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# AMENDED AND RESTATED HOTEL OPERATING AGREEMENT

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DATED AS OF OCTOBER 1, 2020

between

**AUSTIN CONVENTION ENTERPRISES, INC.,**  
*a Texas nonprofit public facility corporation,*  
as Owner,

and

**HILTON MANAGEMENT LLC,**  
*a Delaware limited liability company,*  
as Manager

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## AMENDED AND RESTATED HOTEL OPERATING AGREEMENT

This **AMENDED AND RESTATED HOTEL OPERATING AGREEMENT** (this "*Agreement*") is effective as of October 1, 2020 (the "*Effective Date*"), by and between **AUSTIN CONVENTION ENTERPRISES, INC.**, a Texas nonprofit public facility corporation ("*Corporation*") and **HILTON MANAGEMENT LLC**, a Delaware limited liability company ("*Manager*"). This Agreement amends and restates the original Hotel Operating Agreement between the parties dated as of June 1, 2001, as amended by the first, second and third amendments, as described below (the "*Original Agreement*").

### BACKGROUND:

A. Terms which are capitalized, but not defined in the body of this Agreement shall have the meaning assigned to such terms in the Glossary of Terms attached as Exhibit A to this Agreement. To the extent capitalized terms are not defined in Exhibit A attached hereto or in the body hereof, then such terms shall have the meaning assigned to them in the Indenture (as defined herein) as of the date hereof without giving effect to any future modifications to such terms in the Indenture to the extent such modifications impact Manager's rights and/or obligations hereunder unless such modifications have otherwise been expressly approved by Manager.

B. Corporation and Manager entered into a Hotel Operating Agreement for the management by Manager of the Hotel owned by Corporation currently named the "Hilton Austin Hotel," and the Original Agreement was amended on December 1, 2006 in connection with the issuance by Corporation of its Series 2006 Bonds (the "*First Amendment*"), was further amended on June 2, 2010 (the "*Second Amendment*"), and was amended a third time on May 1, 2017 in connection with the issuance by Corporation of its Series 2017 Bonds (the "*Third Amendment*").

C. Contemporaneously with the Original Agreement, Corporation acquired an interest in that certain Condominium established by and as defined in that certain Amended and Restated Condominium Declaration of Neches Hotel Condominiums recorded in document number 2019137405 of the official public records of Travis County, Texas against the land described in Exhibit B hereto (the "*Site*") (which interest is referred to and defined in the Condominium Declaration and herein as the "*Legal Hotel Unit*").

D. The Hotel opened on December 27, 2003 (the "*Opening Date*") as a full service hotel and currently consists of those certain facilities and amenities in existence as of the date hereof including, without limitation, approximately 801 hotel guest rooms, two full-service restaurants, a lobby bar, approximately 90,000 gross square feet of meeting space, including a ballroom of at least 25,000 gross square feet, approximately 600 parking spaces within a garage to service the needs of the Hotel, and other supporting facilities commensurate with a full service, first class, convention oriented Upper Upscale Hotel and/or required by the Hilton Brand Standards (collectively, the "*Hotel*").

E. Corporation and Manager 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 (IRB 2017-6), and shall be interpreted in accordance with such requirements.

F. Contemporaneously with the execution of the Third Amendment, Corporation issued its Convention Center Hotel First Tier Revenue Refunding Bonds, Series 2017A (the "*Series 2017A Bonds*"), and its Convention Center Hotel Second Tier Revenue Refunding Bonds, Series 2017B (the "*Series 2017B Bonds*"), and together with the Series 2017A Bonds, the "*Series 2017 Bonds*"), for purposes of refunding Corporation's Series 2006 Bonds, funding operating reserves and debt service reserves, and for paying certain costs of issuance of the Series 2017 Bonds.

G. Manager is knowledgeable and experienced in managing, operating and promoting first class hotels and resorts and has performed such services throughout the world, and has operated the Hotel pursuant to the terms of the Original Agreement since the Opening Date.

H. Corporation and Manager now desire to amend and restate the Original Agreement as expressly set forth herein.

**ACCORDINGLY**, 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 hereby amend and restate the Original Agreement and agree as follows.

## Article 1 **The Hotel**

The Hotel was constructed by Corporation in accordance with the preliminary drawings for the Hotel attached as Exhibit D to the Original Agreement, and approved by Manager. Both Parties acknowledge that as of the Effective Date, the Hotel maintains an "upper upscale" rating (as categorized by Smith Travel Research or, if such company no longer exists, by a comparable source within the hotel industry) ("Upper Upscale Rating" and each hotel maintaining an Upper Upscale Rating, an "Upper Upscale Hotel"; it being acknowledged that in the event Smith Travel Research (or future comparable source within the hotel industry if Smith Travel Research no longer exists) modifies its chain scale ratings to change its terminology or adds or subtracts additional chain scales, then the Upper Upscale Rating or Upper Upscale Hotel definitions will be modified to refer to the most comparable chain scale following such modification, addition or subtraction of chain scales by Smith Travel Research), which is at least comparable to other first class convention Other Hilton Hotels, taking into account the character, size and location of the facility.

## Article 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, Corporation hereby engages Manager, and Manager hereby agrees to be engaged by Corporation and does hereby undertake to supervise, direct, and control the management, operation, and promotion of all aspects of the Hotel as the agent of Corporation and as the exclusive manager and operator of the Hotel during the Operating Term.

2.1.2 Qualified Management Agreement. This Agreement is intended to and shall constitute a Qualified Management Agreement, and shall be interpreted in accordance with such requirements.

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 Corporation in writing, preserves the exemption from federal income tax of interest on the Bonds and, in particular, to the extent of its rights and authority under this Agreement and as otherwise authorized by Corporation 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 by Corporation and Trustee. 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 exemption from federal income tax of interest on the Bonds, Manager and Corporation agree to negotiate in good faith and amend this Agreement, including the compensation to be paid to Manager, in a manner which maintains or restores to Manager the benefits expected to be received by it pursuant to the original terms of this Agreement.

2.1.4 Key Money. As consideration for its engagement as hotel manager under this Agreement, Manager will, within five (5) Business Days after the execution of this Agreement, provide a financial contribution to Corporation in the form of (i) a return of a portion of base management fees previously collected under the Original Management Agreement from April 1, 2020 through September 30, 2020 in the aggregate amount equal to \$[ ] plus (ii) an additional financial contribution of \$4,000,000 (such amounts collectively being referred to herein as the "Key Money") The Key Money shall be applied as follows:

- (i) First, towards payment to Manager of an amount equal to [\$848,738.00], representing the full 2020 subordinate management fee anticipated under the Original Agreement prorated for the period of January 1, 2020 through September 30, 2020;
- (ii) Second, Corporation shall cause an amount equal to \$[ ] to be deposited into the Operating Reserve Fund established by Corporation and the Trustee under the Indenture to be used in accordance with the terms thereof; and
- (iii) Third, Corporation shall cause an amount equal to \$[ ] to be deposited into the Supplemental Renewal and Replacement Fund established by Corporation and the Trustee under the Indenture to be used in accordance with the terms thereof.

Manager shall be entitled to a reimbursement of any Unamortized Key Money (as defined below) upon the early termination of this Agreement for any reason except as otherwise provided in Section 4.6.2 hereof. The Key Money will amortize monthly over the Operating Term commencing on the first day of the calendar month following the Effective Date. The unamortized portion of Key Money remaining as of any given date shall be referred to herein as the "*Unamortized Key Money*". Manager's right to reimbursement of any Unamortized Key Money shall survive any foreclosure by the Trustee under the Indenture, or any additional future indenture, mortgage or other security interest (or granting of a deed in lieu thereof). Subject to the provisions of Section 4.6.2 hereof, the payment of Unamortized Key Money shall be a condition to any termination of this Agreement; provided, however, that Manager may waive such condition in the event of a termination initiated by Manager under this Agreement without otherwise waiving its rights to collect such Unamortized Key Money after such termination.

2.1.5 Unamortized Amount. Pursuant to Section 12.37 of the Original Agreement, without limiting anything contained in Section 2.1.4, and in consideration for Manager's agreement to extinguish all of the Series 2001C Bonds owned by Manager as of December 7, 2006, Corporation agreed to pay to Manager the "Unamortized Amount" as defined in the Original Agreement upon the termination of the Original Agreement. As of the Effective Date, the "Unamortized Amount" is [\$ ] (the "*Remaining 2006 Key Money*"). Such Remaining 2006 Key Money will continue to amortize by the amount of \$46,819.39 on the seventh day of each calendar month until fully amortized on December 7, 2021. The unamortized portion of the Remaining 2006 Key Money as of any given date shall be referred to herein as the "*Unamortized 2006 Key Money*". If this Agreement is terminated prior to December 7, 2021, before any such termination shall become effective (provided that Manager may waive such condition in the event

of a termination initiated by Manager under this Agreement without otherwise waiving its rights to collect unamortized amounts hereunder), Corporation shall pay Manager an additional amount equal to the Unamortized 2006 Key Money, unless such termination resulted from (a) a Manager Event of Default, (b) a foreclosure as set forth in Section 4.7 hereof, (c) a Performance Termination Event as set forth in Section 4.5 hereof, or (d) a casualty or condemnation of the Hotel as set forth in Section 7 hereof.

## 2.2 Operating Standards.

2.2.1 Operating Standard Defined. Manager agrees that, subject to the provisions of this Agreement, including, without limitation, the limitations of Legal Requirements, Manager shall cause the Hotel to be operated (a) in a manner consistent with the requirements and limitations set forth in this Agreement (including those relating to the applicable Operating Plan and Budget and the applicable Capital Budget) and the Condominium Documents, (b) in accordance with standards, policies, and programs which are prevailing in effect from time to time and applicable to the operation of Other Hilton Hotels (the "*Hilton Brand Standards*"), including standards and policies applicable to all phases of operation and programs such as purchasing programs, sales promotion programs, and quality improvement programs, (c) as a full service, first class, convention oriented Upper Upscale Hotel in a manner reasonably expected to earn the Hotel at least an Upper Upscale Rating, which is at least comparable to other first class convention Other Hilton Hotels, taking into account the character, size and location of the facility and (d) to the extent consistent with (a), (b), and (c), in a manner reasonably calculated to: (i) protect and preserve the assets that comprise the Hotel; (ii) maximize over the Operating Term the financial return to Corporation from the operation of the Hotel as a first class, convention center headquarters hotel, after taking into consideration the Room Block Commitment; and (iii) control Operating Expenses (the standards described in clauses (a) through (d) above being referred to collectively as either the "*Operating Standards*" or the "*Operating Standard*"). Nevertheless, if an Upper Upscale Rating for the Hotel is not achieved, it will not constitute a default provided Manager works diligently and in good faith to achieve such an Upper Upscale Rating.

2.2.2 Inability to Meet Operating Standard; Modification of Operating Standard. If Manager at any time believes that it cannot operate the Hotel in a manner that allows it to meet any one of the Operating Standards without violating another of the Operating Standards, it shall promptly notify Corporation thereof with a written detailed explanation of the situation and recommendations as to modifications of the Operating Standards without compromising the operation or quality of the Hotel. Corporation will reasonably consider the proposed modifications, but shall not be obligated to approve the proposed modifications so long as its reasons for disapproval are reasonable.

## 2.3 Establishing Rates, Rents, etc.

2.3.1 Establishing Rents, etc. In connection with each proposed operating plan and budget, Manager shall establish all prices, price schedules, rates, and rate schedules, and all rents, lease charges, and concession charges for all areas of the Hotel, and supervise, direct, and control collection of income of any nature from the Hotel's operations and the giving of receipts in connection therewith, provided, however, the foregoing shall in no way limit (i) Corporation's right to review and approve the applicable Operating Plan and Budget (including, without limitation, the budgeted Gross Operating Revenues), as provided in Section 2.18.4 below, or (ii) Corporation's right to appoint a Hotel Consultant and implement certain written recommendations of the Hotel Consultant pursuant to the provisions of Section 2.18.9 below.

2.3.2 Interim Changes to Room Pricing Schedule. For so long as the Bonds are Outstanding, if Manager at any time believes that the current market conditions will not enable Manager to charge daily room rates at least equal to those set forth in the applicable Room Rate Schedule for a period of two consecutive weeks or more, Manager will promptly provide Corporation with a detailed explanation



as part of its monthly reporting to Corporation and/or its Asset Manager relating to the financial condition of the Hotel including recommendations as to modifications of the applicable Room Rate Schedule, together with a revised forecast reflecting the proposed modifications. Such recommendations shall be subject to the prior written approval of Corporation prior to their becoming effective, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that no approval of Corporation shall be required for any such modifications if, in accordance with Section 7.24(a) of the Indenture, (i) such modified rate schedules do not vary from the published or announced rate schedules of hotels in the Competitive Set by more than 45%; (ii) the revised forecast prepared by Manager is not reasonably expected to result in Debt Service Coverage Ratios for the Bonds of more than 2.50:1.00 or less than 1.00:1.00; and (iii) a Hotel Consultant does not recommend a different rate schedule pursuant to Section 7.30 of the Indenture. Any proposed room rate modifications shall be delivered to Corporation as part of its monthly reporting to Corporation and/or its Asset Manager. Interim pricing prior to any review (and if applicable approval) by Corporation will be implemented by Manager in accordance with its standard practices and standards relating to room pricing and revenue management.

## 2.4 Negotiation of Contracts.

2.4.1 Concessions Agreements. Subject to Sections 2.4.2 and 2.4.6 below and the remaining provisions of this Section, Manager shall negotiate, enter into and administer, as agent on behalf of Corporation and for the benefit of the Hotel, concession agreements for the Hotel. Manager shall ensure that all concession agreements are expressly assignable to Corporation or its designee, unless entered into explicitly by Manager on behalf of Corporation. Prior to entering into any such concession agreement (or any other similar occupancy agreement), Manager shall have received an opinion from the Hotel's legal counsel 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 Corporation. Upon the termination of this Agreement for any reason whatsoever, Manager shall promptly take all actions necessary to assign to Corporation or its designee all such concession agreements. In addition, Manager shall use commercially reasonable efforts to include in each such agreement a no personal liability clause in favor of Corporation.

2.4.2 Leases. Manager shall not enter into any leases with respect to any space within the Hotel or on the Land without the prior written approval of Corporation. Manager understands that the Hotel is exempt from ad valorem taxes and that any such lease may adversely affect such exemption. Accordingly, Manager shall be responsible for operating any stores, shops and restaurants within the Hotel.

2.4.3 Service Contracts. Subject to Section 2.4.6 of this Agreement, Manager shall negotiate, enter into, and administer, as agent on behalf of Corporation for the benefit of the Hotel, service contracts for Hotel operations, including (without limitation) contracts for health and safety systems maintenance, 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 Manager deems advisable. Manager shall use commercially reasonable efforts to include a provision in each contract to provide monthly recurring services (other than public utilities) which permits the contract to be terminated upon 30 days written notice. In each other contract, Manager will include termination provisions that are typical in the hotel industry for the type of contract at issue. In addition, Manager shall use commercially reasonable efforts to include in each such contract a no personal liability clause in favor of Corporation.

2.4.4 Banquet and Meeting Facility Contracts. Subject to Section 2.4.6 of this Agreement and the Room Block Commitment, Manager shall negotiate, enter into, and administer, as agent on behalf of Corporation 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 commercially reasonable efforts to include in each such contract a no personal liability clause in favor of Corporation.

2.4.5 Licenses and Permits. Subject to Section 2.4.6 of this Agreement, Manager shall obtain or cause to be obtained all licenses and permits required for the operation, management and operation of the Hotel or the making of Capital Improvements, as and when required under the Legal Requirements. Such licenses and permits shall include, 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, parking and other services Manager deems advisable. Without in any way limiting the foregoing, Manager shall be responsible for obtaining the Liquor Licenses for the Hotel prior to the Required Opening Date. The Liquor Licenses shall be in the name of Manager or an Affiliate of Manager unless the applicable Texas liquor authority requires it to be in the name of Corporation. Subject to all applicable Legal Requirements, Manager or such Affiliate, as applicable, will, if required by the Trustee, pledge such Liquor Licenses to Trustee or another party designated by Trustee, in order to secure the re-payment of the Bonds. If, upon the termination of this Agreement, Corporation has used diligent efforts to obtain a required liquor license for the Hotel, but is unable to obtain the required liquor licenses for the Hotel, Manager shall (unless such termination is as the result of a Corporation default under this Agreement) allow the Hotel to be operated under its Liquor License, without cost to either Party (if permitted by Legal Requirement), for a reasonable time, not to exceed [90] days pursuant to an interim agreement reasonably approved by both Manager and the Corporation; provided, however, that Manager shall not be obligated to do so in the event such temporary use is not permitted by Legal Requirement or such temporary arrangement poses a material risk to Manager or its Affiliates or jeopardizes any liquor license at any other hotel operated or owned by Manager or its Affiliates. [NTD - Remains subject to change. Winstead to consult with outside counsel.]

#### 2.4.6 Approval of Certain Contracts.

2.4.6.1 Corporation's approval (which approval shall not be unreasonably withheld, conditioned or delayed) shall be required for the negotiation, execution or administration 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 year or a term which is equal to or less than one year but is automatically renewable unless terminated (unless such lease or other contract can be terminated without penalty upon notice of 30 days or less), or (ii) requires annual aggregate annual payments in excess of the Materiality Threshold and is other than a contract (A) for which the cost of performance is included in the approved Operating Plan and Budget or approved Capital Budget, (B) for the provision of utilities, or (C) for the provision of employee benefits. Notwithstanding any provision herein to the contrary, all leases, contracts and licenses, goods and services shall comply with the requirements of Section 2.27 of this Agreement. Manager shall generally comply with its standard practices and policies applicable to Other Hilton Hotels (including competitive bidding) in the selection of vendors under contracts for goods and services. In addition, as part of the process of approval of the Operating Plan and Budget, Corporation may instruct Manager to cause some or all of the contracts providing for payments in any one year in excess of the Materiality Threshold (including contracts for consumable supplies) to be competitively bid by a minimum of three different reputable vendors known to Manager to provide high quality service at competitive prices (at least one of whom must not be either a National Vendor or an Affiliate of Manager and may be designated by Corporation, at Corporation's

election). Manager shall select vendors based on Manager's reasonable judgment of which vendors provide the best combination of cost and quality of goods and services.

2.4.6.2 Corporation's approvals under Section 2.4.6.1 preceding shall be deemed given in the event Corporation fails to respond within ten Business Days from the date of Manager's written request for approval. Each request for approval shall prominently display a notation that Corporation has ten Business Days to respond or lose its approval rights.

2.4.7 Certain Limitations. Notwithstanding the foregoing, Manager will not enter into contracts with unrelated third parties for the management, operation or use of the Hotel without first submitting such contracts for review and approval by Corporation and its designated bond counsel to ascertain whether such contracts could adversely affect the exemption from federal income tax of interest on the Bonds. However, without limiting any approvals that may otherwise require Corporation approval pursuant to Section 2.4.6, contracts with unrelated third parties which satisfy the following criteria need not be submitted for review and approval:

- (a) 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).
- (b) Contracts to provide services if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.
- (c) Arrangements provided for use that is 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).
- (d) 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;
- (e) Use by a nongovernmental person pursuant to an arrangement (other than an arrangement resulting in ownership of the Hotel by a nongovernmental person) if:
  - (i) the term of the use under the arrangement including all renewal options is not longer than 30 days, and
  - (ii) the arrangement is a negotiated arms-length arrangement, and
  - (iii) compensation under the arrangement is at fair market value, and

- (iv) the property subject of the arrangement is not financed for the principal purpose of providing that property for use by that nongovernmental person.

2.4.7.2 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 or party related to Manager, receives, directly or indirectly, any direct or indirect benefit (other than the receipt by the vendor of the stated contract consideration), 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.

2.5 Maintenance of Hotel and FF&E. Manager shall keep the Hotel and the FF&E which serves the Hotel in good operating order, repair, and condition in accordance with the Operating Standard set forth in Section 2.2 herein, including making ordinary and 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. 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. In connection with such programs, Manager shall arrange to have the Hotel and the FF&E physically inspected in a manner consistent with and pursuant to its quality assurance standards and policies applicable to Other Hilton Hotels and prepare a written quality assurance report in a form consistent with its quality assurance program applicable to Other Hilton Hotels. Notwithstanding Manager's rights and obligations under the preceding provisions of this Section, Corporation shall have the right to hire an outside consultant to independently inspect the Hotel and the FF&E not more than once each Operating Year, the cost of which shall be paid from the Excess Revenue Fund, or if such funds are not available for the payment thereof, the reasonable amount of the insufficiency shall be paid from the Gross Operating Revenues as an Operating Expense.

2.6 Supervision and Coordination of Renovations, Improvements, etc. In addition to Manager's authority to carry out ordinary repairs and maintenance set forth in Section 2.5, Manager shall, be responsible for the supervision and coordination of the construction and installation of any non-ordinary or non-routine renovations, improvements, repairs, or replacements in connection with a capital project at the Hotel costing or anticipated to cost, in the aggregate, less than \$250,000 that may be implemented from time to time in accordance with this Agreement, including, at the option of Corporation, entering into all necessary contracts as agent for Corporation for such construction and installation. Corporation shall be responsible for any such non-ordinary or non-routine renovations, improvements, repairs or replacements in connection with a capital project at the Hotel costing, or anticipated to cost, \$250,000 or more. Any such non-ordinary or non-routine capital projects undertaken by Corporation will be subject to Manager's approval in accordance with Manager's standard approval processes relating to such capital projects; and Corporation shall further coordinate with Manager to minimize disruption to the Hotel operations. As for any contracts entered into, or project undertaken by, and supervised by Corporation, Manager shall reasonably cooperate with Corporation and their respective designees and consultants with any related design review and project oversight undertaken by any of them, and, and render assistance, as reasonably necessary, to each of them and their respective employees, agents, contractors, and representatives in connection with any such work.

2.7 Purchase of Inventories, Supplies and Consumables. Manager shall, as agent for Corporation, purchase, or arrange for the purchase of, all inventories, provisions, consumable supplies, and operating supplies that are necessary and proper 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 (subject to the provisions of this Agreement with respect to National Vendors), and act in a commercially reasonable and economical manner in purchasing such items, provided that the ownership of all such inventories, provisions, consumable supplies, and operating supplies shall be in the name of Corporation. The cost of such purchases shall be an Operating Expense.

2.8 Cooperation with Corporation's Purchasers, Mortgagees and Consultants. Without in any way limiting Manager's rights under this Agreement, Manager shall reasonably cooperate with Corporation, its consultants and any actual or prospective purchaser, lessee, surety, Mortgagee, or other lender in connection with any proposed sale, lease, or financing of or relating to the Hotel; provided, however, that Manager may, to the extent permitted by the Indenture and the Cash Management Agreement, reimburse itself out of Gross Operating Revenues for the reasonable Out-of-Pocket Expenses reasonably incurred in connection with such cooperation; and, provided further, that Manager shall not be required to release to any Person, without Manager's consent, any of Manager's Proprietary Information.

## 2.9 Legal Services.

2.9.1 Retention of Legal Counsel. Manager shall retain legal counsel for the Hotel (which legal counsel shall be reasonably acceptable to Corporation) to perform legal services in the ordinary course of business of the Hotel under Manager's direction. 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) 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 Corporation 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 lease, license, or concession agreement covering a portion of the Hotel for the breach thereof or default thereunder by the tenant, licensee, or concessionaire, provided Corporation has received written notice of such breach prior to such cancellation or termination, and (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, provided that if such counterclaim involves a claim for more than the Materiality Threshold, such counterclaim and litigation, other than a Manager System Legal Proceeding, shall be subject to joint control under Section 2.9.2 following.

2.9.2 Joint Control of Certain Legal Proceedings. Notwithstanding any provision to the contrary contained in Section 2.9.1, legal proceedings of a nature other than those referred to under Section 2.9.1 that subject Corporation to liability risk in excess of the Materiality Threshold shall be subject to Corporation's and Manager's joint control which shall mean that Corporation and Manager shall (a) jointly select counsel which would represent both Parties, (b) coordinate and reasonably cooperate with regard to case management strategy, (c) have the right to review pertinent documents prior to submission to court, and (d) participate in any settlement discussions. 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. With respect to any Manager System Legal Proceeding in excess of the Material Threshold, Corporation shall have the right to retain separate counsel to represent Corporation and its Affiliates to represent their interests. In such event, 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 or licensed by Manager or its Affiliates; provided, however, that in no event shall either Party be permitted to admit to any liability of the other Party (or its respective

Affiliates) in connection with any such settlement without the approval of the other Party in such Party's sole discretion.

2.9.3 Settlement of Claims. Notwithstanding any provision to the contrary contained in Section 2.9.1, Manager shall not settle any claim, action, counterclaim or employment claim (provided such claim, action, counterclaim or employment claim would otherwise constitute an Operating Expense or otherwise be payable from any Funds) without Corporation's consent if such settlement would, when aggregated with any other settlements agreed to by Manager without Corporation's consent during the then current Operating Year, result in aggregate uninsured liability during the then current Operating Year in excess of three times the Materiality Threshold. Corporation shall respond promptly and reasonably to any request for its consent pursuant to this Section 2.9.3 and Corporation shall act in good faith to the extent any proposed settlement (or lack thereof) may affect Manager's liability; provided however, that so long as Corporation is acting in good faith, nothing herein shall be construed as limiting Corporation's ability to act in its own economic interest. Corporation shall be deemed to have consented to any proposed settlement unless Corporation delivers to Manager a written notice rejecting such settlement in writing together with a description of Corporation's reasons for such rejection within five Business Days after Manager delivers to Corporation a written request for Corporation's consent to such settlement, together with a detailed description of the proposed settlement. Such request for consent shall prominently display a note that Corporation has five Business Days to respond or it loses its consent rights. In addition, at the request of Corporation and as an expense of the Hotel, Manager shall take appropriate steps (as determined by Corporation in its sole discretion) to challenge, protest, appeal, and/or litigate to final decision in any appropriate court or forum any Legal Requirements affecting the Hotel or the operation thereof. 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 or licensed by Manager or its Affiliates. If Manager settles any claim affecting the Hotel as permitted under this Section 2.9.3, any amounts incurred by Manager (including reasonable legal fees, legal liabilities and the cost of such settlement) shall be reasonably allocated to the Hotel. In no event shall any settlement entered into by Manager hereunder include or otherwise constitute an admission of liability of Corporation without the approval of Corporation in Corporation's sole discretion.

2.9.4 Increase or Decrease of Dollar Limits. Each dollar amount provided for in this Section 2.9 shall be increased or decreased for each Operating Year based on the percentage increase or decrease in the Index during the immediately preceding Operating Year.

2.10 Availability of Senior Executive Personnel. Manager shall cause the Senior Executive Personnel to be available as often as Corporation or the Asset Manager reasonably requires to consult with and advise Corporation and its representatives and designees concerning policies and procedures affecting the conduct of the business of the operation of the Hotel. Senior Executive Personnel may supervise any other hotel concurrently and on an ongoing basis with their supervision with respect to the Hotel and the operation thereof if Manager determines that it is in the best interest of the Hotel and Manager obtains the written consent of Corporation. If the Senior Executive Personnel supervise any other hotel concurrently and on an ongoing basis with their supervision with respect to the Hotel and the operation thereof, then Manager shall allocate all salary and other related Out-of-Pocket Expenses between the Hotel and the other managed hotel in a manner that fairly reflects the proportionate portion of such employee's time devoted to the Hotel.

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

2.12 Taxes.

2.12.1 Remitting Sales and other Similar Taxes. Manager shall collect on behalf of Corporation 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.

2.12.2 Ad Valorem Taxes and Personal Property Taxes. The Hotel is currently exempt from ad valorem taxes. Manager shall render all personal property for personal property taxes, to the extent required under any Legal Requirement. Manager shall also be responsible for paying all personal property taxes on behalf of Corporation. Corporation 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 2.12.2. Manager shall handle any tax disputes involving the Hotel and shall periodically report to Corporation as to the status of any such tax disputes involving amounts in excess of the Materiality Threshold.

2.13 Internal Control Structures. Manager shall maintain an internal control structure 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 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.

2.14 Financial Matters. Manager shall keep Corporation informed and advised of all material financial and other matters concerning the Hotel and the operation thereof and give due consideration to suggestions which Corporation's designees or consultants may offer with respect thereto from time to time.

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 the Cash Management Agreement and Section 5.01 of the Indenture. This agreement of Manager shall survive the termination or expiration of this Agreement until all uncollected amounts due during the Term of this Agreement are collected or otherwise accounted for to the reasonable satisfaction of Corporation.

2.16 Cooperation with Convention Center. Manager shall reasonably and in good faith cooperate with the Convention Center's representatives and the Austin Convention and Visitors Bureau.

2.17 Customary and Usual Tasks. Manager shall perform administrative, management, reporting, cooperation, coordination, supervision, and oversight tasks, other than those set forth in Article 2 of this Agreement, as are customary and usual in the operation of a hotel of a class and standing consistent with the Hotel's facilities and the Operating Standard.

2.18 Approval/Disapproval of Budgets.

2.18.1 Delivery of Budgets. On or before November 1 of each Operating Year, Manager shall prepare and deliver to Corporation and its designees and consultants (provided Manager has received written notice of the names and addresses of such designees and consultants at least seven Business Days in advance of delivery) for Corporation's review, a proposed operating plan and budget (which shall include a proposed room rate schedule) and proposed capital budget in reasonable detail for the next ensuing Operating Year.

2.18.2 Preparation Standards. Manager shall act reasonably and exercise prudent business judgment in preparing each proposed operating plan and budget, proposed capital budget and any revisions thereto. Corporation shall act reasonably and exercise prudent business judgment in approving or rejecting all or any portion of the proposed operating plan and budget and proposed capital budget. Each proposed operating plan and budget shall be subject to the provisions of Section 2.18.9 below. In addition, Manager and Corporation agree that:

- (a) each proposed operating plan and budget and proposed capital budget must be prepared giving due consideration to all relevant factors, including, without limitation, existing market and economic conditions, operation of the Hotel in a manner that is consistent with the Operating Standards and the Room Block Commitment;
- (b) each proposed operating plan and budget and each proposed capital budget shall be prepared in accordance with Manager's standard planning and budgeting requirements applicable to all Other Hilton Hotels; and
- (c) each proposed operating plan and budget and each proposed capital budget shall be in the form used by Manager at all Other Hilton Hotels at the time of preparation of the applicable budget.

2.18.3 Required Information and Projections. Each proposed operating plan and budget shall include the following:

- (a) annualized projections of Gross Operating Revenue, Operating Expenses, Gross Operating Profit, and Net Operating Income for that Operating Year;
- (b) for each month, the estimated results of operations (including estimated Gross Operating Revenue, Operating Expenses, Gross Operating Profit, and Net Operating Income);
- (c) for each month, a statement of cash flow, including a schedule of any anticipated requirements for funding from Gross Operating Revenues, the Cash Trap Fund, the Excess Revenues Fund, the Renewal and Replacement Fund, the Supplemental Renewal and Replacement Fund and the Operating Reserve 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 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, the amount of accounts receivable and accounts payable that are more than 90 days past due;
- (g) for each month, estimates of the occupancy and average room rates;
- (h) for each month, an estimate of Group Service Fees and Charges; and
- (i) a marketing plan, which shall contain a description of the Hotel's target markets, the Hotel's relative position in those markets, the proposed room rate structures for each market segment, the current and future sales plan for the Hotel (including specifically the



marketing of rooms to be used in connection with the Convention Center), 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), 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 the proposed room rate structures and other published operating information for the hotels in the Competitive Set.

#### 2.18.4 Approval of Room Rate Schedules and Budgets.

2.18.4.1 Approval of Room Rate Schedules. Pursuant to Section 7.24(a) of the Indenture, Corporation has covenanted for the benefit of the Registered Owners of the Bonds, and in recognition of the expertise of Manager, that it will not disapprove of any rate schedule by Manager so long as (i) such rate schedules do not vary from the rate schedules in the Competitive Set by more than 45%, (ii) the budget prepared assuming such rate schedule does not result in Debt Service Coverage Ratios for the First Tier Bonds and Second Tier Bonds of more than 2.50:1.00 or less than 1.00:1.00, and (iii) a Hotel Consultant does not recommend a different rate schedule pursuant to Section 7.30 of the Indenture. So long as any Bonds are Outstanding, if Corporation disapproves of a proposed rate schedule by Manager or any amendment thereto (pursuant to Section 2.3.2) and Manager disagrees with Corporation's reasons for disapproving such proposed rate schedule (or modification thereto) and disputes the accuracy of the information contained in either clause (i) or (ii) of the immediately preceding sentence, then Corporation shall retain a Hotel Consultant to confirm or reject the accuracy of such information. If the Hotel Consultant agrees with Manager, Corporation shall not have any right to dispute such proposed rate schedules and shall withdraw its disapproval and in any event its disapproval shall be of no further force and effect. If the Hotel Consultant agrees with Corporation, then Manager shall follow Corporation's advice so long as Manager determines that it would not otherwise result in an Event of Default or breach of a covenant under the Indenture or under the Management Agreement. If Corporation disagrees with Manager's determination that following such advice would result in an Event of Default or breach of a covenant under the Indenture or under this Agreement, then either Manager or Corporation may, by delivering written notice of its requirement for arbitration to the others, require that the matter in dispute be submitted to arbitration in accordance with the Management Agreement. Each room rate schedule approved or deemed approved by Corporation is herein referred to as a "*Room Rate Schedule*". The foregoing provisions shall not apply to the Room Block Commitment.

2.18.4.2 Approval of Budgets. Corporation and Manager shall meet within 15 days after Corporation's receipt of the final proposed operating plan and budget and final proposed capital budget for any Operating Year pursuant to Section 2.18.1. Asset Manager shall be permitted to participate in such meeting. At such meeting, Manager shall provide to Corporation its final proposed operating budget and final proposed capital budget for the applicable Operating Year, together with an explanation of the changes from the proposed budgets initially delivered to Corporation. If Corporation and Manager are unable to agree upon a proposed operating plan and budget and proposed capital budget for an Operating Year within 15 days after such initial 15 day period, then within ten days after the expiration of such second 15 day period, Corporation shall deliver to Manager Corporation's written objections to the proposed operating plan and budget and proposed capital budget, subject, however, to the provisions of Section 2.18.9 below. If Corporation fails to deliver to Manager its written approval or disapproval of a proposed operating plan and budget and proposed capital budget within such 10-day period, then such proposed operating plan and budget and proposed capital budget shall be deemed the approved Operating Plan and Budget and approved Capital Budget for the applicable Operating Year, until Corporation delivers to

Manager its objections in writing. At such time as Corporation delivers its objections to such proposed budgets, such disapproval shall specifically include the items disapproved (which disapproved items may include objections that Corporation receives from a Hotel Consultant). During the 15 day period following Manager's receipt of Corporation's items of disapproval, Corporation and Manager will meet to discuss the disapproved items. Within five days after the expiration of such third 15 day period, Manager shall submit to Corporation (and any designee or consultant appointed by Corporation) a revised proposed operating plan and budget and proposed capital budget, as applicable, incorporating such revisions as Corporation and Manager agreed upon during such third 15 day period. If the Parties do not agree upon such revisions, then either Party may request arbitration as set forth in Section 2.18.6 hereof.

2.18.5 Budget Review Standards. Without limiting Corporation's approval rights or the obligation of Manager to follow the Hotel Consultant's written recommendations to the extent set forth in Section 2.18.9 herein, Corporation shall have the right to object to any aspect of any proposed operating plan and budget and/or any proposed capital budget if (among other reasons):

- (a) the objection or change would not materially (i) interfere with Manager's operation of the Hotel in a manner consistent and in compliance with the Operating Standards or (ii) impair Manager's ability to achieve a Performance Test, or (iii) interfere with Manager's fulfillment of its obligations, duties, agreements, covenants or responsibilities under this Agreement;
- (b) the applicable budget is not consistent with the requirements of an Event Room Block Contract or rates approved by Manager and Corporation for an Event Room Block pursuant to the Room Block Commitment;
- (c) as to a proposed capital budget, there are not Sufficient Funds available to make the proposed Capital Improvement set forth therein;
- (d) the proposed operating plan and budget will result in a Debt Service Coverage Ratio of less than the Debt Service Coverage Requirement;
- (e) as to a proposed capital budget, all or some of the proposed Capital Improvements represent material upgrades to the quality or facilities of the Hotel (as distinct from repairs, maintenance or replacements required to prevent any diminution in quality) that are not, in Corporation's reasonable opinion, required to satisfy the Upper Upscale Rating and each other Operating Standard; and
- (f) as to a proposed capital budget, any proposed upgrades to the quality of the facilities of the Hotel would (x) 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 (y) render funds in the Renewal and Replacement Fund, the Supplemental Renewal and Replacement Fund, Operating Reserve Fund, Excess Revenues Fund or Cash Trap 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 Corporation's right to approve a proposed capital budget as to reasonableness of specifications and cost of implementing any upgrade set forth therein.

Notwithstanding the foregoing to the contrary, the Parties acknowledge the that the operating plan and budget shall nevertheless include: (i) expenditures reasonably necessary to prevent a threat to

life, health or safety of persons or damage to the Hotel; (ii) subject to Section 2.18.5(c), expenditures reasonably necessary to materially comply with Hilton Brand Standards; provided however, that Manager will consider in good faith (A) any requested adjustments to the timing of implementation of such expenditures based on current facts and circumstances relating to Hotel (including current cash flow forecasts), and (B) requests for waivers from the Hilton Brand Standards pursuant to its standard waiver review and approval process; and (iii) Hotel Personnel Costs in accordance with standard personnel policies applicable to similarly situated Other Hilton Hotels (as they may be amended from time to time) with respect to any Hotel Personnel employed directly by Manager or its Affiliates (including, for the avoidance of doubt, the Hotel Personnel Costs contemplated in Section 3.1.5.2 related to bonus payments).

2.18.6 Right to Request Arbitration; Deemed Approval of Budgets; Operation of Budgets Pending Arbitrator's Determination.

2.18.6.1 Right to Request Arbitration. If (i) the Parties, despite their good faith efforts, are unable to reach final agreement on the proposed operating plan and budget and/or the proposed capital budget prior to the commencement of the applicable Operating Year and (ii) Corporation does not have the right or the obligation to appoint a Hotel Consultant pursuant to Section 2.18.9 below, then either Party or the Trustee may, by delivering written notice of its requirement for arbitration to the others by January 30 of the of the applicable Operating Year (each such notice of arbitration, an "*Arbitration Request*"), require that the matter(s) in dispute be submitted to arbitration pursuant to Article 10 of this Agreement.

2.18.6.2 Deemed Approval of Budgets. If neither Party nor the Trustee delivers an Arbitration Request by January 30 of the of the applicable Operating Year, then the Parties and the Trustee shall be deemed to have waived their respective rights to arbitrate the matters in dispute and the proposed operating plan and budget and the proposed capital budget for the applicable Operating Year shall be deemed to be the Operating Plan and Budget and Capital Budget for such Operating Year, provided that any Operating Expense line item which is in dispute in the proposed operating plan and budget shall not be greater than 110% of the amount of the actual Operating Expenses incurred for such line item during the Operating Year preceding the Operating Year covered by the proposed operating plan and budget.

2.18.6.3 Operation of Budgets Pending Results from Arbitration. If either Party or the Trustee timely delivers an Arbitration Request regarding the proposed operating plan and budget, then, until the arbitrator issues its decision regarding the disputed items in the proposed operating plan and budget, the proposed operating plan and budget shall govern the areas of operations not in dispute and the prior year's Operating Plan and Budget shall govern the areas in dispute, except that Manager may increase the budgeted expenses provided for such disputed item(s) in the prior year's Operating Plan and Budget and/or Capital Budget, as applicable, by an amount not in excess of the lesser of (i) 5% of the actual amount of the applicable expense line item for the prior Operating Year, or (ii) the amount of the increase originally proposed by Manager.

2.18.6.4 Capital Budget Pending Results from Arbitration. If either Party or the Trustee timely delivers an Arbitration Request regarding the proposed capital budget, then, until the arbitrator issues its decision regarding the disputed items in the proposed capital budget, 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 (a) was contemplated as a regularly recurring Capital Expense in the Capital Budget approved for the prior Operating Year (increased by the percentage increase in the Index from such prior Operating Year), (b) is for an amount not in excess of the Materiality

Threshold and when aggregated with all other Capital Expenses incurred for any other disputed Capital Improvements during such Operating Year, does not exceed two times the Materiality Threshold, or (c) is necessary to eliminate or remove an Emergency. Notwithstanding the foregoing, Manager shall notify Corporation in writing of any such capital expenditure as soon as practicable and describe the reasons therefor.

2.18.7 Permitted Variations from Budget. During the Operating Term, Manager (i) shall use commercially reasonable efforts to operate within, and in a manner consistent with, each approved Operating Plan and Budget and each approved Capital Budget and (ii) shall not substantially deviate from the budgeted Capital Expenses in an approved Capital Budget unless Manager obtains the prior written consent of Corporation (it being agreed that a deviation in excess of the Materiality Threshold in total Capital Expenses is substantial), provided, however, that Manager shall be entitled to reallocate up to 10% of the Capital Budget to one or more line items in the Capital Budget so long as the remaining dollars in those line items from which such 10% is removed are sufficient to complete the work contemplated by those line items. Corporation acknowledges that certain of the expenses described in the Operating Plan and Budget (but not the Capital Budget) for any Operating Year will vary based on the occupancy of the Hotel. 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, so long as with respect to increases in expenses, Manager reasonably believes and Corporation reasonably agrees that such increase will increase net operating income over that budgeted. The term "*Variable Expenses*" shall mean Operating Expenses covered by an 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. Additionally, the approved Operating Plan and Budget and Capital Budget may be revised by Manager during the Operating Year without Corporation approval but with written notice to Corporation, as necessary to include: (i) unforeseen increases to budgeted expense categories which are beyond Manager's reasonable control, such as utility rates and charges, insurance premiums and changes in unaffiliated suppliers' prices; (ii) expenditures reasonably required on an emergency basis in order to protect life, health, safety, or property in cases of emergency or casualty; (iii) expenditures reasonably required to preserve and maintain the security and reliability of Manager's information technology systems in response to any unforeseen or unanticipated cybersecurity threats in accordance with Hilton Brand Standards; and (iv) expenditures required to comply with a change in Legal Requirements.

2.18.8 Characteristics of Budgets. Corporation acknowledges that (a) the Operating Plan and Budget is intended by Manager to be a reasonable estimate of income and expenditure only, (b) Manager does not give any guarantee, warranty or representation whatsoever in connection with any Operating Plan and Budget, other than 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 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) (A) to use commercially reasonable efforts to operate within the approved Operating Plan and Budget and the Capital Budget, or (B) to obtain Corporation's approval prior to making expenditures that exceed in the aggregate the amount of the approved or authorized Capital Budget by more than the Materiality Threshold, or (ii) Corporation'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.

2.18.9 Hotel Consultant. Manager acknowledges that Corporation shall have the right to appoint a Hotel Consultant (and shall appoint if required pursuant to the Indenture) 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, Corporation shall thereafter have the right, either at its own discretion or as required pursuant to the terms of the Indenture, to hire a Hotel Consultant (within 30 days of the receipt of such proposed operating plan and budget), 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 Net Revenues available to pay Debt Service;
- (b) if the actual Debt Service Coverage Ratios with respect to the Bonds for any four consecutive quarters is less than the Debt Service Coverage Requirement, then unless Corporation has appointed a Hotel Consultant pursuant to subsection (a) above within the preceding twelve months, Corporation shall thereafter have the right, either at its own discretion or as required pursuant to the terms of the Indenture, to hire a Hotel Consultant (within 30 days of the receipt by Corporation 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 Net Revenues available to pay Debt Service.
- (c) if the audited annual financial statement delivered to Corporation pursuant to Section 2.20.3 reflects that the Debt Service Coverage Requirement was not achieved, then unless Corporation has appointed a Hotel Consultant pursuant to subsections (a) or (b) above within the preceding twelve months, Corporation shall thereafter have the right, either at its own discretion or as required pursuant to the terms of the Indenture, to hire a Hotel Consultant (within 30 days of Corporation'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 Net Revenues available to pay Debt Service.

Corporation shall deliver the Hotel Consultant's reports and findings to Manager, Trustee and Asset Manager within three Business Days of receipt thereof by Corporation. Manager and Asset Manager will study and review such reports and any written recommendations made by the Hotel Consultant. Manager shall also, upon the request of Corporation or Trustee, meet with the Hotel Consultant to discuss the Hotel Consultant's reports, findings and written recommendations. Manager shall act in good faith in reviewing and implementing all of the Hotel Consultant's written recommendations except those written recommendations which require an expenditure of funds greater than the amount available for such purpose under the Indenture, those written recommendations that compromise the Operating Standards, or those written recommendations which could, in the opinion of Bond Counsel, adversely affect the tax-exempt status of the interest on the Bonds. In addition, if Manager believes that it is not in the best interest of the Hotel to implement any of the Hotel Consultant's written recommendations, Manager shall not be required to follow such written recommendations if Manager provides written explanation to Corporation, Asset Manager and Trustee as to why Manager is not implementing such written recommendations; provided, however, that if the Debt Service Coverage Ratio for the Bonds is less than 1.20:1.00 for the prior eight consecutive calendar quarters, Manager shall act in good faith in implementing such Hotel Consultant's written recommendations unless it received a written waiver from the Asset Manager with respect to the implementation of such written recommendations. The fees and expenses of the Hotel Consultant shall be paid as an Operating Expense from amounts on deposit

in the Lockbox Fund. Contemporaneously with engaging a Hotel Consultant pursuant to the preceding provisions, Corporation shall deliver to Manager a copy of such engagement. In addition, each Party shall deliver to the other 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. To the extent any costs are incurred in connection with the review by the Asset Manager of the written recommendations that Manager disagrees with, such costs shall be paid by (i) Manager if the Asset Manager recommends that Manager follow the Hotel Consultant's written recommendations, (ii) Corporation if the Asset Manager recommends that the Hotel Consultant's written recommendations shall not be followed by Manager and (iii) Manager and Corporation as equitably apportioned between the Parties if the Asset Manager recommends that Manager follows some of the Hotel Consultant's written recommendations and recommends that the other recommendations should not be followed.

2.19 Capital Expenses. During the Operating Term, the remaining provisions of this Section 2.19 shall apply as to the maintenance, repair, and improvement of the Hotel.

2.19.1 Generally. The Hotel (including adjacent grounds, 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 Fund as described in the Cash Management Agreement and the Indenture, as contemplated in the Capital Budget in effect from time to time, to permit operation of the Hotel in accordance with the Operating Standard.

2.19.2 Renewal and Replacement Fund. Corporation shall use commercially reasonable efforts to cause Trustee (subject to and in accordance with the provisions in the Indenture) to set aside (or Corporation, after the Bonds are no longer Outstanding, shall set aside) from Gross Operating Revenues on a monthly basis (in arrears) the Renewal and Replacement Set Aside Amount into the Renewal and Replacement Fund. Corporation shall use commercially reasonable efforts to cause Trustee to maintain as required by Section 5.02 of the Indenture (or Corporation, after the Bonds are no longer Outstanding, shall maintain) the Renewal and Replacement Fund and to invest the balance thereof in accordance with Section 6.03 of the Indenture, with all interest on the investment to accrue in the Renewal and Replacement Fund. After no Bonds are Outstanding, Corporation shall invest amounts in the Renewal and Replacement Fund (or if a Mortgagee is in control of the Renewal and Replacement Fund, Corporation shall use commercially reasonable efforts to cause such Mortgagee to invest such amounts) in lawfully permitted interest bearing accounts, with interest flowing into the Renewal and Replacement Fund. To the extent amounts in the Renewal and Replacement 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 Renewal and Replacement 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 2.19.4 of this Agreement, (b) Capital Expenses which are incurred by Manager pursuant to a provision of this Agreement which clearly and expressly permit Manager to incur such expense without the prior written consent of Corporation, or (c) Capital Expenses which Manager incurs with the prior written approval of Corporation. All requests for Capital Expenses shall include reasonably detailed back-up documentation including, without limitation, lien releases, bids and invoices as appropriate or required.

2.19.3 Use of Renewal and Replacement Fund, Supplemental Renewal and Replacement Fund, Operating Reserve Fund, Excess Revenues Fund and Cash Trap Fund for Capital Expenses. Subject to the terms of the Indenture, the Renewal and Replacement Fund and Supplemental Renewal and Replacement Fund, subject to Section 2.19.4 hereof, shall be used for the purposes of funding FF&E and Capital Expenses which are included in the Capital Budget or otherwise clearly and expressly authorized

by this Agreement or pre-approved in writing by Corporation. The Renewal and Replacement Fund and the Supplemental Renewal and Replacement Fund shall also be available to pay Debt Service on the Bonds to the extent set forth in Section 5.09 and Section 5.16 of the Indenture or for whatever other purposes are expressly permitted pursuant to the terms of the Indenture. However, the Renewal and Replacement Fund shall not be used for the purposes set forth in the first sentence of this Section 2.19.3 unless the Supplemental Renewal and Replacement Fund is not sufficient to satisfy the matters described in such sentence. In addition to the purposes permitted under Section 5.08 of the Indenture and subject to the terms of the Indenture, Manager may, but shall not be obligated to, use the Operating Reserve Fund for unbudgeted capital Emergency Expenses or to comply with Legal Requirements (and then if the violation of such Legal Requirements would expose Manager to material risk of civil or criminal sanctions or would pose an imminent threat to Hotel or its employees, guests or other persons using or occupying any portion of the Hotel). If the Operating Reserve Fund is not sufficient to satisfy the unbudgeted Emergency Expenses, or Manager elects to not utilize funds in the Operating Reserve Fund for such purposes, then such expenditures shall be satisfied from the Excess Revenues Fund first and the Cash Trap Fund second, and if any insufficiency then remains, from the Supplemental Renewal and Replacement Fund and then from the Renewal and Replacement Fund. In connection with any Emergency Expenses from the Renewal and Replacement Fund, the Supplemental Renewal and Replacement Fund, the Operating Reserve Fund, Excess Revenues Fund or the Cash Trap Fund, that were not specifically contemplated in the Capital Budget, Manager shall use good faith efforts to attempt to notify Corporation prior to the time that the expenditures in question are made and shall in any event notify Corporation in writing as soon as possible after such expenditures are made. Neither the Cash Trap Fund nor the Excess Revenues 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 Capital Budget and then only to the extent that such Capital Expenses exceed the balance of the Renewal and Replacement Fund and the Supplemental Renewal and Replacement Fund.

2.19.4 Defective and Dangerous Conditions. If any portion of the design or construction of the Hotel, including any Capital Improvements made to the Hotel from time to time, 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 Certificate of Occupancy, Corporation shall, subject to any limitations on warranties contained in the applicable design, engineering and construction documents, make immediate demand on, and use commercially reasonable efforts to cause, the warranting party to expeditiously remedy such defect or cause such defect to be remedied; provided, however, Corporation 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, and unless and until such challenge is settled, Corporation shall have no obligation to pursue any warranting party, surety, or contractor regarding such alleged defect. Any amounts expended by Corporation under this Section 2.19.4 shall be paid out of the Excess Revenues Fund first and the Cash Trap Fund second, but if the Excess Revenues Fund and Cash Trap Fund are not sufficient, the insufficiency shall be paid out of the following funds in the following order of priority: the Renewal and Replacement Fund and the Supplemental Renewal and Replacement Fund, and, to the extent Manager in its discretion elects to make a request for such funds pursuant to Section 5.08(a) of the Indenture, the Operating Reserve Fund. Any recovery which Corporation receives from the warranting party, surety, 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).

2.19.5 Approval for Payment of Capital Improvements. Subject to the availability of sufficient amounts in the Renewal and Replacement Fund, the Supplemental Renewal and Replacement Fund, the Excess Revenues Fund and the Cash Trap Fund (the use of which funds shall be subject to Sections 2.19.3 above and 2.19.6 hereof), Manager (at no additional fee to Manager unless the additional fee is specifically included in the applicable Capital Budget and specifically identified as such, or otherwise specifically approved in writing by Corporation) shall arrange for and supervise the completion of all

Capital Improvements approved by Corporation in the Capital Budget or otherwise agreed to by Corporation and Manager in writing except for those Capital Improvements contemplated in Section 2.6 that Corporation will oversee and supervise. For the avoidance of doubt, Manager may also request funds for the payment of certain Capital Expenses from the Operating Reserve pursuant to Section 5.08(a) of the Indenture. Any requisitions for payment of Capital Improvements from the Renewal and Replacement Fund, the Supplemental Renewal and Replacement Fund, the Excess Revenues Fund and the Operating Reserve Fund, shall be subject to the review and approval of Corporation, and all costs and expenses incurred by Corporation in connection with such review shall be paid as part of the cost of such Capital Improvements.

2.19.6 Corporation's Source of Funds for Capital Expenses. Notwithstanding any provision to the contrary contained in this Agreement, until the Bonds are no longer Outstanding, (i) Corporation's obligations to provide funds for Capital Expenses shall be limited to funds in the Renewal and Replacement Fund, the Supplemental Renewal and Replacement Fund, the Excess Revenues Fund and the Cash Trap Fund and (ii) the availability of funds for Capital Expenses or any other expenses shall be limited to the extent provided in the Indenture. For the avoidance of doubt, Manager may also request funds for the payment of certain Capital Expenses from the Operating Reserve pursuant to Section 5.08(a) of the Indenture. In any event, Manager shall exercise commercially reasonable efforts consistent with the Operating Standard to schedule and budget for Capital Expenses in a fashion that permits funding solely from the Renewal and Replacement Fund (to the extent available under the Indenture) and the Supplemental Renewal and Replacement Fund.

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

2.20.1 Books and Records. During the Operating Term, in accordance with the current policies and standards applicable to all Other Hilton Hotels, Manager shall cause 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. Manager may, in its reasonable discretion, handle the Hotel's accounting functions directly or through an Affiliate, as a Group Service, in which event the provisions of Section 2.22 of this Agreement shall apply. All such books of account and records shall be kept in accordance with sound business practices and sufficient in all respects to permit preparation of financial statements in accordance with Generally Accepted Accounting Principles and the Uniform System of Accounts, consistently applied.

All of the financial books and records pertaining to the Hotel, including books of account and front office records shall be the property of Corporation; 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, subject to any restrictions pursuant to Legal Requirement or Manager's and its Affiliates privacy policies relating to the handling of such data, Corporation 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 and information pertaining thereto, initial hire date, current salary, wage and benefits, and employment positions). 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 Corporation so as to ensure the orderly continuance of the operation of the Hotel, but all of such information shall be retained by Corporation and made available to Manager at the Hotel, at all reasonable times, for inspection, audit, examination, and copying (at Manager's expense) for the period of time required by regulations of the Internal Revenue Service, but in any event not less than three years subsequent to the date of such Termination. Prior to destroying the records, Corporation shall notify Manager and provide Manager the opportunity to obtain the records from Corporation at Manager's



expense. . 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 to such guests' stay ("Hotel Guest Data"). During and after the Term, Manager shall retain, use and otherwise process Hotel Guest Data in accordance with its publicly posted privacy policy as amended from time to time so long as such information is not used in a manner which would violate Section 4.9.10 of this Agreement or subject Corporation to any liability for the use or disclosure of such information. Corporation shall not be permitted to use Hotel Guest Data for any purpose except as noted in the following sentence. 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, facilitate the ability of Corporation to honor any reservations on the book at the time of such expiration or earlier termination. Any Hotel Guest Data in the hotel termination reports will be used solely for the purpose of honoring such reservations and shall not be used for any other purpose.

2.20.2 Monthly Reports. Manager shall cause to be prepared and delivered to Corporation's consultants (provided Manager has received written notice of the names and addresses of such designees and consultants at least seven Business Days in advance of delivery) the monthly operating reports provided by Manager to Other Hilton Hotels in accordance with its standard practices based on information available to Manager (the "*Monthly Reports*"); provided, however, that such Monthly Reports shall at minimum, contain such information as required under the Indenture or as may otherwise be necessary for Corporation to fulfill its reporting and disclosure obligations under the Indenture; including without limitation, Sections 7.09, 7.28, 7.32, and 9.02 of the Indenture, or as otherwise required by law. The Monthly Reports shall reflect operational results for the current month and the preceding 11 months and year-to-date, including the REVPAR of the Hotel, calculated both on a monthly basis, and an aggregate 12-month trailing basis. Manager shall deliver to Corporation each Monthly Report on or before the 15th day of the month following the month to which such Monthly Report relates. The Monthly Reports shall be in a format (which may be amended from time to time) substantially similar to the operating reports provided by Manager to Other Hilton Hotels and shall include such other information as may be reasonably required by Corporation so as to comply with its obligations under the Bond Documents. Additionally, Corporation shall be permitted from time to time to reasonably request such additional financial and operating information from Manager; provided, however, that any such additional information shall not result in an additional cost or material burden to Manager.

2.20.3 Annual Financial Statements. Within 45 days after the end of each Operating Year, Manager shall cause to be prepared and delivered to Corporation, as an Operating Expense, the unaudited operating statements (including statement of income and expense) for the Hotel, prepared on an accrual basis in accordance with Generally Accepted Accounting Principles and the Uniform System of Accounts, consistently applied (the "*Unaudited Annual Report*"). The Unaudited Annual Report shall include such other information as may be reasonably required by Corporation so as to comply with its obligations under the Bond Documents. Manager shall cooperate with Corporation, the Asset Manager, and the Independent Accountant selected by Corporation in connection with the preparation of the Certified Financial Statements of Corporation relating to the Hotel.

2.20.4 Destruction of Records. Manager shall not destroy any books and records, without identifying the records to Corporation and obtaining Corporation's prior written approval of the destruction of such identified records except in accordance with Manager's and its Affiliates records retention policy.

2.20.5 Corporation's Audit Rights. Corporation, Corporation's designees and consultants, and Trustee shall, at any time throughout the term of this Agreement, have the right to audit and verify the books and records of the Hotel and the operations of the Hotel, upon reasonable prior written notice to Manager. Corporation, its designees and consultants, and Trustee shall also be entitled to conduct spot audits or examinations of the same at the Hotel without prior notice from time to time, when such notice

could impair the purposes of the audit. Any audit and verification pursuant to this Section 2.20.5 shall be conducted in such a fashion as to interfere as little as reasonably practicable with Manager's normal business operations and during normal business hours. Manager shall cooperate with Corporation, Trustee and its auditors in connection with such audit and shall promptly make available to Corporation, Trustee and its auditors any and all information relating to the Hotel that they may reasonably request in connection with such audit. Corporation shall not be responsible for failure to discover any defalcations during any audit or inspection of the financial records. If Gross Operating Revenue or Net Operating Income as set forth in Manager's Unaudited Annual Report are found to be understated or overstated by more than 3%, then Manager must immediately pay to Corporation the cost of such audit (not to exceed the Materiality Threshold) as well as correct the misstatements as shown by such audit. Notwithstanding the preceding sentence, the costs of such audit shall not be included in the calculation of the Performance Test.

2.21 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 applicable to Other Hilton Hotels. 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 2.21.1 through 2.21.8.

2.21.1 Employment of Hotel Personnel.

2.21.1.1 Responsible Party. Subject to Corporation's rights under Section 2.21.1.4 below, Manager shall recruit, hire, relocate, pay, supervise, and dismiss all Hotel Personnel (including, without limitation, Key Employees and the Executive Staff), with the understanding that all Hotel Personnel shall be the employees of Manager, and not Corporation.

2.21.1.2 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. Notwithstanding the foregoing or any other provision to the contrary herein contained, bonuses for Key Employees shall not be included in Operating Expenses and shall be paid by Manager from its own funds.

2.21.1.3 Sufficient Personnel. Manager shall ensure that the number of Hotel Personnel is sufficient to operate the Hotel in accordance with the Operating Standard. Manager shall supervise through the Senior Executive Personnel, the Key Employees and the Executive Staff the hiring, discharging, promotion and work performance of all other operating and service employees of the Hotel. Manager shall further ensure that all members of the Senior Executive Personnel, Key Employees and Executive Staff of the Hotel shall be properly qualified for their positions. The direct compensation payable to Senior Executive Personnel, Key Employees and Executive Staff shall be comparable to the direct compensation paid to the members of the senior executive personnel and executive staff of other comparable first-class Upper Upscale Hotels, taking into account the location and size of the Hotel, it being understood that the Hotel will at no time be placed at a competitive disadvantage with respect to the hiring and maintaining of its Senior Executive Personnel, Key Employees and Executive Staff.

2.21.1.4 Corporation's Right to Approve Senior Executive Personnel. Corporation shall have the right to interview and approve (not to be unreasonably withheld, conditioned or delayed) the individuals proposed by Manager to serve as Senior Executive Personnel prior to their appointment; provided, however, that Corporation shall be deemed to have approved the

appointment of any such individuals unless Corporation delivers notice of its disapproval of such appointment within seven days after Manager's delivery to Corporation of (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 Corporation and such individual at the Hotel or at another mutually acceptable location (it being agreed that Corporation will forego its right to interview any such individual if Corporation is unwilling or unable to have an authorized representative participate in the interview within seven Business Days following Manager's notice to Corporation of Manager's desire to arrange such an interview); provided, further, neither Corporation's exercise, nor its failure to exercise any right of approval of a proposed Senior Executive Personnel, shall in any way create any liability or responsibility on the part of Corporation or any Affiliate of Corporation in connection with the performance by any person of his or her duties as an employee of Manager. Moreover, Corporation acknowledges that it may not reject more than two candidates proposed by Manager for any one Senior Executive Personnel position each time such position becomes available for hire. Manager will be cognizant that reasonable consistency in the hiring of Senior Executive Personnel is important to the success of the Hotel. Manager agrees that if there is a vacancy in the general manager's position, that Manager shall make reasonable efforts to find a temporary or permanent replacement within a reasonable period of time thereafter.

2.21.1.5 Relocation Expenses. If Manager relocates any Key Employees or Executive Staff to another hotel or position (and such individual remains employed by Manager or its Affiliates) within 18 months after his/her arrival at the Hotel, Manager shall reimburse Corporation for the portion of the relocation expenses incurred by Corporation (as determined in accordance with the immediately following sentence) in relocating such individual's replacement to the Hotel unless the relocation of any such Key Employees or Executive Staff is at the request of Corporation. The reimbursement to be made by Manager to Corporation pursuant to this provision shall be equal to the total relocation costs incurred by the Hotel under the relocation policy of Manager and its Affiliates in bringing the replacement employee to the Hotel, multiplied by a fraction, the numerator of which shall be the period of time remaining from the date the departing employee left his or her employment at the Hotel to the date when the departing employee would have been employed at the Hotel for 540 days, and the denominator of which shall be 540 days. It is understood and agreed that the Hotel shall not incur any expense in connection with the relocation of the departing Senior Executive Personnel to his or her new position, regardless of the length of time any such individual is employed at the Hotel.

2.21.1.6 Employee Benefits. 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 Hilton Hotels. Manager may charge the Hotel with its pro rata share of the costs and expenses of such Hilton plan or plans allocated to the Hotel on the same basis as allocated to Other Hilton 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 the applicable provisions of the applicable Operating Plan and Budget (but in no event will bonuses for Key Employees be included in any Operating Plan and Budget). All such compensation, bonuses, employee benefits shall be established using Manager's compensation policies and guidelines applicable to all Other Hilton Hotels and shall be reasonable as compared to Other Hilton Hotels (taking into consideration the location of the Hotel and Other Hilton Hotels).

2.21.1.7 Equal Opportunity Employment. Manager shall use diligent 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 comply generally 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 Article 5 of this Agreement.

2.21.1.8 Travel and Reimbursement. Employees and representatives of Corporation, Manager and their Affiliates who travel to the Hotel on a temporary basis to provide technical assistance or other services (including legal and consulting services) shall be permitted to stay at the Hotel and use its facilities (including restaurants and lounges), without charge and on a space available basis. 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's policies applicable to Other Hilton Hotels with respect to such stays in effect from time to time, provided that the aggregate effect of such complimentary stays do not place more than an immaterial burden on the operations or profitability of the Hotel.

2.21.2 Employee Status. None of the Hotel Personnel shall be considered employees of City, Corporation or Trustee. All Hotel Personnel Costs shall be Operating Expenses and the responsibility of Corporation. Manager shall pay all Hotel Personnel Costs of such employees and the amount of payments shall immediately be reimbursed to Manager by Corporation in accordance with Section 3.4 hereof.

2.21.3 Advance Notice Regarding Termination. Manager shall be responsible for giving notices, if any, required to be given to Manager's employees under any Legal Requirement in connection with the Termination of this Agreement and the reasonable costs to provide such notices shall be Operating Expenses. Corporation shall, however, provide reasonable prior notice to Manager of any sale of the Hotel by Corporation in order to enable Manager to provide notices to employees required by any Legal Requirement. Corporation shall not be responsible to Manager for any compensation, benefits, or other claims relating to any period after the Termination of this Agreement and arising as a result of Manager's failure to timely deliver any required notification to Hotel Personnel following notice from Corporation of an event triggering such notice requirement provided such notice is reasonable as per the previous sentence. 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 15 days plus the number of days necessary for Manager to comply with any Employee Termination Notice Requirements after the notice is delivered, Owner shall (or shall cause any successor operator of the Hotel) to 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 Manager will not be required to comply with any Employee Termination Notice Requirements. 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 an Event of Default by Owner. [NTD - this section remains under further review with ace labor counsel.]

2.21.4 Labor Relations. Manager, upon request by a labor organization, may (to the extent permitted by law) enter into an appropriate voluntary recognition agreement (including "card check"

recognition) covering an appropriate bargaining unit of Hotel Personnel and may remain neutral in any organizing efforts by a labor organization of Hotel Personnel. Manager will execute any collective bargaining agreement as the employer, subject to the conditions set forth below. Manager shall consult with Corporation in advance of, and, to the extent practicable, during the course of, negotiations with any labor union as to the terms of the collective bargaining agreement being negotiated. Manager shall have no right to enter into any multi-employer group agreement without the prior written approval of Corporation which may be granted or withheld in Corporation's reasonable discretion.

2.21.5 Hilton Personnel. If Manager shall reasonably deem it advisable, Manager shall select the Senior Executive Personnel of the Hotel from the employees of Manager and its Affiliates or from the staff of Other Hilton Hotels.

2.21.6 Non-Solicitation. Corporation and its Affiliates and their successors hereby agree not to solicit the employment of any of the Senior Executive Personnel at any time during the Operating Term, without Manager's prior approval.

## 2.22 Group Services.

2.22.1 Generally. Consistent with the Operating Plan and Budget, Manager shall furnish or cause its Affiliates to furnish to the Hotel the benefits of the Group Services, and, subject to the remaining provisions of this Section, Corporation hereby agrees that Manager may in its discretion cause the Hotel to participate in any or all such Group Services. Without limiting the definition of Group Services, Manager shall provide the following services, as Group Services:

2.22.1.1 Accounting. Manager may, in its reasonable discretion, handle directly, or through an Affiliate, any of the accounting functions for the Hotel, including without limitation, accounts payable, general ledger, payroll and accounts receivable, or any part thereof, as part of Group Services for the purpose of achieving a more cost efficient operation of the Hotel.

2.22.1.2 Marketing and Sales Program. Manager shall maintain a marketing and sales program that promotes the brand identity of Manager and its Affiliates, advertises to Manager's and its Affiliate's markets and secures bookings for hotels and resorts, including the Hotel, operated under the "HILTON" name (the "*Group Services Marketing Program*"). In addition, Manager shall coordinate the Hotel's individual marketing program with the Group Services Marketing Program and, as appropriate, include the Hotel in the brand identity and national advertising programs conducted as part of the Group Services Marketing Program.

2.22.1.3 Bookings/Reservations. As part of Group Services, Manager shall secure bookings for the Hotel through Manager's local, national and worldwide sales and reservations offices and other local, national and worldwide distribution and sales systems, 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 honor bookings made pursuant to the Room Block Commitment, except as otherwise expressly provided therein. Manager shall develop a local sales program, represent the Hotel at appropriate conventions and travel congresses, and list the Hotel in printings of general tariff bulletins. In addition, Manager shall process reservations for the Hotel through Manager's and its Affiliates' worldwide communications network. To facilitate Manager's provision of such reservations services, Corporation agrees that:

- (i) Neither Corporation nor any Affiliate of Corporation shall maintain or use in connection with the Hotel any toll-free or similar telephone line or communications device for making reservations that is independent of the reservations telephone line or communications

device maintained by Manager or its Affiliates in connection with the worldwide communications network of Manager and its Affiliates. The toll-free reservations telephone line or similar telephone number or communications device for making reservations must be the only telephone reservations line or communications device for the Hotel. The Hotel must be listed in all airline reservations systems (which include what are known in the hospitality industry as Global Distribution Systems) under the applicable code for hotels and resorts operated under the "HILTON" name.

- (ii) Throughout the Operating Term, Corporation shall permit Manager to load into the reservations system maintained by Manager and its Affiliates and to maintain, on a current basis, the Hotel's total rooms inventory and all associated room rates.

2.22.2 Required Representations. In connection with and as a condition to providing Group Services, Manager represents and warrants to Corporation and Trustee the following: (a) Group Services Fees and Charges for the applicable Group Services represent reimbursement of costs paid by Manager or its Affiliates to Unrelated Third Parties (including payments of salaries, wages, compensations and benefits payable to Manager's employees) for the reasonable and actual costs of providing such Group Services to the Hotel and all participating Other Hilton Hotels, which system wide costs may be determined using reasonable accounting procedures, applied on a consistent basis (which accounting procedures shall at all times comply with the requirements of Section 2.20 of this Agreement and may include carrying costs of facilities of Manager or its Affiliates), (b) the Group Services Fees and Charges for the applicable Group Services do not include any Direct or Indirect Profit to Manager or its Affiliates, (c) the allocation of the Group Services Fees and Charges among the Hotel and all participating Other Hilton Hotels will be based on fair, reasonable and equitable allocations established in accordance with reasonable accounting procedures, consistently applied (which accounting procedures shall at all times comply with the requirements of Section 2.20 of this Agreement), and (d) without limiting clause (c) preceding, the Hotel's allocated share and each participating Other Hilton Hotel's allocated share of Group Services Fees and Charges are and shall be determined using the same formula(s) (including fair, reasonable and equitable variables consistently applied). Manager shall indemnify and hold harmless Corporation and Trustee in its individual capacity and as Trustee for the benefit of the Bondholders from and against any and all damages, expenses, liabilities or obligations that arise out of a breach of any such representation and warranty.

2.23 Required Accounting. Within 120 days after the end of each Operating Year (or such later date as may be mutually agreed upon by Corporation and Manager), Manager shall furnish to Corporation and Trustee (a) a procedures letter from one or more independent public accountants, substantially in the form attached hereto as Exhibit X (the "*Annual Independent Accounting*" or the "*Report*"); and (b) a certificate from a senior officer of Manager, substantially in the form attached hereto as Exhibit X-1, to the effect that based on the Report and such other reasonable inquiry taken by Manager in the ordinary course of business, Manager has not received any Direct or Indirect Profit from the subject calendar year as a result of the Group Services Fees and Charges. Manager shall indemnify and hold harmless Corporation and the Trustee in its individual capacity and as Trustee for the benefit of the Bondholders from and against any and all damages, expenses, liabilities or obligations that arise out of Manager receiving any Direct or Indirect Profit described in this Section 2.23.

## 2.24 Hotel Marketing Program.

2.24.1 Development and Implementation of Hotel Marketing Program. In addition to affiliating the Hotel with the Group Services 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 may include the following:

- (a) production, distribution, and placement of promotional materials relating to the Hotel, including materials for the promotion of employee relations;
- (b) subject to budget limitations, development and implementation of promotional offers or programs that benefit the Hotel and are undertaken by Manager or by a group of Other Hilton Hotels that includes the Hotel;
- (c) subject to budget limitations, attendance of Hotel Personnel at conventions, meetings, seminars, conferences, and travel congresses;
- (d) subject to budget limitations, selection of and guidance to, as required, advertising agency and public relations personnel; and
- (e) subject to budget limitations, preparation and dissemination of news releases for national and international trade and consumer publications.

2.24.2 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 and Asset Manager with marketing sales expertise. Any such assistance rendered by Corporate Personnel shall be at no cost to Corporation or the Hotel for such Corporate Personnel's time, but Corporation 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 the provisions of Section 2.18 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. Such requirements currently include the following: (a) the "HILTON" logotype must be the only logotype or symbol used to identify the Hotel; (b) Corporation must obtain Manager's consent prior to publishing any Hotel advertising materials or implementing any advertising programs of its own; and (c) if required by Manager, the Hotel must participate in all promotional and marketing programs of Manager and its Affiliates for so long as they are continued. The cost of the development and implementation of the Hotel's marketing program shall be an Operating Expense, and the estimated costs for each Operating Year will be included in the Operating Plan and Budget for such Operating Year.

2.25 Automation. The Hotel shall utilize all automation systems necessary to enable the Hotel to function as any Other Hilton Hotel. Upon request, Manager will provide Corporation with a written list of Manager's Proprietary Software actually installed in the Hotel by or for Manager, and if requested by Corporation, Manager will request and use commercially reasonable efforts to obtain extensions of any software or information system licensing agreement for a period (not to exceed 90 days) following Termination of this Agreement. If the software or information system is owned by Manager or any of its Affiliates, then Manager (if requested by Corporation) will be under the absolute obligation to provide an extension of such software and information system for a period (not to exceed 90 days) following Termination of this Agreement and, in any event, for the entirety of the Transition Period, or if owned by a third party, only to the extent that Manager or its Affiliates is contractually permitted to permit Corporation to continue to use such software and information systems. In connection with any such extension, Corporation shall be required to execute Manager's standard grace period license agreement.

## 2.26 Purchasing.

2.26.1 National Vendors. In the performance of its obligations under Section 2.7 of this Agreement, Manager may elect to purchase the items described therein under vendor contracts available to

Manager under the purchasing program of Manager and its Affiliates for so long as such a program is maintained. 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. In purchasing goods or services under the purchasing program of Manager or its Affiliates, Manager shall provide written evidence to Corporation that such goods and services and all costs and fees charged therefor are being furnished on terms and conditions (including payment terms, price, quality and time of delivery) that are not less favorable to Corporation than those generally obtained in the competitive, open market, and Corporation shall be entitled to decline participation in any contract with a National Vendor from which Manager or its Affiliates or related parties receives any payments or administrative fees if Manager is not able to provide such written evidence. Manager shall act in an economical manner in purchasing items for the Hotel, but, in selecting such items for purchase, Manager also shall be entitled to reasonably take into account the environmental consequences of its selections and the desirability of encouraging such things as recycling of materials. 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. Manager shall indemnify and hold harmless Corporation and the Trustee from and against any and all damages, expenses, liabilities or obligations that arise out of a breach of any such representation and warranty.

2.26.2 Local Vendors. Notwithstanding anything to the contrary in this Agreement, Corporation may suggest that any services that are provided by third party vendors, other than Group Services, be obtained from a local vendor (including minority owned business enterprises and women owned business enterprises), and Manager's consent to such request will not be unreasonably withheld if Corporation can demonstrate to Manager's reasonable satisfaction that such service can be provided in a more cost-efficient way through a reputable third-party identified by Corporation, and that the quality of the service will satisfy Manager's national quality requirements in Manager's reasonable discretion.

2.26.3 Affiliates. 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, so long as (i) the 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 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 and (ii) such contracts do not result in any such Affiliate or Related Party receiving any direct or indirect profit by reason thereof. Manager does hereby indemnify and hold harmless Corporation and the Trustee from and against any and all damages, expenses, liabilities or obligations that arise out of a breach of clause (ii).

2.27 Hotel Parking. The Hotel includes the Hotel Unit's Parking Spaces which will accommodate at least 600 parking spaces for use by the Hotel (with the understanding that the Garage also includes additional spaces for use by others). Manager may engage a third party parking manager to manage and operate the Hotel Unit's Parking Spaces and the Garage related thereto; provided that (i) Corporation shall have the right to approve any such third party parking manager (which approval shall not be unreasonably withheld, conditioned or delayed), (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 Corporation and Bond Counsel, and (iii) the third party parking manager shall execute an assignment agreement with the Trustee and Corporation in substantially the form of the Hotel Assignment Agreement. All revenue generated by the Hotel Unit's Parking Spaces shall be included in Gross Operating Revenues and, all expenses incurred in connection with the management and operation of the Hotel Unit's Parking Spaces shall be included in Operating Expenses.

2.28 Compliance with Legal Requirements. Manager shall do or cause to be done all such acts and things in or about the Hotel that Manager, in good faith and exercising prudent commercial judgment,



reasonably believes to be necessary to comply with Legal Requirements and Approvals. Manager shall endeavor to ensure that the business being conducted at the Hotel is in full compliance with all Legal Requirements that are applicable to the ownership or operation of the Hotel. If the cost of compliance is not a Capital Expense, the cost of compliance shall be an Operating Expense. If the cost of compliance is a Capital Expense, the cost shall be funded in the manner as provided in Section 2.19 of this Agreement. 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 even if Manager was not a party to this Agreement. This Article shall not be construed to limit the right of either Corporation 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 for which the other Party is not willing to fully indemnify.

2.29 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 Article 2, Manager shall not borrow any money or execute any credit obligation in the name and on behalf of Corporation or pledge the credit of Corporation without Corporation's prior written consent, which may be given or withheld in Corporation's sole discretion.

2.30 Minority Business Enterprises and Women Business Enterprises. Manager shall employ an openly advertised, competitive, and non-discriminatory process to select its contractors and consultants, consistent with the City Minority and Disadvantaged Business Ordinance, and to work with the City Office of Small Minority Business Resources to identify qualified minority and women owned firms.

2.31 Certain Limitations on Manager's Duties, Obligations and Rights.

2.31.1 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, (without duplication) fixed expenses under the Uniform System of Accounts, 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) are subject to Sufficient Funds being available to Manager. Notwithstanding anything herein to the contrary, if there are not (or not reasonably anticipated to be based upon current cash flow forecasts) Sufficient Funds in the Hotel Lockbox Fund (or other funds that are available to Manager for the payment of Operating Expenses pursuant to the Indenture) for the payment of such Operating Expenses, and Corporation shall have failed to make additional funds available for the payment of such Operating Expenses within 30 days after receiving a written request therefor from Manager, then then Manager shall be permitted, but not obligated, to terminate this Agreement upon no less than 30 and no more than 90 days' prior written notice. Any such failure by Corporation to provide such additional funds shall not, however, not be considered an Event of Default of Corporation.

2.31.2 No Representations Concerning Insurance Coverage. In connection with any insurance coverage required or obtained under this Agreement, neither Manager nor its Affiliates makes any warranty or representation regarding the advisability, nature, or extent of the insurance coverages provided by Manager for the benefit of the Hotel and/or Corporation or any other insurance coverages that Corporation should consider for the protection of the Hotel and its operations.

2.31.3 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 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. Any and all such financial projections and budgets are not to be independently relied upon by Corporation or any third party as to the

results predicted therein, although Manager acknowledges that the same will be used by Corporation and given to Corporation'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. Corporation acknowledges that Manager shall not be held responsible by Corporation 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 Corporation'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.

2.31.4 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 and occurs or arises solely out of activities undertaken (a) prior to the Required Opening Date at the Hotel or on the Land or (b) after the Required Opening Date and caused by persons or entities other than Manager, Hotel Personnel or persons or entities providing services on the Land, Manager's management services under this Agreement shall not extend to management of any abatement or other correction of such problems, other than abatement and correction which costs \$350,000 or less, oversight of and coordination with any environmental consultant. However, Manager agrees to extend its management services and engage the necessary parties to oversee any such abatement and correction which costs in excess of \$350,000 if Corporation requests such services and Manager and Corporation are able to agree upon a fair, equitable and reasonable fee for such services. The cost to correct and abate any such problems shall be funded from (i) Hotel revenues in the Lockbox Fund, to the extent such costs constitute Operating Expenses or (ii) to the extent that such expenditures do not constitute Operating Expenses, from the Supplemental Renewal and Replacement Fund to the extent such costs constitute Capital Expenditures, or if funds are not sufficient from such sources, from any other source of funds available for the payment thereof under the Indenture (it being acknowledged that Manager may, but shall have no obligation to, request funds from the Operating Reserve Fund for the payment of such items pursuant and subject to Section 5.08(a) of the Indenture). If the Lockbox Fund is not sufficient to pay all such Operating Expenses, then the deficiency shall be paid first from the Excess Revenues Fund or the Cash Trap Fund (as the case may be) and then from the Operating Reserve Fund to the extent Manager requests such funds from the Operating Reserve pursuant to Section 5.08(a) of the Indenture. If the Supplemental Renewal and Replacement Fund is not sufficient to pay all such Capital Expenditures, then the deficiency shall be paid first from the Excess Revenues Fund or the Cash Trap Fund (as the case may be) and then from the Renewal and Replacement Fund. Notwithstanding the foregoing, except with respect to any environmental matters or matters relating to construction deficiencies at the Hotel or other items which the Design/Builder is responsible for under the Design/Build 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 Corporation in pursuit of solutions to such problem and Manager may elect, at its option and if approved by Corporation, to assume management of such problem as part of its management duties and responsibilities under this Agreement for no additional compensation. Notwithstanding any provision or inference to the contrary herein contained, Manager, as part of its management services and for no additional compensation will be responsible for overseeing and managing the correction or abatement of any environmental, construction and real property-related problems which result from its management and operation of the Hotel, services provided to the Hotel after the Required Opening Date, or any such problem caused by Manager, Hotel Personnel or any contractors on the Land.

2.31.5 Release. Corporation hereby unconditionally releases Manager and its Affiliates, and their respective officers, trustees, directors, employees, partners, attorneys, agents, and assigns from any and all actual or threatened claims, liabilities, detriments, counterclaims, liens, controversies,

agreements, executions, debts, covenants, causes of action, actions, demands, losses, damages, judgments, costs, expenses, and obligations, whether now existing or hereafter arising, and whether known, unknown, fixed, contingent, or otherwise, direct or indirect, at law or in equity (including, without limitation, attorneys' fees) arising from or related to any matter for which Manager is expressly relieved of liability pursuant to Sections 2.30.1 through 2.30.4 hereof.

2.32 Asset Manager. Manager acknowledges that Corporation is required pursuant to the terms of the Indenture to retain an Asset Manager to perform the duties and responsibilities as set forth in Section 7.24(e) of the Indenture. Manager hereby recognizes that the Asset Manager is an authorized representative of Corporation with respect to the Hotel and agrees to consult with and cooperate in good faith with Asset Manager as Corporation's designated representative, at minimum, to the extent set forth in the Indenture.

2.33 Mandatory Guest Fees. Before Manager assesses any Mandatory Guest Fees at the Hotel, Corporation shall be first required to execute an acknowledgment, in form mutually and reasonably agreed upon by Corporation and Manager, authorizing and directing Manager to charge such Mandatory Guest Fees.

### Article 3 Fees and Expenses

#### 3.1 Management Fee

3.1.1 Obligation for Management Fees. In consideration for performing all of its management, administrative, oversight, cooperation and coordination services under this Agreement, Corporation shall pay a "*Management Fee*" for such period of time, consisting of a "*Base Management Fee*" equal to 3% of Gross Operating Revenues for the applicable Operating Year and a "*Subordinate Management Fee*" of up to 1% of Gross Operating Revenues for the applicable Operating Year, subject to the conditions set forth in Section 3.1.3 hereof.

Corporation and Manager agree that, except for the Management Fee, Group Services Fees and Charges, 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. All such fees shall be treated as Operating Expenses except the Subordinate Management Fee which, so long as any Bonds remain Outstanding under the Indenture, shall be subordinate to payment of Debt Service on all Outstanding Bonds and payable solely from amounts rightfully on deposit in the Subordinate Management Fee Fund held by the Trustee under the Indenture.

3.1.2 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 2.20.2. Corporation hereby authorizes Manager to withdraw the monthly installment of the Base Management Fee on such date from the Lockbox Fund. If the aggregate monthly Base Management Fees paid during an Operating Year either exceeds or are less than the Base Management Fee shown in the Certified Financial Statements of Corporation relating to the Hotel contemplated by Section 2.20.3, then Manager shall deposit into, or withdraw the amount of such overpayment or underpayment, as the case may be, from the Hotel Accounts. Any overpayments of the Base Management Fee required to be repaid by Manager shall not be subject to any right of offset of Manager for any other amounts owed to or claimed by Manager hereunder.

3.1.3 Subordinate Management Fee. Manager will qualify for a Subordinate Management Fee of 1% of Gross Operating Revenues for the applicable Operating Year, subject to Hotel achieving the REVPAR Performance Standard in such Operating Year.

For the avoidance of doubt, the Subordinate Management Fee shall continue to be payable to Manager in the event of an equitable adjustment of the REVPAR Performance Standard for any Operating Year pursuant to Section 4.5.3.2 hereof.

**3.1.4 Payment of Subordinate Management Fee.** Manager shall be paid the Subordinate Management Fee semiannually, as accrued through each Interest Payment Date on the Business Day immediately following such Interest Payment Date (based on the then-current projected amount of the Subordinate Management Fee) from amounts then on deposit in the Subordinate Management Fee Fund (the "*Semi-Annual Installment*"). Manager shall be permitted to request payment of the Subordinate Management Fee pursuant to Section 5.17(c) of the Indenture. To the extent that funds are not available in the Subordinate Management Fee Fund for the payment of any Semi-Annual Installment(s) when due, such amounts shall be deferred ("*Deferred Installment(s)*"), and shall be payable (together with any interest thereon, as set forth below) as and when funds become available in the Subordinate Management Fee Fund. Deferred Installments shall earn interest equal to the lesser of (i) Prime Rate, plus 1.5%, and (ii) the maximum rate of interest permitted by law, including, without limitation Section 2251.025, Texas Government Code. Deferred Installments shall be paid with priority being given to the longest-accrued Deferred Installments, and shall be paid prior to any current/undeterred Semi-Annual Installments. Notwithstanding any of the foregoing or in the Indenture to the contrary, Corporation will be required to pay all Subordinate Management Fees (including interest thereon) no later than five years after the original due date thereof. Manager shall be entitled to reimbursement of any earned and unpaid Subordinate Management Fees (including interest thereon) upon expiration or an early Termination of this Agreement through the date of such expiration or Termination. Such amounts shall be payable regardless of whether funds are available therefor in the Subordinate Management Fee Fund. Notwithstanding any provision to the contrary herein contained, the Subordinate Management Fee is subordinate and inferior in priority to the payment of Debt Service. To the extent there are sufficient funds in the Subordinate Management Fee Fund, Manager shall be paid the first semi-annual payment of the Subordinate Management Fee Fund if the year to date REVPAR of the Hotel is at or above the REVPAR Performance Standard on the date when such semi-annual payment is due. In the event Manager has received payment of any portion of the Subordinate Management Fee with respect to any Operating Year in which the REVPAR Performance Standard is not met, then Manager shall promptly return such portion of the Subordinate Management Fee payment to Trustee for deposit into the Subordinate Management Fee Fund. Furthermore, if the aggregate Subordinate Management Fees paid during an Operating Year either exceed or are less than the Subordinate Management Fee shown in the Certified Financial Statements of Corporation relating to the Hotel contemplated by Section 2.20.3, then Manager shall either (i) deposit with the Trustee such overpayment for deposit into the Subordinate Management Fee Fund, or (ii) have the right to request such underpayment from the Subordinate Management Fee Fund to the extent there are sufficient funds therein. Any overpayments of the Subordinate Management Fee required to be repaid by Manager shall not be subject to any right of offset of Manager for any other amounts owed to or claimed by Manager hereunder. For the avoidance of doubt, at any point after the Bonds are no longer Outstanding, any Subordinate Management Fee due and payable on a semi-annual basis will be paid in the same manner as described herein from the Lockbox Fund. In the event this Agreement terminates prior to year-end for any reason, Manager shall be entitled to payment of any accrued and unpaid Subordinate Management Fee through the date of expiration or termination to the extent that the REVPAR Performance Standard is being met at the time of such expiration or termination. For purposes of payment of the Subordinate Management Fee earned from the Effective Date through December 31, 2020, the REVPAR Performance Standard will be determined with reference to the full 2020 Operating Year (as opposed to measuring whether such REVPAR Performance Standard was met based on the period of time from the Effective Date through December 31, 2020).

**3.1.5 Employee Performance Payments.**

3.1.5.1 Reference is made to the Additional Management Fee set forth in Section 3.1.4 of the Original Management Agreement. As of the Effective Date, Manager acknowledges that it is in possession of \$[REDACTED] representing the Additional Management Fee earned through the Effective Date. Bonus for Eligible Employees (as defined in the Original Management Agreement) relating to the 2020 Operating Year shall be paid solely from the Additional Management Fee. Manager shall be entitled to retain any such Additional Management Fee not otherwise applied toward such Bonuses.

3.1.5.2 Starting with bonuses relating to the 2021 Operating Year and thereafter, all bonuses of Eligible Employees shall be treated as an Operating Expense. Such total bonuses will be included in the annual Operating Plan and Budget and shall be paid as an Operating Expense from amounts in the Lockbox Fund prior to any distributions of any funds to the Trustee pursuant to the Cash Management Agreement. Manager shall further be permitted to reserve approximately 1/12<sup>th</sup> of the anticipated total bonus payments due on a monthly basis in order to avoid a potential cash shortfall caused by the yearly bonus payouts. Manager will reasonably adjust any such accruals on a quarterly basis based on actual Hotel performance during the applicable Operating Year.

3.1.5.3 Corporation and Manager hereby acknowledge the terms and provisions of Exhibit G which are incorporated herein by reference. If Manager desires to modify the Original Metrics set forth in Attachment I, it will notify Corporation as part of the yearly Budget approval process and provide Corporation with reasonable information regarding the proposed Changed Metrics. To the extent Corporation 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 hereof. Corporation 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.

### 3.2 Group Services Fees and Charges.

3.2.1 Hotel's Share of Group Services Fees and Charges. Manager and its Affiliates shall be entitled to be paid for Hotel's pro rata share of Group Services Fees and Charges, which pro rata share shall be determined and allocated in the same manner as is the pro-rata share for all Other Hilton Hotels. If equipment and/or software is installed and maintained at the Hotel in connection with the provision of any Group Services, the costs thereof will be paid subject to the limitations of this Agreement with respect to the applicable approved Operating Plan and Budget or the applicable approved Capital Budget, as the case may be.

3.2.2 Payment of Group Services Fees and Charges. The Group Services Fees and Charges shall be paid monthly in arrears during the Operating Term as an Operating Expense. Each time that Manager withdraws funds pursuant to the Cash Management Agreement for the payment of Group Services Fees and Charges, Manager shall be deemed to have made the representations set forth in Section 2.22.2 to each of Corporation and Trustee.

### 3.3 Intentionally Omitted. .

### 3.4 Reimbursable Expenses.

3.4.1 Reimbursable Expenses Defined. Subject to the limitations of the Cash Management Agreement, the applicable provisions of the Indenture and the Operating Plan and Budget (with such deviations therefrom that are expressly permitted pursuant to the terms of this Agreement), Manager shall be entitled to reimburse itself from the Lockbox Fund for all reasonable Out-of-Pocket 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 (subject, however, to the limitations of the applicable Operating Plan and Budget and any limitations set forth below):

- (a) all Hotel Personnel Costs incurred in accordance with standard personnel policies applicable to Other Hilton Hotels (as they may be amended from time to time) with respect to any Hotel Personnel employed directly by Manager or its Affiliates including, for the avoidance of doubt, the Hotel Personnel Costs contemplated in Section 3.1.5.2 related to bonus payments;
- (b) the per diem rate of pay and benefits 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 per diem rate shall not exceed the per diem agreed to in the applicable Operating Plan and Budget;
- (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) Group Services Fees and Charges payable under Section 3.2 of this Agreement;
- (e) the Hotel's properly and reasonably allocated share of all costs and charges payable or incurred to third parties in connection with the provision of Group Services in accordance with this Agreement or for independent third party consultants rendering services to the Hotel regularly used by Hilton in the operation of Other Hilton Hotels; and
- (f) all taxes and similar assessments (other than sales taxes and Manager's income taxes) levied against any fees or reimbursements payable to Manager under this Agreement for expenses incurred for Corporation's account.

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 Corporation.

3.5 Payment of Reimbursable Expenses. Until the Bonds are no longer Outstanding, Reimbursable Expenses properly documented in accordance with Section 3.4.1 hereof shall be paid as Operating Expenses in accordance with the Cash Management Agreement, 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 Reserve Fund (and, if the Operating Reserve Fund is insufficient, then the insufficiency shall be paid from the Excess Revenues Fund or the Cash Trap Fund) within 30 days after Manager delivers to Corporation of a request in the form of Exhibit J attached hereto, 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 Reserve Fund, the Excess Revenues Fund, and the Cash Trap Fund. If there are not Sufficient Funds in the Operating

Reserve Fund, the Excess Revenues Fund and the Cash Trap Fund within the required 30-day period and the Bonds are still Outstanding, then, without otherwise limiting Manager's termination right set forth in Section 2.31.1, any Reimbursable Expenses shall be paid as soon as there are funds in the Lockbox Fund, the Operating Reserve Fund, the Excess Revenues Fund or Cash Trap Fund and any amounts not paid shall bear interest as provided in Section 12.25 hereof until paid. After the Bonds are no longer Outstanding, any Reimbursable Expenses in excess of amounts available in the Lockbox Fund shall be paid within 30 days of the delivery to Corporation of an invoice evidencing the applicable Reimbursable Expenses.

3.5.1 Required Representations. In connection with and as a condition to being paid Reimbursable Expenses, Manager represents and warrants to Corporation and Trustee the following: (i) Reimbursable Expenses represent reimbursement of costs paid by Manager or its Affiliates to Unrelated Third Parties (including 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 participating Other Hilton Hotels, (ii) the Reimbursable Expenses do not include any Direct or Indirect Profit received by Manager or an Affiliate of Manager, (iii) to the extent Reimbursable Expenses represent an allocation of costs between the Hotel and Other Hilton Hotels, the allocation of the Reimbursable Expenses among Hotel and all participating Other Hilton Hotels are based on fair, reasonable and equitable allocations established in accordance with reasonable accounting procedures, consistently applied (which accounting procedures shall at all times comply with the requirements of Section 2.20.1), and (iv) without limiting clause (iii) preceding, the Hotel's allocated share and each participating Other Hilton Hotel's allocated share of any such allocated Reimbursable Expenses are and shall be determined using the same formula(s) (including fair, reasonable and equitable variables consistently applied). Manager shall indemnify and hold harmless Corporation and the Trustee in its individual capacity and as Trustee for the benefit of the Bondholders from and against any and all damages, expenses, liabilities or obligations that arise out of a breach of any such representation and warranty.

3.6 Clearing Bank Account. As part of the process of depositing all Gross Operating Revenues into the Lockbox Fund, Manager may also establish and maintain one or more authorized clearing account or accounts for the purpose of obtaining for the Hotel the most favorable terms available for settling electronic transactions effected with bank and non-bank credit cards; provided, however, that the discount and other fees charged by any such bank as well as payment terms must be competitive with the charges for such services and timeliness of payment prevailing among banks in the Hotel's market area and provided further that Manager shall notify Corporation and Trustee in writing of the name and location of each banking institution at which Manager maintains such authorized accounts, together with such information as Corporation shall reasonably request in order to permit a security interest to be established in such account or accounts. During the entire Operating Term, Manager may deposit during each Business Day all Gross Operating Revenue (in excess of the Petty Cash Amount retained at the Hotel) into the Clearing Bank Accounts or the Lockbox Fund. Manager shall transfer funds in the Clearing Bank Accounts at the end of each Business Day into the Lockbox Fund, pursuant to the Cash Management Agreement.

3.7 Deposit of Gross Operating Revenues into Lockbox Fund. Corporation shall deposit (or cause to be deposited) all Gross Operating Revenues calculated on a cash basis (less the Petty Cash Amount) into the Lockbox Fund directly or through Clearing Bank Accounts, pursuant to the Indenture and the Cash Management Agreement. Manager shall have access to the Operating Costs Set Aside Amount as provided in the Cash Management Agreement.

3.8 Payment of Operating Expenses. At all times during the Operating Term, Manager shall have the right to withdraw funds from the Lockbox Fund solely for the purpose of paying Operating Expenses including, without limitation, (i) amounts then due and owing pursuant to the terms of any Short Term Indebtedness then outstanding; (ii) intentionally omitted; and (iii) the Base Management Fee then due and owing. Manager shall further have the right to requisition funds for the payment of Operating Expenses

from the Operating Reserve Fund and such other funds established under the Indenture as expressly authorized under the terms and conditions of the Indenture. During the occurrence and continuation of an Event of Default hereunder, Manager shall provide a weekly report to Corporation summarizing all Operating Expenses paid during each week to Corporation and, if requested by the Trustee, to the Trustee. All persons whom Manager authorizes as signatories shall conduct themselves in accordance with Manager's standard accounting policies and practices. Manager shall establish controls reasonably satisfactory to Corporation to ensure control over and accurate reporting of all transactions involving such accounts (including fidelity bonding for all persons handling cash) and the administration of all such accounts shall be subject to the requirements of any Mortgagee.

3.9 Funds, Accounts and Disbursements After Redemption of all Bonds. At such time as no Bonds are Outstanding, the limitations on Corporation's funding obligations described in Section 3.10 of this Agreement (among other places in this Agreement) shall terminate. At such time, Corporation and Manager shall execute an amendment to this Agreement and enter into a replacement cash management agreement in form and substance reasonably acceptable to the Parties, with respect to the collection of revenues and administration of funds for the operation of the Hotel, including such reserve funds and accounts as may reasonably necessary for the operation and maintenance of the Hotel (collectively, the "*Post-Financing Amendments*"), it being acknowledged that (a) Manager will (i) continue to control the Hotel accounts, (ii) be the sole signatory on the Hotel accounts, (iii) have the unrestricted right to pay Operating Expenses (including any Reimbursable Expenses) from such Hotel accounts, and (iv) have the right to hold back reasonable working capital prior to the distribution of any funds to Corporation and maintain the Operating Reserve which shall be replenished up to the Operating Reserve Requirement prior to distribution of any funds to Corporation and (b) there shall continue to be maintained the Renewal and Replacement Fund and Supplemental Renewal and Replacement Fund with ongoing contributions equal to the applicable set aside amounts relating to such funds. Notwithstanding the foregoing to the contrary, neither Party shall be permitted to unreasonably withhold its acceptance of and agreement to the Post-Financing Amendments, or condition the same upon any other amendments or modifications to the terms of this Agreement.

3.10 Limitation on Corporation's Obligations While Bonds Remain Outstanding. Notwithstanding anything contained herein to the contrary, Manager acknowledges that Corporation shall have no responsibility or liability for Trustee's failure to honor any requests of Corporation to disburse amounts from any of the Funds pursuant to the Indenture, but Corporation shall use commercially reasonable efforts to enforce Trustee's obligations under the Indenture. Notwithstanding anything in this Agreement to the contrary, Manager acknowledges and agrees that, until no Bonds remain Outstanding, the only funds which Corporation shall be obligated to use to pay any sums due hereunder (without otherwise limiting Manager's termination right set forth in Section 2.31.1, shall be the following (and then only to the extent such funds are made available to Corporation to pay sums due hereunder and also subject to the limitations contained in and the rights of Trustee under the Bond Documents): (a) the Operating Costs Set Aside Amount that is to be funded as provided in Section 3.7 hereof, which Operating Costs Set Aside Amount shall be used solely for the purpose of paying Operating Expenses; (b) Gross Operating Revenues (including any Gross Operating Revenues in the Operating Reserve, Renewal and Replacement Reserve, Supplemental Renewal and Replacement Reserve, Cash Trap Fund, Excess Revenues Fund, Lock Box Fund and/or Clearing Bank Accounts), all of which shall be used in accordance with this Agreement, the Cash Management Agreement and the Indenture; (c) insurance and condemnation proceeds received by Manager, Corporation or Trustee for events that occur during the Operating Term, which proceeds shall be used in accordance with and only for the purposes set forth in Article 7 hereof. In light of the foregoing, Corporation hereby recognizes that Manager's remedy at law for damages is inadequate and agrees that Manager shall have the right to seek any equitable action (which does not violate the foregoing provisions), including, without limitation, temporary restraining orders and injunctive relief to enforce Corporation's obligations under this Agreement.



3.11 Certain Representations. Manager and Corporation represent that the Management Fee and the Termination Fee were negotiated at arm's length and, given the terms of this agreement, are reasonable.

3.12 No Personal Liability. Trustee shall have no personal liability for the payment of any amounts hereunder, the breach of any duties, obligations, covenants, agreements, responsibilities or representations contained herein. Additionally, Manager agrees that it shall look solely to Corporation's and Trustee's interest in the Hotel and related revenues and funds for the payment and performance of such duties, obligations, covenants, agreements, responsibilities and representations. Without limiting the foregoing, to the extent Corporation's and Trustee's interest in the Hotel and the various revenues and funds described herein are not sufficient to satisfy any liability of Corporation hereunder or otherwise or any judgment entered against Corporation or Trustee, neither Corporation nor Trustee shall be liable for such deficiency.

#### Article 4 **Term and Termination**

4.1 Term. The term of this Agreement shall commence on the Effective Date and end on December 31, 2041 (the "*Term*" or "*Operating Term*"), unless earlier terminated in accordance with the terms hereof. The provisions of the Original Agreement (after giving effect to the amendments to the applicable terms in the Original Agreement set forth herein) shall determine the rights, remedies, powers, privileges, liabilities and obligations of Manager and Corporation relating to periods prior to the Effective Date.

4.2 Events of Default by Manager. An Event of Default shall occur with respect to Manager if and only if:

- (a) without limiting other provisions of this Section 4.2, Manager breaches or fails to perform any covenant or agreement made by Manager hereunder and fails to cure such breach or failure within 120 days after Manager's receipt of a written notice from Corporation, the Trustee or the Asset Manager specifying the breach or failure to perform;
- (b) Manager fails to pay, on the due date thereof, Taxes, Gross Receipts Taxes, or withholding or other employment related taxes; provided, however, that if Manager is contesting the amount of such items in good faith, Manager may withhold payment of the disputed amount until the earlier of 120 days after the payment's due date or the date on which the failure to make full payment would result in the assessment of interest or penalties or the imposition of a lien or other restriction upon the Hotel, or would otherwise have an adverse effect upon the Hotel or Corporation;
- (c) Manager fails to pay Insurance Costs when due, or permits the insurance coverages required by this Agreement to lapse for any reason;
- (d) Corporation determines, after consultation with 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 does not constitute a Qualified Management Agreement; provided however, that if such actions or failure to act can be cured within 30 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 30 days, then Manager shall have 30 days to cure such default;

- (e) Manager defaults under the Room Block Commitment beyond any applicable grace periods set forth therein;
- (f) Manager fails to pay any amounts due to Corporation (including, without limitation, any amounts owed to Corporation under an indemnity, hold harmless or reimbursement clause contained herein) on the date required hereunder and such failure continues for a period of 30 days after Manager receives written notice thereof;
- (g) Manager fails to deposit cash receipts, checks, money orders and the like into the Clearing Bank Accounts or Lockbox Fund as soon as is reasonably practicable and such failure continues for a period of five days;
- (h) Manager fails to deliver its Unaudited Annual Report within the time required under Section 2.20.3 hereof, and such failure continues for a period of 30 days after Manager receives written notice thereof;
- (i) Any Liquor Licenses are revoked or terminated or otherwise declared ineffective by the applicable governmental authority and is not fully restored within 30 days after revocation of such declaration;
- (j) any representation or warranty made by Manager herein is false or misleading in any material respect and (a) 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 30 days after receiving written notice thereof or (b) 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;
- (k) Manager makes a representation or warranty to Corporation hereunder knowing that such representation or warranty is not true or is misleading in a material respect and as a result thereof, Corporation or Trustee suffers damage;
- (l) Manager assigns or purports to assign this Agreement or any of its rights hereunder in violation of the provisions of Section 9.1.1 or 9.2.2 of this Agreement;
- (m) 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 by reason of any of the following: (i) Force Majeure Event; (ii) lack of Sufficient Funds for (A) Operating Expenses, (B) Capital Expenses for budgeted Capital Improvements and FF&E, unbudgeted (but approved) Capital Improvements or an Emergency, (C) 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 (D) Insurance; (iii) breach by Corporation of its obligations hereunder, or a breach by Trustee of the agreements and obligations pursuant to Article 10 of the Indenture; or (iv) as a result of Manager's implementation of a Hotel Consultant's recommendation; 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;
- (n) any of the following occur or exist:
  - (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 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 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 90 days after the commencement thereof;
- (v) Manager is adjudicated insolvent or bankrupt;
- (vi) Manager makes a general assignment of its assets for the benefit of creditors;- 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 any substantial part of the property of Manager is attached, and such attachment or levy is not released within 90 days thereafter;-Manager indicates in writing its consent to, approval of, or acquiescence, in any of the foregoing; or
- (viii) if Manager is a corporation or partnership, Manager takes any corporate or partnership action for the purpose of effecting any of the foregoing.

Notwithstanding any provision to the contrary herein contained, if (i) the cure periods provided to Corporation under the Indenture are less than the cure periods granted herein (including the time periods contained in Section 4.4.1 herein), the cure periods granted herein shall be deemed reduced to be 15 days less than the cure periods provided for under the Indenture; and (ii) Manager is able to demonstrate to the reasonable satisfaction of Corporation and the Asset Manager that either (a) such default is the direct result of following the Hotel Consultant's written recommendation and would not have occurred but for Manager's following the written recommendation of such Hotel Consultant, (b) such default is the result of there not being Sufficient Funds or (c) such default is a direct result of Corporations failure to materially comply with the terms of this Agreement or reasonably cooperate in a manner necessary for Manager to perform its obligations hereunder, then such default shall not constitute an Event of Default herein. If Manager claims that a breach or failure to perform by Manager would not have occurred but for Manager following the recommendations of a Hotel Consultant and Corporation and Asset Manager disagree with such claim by Manager, then either Party may, by delivering written notice of its requirements for arbitration to the others, require that the disputed matter be submitted to arbitration pursuant to Article 10 of this Agreement. Manager shall keep Corporation and the Asset Manager informed, in writing, 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.

4.3 Event of Default by Corporation. An Event of Default shall occur with respect to Corporation if and only if:

- (a) without limiting other provision of this Section 4.3, Corporation breaches or fails to perform any covenant or agreement made by Corporation hereunder and fails to cure such breach or failure within 120 days after Corporation's receipt of written notice from Manager specifying the breach or failure to perform;
- (b) Corporation fails to pay any money owed to Manager within the time required hereunder (including, without limitation, any amounts owed to Manager under an indemnity, hold harmless or reimbursement agreement contained herein) and such failure continues for a period of 30 days after Manager delivers written notice to Corporation specifying such failure; or
- (c) any representation or warranty made by Corporation hereunder is false or misleading in any material respect and (i) there is no reasonable action which Corporation could take to cause such representation or warranty to be true, correct and not misleading in all material respects within 30 days after receiving written notice thereof or (ii) if such a reasonable action exists, Corporation 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, Manager is materially damaged as a result of such false or materially misleading representation or warranty.

#### 4.4 Rights and Remedies of Non-Defaulting Party.

4.4.1 Remedies. Upon the occurrence of an Event of Default by Manager or Corporation, 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 25 days (subject in all respect to Section 2.21.3) and no later than 75 days after the giving of such notice, when the Agreement shall terminate. Such advance notice requirement shall run concurrently with, and not in addition to, any applicable cure periods to which the defaulting Party is entitled under this Agreement for such Event of Default. In addition to its right of Termination, the non-defaulting Party shall be entitled to pursue all other remedies available to it under Legal Requirement as a result of such Event of Default. At the same time Manager delivers a notice to Corporation, including without limitation any notice to Corporation under Section 4.3 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 Corporation 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 Corporation to cure such default under Section 4.3 of this Agreement and no longer except as otherwise provided in the Hotel Assignment Agreement or the Subordination Agreement then in effect. Manager shall have no personal liability to Corporation for any failure to deliver (or delay in delivering) any such notice of default to Corporation and Trustee, however, Corporation'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 Corporation and Trustee, and Manager shall not exercise its right to terminate this Agreement under this Section 4.4 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 the Trustee of any of Corporation's covenants or agreements under this Agreement, and any cure of Corporation's defaults, as if performed by Corporation. If Corporation'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 Corporation or exercised such other remedy which would allow the Trustee to cure Corporation's defaults, the time period which Trustee shall have to cure Corporation'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, plus a reasonable time thereafter (but not to exceed 90 days), provided Trustee is diligently pursuing such actions.

4.4.2 Manager's Source of Payment. Any damages owed to Manager by Corporation shall be satisfied solely out of Corporation's interest in the Hotel, from the Hotel's Gross Operating Revenues, from the various funds described herein or from any net sales proceeds received by Corporation upon the sale of the Hotel; subject in all respects, however, to the terms of Hotel Assignment Agreement, for so long as the Bonds are Outstanding. So long as any unpaid damages are owed to Manager, such damages shall constitute an ongoing claim against such assets.

#### 4.5 Performance Termination.

4.5.1 Right to Terminate. In addition to any Termination right that Corporation has pursuant to Section 4.4 of this Agreement, but subject to Sections 4.5.3 and 4.5.4 of this Agreement, Corporation shall have the right to terminate this Agreement with any consent required pursuant to the terms of the Indenture so long as any Bonds remain Outstanding, if with respect to two out of any three consecutive Operating Years during the Performance Test Period, both the Debt Service Coverage Requirement and the REVPAR Performance Standard are not satisfied (each such event a "*Performance Termination Event*").

4.5.2 Competitive Set. The Competitive Set shall be maintained in keeping with the requirements of the Indenture. The initial Competitive Set shall consist of (in addition to the Hotel): (i) the Hilton Garden Inn Austin Downtown, (ii) the Hyatt Regency Austin, (iii) the Omni Austin Downtown, and (iv) the Sheraton at the Capital. The Competitive Set shall be subject to change from time to time as mutually agreed upon by the Parties so as to include a group of at least five hotels in the downtown Austin market that are most comparable to the Hotel in quality, price and market segment (with due consideration given to age, quality, number of guest rooms, room size, facilities, meeting space accommodations and business mix); provided, however, other than the Austin Marriott Downtown, no hotel may be added to the Competitive Set if such hotel has been in operation for less than 36 months.

In connection with a removal or addition of a hotel or hotels to the Competitive Set, either Party may also request that the percentage set forth as the REVPAR Performance Standard be equitably adjusted to account for any changes in the Competitive Set as and when the same shall come into effect. If Corporation and Manager are unable to agree as to (i) an equitable adjustment of the percentage threshold set forth in the definition of "REVPAR Performance Standard" or (ii) the replacement of a Hotel in the Competitive Set, to comply with the foregoing requirements, such determination will be made by an independent nationally recognized hospitality industry consultant that is mutually acceptable to Corporation and Manager and otherwise qualified to be a Hotel Consultant. Terms for selection of a qualified Hotel Consultant shall be agreed upon by both Parties.

Without limiting the generality of the foregoing, Manager may request that the REVPAR Performance Standard be equitably adjusted if the Convention Center Expansion is not substantially completed by December 31, 2027 and, in Manager's judgement, such event results in an oversupply in downtown Austin market. If Corporation and Manager are unable to agree as to an equitable adjustment to the REVPAR Performance Standard, such determination will be made by an independent nationally recognized hospitality industry consultant that is mutually acceptable to Corporation and Manager and otherwise qualified to be a Hotel Consultant. Terms for selection of a qualified Hotel Consultant shall be agreed upon by both Parties.

The Parties specifically acknowledge that the Austin Marriott Downtown is anticipated to open across from the Convention Center in 2020. The Parties agree that upon the Austin Marriott Downtown opening, the Competitive Set will be automatically modified to consist of (in addition to the Hotel): (i) the Austin Marriott Downtown, (ii) Hyatt Regency Austin, (iii) Omni Austin Downtown, (iv) Westin Austin Downtown and (v) Fairmont Austin.

#### 4.5.3 Exceptions to Performance Termination Event.

4.5.3.1 Limited Right to Avoid Performance Termination Event under Section 4.5.1(a). Notwithstanding Section 4.5.1(a), Manager shall have the right to eliminate a Performance Termination Event under Section 4.5.1(a) if, for the applicable Operating Year, Manager pays Owner the Cure Amount for either of the relevant Operating Years that has resulted in the Performance Termination Event. If Manager elects to pay the Cure Amount, it will do so within 30 days of Owner's delivery of a notice under Section 4.5.4 below and the performance test will be deemed met for the relevant Operating Year cured by Manager. Manager's right to pay the Cure Amount may be exercised by Manager not more than once during any three consecutive Operating Years.

4.5.3.2 Certain Other Exceptions to Performance Termination Events. Notwithstanding Section 4.5.1 of this Agreement, a Performance Termination Event shall not exist if the Performance Termination Event is caused primarily by one or more of the following, or any combination thereof:

- (a) The occurrence of a Force Majeure Event during the applicable Operating Year(s);
- (b) Corporation's failure to timely complete the Capital Improvements required in the PIP within the timeframes set forth therein, or its failure to authorize or to make the Capital Improvements necessary for the Hotel to maintain the Hotel as an Upper Upscale Hotel;
- (c) diminished capacity of the Convention Center or disruption of Convention Center operations as a result of renovation, expansion, closure or otherwise;
- (d) An uncured Event of Default by Corporation hereunder during the applicable Operating Year;
- (e) Corporation's refusal to disburse or Corporation's inability to cause the Trustee to disburse Sufficient Funds in order to pay Operating Expenses, Capital Expenses, fixed expenses, Taxes, Excluded Taxes and Other Charges or Insurance (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
- (f) Manager demonstrates to the reasonable satisfaction of Corporation and the Asset Manager that the Performance Termination Event was a direct result of following the written recommendations of a Hotel Consultant pursuant to Section 2.18.9 of this Agreement and would not have occurred but for Manager's following the written recommendations of such Hotel Consultant.

Manager agrees that it shall have the burden of proof to show that the existence of all or any of the conditions or events specifically described in clauses (a) through (e) above was the primary cause of the Performance Termination Event occurring during the Performance Test Period. If Corporation disagrees that Manager has met such burden of proof, then either Party or the Trustee may, by delivering written notice of its requirement for arbitration to the others, require that the matter be submitted to arbitration pursuant to Article 10 of this Agreement.

4.5.4 Corporation's Exercise of Its Termination Rights. Corporation shall exercise its Termination rights pursuant to Section 4.5.1 of this Agreement, if at all, by giving notice of such Termination to Manager within 90 days following the scheduled deadline for delivery of the Certified

Financial Statements for the Operating Year on which the Termination is based; provided however, that if the Certified Financial Statements have not been delivered by the scheduled deadline due to the fault of Manager, the period of time to exercise such Termination right shall be extended until such Certified Financial Statements shall have been delivered. Any such notice under this Section 4.5.3 shall specify the effective date of Termination, which date shall be no earlier than 90 days and no later than 365 days following the date of Corporation's notice of Termination. If Corporation fails to deliver notice to Manager within the required 90 day period under this Section 4.5.3, Corporation's right to terminate this Agreement pursuant to this Section shall expire as to the Performance Termination Event in question. For the avoidance of doubt, no Termination Fee shall be payable in the event this Agreement is terminated pursuant to the terms and conditions of this paragraph.

#### 4.6 Termination Upon Sale.

4.6.1 Paying a Termination Fee. Notwithstanding any provision of this Agreement to the contrary, Corporation (with the written consent of a Majority of the Bondholders as provided in the Indenture) or its successor-in-interest, may transfer, only after the 10th full Operating Year of the Operating Term (i.e. starting on January 1, 2031), the Hotel or more than a 50% direct or indirect equity interest in Corporation or its successor-in-interest pursuant to a bona fide, arm's length transaction (whether by fee transfer, a transfer of ownership interests in Corporation (excluding the sale of shares in Corporation to the public) or otherwise) to a third party that is not an Affiliate of Corporation or its constituent owners. Immediately prior to such conveyance, subject to Manager's receipt of the Termination Fee and all other amounts due and owing to Manager through such Termination on or before the effective date of Termination, the party acquiring the Hotel in such transfer shall have the right to terminate this Agreement by delivering written notice to Manager not more than 45 days prior to the conveyance and not later than 60 days after the conveyance, and in any event at least 45 days prior to the effective date of the Termination with the effective date of the Termination being selected by Corporation or the party acquiring the Hotel in its sole and absolute discretion subject to the foregoing notice requirements (as such date may need to be reasonably extended in order for Manager to comply with Employee Termination Notice Requirements). If such a Termination notice is forwarded to Manager prior to the closing of the sale and the sale does not occur for a reason other than an Event of Default by Corporation, then Corporation may withdraw the Termination notice and this Agreement shall continue in full force and effect. If, at the time of the sale, Manager is not in Default hereunder and a then-current right to terminate as a result of a Performance Termination Event beyond any Manager cure right does not exist, Corporation shall pay or cause to be paid to Manager a fee (the "*Termination Fee*") in an amount calculated by multiplying (i) the sum of (a) the Base Management Fee for the most recently ended Operating Year and (b) the Subordinate Management Fee accrued (even if unpaid) for the most recently ended Operating Year by (ii) the applicable "Multiplier" set forth below:

<b>Termination Occurring in Operating Year</b>	<b>Multiplier</b>
11-13	3
14-16	2
17-19	1

The payment of such Termination Fee (if payable pursuant to the preceding provisions) and other amounts due and owing to Manager under this Agreement shall be a condition precedent to the Termination of this Agreement in connection with the sale and this provision shall be included in any contract for the sale of the Hotel. Any Termination Fee payable pursuant to this provision will be payable on the effective date of the Termination, and no Termination of this Agreement pursuant to this provision shall be effective unless and until the Termination Fee has been paid in full, subject to Section 4.6.2 hereof. For the avoidance of doubt the Termination Fee shall only be payable to Manager under the circumstances described in this

Section 4.6.1, and no termination fees shall be payable by Corporation as a result of any other termination of this Agreement provided elsewhere herein, including a termination by Corporation by reason of an Event of Default by Manager; provided that the same shall not otherwise limit any other rights or remedies Manager may have hereunder in connection with a termination of this Agreement.

4.6.2 Not Paying a Termination Fee. Notwithstanding anything contained herein to the contrary, Corporation will have the right to terminate upon sale pursuant to Section 4.6.1, without a payment of a Termination Fee, provided that the buyer retains Hilton as Manager pursuant to a mutually agreed upon assignment and/or amendment of this Agreement or is approved for and enters into a franchise agreement with Manager's franchisor affiliate on then-standard terms and conditions for a Hilton brand name hotel for at least the then-remaining term of this Agreement. If the purchaser and Manager's franchisor affiliate enter into a franchise agreement as contemplated herein, then the Termination Fee will not be due and payable to Manager so long as (i) the then-current Unamortized Key Money is reflected in the new franchise agreement (or accompanying development incentive note), (ii) such Unamortized Key Money continues to amortize on a yearly basis over the lesser of the remaining term of this Agreement or the term of such franchise agreement, and (iii) such franchise agreement provides that any Unamortized Key Money will be due and payable to Manager's franchise affiliate upon termination of such franchise agreement for any reason.

4.7 Recognition Upon Foreclosure. Notwithstanding anything to the contrary in this Agreement, any Mortgagee (including Trustee) shall be required to enter into a Non-Disturbance Agreement as a condition of the execution of any Mortgage or similar security instrument relating to the Hotel. Notwithstanding the foregoing, a Mortgagee (including Trustee) shall have the right to terminate this Agreement upon the foreclosure of its Mortgage or upon acceptance of a deed-in-lieu of foreclosure, if: (a) an Event of Default by Manager exists under this Agreement at the time of commencement, completion or during the process of the foreclosure proceeding or the process of the deed-in-lieu of foreclosure; or (b) Corporation has a then-current and continuing right to terminate this Agreement pursuant to a Performance Termination Event beyond a cure right expressly permitted under Section 4.5.3 above. If this Agreement is so terminated by a Mortgagee in accordance with clause (a) or (b) above, no Termination Fee shall be payable to Manager and the Mortgagee liability for past defaults shall be limited as provided in Sections 9.3 and 9.4. Manager and Corporation intend that Trustee and purchaser at a foreclosure sale, transferee in foreclosure or transferee as a result of a deed-in-lieu of foreclosure or similar remedy (a "Foreclosure Purchaser") and their respective Affiliates be and is a third party beneficiary to the foregoing provisions. The right, if any, of a Foreclosure Purchaser to terminate this Agreement upon its acquisition of the Hotel shall be governed by the terms of this Agreement, the Hotel Assignment Agreement, any applicable Hotel Assignment Agreement or Subordination Agreement and the Indenture.

4.8 Non Waiver. If Corporation, Trustee or any Mortgagee or a Foreclosure Purchaser has a right to terminate this Agreement pursuant to Section 4.7 above, but fails or elects not to exercise such right, such failure to exercise shall not constitute a waiver by Corporation, Trustee, Mortgagee or such Foreclosure Purchaser of its right to terminate on account of a subsequent Performance Termination.

4.9 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 Legal Requirement):

4.9.1 Payment of Out-of-Pocket Expenses. Except in connection with a Termination by Corporation based upon an Event of Default by Manager (in which case the following amounts shall be payable by Manager), 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 for the sole account of Corporation, and reimbursed to Manager immediately on receipt of any invoice or invoices (together with such reasonable supporting



documentation as Corporation 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 policies applicable generally to employees of Other Hilton Hotels) incurred by Manager in the course of effecting the Termination of this Agreement or the cessation of Hotel operations; provided however, that Manager shall be responsible for all liability associated with any failure to comply with the WARN Act to the extent due to Manager's Negligence or Willful Acts. Manager acknowledges that Corporation may, at its election and in consultation with Manager, following Corporation'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 Corporation to minimize any and all expenses that Corporation incurs under this Section 4.9.1.

4.9.2 Final Accounting. Within 45 days after Termination of this Agreement, Manager shall provide to Corporation a final and full accounting through the date of Termination of all Management Fees, Group Services Fees and Charges, Reimbursable Expenses, and other payments due Manager under the terms of this Agreement through the Termination date; and within 15 days of Corporation's receipt of such final and full accounting, Corporation shall pay Manager all Management Fees, Group Services Fees and Charges, Reimbursable Expenses, and other payments due Manager under the terms of this Agreement through the Termination date or provide Corporation's objections thereto. If Corporation disagrees with any amounts claimed by Manager, then Corporation shall promptly meet with Manager to discuss resolution of the amounts which Corporation disputes and if resolution is not reached within 30 days after Corporation delivered its objections, then either Party may pursue resolution through the arbitration proceeding in Article 10 of this Agreement. Manager shall also provide financial and other records related to the operation of the Hotel to Corporation through the date of Termination and shall continue to provide assistance to Corporation after the Termination of this Agreement to the extent necessary for Certified Financial Statements to be prepared. This obligation is unconditional and shall survive the Termination of this Agreement. Manager shall have reasonable access to the Hotel books and records necessary to provide the final accounting.

4.9.3 Vacating Hotel. Manager shall peacefully vacate and surrender the Hotel to Corporation.

4.9.4 Books and Records. Manager shall deliver to Corporation all of Corporation's books and records respecting the Hotel and all contracts, leases, and other documents respecting the Hotel that are not Manager's Proprietary Information, Hotel Guest Data (except to the extent contemplated in Section 2.20.1 or employee personnel files maintained by Manager and are in the custody and control of Manager, including those provided for in Section 2.4 of this Agreement. Manager will also deliver to the 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.

4.9.5 Licenses and Permits. Manager shall deliver to Corporation 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 Corporation (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, Corporation shall reimburse Manager for such expended funds. Manager recognizes that all licenses held for the operation of the Hotel are held for the benefit of Corporation and Manager has no ownership therein, except in order to fulfill its obligations hereunder. The entity holding the Liquor License shall, upon the request of Corporation, enter into a temporary lease, license or such other agreement as may be permitted under applicable law to permit the continuous and uninterrupted sale of alcohol beverages at the Hotel consistent with prior operations. In such event, neither Manager nor the party holding the Liquor Licenses shall be

entitled to compensation in connection with such arrangement, but shall be reimbursed by Corporation for any cost or liability in connection therewith and shall be named as an additional insured on any "dramshop" or other liability insurance pertaining to the sale of alcoholic beverages at the Hotel. In addition, any such temporary lease, license or other arrangement shall (a) include an indemnification and release of Manager and its Affiliates from all liabilities, obligations, reasonable costs and reasonable expenses, including reasonable attorneys' fees, arising out of or in connection with such temporary lease, license or other agreement, save and except for liabilities, obligations, costs, and expenses arising out of Manager's Negligence or Willful Acts and (b) provide for the Termination of all obligations of Manager and its Affiliates thereunder within 90 days following the date of Termination of this Agreement. Upon the Termination of this Agreement, Manager and the entity holding the Liquor Licenses will fully cooperate with the owner of the Hotel or an entity designated by the owner in their attempts to transfer existing licenses and permits or obtain new Liquor Licenses for the Hotel.

4.9.6 Honoring Reservation Dates. Subject to the Room Block Commitment, Corporation shall honor all business confirmed for the Hotel in the ordinary course of business and in accordance with Section 4.9.14 herein with reservation dates after the Termination; provided, however, that Corporation shall have no obligation to honor rooms at nominal or free rates unless reimbursement is provided by Manager.

4.9.7 Assignment of Contracts. Manager shall, to the extent required by Corporation, assign to Corporation its interest (if any) in, and Corporation shall assume and confirm in writing its continuing responsibility for all obligations and liabilities relating to, any and all contracts (including collective bargaining agreements (unless the Hotel withdraws from the collective bargaining agreement, in which event Corporation shall be responsible for any withdrawal fees), leases, 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 Corporation may further assign such interests to the Trustee.

4.9.8 Trademarks. If this Agreement is terminated in accordance with the terms hereof or for any other reason whatsoever, Manager and Corporation shall cooperate, at Manager's cost as a result of Manager Event of Default, and at Corporation's cost for any other termination, immediately take all steps reasonably requested by Corporation to disassociate the Hotel and Corporation from the Trademarks (including the removal of all signage bearing the name or mark of Manager). Corporation 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 (with the understanding that Manager shall cause the removal of all such FF&E and operating supplies bearing any of the Trademarks upon Termination or promptly thereafter and shall reimburse Corporation for the unamortized cost of such FF&E and operating supplies other than any signage). If the Parties fail to remove Trademark-bearing Hotel signage on or prior to the effective date of the Termination, either Party has the right to remove and retain or dispose of all such interior or exterior signage, at Manager's cost if termination is a result of a Manager Event of Default and at Corporation's cost for any other termination. 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 Corporation copy, reproduce, or retain any of Manager's Proprietary Information or materials bearing the Trademarks.

4.9.9 Proprietary Software. Subject to making such items available during the Transition Period as herein provided, 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 Corporation in

facilitating the orderly transfer of Corporation's records and data contained in Manager's Proprietary Software. Manager shall reasonably cooperate with Corporation 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. To the extent necessary to facilitate the orderly transfer of Corporation's records and data, Corporation and Manager shall execute Manager's current form of software license agreement at no additional charge other than as previously charged Corporation to provide for the use by Corporation of appropriate Manager's Proprietary Software (excluding, in any event, the reservations system), provided that Manager shall use commercially reasonable efforts to extend the license for the accounting software to Corporation for a period of time not to exceed the greater of 120 days following the effective date of the Termination or the Transition Period.

4.9.10 Protection of Guest Lists. Manager shall not contact any Hotel guests that have booked Hotel rooms or Hotel facilities prior to Termination for the purpose of soliciting such Hotel guests to cancel their previously booked Hotel rooms and transfer such business to any other transient lodging in the City of Austin, Texas; provided that Manager shall be permitted to notify such guests of a Termination so long as such guests are not solicited to cancel their reservations.

4.9.11 Special Provisions Regarding Foreclosure. If the Trustee or a Foreclosure Purchaser is entitled to terminate this Management Agreement upon a Foreclosure Event pursuant to Section 4.7 hereof, and this Agreement has not already been terminated pursuant to the terms hereof at the time of the Foreclosure Event, then, upon delivery of written notification from the Trustee or the Foreclosure Purchaser (as the case may be) of such Person's intent to terminate this Agreement, Manager shall nevertheless continue to manage and operate the Hotel under this Agreement pending the Foreclosure Purchaser's selection and engagement of a new manager for a period of up to 180 days following the completion of the Foreclosure Event (the "*Transition Period*"). The obligation of Manager to continue to manage and operate the Hotel during the Transition Period shall remain in effect without regard to any Event of Default by Corporation or any claims of Manager associated therewith, so long as Trustee continues to pay Manager the amounts owed to Manager and Trustee remains bound by and subject to the terms and conditions of this Agreement during the Transition Period. For the avoidance of doubt, Manager shall not be entitled to receive any Termination Fee related to a Termination under this Section 4.9.11.

4.9.12 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, Corporation will advance the insufficiency from the Excess Revenues Fund). If Corporation 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 Corporation for the unearned portion of insurance premiums (to the extent such apportionment is available from the insurer) or the self-insurance program of Manager. Corporation 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 Corporation or the Hotel thereafter.

4.9.13 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 Corporation will cooperate with each other and act in a professional manner

to effect an orderly transition of management functions from Manager to Corporation, any transferee of Corporation or to any managing agent designated by Corporation or any transferee of Corporation for a period of up to 90 days from the date of notice of Termination.

4.9.14 Receivables. All receivables of the Hotel outstanding as of the effective date of Termination, including, without limitation, guest ledger receivables, shall continue to be the property of Corporation. Manager will cooperate with Corporation in all reasonable respects, but at Corporation's sole cost and expense, in the collection of any receivables, and will turn over to Corporation 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 days after the date of Termination, provide Corporation 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. Manager agrees that, except with Corporation's consent, Manager will not book reservations for rooms or public space after (i) the date on which this Agreement expires in accordance with the provisions of the Agreement or (ii) the date of earlier Termination of this Agreement once the Termination date has been established in accordance with the provisions of this Agreement.

4.9.15 Survival. The provisions contained in this Section 4.9 shall survive the Termination of this Agreement.

## Article 5 Insurance

### 5.1 Maintenance of Insurance Coverage.

5.1.1 Required Insurance. The Parties agree that the insurance policies described in Exhibit L shall at all times be maintained with respect to the Hotel as an Operating Expense in accordance with the terms hereof. The insurance coverage described in Sections (a) through (e) of Exhibit L shall be maintained by Corporation, which such coverage shall comply with Hilton Brand Standards; provided, however, that Corporation shall have the option to enroll in any Manager-purchased insurance program offered with respect thereto subject to the terms, conditions and qualification relating to Manager-purchased insurance programs. [In addition to the foregoing, Manager shall, at its own cost, carry fidelity bonds on its Senior Executive Personnel and employees handling cash or receipts of the Hotel (including any person with access to funds in the Lockbox Fund) in the amounts set forth in Exhibit L] [NTD - Subject to review as Hilton believes this is now covered under the Crime policy.] or is otherwise adequately covered under the coverages contemplated under Sections (f), (g) or (h) in Exhibit L. Additionally, the Parties agree to maintain such insurance in such higher coverage amounts or as more particularly as required under Sections 7.20, 7.21 and 7.22 of the Indenture and under the Declaration.

5.1.2 Insurance Consultant. Corporation may from time to time, or as may be required pursuant to the terms of the Indenture, but in any event no more than once per year, engage, as an Operating Expense, an Insurance Consultant to review the insurance requirements herein and in the Indenture.

5.1.3 Special Conditions or Hazards. Corporation 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 Corporation and (iii) that may create or contribute to any claims, damages, losses, or expenses not typically insured against by the coverages required pursuant to Section 5.1.1 of this Agreement. If any such condition or hazard requires removal, abatement, or any other special procedures, such special procedures shall be performed as an Operating

Expense in compliance with all Legal Requirements. Conditions or hazards to which this Section 5.1.4 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 endeavor to obtain appropriate insurance coverages against such conditions and hazards to protect the interests of Manager, Corporation 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, Corporation 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 Article 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 Texas (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. All insurances obtained by either Corporation or Manager must name the other as "additional insureds" (provided that any property insurance shall only be required to name Manager as additional insureds only to the extent such coverage is inclusive of business interruption coverage. The commercial general liability policy and umbrella liability policy shall name the Trustee (for the benefit of the Registered Owners of the Bonds) as additional named insureds. The property insurance shall also name Corporation as the named insured, and shall (a) include (if appropriate) a mortgagee endorsement clause in favor of mortgagees, as their interests may appear, and (b) provide coverage for Manager and Trustee (for the benefit of the Registered Owners of the Bonds), as their interests may appear as insureds. With the exception of any professional liability insurance or workers' compensation insurance coverage, all other policies of insurance required to be carried by Manager hereunder shall name Corporation as the named insured and, as appropriate, name Manager and the Trustee (for the benefit of the Registered Owners of the Bonds) as additional insureds, as their interests may appear. In addition to the foregoing, in any instance where Manager shall be named as an "additional insured", Manager's respective Affiliates shall also be named as "additional insureds" as reasonably requested by Manager, as their respective interests may appear.

5.2.2 Amounts of Coverage. When maintained by Corporation, amounts and types of coverages and amounts of deductibles shall comply with Exhibit L and Hilton Brand Standards or shall otherwise be subject to the reasonable approval of Manager; provided, however, if the coverages and amounts conform to the requirements of the Bond Documents, then the coverages and amounts shall be deemed approved by Manager so long as they comply with Exhibit L and the Hilton Brand Standards.

5.3 Waiver of Subrogation Requirements. Where appropriate and obtainable (including the insurance provided for in Exhibit L), all policies shall include the insurer's waiver of subrogation rights against Corporation, Manager, Trustee and Registered Owners of the Bonds.

5.3.1 Notice of Termination. Each insurance policy shall include a requirement that the insurer provide at least 30 days' written notice of cancellation or material change in the terms and provisions of the applicable policy to Corporation and Trustee.

5.3.2 Severability of Interests. Each insurance policy where obtainable shall include coverage for severability of interests.

5.4 Changes to Insurance Policies. Subject in all respects to any minimum requirements of the Indenture, the requirements of Exhibit L and the Hilton Brand Standards, if either Corporation or Manager believes that the insurance coverage required to be maintained by such Party under this Article 5 is no longer commercially reasonable or available, such Party may, after giving the other Party 10 days' advance written notice, engage an Insurance Consultant to review the insurance requirements herein and to provide a written report determining whether or not such insurance requirements are no longer commercially reasonable or available, and if necessary, proposing alternative insurance requirements. If the recommendations otherwise remain in compliance with this Article V, Exhibit L and the Hilton Brand Standards, each of the Parties agrees to accept the determination of the Insurance Consultant, and the Parties shall agree to adopt the recommended insurance requirements in lieu of those set forth in this Article 5. If the recommendations do not otherwise comply with this Article V, Exhibit L or the Hilton Brand Standards, then the Parties shall consider such recommendations in good faith, but shall have no obligations to implement such recommendations.

5.5 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, or other satisfactory evidence such as a certificate of insurance, 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 prior to the expiration date of each such policy, the Party obtaining such insurance shall provide the other Party with binders evidencing renewal of existing or acquisition of new coverages. Certified copies of renewed or new policies or certificates of insurance shall be provided by the Party obtaining insurance coverage under this Article 5 to the other Party as soon as practicable after renewed or new coverages become effective.

5.6 Schedule of Insurance. On request, the Party obtaining insurance under this Article shall furnish the other with a schedule 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.

5.7 Duties of Manager. Manager shall promptly:

- (a) cause to be investigated all accidents and claims for damage relating to the operation and maintenance of the Hotel, as they become known to Manager, shall report to Corporation any such incident that is material, and shall provide to Corporation a report semiannually setting forth all accidents and claims for damage relating to the Hotel in the form prepared by Manager for Other Hilton Hotels;
- (b) cause to be investigated all damage to or destruction of the Hotel, as it becomes known to Manager, shall report to Corporation any such incident that is material, together with the estimated cost of repair thereof, and shall provide to Corporation a report semiannually setting forth all damage to or destruction of the Hotel in the form prepared by Manager for Other Hilton Hotels;
- (c) prepare any and all reports required by any insurance company (or assist Corporation in the preparation of any such 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

- (d) retain on behalf of Corporation all consultants and experts, including architects, engineers, contractors, accountants, and attorneys, as needed, and as an expense of the Hotel, 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.

5.8 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. Corporation 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. Corporation agrees to comply with any additional insurance requirements Manager reasonably requests in order to protect the Hotel and the respective interests of Corporation and Manager; provided, however, so long as any Bonds are Outstanding, that Corporation shall not be required to comply with any such insurance requirements requested by Manager to the extent the same would violate the Bond Documents.

5.9 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 showing that such Party maintains commercial general liability insurance in an amount at least equal to \$1,000,000 per occurrence, worker's compensation or its facsimile at statutory levels and employers liability coverage or its equivalent in the amount of \$1,000,000 or, if greater, otherwise 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 or more consecutive days, Manager will require each such Party to name Manager and Corporation as an additional insured under such Party's commercial general liability insurance policy.

5.10 Insurance by Manager. Any insurance provided by Manager under this Article 5 may, at its option, be effected under policies of blanket insurance which cover other properties of Manager and its Affiliates, and a pro rata portion of such premiums shall be allocated to the Hotel on the same basis as allocated to participating Other Hilton Hotels. Any policies of insurance maintained by Manager pursuant to the provisions of this Article 5 may contain deductible provisions in such amounts as are maintained with respect to Other Hilton Hotels, for which Corporation shall be responsible or which Manager, at Corporation's expense, may pay. Further, in lieu of all or a part of commercial general liability insurance and worker's compensation and employer's liability insurance, Manager, with the prior written consent of the Trustee, may self-insure the risks required to be covered by such insurance policies through a self-insurance or assumption of risk program similar to those in effect at Other Hilton Hotels, up to such amounts which such risks are assumed or self-insured at Other Hilton Hotels. Notwithstanding the foregoing, Corporation shall have the right to obtain all or some of the insurance for the Hotel other than those coverages contemplated in Sections (f), (g) and (h) of Exhibit L.

5.11 Acknowledgment Regarding Procurement of Insurance Coverage. Notwithstanding anything to the contrary in this Article 5, Corporation and Manager agree and acknowledge that Corporation, not Manager, currently procures and maintains all insurance coverages contemplated on Exhibit L other than crime insurance, workers' compensation insurance and employment practices liability insurance (which such insurance coverages remain procured and maintained by Manager for Corporation in accordance with this Agreement). Corporation agrees that the insurance coverages it maintains are procured and maintained in accordance with the requirements of this Agreement including, without limitation, Article 5 and Exhibit L hereof.

## Article 6 **Mortgages**

## 6.1 Authorization to Mortgage Hotel.

6.1.1 Right to Mortgage. Subject to the requirement that Corporation procure a Non-Disturbance Agreement from any applicable Mortgagee or secured party, Corporation 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 Mortgage that is entered into by Corporation or its successor-in-interest, and to assign to any Mortgagee as collateral security for any loan secured by the Mortgage, all of Corporation'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 loan placed on any part of the Hotel (other than Additional Bonds and Refunding Bonds as contemplated under Section 6.1.2 below), if the principal amount of indebtedness of such loan exceeds 75% of the appraised value of the Hotel. Corporation or its successor-in-interest shall provide Manager with the name and address of any Mortgagee. Any Mortgagee's interest in the Hotel shall be senior to the rights and interests of Manager or any Affiliate thereof, but (i) shall not affect or impair Manager's rights to receive its Management Fees, Group Services Fees or Charges, or Reimbursable Expenses through the date of Termination of this Agreement from Gross Operating Revenue (pursuant to and subject to the terms and conditions of this Agreement) and (ii) shall be subject to the rights of Manager under the Hotel Assignment Agreement, or any Subordination Agreement or Non-Disturbance 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.

6.1.2 Additional Bonds. Notwithstanding any provision to the contrary herein contained, Corporation shall have the absolute right (without any restriction or condition or approval of Manager) to issue (i) Additional Bonds secured by the Hotel, provided the standards set forth in Section 3.02 of the Indenture are satisfied and (ii) Refunding Bonds pursuant to and under the Indenture or pursuant to another indenture, provided, however, notwithstanding the foregoing, (a) if in the reasonable opinion of Manager delivered within ten days after the receipt of the proposed indenture and other bond documents, the new indenture or bond documents materially alter any rights of Manager under this Agreement or impose any additional material or economic burdens on Manager, then Corporation 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 and (b) other than Refunding Bonds issued pursuant to Section 3.02(b) of the Indenture or Additional Bonds issued pursuant to Section 3.02(c) of the Indenture, the prior written consent of Manager shall be required with respect to all other refunding bonds and additional bonds if the principal amount thereof together with all other Bonds then Outstanding under the Indenture after such issuance exceeds 75% of the appraised value of the Hotel. Corporation shall deliver to Manager a copy of any new indenture and related bond documents promptly after the execution thereof. Any such Additional Bonds and/or Refunding Bonds secured by a security interest in the Hotel shall be subject to the continuance of the Hotel Assignment Agreement, or the execution of a Non-Disturbance Agreement in the same form and substance as the Hotel Assignment Agreement in effect as of the Effective Date.

6.1.3 Amendments Following Satisfaction of Bonds. If there are no Bonds Outstanding during the Operating Term of this Agreement, then this Agreement shall, to the extent applicable, be deemed amended to incorporate all Sections of the Indenture specifically referenced herein and, upon the request of either Party, the other Party shall enter into an amendment to this Agreement to reflect the actual changes resulting from the deemed amendment.



6.1.4 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; provided, however, that any expense incurred in the Hotel's name in connection with such activities shall be deemed to be an Operating Expense; and provided, further, that Manager shall have the right to schedule such activities at times when a member of the Senior Executive Personnel is at the Hotel and available to coordinate the activities of such Mortgagee or its agents.

6.1.5 Existing Mortgages. Corporation represents and warrants that, as of the date hereof, the mortgage, lien and security interests that secure the Bonds are the only Mortgage, lien and security interest encumbering all or any part of the Hotel and its component real and personal property and the real property on which the Hotel is situated. Subject to Section 6.1.1 of this Agreement, Manager hereby acknowledges the existence of the Mortgages securing the Bonds and agrees that Manager's rights and interests in and to the Hotel pursuant to this Agreement shall be subordinate to the lien of such Mortgages. Corporation shall deliver to Manager a true and complete copy of the final form of Bond Documents promptly after the execution thereof.

6.1.6 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 the Trustee, Manager or the Registered Owners of the Bonds, and neither the officers, agents, employees or representatives of the Trustee, Manager or the Registered Owners of the Bonds 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; provided however that such protection shall not extend to any employee of Manager located at the Hotel for any liability or accountability due to the negligence or willful misconduct of such employee.

## 6.2 Subordination; Non-Disturbance.

6.2.1 Subordination. Manager hereby subordinates all rights and interests in the Hotel pursuant to this Agreement and Manager's rights hereunder to the provisions of the Indenture and all other Bond Documents, as well as each Mortgage hereafter granted against the Hotel (provided that any debt held by an Affiliate of Corporation will be deemed to be subordinate to Manager's rights and interests in the Hotel). If there is any conflict between a provision of this Agreement and any provision of the Indenture, the provision of the Indenture shall control. Without limiting the foregoing, Manager agrees that Trustee shall have the absolute right to consent to and approve all matters 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 Agreement. Even though this Agreement is subordinate to the lien of each Mortgage, on request at any time from time to time during the Operating Term of this Agreement, Manager shall execute, acknowledge and deliver to Corporation or its successor-in-interest or any Mortgagee a commercially reasonable subordination agreement (a "*Subordination Agreement*") that subordinates this Agreement to the lien of the Mortgage held by such Mortgagee, which includes the protections in favor of Manager as specifically set forth herein, which may include a provision which provides that the Mortgagee shall not be liable in any respect from its own funds or otherwise for any defaults by Corporation or any amounts owed to Manager prior to the date of foreclosure and which includes a provision which permits the Mortgagee to cure any Event of Default hereunder. Manager shall not be required to accept or agree to any proposed Subordination Agreement if it effects a modification of

this Agreement or otherwise impairs Manager's rights or materially increase its burdens or obligations hereunder (other than by the subordination of this Agreement to the lien of the Mortgage). Manager hereby acknowledges and agrees to the terms of the Hotel Assignment Agreement as being an acceptable Subordination Agreement.

6.2.3 Manager's Agreements. Manager covenants and agrees, represents and warrants with and to Corporation and for the benefit of the 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 the Trustee or any interest of the Trustee.
- (b) Except as otherwise expressly permitted in Section 7.24 of the Indenture, Manager shall not agree to modify, amend or terminate this Agreement without the Trustee's prior written consent. Manager shall not receive or accept any fees, charges or reimbursements in excess of the amounts set forth 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 the Trustee, forthwith, any such amounts.
- (c) 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 Corporation hereby irrevocably constitutes and appoints Trustee the attorney-in-fact and agent of Corporation for the purpose of endorsing the consent of Corporation on any such notice. The foregoing power is coupled with an interest and shall survive the liquidation, bankruptcy or insolvency of Corporation and is in addition to and not in lieu of any terms to such effect contained in the Indenture. Manager agrees that, upon Trustee's revocation of Corporation's license to exercise the rights granted by Trustee to Corporation under the Assignment Agreement and receipt of the aforesaid notice, Manager shall perform its obligations under this Agreement directly for the benefit of Trustee, as if Trustee were the "Corporation" thereunder, subject however to the limitations of liability contained in the Indenture and this Agreement. As compensation for such agreement, Manager shall be paid those sums provided for in this Agreement to be paid for management of the Hotel but only to the extent accruing after such revocation by Trustee of Corporation's license, without regard to any claims against Corporation.
- (d) No failure or delay on the part of Trustee in exercising any power or right shall operate as a waiver thereof or a waiver of any other term, provision or condition, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power in favor of Trustee. All rights and remedies of Trustee hereunder are cumulative and shall not be deemed exclusive of any other rights or remedies provided by law. The Trustee shall not be prejudiced in its right to enforce this Agreement by any act or failure to act on the part of Corporation or anyone in custody of Corporation's assets or property.

6.2.4 Bankruptcy. Manager agrees not to cause the filing of a petition in bankruptcy against Corporation for non-payment of any sum due Manager by Corporation until the payment in full of

the Bonds and/or any other sums due under any of the Bond Documents and the expiration of a period equal to the applicable preference period under the federal Bankruptcy Code (Title 11 of the United States Code); provided however, that in the event of a bankruptcy filing of Corporation, Manager shall be entitled to file claims in accordance with applicable bankruptcy laws. In the event of any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise of all or any part of the assets of Corporation or the proceeds thereof, to creditors of Corporation, or upon any indebtedness of Corporation, by reason of the liquidation, dissolution or other winding up of Corporation or Corporation's business, or any sale, receivership, insolvency or bankruptcy proceeding, or assignment for the benefit of creditors, or any proceeding by or against Corporation for any relief under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, compositions or extensions, then and in any such event any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to any or all indebtedness or obligations of Corporation to Manager (including, without limitation, interest and post-petition interest) shall be paid or delivered in accordance with the Indenture, until the Bonds and/or any other sums due under any of the Bond Documents shall have first been fully paid and satisfied. Manager agrees to cooperate with Trustee in the administration of any claim by Manager.

6.2.5 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, distribution, security or proceeds thereof be received by Manager contrary to the provisions of this Agreement, the Indenture, the Cash Management Agreement or the Hotel Assignment Agreement, Manager will forthwith deliver the same to the 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 the Trustee.

### 6.3 Subordination Agreements.

6.3.1 Mortgagee's Right to Terminate Upon Foreclosure. A Mortgagee's rights to terminate this Agreement upon a foreclosure are limited to those described in Section 4.7 (a) and (b) hereof. If (i) the Trustee, any Affiliate of the Trustee or any other Person shall become the owner of any of the Hotel, 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 (herein, "*Foreclosure Event*") and (ii) this Agreement shall not have been terminated as a result thereof as provided in this Agreement, then Manager shall attorn to the Trustee, such Affiliate or such other Person to the extent such Trustee, Person or any of their Affiliates is not a Sanctioned Person or otherwise a Person that would cause the representations of Corporation under Section 12.35 to be untrue, as the case may be, and the Trustee agrees not to disturb Manager's rights under this Agreement, and both Manager and Trustee shall be bound by all of the terms, covenants and conditions of this Agreement for the balance of the term thereof remaining and any extensions or renewals thereof, with the same force and effect as if the Trustee, such Affiliate 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 Corporation. Said attornment and nondisturbance shall be effective and self-operative as an agreement between Manager and the Trustee, such Affiliate 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 the Trustee, Manager shall execute an instrument in confirmation of said attornment and nondisturbance. 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.

6.3.2 Delivery of Non-Disturbance Agreement. Without in any way limiting a Mortgagee's right to terminate this Agreement in connection with the foreclosure of its Mortgage as

contemplated in Section 4.7 (a) and (b), Corporation (or its successor-in-interest) shall not accept a Mortgage unless the Mortgagee agrees to a non-disturbance agreement that protects Manager's right to continue to manage the Hotel pursuant to this Agreement following a foreclosure or deed in lieu of foreclosure of the Mortgage, or similar right or remedy with respect to a Mortgage held by such Mortgagee (a "*Non-Disturbance Agreement*"), with the understanding that a Mortgagee may condition its delivery of a Non-Disturbance Agreement upon receipt of a Subordination Agreement from Manager, as provided in Section 6.2.1 of this Agreement. Manager hereby acknowledges and agrees that the requirement of a Non-Disturbance Agreement is met with the execution and delivery of the Hotel Assignment Agreement.

6.3.3 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. Manager acknowledges that 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, without any notice to or consent from Manager. Any such assignment shall include an assignment of the Hotel Assignment Agreement.

6.3.4 Assignment of Claims. Manager will not assign or transfer to others any claim which it has or may hereafter have against Corporation 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.

## Article 7 Casualty & Condemnation

### 7.1 Destruction, Permanent Taking During the Period when Bonds are Outstanding.

7.1.1 Corporation 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 Article 5 above or Taken, then the Casualty Proceeds and/or the Condemnation Proceeds, as applicable, shall be paid immediately to the Trustee (with the understanding that any Casualty Proceeds and Condemnation Proceeds received by Manager, Corporation or other named insured parties shall be immediately turned over to the 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. If the amounts in the Insurance and Condemnation Proceeds Fund, after such deposit, together with investment income reasonably expected to be received with respect thereto and any other funds available therefor (including without limitation amounts on deposit in the Operating Reserve Fund, the Excess Revenues Fund and the Cash Trap Fund, in that order) (collectively, the "*Available Casualty/Condemnation Amounts*"), are not applied to the redemption of the Bonds (to the extent permitted under the Bond Documents) and are sufficient to repair or replace the property damaged, destroyed or Taken, as certified in a statement of an independent architect (the "*Independent Architect*") to be mutually agreed upon by Manager and Corporation, then Corporation shall cause the repair or replacement of the property damaged, destroyed or Taken. Notwithstanding the foregoing and subject to Section 7.1.2 of this Agreement, Corporation shall be under no obligation to engage a contractor to perform the repair and restoration of the Hotel if (a) all or substantially all of the Hotel is Taken, (b) in Corporation's reasonable judgment, the portion of the Hotel Taken is such that the Hotel cannot be restored to economically feasible usefulness, (c) the damage, destruction or Taking makes it

imprudent or unreasonable to operate the remaining portion of the Hotel in accordance with the Operating Standard, or (d) the Trustee, pursuant to and in accordance with the Bond Documents, does not make the Casualty Proceeds and/or Condemnation Proceeds available for repair or reconstruction.

**7.1.2 Insufficient Available Amounts – Corporation's Option to Terminate or Restore.**

If Corporation does not repair, restore, replace, or rebuild the Hotel due to insufficient Available Casualty/Condemnation Amounts and the damage, destruction or Taking makes it imprudent or unreasonable to operate the remaining portion of the Hotel in accordance with the Operating Standard, then Corporation may terminate this Agreement by giving notice to Manager (which shall be effective 90 days after its delivery) within 30 days after the report is delivered by the Independent Architect. Notwithstanding the foregoing, if Corporation operates a Hotel on the Land within three years after such Termination date, Manager shall have the right to elect, in its sole and absolute discretion, to enter into a new hotel operating agreement on the same terms and conditions as this Agreement with the then current owner of the Land (provided that such hotel operating agreement will be modified by the parties in good faith to the extent the following circumstances necessitate reasonable modifications to such hotel operating agreement: (i) damage or destruction to the adjacent historic building and the resulting loss of meeting space available to the Hotel or (ii) insufficient funds exist to restore the Hotel to the condition prior to the casualty or condemnation but Corporation restores the Hotel to the extent of available funds); provided that if the Land is sold to a third party (other than pursuant to a foreclosure sale which will terminate this right automatically without payment of any Termination Fee unless the Foreclosure Purchaser is Corporation or an Affiliate of Corporation, in which case such right will remain in place and may only be terminated by payment of a Termination Fee), such third party can terminate the foregoing right by paying to Manager a Termination Fee equal to that which would have been payable at such time if this Agreement were in effect at such time. The foregoing right shall survive the Termination of this Agreement pursuant to this Section 7.1.2.

**7.2 Destruction After Bonds Are No Longer Outstanding** . 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 Article 5 of this Agreement, then Corporation 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, subject to the following conditions precedent: (a) Corporation receives insurance proceeds in an amount sufficient to cover at least 90% of the cost to rebuild and replace the Hotel as certified in a statement of an Independent Architect to be mutually agreed upon by Manager and Corporation, (b) the balance of the Operating Reserve Fund is sufficient to cover the difference between the cost to repair and the insurance proceeds received by Corporation, (c) the holder of any Mortgage then existing against all or any of the Hotel allows the Available Casualty/Condemnation Amounts to be used for the repair and reconstruction of the Hotel, and (d) the repair of the Hotel is not reasonably anticipated by an Independent Architect to exceed six months. If the conditions set forth in (a), (b), (c) and (d) are not satisfied, Corporation shall not be required to repair any damage or destruction of the Hotel and if Corporation elects not to repair the Hotel, then Corporation or Manager may terminate this Agreement by giving notice to the other Party (which shall be effective 90 days after its delivery) within 30 days after the report is delivered by such Independent Architect. Manager shall cooperate with Corporation in obtaining all property damage insurance proceeds payable with respect to the Casualty Restoration so that the same shall be available to Corporation as the Casualty Restoration progresses. Corporation 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.

**7.3 Substantial Uninsured Casualty After the Bonds Are No Longer Outstanding**. If after the Bonds are no longer Outstanding, the whole or any part of the Hotel is damaged or destroyed by any peril or event and the cost of the Casualty Restoration exceeds the insurance proceeds payable on account thereof

by an amount in excess of 5% of the replacement value of the Hotel as of the date of the Casualty, as determined by an Independent Architect to be mutually agreed upon by Manager and Corporation, then Corporation may terminate this Agreement by giving notice to the other Party (which shall be effective 90 days after its delivery) within 30 days after the report is delivered by such Independent Architect.

#### 7.4 Permanent Taking After Bonds are no Longer Outstanding.

7.4.1 Termination Right. If after all Bonds are no longer Outstanding (a) all or substantially all of the Hotel is Taken, (b) in Corporation's reasonable judgment, the portion of the Hotel Taken is such that the Hotel cannot be restored to economically feasible usefulness, or (c) a Taking of a portion of the Hotel makes it imprudent or unreasonable to operate the remaining portion of the Hotel in accordance with the Operating Standard, all as reasonably determined by Corporation, then all Condemnation Proceeds received by Manager with respect to the Hotel shall be payable to Corporation, and this Agreement shall terminate within 30 days after the date of such Taking. If this Agreement is not terminated in accordance with the preceding sentence, then, at Corporation's election, either Corporation or a third party shall coordinate such alterations or modifications to the Hotel, or any part thereof, as approved by Corporation, as shall be reasonably necessary to make the Hotel a satisfactory architectural unit as a first class hotel of the type immediately preceding such taking or condemnation (the "*Required Alteration Standard*"). If the Condemnation Proceeds made available for such alterations are insufficient to alter or modify the Hotel in accordance with the Required Alteration Standard, then this Agreement shall terminate and Corporation shall retain all Condemnation Proceeds.

7.4.2 Operating Hotel on Land Within 24 Months after Termination. Notwithstanding the Termination of this Agreement in accordance with Section 7.4.1 of this Agreement, if Corporation operates a Hotel on the Land within 24 months after the date of Termination under Section 7.4.1 of this Agreement, Manager shall have the right to elect, in its sole and absolute discretion, to enter into a new hotel operating agreement (a) incorporating the terms of this Agreement to the extent applicable (i.e., the provisions relating to the Trustee and Bond Documents will no longer be applicable) and (b) making such modifications to the provisions contained in this Agreement as are necessary to reflect the then existing condition of the Hotel. In addition, if the Land is sold to a third party during such 24-month period and such third party operates a Hotel on the Land within such 24-month period, then such third party may, at its option, terminate the foregoing right by paying to Manager a Termination Fee equal to that which would have been payable at such time if this Agreement were in effect at such time. Notwithstanding the preceding provisions, upon a foreclosure of a Mortgage, this Section 7.4.2 shall be deemed null and void if the party obtaining title to the Land at the foreclosure sale or under a deed in lieu of foreclosure is a party other than Corporation or an Affiliate of Corporation.

#### 7.5 Taking for Temporary Use.

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 7.5.2 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 be included in Gross Operating Revenue for the Operating Year or Years in which received. When and if, during the such 24-month period, the temporary use ceases and provided this Agreement is not terminated pursuant to Section 7.5.2 of this Agreement, Corporation shall engage a contractor to make all such restoration, repairs, and alterations as are necessary to restore the Hotel to its condition prior to the Taking for temporary use. Corporation shall require its contractor to commence such restoration, repairs, and alterations promptly and shall complete the same with diligence. Subject to the requirements of Generally Accepted Accounting Principles and the

Uniform System, the costs of any such work shall not be deducted as Operating Expenses in determining Gross Operating Profit.

7.5.2 Termination Right. In the event any temporary Taking is reasonably anticipated to continue or continues for six months or longer, either Manager or Corporation may terminate this Agreement by delivery of written notice to the other party setting forth a Termination date no sooner than 30 days from the date of the notice.

7.6 Commencement and Completion of Casualty Restoration. If Corporation is required to repair or rebuild the Hotel due to fire or other casualty pursuant to this Article 7, Corporation shall commence the Casualty Restoration as soon as practicable after the occurrence of the damage or destruction and shall complete the work with diligence. If a right of Termination does exist, the obligation to commence the Casualty Restoration shall be delayed until the earlier of the giving of the applicable notice of Termination (in which event the obligation shall not become operative) or the expiration of the applicable notice period (in which event the obligation to commence and complete the Casualty Restoration as provided in this Section 7.6 shall become operative immediately).

7.7 Effect of Termination. If this Agreement is terminated pursuant to this Article 7, all expenses arising as a result of Termination of this Agreement or as a result of the cessation of Hotel operations shall be for the sole account of Corporation. Notwithstanding anything to the contrary in this Agreement, no Termination Fee shall be payable upon a Termination of this Agreement due to Casualty or Taking.

## Article 8 **Business Interruption**

8.1 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 generally coordinate the efforts of all parties involved 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 Group Services Fees and Charges and all Reimbursable Expenses, for the period of the business interruption; provided, however, for so long as Corporation either participates in Manager's insurance program or maintains Business Interruption Insurance which provides benefits no less favorable to Manager than if Corporation were participating in Manager's insurance program, the Parties acknowledge that payments pursuant to this Section 8.1 shall be satisfied only by proceeds of such Business Interruption Insurance and further provided that Manager's right to receive payment during the period that Business Interruption Insurance proceeds remain payable shall be subordinate only to the payment of Debt Service on the Bonds (without otherwise limiting Manager's right to terminate this Agreement pursuant to Section 2.31.1). In the event of such a business interruption, for purposes of calculating the Base Fee, the Subordinate Management Fee, Group Services Fees and Charges, the Gross Operating Revenue during the period of operation shall be increased by the amount of insurance proceeds received under the Business Interruption Insurance during the period of the business interruption.

8.2 Corporation's Obligations During Partial Operation. If the Hotel suffers damage or loss that results in an interruption in the operation of the Hotel, Corporation shall nevertheless be obligated to pay all expenses of operating and maintaining the Hotel (at the level which is reasonably necessary given the damage or loss that has occurred), regardless of whether there are available to Corporation any Business Interruption Insurance proceeds to cover such amounts, and Corporation shall be responsible for depositing all such amounts necessary for the operation and maintenance of the Hotel in the Lockbox Fund during the period of the business interruption.

8.3 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 the Trustee, for allocation and distribution in accordance with the Indenture, and Manager shall share in any proceeds (regardless of whether this Agreement has been terminated) to the extent that the proceeds represent the Management Fee, the the Group Services Fees and Charges or the Reimbursable Expenses payable by Corporation to Manager under this Agreement throughout the covered period of any business interruption up to any Termination Date; provided that Manager's right to receive payment during the period that Business Interruption Insurance proceeds remain available shall be subordinate to the payment of Debt Service on the Bonds. 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 Corporation would otherwise be required to pay in accordance with Section 8.1 so long as Corporation participates in Manager's insurance program or obtains its own Business Interruption Insurance that provides at the level of coverage of Manager's business interruption insurance available through Manager's insurance program.

8.3.1 Deposit of Proceeds of Business Interruption Insurance During Period Bonds are Outstanding. Notwithstanding any other provision hereof, Corporation 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 the Trustee when and as received in a segregated account (the "*Business Interruption Account*") within the Insurance and Condemnation Proceeds Fund, which account Corporation shall cause to be established by the Trustee upon receipt of notice that the carrier of such insurance will be paying claims thereon to the Trustee. So long as any Bonds are Outstanding, Corporation shall use commercially reasonable efforts to require the Trustee to hold the Business Interruption Account in trust for the intended beneficiaries of such funds separate and apart from any other Funds and Accounts. So long as any Bonds are Outstanding, Corporation shall use commercially reasonable efforts to require the Trustee to immediately transfer any amounts deposited in the Business Interruption Account and transferred in accordance with Section 5.18(d) of the Indenture.

8.3.2 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 Corporation, which reduction shall be allocated in any manner deemed fair and appropriate by Manager, Corporation, and the Trustee.

8.3.3 Characterization of Business Interruption Proceeds. Business Interruption Proceeds received shall be deemed Gross 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.

8.3.4 Deposit of Business Interruption Proceeds after No Bonds Outstanding. After there are no Bonds Outstanding, Corporation shall deposit any Business Interruption Proceeds received by Corporation, and Manager shall deposit any Business Interruption Proceeds received by Manager, into the Lockbox Fund immediately upon receipt.

## Article 9 Assignment

### 9.1 Restrictions on Assignment.



9.1.1 Restriction. Except as expressly provided otherwise herein, neither Party may effect an Assignment without the prior consent of the other Party. Corporation further consents to the assignment of this Agreement to the Trustee for the benefit of the Registered Owners of the Bonds, as security for Corporation's obligations under the Indenture and other documents securing the repayment of the Bonds. Any Assignment by a Party in violation of the terms of this Article 9 shall be a material and non-curable breach of this Agreement by the assigning Party, governed by the terms of Article 4 hereof.

9.1.2 Definition of Assignment. The term "*Assignment*" includes the following: (a) assignment, pledge, encumbrance, or transfer in any manner of an interest in this Agreement, or any rights or obligations under this Agreement; (b) any transfer of an aggregate of more than 50% (measured by fair market value or voting power) of the legal and/or beneficial interest (whether partnership interest, corporate stock, shares, or otherwise); (c) any transfer of an aggregate of more than 50% (measured by fair market value or voting power) of the legal and/or beneficial interest (whether partnership interest, corporate stock, shares, or otherwise) by an investor or investors of any owner of a Party; or (iv) any change in the actual or effective voting control of a Party or an owner of such Party.

9.1.3 Definition of Owner. The term "owner" means (a) the holder of 50% or more (measured by fair market value or voting power) of the legal and/or beneficial interest (whether partnership interests, corporate stock, shares, or otherwise) of an entity; (b) the owner, as defined in clause (a), of an owner, as defined in clause (a); or (c) the owner of a controlling interest in any Party.

9.1.4 Exclusion of Publicly Traded Stock. Neither any transfer of publicly traded stock nor any public offering or private placement of equity ownership interests (whether partnership interest, corporate stock, shares, or otherwise) in either Party to a parent company or other owner of either Party shall be deemed to be an Assignment.

## 9.2 Permitted Assignment by Manager.

9.2.1 Permitted Assignments. Subject to Section 9.2.2 of this Agreement, Manager shall have the right, without Corporation's consent but upon ten days prior notice to Corporation, to effect an Assignment of all, but not less than all, of its interest in this Agreement to any of the following (each a "*Proposed Assignee*"): (a) any Affiliate of Manager; (b) any successor of Manager that may result from any merger, consolidation, or reorganization; or (c) any Person that acquires all or substantially all of the business and assets of the hotel management and license operations associated with hotels and resorts operating under the HILTON brand and, in each of clauses (a), (b) and (c) in this Section 9.2.1, continues the hotel management business using the HILTON brand.

9.2.2 Conditions Precedent to Assignment. As a condition precedent to any Assignment under Section 9.2.1 of this Agreement, all of the following must be satisfied:

- (a) the Proposed Assignee must execute an assignment and assumption agreement in form and substance reasonably acceptable to Corporation pursuant to which such assignee assumes and agrees to be bound by all of the terms and provisions of this Agreement (including the assumption of any and all liabilities relating to any Event of Default of Manager that has occurred and remains uncured);
- (b) subject to Manager's rights under Section 11.3 below, the Proposed Assignee shall, at all times during the Operating Term, continue the use of the HILTON brand and continue the use of the name of the Hotel as the Hilton Austin;

- (c) the Proposed Assignee, together with its Affiliates, is recognized as having or operating (or upon such Assignment shall be recognized as having) a national or international chain of Upper Upscale Hotels;
- (d) the Proposed Assignee, together with its Affiliates, shall continue to operate the Other Hilton Hotels under the Hilton name and to provide the Group Services and other provisions to be furnished by Manager at the standards provided for in and otherwise in accordance with this Agreement;
- (e) the Proposed Assignee is not generally recognized in the community as being of ill repute with whom a prudent business person would not wish to associate in a commercial venture or a Person that would be considered by regulators in the gaming industry to be an unsuitable business associate of Manager and its Affiliates;
- (f) in the event that the Proposed Assignee does not have a net worth at least equal to \$150,000,000 as of December 31 of the year preceding the proposed date of Assignment, Manager or the Proposed Assignee shall deliver to Corporation and Trustee a guaranty (in form and of substance reasonably satisfactory to Corporation and Trustee) executed by (i) a Person having the required net worth guaranteeing all of the obligations and liabilities of the Proposed Assignee under this Agreement or (ii) Manager, if the Proposed Assignee is an Affiliate of Manager;
- (g) if a guaranty is to be provided pursuant to clause (f), then Manager or the Proposed Assignee shall deliver to Corporation and Trustee a legal opinion, in form and substance, and from a law firm, satisfactory to Corporation and Trustee, opining as to the enforceability of the guaranty;
- (h) if the Proposed Assignee is an Affiliate of Manager, then Manager shall not be relieved of any of its obligations or liabilities hereunder; and
- (i) Manager shall give Corporation notice of an Assignment to the Proposed Assignee, which notice shall (i) identify in reasonable detail the owners of the Proposed Assignee, (ii) in the case of an Affiliate, provide proof (including a legal opinion) reasonably satisfactory to Corporation and Trustee that the Proposed Assignee falls within the definition of an Affiliate of Manager, (iii) in the case of a merger, consolidation, or reorganization of Manager or acquisition of assets of Manager, provide proof of the same reasonably satisfactory to Corporation and Trustee, and (iv) be accompanied by the latest available audited and unaudited financial statements of the Proposed Assignee or other information with respect to such proposed Assignment reasonably necessary for Corporation to determine if the proposed Assignment is a permitted Assignment under this Article.

### 9.3 Assignment by Corporation.

9.3.1 Certain Permitted Assignments. Notwithstanding anything to the contrary in this Agreement but subject to the provisions of Section 4.7 and Section 11.6 of this Agreement, Corporation may sell, transfer, assign, or convey the Hotel or any part thereof or any constituent ownership interest in Corporation, and effect an Assignment of this Agreement, or any interest therein, to any Person who satisfies all of the following requirements:

- (a) is not (and is not an Affiliate of) a national or international chain manager of Upper Upscale Hotels;

- (b) is not (and is not an Affiliate of a Person) generally recognized in the community as being of ill repute and is not in any other manner a Person with whom a prudent business person would not wish to associate in a commercial venture or a Person that would be considered by regulators in the gaming industry to be an unsuitable business associate of Manager and its Affiliates; and
- (c) has the ability to fulfill Corporation's financial obligations hereunder.

Corporation shall give Manager not less than 30 days advance written notice of its intention to sell, transfer, or convey the Hotel or effect an Assignment of this Agreement, which notice shall identify in reasonable detail the ownership of the proposed transferee or assignee. Except in the case of a foreclosure sale, Manager shall have the right to require as an additional condition precedent of the consummation of any such sale or lease that all existing defaults by Corporation be cured, or that arrangements reasonably 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. Notwithstanding the foregoing, so long as no Bonds remain Outstanding under the Indenture, 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, but if such defaults are not cured, Manager shall have the right to terminate this Agreement. In the case of a sale, conveyance or transfer of the Hotel, and/or an Assignment, 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. The terms of this Section shall not apply to any transfer in accordance with Section 4.7 of this Agreement provided that the transferee 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.

9.3.2 Rights to Encumber. Without limiting the generality of and notwithstanding Section 9.3.1, Corporation may mortgage, hypothecate, encumber, pledge, assign or grant a security interest in the Hotel and/or this Agreement in connection with the Bonds or other financing transactions subject in all respects to the terms and conditions set forth in Section 4.7 and Article 6 hereof.

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 Corporation or, in the case of an assignment under Section 9.2.2 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 Corporation, the assignee agrees to 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, provided the Proposed Assignee complies with the criteria of Section 9.3 of this Agreement; provided further, that notwithstanding anything herein to the contrary, if the Trustee exercises foreclosure rights, the Trustee shall not be liable for any obligations of Corporation accrued prior to ownership of the Hotel and Trustee's liability shall be solely limited to its period of ownership of the Hotel.

## Article 10 Resolution of Disputes

## 10.1 Alternative Dispute Resolution Required

10.1.1 Administration of Mediation. The Parties shall attempt to resolve any Arbitrable Dispute through a process of mediation administered by J.A.M.S./Endispute, Inc. or its successors ("JAMS") or American Arbitration Association ("AAA") or any other similar arbitration/mediation service mutually acceptable to the Parties. If, at the time such a dispute arises, JAMS or AAA does not exist or is unable to administer the mediation of the dispute in accordance with the terms of this Article 10 and the Parties are unable to mutually agree upon another arbitration/mediation service within five Business Days thereafter, then the mediation will be administered, in accordance with the terms of this Article 10, by United States Arbitration and Mediation or its successors ("USA&M"). If USA&M is similarly unavailable or unable to administer the mediation and the Parties cannot agree on the identity of a substitute service provider, then the complaining Party shall petition to the appropriate court of the county in which the Hotel is located to identify a substitute service provider, who will administer the dispute resolution process in accordance with the foregoing and the remaining provisions of this Article 10. The service provider identified in accordance with the provisions of this Section 10.1.1 shall be referred to as the "ADR Provider."

10.1.2 Conducting Mediation. The Parties shall attempt to settle the dispute by participating in at least ten hours of mediation at the offices of the ADR Provider. The complaining Party must notify the other Party that a dispute exists and then contact the ADR Provider to schedule the mediation conference. A designated individual mediator will then be selected in accordance with the rules of the ADR Provider to conduct the mediation, provided that such mediator must have experience in the hospitality industry and must not have any conflict of interest. The mediation will be a non-binding conference between the Parties conducted in accordance with the applicable rules and procedures of the ADR Provider. Neither Party may initiate litigation or arbitration proceedings with respect to any dispute until the mediation of such dispute is complete or timely attempted in accordance with the last two sentences of Section 10.1.2. Any mediation will be considered complete: (a) if the Parties enter into an agreement to resolve the dispute; (b) with respect to the Party submitting the dispute to mediation, if the other Party fails to appear at or participate in a reasonably scheduled mediation conference; or (c) if the dispute is not resolved within five days after the conclusion of the mediation conference. The mediation conference shall occur within one day or two consecutive days. Such conference shall be scheduled and held within ten days of notice of the dispute.

10.1.3 Arbitration or Litigation if Mediation Fails. If any dispute remains between the Parties after the mediation is complete or timely attempted in accordance with the last two sentences of Section 10.1.2, then either Party may commence legal proceedings to resolve such dispute; provided, however, that if the dispute is an Arbitrable Dispute, either Party may require that the dispute be submitted to final and binding arbitration (without appeal or review) in the county in which the Hotel is located, administered by the ADR Provider under its then-current rules. The arbitrator must have experience in the hospitality industry and must not have any conflict of interest.

10.1.4 Period Within Which Arbitration or Litigation Must Be Commenced. Any litigation or arbitration of a dispute (including an Arbitrable Dispute) must be initiated within 18 months from the date on which either Party first gave written notice to the other of the existence of the dispute, and any Party who fails to commence litigation or arbitration within such 18-month period shall be deemed to have waived any of its affirmative rights and claims in connection with the dispute and shall be barred from asserting such rights and claims at any time thereafter. An arbitration shall be deemed commenced by a Party when the Party sends a notice to the ADR Provider, with a copy of the notice to the other Party, identifying the Arbitrable Dispute and requesting arbitration. Litigation shall be deemed commenced by a Party when the Party serves a complaint on the other Party with respect to the dispute.

10.1.5 Compensation of Mediator or Arbitrator. Subject to the right of the prevailing Party to seek reimbursement from the other Party pursuant to Section 10.3 of this Agreement, the Parties agree to share equally the costs, including fees, of the ADR Provider selected or appointed under this Article 10. As soon as practicable after selection of the ADR Provider, the ADR Provider or its designated representative shall determine a reasonable estimate of the ADR Provider's anticipated fees and costs and send a statement to each Party setting forth that Party's equal share of the fees and costs. Each Party shall, within ten days after receipt of the statement, deposit the required sum with the ADR Provider.

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

10.3 Expenses. The prevailing Party in any arbitration, suit or other action arising out of or related to this Agreement shall be entitled to recover from the other Party all reasonable attorneys' fees and its reasonable out-of-pocket arbitration costs and expenses incurred in connection with the action, including reasonable attorneys' fees, expenses, and disbursements, and fees, costs, and expenses relating to any mediation, arbitration and/or litigation, as applicable. If any Party secures a judgment in any proceeding brought to enforce or interpret this Agreement, then any costs or expenses (including reasonable attorneys' fees) incurred in enforcing, or in appealing from, such judgment shall be payable to the prevailing party by the Party against whom such judgment has been rendered and shall be recoverable separately from and in addition to any other amount included in such judgment. A "*prevailing party*" shall be a party who is successful on its claim or appeal brought in the arbitration or litigation process, as determined by the ADR Provider or the court. If both parties are a prevailing party, then the arbitrator or court shall award attorneys' fees and allocate costs as it determines to be fair and equitable, in its sole discretion. Notwithstanding the foregoing, a party shall not be a prevailing party if such party is awarded less than 75% of the amount of the claim for which it sought recovery.

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

## Article 11 **Intellectual Property**

11.1 Ownership of Trademark. Corporation 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 whomever developed.

11.2 Use of Trademarks. As part of the management 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. Corporation 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), Corporation may not use any of the Trademarks as all or part of its legal name or any other trade or assumed name under which Corporation does business, and Corporation shall disclose in any trade or assumed name filing that the Hotel is independently managed and that Corporation has no ownership rights in the Trademarks. Except as provided in Section 11.3 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 Corporation shall not combine any of the Trademarks with any other trademark, service mark or logo.

11.2.2 Manager's Rights Regarding Trademarks. Manager reserves the sole right and discretion to:

- (a) set reasonable minimum operating standards (consistent with the Operating Standard and the other provisions of this Agreement) associated with the Trademarks for the Hotel which must be met as a condition of continued association with the "Hilton" brand name;
- (b) determine how and on what materials the Trademarks may be used;
- (c) require the signing of secrecy agreements by Hotel Personnel and third parties to protect the confidentiality and the proprietary nature of the Trademarks;
- (d) 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
- (e) handle disputes and control actual or threatened litigation with third parties relating to any part of the Trademarks.

11.3 Manager's Rights Regarding Hilton Name. Corporation recognizes that the name "Hilton" when used alone or in conjunction with some other words, and that the stylized "H" used by Manager, together with the other names, logos or designs relating to the Trademarks are owned by Manager or one or more of its Affiliates and are the exclusive property of Manager or its Affiliates (herein called "*Hilton Owned Hotel Names*"). Accordingly, Corporation agrees that no right or remedy of Corporation for any default of Manager hereunder shall, nor shall any provisions of this Agreement, confer upon Corporation, its successors or assigns the right to use Hilton Owned Hotel Names in the operation of the Hotel, or otherwise, nor to hold the Hotel out as a Hilton Hotel, after the expiration or earlier Termination of this Agreement. On the expiration or earlier Termination of this Agreement, all exterior and interior signs containing any Hilton Owned Hotel Name and all forms of advertising, stationery, folio, menus, invoices, contract forms, brochures and other promotional material using a Hilton Owned Hotel Name shall be removed consistent with Section 4.9.3. Corporation shall discontinue all use of Hilton Owned Hotel Names, including without limitation, any such Hilton Owned Hotel Names on all of the foregoing, with the exception that Corporation shall not be in breach of this covenant as a result of Manager's failure to remove from the Hotel such exterior and interior signs or such advertising, stationery, folio, menus, invoices, contract forms, brochures, or any other items which bear a Hilton Owned Hotel Name. Moreover, Corporation shall not be responsible for causing billboard companies to remove a Hilton Owned Hotel Name from its billboards. In the event of any breach of this covenant by Corporation, Manager, in addition to any remedies available to it hereunder, at law or in equity, shall have the right to injunctive relief.

11.4 Name of Hotel. At all times during the Operating Term, the Hotel will be operated under the "HILTON" brand and the name of the Hotel will continue as the "Hilton Austin" or any other name

mutually agreed upon by Manager and Corporation. If Manager and its Affiliates change the brand name used in the system-wide identification of the Other Hilton Hotels, the Hotel name may be changed, at Manager's expense, without Corporation's consent, to reflect the change in the system-wide identification, provided, that if the system-wide identification, as changed, is no longer generally known as an Upper Upscale Hotel brand, then Corporation may terminate this Agreement by delivering written notice thereof without payment of any Termination Fee. If at any time the brand name "HILTON" is no longer generally known as an Upper Upscale Hotel brand, then Manager shall consider operation of the Hotel under another comparable hotel brand operated by Manager or its Affiliates that is generally known as an Upper Upscale Hotel brand, or the highest name brand that is not a luxury collection brand; provided, however, the foregoing shall not affect Manager's obligation to manage the Hotel under the Operating Standard. If Manager fails to operate the Hotel under another hotel brand acceptable to Corporation, then Corporation may terminate this Agreement as its sole remedy by delivering written notice thereof to Manager and no Termination Fee shall be payable to Manager hereunder.

#### 11.5 Obligations of Corporation.

11.5.1 Prohibition on Advertising. Without first obtaining Manager's consent, Corporation shall not publish any Hotel advertising materials or implement any Hotel advertising or promotional programs of its own.

11.5.2 Trademark Litigation. Corporation shall promptly notify Manager of any litigation filed or threatened against Corporation involving the Trademarks, as well as any apparent third-party infringement of the Trademarks of which Corporation becomes aware and, at Manager's expense, shall cooperate fully with Manager on such matters.

11.6 Proprietary Information. Corporation acknowledges that Manager or one of its Affiliates is or will become the owner or licensee of certain intellectual property (the "*Manager's Intellectual Property*") including (a) software in use at one or more Other Hilton 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 ("*Manager's Proprietary Software*"), 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 Corporation or any third parties.

11.7 Certain Rights of Manager in Connection with a Sale of the Hotel. If Corporation elects to sell the Hotel during the term of this Agreement through a public or private bid process, Corporation will give Manager notice thereof at the time that notice is given to the public or to private bidders, as applicable, and Manager shall have the right to participate as a bidder in connection with such sale, provided that (i) Manager then meets the qualifications applicable to all other bidders, (ii) such bid shall be subject to and submitted in accordance with all qualifications, requirements and limitations which Corporation imposes on each of the other bidders, and (iii) Corporation shall have no obligation whatsoever to accept Manager's bid. Corporation shall take no actions and shall not request any party to take actions for the specific purpose of or which is intended to have the effect of eliminating Manager from a bidding process. As an example of the intent of the preceding sentence, Corporation may not include a provision in a bid that prohibits a corporation that owns hotels from participating in the bidding process. If Corporation hereafter elects to sell the Hotel through a process other than a public or private bid process, Corporation shall give Manager notice of its intent to sell the Hotel at least 15 days prior to accepting any other offer to acquire the Hotel. Corporation shall allow Manager to submit an offer to Corporation for Manager's acquisition of the Hotel, provided that (a) such offer is submitted to Corporation within 15 days after Corporation delivers to

Manager the notice of Corporation's intent to sell the Hotel, and (b) Corporation shall have no obligation whatsoever to accept Manager's offer for acquisition of the Hotel.

## Article 12 Miscellaneous

### 12.1 Interpretation.

12.1.1 Recitals. The Recitals set forth at the beginning of this Agreement and Exhibits A-Y attached to this Agreement are hereby incorporated in and made a part of this Agreement.

12.1.2 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.

12.1.3 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.

12.1.4 Section References. In this Agreement, any reference to a Subsection, Section or an Article is a reference to a Subsection, Section or Article of this Agreement, unless otherwise specified.

12.2 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.

12.3 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.

12.4 Meaning of "Consistent With". Whenever a provision in this Agreement specifies that an expenditure or an action shall be "consistent with" the Operating Plan and Budget or the Capital Budget, the determination of consistency shall be made in light of the level of detail set out in the Operating Plan and Budget and the Capital Budget, as applicable, with respect to the type of expenditure or action at issue.

12.5 Representations and Warranties of Manager. Manager represents and warrants to and covenants with Corporation as of the Effective Date as follows:

12.5.1 Due Organization, Etc. Manager is duly organized, validly existing, and in good standing, 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. Manager's execution, delivery, and performance of this Agreement have been duly authorized.

12.5.2 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.



12.5.3 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.

12.5.4 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.

12.5.5 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.

12.5.6 Operation of Hotel. Manager shall not operate the Hotel in any manner or for any purposes, other than as herein set forth.

12.5.7 Required Approvals. Manager shall maintain throughout the Operating Term all Approvals that are in its name or an Affiliate's name and that are necessary to operate the Hotel.

12.5.8 No Abandonment. Subject to the Termination provisions in this Agreement, Manager shall not abandon the Hotel during the Operating Term (subject to a Force Majeure Event).

12.5.9 No Hazardous Materials. Manager shall not knowingly use or occupy, or knowingly permit 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 Materials), 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 Corporation recognizes and agrees that operations of the Hotel in the ordinary course of business and the holding of events in the Hotel meeting the Operating Standard shall not, in and of itself, constitute a nuisance.

12.5.10 Limitation on Alterations. Manager shall not make, authorize or permit any material modifications or alterations to the Hotel, except as expressly authorized by this Agreement or by an approved Capital Budget.

12.6 Representations and Warranties of Corporation. Corporation represents and warrants to Manager as of the Effective Date and the Required Opening Date, as follows:

12.6.1 Due Organization, etc. Corporation is duly organized, validly existing, and in good standing and 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. Corporation's execution, delivery, and performance of this Agreement have been duly authorized.

12.6.2 Valid and Binding Obligation. This Agreement constitutes a valid and binding obligation of Corporation and does not constitute a breach of or default under the corporate documents or bylaws of Corporation or the terms, conditions, or provisions of any law, order, rule, regulation, judgment, decree, agreement, or instrument to which Corporation is a party or by which it or any of its assets is bound or affected.

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

12.6.4 Continuing Legal Existence. Corporation shall, as an Administrative Expense, keep in full force and effect throughout the Operating Term its legal existence as a non-profit public facility corporation.

12.6.5 Required Approvals. Corporation 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.

12.6.6 No Adverse Litigation/Condemnation. There is no litigation or proceeding pending or threatened against Corporation, or to the knowledge of Corporation, against the Land, that could adversely affect the validity of this Agreement or the ability of Corporation to comply with its obligations under this Agreement. Corporation is not aware of any condemnation proceeding pending or threatened against the Land or any portion thereof.

12.6.7 Environmental. Except as disclosed in the Environmental Site Assessments delivered to Manager, Corporation has no actual knowledge that the Land violates any environmental Legal Requirement. Manager hereby acknowledges receipt of the Environmental Site Assessments.

12.6.8 Rights to Purchase. Corporation has not granted any other person the right to purchase the Hotel, except for foreclosure rights contained in the Bond Documents and the rights granted to Manager under Section 11.7 of this Agreement.

12.7 Parking. Under the Condominium Documents, Corporation has the exclusive right to use the Hotel Unit's Parking Spaces. Corporation has the right to approve the parking plan for the Garage and will involve Manager in all decisions concerning the parking plan.

12.8 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 Corporation, 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 Corporation for the Affiliate's performance, and Corporation 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.

12.9 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 Texas. 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 the 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) (i) acknowledges the competence of any such court, (ii) submits to the jurisdiction of any such court in any such suit, action or proceeding, and (iii) 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) submits to the non-exclusive jurisdiction of the Federal Courts in the County, 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: Corporation Service Company, d/b/a CSC – Lawyers Incorporating Servicing Company, 800 Brazos, Austin, Texas 78701, 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.

12.10 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. Corporation 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, as set forth in Section 11.06(c) of the Indenture. Corporation 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 Section 11.06(c). 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.

12.11 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.

12.12 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, by facsimile transmission (with telephonic confirmation of receipt), DHL, 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 12.13. All such communications from Manager to Corporation shall also be given by Manager to the Trustee in the same manner as given to Corporation. Until a Party provides a change in address in accordance with this Section 12.13, notices will be sent to the following addresses:

To Manager:	Hilton Management LLC c/o Hilton Worldwide Holdings Inc. 7930 Jones Branch Drive
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McLean, Virginia 22181  
Attention: General Counsel

With a copy to: General Manager  
Hilton Austin  
500 East 4th Street  
Austin, Texas 78701

To Corporation: Austin Convention Enterprises, Inc.  
[ ]  
[ ]  
[ ]  
Telephone No.: [ ]

With a copy to: Winstead PC  
401 Congress Ave., Suite 2100  
Attention: David L. Dawson  
Telephone No.: (512) 370-2847

To Trustee: U.S. Bank National Association  
Corporate Trust Services  
60 Livingston Ave., EP-MN-WS3C  
Saint Paul, MN 55107  
Telephone No.: (651) 466-6302

#### 12.13 Corporation's Indemnity.

12.13.1 Indemnity. To the extent permitted by law, Corporation shall indemnify, defend, and hold Manager and its Affiliates and their respective officers, directors, employees, agents, and assigns (collectively, "*Manager's Parties*") harmless from and against, and reimburse Manager for, any and all claims, demands, actions, causes of action, enforcement proceedings, penalties, suits, liabilities, judgments, damages, losses, counterclaims, executions, liens, debts, costs and expenses, including reasonably attorneys' fees (collectively, "*Claims*") which Manager's Parties or any of them may have alleged against them, incur, become responsible for, or pay out for any reason, but only to the extent arising out of all or any of the following: (a) the ownership, maintenance, improvement, management or operation of the Hotel, provided Manager at all times acts within the scope of its authority under this Agreement and then only to the extent any such Claim is in excess of Insurance Proceeds made available to Manager and other Manager's Parties; (b) a breach by Corporation of any of its obligations, covenants, agreements or representations under this Agreement; (c) an Event of Default by Corporation; (d) contamination of or any adverse effects on the environment with respect to the Hotel, provided same was not caused by Manager or any of its employees and further provided that the contamination occurred during the period of Corporation's ownership of the Hotel; (e) any violation of any Legal Requirements with respect to the design or construction of the Hotel; or (f) Corporation's Negligent or Willful Acts, but only to the extent the Claims arising out of thereof are in excess of available Insurance Proceeds. Notwithstanding the foregoing, in no event will Corporation's indemnity, hold harmless or defense agreements extend to (i) any breach of any of Manager's obligations, covenants, agreements or representations contained in this Agreement or the Room Block Commitment, (ii) Manager's Negligent or Willful Acts, (iii) an Event of Default by Manager under this Agreement, or (iv) any other matters with respect to which Manager has indemnified Corporation under Section 12.15.3 of this Agreement.

12.13.2 Treatment of Certain Expenses. Any funds expended on Corporation's indemnity of Manager shall be deemed to be an Operating Expense if the matter for which Manager is being indemnified for (or would have been indemnified for if such indemnity from Corporation is otherwise prohibited by law) would have been an Operating Expense.

12.13.3 Manager's Indemnity. To the extent permitted by law, Manager shall indemnify, defend, and hold Corporation and Trustee and their respective Affiliates and their respective directors, employees, agents, and assigns harmless (collectively, "*Corporation's Parties*") from and against, and reimburse Corporation and Trustee for, any and all Claims, but excluding consequential damages caused by Manager (other than Permitted Consequential Damages), which Corporation, Trustee or all or any of Corporation's Parties may have alleged against them, incur, become responsible for, or pay out for any reason, but only to the extent arising out of all or any of the following: (a) Manager's Negligent or Willful Acts, but only to the extent the Claims arising out of thereof are in excess of available Insurance Proceeds, (b) a breach by Manager of any obligation, agreement, covenant or representation under this Agreement, (c) an Event of Default by Manager, or (d) breach by Manager of any of the Contracts for a reason other than the lack of Sufficient Funds. Notwithstanding the foregoing, in no event will Manager's indemnity, hold harmless or defense agreements extend to (i) any breach of any of Corporation's obligations, covenants, agreements or representations contained in this Agreement or the Room Block Commitment, (ii) Corporation's Negligent or Willful Acts, (iii) an Event of Default by Corporation under this Agreement, or (iv) any other matters with respect to which Corporation has indemnified Manager (or would have indemnified Manager if such indemnity is otherwise prohibited at law) under Section 12.14.1 of this Agreement.

12.13.4 Survival/Exclusion from Indemnity. The obligations set forth in this Section 12.14 shall survive any Termination of this Agreement. In no event shall the settlement by either Party in good faith of any claim brought by a third party (including Hotel Personnel) in connection with the ownership or operation of the Hotel be deemed to create any presumption of the validity of the claim; nor shall any such settlement be deemed to create any presumption that the acts or omissions giving rise to such claim constituted Manager's or Corporation's Negligent or Willful Acts or an Event of Default or breach by Manager or Corporation under this Agreement. Notwithstanding any contrary provision of this Section 12.14, Corporation 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.

12.13.5 Consequential Damages. The foregoing indemnities, hold harmless and reimbursement agreements shall apply to consequential damages only to the extent covered by insurance policies maintained or required to be maintained under this Agreement ("*Permitted Consequential Damages*").

12.14 Force Majeure Events. If, at any time during the Operating Term, Corporation 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 Corporation 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 Corporation 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 Corporation deem that the reopening and commencement of operations may be done pursuant to applicable Legal Requirements and without jeopardy to the Hotel, its guests or Hotel Personnel. 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.

12.15 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 "Corporation" and "Manager" as used in this Agreement shall include all permitted successors and assigns of the original Parties.

12.16 Estoppel Certificates. On request at any time and from time to time during the Operating Term, Manager shall execute, acknowledge, and deliver to Corporation, Trustee or any Mortgagee, 20 days following Manager's receipt of written request therefor, a certificate: (a) certifying that this Agreement has not been modified 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 default exists, including any Event of Default, and if so, specifying each default of which the signatory may have knowledge; and (c) providing any additional information and statements as may be reasonably requested by Corporation, the Trustee, or any other Mortgagee; 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. On similar notice, Manager shall be entitled to a similar certificate from Corporation with respect to this Agreement or any Mortgage or any ground lease covering the Land.

12.17 Entire Agreement. Subject to Section 6.2.1 herein, this Agreement, and the Room Block Commitment constitutes the entire 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 Commitment, the Room Block Commitment 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. Neither Party shall have any remedy in respect of any untrue statement made by the other Party on which that Party relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that Party's only remedy shall be for breach of contract as provided in this Agreement.

12.18 Counterparts. This Agreement may be executed in several counterparts, including electronic or pdf counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

12.19 Relationship of the Parties. Manager and Corporation 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 Corporation 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 Corporation except as expressly set forth in this Agreement.

12.20 Confidentiality.

12.20.1 Generally. Subject to Sections 12.21.2 and 12.21.3 hereof and any disclosure required pursuant to the Indenture, 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. Except as disclosure may be required to obtain the advice of professionals or consultants, financing for the Hotel from a lender or potential lender, or investors or potential investors in the Hotel or any Corporation Affiliate, or in furtherance of a permitted Assignment of this Agreement, or as may be required by law or by the order of any government, governmental or quasi-governmental unit, tribunal, or otherwise to comply with Legal Requirements (including reporting requirements applicable to public companies), each Party shall make every effort to ensure that such information is not disclosed to the press or to any other third party or entity without the prior consent of the other Party. The obligations set forth in this Section 12.21.1 shall survive any Termination of this Agreement for a period of two years 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) or a comparable hospitality industry reporting service unless approved in writing by Corporation.

12.20.2 Open Records Information. If Manager receives a request under the Texas Public Information Act pertaining to the Hotel, Manager will promptly inform Corporation thereof.

12.20.3 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 Registered Owners of the Bonds and their legal counsel and other representatives reviewing this Agreement on their behalf, 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.

12.21 Limitation on Pledging Corporation'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 Corporation or pledge the credit of Corporation, without Corporation's prior written and express consent.

12.22 Exculpation. Notwithstanding any provision to the contrary herein contained, none of the Trustee, Registered Owners of the Bonds nor Affiliates of any thereof, nor any officer, director, employee or agent of Corporation, the Trustee, Registered Owners of the Bonds or their Affiliates, or 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 Corporation hereunder and, except as otherwise expressly provided in this Agreement, Manager agrees it shall not seek to obtain a money judgment against Trustee, Registered Owners of the Bonds or Affiliates of any thereof, or against any officer, director, employee or agent of Corporation, the Trustee, Registered Owners of the Bonds or their Affiliates, or against any of their respective heirs, administrators, executors, personal representatives, successors or assigns. The City of Austin is distinct from Corporation and shall have absolutely no liability or obligation hereunder. All accrued liabilities of Corporation to Manager at Termination of this Agreement shall be due and owing upon Termination.

12.23 Restrictive Covenant. Manager and its Affiliates shall not at any time from the Effective Date through December 31, 2027, without the prior written consent of Corporation, own, lease, operate,

manage, license, franchise, or merge with, in whole or in part, directly or indirectly, a Restricted Hotel that is within the area bounded by Nueces street to the west, I-35 to the east, 12th street to the north, and Ladybird Lake to the south (the "*Restricted Area*").

"*Restricted Hotel*" shall mean any hotel or motel facility which is **operated** under the "Hilton" brand as a full service hotel but shall not include or apply to (i) Hilton Worldwide Holdings, Inc. or its Affiliates or (ii) any other hotel that is branded under a chain of hotels that includes the word "Hilton" within the brand names (including, for example, but without limitation Hilton Garden Inn, Canopy by Hilton, Home2 Suites by Hilton, Hampton Inn by Hilton, Hilton Grand Vacations, Tempo by Hilton, Homewood Suites by Hilton, Doubletree by Hilton, Curio – a Collection by Hilton, Motto by Hilton, Tru by Hilton, Signia by Hilton, Tapestry Collection by Hilton, Embassy Suites by Hilton, etc.).

12.24 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 Corporation 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; provided that no interest shall be payable on amounts owed by Corporation 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 Corporation has failed to provide adequate funds following request by Manager in accordance with this Agreement). In no event will Corporation be entitled to pay or charge interest in excess of any statutory limitations on interest applicable to Corporation.

12.25 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. Corporation hereby consents to the execution and delivery by Corporation and Manager of this Agreement.

12.26 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. The Trustee shall be a third party beneficiary hereunder and all indemnities and disclaimers in favor of Corporation shall extend to the Trustee as a third party beneficiary hereunder. As a third party beneficiary, Trustee shall have the right to enforce its rights hereunder and exercise any rights it has with respect to the Hotel under the Indenture, as a result of any assignment pertaining to this Agreement, or under any other Bond Document; provided that other than as expressly provided herein or as set forth in the Indenture, the Trustee shall have no additional or different rights than Corporation has hereunder. Manager acknowledges that the Trustee has certain approval rights to the consents, approvals and other actions by Corporation in this Agreement.

12.27 Sale of Securities. In the event Corporation, or any person controlling Corporation shall, at any time or from time to time, sell or offer to sell, any securities (including the Bonds) issued by Corporation, Corporation 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 and certify that such information is true and correct in all material respects and does not omit a material fact necessary to make such disclosure true and correct. For the avoidance of doubt, information relating to Manager and its Affiliates in any prospectus shall be limited to information publicly available pursuant to Manager or its Affiliates then-most recent quarterly filings. All terms used in this Section 12.28 shall have the same meaning as in the Securities Act of 1933, as amended.

12.28 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.

12.29 Delivery of Information for Approvals Generally. With respect to approvals to be obtained from either Corporation 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.

12.30 Closing Costs. All legal fees and other fees and expenses of Corporation and Manager incurred in the course of consummating this Agreement shall be borne exclusively by Corporation and Manager, respectively.

12.31 Property Improvement Plan. Corporation agrees to undertake and complete the Capital Improvements described in the Property Improvement Plan attached hereto as Exhibit Y ("*PIP*") on or before the dates set forth therein; provided, however, that if funds under the Indenture are not available for the timely completion of the PIP, the Parties may mutually agree in writing to revise the PIP or to extend the time for the completion thereof.

12.32 Exhibits. The Exhibits which are attached to this Agreement and made a part of this Agreement for all purposes are as follows: [NTD - To be updated. Eliminate unnecessary exhibits.]

Exhibit A	Glossary of Defined Terms
Exhibit B	Legal Description of the Site
Exhibit E	Cash Management Agreement
Exhibit F	
Exhibit G	Incentive Compensation Metrics
Exhibit G-1	
Exhibit H	
Exhibit J	Form of Request for Reimbursable Expense
Exhibit K	Form of Request for FF&E and Capital Expenses
Exhibit L	List of Insurance and Insurance Requirements (including subrogation provisions)
Exhibit M	Existing Mortgages
Exhibit N	Intentionally Omitted
Exhibit O	Intentionally Omitted
Exhibit Q	Intentionally Omitted
Exhibit R	Intentionally Omitted
Exhibit S	List of Hotel Consultants
Exhibit U	Intentionally Omitted
Exhibit W	Intentionally Omitted

Exhibit X	Annual Independent Accounting
Exhibit X-1	Certificate of No Direct or Indirect Profit
Exhibit Y	Property Improvement Plan

12.33 Amendments to Indenture. Any amendment to the Indenture or other Bond Documents shall be subject to the prior written approval of Manager if, in the good faith judgment of Manager, such amendment has the effect of materially altering any rights of Manager under this Agreement or imposing any additional material or economic burdens on Manager, such approval not to be unreasonably withheld, conditioned or delayed. The foregoing does not apply to the Cash Management Agreement, it being understood that Manager is a party to such agreement and therefore such agreement requires Manager's execution to any proposed amendment.

12.34 Amendment to Condominium Documents. At least ten days prior to agreeing to any amendment to the Condominium Documents, Corporation will deliver to Manager copies thereof. Corporation will not agree to any provision in any such amendment if in the reasonable opinion of Manager delivered within ten days after the receipt of the proposed amendments to the Condominium Documents such amendments will have the effect of imposing additional material obligations or any economic burdens on Manager, without Manager's prior written consent which consent may not be unreasonably withheld.

12.35 Anti-Corruption and Trade Restrictions. [NTD – This section remains subject to negotiation.] Each Party, in respect of itself, represents and warrants to the other Party that:

12.35.1 it is not a Sanctioned Person;

12.35.2 any funds received or paid in connection with entry into or performance of this Agreement, including any Key Money, 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; and

12.35.3 it or any of its directors, executive officers, and senior management has not been convicted of, pleaded guilty to, or has not otherwise been adjudged liable for any violation of laws, ordinances, rules or regulations that pertain to bribery or corruption, money laundering, competition, securities or financial fraud, trade sanctions or export controls, human trafficking, sex trade or forced labor.

12.36 Limitations on Fiduciary Duties. To the extent the relationship between the Parties is deemed to be that of a principal, in the case of Corporation, and agent, in the case of Manager, the following provisions shall apply:

- (a) This Agreement and any liability between the Parties will be interpreted in accordance with general principles of contract interpretation, without regard to the common law principles of agency. To the extent any fiduciary or other duties that exist or are implied under the common law principles of agency or otherwise, 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 are inconsistent with, or would have the effect of modifying, limiting or restricting, the express provisions of this Agreement, the terms of this Agreement will prevail. Furthermore, for purposes of assessing Manager's duties and obligations under this Agreement, 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 or other Implied Duties which may exist between the Parties.

Corporation specifically consents to all transactions by Manager described in this Agreement.

- (b) Except as provided in Section 12.23 and , Manager and its Affiliates may establish or engage in any business of any kind or participate in any investment of any kind, whether use any of the Trademarks or any other proprietary of Manager, at any location, in Manager's sole discretion.
- (c) Subject to Sections 2.4, 2.26, 2.30 and 12.8, Manager may elect to use the services of its Affiliates in fulfilling its obligations under this Agreement.
- (d) Subject to Section 2.23, 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.
- (e) Subject to Section 2.26, 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.
- (f) Manager and its Affiliates may use the Hotel Guest Data in any manner permitted by law.
- (g) Manager is permitted to use the funds in the Lockbox Fund and Clearing Bank Accounts for the purposes described in this Agreement.

(Remainder of Page Intentionally Left Blank)

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first above written.

**HILTON MANAGEMENT LLC,**  
a Delaware limited liability company

By: Hilton Domestic Operating Company Inc.

\_\_\_\_\_  
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AUSTIN CONVENTION ENTERPRISES, INC.,**  
a Texas nonprofit public facility corporation

\_\_\_\_\_  
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**GLOSSARY OF DEFINED TERMS**

"AAA" has the meaning given in Section 10.1.1.

"*Account or Accounts*" shall mean 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 Bonds*" shall mean any additional Bonds issued by Corporation pursuant to Section 3.02 of the Indenture to refund any Bonds previously issued thereunder or to make additional improvements and/or renovations to the Hotel; provided that the Additional Bonds shall never constitute Series 2017 Bonds.

"*Administrative Expenses*" shall mean the reasonable fees and expenses of Corporation, the Asset Manager and the Trustee (inclusive of the salaries and wages of Corporation's executive and administrative personnel and fees and expenses of any consultants retained by Corporation, but specifically excluding any legal judgments, settlements or similar resolutions of disputes reduced to a monetary amount against Corporation, unless such judgment, settlement or similar resolution of dispute arises out of the acts or omissions of the Manager), paid in accordance with the Indenture and directly relating to the Hotel and limited as provided in the applicable Operating Plan and Budget. Corporation shall have the right to engage legal counsel as it determines appropriate and the fees and expenses of such legal counsel, as approved by Corporation, shall be deemed reasonable.

"*ADR Provider*" has the meaning given in Section 10.1.1.

"*Affiliate*" shall mean (i) with respect to Manager and Corporation as of the relevant date in question, any other Person directly or indirectly controlling, controlled by, or under common control with Manager or Corporation, as the case may be, and any Person directly or indirectly controlling, controlled by or under common control with such entities and, without limiting the generality of the foregoing, shall include (a) any Person which beneficially owns or holds 50% or more of any class of voting securities of such designated Person or 50% or more of the equity interest in such designated Person and (b) any Person of which such designated Person beneficially owns or holds 50% or more of any class of voting securities or in which such designated Person beneficially owns or holds 50% or more of the equity interest. For greater clarity, the Parties acknowledge that 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; provided, however, solely for purposes of any provision of the Management Agreement pertaining to contracts between Manager and any Manager Affiliate, an Affiliate of Manager shall be deemed to include any entity in which Manager owns (directly or indirectly) more than a 50% equity interest or otherwise participates in more than 50% of the profits or revenues of such entity (excluding such participation that represents management fees to Manager); and further provided, however, that for purposes of Section 2.26 of the Management Agreement the applicable percentage with respect to Manager shall be 25%. Under no circumstances shall the Trustee or any Registered Owner be deemed to be Affiliate of Corporation.

"*Agreement*" means this Amended and Restated Hotel Operating Agreement dated to be effective as of the Effective Date, as this same may be further amended, supplemented or modified in accordance with the terms hereof and with the terms of the Indenture.

"*Annual Independent Accounting*" has the meaning given in Section 2.22.3.

"*Anti-Corruption Laws*" all applicable anti-corruption, anti-bribery, anti-money laundering, books and records and internal controls laws.

"*Approvals*" shall mean licenses, approvals, permits, authorizations, registrations, and the like required by any governmental or regulatory organization or unit having jurisdiction over Corporation or the Hotel.

"*Arbitrable Dispute*" shall mean any dispute, claim or issue arising under the Management Agreement with respect to (a) the proper inclusion or exclusion of items in Gross Operating Revenue, Operating Expenses or Total Net Revenues, (b) the proper calculation of Group Services Fees and Charges and Reimbursable Expenses, (c) any dispute regarding the Operating Standard, (d) any disputes arising under Sections 2.18 or 2.19 of the Management Agreement, and (e) any other matter as to which the Management Agreement expressly provides for dispute resolution by arbitration. Notwithstanding the foregoing or any other provision of the Management Agreement, there shall be excluded from Arbitrable Disputes claims and disputes which (i) relate to preserving or protecting Manager's proprietary rights in the proprietary information described in Section 11 in the Management Agreement, (ii) are for extraordinary relief such as injunction or eviction, (iii) either Manager or Corporation asserts against the other in any action brought by a third party and in which Manager and/or Corporation are named or joined defendants, (including counter-defendants and third-party defendants).

"*Arbitration Request*" has the meaning given in Section 2.18.6.1.

"*Asbestos*" shall mean any asbestos or material containing asbestos.

"*Asset Manager*" shall mean a Person with hospitality management experience of at least five years (including at least three years management experience in a hotel similar in size and quality to the Hotel) selected by Corporation with notices to the Bond Insurer, Trustee and Manager of such selection.

"*Assignment*" has the meaning given in Section 9.1.2 of this Agreement.

"*Association*" shall mean the Austin Convention Condominium Association, Inc., a Texas non-profit corporation organized under the Texas Non-Profit Corporation Act pursuant to the formation requirements set out in the Uniform Condominium Act, and created for the purposes and possessing the rights, powers and authority set forth in the Declaration and in the Association Articles.

"*Association Articles*" shall mean the articles of incorporation of the Association filed with the Secretary of State of Texas, as amended from time to time.

"*Available Casualty/Condemnation Amounts*" has the meaning given in Section 7.11 of this Agreement.

"*Available Revenue Fund*" or "*Hotel Available Revenue Fund*" shall mean the Convention Center Hotel Revenue Bond Available Revenue Fund established by Section 5.02 of the Indenture. "*Bankruptcy Code*" shall mean the Bankruptcy Reform Act of 1978, as amended, (11 U.S.C. Section 101, et seq.).

"*Base Management Fee*" means the base management fee of Manager equal to 3% of Gross Operating Revenues, payable pursuant to Section 3.1.2 of this Agreement.

"*Bond*" or "*Bonds*" shall mean the Series 2017 Bonds and any Additional Bonds and Refunding Bonds of the Corporation, authenticated and delivered under and pursuant to the Indenture or under any Supplemental Indenture.

"*Bond Counsel*" means Winstead PC or any other law firm selected by the Corporation, whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized including.

"*Bond Documents*" shall mean the Indenture, Assignment Agreement, Cash Management Agreement, the Hotel Deed of Trust, the Security Agreement and any other agreement relating to the Bonds.

"*Bondholder*" shall mean the person in whose name any of the Bonds are registered on the books kept and maintained by the Trustee as bond registrar.

"*Budget*" shall mean the Operating Plan and Budget and the Capital Budget for the applicable Operating Year.

"*Business Day*" shall mean a day that is not a Saturday, Sunday or legal holiday on which banking institutions in the State of Texas are authorized or required by law or executive order to remain closed.

"*Business Interruption Account*" has the meaning given in Section 8.3.1.

"*Business Interruption Proceeds*" has the meaning given in Section 8.3.1.

"*Bylaws*" shall mean the bylaws of the Association adopted by the Association Board, as amended from time to time.

"*Capital Budget*" shall mean the approved annual plan and budget setting forth all approved Capital Improvements and Capital Expenses for the Hotel for the relevant Operating Year, prepared in accordance with the terms of Section 2.18 of the Management Agreement.

"*Capital Expense*" shall mean any item of expense that, according to Generally Accepted Accounting Principles, is not properly deducted as a current expense on the books of the Hotel, but rather should be capitalized.

"*Capital Improvement*" shall mean an item of any nature incorporated into the Hotel, the cost of which is a Capital Expense.

"*Cash Management Agreement*" shall mean the Amended and Restated Cash Management and Lockbox Agreement, dated as of May 1, 2017, among Corporation, the Trustee, the Depository Bank and the Manager.

"*Cash Trap Fund*" shall mean the Convention Center Hotel Revenue Bond Cash Trap Fund established pursuant to Section 5.02 of the Indenture.

"*Casualty*" shall mean, for the purposes of the Management Agreement, 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, for the purposes of the Management Agreement, the proceeds (excluding Business Interruption Proceeds) paid under any casualty and property insurance policy maintained by Manager or Corporation with respect to the Hotel, in accordance with the terms of the Management Agreement, as a result of damage to or destruction of the Hotel arising as a result of a fire or other casualty.

"*Casualty Restoration*" has the meaning given in Section 7.2.

"*Certificate of Occupancy*" shall mean a certificate or certificates, as applicable, issued by the City that permits legal and beneficial occupancy, operation and use of the Hotel without interruption for each of its intended purposes, which certificate or certificates may be issued with or without qualification so long as any qualification shall not prohibit, restrict or impair such occupancy, operation or use.

"*Certified Financial Statements*" shall mean audited financial statements of Corporation relating to the Hotel consisting of a statement of net position, a statement of revenues and expenditures and a statement of cash flows 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*" shall mean the City of Austin, Travis County, Texas, a municipal corporation.

"*Claims*" has the meaning given in Section 12.14..

"*Clearing Bank Accounts*" shall mean the accounts, bearing the name of the Trustee so long as the Indenture is in effect and otherwise bearing the name of the Corporation, at a bank or banks selected by the Corporation, for the purpose of depositing all Gross Operating Revenues, whether from Manager, from credit card companies, or anyone, each of which shall be given instructions to make deposits in the Clearing Bank Accounts pursuant to the Cash Management Agreement.

"*Closing Date*" shall mean the date of issuance of the 2017 Bonds.

"*Code*" shall mean the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations proposed or in effect with respect thereto.

"*Common Elements*" shall have the meaning set forth in the Declaration.

"*Competitive Set*" shall mean, from time to time during the Operating Term, at least five hotels (not counting the Hotel) in the downtown Austin market that are most comparable to the Hotel in quality, price and market segment (with due consideration given to age, quality, number of guest rooms, room size, facilities, meeting space accommodations and business mix), as determined in accordance with Section 4.5.2. Notwithstanding the foregoing, the initial Competitive Set as of the Effective Date shall consist of the following four hotels (in addition to the Hotel): (i) the HGI Austin Downtown, (ii) the Hyatt Regency Austin, (iii) the Omni Austin Downtown, and (iv) the Sheraton at the Capital. Pursuant to Section 4.5.2 hereof, upon the opening of the Austin Marriott Downtown, the Competitive Set shall be automatically modified to consist of the following five hotels (in addition to the Hotel): (i) the Austin Marriott Downtown, (ii) Hyatt Regency Austin, (iii) Omni Austin Downtown, (iv) Westin Austin Downtown and (v) Fairmont Austin.

"*Condemnation Proceeds*" shall mean, for the purposes of the Management Agreement, the proceeds payable in respect of any Taking of all or a portion of the Project or the Hotel, as the case may be.

"*Condominium*" shall mean the form of real property established by the Declaration with respect to the Property, in which portions of the Property are designated for individual ownership or occupancy and the remainder of the Property is designated for common ownership or occupancy solely by the owners of such remainder. The Condominium contains three Legal Units.

"*Condominium Declaration*" or "*Declaration*" shall mean the Condominium Declaration for Neches Hotel Condominiums and all recorded amendments thereto, which Declaration and all amendments thereto, shall be recorded in the County.

"*Condominium Documents*" shall mean, collectively, the Condominium Declaration, the Bylaws, the Association Articles, and the Map.



"*Consultant*" shall mean any Person at the time employed by or on behalf of Corporation (or, to the extent specifically provided in the Indenture or in any Supplemental Indenture, by or on behalf of the Trustee) for the benefit of the Registered Owners to carry out the duties imposed by or pursuant to the Indenture or a Supplemental Indenture, which Person shall be experienced, have a national and favorable reputation in the matters for which such Person is so employed, and be independent of Corporation, Manager and the City.

"*Continuing Disclosure Agreement*" or "*Disclosure Agreement*" shall mean that certain Continuing Disclosure Agreement by and between the Corporation and the Trustee, as Dissemination Agent, dated as of the Series 2017 Bond Effective Date while the Series 2017 Bonds are Outstanding, and each subsequent Continuing Disclosure Agreement executed by the Corporation in connection with each issuance of Additional Bonds while such Additional Bonds are Outstanding.

"*Contracts*" shall mean, with respect to the Management Agreement as applicable, all contracts, agreements and licenses entered into by the Manager for or on behalf of Corporation.

"*Convention Center*" shall mean the Austin Convention Center located across the street from the Land, together with additions and modifications thereto.

"*Convention Center Expansion*" the expansion of the Convention Center to include at least 450,000 square feet of total functional space (including exhibit, ballroom, and meeting space).

"*Convention Center Representative*" shall have the meaning set forth in Section 1.6 of the Room Block Commitment.

"*Corporate Personnel*" shall mean 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 the Management Agreement.

"*Corporation*" means Austin Convention Enterprises, Inc., a Texas nonprofit public facility corporation.

"*Corporation Board*" shall mean the board of directors of the Corporation, or any successor in function.

"*Corporation's Negligent or Willful Act*" shall mean any (i) acts or omissions constituting fraud, negligence, or willful misconduct on the part of Corporation or its Affiliates, their officers, directors, employees, agents, or assigns, or (ii) criminal violation of law by Corporation, Corporation's Affiliates or permitted assignees under the Management Agreement or any of their respective officers, directors or employees.

"*Corporation's Parties*" has the meaning given in Section 12.14.3.

"*County*" shall mean Travis County, Texas.

"*Cure Amount*" means, for the applicable Operating Year, the lesser of either (a) the difference between (i) the amount of Total Net Revenues that would have been necessary to satisfy the Debt Service Coverage Requirement for such Operating Year and (ii) actual Total Net Revenues for the applicable Operating Year; or (b) the difference between (i) the amount of Total Operating Revenues (as defined by the Uniform System) that would have been necessary to meet the REVPAR Performance Standard for the applicable Operating Year and (ii) actual Total Operating Revenues (as defined by the Uniform System) for the applicable Operating Year.

"*Debt Service Coverage Ratio*" shall mean, for any particular period:

- (a) with respect to the Outstanding First Tier Bonds, a fraction calculated by dividing the Total Net Revenues for a particular period of time by the Net Debt Service for the Outstanding First Tier Bonds for the same period of time; and
- (b) with respect to the Outstanding Second Tier Bonds, a fraction calculated by dividing the Total Net Revenues for a particular period of time by Net Debt Service for the Outstanding First Tier Bonds and Second Tier Bonds for the same particular period of time.

"*Debt Service Coverage Requirement*" shall mean, for each Operating Year, a Debt Service Coverage Ratio which is not less than 1.20:1.00 with respect to the Outstanding First Tier Bonds and Second Tier Bonds.

"*Deferred Installment(s)*" has the meaning given in Section 3.1.4.

"*Depository Bank*" shall mean such banking institution or institutions as the Corporation shall from time to time designate, in writing to the Trustee, at which the account or accounts shall be established and maintained with respect to the Lockbox Fund pursuant to the Cash Management Agreement.

"*Direct or Indirect Profit*" shall mean any monetary compensation, other than for the reasonable and actual costs of providing goods, services, supplies, products or equipment (including carrying costs of facilities), whether in the form of a payment, credit, rebate, refund, 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, received by the Manager and/or any of its Affiliates, directly or indirectly, in any calendar year from or on account of the Gross Operating Profit from 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 benefits the Hotel and Other Hilton 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 each hotel in the Hilton System, including the Hotel, 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 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 Hilton 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 the costs);
- (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 Hilton 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) any payment received by the Manager and any of its Affiliates in such calendar year which does not exceed 5% of the Management Fee paid to Manager during such calendar year;
- (g) any payment for hotel rooms, food or other services received by any hotel owned in whole or in part or managed by Hilton or any of its Affiliates in connection with any meetings or other travel involving representatives of Hilton, its Affiliates or the Hotel (i.e. national sales meetings) which payment is paid out of Group Services Fees and Charges 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 Hilton 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.

"Dollars" and "\$" shall mean the lawful money of the United States of America.

"Effective Date" means October 1, 2020, the effective date of the Agreement.

"Emergency" shall mean a situation imminently threatening life, health, or safety.

"Emergency Expenses" shall 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 Claims" shall mean claims, liabilities, investigations, litigation, administrative proceedings, whether pending or to the knowledge of Corporation, threatened, or judgments, orders or anticipated damages in law relating to any Hazardous Materials.

"Environmental Law" shall mean any federal, state, or local law, ordinance or regulation or any court judgment or order of any federal, state or local agency or regulatory body relating to industrial hygiene or to environmental or unsafe conditions including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials and Asbestos, those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation. "Environmental Laws" also shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act and the Occupational Safety and Health Act, and all regulations adopted in respect to the foregoing laws.

"Environmental Site Assessments" shall mean any assessments, audits, investigations, testing, sampling, analysis and similar procedures conducted on the Property for the purpose of identifying Hazardous Materials.

"Event of Default" means an uncured default by an applicable Party under this Agreement beyond applicable cure periods.

"*Event Room Block*" shall mean a block of guest rooms in the Hotel for a series of nights that Corporation, on behalf of a PCC, may reserve in the Hotel pursuant to the Room Block Commitment.

"*Event Room Block Contract*" shall have the meaning assigned to such term in the Room Block Commitment.

"*Excess Revenues Fund*" shall mean the Convention Center Hotel Revenue Bond Excess Revenues Fund established by Section 5.02 of the Indenture.

"*Excluded Taxes and Other Charges*" shall mean any (i) Gross Receipts Taxes; (ii) withholding tax or other employment related taxes; (iii) wage, child support or spousal support garnishments; or (iv) unclaimed property or wages.

"*Executive Staff*" shall mean the persons employed by Manager as the heads of the various departments of the Hotel, as applicable.

"*FF&E*" shall mean 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 of Accounts.

"*First Tier Bonds*" shall mean the Series 2017A Bonds and all Additional Bonds issued on a parity with the Series 2017A Bonds.

"*First Tier Debt Service Reserve Fund*" shall mean the Convention Center Hotel Revenue Bond First Tier Debt Service Reserve Fund established by Section 5.02 of the Indenture.

"*Force Majeure Event*" for purposes of the Management Agreement, shall mean, (i) fire, storm, earthquake, flood, natural disaster, or other casualty events; (ii) terrorist attacks; (iii) pandemics, epidemics, quarantine restrictions or other public health restrictions or advisories; (iv) the of performance of approved Capital Improvements adversely affecting a material portion of the income generating areas of the Hotel which is the direct cause of the delay of performance; (v) strikes that are not directly related to acts or labor relations of Manager or its respective Affiliates; (vi) riots or other civil unrest; (vii) any acts of governmental agencies (but expressly excluding any acts of Corporation performed in accordance with the terms of the Transaction Documents); (viii) diminished capacity of the Convention Center or disruption of Convention Center operations, as a result of a renovation, expansion, closure or otherwise or the relocation of the Convention Center from its current location in a manner that materially impacts the Gross Operating Revenues of the Hotel; or (ix) a combination of any of the foregoing or any other similar event beyond a party's reasonable control that materially adversely affects the ability of a party to perform, but not in any event market or economic conditions.

"*Foreclosure Event*" has the meaning given in Section 6.3.1.

"*Foreclosure Purchaser*" has the meaning given in Section 4.7.

"*Fund*" or "*Funds*" shall mean any one or more, as the case may be, of the separate special funds established by the Indenture or by any Supplemental Indenture.

"*GAAP*" or "Generally Accepted Accounting Principles" shall mean 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 Corporation

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 of Corporation shall make the determination on the request of either Party, unless such accounting firm is also the auditing firm for Manager, in which case a different nationally recognized accounting firm shall make such determination.

"Garage" shall have the meaning given in the Declaration.

"Gross Operating Profit" or "GOP" shall mean for any period of time, the amount by which Gross Operating Revenue properly attributable to such period exceeds Operating Expenses for the same period.

"Gross Operating Revenue" or "GOR" shall mean all revenue and income of any kind derived directly or indirectly from operations at the Hotel, whether or not arranged by, for or on behalf of another Person or at another location, properly attributable to the period under consideration (including rentals or other payments from licensees, lessees, or concessionaires of retail space in the Hotel, but not gross receipts of such licensees, lessees, or concessionaires), determined in accordance with Generally Accepted Accounting Principles and the Uniform System of Accounts (except that in determining the amount deposited into the Lockbox Fund, such determination shall be made on a cash basis), except that the following shall not be included in determining Gross Operating Revenue: (a) receipts from awards or sales in connection with any Taking, from other transfers in lieu of and under the threat of any Taking, and other receipts in connection with any Taking, but only to the extent that such amounts are specifically identified as compensation for alterations or physical damage to the Hotel; and (b) interest earned on funds held in any Account.

"Gross Receipts Taxes" shall mean 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, cabaret or similar or equivalent taxes, including, but not limited to, any transaction tax, resale of electricity tax, soft drink tax, head tax, occupancy tax, amusement tax, beverage tax, USC tax, SUTA, MEPA sales tax, public utility tax, and/or new service tax.

"Gross Revenues" shall mean Gross Operating Revenues, including all receivables related thereto, except that the following shall also be included in determining Gross Revenue:

- (a) receipts from the financing, sale or other disposition of capital assets and other items not in the ordinary course of the Project's operations and income derived from securities and other property acquired and held for investment;
- (b) receipts from awards or sales in connection with any Taking, from other transfers in lieu of and under the threat of any Taking, and other receipts in connection with any Taking, but only to the extent that such amounts are specifically identified as compensation for alterations or physical damage to the Project;
- (c) proceeds of any insurance, including the proceeds of any Business Interruption Insurance;
- (d) proceeds of any financing;
- (e) the initial operating funds and working capital loans and any other funds provided by Corporation to Manager whether for Operating Expenses or otherwise;
- (f) other income or proceeds derived from operations outside of the Project and resulting other than from the use or occupancy of the Project, or any part thereof, or other than from the sale of goods, services or other items sold on or provided from the Project in the ordinary course of business;

- (g) interest earned on funds held in any Account; and
- (h) deposits for room reservations received by the Manager prior to the Opening Date of the Hotel.

"*Group Services*" shall mean the collective reference to the following services, programs and group benefits (for so long as such services are offered generally within the Hilton System): (a) group advertising, (b) sales and business promotion services for both individual guests and conventions, (c) national marketing programs, (d) the Hilton Reservation System, (e) credit card services,; (f) accounting services and (g) such additional services, programs or group benefits as are, from time to time, provided generally to substantially all Other Hilton Hotels.

"*Group Services Fees and Charges*" shall mean the aggregate fees and charges assessed against Hotel and all Other Hilton Hotels for the provision of Group Services, provided that (a) all such fees and charges shall be solely for reimbursement of payments made by Manager to unrelated third parties (including payments of salaries, wages, compensations and benefits payable to Manager's employees) for the reasonable and actual costs of providing Group Services to the Hotel and all participating Other Hilton Hotels, which system wide costs may be determined using a reasonable accounting procedure, applied on a consistent basis (which accounting procedure in the case of Manager shall at all times comply with the requirements of Section 2.20), and (b) the fees and charges shall not include any indirect or direct profit.

"*Group Services Marketing Program*" has the meaning given in Section 2.22.1.2.

"*Hazardous Materials*" shall include, without limitation, petroleum and petroleum products (excluding a small quantity of gasoline used in maintenance equipment on the Site in compliance with all applicable Environmental Laws), flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls, asbestos in any form that is or could become friable, paint with more than 0.5 percent lead by dry weight, hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise including, but not limited to, those materials defined as "hazardous substances", "extremely hazardous substances", "hazardous chemicals", "hazardous materials", "toxic substances", "toxic chemicals", "air pollutants", "toxic pollutants", "hazardous wastes", "extremely hazardous waste", or "restricted hazardous waste" by Environmental Laws.

"*Hilton*" shall mean Hilton Management LLC, a Delaware limited liability company, and its permitted successors and assigns.

"*Hilton Brand Standards*" as defined in Section 2.2.1.

"*Hilton Classification of Accounts*" shall mean the classification of accounts generally used by Manager at any particular time in connection with the operation of the Other Hilton Hotels.

"*Hilton Owned Hotel Names*" has the meaning given in Section 11.3.

"*Hilton Parties*" and "*Hilton Party*" shall mean Hilton, its Affiliates, subsidiaries, parent(s), partners, joint venturers, successors and assigns and their respective subcontractors, contractors, agents, employees, directors, officers, attorneys, invitees, and guests.

"*Hilton Reservation System*" shall mean the reservation system maintained by Manager and its Affiliates relating to the Hotel, Other Hilton Hotels and other hotels operating under brands owned or affiliated with Hilton Worldwide Holdings Inc. and its subsidiaries (or their respective successors and assigns).

*"Hilton System"* shall mean, 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 "Hilton" brand name, in whole or in part; including licensed brands associated with the Hilton name, trademarks, logos, servicemarks and the like, access to a "Hilton" reservation system, publicity and marketing, training, standards, specifications, policies, inspection programs and manuals containing standards and requirements for the operation of "Hilton" branded hotels.

*"Hotel"* means the Legal Hotel Unit, which consists of an approximately 801-room full service hotel, restaurants, lobby bar, meeting space and parking spaces.

*"Hotel Assignment Agreement"* shall mean the Assignment and Subordination of Hotel Agreements, dated as of June 1, 2001, as amended by the First Amendment to Assignment and Subordination of Hotel Operating Agreements, dated as of December 1, 2006, and as further amended by the Second Amendment to Assignment and Subordination of Hotel Operating Agreements, dated as of May 1, 2017 and effective as of the Closing Date for the Bonds, by the Corporation in favor of the Trustee and as acknowledged and consented to by the Manager and the Trustee.

*"Hotel Consultant"* shall mean an independent nationally recognized consulting firm with substantial and significant experience in the first-class convention hotel segment as chosen by Corporation from the list of hotel consultants attached to the Management Agreement as Exhibit S. If either Manager or Corporation in their sole discretion determines that any such consulting firm listed on Exhibit S to the Management Agreement no longer qualifies as a nationally recognized consulting firm with substantial and significant experience in the first-class convention hotel segment, such consulting firm shall be removed from the list on Exhibit S to the Management Agreement and Manager shall submit to Corporation and the Trustee the names of two nationally recognized consulting firms with substantial and significant experience in the first-class convention center hotel segment, none of whom shall be Manager's primary hotel consultant or auditor and each of whom shall provide a written statement to each of Corporation and Trustee representing that it will make a fair and impartial judgment in any matter submitted to it pursuant to this Agreement. Corporation, upon the advice of the Asset Manager and with the prior written consent of the Trustee, shall select one of the names submitted as a replacement; provided that Corporation, upon the advice of the Asset Manager, may reject both names in its sole discretion and require the Manager to submit two additional names for consideration until Corporation selects the replacement.

*"Hotel Personnel"* shall mean all individuals performing services at the Hotel employed by Manager or an Affiliate of Manager.

*"Hotel Personnel Costs"* shall mean all costs associated with the employment, management or termination of Hotel Personnel, including training expenses, recruitment expenses, the costs of moving executive level Hotel Personnel, their families and their belongings to the area in which the Hotel is located at the commencement of their employment at the Hotel, wages and salaries, compensation (including incentive compensation) and benefits, employment taxes, training, and severance payments, all in accordance with Legal Requirements and Manager's policies for Other Hilton Hotels.

*"Hotel Unit's Parking Spaces"* shall mean the reserved parking spaces designated as such and shown on the Map.

*"Indenture"* shall mean the Amended and Restated Indenture of Trust, dated as of the Series 2017 Bond Effective Date, effective as of the Closing Date for the Series 2017 Bonds, by and between the Corporation and the Trustee, as amended and supplemented from time to time.

"*Independent Accountant*" the accounting firm of RSM US LLP or another national firm of independent certified public accountants mutually acceptable to Corporation.

"*Independent Architect*" has the meaning given in Section 7.1.1.

"*Index*" shall mean the Consumer Price Index for All Urban Consumers, All Items, for the market area that includes the Hotel, as published by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-84 as a base of 100, or if such index is discontinued, the most comparable index published by any federal governmental agency. For purposes of determining increases or decreases in any amounts contemplated in this Management Agreement for the ensuing Operating Year, the Index reported for September of the preceding Operating Year shall apply.

"*Insurance and Condemnation Proceeds Fund*" shall mean the "Convention Center Hotel Revenue Bond Insurance and Condemnation Fund" established pursuant to Section 5.02 of the Indenture.

"*Insurance Consultant*" shall mean an insurance consultant mutually acceptable to Corporation.

"*Insurance Costs*" shall mean 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 the Management Agreement and the Indenture, including, without limitation, Exhibit L attached to the Management Agreement.

"*Insurance Proceeds*" shall mean any and all proceeds received by the Corporation from an insurance company as a result of a casualty loss in connection with the Corporation's Unit.

"*Interest Payment Date*" shall mean, with respect to the Series 2017 Bonds, January 1 and July 1 of each year, commencing July 1, 2017 or any other date on which the principal or Redemption Price of, or interest on the Series 2017 Bonds is due, and with respect to any other Series of Bonds, the date on which interest is due and payable thereon.

"JAMS" has the meaning given in Section 10.1.1.

"*Key Money*" has the meaning given in Section 2.1.4.

"*Key Employees*" shall mean the following positions for the Hotel: the Senior Executive Personnel, the executive assistant manager, the resident manager, the director of food and beverage, the director of front officer operations, the director of security, the director of human resources, the director of housekeeping and the director of engineering.

"*Land*" and "*Site*" shall mean the real property generally bounded by 4th Street, 5th Street, Neches Street, and Red River Street in Austin, Travis County, Texas more particularly described in Exhibit A attached to the Condominium Declaration together with all and singular the rights and appurtenances pertaining thereto.

"*Legal Hotel Unit*" has the meaning given in the Recitals .

"*Legal Requirements*" shall mean (a) all laws, statutes, acts (including, without limitation, the Texas Public Information Act), ordinances, rules, regulations, permits, licenses, authorizations, directives, orders and requirements of all governments, quasi-governmental or regulatory authorities, that now or hereafter may be applicable to, as applicable, (i) the Project and the construction, maintenance and 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) Corporation and (b) the requirements of all documents properly filed in the real property records against the Hotel.

*"Liquor License"* shall mean the liquor licenses issued for the Hotel in the name of Manager pursuant to Section 2.4.5.

*"Lockbox Fund"* shall mean the fund by that name required to be maintained pursuant to Section 5.04 of the Indenture and established pursuant to Section 2 of the Cash Management Agreement

*"Management Fee"* means Manager's fees earned in consideration for performing all of its management, administrative, oversight, cooperation and coordination services under this Agreement, consisting of the Base Management Fee and the Subordinate Management Fee.

*"Manager"* means Hilton Management LLC, a Delaware limited liability company, together with its permitted successors and assigns.

*"Manager's Intellectual Property"* has the meaning given in Section 11.6.

*"Manager's Negligent or Willful Acts"* shall mean any (a) acts or omissions constituting fraud, negligence, or willful misconduct on the part of Manager or its Affiliates, their officers, directors, employees, agents, or assigns, or Key Employees or (b) criminal violation of law by Manager, Manager's Affiliates or permitted assignees under the Management Agreement, or any of their respective officers, directors or employees, or Key Employees. Notwithstanding the foregoing, acts or omissions of Hotel Personnel (other than Key Employees) shall be excluded from Manager's Negligent or Willful Acts, so long as Manager acted reasonably, prudently and diligently in hiring, firing, training and supervising such Hotel Personnel and Key Employees.

*"Manager's Parties"* has the meaning given in Section 12.14.1.

*"Manager's Proprietary Information"* shall mean (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, (c) personnel information, or (d) information that should be treated as confidential under the circumstances surrounding its disclosure including guest history information, sales and marketing information, account information or could cause competitive harm to Manager or any of its Affiliates relating to the Other Hilton Hotels and other proprietary information relative to the operating methods, procedures and policies distinctive to Other Hilton Hotels, including without limitation, the contents of the Hilton operating manuals information and methodologies relating to the Hilton Honors Program or other similar programs or the Hilton Reservation System and all commercial or financial information (including without limitation, all expenses, calculations and apportionments) relating thereto, and Hilton System information.

*"Manager's Proprietary Software"* has the meaning given in Section 11.6.

*"Manager System Legal Proceeding"* 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.

*"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).

*"Material Interest"* the right to materially influence, directly or indirectly, the affairs of an entity by contract, direct or indirect legal or beneficial ownership of 50% or more of the shareholding or ownership interest, or otherwise.

*"Materiality Threshold"* an amount initially equal to \$100,000 for the first Operating Year, adjusted annually on January 1 of each subsequent Operating Year by a percentage increase in the Index (if any) over the prior Operating Year.

*"Map"* shall mean the survey plat of the Land and dimensional drawings that horizontally and vertically identify and describe the Units and the Common Elements attached to the amended condominium declaration.

*"Monthly Reports"* has the meaning given in Section 2.20.2.

*"Mortgage"* shall mean any holder of a deed of trust or other security instrument evidencing a security interest in the Hotel.

*"National Vendor"* shall mean any vendor providing goods or services to the Hotel and Other Hilton 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 Hilton Hotels.

*"Net Operating Income"* shall mean, for any period, the amount by which the sum of (i) Gross Operating Profit properly attributable to the period under consideration and (ii) interest earned on any of the Accounts or Funds (except for the First Tier Debt Service Reserve Fund, the Second Tier Debt Service Reserve Fund, the Rebate Fund, the Renewal and Replacement Fund, the Supplemental Renewal and Replacement Fund and the Operating Reserve Fund to the extent such interest earnings on the Operating Reserve Fund are retained in the Operating Reserve Fund), exceeds the aggregate of the following: (a) Taxes; (b) Insurance Costs; and (c) amounts added to the Renewal and Replacement Fund for the same period.

*"Net Revenues"* shall mean Gross Operating Revenues for the Hotel less (a) Operating Expenses, (b) payments of interest on any Short Term Indebtedness and (c) Administrative Expenses.

*"Non-Disturbance Agreement"* has the meaning given in Section 6.3.2 .

*"Opening Date"* has the meaning given in the Recitals of this Agreement.

*"Operating Costs Set Aside Amount"* means [ ]% of Gross Operating Revenue.

*"Operating Expenses"* shall mean all those ordinary and necessary expenses, including Reimbursable Expenses, Base Management Fee, , incurred in the operation of the Hotel (including any management fee payable in respect of the Hotel Unit's Parking Spaces unless the Manager is obligated to pay such management fee pursuant to Section 2.26) in accordance with and to the extent provided in the Management Agreement, including but not limited to Hotel Personnel Costs, the cost of maintenance and utilities, administrative expenses, the costs of advertising, marketing, and business promotion, and any amounts payable to Manager as set forth in the Management Agreement other than the Subordinate Management Fee, all as determined in accordance with Generally Accepted Accounting Principles and the Uniform System of Accounts as well as any other item specifically made an Operating Expense under a specific provision of the Management Agreement. Notwithstanding the foregoing description, unless expressly made an Operating Expense under a specific provision of the Management Agreement, the following shall

not constitute Operating Expenses: (a) Taxes and Excluded Taxes and Other Charges (save and except for payroll taxes included in Excluded Taxes and Other Charges); (b) Insurance Costs; (c) rentals of real property (unless approved in writing by Corporation); (d) depreciation and amortization on capitalized assets; (e) Administrative Expenses and other costs and expenses of Trustee, Corporation, or Trustee's or Corporation's personnel, such as entertainment expenses, salaries, wages and employee benefits of Trustee's or Corporation's employees, directors' fees, and the expenses of directors or Trustee's or Corporation's employees to attend board meetings; (f) costs and professional fees, including the fees of attorneys, accountants, and appraisers, incurred directly or indirectly in connection with any category of expense that would not otherwise be an Operating Expense, unless otherwise expressly provided in the Management Agreement; (g) payments of principal and interest related to any financing of the Hotel; (h) costs covered by and of Manager's indemnity, hold harmless and defense agreements contained in the Management Agreement, all of which shall be funded out of Manager's own funds (from whatever source, including insurance proceeds); (i) costs incurred by Manager to perform obligations, duties, covenants, agreements and responsibilities which, under the express terms of the Management Agreement, are to be funded from Manager's own funds; (j) Capital Expenses, including, without limitation, construction costs of the Project; and , and (k) payments made and amounts required to be paid pursuant to the Development Agreement and the Design/Build Agreement.

*"Operating Plan and Budget"* shall mean an annual marketing and operating plan and budget for the Hotel prepared by Manager and approved (or deemed approved) by Corporation, all in accordance with the terms of Section 2.18.

*"Operating Reserve Fund"* shall mean the Convention Center Hotel Revenue Bond Operating Reserve Fund established by Section 5.02 of the Indenture.

*"Operating Standard"* or *"Standards"* shall mean the standard of management of the Hotel described in Section 2.2.1.

*"Operating Term"* shall mean the term of the Management Agreement, as defined in Section 4.1.

*"Operating Year"* shall mean each full calendar year occurring during the Operating Term and the calendar year in which the Termination of the Management Agreement occurs.

*"Original Agreement"* has the meaning given in the Preamble.

*"Other Hilton Hotels"* shall mean all hotels and resorts in the United States that are owned or managed by Manager and/or its Affiliates under the "HILTON" brand, (it being acknowledge that the "Hilton" brand does not include any brand that includes the word "Hilton" within the brand names (including, for example, but without limitation Hilton Garden Inn, Canopy by Hilton, Home2 Suites by Hilton, Hampton Inn by Hilton, Hilton Grand Vacations, Tempo by Hilton, Homewood Suites by Hilton, Doubletree by Hilton, Curio – a Collection by Hilton, Motto by Hilton, Tru by Hilton, Signia by Hilton, Tapestry Collection by Hilton, Embassy Suites by Hilton, etc.)), including all such hotels and resorts under such brand that are owned or managed by Manager and its Affiliates.

*"Out-of-Pocket Expenses"* shall mean the out of pocket costs paid to non-Affiliates of Manager (with no mark-up or profit to Manager) incurred directly by Manager or any of its Affiliates providing services to the Hotel under the Management Agreement, including, without limitation, reasonable air and ground transportation, meals, lodging, reasonable business entertainment expenses, taxes, gratuities, computer services, document reproduction, printing, promotional materials, stationery, postage, long-distance telephone calls, and facsimiles.

*"Owner's Unit"* shall have the meaning set forth in the Declaration.

"Party" shall mean Manager and Corporation.

"PCC" shall have the meaning assigned to such term in Section 1.20 of the Room Block Commitment.

"Performance Test" shall mean the tests to determine if a Performance Termination Event has occurred.

"Performance Test Period" shall mean the period of the Operating Term commencing with the 2024 Operating Year and ending on the last day of the Operating Term (i.e., the first measurement year relating to the Performance test will be the 2024 Operating Year).

"Performance Termination Event" has the meaning given in Section 4.5.1.

"Permitted Consequential Damages" has the meaning given in Section 12.14.5.

"Person" shall mean any individual, public or private corporation, partnership, limited liability company, county, district, authority, municipality, political subdivision or other entity of the State or the United States of America, and any partnership, association, firm, trust, estate or any other entity or organization whatsoever.

"Petty Cash Amount" shall mean an amount reasonably estimated by Manager as the amount needed from time to time to be retained by Manager at the Project as petty cash, which amount shall be comparable to the amount kept by Manager as petty cash at other hotels of comparable size and quality operated by Manager.

"PIP" has the meaning given in Section 12.32.

"Prime Rate" shall mean the prime lending rate then in effect as published in the Wall Street Journal. For purposes of calculating interest under this Management Agreement, the applicable Prime Rate shall be calculated as of the first Business Day of each calendar month.

"Project" shall have the meaning set forth in the Declaration.

"Property" shall mean the Land and the Improvements.

"Proposed Assignee" has the meaning given in Section 9.2.1.

"Qualified Management Agreement" means an agreement that complies with the applicable requirements of section 141 of the Internal Revenue Code, as amended, and Rev. Proc. 2017-13 (IRB 2017-6).

"Rebate Fund" shall mean the Convention Center Hotel Revenue Bond Rebate Fund established by Section 5.02 of the Indenture, and includes any separate accounts or subaccounts established by the terms of any Supplemental Indentures or any agreement pursuant thereto.

"Receiving Party" has the meaning given in Section 12.29.

"Refunding Bonds" shall mean all Bonds, whether issued in one or more Series, issued for the purpose of refunding a like or different principal amount of Bonds, and hereafter authenticated and delivered pursuant to the Indenture.

"Reimbursable Expenses" has the meaning given in Section 3.4.1.

"*Related Party*" shall mean any Person who is a "related person" within the meaning of Section 144(a)(3) of the Code.

"*Renewal and Replacement Fund*" shall mean the Convention Center Hotel Revenue Bond Renewal and Replacement Fund established by Section 5.02 of the Indenture and shall have the meaning assigned to such term in Section 3.9 of the Management Agreement.

"*Renewal and Replacement Set Aside Amount*" shall mean 4% of Gross Operating Revenue. The Renewal and Replacement Set Aside Amount shall not be classified as an Operating Expense or Capital Expense, provided that upon disbursement of funds from the Renewal and Replacement Fund, the disbursed amounts shall be classified as an Operating Expense or Capital Expense in accordance with GAAP.

"*Report*" has the meaning given in Section 2.22.3.

"*Required Alteration Standard*" has the meaning given in Section 7.4.1.

"*Restricted Area*" has the meaning given in Section 12.24.

"*Restricted Hotel*" has the meaning given in Section 12.24.

"*REVPAR*" shall mean, with respect to each hotel that is a member of the Competitive Set and with respect to the Hotel, and with respect to any period of time, the "Revenue Per Available Room" for the hotel in question, as measured and reported by Smith Travel Research, Inc., or such other reputable independent third party market research firm as may be mutually approved by Corporation and Manager.

"*REVPAR Performance Standard*" shall mean that the Hotel's REVPAR for the applicable Operating Year is at least 88% of the average REVPAR of the Hotels in the Competitive Set for such Operating Year.

"*Room Block Commitment*" shall mean that certain Room Block Commitment Agreement entered into between Corporation and Manager, dated as of June 1, 2001.

"*Room Block Contract*" shall have the meaning assigned to such term in Section 1.15 of the Room Block Commitment.

"*Room Rate Schedule*" shall have the meaning assigned to such term in Section 2.18.4.1.

"*Sanctioned Person*" any person, entity, government, government entity, quasi-governmental entity, or any agency instrumentality or subdivision thereof), who is subject to Trade Restrictions.

"*Second Tier Bonds*" shall mean the Series 2017B Bonds and all Additional Bonds issued on a parity with the Series 2017B Bonds.

"*Second Tier Debt Service Reserve Fund*" shall mean the Convention Center Hotel Revenue Bond Second Tier Debt Service Reserve Fund established by Section 5.02 of the Indenture.

"*Semi-Annual Installment(s)*" has the meaning given in Section 3.1.4.

"*Senior Executive Personnel*" shall mean the individuals employed from time to time as the general manager of the Hotel, the director of finance for the Hotel, and the director of marketing for the Hotel.

"*Series 2017 Bonds*" shall mean, collectively, the Series 2017A Bonds and the Series 2017B Bonds.

"*Series 2017A Bonds*" shall mean the \$135,340,000 aggregate principal amount of Austin Convention Enterprises, Inc., Convention Center Hotel First Tier Revenue Refunding Bonds, Series 2017A.

"*Series 2017B Bonds*" shall mean the \$59,315,000 aggregate principal amount of Austin Convention Enterprises, Inc., Convention Center Hotel Second Tier Revenue Refunding Bonds, Series 2017B.

"*Series 2017 Bond Effective Date*" shall mean May 1, 2017.

"*Short Term Indebtedness*" shall mean any notes or other indebtedness lawfully issued or incurred by the Corporation payable in full not later than twelve months from the date so issued or incurred.

"*Site*" has the meaning given in the Recitals.

"*State*" shall mean the State of Texas.

"*Sub-Unit*" shall have the meaning set forth in the Declaration.

"*Subordinate Management Fee*" means the subordinate management fee of Manager of 1% of Gross Operating Revenues, payable pursuant to Section 3.1.3.

"*Subordinate Management Fee Fund*" shall mean, so long as any Bonds remain Outstanding, the Convention Center Hotel Revenue Bond Subordinate Management Fee Fund established by Section 5.02 of the Indenture.

"*Subordination Agreement*" has the meaning given in Section 6.2.2.

"*Sufficient Funds*" shall mean the following:

- (a) with respect to the payment of Operating Expenses, there are sufficient amounts in the Hotel 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 Renewal and Replacement Fund, the Supplemental Renewal and Replacement Fund, the Excess Revenues Fund, the Cash Trap Fund to pay for such Capital Expenses;
- (c) with respect to Taxes and Insurance, there shall be sufficient balances in the Taxes and Insurance Fund to pay for such costs;
- (d) 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;
- (e) 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 Renewal and Replacement Fund, the Supplemental Renewal and Replacement Fund, the Excess Revenues Fund, and the Cash Trap Fund to pay for such costs and Capital Expenses.

"*Supplemental Renewal and Replacement Fund*" shall mean the Convention Center Hotel Revenue Bond Supplemental Renewal and Replacement Fund established by Section 5.02 of the Indenture.

"*Supplemental Renewal and Replacement Set Aside Amount*" shall mean eight percent (8%) of Gross Operating Revenue for each month.

"*Systems*" include, but are not limited to, all fixtures, equipment, pipes, lines, wires, ducts, vents, computer cables, security system cables, monitoring system cables, conduits and other systems and facilities used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, waste water, sewage, and audio and video signals, notwithstanding the fact that such System may be located in all or a portion of a Unit.

"*Taking*" or "*Taken*" shall mean 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 Corporation in lieu thereof.

"*Taxes*" shall mean 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.

"*Taxes and Insurance Fund*" shall mean the "Convention Center Hotel Revenue Bond Taxes and Insurance Fund" established pursuant to Section 5.02 of the Indenture, and after the Bonds are no longer Outstanding under the Indenture, the fund by that name to be created pursuant to Section 3.9 of the Management Agreement.

"*Term*" means the Operating Term.

"*Termination*" shall mean the expiration or sooner cessation or termination of the Management Agreement.

"*Termination Fee*" has the meaning given in Section 4.6.1.

"*Total Net Revenues*" shall mean Gross Operating Revenue plus the earnings on amounts deposited into the Available Revenue Fund not otherwise included in the definition of Gross Operating Revenue, less Operating Expenses, and less amounts added to the Renewal and Replacement Fund for the same period representing the regularly scheduled 4% of Gross Operating Revenue required to be deposited pursuant to the definition of "Renewal and Replacement Set Aside Amount".

"*Trademarks*" shall mean the trademarks, trade name, service marks, and copyrights associated with the name HILTON, and the related marks that include the word HILTON, including HILTON HOTELS, HILTON RESORTS, and the "Hilton Hotels & Resorts" corporate logo or symbol, together with the right to use any and all slogans, derivations, trade secrets, know-how, and trade dress, and all other proprietary rights, insignia, emblems, symbols, slogans, distinguishing characteristics, trade names, domain names, and all other service marks, trademarks or characteristics associated or used with, or in connection with, such names, marks and slogans or hotels operated under the Hilton name.

"*Trade Restrictions*" means trade, economic or investment sanctions, export controls, anti-terrorism, non-proliferation, anti-money laundering and similar restrictions in force from time to time pursuant to laws, rules and regulations imposed under Laws to which the Parties are subject.

"*Transition Period*" has the meaning given in Section 4.9.11.

"*Trustee*" shall mean U.S. Bank National Association f/k/a U.S. Bank Trust National Association, as trustee under the Indenture, together with any successors or assigns

"*Unamortized 2006 Key Money*" has the meaning given in Section 2.1.4.

"*Unamortized Key Money*" has the meaning given in Section 2.1.4.

"*Uniform Condominium Act*" shall mean the Uniform Condominium Act, Texas Property Code, Chapter 82, Section 82.001 et seq., as amended from time to time.

"*Uniform System of Accounts*" shall mean the latest edition of the Uniform System of Accounts for the Lodging Industry that is published by the American Hotel & Lodging Educational Institute, Lansing, Michigan, and approved by the American Hotel & Motel Association (currently, the 11th Revised Edition, 2014, or the then most current version).

"*Unit*" shall have the meaning set forth in the Declaration.

"*Unrelated Third Party*" means any Person who is not a Related Party.

"*Upper Upscale Hotel*" shall mean a hotel having an Upper Upscale Rating.

"*Upper Upscale Rating*" shall have the meaning assigned to such term in Section 1.3.

"*USA&M*" has the meaning given in Section 10.1.1.

"*Variable Expenses*" has the meaning given in Section 2.18.7.



EXHIBIT G  
INCENTIVE COMPENSATION METRICS

Manager has represented to Corporation 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 Corporation (as part of the yearly budget process) of its desire to change the applicable Metrics or unless Corporation 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**"):

<b><u>METRIC</u></b>	<b><u>DESCRIPTION</u></b>
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".
Honors	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

Corporation 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 3. of this Agreement. Corporation 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 Corporation 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 Corporation to eliminate the resulting private business use.