of the Hotel; and (iii) performing the Services described in Exhibit C attached hereto (“Services”).

3.2 Use of Affiliates by Consultant. Owner acknowledges and agrees that in performing its obligations under this Agreement, Consultant may from time to time use the services of, or delegate some or all of its obligations, responsibilities, rights and/or benefits hereunder to, one or more of its Affiliates; provided, however (a) Consultant shall not be relieved of its obligations to Owner under this Agreement unless otherwise provided herein, and (b) Owner shall not pay more for the Affiliate’s services and expenses than Consultant would have been entitled to receive under this Agreement had Consultant performed such services or obligations.

3.3 Other Activities. Consultant or its Affiliates (as the case may be) shall devote so much of its time (and that of its employees) to the coordination and administration of its duties hereunder as is reasonably required in order to perform such duties in accordance with the provisions of this Agreement. Consultant or its Affiliates (as the case may be) shall not be bound to devote its full business time (or that of its employees) to such coordination and administration of its duties. Further, both Parties acknowledge and agree that each Party and its Affiliates may engage in and/or possess any interest in other businesses or real estate ventures of any nature and description, which may compete with the Hotel. The Parties agree that such outside activities shall not constitute a violation of this Agreement.

## **4 OWNER’S RESPONSIBILITIES**

4.1 Development and Construction of the Hotel. Owner shall cause all phases of the Hotel to be planned, designed, developed, constructed, engineered, furnishing, fixtured,

equipped, decorated and completed in accordance with this Agreement, the Brand Standards, and all applicable Legal Requirements. Owner shall: (i) provide or obtain all financial (debt and equity) and other resources necessary to complete the development and construction of the Hotel, it being acknowledged and agreed that the proceeds of the Bonds shall be the only source of funds for the design, development and construction of the Hotel and no other funds of the Owner or of the State of Georgia will be available for such purpose or any other purpose under this Agreement; (ii) prepare the Land for construction of the Hotel; (iii) prior to the Commencement of Construction, obtain all approvals, license and permits necessary to perform the work required for the construction of the Hotel, including construction permits, zoning and other entitlements, from all governmental authorities having jurisdiction over the Hotel and the business to be operated therein, and maintain all such approvals throughout the construction; (iv) to the extent not previously provided to Consultant prior to the Effective Date, prepare and deliver to Consultant for Consultant's review the Project Budget and the Project Schedule; (v) perform all work necessary to cause the Commencement of Construction to occur prior to the Construction Commencement Date, with time being of the essence, which date shall be subject to extension for a Force Majeure Event; and (vi) perform all work necessary to cause the Opening Date to occur before the Outside Opening Date (provided that if the Opening Date does not occur because of delays in the construction, furnishing and equipping of the Hotel due to a Force Majeure Event, then the Outside Opening Date shall be adjourned by a period of time equal to the length of such Force Majeure Event, but the Outside Opening Date shall not be adjourned for any reason beyond the Outside Opening Date).

4.2 Owner's Outside Consultants. Owner shall select, retain, supervise and direct, at Owner's expense, reputable and qualified outside consultants for the Hotel. The following outside consultants shall be subject to the prior review and approval of Consultant: (i) design architects and architect(s) of record; (ii) MEP engineers; (iii) landscape architect; (iv) kitchen and laundry consultant; (v) interior designer; (vi) technical systems/IT/low-voltage consultant; (vii) purchasing agent; (viii) lighting consultant; (ix) signage and graphics consultant; (x) audio/video technology consultant; (xi) art consultant; (xii) vertical transportation consultant; (xiii) fire & life safety consultant; (xiv) F&B concept consultant; (xv) spa/wellness consultant; (xvi) civil engineer; (xvii) structural engineer; (xviii) FF&E project manager; (xix) environmental consultant; (xx) general contractor; and (xxi) project manager. Consultant acknowledges that it has approved the outside consultants set forth on Exhibit E. **[NOTE: WORKING WITH HILTON AD&C TEAM TO PREPARE EXHIBIT. ALSO, EXHIBIT E SHOULD REFLECT CONSULTANTS CURRENTLY WORKING ON PROJECT.]** Owner shall cause all of its consultants to cooperate with Consultant in performing its obligations under this Agreement, including providing promptly upon request all information and documentation reasonably requested by Consultant.

4.3 Preparation of Plans and Specifications. Owner shall, at its sole cost and expense, cause its outside consultants to prepare full and complete plans and specifications for the Hotel in accordance with Legal Requirements and the Brand Standards, and within the applicable timeframes set forth in the Project Schedule. The Parties acknowledge that it is usual practice in the design process to first prepare conceptual drawings, and proceed through a series of schematic and preliminary drawings, to final construction documents. All plans and specifications prepared at each stage of the design and development process shall be submitted to Consultant for its review and approval, as set forth in ARTICLE Five prior to commencement of

the subsequent phase. [NOTE: AT THIS POINT, FORMAL APPROVALS HAVE NOT BEEN ISSUED. INTERIM REVIEWS AND COMMENTS HAVE BEEN PROVIDED ON A REAL-TIME BASIS THROUGH IN-PERSON AND ONLINE MEETINGS, BUT THE FORMAL APPROVALS REQUESTED HAVE NOT YET HAPPENED] [DISCUSS. GWCCA CANNOT HAVE EXPOSURE WHERE HILTON CAN GO BACK IN TIME AND REQUIRE CHANGES BECAUSE THEY HAVE NOT FORMALLY APPROVED THE DRAWINGS.] The conceptual drawings, schematic and preliminary drawings, and final construction documents, after approval by Consultant (the “Approved Plans and Specifications”), shall not be changed without Consultant’s prior consent. Each subsequent design phase shall conform to the prior approved phase.

4.4 FF&E and OS&E. Owner shall select, purchase or lease (upon Consultant’s reasonable approval), and install all FF&E and OS&E at the Hotel in accordance with the Brand Standards, the Approved Plans and Specifications and Legal Requirements.

4.5 Construction of Model Room. Owner shall construct one model hotel guest room for each typical King and Double/Queen room type and section of double loaded corridor, showing layout, design and FF&E for a standard hotel guest room consistent with the Brand Standards, and notify Consultant when such model room is available to be reviewed and approved by Consultant. To the extent any portion of the model room is disapproved by Consultant, Owner shall redesign the model room, reselect FF&E and reconstruct such model room in accordance with the comments provided by Consultant and resubmit such model room for review and approval by Consultant, until such time as a fully completed model room, approved by Consultant, exists.

4.6 Owner’s Representative. Owner shall designate a representative who shall be authorized to act on Owner’s behalf with respect to the Hotel (“Owner’s Representative”). Owner’s Representative shall examine documents submitted by Consultant and shall respond thereto promptly in order to avoid unreasonable delay in the progress of the Hotel. The initial Owner’s Representative shall be Drew Company Atlanta, LLC (acting through either Theonie Alicandro or Austin Bell). [NTD: DISCUSS. OWNER’S REPRESENTATIVE CANNOT “BIND” GWCCA.]

4.7 Preparation and Resolution of Punch List. Owner shall prepare and deliver to Consultant a list of all deficiencies and construction work remaining uncorrected or incomplete (including, without limitation, “punchlist” items), which list shall be subject to approval by Consultant before being deemed finalized for delivery to the applicable outside consultants for such corrective work. Owner will deliver such “punchlist” items prior to the scheduled Opening Date on the schedule reasonably requested by Consultant. As currently anticipated, such punch list items will be delivered to Consultant in 4 or more tranches with the first tranche of punchlist items being delivered 90 to 120 days prior to the scheduled Opening Date and the last tranche of punchlist items being delivered approximately 14 days prior to the scheduled Opening Date. Consultant shall have the right to inspect the Hotel and add additional items to such list to the



extent such items have not been completed in accordance with the [Brand Standards]<sup>1</sup>, the Approved Plans and Specifications, and Legal Requirements. Owner shall cooperate with Consultant to ensure that all material deficiencies and construction work and any work which would be an impediment or detriment to the operation of the Hotel are completed prior to the Opening Date and all other punchlist items are completed within three (3) months following the Opening Date (if Owner is notified late of any specific item not included in such listing at the Opening Date, three months following such later date); provided that if such matters cannot be completed within such three (3) month period, Owner shall commence such actions within such period and thereafter diligently prosecute such work to completion.

4.8 Certificate of Completion and Occupancy. Prior to the Opening Date, Owner shall obtain from its architect (and provide a copy to Consultant) a certification that construction of the Hotel has been completed in accordance with (i) all applicable Legal Requirements and (ii) the Approved Plans and Specifications. Owner shall obtain and provide to Consultant all certifications (copies or originals as appropriate) required by any governmental authority, if applicable, required to open the Hotel to the public and to use, occupy and operate the Hotel as contemplated by the Management Agreement. Owner shall ensure that all construction work and equipment shall be free of defects and shall include a minimum one (1) year warranty from all contractors and manufacturers, commencing as of Substantial Completion.

4.9 Opening Date. The Opening Date shall not be deemed to have occurred unless each of the following conditions have been met: (a) if applicable, a certificate of occupancy or its equivalent has been issued for the Hotel; (b) the Hotel architect has provided Owner and Consultant with a certificate certifying that the Hotel has been substantially completed in accordance with the Approved Plans and Specifications; (c) substantially all FF&E and OS&E have been installed; (d) all mechanical and electrical systems are functioning properly; (e) all licenses and permits required for the operation of the Hotel have been obtained; (f) Consultant has confirmed that the Hotel complies with the Brand Standards or is otherwise acceptable to Consultant; and (g) the Hotel architect has provided Consultant with a certificate certifying that the Hotel has been designed and constructed in conformance to and in compliance with the requirements of the Americans with Disabilities Act of 1990, as amended (ADA).

4.10 Documentation and Training. Prior to the Opening Date, Owner shall provide to Consultant copies of all relevant documentation for the Hotel, including “as-built” plans and specifications and manufacturer’s operating maintenance manuals. [NOTE: IN REALITY TRAINING ON THIS IS POTENTIALLY A MIXTURE OF MANAGER AND THE OWNER (THROUGH ITS VARIOUS CONSULTANTS). SO WE FIGURED IT WAS JUST EASIER TO DELETE THE CONCEPT ALTOGETHER INSTEAD OF SIFTING THROUGH WHO IS RESPONSIBLE FOR WHICH SYSTEMS. NTD: HILTON TO FURTHER EXPLAIN.].

4.11 Administrative/Professional Services. Owner shall furnish at its own expense such legal, accounting and insurance counseling services as may be necessary or appropriate for the Hotel, including without limitation such auditing services as Owner may require to verify any

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<sup>1</sup> **NTD: DISCUSS. GLOBAL COMMENT. GWCCA NEEDS TO KNOW WHAT THE BRAND STANDARDS GWCCA IS BEING HELD ACCOUNTABLE FOR SO WHEN WE PUNCHLIST, GWCCA IS NOT HELD TO SOMETHING ARBITRARY.**

applications for payment submitted by contractors, design professionals and other parties engaged in the construction of the Hotel, or to ascertain how or for what purposes such parties have used the monies paid by or on behalf of Owner. Owner acknowledges and agrees that it shall have complied with all Legal Requirements relating to retainage or any bonding requirements to avoid any third party claims against the Hotel.

4.12 Non-Conformity with Approved Review Matters. If either Party observes or otherwise becomes aware of any fault or defect in the Hotel or nonconformance with the Approved Plans and Specifications, such Party shall provide prompt written notice thereof to the other Party.

4.13 Reserved.

## **5 REVIEW PROCEDURES**

5.1 Approval Standard. Except as otherwise expressly provided in this Agreement all opinions contemplated by this Agreement must be reasonably formed and the consent to or approval of any document, proposed action or other matters in accordance with this Agreement must be in writing and shall not be unreasonably withheld, conditioned or delayed; provided, however, that in determining the reasonableness of any such withholding, condition or delay, full consideration shall be given to the Brand Standards, and it shall be unreasonable to deny or refuse consent or approval to any matter if the effect of such denial or refusal would prevent or hinder, the development or construction of the Hotel in accordance with the Brand Standards. [Consultant expressly agrees that the scope of its approval rights under this Agreement are limited to confirming whether the Review Matters comply with the Brand Standards.] **[NOTE: HILTON WILL BE REVIEWING THE PLANS AND SPECS BEYOND SIMPLE COMPLIANCE WITH BRAND STANDARDS. IT'S THE REASON, FOR EXAMPLE, THE PLANS AND SPECS GO THROUGH OUR DESIGN REVIEW PROCESS.] [NTD: DISCUSS. SAME ISSUE AS SECTION 4.3; 5.4. SINCE THERE ARE NO FORMAL APPROVALS IN HAND, GWCCA CANNOT RISK HILTON COMING BACK AND ASKING FOR CHANGES THAT WOULD IMPACT THE BUDGET OR THE SCHEDULE. GWCCA IS STARTING CONSTRUCTION IN LESS THAN 2 MONTHS. ALSO, HILTON TO CLARIFY SPECIFIC ADDITIONAL ITEMS SUBJECT TO HILTON'S PROPOSED APPROVAL.]**

5.2 Matters Subject to Review Procedures. All materials, actions or matters requiring the review and approval of Consultant under this Agreement, including but not limited to plans and specifications, design, level of finishes, the model room, FF&E, OS&E and all other matters described in this Agreement (collectively, the "Review Matters"), shall be subject to the procedures set forth in this ARTICLE Five.

5.3 Review Procedure. Owner shall promptly submit all Review Matters to Consultant for Consultant's approval. Owner shall provide at least five (5) business days' prior written notice stating the anticipated delivery date for each submission of Review Matters.

5.3.1 Consultant shall either approve or disapprove in writing the Review Matters on or before the expiration of the fifteenth (15<sup>th</sup>) business day after Consultant's

actual receipt of such Review Matters. If Consultant does not approve or disapprove in writing the Review Matters within that fifteen (15) business day period provided, then Owner shall be entitled to deliver a second written notice requesting Consultant's approval, which notice shall provide Consultant with an additional five (5) business days to respond and which notice must clearly state the following on the bottom of the first page in bolded 14pt type:

**“THIS IS YOUR SECOND NOTICE. FAILURE TO RESPOND WILL RESULT IN THE DEEMED APPROVAL OF THE REVIEW MATTERS PROVIDED.”**

5.3.2 If Consultant does not approve such Review Matters in writing or provide written comments or corrections to Owner within such five (5) business day period, the Review Matters submitted shall be deemed to be approved.

5.3.3 If any Review Matters are disapproved, Consultant will provide reasonable detail regarding the reasons for such disapproval, and Owner shall have the right to revise and modify such Review Matters to comply with objections of Consultant; provided, however, that Owner shall resubmit such items to Consultant for approval pursuant to this ARTICLE Five.

5.3.4 If Owner makes any modifications or changes to any previously approved Review Matters, Owner shall clearly identify or highlight the changes or modifications made to such Review Matters and resubmit such items to the Consultant for approval in accordance with this ARTICLE Five.

- 5.4 Approval and Brand Freeze. Any approval by Consultant shall not be deemed or construed to imply any representation or warranty as to the item or matter so approved, other than a representation that the item or matter complies at that time with the applicable portion of the Brand Standards (or that such non-compliance with the Brand Standards is otherwise acceptable to Consultant). Upon approval or deemed approval of any Review Matters by Consultant, Consultant will not require any further changes thereto (or in connection with future submittals that are otherwise consistent with such approved Review Matters) based on modifications to the Brand Standards after the date of such approval, except with respect to any matters that involve Legal Requirements, life safety or information technology. **[NOTE: DISCUSS. SAME ISSUE AS ABOVE. SINCE THERE ARE NO FORMAL APPROVALS IN HAND, GWCCA CANNOT RISK HILTON COMING BACK AND ASKING FOR CHANGES THAT WOULD IMPACT THE BUDGET OR THE SCHEDULE].**

## **6 REPORTS AND INSPECTIONS**

6.1 Monthly Reports and Information. Owner's Representative shall prepare and deliver to Consultant monthly progress reports outlining the progress of all major activities related to the Hotel in reasonable detail, including the development, design, construction and furnishing of the Hotel. Each monthly progress report shall be delivered to Consultant no later than the 15<sup>th</sup> day of the calendar month following the month to which such report relates and

shall include a summary of: (i) major development and construction activities completed in the previous month; (ii) variations from the Approved Plans and Specifications (if any); (iii) deviations from the Project Schedule (if any); (iv) material outstanding issues relating to the Hotel; (v) major activities expected to be accomplished during the upcoming month; (vi) photographs of the construction site; and (vii) such other information reasonably requested by Consultant from time to time. In the event Owner fails to deliver any monthly progress report or portion thereof, Consultant shall notify Owner and Owner shall have an additional fifteen (15) days to provide the requested information before such failure would be a default hereunder.

6.2 Inspections and Site Visits. Owner acknowledges and agrees that the Services will be performed at Consultant's corporate headquarters and/or divisional offices. Consultant shall have the right (but not the obligation) to make such visits to the Hotel and/or to the offices of Owner or its outside consultants, as Consultant may, in its reasonable discretion, consider necessary, appropriate or advisable to perform the Services or otherwise upon the reasonable request of Owner. Consultant and its inspectors shall have the right to enter the site on which the Hotel is being constructed, upon at least 48 hours prior notice, at any time during the construction, to conduct an inspection of the Hotel to confirm its compliance with the Approved Plans and Specifications and the Brand Standards. Consultant shall not have direct access to any persons providing goods or services for the construction or such other work, but rather will seek such access through Owner's Representative, who will not unreasonably withhold consent to any meetings requested by Consultant with persons providing goods or services for the construction or such other work. Owner shall cause all of its consultants to fully cooperate with Consultant in undertaking matters outlined in this Section. Owner acknowledges that Consultant may use Corporate Personnel or retain a third-party inspection service to perform any of Consultant's inspections. Consultant may, in its reasonable discretion, maintain one or more representatives on site during the construction of the Hotel. Consultant's representatives shall be given full access, upon Consultant's reasonable request to all design, development and construction meetings.

## **7 COMPENSATION FOR SERVICES**

7.1 Services. For its Services performed hereunder, Consultant shall be paid a fee (the “Services Fee”) in the amount of \$200,000. The Services Fee shall be paid in thirty (30) equal monthly installments of \$6,666.67 on the first day of each month commencing with the month anticipated to be thirty (30) months prior to the anticipated Opening Date (as reasonably determined by the Parties with reference to the Project Schedule) and ending on the month in which the actual Opening Date occurs (or such earlier month as the foregoing monthly installments results in the Services Fee being paid in full). In the event the actual Opening Date occurs prior to the Services Fee being paid in full, then the remaining balance of the Services Fee will be due and payable in full on the Opening Date. Consultant expressly acknowledges and agrees that the Services Fee is the only compensation due to Consultant for the provision of the Services under this Agreement and includes all fees, reimbursements and other costs for all Services provided by Consultant (including all costs associated with personnel, administrative, travel and miscellaneous expenses), and under no circumstances shall Owner be responsible for the payment of any such additional fees, reimbursable expenses other charges of Consultant in connection the provision of the Services.

7.2 Overdue Amounts. If any amount due by Owner to Consultant or its Affiliates has not been paid within ten (10) days after payment is due, Owner shall pay, in addition to the amount due, interest at a rate equal to the prevailing lending rate of the primary bank at which the Hotel maintains its accounts plus three percent (3%). In no event will Owner be entitled to pay or charge interest in excess of any statutory limitations on interest applicable to Owner.

7.3 No Offset. All payments by Owner under this Agreement and all related agreements between the Parties or their respective Affiliates shall be made pursuant to independent covenants, and Owner shall not set off any claim for damages or money due from Consultant or any of its Affiliates to Owner.

7.4 Reserved.

7.5 Taxes. Owner shall pay to Consultant an amount equal to any sales, use, gross receipts, value added, excise or similar tax assessed against Consultant by any governmental authority that are calculated on continuing payments required to be paid by Owner under this Agreement, other than income taxes assessed against Consultant.

## **8 INDEPENDENT CONTRACTOR**

The Parties acknowledge and agree that (i) the relationship between them under this Agreement shall be that of an independent contractor relationship and not of principal and agent; (ii) they are not joint venturers, partners, or joint owners with respect to the Hotel, and (iii) nothing in this Agreement shall be construed as creating a partnership, agency, joint venture or similar relationship between the Parties.

## **9 LIMITATION ON CONSULTANT’S DUTIES AND OBLIGATIONS**

9.1 Nature and Scope of Services. Any (a) advice, assistance, recommendation or direction with respect to the development, design, construction, equipping, furnishing, or decoration of the Hotel, (b) review and approval of any plans and specifications for the Hotel, (c) periodic review or inspection of the construction, and (d) other services provided to Owner by Consultant and/or its Affiliates under this Agreement: is performed solely for the purpose of performing the Services and is not intended to be and shall not constitute any representation, warranty, agreement, covenant, promise or guaranty of any kind or nature whatsoever, other than a representation that the item or matter complies at that time with the applicable portion of the Brand Standards (or that such non-compliance with the Brand Standards is otherwise acceptable to Consultant) and should be not be relied upon by Owner, its Affiliates, outside consultants or any third party as confirmation that (1) there are no errors in the Approved Plans and Specifications for the Hotel, (2) there are no defects in the design or construction of the Hotel or installation of any building systems or FF&E therein, or (3) the plans, specifications, construction and installation work will comply with all Legal Requirements, including laws or regulations governing public accommodations for individuals with disabilities.

9.2 Good Faith Judgment. Consultant is not liable for, and Owner agrees not to make any claim against Consultant because of, any alleged errors of judgment made in good faith by Consultant in connection with the performance of any services provided or arranged by Consultant. Consultant does not determine and is not responsible for construction means, methods, techniques, sequences or procedures used in the construction of the Hotel, or for safety precautions and programs in conjunction with the physical construction of the Hotel.

9.3 Legal Requirements. Owner and Owner's outside consultants are solely responsible for the compliance of the Hotel with Legal Requirements (including, without limitation, Legal Requirements regarding environmental safety and hazardous materials and laws or regulations governing public accommodations for individuals with disabilities). Neither Consultant nor its Affiliates will advise Owner of Legal Requirements applicable to the Hotel.

9.4 Engineering, Structural and Environmental Matters. The foundation and structural soundness and engineering integrity of the Hotel, as well as the environmental condition of the Hotel, are the exclusive responsibility of Owner and Owner's consultants. Consultant for itself and on behalf of Consultant Parties hereby disclaims any and all representations, warranties, agreements, covenants, promises and guaranties of any kind, whether express or implied, patent or latent, oral or written, past, present or future. Owner must rely solely on its own outside consultants for all architectural, engineering, environmental or similar professional services.

9.5 Schedules, Budgets and Cost Projections. Consultant's review or approval, if applicable, of any schedules, budgets, or cost projections shall not be construed to be a representation, warranty, agreement, covenant, promise, or guaranty by Consultant that the dates, durations, figures or results shown in such schedules, budgets or cost projections can be achieved.

## **10 EVENTS OF DEFAULT; TERMINATION RIGHTS**

10.1 Events of Default. The following actions or events shall constitute an “Event of Default” under this Agreement:

10.1.1 a failure by either Party to pay any amount of money to the other Party when due and payable under this Agreement that is not cured within ten (10) days after receipt of written notice to the defaulting Party;

10.1.2 a failure by either Party to perform any of the other covenants, duties or obligations set forth in this Agreement to be performed by such Party that is not cured within thirty (30) days following receipt of notice of such default from the non-defaulting Party to the defaulting Party; provided, however, if (a) the default is susceptible of cure but not within a thirty (30) day period, (b) the default cannot be cured solely by the payment of a sum of money, and (c) the default would not expose the non-defaulting Party to an imminent and material risk of criminal liability or of material damage to its business reputation, the thirty (30) day cure period shall be extended if the defaulting Party commences to cure the default within such thirty (30) day period and thereafter proceeds with reasonable diligence to complete such cure, but in no event shall such cure period be extended beyond a total of six (6) months;

10.1.3 a material breach by a Party of any representation or warranty expressly set forth in this Agreement;

10.1.4 an Insolvency Event occurs with respect to a Party.

10.2 Remedies for Event of Default. Subject to the terms of this Agreement, if any Event of Default shall have occurred, the non-defaulting Party shall have the right to terminate this Agreement by providing notice to the defaulting Party specifying a date, not earlier than five (5) days or later than thirty (30) days after the defaulting party’s receipt of such notice. This right to terminate shall be in addition to any other rights and remedies available to the non-defaulting Party hereunder, at law or in equity.

10.3 Limitation of Liability.

10.3.1 In no event shall either Party be liable to the other for any losses in excess of the amount of direct damages actually incurred, and neither Party shall be liable to the other Party for, and each Party hereby expressly waives (and under no circumstances shall an award contain any amount that in any way reflects) any indirect, special, punitive or consequential damages of any kind whatsoever, including loss of use of the Hotel or loss of revenue, income, profits, goodwill or reputation. Notwithstanding anything to the contrary contained in this Agreement, Consultant’s cumulative liability to Owner under this Agreement, whether in contract, tort, or otherwise, shall not exceed the Services Fee actually paid to and received by Consultant.

10.3.2 The Parties further agree that the waivers, releases and limitations on liability set forth in this Agreement shall apply at all times, whether in contract, equity, tort or otherwise, regardless of fault, negligence, strict liability, breach of contract or breach of warranty of the

party indemnified, released or whose liabilities are limited, and that such shall extend to each Party's indemnitees.

10.3.3 No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any officer, agent, employee or representative of Owner, Trustee, Consultant or the Bondholders, and neither the officers, agents, employees or representatives of Owner, Trustee, Consultant or the Bondholders, nor any person executing or authenticating the Bonds shall be personally liable thereon or be subject to any personal liability or accountability by reason of the issuance thereof, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the acceptance of this Agreement and the issuance of the Bonds.

10.4 Reserved.

10.5 Payments On or After Termination/ Effect of Termination. Any amounts to be paid hereunder prior to the date of any termination are payment obligations which shall survive termination of this Agreement.

10.6 Cross-Termination with Other Hotel Agreements. Notwithstanding anything to the contrary in this Agreement, if the Management Agreement is terminated in accordance with its terms, then this Agreement shall terminate on the date of such termination without further act or notice. The Parties shall retain any remedies hereunder and thereunder as a result of an event of default under any of the Hotel Agreements.

10.7 Actions to be Taken on Termination. [On the effective date of termination of this Agreement, in addition to any other amounts which may be due under this Agreement, Owner shall pay to Consultant the accrued and unpaid amount of the Services Fee; provided, however, in the event the accrued and unpaid amount of the Services Fee would result in Consultant being paid, together with previous installments of the Services Fee, less than \$100,000, then Owner shall pay to Consultant an amount equal to \$100,000 minus the aggregate amount of previous installments of the Services Fee received by Consultant.] **[NOTE: THIS PROPOSED COMPROMISE REFLECTS THE FACT THAT SIGNIFICANT TECHNICAL SERVICES WORK HAS ALREADY BEEN DONE, WITHOUT PAYMENT, IN ADVANCE OF THE TSA AND QMA BEING SIGNED]. [NTD: OPEN. DISCUSS.]**

10.8 [In the event Consultant or its Affiliates incur any uninsured loss, damage or related cost related to (a) this Agreement or (b) the design, construction, development, operation, or ownership of the Hotel, and such loss, damage or related cost is not otherwise the result of Consultant's Grossly Negligent or Willful Acts, then Consultant may offset and reduce the Key Money payable under the Management Agreement by the amount any of the Consultant or its Affiliates may incur, become responsible for, or pay out with respect to any such loss, damage or related cost; provided that upon the funding of Key Money to Owner, the full amount of Key Money shall be deemed to have been distributed to the Owner by paid regardless of such offset.] **[NTD: OPEN. DISCUSS.]**



10.9 Survival. This ARTICLE Ten shall survive the expiration or termination of this Agreement.

## **11 PROPRIETARY INFORMATION.**

Owner acknowledges and agrees that this Agreement does not grant to Owner any license, use or other proprietary right, title or interest whatsoever in the Brand Name or any proprietary information of Consultant or its Affiliates whatsoever.

## **12 INSURANCE**

Owner, at its expense, or a consultant acting on Owner's behalf, shall obtain and maintain the insurance policies set forth on Exhibit D. The insurance policies shall be effective upon the date of Commencement of Construction. Owner shall obtain and maintain insurance in accordance with the terms of the Brand Standards. The provisions of Sections [5.2 through 5.5 and Section 5.7 of the Management Agreement are hereby, by this reference, incorporated in this Agreement and made a part hereof.

## **13 INDEMNIFICATION**

13.1 Reserved.

13.2 Consultant Indemnification. Consultant shall indemnify, defend and hold Owner and its Affiliates and their respective officers, directors, employees, agents and assigns (collectively, "Owner's Parties") harmless for, from and against any and all Claims that Owner or Owner Parties may have alleged against them, incur, become responsible for or pay out by reason of or to the extent caused by Consultant's Grossly Negligent or Willful Acts.

13.3 Indemnified Parties. The indemnities contained in this ARTICLE Thirteen shall run to the benefit of Owner, its respective Affiliates, and the directors, partners, members, managers, officers and employees of each such entity.

13.4 Survival. The provisions of this ARTICLE Thirteen shall survive any termination or expiration of this Agreement and shall remain in full force and effect until such time as the applicable statute of limitation shall cut off all demands, claims, actions, damages, losses, liabilities or expenses which are the subject of this ARTICLE Thirteen.

13.5 Indemnification Procedure. The provisions of Section [13.14.3] of the Management Agreement are hereby, by this reference, incorporated in this Agreement and made applicable to the indemnities provided by the Parties under this Agreement.

## **14 ASSIGNMENT**

14.1 Assignments by Consultant. Except as otherwise provided in this Section 14.1, Consultant shall not assign this Agreement without the prior written consent of Owner. Any consent granted by Owner to an assignment shall not be deemed a waiver of the covenant herein contained against assignment in any subsequent case. Notwithstanding the foregoing, Consultant, without the consent of Owner, has the right to assign this Agreement to the same

extent as Manager has the right to assign the Management Agreement as set forth in Section 9.3.2 of the Management Agreement.

14.2 Assignments by Owner. Owner shall not have the right to delegate, assign or otherwise transfer any or all of its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of Consultant, except to any person to whom Owner contemporaneously assigns its interest in the Management Agreement in accordance with the terms of the Management Agreement; provided, however, any such assignment shall not release Owner from any of its liabilities or obligations under this Agreement.

## 15 CLAIMS AND DISPUTES

The dispute resolution provisions set forth in Article [10] of the Management Agreement are hereby, by this reference, incorporated in this Agreement and made applicable to the resolution of disputes arising under this Agreement.

## 16 GENERAL PROVISIONS

16.1 Notices. Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications required or permitted to be given hereunder, or which are to be given with respect to this Agreement, shall be in writing and shall be addressed to the party to be so notified as follows:

To Owner:                   Geo. L. Smith II Georgia World Congress Center  
                                  Authority  
                                  285 Andrew Young International Blvd., NW  
                                  Atlanta, Georgia 30313-1591  
                                  Attn: Executive Director

With a copy to            [ \_\_\_\_\_ ]  
Trustee:                   \_\_\_\_\_

                                  \_\_\_\_\_

                                  Attn: \_\_\_\_\_

With a copy to:           Office of the Attorney General  
                                  40 Capitol Square, SW  
                                  Atlanta, Georgia 30334  
                                  Attn: Attorney General

With a copy to:           Geo. L. Smith II Georgia World Congress Center  
                                  Authority  
                                  285 Andrew Young International Blvd., NW  
                                  Atlanta, Georgia 30313-1591  
                                  Attn: J. Pargen Robertson, Jr.

With a copy to: King & Spalding LLP  
1180 Peachtree Street NE  
Atlanta, Georgia 30309  
Attn: Matthew W. Nichols

With a copy to: Greenberg Traurig, LLP  
1000 Louisiana Street, Suite 1700  
Houston, Texas 77002  
Attention: Franklin D.R. Jones, Jr.

With a copy to  
Owner's  
Representative: Drew Company Atlanta, LLC  
2 Seaport Lane, 9<sup>th</sup> Floor  
Boston, MA 02210  
Attn: Theonie Alicandro

If to Consultant: c/o Hilton Worldwide Holdings, Inc.  
7930 Jones Branch Drive  
McLean, VA 22102  
Attention: General Counsel

and

Hilton Worldwide Holdings, Inc.  
755 Crossover Lane  
Memphis, TN 38117  
Attention: [ ]

16.2 Modifications and Changes to this Agreement. This Agreement cannot be changed or modified except by another agreement in writing signed by the Party sought to be charged therewith, or by its duly authorized agent. No waiver of any breach shall affect or alter this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach of this Agreement. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

16.3 Entire Agreement. This Agreement together with the other Hotel Agreements constitutes all of the understandings and agreements of whatsoever nature or kind existing between Owner and Consultant regarding the provisions set forth in this Agreement. Except as provided otherwise, in entering into this Agreement, neither Owner nor Consultant is relying upon any statement, representation or promise, or the failure to make any statement, representation or promise, of the other (or of any officer, agent, employee, representative or attorney for the other).

16.4 References and Interpretations. Except as otherwise specifically indicated, all references to Articles, Sections and paragraphs refer to Articles, Sections and paragraphs of this Agreement, and all references to Exhibits refer to the Exhibits attached hereto. Unless expressly stated to the contrary, reference to any Section includes the subsections thereof. Article and Section headings are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision. Pronouns and their variations refer to the masculine, feminine, neuter, singular or plural, as appropriate. The words “herein”, “hereof”, “hereunder”, “hereinafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or paragraph. The terms “include” and “including” shall each be construed as if followed by the phrase “without being limited to”. Neither party shall be deemed to have drafted this Agreement, and no provision shall be interpreted in favor of or against either party as drafter.

16.5 Survival of Covenants. Any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.

16.6 Third Party Beneficiary. None of the rights or obligations created by this Agreement shall run to or be enforceable by any third party.

16.7 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Owner and Consultant, their respective heirs, legal representatives, successors and assigns.

16.8 Waivers. No failure by Consultant or Owner to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

16.9 Partial Invalidity. Any provision of this Agreement prohibited by law or by court decree in any locality or state shall be ineffective to the extent of such prohibition without in any way invalidating or affecting the remaining provisions of this Agreement, or without invalidating or affecting the provisions of this Agreement within the states or localities where not prohibited or otherwise invalidated by law or by court decree. Further, if any provision of this Agreement is held unenforceable by virtue of its scope, but may be made enforceable by a limitation thereof, such provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the laws of the jurisdiction in which enforcement is sought.

16.10 Applicable Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of New York without recourse to its choice of law or conflict of law principles.

16.11 Representations and Warranties of Consultant. Consultant represents and warrants to Owner, as of the Effective Date, as follows:

16.11.1 Consultant is duly organized, validly existing and in good standing under the laws of the state of its organization, is duly qualified to do business in the state in which the Hotel is located, and has full power, authority and legal right to execute, perform and timely observe all of the provisions of this Agreement to be performed or observed by Consultant. Consultant's execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of Consultant.

16.11.2 This Agreement constitutes a legal, valid and binding obligation of Consultant, does not and will not constitute a breach of or default under the organizational and governing documents of Consultant or the terms, conditions or provisions of any law, order, rule, regulation, judgment, decree, agreement or instrument to which Consultant is a party or by which it or any substantial portion of its assets is bound or affected and is enforceable against Consultant in accordance with its terms (except as such enforceability may be limited by bankruptcy or insolvency laws and by general principles of equity, regardless of whether such enforceability shall be considered in a proceeding in equity or at law).

16.11.3 No approval of any third party that has not been obtained prior to the execution of this Agreement is required for Consultant execution and performance of this Agreement.

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

16.11.5 There is no litigation or proceeding pending or threatened against Consultant that could adversely affect the validity of this Agreement or the ability of Consultant to comply with its obligations under this Agreement. Without limiting the foregoing, no Insolvency Event has occurred with respect to Consultant.

16.12 Representations and Warranties of Owner. Owner represents and warrants to Consultant, as of the Effective Date, as follows:

16.12.1 Owner is duly organized, validly existing and in good standing under the laws of the state of its organization, is duly qualified to do business in the state in which the Hotel is located, and has full power, authority and legal right to execute, perform and timely observe all of the provisions of this Agreement to be performed or observed by Owner. Owner's execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of Owner.

16.12.2 This Agreement constitutes a legal, valid and binding obligation of Owner, does not and will not constitute a breach of or default under any of the organizational or governing documents of Owner or the terms, conditions or provisions of any law, order, rule, regulation, judgment, decree, agreement or instrument to which

Owner is a party or by which it or any substantial portion of its assets (including the Hotel) is bound or affected and is enforceable against Owner in accordance with its terms (except as such enforceability may be limited by bankruptcy or insolvency laws and by general principles of equity, regardless of whether such enforceability shall be considered in a proceeding in equity or at law).

16.12.3 Owner has the right to construct the Hotel as a matter of right, without the need to obtain any zoning approvals.

16.12.4 No approval of any third party (including the holder of any mortgage on all or any portion of the Hotel) that has not been obtained prior to the execution of this Agreement is required for Owner's execution and performance of this Agreement.

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

16.12.6 There is no litigation or proceeding pending or threatened against Owner or the Hotel that could adversely affect the validity of this Agreement or the ability of Owner to comply with its obligations under this Agreement. Without limiting the foregoing, no Insolvency Event has occurred with respect to Owner.

16.13 Confidentiality. The confidentiality provisions set forth in Section [13.21] of the Management Agreement are hereby, by this reference, incorporated in this Agreement and made a part hereof.

16.14 Further Assurances. Owner and Consultant shall do and cause to be done all acts, and execute and deliver all documents and instruments, reasonably necessary for each of them to perform their respective obligations under, and to give effect to the transactions contemplated by, this Agreement.

16.15 Force Majeure. Except as specifically set forth in this Agreement, in the event of a Force Majeure Event, the obligations of the Parties and/or the time period for the performance of such obligations (other than the payment of money) shall be adjusted to the extent such Parties are prevented, hindered, or delayed in such performance during the period of such Force Majeure Event. Upon the occurrence of a Force Majeure Event, the affected Party shall give prompt, written notice of such Force Majeure Event to the other Party.

16.16 Time of the Essence. Time is of the essence for all purposes of this Agreement.

16.17 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

*[Signatures on following page]*

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the day and year first above written.

**CONSULTANT:**

**SIGNIA HOTEL MANAGEMENT LLC**

**By: Hilton Domestic Operating Company Inc.,  
as "Operator"**

By: \_\_\_\_\_  
Authorized Person

**OWNER:**

**GEO. L. SMITH II GEORGIA WORLD  
CONGRESS CENTER AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**TO TECHNICAL SERVICES AGREEMENT**

Legal Description of Land

[To be attached]



## **EXHIBIT B**

### **TO TECHNICAL SERVICES AGREEMENT**

#### **Description of Hotel Components**

**Hotel.** The Hotel shall consist of the following components:

- (a) Approximately 975 Rentable Guest Rooms;
- (b) Approximately 75,000 meeting, indoor banquet space and pre-function space;
- (c) 2 full-service restaurants including a market/deli/café and Signature restaurant
- (d) Lobby bar; pool bar;
- (e) The Garage;
- (f) Swimming pool;
- (g) Fitness facilities and Spa;
- (h) Club Signia Lounge;
- (i) other supporting facilities and FF&E, Operating Equipment, and Operating Supplies associated therewith including food preparation facilities and back-of-house areas characteristic of a full-service Hotel; and
- (j) other amenities and features characteristic of a full-service hotel as set forth in the plans and specifications approved pursuant to this Agreement.

## EXHIBIT C

### Consultant Responsibilities

Capitalized terms used and not defined herein shall have the meaning set forth in the body of the Technical Services Agreement.

**I. GENERAL RESPONSIBILITIES.** Consultant shall provide advisory services to the Owner and the Owner's consultants to ascertain that the proposed Review Matters are in compliance with Brand Standards. Consultant will also observe the construction of the Hotel to verify compliance with the Approved Plans and Specifications and Brand Standards. In performing Services, Consultant will:

- A. Assign a Hilton Architecture and Construction Department (HACD) representative for the Hotel;
- B. Provide the technical personnel required to enable the prompt commencement and prosecution of services to be provided by Consultant;
- C. Supplement its personnel with outside consultants as it deems necessary;
- D. Review, provide comments to and abide by the Project Schedule; and
- E. Review and comment on the proposed budgets.

**II. DESIGN.** In providing Services for the design of the Hotel, Consultant will:

- A. Prepare a preferred list of design consultants for the Hotel and review and approve the Owner's selection of the outside consultants in accordance with Section 4.2 of the Agreement;
- B. Attend design meetings and formal presentations in accordance with the Project Schedule and at other mutually acceptable dates and times;
- C. Provide operational and technical assistance to Owner in development of criteria for the Hotel;
- D. Visit the Hotel site in accordance with this Agreement and consult with Owner and the approved architect on site planning concepts and requirements;
- E. Provide, communicate and interpret the Brand Standards during all phases of the Hotel;
- F. Prior to formal presentations conducted by Owner's consultants, review and comment on the documents prepared and submitted to Consultant, in preparation for those formal presentations;

G. Provide food and beverage concepts and recommend layout planning for administrative office and back-of-house areas for incorporation into the proposed plans by Owner's design consultants;

H. Review and comment on any environmental report prepared by Owner's environmental consultant;

I. Review and comment on other reports and studies provided by Owner's consultants required for the design of the Hotel;

J. Review and comment on any risk assessment performed by Owner's consultants relating to security and fire safety systems (including the location of security and fire safety devices specifications, installation details, power and space requirements of each security and fire safety system proposed by Owner's consultants;

K. Review and comment on background drawings (low voltage drawings) prepared by Owner's consultants, including 1) locations for all data drops including; food & beverage point of sale, property management system, digital signage, time clocks, CCTV, guest and meeting room HSIA, business center, and depending on the Hotel requirements, additional network connections may be required for other applications; 2) locations and types of all telephone instruments, analog lines and locations of all paging and call accounting equipment; review any schedule prepared by Owner's consultants that describes the function of each type of telephone instrument;

L. Review and comment on any specifications, equipment schedules, diagrams, drawings and other data prepared by Owner's consultants relating to the furnishing and installation of Hotel systems for point of sales and property management (excluding conduit, wire and power requirements);

M. Review and comment on proposed plans created by Owner's consultants for telecommunications conduit sizing and for cable distribution, power and space requirements for all equipment;

N. Review and comment on the proposed plans and reports submitted by Owner at all phases of design (including those proposed plans and reports referred to in clauses H through M above) to be agreed upon in accordance with the Project Schedule, completing each review in accordance with the Agreement; written explanation will be provided for any items disapproved detailing the reasons(s) for such disapproval. Any comment provided by Consultant shall not be deemed or construed to imply any representation or warranty as to the item or matter so reviewed, other than with respect to whether such item is or is not in substantial conformance at that time with the applicable portion of the Brand Standards.

**III. CONSTRUCTION.** In providing Services for the construction of the Hotel, Consultant will:

A. Reserved;

B. Review and comment on shop drawings, product data, samples, model rooms and other proposed plans as submitted by contractors and vendors for compliance with the Brand Standards and construction documents within the timeframes set forth in Section 5 of this Agreement; **[NTD: DISCUSS AND CONFIRM HILTON'S INVOLVEMENT, IF ANY, IN THE SHOP DRAWING PROCESS.]**

C. Assist the Owner in monitoring and updating the Project Schedule during the execution of the work;

D. Conduct a series of general (not exhaustive) observations during the construction of the Hotel at mutually acceptable dates and times and provide a written report of each visit to the Owner; and

E. Conduct site and building observation prior to turnover to assist the Owner in verifying compliance of work with the Brand Standards and construction documents and report in writing any deficiencies observed.

**End of Exhibit C**

## EXHIBIT D

### MINIMUM INSURANCE REQUIREMENTS EXHIBIT D

#### [REMAIN UNDER REVIEW BY OWNER'S RISK MANAGEMENT TEAM]

##### Minimum Insurance Requirements

Owner or Owner's contractor, at Owner's expense, shall provide the following insurance (except item 7 below which shall be provided by the Hotel architect, at the Hotel architect's expense):

1. **Builder's Risk Property** – Coverage must be written on an “all risk” or “special risk” form including flood, earthquake, windstorm and terrorism, and cover the value of the completed conversions/construction on a so-called Builder's Risk Completed Value form (100%). The Builder's Risk must cover Transit, Soft Costs, Building Laws and Ordinances, Demolition and Debris Removal and Pollution (if a pollution exposure exists). Additionally, this insurance must include Business Interruption coverage for full recovery of net profits and continuing expenses of the Hotel projected for twelve (12) months.
2. **Commercial General Liability** – Minimum \$1,000,000 per occurrence, \$2,000,000 annual aggregate, and \$2,000,000 Products and Completed Operations Liability, including the following coverages: (a) Bodily Injury and Property Damage, (b) Personal Injury and Advertising Injury Liability and (c) Terrorism, if available at commercially reasonable rates.
3. **Business Automobile Liability** – Minimum \$2,000,000 per accident resulting from the use, operation or maintenance of any automobiles, and minimum \$2,000,000 for uninsured/underinsured motorist. If Owner or its contractor does not have any automobiles, the Commercial General Liability policy must be endorsed to cover Non-Owned Automobile Liability.
4. **Statutory Workers' Compensation** – As necessary to cover statutory benefits required by applicable Legal Requirements.
5. **Employers Liability** – Minimum limit of \$1,000,000 per accident, \$1,000,000 for each employee and policy limit for bodily injury by disease.
6. **Excess/Umbrella Liability** – Minimum \$15,000,000 per occurrence, \$15,000,000 annual aggregate, applying excess over all of the above-mentioned primary Commercial General, Automobile and Employers liability policies (including Terrorism).
7. **Architects and Engineers Errors and Omissions Liability** – Owner shall cause its architect to maintain a minimum limit of \$5,000,000 per claim and in no event for a duration less than the earlier of the term of this Agreement or the term of any statute of

limitations pursuant to which an action may be brought based on any error or omission causing damage or loss to the Hotel.

### Terms and Conditions

8. All insurers must have a minimum A.M. Best rating of A-VII.
9. All policies must provide a 30-day written notice of cancellation or material change (other than increases in coverage) to the Owner and Consultant.
10. All insurance policies required hereunder, with the exception of Statutory Workers' Compensation, must name Hilton Worldwide, Inc. and its owners, subsidiaries and Affiliates now or hereafter existing (including the employees, officers and directors of all the foregoing entities) as additional insureds.
11. The Commercial General Liability and Excess/Umbrella policies must be written on an "Occurrence" form.
12. All liability policies must include Punitive Damages, if available.
13. The Builder's Risk policy, and all other policies where permitted by applicable Legal Requirements, shall include the interests of the Owner, its contractor, Consultant and all subcontractors on all tiers of the conversion/construction of the Hotel.
14. The Builder's Risk policy shall contain an express waiver of subrogation against Consultant and its Affiliates.
15. Owner shall comply with all terms and conditions for insurance required by its lender.

Owner shall have its contractor cause all subcontractors on every tier to maintain appropriate workers' compensation and employer's liability insurance for their respective employees as required by the laws of the jurisdiction in which the Hotel is to be constructed.

**EXHIBIT E**

**LIST OF APPROVED CONSULTANTS**

**[NOTE: WORKING WITH AD&C TO FILL IN EXHIBIT AND WILL SEND UNDER SEPARATE COVER.]**

CERTIFICATE

The undersigned hereby certifies that I hold the position of Secretary or Assistant Secretary, as stated below my signature, of the Geo. L. Smith II Georgia World Congress Center Authority and that the Resolution a true and correct copy of which is attached to this Certificate was duly adopted by the Board of Governors of the Authority at and in a public meeting duly scheduled and for which all public notices required by law were given.

Dated: February 25, 2020.

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Secretary or Assistant Secretary

{ Authority Seal }