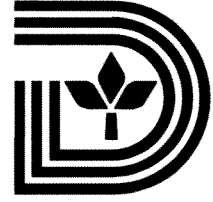


# Memorandum



CITY OF DALLAS

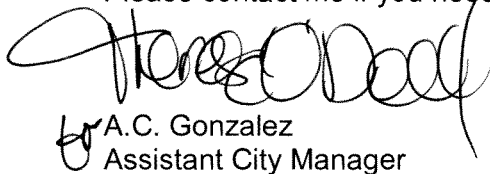
DATE February 18, 2009

TO The Honorable Mayor and Members of the City Council

SUBJECT Convention Center Hotel Operator Agreement

Attached is the convention center hotel operating agreement as revised, February 17, 2009.

Please contact me if you need additional information.

A handwritten signature in black ink, appearing to read 'A.C. Gonzalez'.

A.C. Gonzalez  
Assistant City Manager

C: Mary K. Suhm, City Manager  
Deborah Watkins, City Secretary  
Tom Perkins, City Attorney  
Craig Kinton, City Auditor  
Judge C. Victor Lander, Judiciary  
Ryan S. Evans, First Assistant City Manager  
Forest Turner, Interim Assistant City Manager  
Ramon Miguez, P.E., Assistant City Manager  
Jill A. Jordan, P.E., Assistant City Manager  
Jeanne Chipperfield, Interim Director, Office of Financial Services  
Dave Cook, Chief Financial Officer  
Karl Zavitkovsky, Director, Office of Economic Development  
Hammond Perot, Assistant Director, Office of Economic Development  
Frank Poe, Director, Convention & Event Services  
Helena Stevens-Thompson, Assistant to the City Manager

**HOTEL OPERATING AGREEMENT**

Between

**DALLAS CONVENTION CENTER HOTEL DEVELOPMENT CORPORATION**

**“Owner”**

And

**OMNI HOTELS MANAGEMENT CORPORATION**

**“Manager”**

Dated: \_\_\_\_\_, 2009

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**[FINAL APPROVAL OF THIS AGREEMENT SUBJECT TO REVIEW AND APPROVAL OF EXHIBITS TO BE ATTACHED TO THIS AGREEMENT AND ALL AGREEMENTS AND DOCUMENTS REFERENCED HEREIN; ALL INSURANCE PROVISIONS REMAIN SUBJECT TO REVIEW AND APPROVAL OF MANAGER AND ITS REPRESENTATIVES]**

**HOTEL OPERATING AGREEMENT**

This HOTEL OPERATING AGREEMENT (this “**Agreement**”) is made as of \_\_\_\_\_, 2009, by and between DALLAS CONVENTION CENTER HOTEL DEVELOPMENT CORPORATION, a public non-profit local government corporation created pursuant to Section 431.101 of the Texas Transportation Code (“**Owner**”) and OMNI HOTELS MANAGEMENT CORPORATION, a Delaware corporation (“**Manager**”). Owner and Manager are herein collectively referred to as the “**Parties**” and individually as a “**Party**.”

**RECITALS**

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

B. The development and expansion of commerce and the diversification of the economy within the State of Texas and the City is paramount to the continued economic development of the City. To further promote tourism and the convention industry in the City of Dallas, Texas (the “**City**”), Owner intends to have a premier, full service convention center headquarters hotel and related improvements constructed on the Site, which it acquired on June 19, 2008, as more specifically described in **Exhibit B** hereto.

C. Owner has entered into a Hotel Developer Agreement with Matthews Southwest Holdings, Inc. (“**Developer**”), dated as of January \_\_, 2009, a copy of which Hotel Developer Agreement is attached hereto as **Exhibit C** and incorporated herein by this reference for all purposes, which requires the Developer to design, develop, construct, equip, furnish, fully complete and open, or cause to be designed, developed, constructed, equipped and furnished, fully completed and opened, the Hotel Project Improvements (as defined in the Hotel Developer Agreement) at and within the Site.

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

E. Owner desires to engage Manager to manage and operate Owner’s interest in the Hotel to be developed on the Site (the “**Hotel**”), which includes (i) a full service hotel consisting of at least \_\_\_\_\_ thousand (\_\_\_\_\_) square feet, including at least one thousand (1,000) hotel guest rooms, (ii) two full-service restaurants, (iii) a lobby bar, (iv) at least eighty thousand (80,000) square feet of meeting space, including a grand ballroom of at least thirty-two thousand (32,000) square feet and a junior ballroom of at least fifteen thousand (15,000) square feet (with the understanding that the square footage of the meeting space and ballroom space excludes pre-convene space and circulation space), (v) at least seven hundred twenty (720) 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 hotel (the “**Required Scope of the Hotel**”), all of which will be detailed in the Approved Plans.

F. The parties understand that the Hotel has been financed with the proceeds of the Bonds, the interest on which is excludible from gross income for federal income tax purposes (i.e., tax-exempt bonds). In connection therewith, the parties acknowledge that Owner and the City have made certain covenants to the Bondholders intended to assure that the Bonds remain tax-exempt bonds. The parties understand that this Agreement, and other agreements that may be entered into by Manager acting under the authority granted to it under this Agreement, are instrumental to Owner and the City satisfying those covenants. The parties intend that this Agreement shall be interpreted in light of such covenants. Owner and Manager further intend that this Agreement constitute, and this Agreement shall constitute, a “**Qualified Management Agreement**” in compliance with applicable requirements of Section 141 of the Internal Revenue Code, as amended, and Rev. Proc. 97-13, 1997-5 I.R.B. 18, and shall be interpreted in accordance with such requirements.

G. To finance the costs (i) to acquire the Site and the costs to develop and construct the Hotel (including, without limitation, FF&E), (ii) to pay for certain pre-opening and marketing expenses, costs of issuance and initial start-up and operating costs and (iii) to fund certain reserves, Owner has issued or will issue the Series 2009 Bonds. The Series 2009 Bonds shall be issued in accordance with the terms of the Indenture.

H. Contemporaneously with this Agreement, Manager and Owner have entered into that certain Technical and Pre-Opening Services Agreement (“**Technical and Pre-Opening Services Agreement**”), dated of even date herewith, pursuant to which Manager will, as independent contractor, perform certain review, inspection and coordination services in connection with the design and construction of the Hotel, and certain pre-opening services in preparation for the Opening of the Hotel. The terms of such Technical and Pre-Opening Services Agreement will, among other things, provide for a technical services fee of \$350,000 to be paid to Manager by Owner (the “**Technical Services Fee**”), and a maximum pre-opening services budget of \$4,500,000.

## **AGREEMENTS**

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

### **1. THE HOTEL**

**1.1** Required Scope of the Hotel. The Parties accept the Required Scope of the Hotel, which shall not be materially changed except in accordance with the Technical and Pre-Opening Services Agreement and subject to Owner’s and Manager’s approval, which shall not be unreasonably withheld, conditioned or delayed. If Manager fails to deliver a written notice to Owner approving or rejecting a proposed change to the Required Scope of the Hotel within the time periods provided for in the Technical and Pre-Opening Services Agreement, Manager shall be deemed to have approved such change.

1.2 Plans and Specifications. Manager has approved the preliminary drawings for the Hotel more particularly described in **Exhibit D** attached hereto and is satisfied that, if built in accordance with such approved preliminary drawings, the Hotel will be consistent with the Omni Brand Standards and will be consistent with the physical requirements of a “Four Star” hotel, in accordance with the criteria set forth in **Exhibit Y** hereto. Manager shall have the right to approve all plans and specifications for design and construction of the Hotel, as well as all phases of construction of the Hotel, in accordance with the provisions of the Technical and Pre-Opening Services Agreement. Manager’s approval of the plans and specifications, and of each phase of the construction of the Hotel in the manner provided in the Technical and Pre-Opening Services Agreement will signify Manager’s satisfaction with each phase of the design and construction process that the Hotel is consistent with the Omni Brand Standards (more specifically defined below) and the physical requirements of a “Four Star” hotel, as described in Exhibit Y hereto, and that the Hotel, when built in accordance with such standards, will be comparable to other first-class convention center hotels in the cities of Austin, Houston, and San Antonio (“**Comparable Convention Center Hotels**”), taking into account the character, size and location of the facility. Owner must submit to Manager, and Manager shall have written approval rights over, all proposed changes to design throughout the design and construction process, in accordance with the terms of the Technical and Pre-Opening Services Agreement. If Manager concludes that any changes in the design do not meet Omni Brand Standards or a Four Diamond rating, or will prevent it from meeting Omni Brand Standards or a Four Diamond rating, Manager shall immediately notify Owner in accordance with the terms of the Technical and Pre-Opening Services Agreement. If Owner does not obtain Manager’s written approval for any such design change as required under the Technical and Pre-Opening Services Agreement, then Manager shall have the right to terminate this Agreement, by providing notice and right to cure to Owner, as provided in the Technical and Pre-Opening Services Agreement, provided that Manager’s right to terminate this Agreement under this provision shall expire as of the Opening Date. In the event that Manager elects to terminate this Agreement under this Section 1.2, Manager will be released from the Key Money Contribution and Manager will remain entitled to receive the Technical Services Fee and any incurred, unpaid expenses for Pre-Opening Services. Notwithstanding the foregoing, in no event will Manager have the right to rescind any prior approvals made by Manager to any prior phase of design or construction in accordance with the Technical and Pre-Opening Services Agreement. Notwithstanding anything contained in this Agreement or the Technical and Pre-Opening Services Agreement to the contrary, Manager has no liability or obligation in connection with the preliminary drawings and/or the plans and specifications for the construction of the Hotel, and Manager has no obligation and no responsibility for the adequacy thereof or for the construction of the Hotel contemplated by such drawings and plans. Further, Manager has no duty to inspect the construction of the Hotel, and should Manager inspect such construction, Manager shall have no liability or obligation to Owner or any other party arising out of such inspection. No inspection nor any failure by Manager to make objections after such inspection shall constitute a representation by Manager that the Hotel are in accordance with the drawings and/or plans and specifications or constitute a waiver of Manager’s right thereafter to insist that the Hotel be constructed in accordance with such plans and specifications or any other requirement, except to the extent provided in the Technical and Pre-Opening Services Agreement.

## 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, Owner hereby engages Manager, and Manager hereby agrees to be engaged by Owner and does hereby undertake to supervise, direct, and control the management, operation, and promotion of all aspects of the Hotel as the agent of Owner and as the exclusive manager and operator of the Hotel during the Operating Term. Manager shall have the exclusive authority and duty during the Operating Term to direct, supervise, manage and operate the Hotel on a day-to-day basis in accordance with the Operating Standard and the terms of this Agreement.

2.1.2 Qualified Management Agreement. This Agreement is intended to and shall constitute a “**qualified management agreement**” in compliance with applicable requirements of Section 141 of the Internal Revenue Code, as amended, and Rev. Proc. 97-13, 1997-5 I.R.B. 18 (as modified by Rev. Proc. 2001-39, 2001-28 I.R.B. 38), and shall be interpreted in accordance with such requirements. Manager represents to Owner that Manager has reviewed the applicable requirements of Section 141 of the Code and Rev. Proc. 97-13, 1997-5 I.R.B. 18 (as modified by Rev. Proc. 2001-39, 2001-28 I.R.B. 38).

2.1.3 Tax Covenant. Manager agrees that it will operate and manage the Hotel in a manner which, to the extent of its rights and authority under this Agreement and as otherwise authorized by Owner in writing, preserves the 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 Owner in writing, will comply with the requirements of section 141(b) of the Code, section 1.141-3 of the Treasury Regulations and Revenue Procedure 97-13 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, so instructed by Owner, such action is authorized or such breach is waived in writing in advance by Owner. In the event that such requirements impose a material adverse financial burden on Manager not otherwise contemplated by this Agreement, or if it becomes necessary to amend this Agreement in order to preserve the exemption from federal income tax of interest on the Bonds, Manager and Owner agree to negotiate in good faith and amend this Agreement, including, if necessary, the compensation to be paid to Manager, in a manner which maintains or restores to both Owner and Manager, to the greatest extent possible within the requirements of this Section 2.1.3, the benefits expected to be received by each of Owner and Manager pursuant to the original terms of this Agreement.

2.1.4 Submission of Contracts for Bond Counsel Review. Manager shall be permitted, at its option, to submit inquiries to Owner to ascertain whether an action or inaction on Manager’s part could have an adverse effect on the exemption from federal income tax of interest on the Bonds. As part of such review, Manager may, at its option, submit to Owner contracts with unrelated third parties for the management, operation or use of the Hotel to ascertain whether such contracts could adversely affect the exemption from federal income tax of interest on the Bonds. Owner may seek the advice of Bond Counsel with respect to each such

inquiry or contract so submitted. Manager shall be entitled to rely upon the advice from Owner or Bond Counsel, as applicable, and in the event Manager takes any action or inaction in reliance upon the express advice or interpretation of Owner or Bond Counsel, Manager shall be relieved from any liability to Owner with respect to any such action or inaction. Owner shall use its best efforts to make or obtain such determination within ten (10) days of such submission but in no event later than thirty (30) days of such submission. Failure to submit any such contract shall not result in an Event of Default under this Agreement, except to the extent that (i) any such contract is required to be submitted to Owner pursuant to Section 2.4.1, 2.4.2 or 2.4.3 and (ii) failure to submit any such contract adversely affects the exemption from federal income tax of the interest on the Bonds. Contracts with unrelated third parties which satisfy the criteria set forth in Section 2.4.7 need not be submitted for such review and approval.

## 2.2 Operating Standards.

2.2.1 Operating Standard Defined. Manager agrees that, subject to the provisions of this Agreement, Manager shall, as the agent of Owner, cause the Hotel to be operated (a) in a prudent and efficient manner reasonably calculated to repay Bondholders in accordance with the terms of the Indenture, consistent with the requirements and limitations set forth in this Agreement (including those relating to the applicable Approved Operating Plan and Budget and the applicable Capital Budget), (b) in accordance with standards, policies, and programs applicable to all phases of operation and programs, including without limitation, purchasing programs, sales promotion programs, and quality improvement programs, which are prevailing in effect from time to time and applicable to the operation of Other Omni Hotels (“**Omni Brand Standards**”), as currently set forth in Exhibit Z attached hereto, (c) as a full service, first class, convention oriented Hotel which is at least comparable to other Comparable Convention Center Hotels, taking into account the character, size and location of the facility, operated in accordance with the Four Diamond rating requirements of the American Automobile Association (“**AAA**”), as currently set forth in Exhibit AA attached hereto; and (d) 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 Owner from ownership and operation of the Hotel as a first class, convention center headquarters hotel, after taking into consideration the Room Block Agreement; and (iii) control Operating Expenses (the standards described in clauses (a) through (d) above being referred to collectively as either the “**Operating Standards**” or the “**Operating Standard**”). Owner agrees that the Omni Brand Standards as set forth in Exhibit Z hereto meet the Four Diamond rating standards of AAA as set forth in Exhibit AA. Nevertheless and notwithstanding anything contained in this Agreement to the contrary, if AAA does not confer a Four Diamond rating on the Hotel, it will not constitute a default or “Event of Default” hereunder, so long as the Hotel meets the operating standards then published by AAA to obtain a Four Diamond rating. Owner hereby acknowledges that Manager owns and/or operates other hotels in the Dallas Fort Worth area and other convention center hotels in the United States. Owner hereby agrees and acknowledges that Manager’s ownership, operation, management and promotion of all such other hotels shall not be deemed a violation of any of the provisions of this Agreement, provided that Manager allocates (in a commercially reasonable manner) all rental opportunities and costs among all hotels operated by Manager, and that Manager does not operate other hotels in a manner that could reasonably be expected to result in greater revenues or lower costs for those hotels as compared to the Hotel, after taking into

consideration the character, size and location of each of the Hotel and the other hotels operated by Manager.

### 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 Owner 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. Owner 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. Notwithstanding the foregoing, however, if at any time after the fourth (4<sup>th</sup>) full Operating Year, Manager determines that the Hotel cannot be operated in accordance with the Omni Brand Standards set forth in **Exhibit Z** hereto, Manager shall have the right, upon one hundred and twenty (120) days' prior written notice specifying in detail the Omni Brand Standards that are not met by the Hotel and the actions required for Owner to cure such deficiencies, unless Owner takes prompt action to cure such deficiencies described in the notice, to terminate this Agreement. If Owner cannot reasonably be expected to complete the actions necessary to cure the deficiencies identified by Manager within such one hundred and twenty day period, then Owner shall have such time as is reasonably necessary to cure such deficiencies, provided that Owner diligently pursues the actions necessary to cure such deficiencies within a reasonable period of time following Manager's notice.

## 2.3 Establishing Rates, Rents, etc.

2.3.1 Approval of Rates in Operating Plan. 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) Owner's right to review and approve the Proposed Operating Plan and Budget (including, without limitation, the budgeted Gross Operating Revenues), as provided in Section 2.18.4 below, or (ii) Owner's right to appoint a Hotel Consultant to make 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 any 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 Owner with a written detailed explanation of the situation and recommendations as to modifications of the applicable Room Rate Schedule. Owner shall not have the right to approve any such modifications so long as (1) such modified rate schedules do not vary from the published or announced rate schedules of hotels in the Competitive Set by more than 75%, and (2) the revised budget prepared assuming such rate schedule does not result in Debt Service Coverage Ratios for the Series 2009 Bonds of less than 1.00 to 1.00. If Owner believes that either clause (1) or (2) is not satisfied and Manager disagrees, then the provisions of Section 2.18.4.2 shall be applicable to resolving the disagreement between Manager and Owner.

## 2.4 Negotiation of Contracts.

**2.4.1 Concession Agreements.** Subject to Sections 2.1.2, 2.1.3, 2.1.4, 2.4.2, 2.4.6 and 2.4.7 of this Agreement below and the remaining provisions of this Section, Manager shall negotiate, enter into and administer, as agent on behalf of Owner and for the benefit of the Hotel, any agreement with a concessionaire relating to the management and operation of the Hotel (individually, a “**Concession Agreement**” and collectively, “**Concession Agreements**”). Manager shall ensure that all Concession Agreements are expressly assignable to Owner or its designee, unless entered into explicitly by Manager on behalf of Owner. Prior to entering into any such Concession Agreement (or any other similar occupancy agreement), Manager shall submit such Concession Agreement to Owner, who shall obtain an opinion from Bond Counsel to the effect that such Concession Agreement will not adversely affect the Hotel’s exemption from ad valorem taxes, and Manager shall have the right to rely upon such opinion. Upon the termination of this Agreement for any reason whatsoever, Manager shall promptly take all reasonable actions necessary to assign to Owner or its designee all such Concession Agreements; provided, however, that Manager shall not be required to pay any money in connection with the assignment. In addition, Manager shall require that each such agreement include a no personal liability and indemnity clause in favor of Owner.

**2.4.2 Leases.** Subject to Section 2.1.3 and Section 2.29 of this Agreement, and with at least sixty (60) days’ prior written notice to Owner, Manager may enter into leases with third parties for the operation of restaurants, shops, spas and other retail venues within the Hotel with respect to any space within the Hotel or on the Land. All such leased areas shall be operated in accordance with the Operating Standard and in compliance with all tax requirements and Legal Requirements applicable to the Hotel and such leased operations, and Manager shall be responsible for assuring that each third party lessee conforms to the Operating Standard and Legal Requirements other than federal tax law requirements for “qualified management contracts.” Manager shall submit each lease to Owner, for review by Bond Counsel to determine if such lease complies with federal tax law requirements for “qualified management contracts.” Notwithstanding anything contained herein to the contrary, Owner and Bond Counsel shall review all leases submitted to it by Manager pursuant to Section 2.1.4 as same relate to federal tax law requirements for “qualified management contracts,” and Manager shall be entitled to rely upon the opinion of Bond Counsel that such leases comply with all tax requirements as provided in Section 2.1.4.

**2.4.3 Service Contracts.** Subject to Sections 2.1.2, 2.1.3, 2.1.4, 2.4.6 and 2.29 of this Agreement, Manager shall negotiate, enter into, and administer, as agent on behalf of Owner for the benefit of the Hotel, service contracts for Hotel operations, including (without limitation) contracts for health and safety systems maintenance, transportation, audio-visual, electricity, gas, telephone, cleaning, elevator and boiler maintenance, air conditioning maintenance, laundry and dry cleaning, master television service, broadband, high-speed internet access and other technological services as they are developed, use of copyrighted materials (such as music and videos), entertainment, and other services Manager deems advisable and in accordance with the Operating Standard. 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 ninety (90) 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 require that each such agreement (other than utilities contracts that are not subject to negotiation) include a no personal liability and indemnity clause in favor of Owner. Notwithstanding anything contained herein to the contrary, Manager shall submit to Owner and Bond Counsel for review all third party contracts pursuant to Section 2.1.4 as same relate to issues regarding tax exemption of the interest on the Bonds, and Manager shall be entitled to rely upon the opinion of Bond Counsel confirming that such third party contracts comply with all tax requirements as provided in Section 2.1.4.

**2.4.4 Banquet and Meeting Facility Contracts.** Subject to Sections 2.1.3, 2.1.4, 2.4.6 and 2.29 of this Agreement and the Room Block Agreement, Manager shall negotiate, enter into, and administer, as agent on behalf of Owner and for the benefit of the Hotel, contracts for the use of banquet and meeting facilities and guest rooms by groups and individuals. In addition, Manager shall require that each such agreement include a no personal liability and indemnity clause in favor of Owner.

**2.4.5 Licenses and Permits.** Subject to Sections 2.1.3, 2.1.4 and 2.4.6 of this Agreement, Manager shall obtain or cause to be obtained all licenses and permits required for the management and operation of the Hotel or the making of Capital Improvements, as and when required under the Legal Requirements; provided that Manager shall have no obligation to obtain a Temporary Certificate of Occupancy or a Certificate of Occupancy, such obligation to be an obligation of the Developer under the Hotel Developer Agreement. 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 all Liquor Licenses and permits required for the operation of the Hotel, and for compliance with all laws and regulations that apply to the operation of the Hotel under such Liquor Licenses and permits, the costs and expenses of which shall be Operating Expenses of the Hotel. Subject to all applicable Legal Requirements, Manager or such Affiliate, as applicable, will, if required by Trustee, pledge such Liquor Licenses to Trustee or another party designated by Trustee, in order to secure the re-payment of the Bonds

**2.4.6 Approval of Certain Contracts.** Owner's approval (which 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 (1) year or a term which is equal to or less than one (1) year but is automatically renewable unless terminated (unless such lease or other contract can be terminated without penalty upon notice of thirty (30) days or less), or (ii) requires annual aggregate annual payments in excess of One Hundred Thousand Dollars (\$100,000) and is other than a contract (1) for



which the cost of performance is included in the Approved Operating Plan and Budget or approved Capital Budget, or (2) for the provision of utilities, or (3) 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 Sections 2.1.3, 2.27 and 2.29 of this Agreement. Manager shall generally comply with its standard practices and policies applicable to Other Omni Hotels (including competitive bidding) in the selection of vendors under contracts for goods and services, subject to the requirements of Section 2.29. In addition, as part of the process of approval of the Proposed Operating Plan and Budget, Owner may instruct Manager to cause some or all of the contracts providing for payments in any one year in excess of One Hundred Thousand Dollars (\$100,000) (including contracts for consumable supplies) to be competitively bid by a minimum of three (3) different reputable vendors known to Manager to provide high quality service at competitive prices (at least two of whom must not be either a National Vendor or an Affiliate of Manager, and one of whom may be designated by Owner, at Owner'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.

2.4.6.1 Owner shall be deemed to have disapproved all of the matters submitted for its approval under Subsection 2.4.6 in the event Owner fails to respond within ten (10) Business Days from the date of Manager's second written request for approval which second request shall be sent by Manager if Owner has not responded to Manager's first request for approval within five (5) Business Days from the date of Manager's first written request for approval. Each second written request for approval shall prominently display a notation that Owner has ten (10) Business Days to respond or shall be deemed to have disapproved of such matter.

**2.4.7 Certain Limitations.** 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 Owner and Bond Counsel to ascertain whether such contracts could adversely affect the exemption from, federal income tax of interest on the Bonds. Notwithstanding the foregoing or anything to the contrary in this Agreement, contracts with unrelated third parties which satisfy the following criteria need not be submitted for review and approval:

1. Contracts for services that are solely incidental to the primary governmental function or functions of the Hotel (for example, contracts for janitorial, equipment repair, billing or similar services); or
2. 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; or
3. Arrangements provided for use that are available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied (unless the term of the arrangement, including all renewal options, is greater than 180 days); or

4. Use by a nongovernmental person pursuant to an arrangement (other than an arrangement resulting in ownership of the Hotel by a nongovernmental person) if:
  - a. the term of the use under the arrangement including all renewal options is not longer than 50 days, and
  - b. the arrangement is a negotiated arms-length arrangement, and
  - c. compensation under the arrangement is at fair market value, and
  - d. the property subject of the arrangement is not financed for the principal purpose of providing that property for use by that nongovernmental person; or
5. Contracts involving the payment of a total aggregate amount of less than \$100,000, as provided by Section 2.4.6; or
6. Contracts necessary to handle or prevent Emergency situations, provided that Manager notifies Owner of any and all such Contracts as soon as reasonably practicable after entering such contracts; or
7. Any other contracts that Owner has notified Manager in writing that it no longer is necessary to submit to Owner.

**2.4.8** Contracts with Related Parties. Notwithstanding anything to the contrary herein contained, Manager shall not enter into any contract, as a result of which Manager, or any Affiliate of or party related to Manager, receives, any Direct or Indirect Profit, including without limitation any rebate, kick-back, revenue sharing, royalty, profit participation, equity participation, barter consideration in the form of goods or services, or any other device, however denominated, and whether similar or dissimilar to any of the foregoing, during any Operating Year which, together with any Direct or Indirect Profit received pursuant to Sections 2.25.1, 2.25.3 and 3.4.3 would exceed five percent (5%) of the total Management Fee, the Centralized Services Fees and Charges and Eligible Employee Compensation Pool owed to Manager during such Operating Year (provided, however, that the amounts of the Centralized Services Fees and/or Eligible Employee Bonus Pool shall be excluded from such calculation to the extent such amounts are no longer being paid to the Manager based on the fixed amounts set forth in Section 3.2.1 and Section 2.21.2.2(i), respectively).

**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 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 at least once each Operating Year (either by a qualified employee of Manager or an outside consultant selected by Manager) and prepare a written report in a form reasonably acceptable to Owner for Owner's review and approval (which approval shall not be unreasonably withheld, conditioned or delayed). Notwithstanding Manager's rights and obligations under the preceding provisions of this Section, Owner shall have the right to hire an outside consultant to independently inspect the Hotel and the FF&E not more than once each Operating Year, the cost of which shall be paid from the Surplus Revenue Fund, but if there are not sufficient funds available in the Surplus Revenue Fund, the amount of the insufficiency shall be paid from the Gross Operating Revenues as an Operating Expense. The costs of such inspection and consultant, however, shall not be included as an Operating Expense for purposes of the Performance Test.

**2.6** Supervision and Coordination of Renovations, Improvements, etc. Manager shall (a) supervise and coordinate the construction and installation of any renovations, improvements, repairs, or replacements of a capital nature to the Hotel that may be implemented from time to time in accordance with this Agreement; (b) reasonably cooperate with Developer, Trustee and Owner and their respective designees and consultants with any related design review and project oversight undertaken by any of them; and (c) cooperate with and render assistance, as reasonably necessary, to each of them and their respective employees, agents, contractors, and representatives in connection with any such work.

**2.7** Purchase of Inventories, Supplies and Consumables. Subject to the obligations of the Owner and/or Developer under the Construction Documents, with respect to the following, Manager shall 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, and act in a commercially reasonable and economical manner in purchasing such items, provided that ownership of all such inventories, provisions, consumable supplies, and operating supplies shall be in the name of Owner.

**2.8** Cooperation with Owner's Purchasers, Mortgagees and Consultants.

Subject to Sections 6.1 and 6.2 hereof, without in any way limiting Manager's rights under this Agreement, Manager shall reasonably cooperate with Owner, its consultants and any actual or prospective purchaser, lessee, surety, Mortgagee, Trustee, or other lender in connection with any proposed sale, lease, or financing of or relating to the Hotel; 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 Owner) 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) to enforce or terminate any contract or other agreements related to the Hotel's operations and under which the third party contractor is in default, provided Owner has received written notice of such default prior to such enforcement and termination, (ii) to oust or dispossess guests, tenants, or other persons in possession who are not entitled to occupy the portion of the Hotel which they occupy, and (iii) to cancel or terminate any 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 Owner has received written notice of such default prior to such cancellation or termination, (c) take appropriate steps (as determined by Manager in its reasonable and prudent discretion) to challenge, protest, appeal and/or litigate to final decision in any appropriate court or forum any counterclaims related to the foregoing, provided that if such counterclaim involves a claim for more than Seventy Five Thousand Dollars (\$75,000), such counterclaim and litigation shall be subject to joint control under Section 2.9.2 following; and (d) defend, or submit to the appropriate insurance carrier for defense of, all claims against the Hotel related to personal injury, employment, or other claims filed against the Hotel, Owner or Manager related to the operation of the Hotel.

**2.9.2 Joint Control of Certain Legal Proceedings.** Notwithstanding any provision to the contrary contained in Section 2.9.1 of this Agreement, legal proceedings of a nature other than those referred to under Section 2.9.1 of this Agreement that subject Owner to liability risk in excess of Seventy Five Thousand Dollars (\$75,000) (other than those covered by insurance) shall be subject to Owner's and Manager's joint control which shall mean that Owner 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.

**2.9.3 Settlement of Claims.** Notwithstanding any provision to the contrary contained in Section 2.9.1 of this Agreement, 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 Owner's consent if such settlement would, when aggregated with any other settlements agreed to by Manager without Owner's consent during the then current Operating Year, result in aggregate uninsured liability during the then current Operating Year in excess of Two Hundred Thousand Dollars (\$200,000). Owner shall respond promptly and reasonably to any request for its consent pursuant to this Section 2.9.3 of this Agreement and Owner 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 Owner is acting in good, faith, nothing herein shall be construed as limiting Owner's ability to act in its own economic interest. Owner shall be deemed to have disapproved any proposed settlement unless Owner delivers to Manager a written notice approving such settlement in writing within fifteen (15) Business Days after

Manager delivers to Owner a written request for Owner's consent to such settlement, together with a detailed description of the proposed settlement. Such request for consent shall prominently display a note that Owner has fifteen (15) Business Days to respond. In addition, at the request of Owner and as an expense of the Hotel, Manager shall take appropriate steps (as determined by Manager 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.

**2.10** Availability of Senior Executive Personnel. Manager shall cause the Senior Executive Personnel to be available as often as Owner reasonably requires to consult with and advise Owner and Hotel Consultant and any of their respective representatives and designees concerning policies and procedures affecting the conduct of the business of the operation of the Hotel.

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

**2.12** Taxes.

**2.12.1** Remitting Sales and other Similar Taxes. Manager shall collect on behalf of Owner and account for and remit to governmental authorities all Gross Receipts Taxes. If any such Gross Receipts Taxes are deposited in the Lockbox Fund, Manager shall have the right to withdraw the amount of such deposited taxes in order to remit same to the applicable governmental authorities.

**2.12.2** Ad Valorem Taxes and Personal Property Taxes. Manager shall render, or cause to be rendered by any third party lessee operating within the Hotel, payments to the applicable taxing authority of all 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 Owner. Owner acknowledges that Manager is not a tax advisor and is not acting as such in connection with any involvement in the review of tax bills or written recommendations made pursuant to this Subsection 2.12.2. Manager shall handle as an expense of Hotel any tax disputes involving the Hotel and shall periodically report to Owner as to the status of any such tax disputes involving amounts in excess of \$25,000.

**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 Owner informed and advised of all material financial and other matters concerning the Hotel and the operation thereof and give due

consideration to suggestions which Owner's designees or consultants, including without limitation the Hotel Consultant, 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 that certain Cash Management Agreement, a copy of which is attached hereto as **Exhibit E**, and Section 5.04 of the Indenture. This agreement of Manager shall survive the termination or expiration of this Agreement until all uncollected amounts due during the Operating Term of this Agreement are collected or otherwise accounted for to the reasonable satisfaction of Owner.

**2.16** Cooperation with Convention Center. Manager shall reasonably and in good faith cooperate with the Convention Center's representatives and the Dallas Convention and Visitors Bureau, and will actively participate with the Convention Center representatives and Dallas Convention and Visitors Bureau in joint marketing for conventions and other events scheduled at the Convention Center and the Hotel. The General Manager and Director of Sales of the Hotel will meet no less often than quarterly with representatives of the Convention Center and Dallas Convention and Visitors Bureau to discuss potential joint marketing opportunities and results of joint marketing efforts. Manager will use its commercially reasonable efforts to implement specific marketing plans suggested by representatives of the Convention Center and the Dallas Convention and Visitors Bureau, subject to payment of the costs of such marketing plans from the Hotel's marketing budget.

**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 Owner and its designees and consultants (provided Manager has received written notice of the names and addresses of such designees and consultants at least seven (7) Business Days in advance of delivery) a Proposed Operating Plan and Budget for the next ensuing Operating Year. Upon request, Manager will meet with Owner to discuss the Proposed Operating Plan and Budget. The Proposed Operating Plan and Budget shall be subject to the review and approval process set forth in Section 2.18.4 of this Agreement.

**2.18.2** Preparation Standards. Manager shall act reasonably and exercise prudent business judgment in preparing each Proposed Operating Plan and Budget and any revisions thereto. Owner shall act reasonably and exercise prudent business judgment in approving or rejecting all or any portion of the Proposed Operating Plan and Budget. Each Proposed Operating Plan and Budget shall be subject to the provisions of Section 2.18.9 below. In addition, Manager and Owner agree that:

- (a) each Proposed Operating Plan and Budget must be prepared giving due consideration to all relevant factors, including, without limitation, existing market and

economic conditions, and operation of the Hotel in a manner that is consistent with the Operating Standard and the Room Block Agreement;

(b) each Proposed Operating Plan and Budget shall be prepared in accordance with Manager's standard planning and budgeting requirements applicable to all Other Omni Hotels; and

(c) each Proposed Operating Plan and Budget shall be in the form used by Manager at all Other Omni Hotels at the time of preparation of the applicable budget (the current form used by Manager and all Other Omni Hotels is attached hereto as **Exhibit F** and each subsequent form used by Manager shall include substantially the same line items as set forth on **Exhibit F**).

**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 Senior FF&E Reserve Fund, the Subordinate FF&E Reserve Fund, the Operating Expense Reserve Fund and the Surplus Revenue Fund as provided by Owner;

(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, estimates of the occupancy and average room rates;

(g) for each month, an estimate of Centralized Service Fees and Charges;

(h) a marketing plan, which shall contain a summary of the marketing strategies and tactics for each market sector, including: (1) a description of the Hotel's target markets, (2) the Hotel's relative position in those markets, (3) the proposed room rate structures for each market segment, with a comparison of the room rate structures, (4) the current and future sales and marketing plans for the Hotel (including specifically the marketing of rooms to be used in connection with the Convention Center), (5) the advertising and public relations plan for the Hotel (including specifically advertising and public relations programs to be used in connection with the Convention Center), (6) the proposed staffing for the sales and marketing activities of the Hotel (including

specifically sales and marketing activities pertaining the availability of rooms for the Convention Center) and (7) the proposed room rate structures and other published operating information for the hotels in the Competitive Set;

(i) a capital plan, which shall contain: (1) a five year forecast of Capital Expenditure needs for the Hotel, (2) a five year forecast of estimated available funds in the Senior FF&E Reserve Fund and the Subordinate FF&E Reserve Fund, (3) a detailed description of the requested Capital Expenditures for the Hotel, associated costs and funding plans for the upcoming Operating Year, and (4) an amount to cover unforeseen contingencies that may occur during the upcoming Operating Year; and

(j) an FF&E plan, which shall contain: (1) a five year forecast of FF&E needs and routine capital expenses for the Hotel, (2) a five year forecast of estimated available funds in the Senior FF&E Reserve Fund and the Subordinate FF&E Reserve Fund, (3) associated costs and funding plans for the upcoming fiscal year for the Hotel, and (4) a specified amount to cover unforeseen contingencies that may occur during the upcoming Operating Year.

#### 2.18.4 Approval of Budgets.

2.18.4.1 Approval of Proposed Operating Plan and Budget. Owner and Manager shall meet within fifteen (15) days after Owner's receipt of the Proposed Operating Plan and Budget for any Operating Year pursuant to Section 2.18.1 of this Agreement. If Owner and Manager are unable to agree upon a Proposed Operating Plan and Budget for an Operating Year within fifteen (15) days after such initial 15-day period, then within ten (10) days after the expiration of such second 15-day period, Owner shall deliver to Manager Owner's written objections to the Proposed Operating Plan and Budget, subject, however, to the provisions of Section 2.18.9 below. If Owner 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 disapproved in all respects, until Owner delivers to Manager its approval or any objections in writing. At such time as Owner delivers its objections to such Proposed Operating Plan and Budget, such disapproval shall specifically include the items disapproved (which disapproved items may include objections that Owner receives from the Hotel Consultant). During the fifteen (15) day period following Manager's receipt of Owner's items of disapproval, Owner, Manager and the Hotel Consultant will meet to discuss the disapproved items. Within five (5) days after the expiration of such third fifteen (15) day period, Manager shall submit to Owner and the Hotel Consultant a revised Proposed Operating Plan and Budget, as applicable, incorporating such revisions as Owner and Manager agreed upon during such third fifteen (15) day period. If the Parties do not agree upon such revisions, then the Parties shall engage in the procedure described in Section 2.18.6 to resolve such dispute.

2.18.4.2 Approval of Room Rate Schedules. Owner will not disapprove of a proposed rate schedule presented by Manager so long as (1) such rate schedule does not vary from the average comparable rates of hotels in the Competitive Set by more than



75%, (2) the budget prepared assuming such rate schedule does not result in Debt Service Coverage Ratios less than the Debt Service Coverage Requirement. As provided in the Indenture, so long as any Bonds are Outstanding, if Owner exercises its right to disapprove proposed rate schedule by Manager or any amendment thereto pursuant to Section 2.3.2 and Manager disagrees with Owner's reasons for disapproval of such proposed rate, schedule (or modifications thereto) and disputes the accuracy of the information contained in either clauses (1) or (2) of the immediately preceding sentence, then Owner shall request the Hotel Consultant to prove or disprove such clauses (1) or (2). If the Hotel Consultant agrees with Manager, Owner shall not have any right to dispute such proposed rate schedules and shall withdraw its disapproval. If the Hotel Consultant agrees with Owner, Manager shall have the right to submit the issue to the Dispute Resolution Procedure provided for in Section 10.1. Each room rate schedule approved or deemed approved by Owner is herein referred to as a "**Room Rate Schedule**". The foregoing provisions shall not apply to the Room Block Agreement.

2.18.4.3 Reduced Rate or Complimentary Rooms or Services. Manager shall submit to Owner, as part of the Proposed Operating Plan and Budget, a proposal for a limited amount of reduced rate or complimentary rooms or services. Manager shall not provide any reduced rate or complimentary rooms or services to any person or group except in accordance with the Approved Operating Plan and Budget.

2.18.5 Budget Review Standards. Without limiting Owner's approval rights, Owner shall have the right to object to any aspect of any Proposed Operating Plan and Budget, and Manager shall not have the right to use the Dispute Resolution Procedures provided for in Section 10.1, if (among other reasons):

(k) 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;

(l) the applicable budget is not consistent with the requirements of a Room Block Agreement or rates approved by Manager and Owner for a Room Block pursuant to the Room Block Agreement;

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

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

(o) 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); and

(p) as to a proposed capital budget, any proposed upgrades to the quality of the facilities of the Hotel would (i) require material alterations to the structural elements of the Hotel building as a result of any modifications in Omni Brand Standards made by Manager after the Effective Date, except as necessary to correct an Emergency or to comply with Legal Requirements; (ii) require purchase of new or replacement FF&E as a result of any modifications in Omni Brand Standards made by Manager after the Effective Date, until the earlier of five (5) years from the date of purchase of such FF&E or the end of the useful life of such FF&E; (iii) 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 (iv) render funds in the Senior FF&E Reserve Fund, the Subordinate FF&E Reserve Fund, Operating Expense Reserve Fund, or Surplus Revenue Fund inadequate for other necessary Capital Expenses or funding of other amounts as contemplated by this Agreement or an existing approved Capital Budget. The foregoing shall not in any way limit Owner's right to approve a proposed capital budget as to reasonableness of specifications and cost of implementing any upgrade set forth therein.

#### 2.18.6 Right to Request Dispute Resolution Procedure.

2.18.6.1 Right to Request Dispute Resolution Procedure. If (i) the Parties, despite their good faith efforts, are unable to reach final agreement on the Proposed Operating Plan and Budget for an Operating Year by December 15 of the prior Operating Year, the Parties shall invoke the “**Dispute Resolution Procedures**” as follows: (1) to the extent Owner, Hotel Consultant, or Manager have an approval right that is subject to disagreement among the Parties, the Party with the disagreement shall within five (5) days meet and confer about the disagreement; (2) if the Parties do not resolve their differences at this meeting, within ten (10) days, Senior Management of the respective Parties, shall meet and confer; and (3) if the Parties do not resolve their differences at this meeting, the parties within ten (10) days shall resolve such matter pursuant to Section 10.1 hereof. The costs associated with the Dispute Resolution Procedure shall be an Operating Expense, but one half of the costs associated with the Dispute Resolution Procedure shall be subtracted from the calculation of the Operating Expenses for the purposes of the Performance Test.

2.18.6.2 Operation of Budgets Pending Results from Expert. If Owner or Manager requests the Dispute Resolution Procedure to determine any disputed items in the Proposed Operating Plan and Budget, then, until the Expert 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 Approved Operating Plan and Budget shall govern the areas in dispute.

2.18.6.3 Capital Budget Pending Results from Expert or Arbitration. If Owner or Manager requests the Dispute Resolution Procedure to determine any disputed item in the proposed capital budget, then, until the Expert 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 is necessary to eliminate or remove an Emergency. Notwithstanding the foregoing, Manager shall notify Owner 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, except in the case of an Emergency, substantially deviate from the budgeted Capital Expenses in an approved Capital Budget unless Manager obtains the prior written consent of Owner (it being agreed that deviation in excess of One Hundred Thousand Dollars (\$100,000) 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 ten percent (10%) is removed are sufficient to complete the work contemplated by those line items. Owner acknowledges that certain of the expenses described in the Approved 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 Owner reasonably agrees that such increase will increase net operating income over that budgeted. The term “**Variable Expenses**” shall mean Operating Expenses covered by an Approved Operating Plan and Budget that reasonably fluctuate as a direct result of business volumes, including food and beverage expenses, other merchandise expenses, operating supply expenses, and energy costs.

**2.18.8 Characteristics of Budgets.** Owner acknowledges that (a) the Proposed or Approved Operating Plan and Budget is intended by Manager to be a reasonable estimate of income and expenditure only; (b) Manager does not give any guarantee, warranty or representation whatsoever in connection with any Approved Operating Plan and Budget, other than that Manager prepared same in good faith, utilizing all available facts and commercially prudent business methods; and (c) a failure of the Hotel to achieve any Approved Operating Plan and Budget for any Operating Year shall not in and of itself constitute an Event of Default or breach by Manager hereunder. The preceding sentence shall not, however, be construed as a limitation on (i) Manager’s obligations (and Manager shall be in breach of this Agreement if Manager fails) (1) to use commercially reasonable efforts to operate within the Approved Operating Plan and Budget and the Capital Budget, or (2) to obtain Owner’s approval prior to making expenditures that exceed in the aggregate the amount of the approved or authorized Capital Budget by more, than \$100,000, or (ii) Owner’s right to terminate this Agreement under any provision of this Agreement, including, without limitation, by reason of a Performance Termination Event or an Event of Default under this Agreement.

**2.18.9 Hotel Consultant.** Manager acknowledges that Owner is authorized to retain a Hotel Consultant to make recommendations under each of the following circumstances:

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

(b) if the actual Debt Service Coverage Ratios with respect to the Series 2009 Bonds for any four consecutive quarters is less than the Debt Service Coverage Requirement, Owner shall request the Hotel Consultant (within thirty (30) days of the receipt by Owner of the Quarterly 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 Owner pursuant to Section 2.20.3 of this Agreement reflects that the Debt Service Coverage Requirement was not achieved, then Owner shall request the Hotel Consultant (within thirty (30) days, of Owner's receipt of such audited annual financial statement) to make written recommendations as to the operation, management, marketing, improvement, condition or use of the Hotel or any part thereof that the Hotel Consultant believes could result in satisfying the Debt Service Coverage Requirement or improving the total amount of Net Revenues available to pay Debt Service.

Owner shall deliver the Hotel Consultant's reports and findings to Manager and Trustee within three (3) Business Days of receipt thereof by Owner. Manager will study and review such reports and any written recommendations made by the Hotel Consultant. Manager shall also, upon the request of Owner or Trustee, meet with the Hotel Consultant to discuss the Hotel Consultant's reports, findings and written recommendations. Manager shall accept and promptly implement all of the Hotel Consultant's written recommendations except (i) those written recommendations which require an expenditure of funds greater than the amount available for such purpose under the Indenture, or those written recommendations which could, in the opinion of Bond Counsel, adversely affect the tax-exempt status of the interest on the Bonds, and (ii) those with which Manager disagrees with such recommendations and provides Owner, Trustee and Hotel Consultant with a written explanation as to the reasons for such disagreement. Following receipt of the Hotel Consultant's written recommendations, Manager shall follow such recommendations except (i) those recommendations which require an expenditure of funds greater than the amount available for such purpose under the Indenture, (ii) those recommendations which could, in the opinion of Bond Counsel, adversely affect the tax-exempt status of the interest on the Bonds, or (iii) those which Manager disagrees with unless Owner or Hotel Consultant disputes such disagreement and requests such disagreement to be resolved through the Dispute Resolution Procedure, with a determination by the Expert that Manager shall follow such recommendations. The fees and expenses of the Hotel Consultant shall be paid as an Operating Expense from amounts on deposit in the Lockbox Fund. 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.

**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 all grounds that comprise the Site, FF&E and hotel equipment and operating supplies) shall be maintained, repaired, and improved by Manager, as an expense of the Hotel payable from the appropriate Fund as described in the Cash Management Agreement and the Indenture, as contemplated in the Capital Budget in effect from time to time.

**2.19.2** Senior FF&E Reserve Fund and Subordinate FF&E Reserve Fund. Owner shall use commercially reasonable efforts to cause Trustee (subject to and in accordance with the provisions in the Indenture) to set aside (or Owner, after the Bonds are no longer Outstanding, shall set aside) from Gross Operating Revenues on a monthly basis (in arrears) the Required Monthly FF&E Fund Deposit Amount into the Senior FF&E Reserve Fund. Owner may, at any time and from time to time at Owner's option after the fifth Operating Year, direct the Trustee (subject to and in accordance with the provisions in the Indenture) to set aside (or Owner may set aside, after the Bonds are no longer Outstanding) the Supplemental Monthly FF&E Deposit into the Subordinate FF&E Reserve Fund. Owner shall use commercially reasonable efforts to cause Trustee to maintain as required by Section 5.02 of the Indenture (or Owner, after the Bonds are no longer Outstanding, shall maintain) the Senior FF&E Reserve Fund and the Subordinate FF&E Reserve 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 Senior FF&E Reserve Fund or Subordinate FF&E Reserve Fund, as applicable. After no Bonds are Outstanding, Owner shall invest amounts in the Senior FF&E Reserve Fund and Subordinate FF&E Reserve Fund (or if a Mortgagee is in control of the Senior FF&E Reserve Fund and Subordinate FF&E Reserve Fund, Owner shall use commercially reasonable efforts to cause such Mortgagee to invest such amounts) in insured interest bearing accounts, with interest flowing into the Senior FF&E Reserve Fund and Subordinate FF&E Reserve Fund, as applicable. To the extent amounts in the Senior FF&E Reserve Fund or Subordinate FF&E Reserve Fund are not expended in an Operating Year, such amounts shall be accumulated for expenditure in future years, but any such amounts shall not be credited against the amount of the Senior FF&E Reserve Fund or Subordinate FF&E Reserve Fund contribution for the next Operating Year. Notwithstanding any provision of this Agreement to the contrary, Manager shall not incur Capital Expenses to the extent expenditures exceed an approved Capital Budget, except (a) for Capital Expenses incurred by Manager in connection with an Emergency pursuant to and subject to the limitations and requirements of Section 2.19.4 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 Owner, or (c) Capital Expenses which Manager incurs with Owner's prior written approval. 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 Senior and Subordinate FF&E Reserve Funds, Operating Expense Reserve Fund and Surplus Revenue Fund for Capital Expenses. The Senior FF&E Reserve Fund

and Subordinate FF&E Reserve Fund, subject to Section 2.19.4 of this Agreement, 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 Owner. The Senior FF&E Reserve Fund and the Subordinate FF&E Reserve Fund shall also be available to pay Debt Service on the Senior Lien Bonds, and the Subordinate FF&E Reserve Fund shall also be available to pay Debt Service on the Subordinate Lien Bonds, to the extent set forth in Section 5.06 of the Indenture. However, the Senior FF&E Reserve Fund shall not be used for the purposes set forth in the first sentence of this Section 2.19.3 unless the Subordinate FF&E Reserve Fund is not sufficient to satisfy the matters described in such sentence. In addition to the purposes permitted under Section 5.16 of the Indenture and subject to the terms of the Indenture, Manager may use the Operating Expense Reserve Fund only for unbudgeted capital Emergency Expenses or to comply with Legal Requirements (and then only 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 Expense Reserve Fund is not sufficient to satisfy the unbudgeted Emergency Expenses, then such expenditures shall be satisfied from the Surplus Revenue Fund, and if any insufficiency then remains, from the Subordinate FF&E Reserve Fund and then from the Senior FF&E Reserve Fund. In connection with any Emergency Expenses from the Senior FF&E Reserve Fund, the Subordinate FF&E Reserve Fund, the Operating Expense Reserve Fund, or the Surplus Revenue Fund, that were not specifically contemplated in the Capital Budget, Manager shall use good faith efforts to attempt to notify Owner prior to the time that the expenditures in question are made and shall in any event notify Owner in writing as soon as possible after such expenditures are made. The Surplus Revenue Fund shall not 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 Senior FF&E Reserve Fund and the Subordinate FF&E Reserve Fund.

**2.19.4 Defective and Dangerous Conditions.** If the design or construction of the Hotel is defective and the defective condition causes damage to the Hotel, poses a risk of injury to people or property, or is not in material compliance with one or more Legal Requirements including, without limitation, the provisions of a Temporary Certificate of Occupancy or a Certificate of Occupancy, Owner shall, subject to any limitations on warranties contained in the Development Agreement, the Hotel Developer Agreement and/or the Construction Documents, expeditiously remedy such defect or cause such defect to be remedied; provided, however, Owner shall maintain the right to challenge in good faith the existence of any alleged defective condition and/or the materiality of such alleged defect and/or any Legal Requirement, and unless and until such challenge is settled, Owner shall have no obligation to remedy or cause such defect to be remedied. In the event that any alleged defective condition is covered any warranty provided by the Developer or Owner has any other rights against Developer or any other third party in connection with such alleged defective condition, Owner shall make immediate demand on, and use commercially reasonable efforts to cause, the Developer or the responsible third party to pay the cost of remediation of such defective condition. Any amounts expended by Owner under this Section 2.19.4 either to repair the defective condition or to seek remedial action from Developer or other third party shall be paid out of the Surplus Revenue Fund, but if the Surplus Revenue Fund is not sufficient, the insufficiency shall be paid out of the following funds in the following order of priority: the Subordinate FF&E Reserve Fund, the Senior FF&E

Reserve Fund and the Operating Expense Reserve Fund. Any recovery which Owner receives from Developer or any other party on account of such amounts shall be deposited into the Funds from which monies were withdrawn in order to cure the defective condition (in the reverse order as the monies were withdrawn). Owner's obligations under this Section 2.19.4 shall not be subject to whether or when insurance proceeds may be available to cover necessary expenditures, but shall be subject to the availability of funds in the Hotel accounts in accordance with the terms of the Indenture.

**2.19.5 Supervision of Capital Improvements.** Subject to the availability of sufficient amounts in the Senior FF&E Reserve Fund, the Subordinate FF&E Reserve Fund, the Operating Expense Reserve Fund, and the Surplus Revenue Fund (the use of which funds shall be subject to Sections 2.19.3 above and 2.19.6 of this Agreement), 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 Owner) shall arrange for and supervise the completion of all Capital Improvements approved by Owner in the Capital Budget or otherwise agreed to by Owner and Manager in writing.

**2.19.6 Owner'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) Owner's obligations to provide funds for Capital Expenses shall be limited to funds in the Senior FF&E Reserve Fund, the Subordinate FF&E Reserve Fund, the Operating Expense Reserve Fund, and the Surplus Revenue Fund and (ii) the availability of funds for Capital Expenses or any other expenses shall be limited to the extent provided in 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 Senior FF&E Reserve Fund (to the extent available under the Indenture) and the Subordinate FF&E Reserve Fund. After the Bonds are no longer Outstanding, Owner's obligations to provide funds for Capital Expenses shall continue to be limited to funds in the Senior FF&E Reserve Fund, the Subordinate FF&E Reserve Fund, the Operating Expense Reserve Fund and the Surplus Revenue Fund, to the extent that such funds continue to be used by Owner.

## **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 Omni Hotels, Manager shall keep full, complete and accurate books of account, front office records, guest information and other records to be prepared to reflect the operation of the Hotel and the results of operations of the Hotel, including, but not limited to accounts and records pertaining to accounts payable, general ledger and payroll. Manager may, in its reasonable discretion, handle the Hotel's accounting functions directly or through an Affiliate, as a Centralized 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 Generally Accepted Accounting Principles and, to the extent applicable, with the Uniform System of Accounts. All books and records shall be reported in the format that Omni uses for all Other Omni Hotels and in such other format and including such additional information as may be required in the Indenture, in the Continuing Disclosure Agreement and as may be reasonably required by Owner, Trustee or Mortgagee. All of the financial books and

records pertaining to the Hotel, including books of account, front office records, and guest records and information, shall be the property of Owner, and shall be available at all reasonable times for inspection and copying by Owner, the City, Hotel Consultant, and their respective representatives; provided, however, that (a) guest information may be used by Manager for any of its business purposes so long as such information is not used in a manner which would violate Section 4.12.10 of this Agreement or subject Owner to any liability for the use or disclosure of such information, (b) files pertaining solely to Manager's Intellectual Property and Manager's Proprietary Information shall be Manager's sole property and (c) employee records of Hotel Personnel shall be Manager's property (except that Owner shall have the right to review such employee records in connection with an audit, a financing or a purchase of the Hotel, but only to the extent of the following: employee contracts, employment applications and information pertaining thereto, initial hire date, current salary, wage and benefits, and employment positions and any other information that Owner is permitted by law to review for any reasonable purpose). Upon Termination of this Agreement, all of such books of account and financial records (excluding confidential files relating to Manager's Intellectual Property) shall be turned over forthwith to Owner so as to ensure the orderly continuance of the operation of the Hotel, but all of such information shall be retained by Owner and made available to Manager at the Hotel, at all reasonable times, for inspection, audit, examination, and copying (at Owner's expense) for the period of time required by regulations of the Internal Revenue Service, but in any event not less than three (3) years subsequent to the date of such Termination.

**2.20.2 Monthly/Quarterly Reports.** Manager shall cause to be prepared and delivered to Owner the monthly and quarterly operating reports listed on **Exhibit G** (the "**Monthly Reports**" and "**Quarterly Reports**", respectively) based on information available to Manager. The Monthly Reports shall reflect operational results for the current month and year to date of the current Operating Year, and the Quarterly Reports shall reflect operational results for each quarter of the Operating Year, as well as the then-current Debt Service Coverage Ratios. Manager shall deliver to Owner each Monthly Report on or before the twentieth (20th) day of the month following the month to which such Monthly Report relates. Manager shall deliver to Owner each Quarterly Report on or before the twentieth (20th) day of the month immediately following the quarter to which such Quarterly Report relates. The reports shall be in a format (which may be amended from time to time) substantially similar to the operating reports provided or generated by Manager with respect to Other Omni Hotels and in such other format and including such additional information as may be required by the Indenture, the Continuing Disclosure Agreement and as may be reasonably required by Owner, any Mortgagee or any surety. Upon request made by the Hotel Consultant made not more than one (1) time each Operating Year, Manager shall have performed an evaluation of the Hotel in accordance with the standards set forth on **Exhibit H**, in all material respects. Copies of the results of the evaluation shall be provided to Owner and Trustee contemporaneously with the Hotel Consultant. Manager shall be permitted to adopt a different system of evaluation consistent with the program utilized at Other Omni Hotels, as long as the goal intended to be accomplished by the evaluation criteria set forth on **Exhibit H** is fairly achieved in all material respects. The cost of the evaluation or audit described in this Section 2.20.2 shall be included in Operating Expenses.

**2.20.3 Annual Certified Financial Statements.** Within one-hundred and twenty (120) days after the end of each Operating Year, Manager shall cause to be prepared and delivered to Owner, as an Operating Expense, Certified Financial Statements for the preceding



Operating Year. Owner shall supply to Manager, within twenty (20) days after written request from Manager so to do, information in Owner's possession (and not in Manager's possession) necessary for Manager to cause the Certified Financial Statements to be prepared and delivered. Until Owner delivers such information to Manager, Manager shall be obligated to prepare and deliver the Certified Financial Statements with only such information as is reasonably available to Manager; provided that if the Independent Accountant is unable to certify to such financial statements because of the need for information in Owner's possession which has not been supplied to Manager, Manager shall nevertheless cause such financial statements to be prepared and delivered with qualifications by the Independent Accountant as to such missing information.

**2.20.4 Destruction of Records.** Manager shall not destroy any books and records, except in accordance with Owner's records retention policy attached as **Exhibit DD** hereto, as may be amended by Owner from time to time in its discretion upon prior written notice to Manager.

**2.20.5 Owner's Audit Rights.** Owner, Hotel Consultant, Trustee and their designees shall, at any time throughout the Operating Term, 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. Owner, Hotel Consultant, Trustee and their designees 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 Owner, Hotel Consultant Trustee and their designees in connection with such audit and shall promptly make available to Owner, Hotel Consultant, Trustee and their designees any and all information relating to the Hotel that they may reasonably request in connection with such audit. Owner, Hotel Consultant and Trustee 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 quarterly or annual operating reports to Owner are found to be understated or overstated by more than three percent (3%), then Manager must immediately pay to Owner the reasonable cost of such audit (any amount not in excess of Fifty Thousand Dollars (\$50,000) shall be deemed reasonable), as well as correct the misstatements as shown by such audit. If Manager is not responsible for the cost of the audit hereunder, then the cost of an audit conducted pursuant to this Article shall be funded from the Surplus Revenue Fund. If there is an insufficiency of funds in the Surplus Revenue Fund, such insufficiency shall be funded from the Operating Expense Reserve Fund and if the Operating Expense Reserve Fund is not sufficient, then from the Gross Operating Revenue as an Operating Expense. Notwithstanding the preceding sentence, the costs of such audit shall not be included in the calculation of any 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 Omni 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 Owner's rights under Section 2.21.1.4 below, Manager shall recruit, hire, relocate, pay, supervise, and dismiss all Hotel Personnel (including, without limitation Senior Executive Personnel, the Key Employees and the Executive Staff), with the understanding that all Hotel Personnel shall be the employees of Manager, and not Owner.

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.

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, Four Diamond 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 Owner's Right to Review and Interview General Manager. Owner shall have the right to interview and consult with Manager regarding the individuals selected by Manager as the General Manager prior to their appointment. Manager shall deliver to Owner the following information at least fifteen (15) days prior to Manager's decision to hire any General Manager, in order to allow Owner to review such information and consult with Manager concerning Owner's views on the hiring of such candidate: (i) a written summary of each such individual's professional experience and qualifications; and (ii) notice of Manager's desire to arrange an interview between Owner and such individual at the Hotel or at another mutually acceptable location (it being agreed that Owner will forego its right to interview any such individual if Owner is unwilling or unable to have an authorized representative participate in the interview within seven (7) Business Days following Manager's notice to Owner of Manager's desire to arrange such an interview); provided, further, Manager will be cognizant that reasonable consistency in the General Manager is important to the success of the Hotel. Manager agrees that if there is a vacancy in any position, Manager shall make commercially reasonable efforts to find a permanent replacement within a reasonable period of time thereafter.

2.21.1.5 Relocation Expenses. If Manager relocates any Senior Executive Personnel to another hotel or position within eighteen (18) months after his/her arrival at the Hotel, Manager shall reimburse Owner for the relocation expenses, and the search and recruiting expenses incurred by Owner in relocating such individual's replacement to the Hotel. It is understood and agreed that the Hotel shall not incur any expense in connection with the relocation of any departing Senior Executive Personnel to his or her new position, regardless of the length of time any such individual is employed at the Hotel; provided, however, that in the event that Manager hires a temporary person for the position of the departing Senior Executive Personnel pending the employment of a permanent replacement, all costs and expenses associated with such temporary employee, including the salary and benefits of such temporary employee, shall be paid from the Eligible Employee Compensation Pool in accordance with Section 2.21.2.2.

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 Omni Hotels. Manager shall charge the Hotel with its pro rata share of the costs and expenses of such Omni plan or plans allocated to the Hotel on the same basis as allocated to Other Omni 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 Approved Operating Plan and Budget. All such compensation, bonuses, employee benefits shall be established using Manager's compensation policies and guidelines applicable to all Other Omni Hotels and shall be reasonable as compared to Other Omni Hotels (taking into consideration the location of the Hotel and Other Omni 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 Section 5 of this Agreement.

2.21.1.8 Travel and Reimbursement. Employees and representatives of Owner, Manager and their Affiliates who travel to the Hotel on a temporary basis to provide technical assistance or other services (including legal, operational and consulting services) shall be permitted to stay at the Hotel, without charge and on a space available basis, and use its facilities (including restaurants and lounges). 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 the limitations for complimentary and discounted rates set forth in the Approved Operating Plan and Budget, which shall be consistent with Manager's

policies applicable to Other Omni Hotels with respect to such stays in effect from time to time, and provided further that the aggregate effect of such complimentary or reduced rate stays do not place more than an immaterial burden on the operations or profitability of the Hotel.

**2.21.2 Employee Status.**

2.21.2.1 Generally. None of the Hotel Personnel shall be considered employees of City, Owner or Trustee. All Hotel Personnel Costs other than as set forth in Section 2.21.2.2 below shall be Operating Expenses and the responsibility of Owner. Manager shall pay all Hotel Personnel Costs of such employees and, except as set forth in Section 2.21.2.2 below, the amount of payments shall immediately be reimbursed to Manager by Owner in accordance with Section 3.4 hereof. Accordingly, Manager shall establish appropriate payroll accounts covering all such employees of the Hotel. Except as set forth in Section 2.21.2.2 below, arrangements shall be made such that Manager can draw on the Lockbox Fund to transfer funds to such payroll accounts immediately upon its payment of such Hotel Personnel Costs.

2.21.2.2 Eligible Employee Compensation Pool.

(i) Determination of Eligible Employee Compensation Pool. Commencing with the first full calendar year following the year in which the Opening Date occurs and continuing for each Operating Year thereafter during the Operating Term, Manager shall be paid the amount of \$\_\_\_\_\_ as the then applicable eligible employee compensation pool (the “**Eligible Employee Compensation Pool**”), provided that such amount for each Operating Year after the first full calendar year following the Opening Date shall be increased by a percentage equal to the percentage change in the Index for the last month of the Operating Year for which such Eligible Employee Compensation Pool is payable as compared to the last month of the Operating Year immediately preceding the Operating Year for which such Eligible Employee Compensation Pool is payable. In addition, for the year in which the Opening Date occurs, and for the year of Termination, Manager shall be paid the amount of \$\_\_\_\_\_ (as increased or decreased by the provisions of the preceding sentence) multiplied by the number of days between (A) the Opening Date and the last day of such year, divided by 365, as the Eligible Employee Compensation Pool for the year in which the Opening Date occurs, and (B) the first day of the year of Termination and the date of Termination, divided by 365, as the Eligible Employee Compensation Pool for the year in which the Termination occurs. Any amount remaining in the Eligible Employee Compensation Pool at the end of any Operating Year shall be retained by Manager.

(ii) Schedule of Compensation. As part of the annual budgeting process, Manager shall deliver to Owner a schedule of Compensation it intends to pay to those personnel holding the positions listed on **Exhibit AA** attached hereto (the “**Executive Committee Personnel**”), it being understood that each such schedule shall set forth the names of each of the Executive Committee Personnel

and the amount of the compensation budgeted for each of the Executive Committee Personnel (the “**Schedule of Compensation**”). The amount of the Schedule of Compensation shall be computed on a basis comparable to the compensation generally paid to similarly situated employees of the Manager at Other Omni Hotels based upon the performance of such Other Omni Hotels. If the Schedule of Compensation varies from the amount of the Eligible Employee Compensation Pool for such Operating Year by more than 5%, the Owner and Manager shall meet to discuss such variance and may mutually agree to amend the amount of the Eligible Employee Compensation Pool set forth in clause (i) above; provided however, that neither Party shall be obligated to agree to any such amendment.

(iii) Increases to Eligible Employee Compensation Pool. In the event that Compensation of the Executive Committee Personnel during an Operating Year exceeds the Eligible Employee Compensation Pool for such Operating Year, then the Eligible Employee Compensation Pool for such Operating Year shall be increased by the amount by which the Compensation exceeds the Eligible Employee Compensation Pool for such Operating Year, but in no event will such increase to the Eligible Employee Compensation Pool (A) exceed an amount equal to 5% of the total Management Fee (including the Eligible Employee Compensation Pool) payable for such Operating Year and (B) be based upon the profitability of the Hotel. Compensation to Executive Committee Personnel shall be payable solely from the Eligible Employee Compensation Pool and to the extent the Eligible Employee Compensation Pool is insufficient, such insufficiency shall be an obligation of Manager payable solely from Manager’s own funds and not directly or indirectly from any Revenues of the Hotel or any funds held by the Trustee under the Indenture.

(iv) Payment of Eligible Employee Compensation Pool. An amount equal to one-twelfth of the Eligible Employee Compensation Pool for an Operating Year shall be payable directly to the Manager from the Lockbox Fund on the first Business Day of each month. To the extent the amount of the Eligible Employee Compensation Pool is increased in accordance with clause (ii) or (iii) above, the amount of such withdrawal shall be increased so that the total amount of the Eligible Employee Compensation Pool for such Operating Year shall be paid to the Manager during such Operating Year.

(v) Certain Representation. Manager represents that there are no other employees at the Hotel other than those within the category of “Executive Committee Personnel” who provide the primary supervisory management services for the Hotel.

(vi) Termination of Eligible Employee Compensation Pool. If Owner notifies Manager in writing that the Eligible Employee Compensation Pool is no longer required, then notwithstanding anything contained in this Agreement to the contrary, Executive Committee Personnel shall be compensated in the same manner as all other Hotel Personnel.

**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. Owner shall, however, provide reasonable prior notice to Manager of any sale of the Hotel by Owner in order to enable Manager to provide notices to employees required by any Legal Requirement. Provided Owner delivers written notice to Manager with sufficient time to enable Manager to serve notice to its employees as required under any Legal Requirement, Owner 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 Owner of an event triggering such notice requirement.

**2.21.4 Labor Relations.** Manager shall have the exclusive authority to negotiate any agreements or contracts with or concerning labor unions representing Hotel Personnel. Owner shall have no authority to, and Owner shall not, negotiate or enter into any such agreements or contracts with or concerning labor unions representing Hotel Personnel on behalf of Manager or in connection with the Hotel. Manager shall consult with Owner in advance of, and, to the extent practicable, during the course of, negotiations with any labor union as to the terms of any collective bargaining agreement or labor contract being negotiated, and shall keep Owner fully and contemporaneously informed regarding all aspects of any labor contract negotiation matters, give due consideration to any recommendations, advice or other input of Owner with respect to such negotiations, and give Owner reasonable notice of the time and location of any negotiating sessions concerning collective bargaining and/or neutrality or access agreements. In addition, representatives of Owner shall be entitled to attend and observe any and all negotiations concerning collective bargaining and/or neutrality or access agreements and confer on an immediate basis with the person or persons selected by Manager to negotiate with representatives of a labor union during the course of any labor negotiations. All neutrality or other agreements with unions representing Hotel Personnel, including but not limited to pre-recognition access, shall be submitted to Owner for review and approval prior to Manager's execution of any such agreement, without regard to the reasonableness of such approval. In any purchase and sale agreement pertaining to the sale of the Hotel, Owner shall include a provision which obligates the purchaser to pay for (and indemnify Owner, Manager and Trustee from and against) any costs and liability arising out of withdrawing the Hotel from any such collective bargaining agreement or labor contract as a result of such sale.

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

**2.21.6 Non-Solicitation.** Owner 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 Centralized Services.**

. Manager shall furnish or cause its Affiliates to furnish to the Hotel the benefits of the Centralized Services, and Owner hereby agrees that Manager may in its discretion cause the

Hotel to participate in any or all such Centralized Services, so long as such participation is consistent with the provisions of each Approved Operating Plan and Budget and is intended to maximize the present value of the Hotel. Without limiting the generality of the foregoing, Manager will provide centralized marketing, sales and reservation services as follows:

**2.22.1 Centralized Marketing Program.** Manager shall maintain a national marketing and national sales program that promotes the Hotel, the “**Omni**” brand identity of Manager and its Affiliates, advertises to Manager’s and its Affiliates’ markets and secures bookings for hotels and resorts, including the Hotel, operated under the “**Omni**” name (the “**Centralized Marketing Program**”). Concurrently with the delivery of the Proposed Operating Plan and Budget, or as soon thereafter as reasonably practical, Manager will provide Owner with a detailed description of the Centralized Marketing Program for the succeeding year. In addition, Manager shall coordinate the Hotel’s individual marketing program with the Centralized Marketing Program and, as appropriate, include the Hotel in the brand identity and national advertising programs conducted as part of the Centralized Marketing Program.

**2.22.2 Centralized Reservation Program.** Manager shall secure bookings for the Hotel through Manager’s sales and reservations offices and other distribution and sales systems (the “**Centralized Reservation Program**”) and shall encourage the use of the Hotel by tourists, special groups, travel congresses, travel agencies, airlines, and other recognized sources of hotel business. Manager shall develop a sales program, 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, Owner agrees that:

(a) **Reservation System.** Owner shall not maintain or use, in connection with the Hotel, toll-free or similar telephone lines or communications devices intended 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, provided, this shall not prohibit a toll free line intended for other purposes. 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 “**Omni**” name.

(b) **Room Inventory.** Throughout the Operating Term, Owner 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, subject to the terms of the Room Block Agreement and all associated room rates.

(c) **Reservation System Requirements.** Manager agrees to have, maintain and operate (or cause to be installed, maintained and operated) during the entire term of this Agreement a reservation system which shall be efficient and be similar to the reservation systems of similarly situated hotel management companies or franchisers which are competitive with Manager. Owner shall acquire, install, operate and maintain (or cause to be acquired, installed, operated and maintained) within the Hotel appropriate terminals and other hardware for

the handling of the bookings made through such systems, with the assistance of Manager if required. Manager shall integrate the Hotel into any current or future reservation or distribution system or systems used by the Omni Brand.

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

- (a) production, distribution, and placement of promotional materials relating to the Hotel;
- (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 Omni 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.

**2.23.2 Responsibility for Development of Marketing Plan.** Development and implementation of the Hotel's individual marketing program will be accomplished substantially by Hotel Personnel, with periodic assistance from Corporate Personnel with marketing sales expertise. Any such assistance rendered by Corporate Personnel shall be at no cost to Owner or the Hotel for such Corporate Personnel's time, but Owner shall pay for the reasonable Out-of-Pocket Expenses (which shall be Operating Expenses) incurred by Manager in connection with such assistance, subject, however, to approval by Owner of such Out-of-Pocket Expenses in connection with the approval the Proposed Operating Plan and Budget in accordance with the provisions of Section 2.18 of this Agreement, and provided that the services are properly identified and justified and represent the most efficient alternative available to Manager. 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 "Omni" logotype must be the only logotype or symbol used to identify the Hotel; (b) Owner 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 Approved Operating Plan and Budget for such Operating Year. For the first five (5) Operating Years of the Hotel, at least twenty five percent (25%) of the total annual marketing budget for the Hotel shall be devoted to the Hotel's specific marketing program.

**2.24** Automation. The Hotel shall utilize all automation systems necessary to enable the Hotel to function as any Other Omni Hotel, including, without limitation, the property management system, time keeping and payroll system, human resource system, revenue management system and links to central reservation system utilized by Other Omni Hotels, as the same may be modified or updated from time to time. Upon request, Manager will provide Owner with a written list of Manager's Proprietary Software actually installed in the Hotel by or for Manager, and if requested by Owner, 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 ninety (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 Owner) will be under the absolute obligation to provide an extension of such software and information system for a period (not to exceed ninety (90) days) following Termination of this Agreement and, in any event, for the entirety of the Transition Period. In connection with any such extension, Owner shall be required to execute Manager's standard grace period license agreement, provided, however, that no license fees shall be payable by Owner to Manager during such grace period.

**2.25** Purchasing.

**2.25.1** 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, subject to the provisions of Section 2.29. Manager will provide information upon request of Owner regarding any goods or services purchased by Manager under its purchasing program with any National Vendor, including information regarding all costs and fees charged therefor, and the terms and conditions of such purchases, including payment terms, price, quality and time of delivery. If Owner can purchase any goods or services upon terms that are more favorable to Owner than those made available by Manager under its purchasing program with a National Vendor, then Owner shall be entitled to decline participation in any contract with that National Vendor, and obtain goods and services from another vendor recommended by Owner subject to Manager's reasonable approval, provided that the goods and services provided by that vendor meet the Omni Brand Standards. Notwithstanding Manager's intentions to use National Vendors for the purchase of goods and services for the Hotel, Manager believes that it has a reasonable expectation of meeting the goals agreed to by Manager under Section 2.29. Manager further agrees that it 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, as well as the policies of City described in Section 2.29. 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 during any Operating Year which, together with any Direct or Indirect Profit received pursuant to Sections 2.4.8, 2.25.3 and 3.4.3, would exceed five percent (5%) of the total Management Fee, the Centralized Services Fees and Charges and Eligible Employee Compensation Pool owed to Manager during such Operating Year (provided, however, that the amounts of the Centralized Services Fees and/or Eligible Employee Bonus Pool shall be excluded from such calculation to the extent such amounts are no longer being paid to the Manager based on the fixed amounts set forth in Section 3.2.1 and Section 2.21.2.2(i), respectively). Manager shall be liable for any damages, expense, liabilities or obligations incurred by Owner that arise out of Manager's breach of its representation and warranty that any such contracts entered into by Manager do not include any Direct or Indirect Profit, up to the amount set forth in Section 12.14.1.

**2.25.2 Local Vendors.** Notwithstanding anything to the contrary in this Agreement, Owner may suggest that any services that are provided by third party vendors, other than Centralized Services and exclusive providers, 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 Owner can demonstrate to Manager's reasonable satisfaction that such service can be provided at least as efficiently as a reputable third-party identified by Owner, and that the quality of the service will satisfy Manager's national quality requirements in Manager's reasonable discretion. Notwithstanding anything contained in Section 2.29 or the preceding sentence to the contrary, however, Manager shall have the right to continue to use National Vendors with whom it has exclusive contracts or local vendors engaged to achieve Omni Brand Standards or meet the Four Diamond operating standards, so long as Manager reasonably believes that it can meet the goals provided in Section 2.29.

**2.25.3 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) such contracts do not provide for a price in excess of the market price for such goods and/or services and the goods and/or services are of a quality that would: (a) be at least equivalent to that provided by an unrelated third party contractor pursuant to an arms-length contract for the same price as is charged by the Affiliate or related party; (b) satisfy the Operating Standard requirements in Manager's reasonable discretion, (ii) such contracts do not result in any such Affiliate or related party receiving any Direct or Indirect Profit by reason thereof during any Operating Year which, together with any Direct or Indirect Profit received pursuant to Sections 2.4.8, 2.25.1 and 3.4.3 would exceed five percent (5%) of the total Management Fee, the Centralized Services Fees and Charges and Eligible Employee Compensation Pool owed to Manager during such Operating Year and (iii) Manager first complies with the requirements of Sections 2.25.1 and 2.25.2 before entering into such contracts with Affiliates. Manager shall be liable for any damages, expense, liabilities or obligations incurred by Owner that arise out of Manager's breach of its representation and warranty that any such contracts entered into by Manager do not include any Direct or Indirect Profit, up to the amount set forth in Section 12.14.1.

**2.26 Hotel Parking.** The Hotel will include a Garage with at least seven hundred and twenty (720) parking spaces for use by the Hotel. Manager shall be responsible for operation

and maintenance of the Garage as a department of the Hotel. Manager may engage a third party parking manager to manage and operate the Garage, provided that (i) Owner and Trustee shall have the right to approve any such third party parking manager (which approval shall not be unreasonably withheld, conditioned or delayed), (ii) the third party parking management agreement will be in the form of a “**qualified management agreement**” drafted by counsel selected by Manager and approved by Owner and Bond Counsel, and (iii) Manager shall be responsible for paying the management fee being charged by the third party parking manager in excess of that amount of the benefit to be derived by having a third party parking manager as determined by Manager to the satisfaction of Owner and Hotel Consultant. All revenue generated by the Garage shall be included in Gross Operating Revenues and all expenses incurred in connection with the management and operation of the Garage shall be included in Operating Expenses.

**2.27 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; provided that Manager shall have no obligation to acquire any Temporary Certificate of Occupancy or Certificate of Occupancy, such obligation to be solely the obligation of the Developer under the Hotel Developer Agreement. 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 Ownership or operation of the Hotel. Manager does not in any way assume any of Developer’s obligations to comply with Legal Requirements or any other laws, rules or regulations or obligations of Developer under the Hotel Developer Agreement including, without limitation, Developer’s obligation to acquire any Temporary Certificate of Occupancy or Certificate of Occupancy. 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 Owner or Manager to contest the applicability of any Legal Requirements so long as such contest does not expose the other Party to material risk of criminal sanctions, or civil sanctions for which the other Party is not willing to fully indemnify.

**2.28 Prohibition on Borrowing and Other Credit Obligations.** Other than the extension of credit to customers in the ordinary course of business and entering into contracts authorized under the preceding provisions of this Section 2, Manager shall not borrow any money or execute any credit obligation in the name and on behalf of Owner or pledge the credit of Owner without Owner’s prior written consent, which may be given or withheld in Owner’s sole discretion.

**2.29 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’s SBE and MWBE Policies to provide small, minority and woman-owned business enterprises with the maximum practical opportunity in the performance of public contracts, as further described in **Exhibit K**. Manager hereby agrees that in connection with the performance of its obligations hereunder, Manager shall use

commercially reasonable efforts to meet the commitments it has made to the City in **Exhibit K**, and abide by all applicable terms and conditions of the SBE and MWBE Policies as attached in **Exhibit K**. This commitment is not intended to limit Manager's express rights under this Agreement, including the right to require that all goods and services obtained by Manager for the Hotel must meet Omni Brand Standards and the Four Diamond rating standard of AAA, but this commitment shall serve as Manager's good faith commitment to use its commercially reasonable efforts to meet the goals established jointly by Manager and the City as identified in **Exhibit K** in the course of all of Manager's duties as operator of the Hotel.

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

2.30.1 Sufficient Funds. Notwithstanding anything else set forth in this Agreement, Manager's obligations, duties, covenants, agreements and responsibilities under this Agreement that require the expenditure of funds which constitute an Operating Expense, Capital Expense, fixed expenses under the Uniform System of Accounts, Excluded Taxes and Other Charges and amounts required to be paid (but which are not paid) under the Development Agreement and the Hotel Developer Agreement are subject to Sufficient Funds being available to Manager.

2.30.2 Insurance Coverage Recommendations. Owner agrees to rely exclusively on its own insurance advisors with respect to all insurance matters. In the event that Owner disagrees with decisions made by Manager in connection with insurance procured by Manager, Owner shall have the right to disagree and require Manager to purchase the insurance recommended by Owner's insurance advisors, and notwithstanding anything contained in this Agreement, the costs of such insurance shall be an Operating Expense.

2.30.3 No Representation Concerning Tax Exempt Status. Manager makes no representation or warranty concerning the tax-exempt status of the interest on the Bonds. Further, Owner hereby acknowledges and agrees that all tax-exempt issues related to the interest on the Bonds are the responsibility of Owner, except to the extent that Manager expressly represents and warrants certain matters regarding the amount of Direct or Indirect Profit in this Agreement.

2.30.4 Accuracy of Predictions in Financial Reports. Any and all financial projections and budgets prepared by Manager under this Agreement, including those contained in the annual Proposed and/or Approved Operating Plan and Budget are to be prepared by Manager as accurately as is reasonably possible, using good faith, information then available to Manager and Manager's prudent business judgment. Any and all such financial projections and budgets are not to be independently relied upon by Owner or any third party as to the results predicted therein, although Manager acknowledges that the same will be used by Owner and given to Owner's lenders and their financial, professional and legal advisors. Manager does not guarantee the accuracy of the projections and budgets, nor does it guarantee the results of such projections and budgets. Owner acknowledges that Manager shall not be held responsible by Owner for any divergence between such projections and budgets and actual operating results achieved, so long as such budgets are prepared by Manager in good faith and Manager, in the preparation of such budgets, uses prudent business judgment and all relevant information then available to Manager. In no event will this paragraph be construed to interfere in any way with

Owner's right to terminate this Agreement in the event of a failed Performance Test or an Event of Default by Manager or relieve Manager from any of its duties, obligations covenants, agreements, and responsibilities set forth in this Agreement.

**2.30.5 Responsibility for Environmental, Construction and Other Real Property Issues.** If any environmental, construction, or real property-related problem exists at the Hotel during the Operating Term and occurs or arises solely out of activities undertaken (a) prior to the Opening Date at the Hotel or on the Site or (b) after the Opening Date and caused by persons or entities other than Manager, Hotel Personnel, persons or entities providing services on the Site at the request of Manager, or guests or other permitted occupants of the Hotel, Manager shall not be responsible for the cost or management of any actions necessary to abate or correct such problems. Manager shall be responsible for the abatement or correction of any environmental, construction or real property related problem that occurs after the Opening Date at the Hotel or on the Site that is caused by Manager, Hotel Personnel, persons or entities providing services on the Site at the request of Manager, or guests or other permitted occupants of the Hotel. The cost to correct and abate any such problems shall be funded from the Operating Expense Reserve Fund, but shall not be included as an expense in connection with the Performance Test unless the cause of such problems was Manager's Gross Negligence or Willful Misconduct. If the Operating Expense Reserve Fund is not sufficient to pay all such costs, then the deficiency shall be paid from the Surplus Revenue Fund. Regardless of whether Manager is or is not responsible for abatement or corrective action as provided in this Section, if Manager determines that any such problem materially impairs, or has the capacity to materially impair operations at the Hotel (including, without limitation, any problem which might result in negative publicity or lower occupancy rates), then Manager shall have the right and the obligation to consult with Owner in pursuit of solutions to such problem and Manager may elect, at its option and if approved by Owner, to assume management of such problem as part of its management duties and responsibilities under this Agreement for no additional compensation.

**2.30.6 Environmental Matters.**

2.30.6.1 At all times during the term of this Contract, Manager and Owner shall use all commercially reasonable efforts to comply fully with Environmental Laws applicable to the Hotel and its operations.

2.30.6.2 To the extent known by Owner or Manager, Manager and Owner each agrees to give the other prompt written notice of (1) all Environmental Liabilities; (2) all pending, threatened or anticipated proceedings, and all notices, demands, requests or investigations, relating to any Environmental Liability or relating to the issuance, revocation or change in any environmental authorization required for operation of the Hotel; (3) all releases of Hazardous Materials at, on, in, under or in any way affecting the Hotel, or any release of Hazardous Materials known by Owner or Manager, as the case may be, at, on, in or under any property adjacent to the Hotel; and (4) all facts, events or conditions that Manager or Owner, as the case may be, knows could reasonably lead to the occurrence of any of the above-referenced matters.

**3. FEES AND EXPENSES**

3.1 Management Fee

**3.1.1 Obligation for Management Fee.** In consideration for performing all of its management, administrative, oversight, cooperation, and coordination services under this Agreement, Owner shall pay for each Twelve Month Period, a “**Management Fee**”, which is hereby defined to mean the following [AMOUNTS BELOW WILL BE FILLED IN BASED ON FINAL HVS PROJECTIONS TO EQUAL 2.65% OF PROJECTED GROSS OPERATING REVENUES FOR EACH OF THE APPLICABLE YEARS, 2.00% OF WHICH WILL BE THE BASE MANAGEMENT FEE AND .65% OF WHICH WILL BE THE SUBORDINATED MANAGEMENT FEE. NOTE THAT THE HVS PROJECTIONS WILL BE SUBJECT TO THE REVIEW AND APPROVAL OF OMNI]:

First Twelve Month Period	\$
Second Twelve Month Period	\$
Third Twelve Month Period	\$
Fourth Twelve Month Period	\$
Fifth Twelve Month Period	\$
Sixth and Later Twelve Month Periods	\$ _____, provided that the Management Fee payable for the sixth (6 <sup>th</sup> ) Twelve Month Period and each succeeding Twelve Month Period shall be increased or decreased, as applicable, by a percentage equal to the percentage change in the Index from the last month of the preceding Twelve Month Period as compared to the last month of the Twelve Month Period immediately preceding such preceding Twelve Month Period.

The Management Fee is divided into two portions, the Base Management and the Subordinate Management Fee, as set forth and defined in Sections 3.1.2.1 and 3.1.3.1, respectively, of this Agreement. Owner and Manager agree that, except for the Management Fee, Centralized 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 that the Subordinate Management Fee, so long as any Bonds remain Outstanding under the Indenture, shall be subordinate to payment of Debt Service on all Outstanding Bonds and be payable solely from amounts rightfully on deposit in the Subordinate Management Fee Fund held by Trustee under the Indenture.

Unless otherwise specified in this Agreement, all amounts payable to Manager or its Affiliates under this Agreement shall be paid to Manager in United States Dollars, in immediately available funds (i.e. by wire transfer or cashier's check) ("**Immediately Available Funds**"), without reduction for any withholding tax, value added tax or any other assessment, tax, duty, levy or charge required under the applicable laws of any applicable jurisdiction, provided that Manager shall be solely responsible for taxes which are in form or substance in the nature of a tax or levy against Manager's income or gross receipts.

### 3.1.2 Base Management Fee

3.1.2.1 Definition of Base Management Fee. The "**Base Management Fee**" shall mean seventy-five and one-half percent (75.5%) of the Management Fee for each Twelve Month Period.

3.1.2.2 Payment of Base Management Fee. One-twelfth (1/12th) of the annual Base Management Fee for the applicable Twelve Month Period shall be paid on the first Business Day of each month in each Twelve Month Period in arrears. For any Twelve Month Period that is a partial twelve (12) month period, the Base Management Fee for each month in said partial Twelve Month Period shall be the pro rata amount calculated for the number of months or partial months in said partial Twelve Month Period. Owner hereby authorizes Manager to withdraw the monthly installment of the Base Management Fee on the first Business Day of each month from the Lockbox Fund.

### 3.1.3 Subordinate Management Fee

3.1.3.1 Definition of Subordinate Management Fee. The "**Subordinate Management Fee**" shall mean twenty-four and one-half percent (24.5%) of the Management Fee for each Twelve Month Period.

3.1.3.2 Payment of Subordinate Management Fee. For each Twelve Month Period Manager shall be paid the amount of the Subordinate Management Fee accrued through each Interest Payment Date on the Business Day immediately following such Interest Payment Date (each such installment, a "**Semi-Annual Installment of the Subordinate Management Fee**"). Notwithstanding the preceding sentence, each Semi-Annual Installment of the Subordinate Management Fee shall be paid only to the extent of the balance of the Subordinate Management Fee Fund as of the date of payment. If the balance of the Subordinate Management Fee Fund is not sufficient to satisfy the applicable Semi-Annual Installment of the Subordinate Management Fee, the unpaid portion of such Semi Annual Installment of the Subordinate Management Fee shall accrue, without interest, and shall be paid as soon as there are funds in the Subordinate Management Fee Fund. After the Bonds are no longer Outstanding, any Subordinate Management Fees in excess of amounts available in the Subordinate Management Fee Fund shall be paid within thirty (30) days of the delivery to Owner of an invoice evidencing the applicable Subordinate Management Fees. Notwithstanding any provision to the contrary herein contained, the Subordinate Management Fee is subordinate and inferior to Debt Service.

### 3.2 Centralized Services Fees and Charges

**3.2.1 Hotel's Share of Centralized Services Fees and Charges.** In consideration for the Manager providing all Centralized Services pursuant to this Agreement, Owner shall pay to Manager, subject to the further terms and conditions of this Agreement, during each Operating Year, as an Operating Expense, one-twelfth of the annual Centralized Services Fees and Charges, as set forth below, for the applicable Twelve Month Period on the first Business Day of each month in each Twelve Month Period in arrears **[AMOUNTS BELOW WILL BE FILLED IN BASED ON FINAL HVS PROJECTIONS APPROVED BY OWNER AND MANAGER TO EQUAL 3.8% OF PROJECTED GROSS ROOM REVENUES FOR EACH OF THE APPLICABLE YEARS]:**

First Twelve Month Period	\$
Second Twelve Month Period	\$
Third Twelve Month Period	\$
Fourth Twelve Month Period	\$
Fifth and Later Twelve Month Periods	\$

provided that the Centralized Services Fees and Charges payable for the sixth (6th) Twelve Month Period and each succeeding Twelve Month Period shall be increased or decreased, as applicable, by a percentage equal to the percentage change in the Index from the last month of the preceding Twelve Month Period as compared to the last month of the Twelve Month Period immediately preceding such preceding Twelve Month Period. Manager shall pay all costs and expenses associated with the Centralized Services out of the Centralized Services Fees and Charges received by Manager; provided however, that if equipment and/or software is installed and maintained at the Hotel in connection with the provision of any Centralized Services, the costs thereof will be paid and charged to the operation of the Hotel either as an Operating Expense or as a Capital Expense, and pursuant to the extent provided for in the Approved Operating Plan and Budget or the applicable approved Capital Budget, as the case may be.

**3.2.2 Revisions to Calculating Centralized Services Fees and Charges.** Notwithstanding Section 3.2.1 above, in the event Manager makes material changes in the nature or scope of Centralized Services provided to Other Omni Hotels, or Manager offers other materially more favorable terms with respect to Centralized Services to one or more Other Omni Hotels comprising an aggregate of ten percent (10%) of the total number of hotel rooms comprising all Other Omni Hotels, or Owner determines that it may pay Centralized Services Fees and Charges in a manner that is similar to Other Omni Hotels consistent with the requirements of operating the Hotel in accordance with the applicable requirements of Section 141 of the Code and Rev. Proc. 97-13, 1997-5 I.R.B. 18 (as modified by Rev. Proc. 2001-39, 2001-28 I.R. B. 38) without imposing additional material obligations on Manager in connection with such requirements, then Owner and Manager agree to negotiate in good faith to determine an adjustment to the amount of Centralized Services Fees and Charges paid by Owner, taking into account the original intentions of Owner and Manager that total annual Centralized Services Fees and Charges would not exceed 3.8% of annual Gross Rooms Revenue.



**3.3 Partial Years.** If for any reason this Agreement is terminated prior to last day of the fifteenth (15th) Operating Year, the Management Fee and the Centralized Services Fees and Charges for the Operating Year in which the Termination occurs shall be the pro rata amount calculated for the number of months or partial months in the such Operating Year, as applicable, and terminated thereafter. In addition, if the Hotel operations are ceased due to a casualty, condemnation, emergency, or Force Majeure Event, a failure, revocation, lapse, non-issuance, non-reissuance or non-renewal of any Temporary Certificate of Occupancy, or any other reason beyond the control of Owner for a period of more than thirty (30) days, the Management Fee, Additional Management Fee and the Centralized Services Fees and Charges for the partial year of operations shall be the pro rata amount calculated for the number of months or partial months in the partial year of operation.

### 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 Approved Operating Plan and Budget, Manager shall be entitled to reimburse itself from the Lockbox Fund for all reasonable out of pocket costs and expenses incurred by Manager and paid to non-Affiliates (and, if permitted under this Agreement, Affiliates of Manager) that were incurred in the ordinary course of managing the Hotel pursuant to this Agreement (collectively, “**Reimbursable Expenses**”), including the following (subject, however, to the limitations of the applicable Approved 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 Omni Hotels (as they may be amended from time to time) with respect to any Hotel Personnel employed directly by Manager or its Affiliates;

(b) the daily 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, with the prior approval of Owner, which approval shall not be unreasonably withheld, conditioned or delayed, accompanied by documentation of the services provided and the time expended;

(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) all taxes and similar assessments (other than sales taxes and Manager’s income taxes) levied against any reimbursements payable to Manager under this Agreement for expenses incurred for Owner’s account; and

(e) the Hotel’s cost of participating in the Omni guest recognition program, as approved by Owner in the Approved Operating Plan and Budget, charged at the same rate as all participating Other Omni Hotels.

Manager shall keep good and adequate records (including invoices and statements) to evidence that Manager incurred and paid the Reimbursable Expenses and such records shall constitute a part of the books and records of Owner.

**3.4.2** Payment of Reimbursable Expenses. Until the Bonds are no longer Outstanding, Reimbursable Expenses properly documented in accordance with Section 3.4.1 of this Agreement shall be paid as Operating Expenses 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 Expense Reserve Fund (and, if the Operating Expense Reserve Fund is insufficient, then the insufficiency shall be paid from the Surplus Revenue Fund) within thirty (30) days after Manager delivers to Owner of a request in the form of **Exhibit L** 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 either the Operating Expense Reserve Fund or the Surplus Revenue Fund. If there are not sufficient funds in the Operating Expense Reserve Fund and the Surplus Revenue Fund within the required 30-day period and the Bonds are still Outstanding, then any Reimbursable Expenses shall be paid as soon as there are funds in the Lockbox Fund, the Operating Expense Reserve Fund, or Surplus Revenue Fund and any amounts not paid shall bear interest as provided in Section 12.24 of this Agreement 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 thirty (30) days of the delivery to Owner of an invoice evidencing the applicable Reimbursable Expenses.

**3.4.3** Required Representations. In connection with and as a condition to being paid Reimbursable Expenses, Manager represents and warrants to Owner 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 Omni Hotels, (ii) the Reimbursable Expenses do not include any Direct or Indirect Profit received by Manager or an Affiliate of Manager during any Operating Year which, together with any Direct or Indirect Profit received pursuant to Sections 2.4.8, 2.25.1 and 2.25.3 would exceed five percent (5%) of the total Management Fee, the Centralized Services Fees and Charges and Eligible Employee Compensation Pool owed to Manager during such Operating Year (provided, however, that the amounts of the Centralized Services Fees and/or Eligible Employee Bonus Pool shall be excluded from such calculation to the extent such amounts are no longer being paid to the Manager based on the fixed amounts set forth in Section 3.2.1 and Section 2.21.2.2(i), respectively), (iii) to the extent Reimbursable Expenses represent an allocation of costs between the Hotel and participating Other Omni Hotels, such allocation among the Hotel and all participating Other Omni Hotels will be based on a fair, reasonable and equitable allocation established in accordance with reasonable accounting procedures, consistently applied (which accounting procedures shall at all times comply with the requirements of Section 2.20.1), and (iv) without limiting clause (iii) preceding, the Hotel's allocated share and each Other Omni 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). In the event that any Other Omni Hotels comprising an aggregate of ten percent (10%) of the total number of hotel rooms comprising all Other Omni Hotels have the right not to pay any Reimbursable Expenses, then Manager shall provide written notice to Owner of the nature of

such Reimbursable Expenses, and Owner shall have the right, exercisable for a period of sixty (60) days following the receipt of such notice, to opt out of paying such Reimbursable Expenses.

Manager shall be liable for any damages, expense, liabilities or obligations incurred by Owner that arise out of Manager's breach of its representation and warranty that any Reimbursable Expenses paid to Manager do not include any Direct or Indirect Profit in excess of the amount permitted in the immediately preceding paragraph, up to the amount set forth in Section 12.14.1.

**3.5** Establishing Clearing Bank Account. On or prior to the Required Opening Date, Manager shall establish an 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 Owner and Trustee in writing of the name and location of each banking institution at which Manager maintains such accounts, together with such information as Owner shall reasonably request in order to permit a security interest to be established in such account or accounts. During the entire Operating Term, subject to and in compliance with the Cash Management Agreement, Manager shall promptly deposit during each Business Day all Gross Operating Revenue (in excess of the Petty Cash Amount (as defined in the Indenture) retained at the Hotel) into the Clearing Bank Account, and transfer funds in the Clearing Bank Accounts at the end of each Business Day into the Lockbox Fund.

**3.6** Operating Costs Set Aside Amount and Operating Expense Reserve Fund. No later than the Required Opening Date and from the proceeds of the Series 2009 Bonds, Owner shall deposit (or cause to be deposited) (i) \$\_\_\_\_\_ into the Lockbox Fund and (ii) \$10,000,000 into the Operating Expense Reserve Fund (to be funded from the Key Money contribution made by Manager in accordance with Section 4.2. Manager shall have access to the Operating Expense Reserve Account as provided in the Cash Management Agreement.

**3.7** Payment of Operating Expenses. At all times during the Operating Term, Manager shall have the right to withdraw funds from the Lockbox Fund solely for the purpose of paying Operating Expenses (including, without limitation, the Base Management Fee), subject, however, to the terms, provisions and limitations of this Agreement, the Cash Management Agreement, the applicable provisions of the Indenture, and Trustee's security interest in the Lockbox Fund. 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 Owner, and will adopt cash management practices identified from time to time by the Independent Auditor, 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. Owner shall have the right (but shall not be obligated) to designate one or more representatives (who may be employees or officers of Owner) who shall be required to co-sign any check for an item not covered by an Approved Operating Plan and Budget or approved Capital Budget and for an amount exceeding Fifty Thousand Dollars (\$50,000) (adjusted annually by the percentage increase in the Index over the immediately preceding Operating

Year) or for Emergency Expenses which exceed the authorized spending limitations set forth in Sections 2.19.3 and 2.19.4 of this Agreement.

**3.8** Funds, Accounts and Disbursements Prior to Payment of all Bonds. While some or all of the Bonds remain Outstanding, Manager agrees that the Cash Management Agreement and the applicable provisions of the Indenture shall control and govern the use of Gross Revenues. Without limiting the preceding sentence, Manager acknowledges that the various Funds established under the Indenture are funded in the particular order and priority stated therein.

**3.9** Funds, Accounts and Disbursements After Redemption of 2009 Series Bonds. At such time as no 2009 Series Bonds are Outstanding, the provisions of this Section 3.9, Section 3.10 and Section 3.11 shall apply and the limitations on Owner's funding obligations described in Section 3.12 of this Agreement (among other places in this Agreement) shall terminate. At such time, Owner and Manager shall execute a reasonable amendment to the Cash Management Agreement confirming the provisions of this Section 3.9, Section 3.10 and Section 3.11, and placing Owner in the position formerly occupied by Trustee thereunder and there shall be established hereunder the following Funds and Account, each of which Owner shall maintain:

- (a) Lockbox Fund;
- (b) Revenue Fund;
- (c) Property Tax Fund
- (d) Insurance Fund;
- (e) Senior FF&E Reserve Fund;
- (f) Operating Expense Reserve Fund;
- (g) City Administrative Expenses Fund;
- (h) Manager Advance Repayment Fund;
- (i) City Advance Repayment Fund;
- (j) Subordinate Management Fee Fund;
- (k) Subordinate FF&E Reserve Fund; and
- (l) Surplus Revenue Fund.

**3.10** Transfers from Lockbox Fund to Revenue Fund. On the first Business Day of each month after no Bonds remain Outstanding, Manager shall make the deposits, transfers or payments indicated below from amounts then on deposit in the Revenue Fund, after payment of Operating Expenses then due and payable, in the order of priority and in the amounts set forth below (including curing any deficiency in deposits, transfers or payments required in prior

months), it being agreed that the requirements of each Fund are to be fully satisfied, leaving no deficiencies, prior to any deposit, transfer or payment later in priority:

- (a) to the Base Management Fee and to pay all other Operating Expenses;
- (b) to the Taxes and Insurance Fund, an amount equal to one-twelfth of the Estimated Property Tax Requirement for the current Operating Year and an amount equal to one-twelfth of the Estimated Insurance Premium Requirement for the current Operating Year;
- (c) to the Senior FF&E Reserve Fund, an amount equal to the Required Monthly Senior FF&E Deposit Amount for the current Operating Year;
- (d) to the Operating Expense Reserve Fund, an amount necessary to restore the amount on deposit therein to the Operating Expense Reserve Requirement in twelve (12) equal monthly installments;
- (e) to Owner, Owner's Administrative Expenses;
- (f) to the Manager Advance Repayment Fund, the Manager Advance Maximum Monthly Amount, up an aggregate amount necessary for the total funds in the Manager Advance Repayment Fund to equal the Manager Advance Repayment Required Amount, and to the City Advance Repayment Fund, a monthly amount equal to the amount deposited for such month into the Manager Advance Repayment Fund, parri passu with the deposit to the Manager Advance Repayment Fund, except if a Termination occurs and the funds then held in the Manager Advance Repayment fund are insufficient to repay the entire Manager Advance Repayment Required Amount, in which event all additional deposits at this level of priority shall be paid to the Manager Advance Repayment Fund until the full Manager Advance Repayment Required Amount has been deposited;
- (g) to the City Advance Repayment Fund, up to an aggregate amount necessary for the total funds in the City Advance Repayment Fund to equal the City Advance Repayment Amount;
- (h) to the Mortgagee, if any, the principal and interest installment then due on any Mortgage encumbering the Hotel;
- (i) to Manager, the amount equal to the Subordinate Management Fee Monthly Amount, plus the Subordinate Management Fee Monthly Amount for any prior period that has not been previously funded;
- (j) after the commencement of the fifth (5th) Operating Year, to the Subordinate FF&E Reserve Fund, an amount equal to the Supplemental Monthly FF&E Fund Deposit Amount for the preceding month;

(k) to Owner, the balance, if any, of moneys remaining in the Surplus Revenue Fund, free and clear, to be used by Owner for any purpose whatsoever, in Owner's sole and absolute discretion.

**3.11 Disbursements after No Bonds Outstanding.** After there are no Bonds Outstanding, the following provisions (in addition to other provisions which apply throughout the Operating Term) shall apply:

**3.11.1 Funding of Taxes and Insurance.** If funds in the Property Tax Fund or Insurance Premium Fund are not sufficient to fund the amount then owed by Owner for property taxes or insurance premiums on the Hotel, Owner shall, within fifteen (15) Business Days after written request therefor from Manager, disburse to Manager funds sufficient to pay taxes and insurance premiums then due and payable with respect to ownership and operation of the Hotel.

**3.11.2 Funding of Capital Expenses and Emergency Expenses.** Prior to the date no Bonds are Outstanding, and subject to the terms of the Cash Management Agreement, Manager, in order to pay for Capital Improvements authorized under the then current Capital Budget and Emergency Expenses, shall, on or about the first day of each month, submit to Trustee a request pursuant to the Cash Management Agreement (including invoices, statements and conditional lien releases) covering the Capital Expenses and Emergency Expenses then incurred by Manager. At such time as no Bonds remain Outstanding, Owner shall, within fifteen (15) Business Days after receipt of a request of Manager in substantially the form attached hereto as **Exhibit M**, make disbursements to Manager from the Senior FF&E Reserve Fund and the Subordinate FF&E Reserve Fund for the purpose of paying for FF&E, Capital Expenses and, if funds are insufficient in the Surplus Revenue Fund or the Operating Expense Reserve Fund, to pay Emergency Expenses or to comply with Legal Requirements.

**3.11.3 Funding of Subordinate Management Fee.** On the date that a Semi-Annual Installment of the Subordinate Management Fee is due, Owner shall, to the extent of funds in the Subordinate Management Fee Fund, disburse to Manager the applicable Semi-Annual Installment of the Subordinate Management Fee plus any accrued and unpaid portion of a Semi-Annual Installment of the Subordinate Management Fee.

**3.12 Limitation on Owner's Obligations While Bonds Remain Outstanding.** Notwithstanding anything contained herein to the contrary, Manager acknowledges that Owner shall have no responsibility or liability for Trustee's failure to honor any requests of Owner to disburse amounts from any of the Funds pursuant to the Indenture, but Owner shall use commercially reasonable efforts to enforce Trustee's obligations under the Indenture. Notwithstanding anything in this Agreement to the contrary, Manager acknowledges and agrees that, until no Bonds remain Outstanding, the only funds which Owner shall be obligated to use to pay any sums due hereunder shall be the following (and then only to the extent such funds are made available to Owner 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 3.6, which Operating Costs Set Aside Amount shall be used solely for the purpose of paying Operating Expenses; (b) Gross Operating Revenues, all of which shall be used in accordance with this Agreement, the Cash Management Agreement and the Indenture; and (c) insurance and condemnation proceeds received by

Manager, Owner 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 of this Agreement. In light of the foregoing and Section 12.22 of this Agreement, Owner hereby recognizes that Manager's remedy at law for damages is inadequate and agrees that Manager shall have the right to seek the equitable action (to the extent it does not violate the foregoing provisions or Section 12.22 of this Agreement) of injunctive relief to enforce Owner's obligations under this Agreement.

**3.13** Certain Representations. Manager and Owner represent that the Management Fee and the Termination Fee were negotiated at arms length and, given the terms of this agreement, are reasonable.

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

#### **4. TERM AND TERMINATION; KEY MONEY AND GUARANTY**

##### **4.1** Term.

**4.1.1** Operating Term. Unless sooner terminated pursuant to the provisions of this Article 4, the term of this Agreement shall be for a period of fifteen years commencing with the Opening Date (the "**Term**" or the "**Operating Term**"). Notwithstanding the preceding sentence, from the Effective Date through the Opening Date, only the following sections of this Agreement shall be in effect: 2.1, 3.12, 4.1, 4.2, 4.3, 4.4, 4.7, 4.8, 4.9, 4.10, 4.11, 6, 9, 10, 11 and 12. On the Opening Date, Manager and Owner shall commence full performance of their respective obligations hereunder.

**4.1.2** Termination of Agreement Prior to Opening Date. Owner or Manager, as applicable, shall have the right to terminate this Agreement, without penalty, prior to the Required Opening Date, as a result of any of the following:

- (a) Owner does not receive the proceeds of the Series 2009 Bonds for any reason within twenty-four (24) months from the Effective Date of this Agreement;
- (b) Trustee does not agree to the terms of this Agreement;
- (c) prior to the commencement of construction of the Hotel, Owner determines, in its reasonable discretion, that it is no longer economically viable for Owner to build and/or operate the Hotel based upon changes in the local Dallas business market or changes in financing, construction or operating costs of the Hotel that occur following the date of execution of this Agreement; or

(d) the Required Opening Date has not occurred by the date which is the last day of the fiftieth (50th) calendar month following the month in which the Effective Date occurs (subject to extension for up to six (6) months for delays caused, by a Force Majeure Event) or if construction of the Hotel is ceased for twelve (12) consecutive months after substantial excavation for the Garage has begun (subject to extension for up to six (6) months for delays caused by a Force Majeure Event), Manager or Owner may terminate this Agreement by notice given to the other not later than ten (10) days following the applicable date (and in any event prior to the Required Opening Date), and this Agreement shall be deemed terminated upon non-terminating Party's receipt of such notice;

(e) Manager does not deposit the Key Money Contribution into the Operating Account, on or before the date that is thirty (30) days prior to Substantial Completion of Hotel construction as required by Section 4.2 hereof.

**4.1.3** Extension of Operating Term. Owner shall have the option, subject to Manager's written approval, exercisable by written notice to Manager no less than one year prior to the end of the initial Term and each Renewal Term thereafter, to extend the Agreement for an additional five (5) year term commencing on the Expiration Date of the then applicable Term or Renewal Term and ending on the five (5) year anniversary date of the applicable Term or Renewal Term.

**4.2** Key Money Contribution. Manager shall commit to funding an amount equal to Six Million Dollars (\$6,000,000.00) ("**Key Money**") to the Operating Expense Reserve Fund on the date that is on or before the thirtieth (30<sup>th</sup>) day prior to the Substantial Completion of Hotel construction. The Key Money will be deposited into the Operating Expense Reserve Fund. Beginning in the 61<sup>st</sup> month after the Opening Date, the Key Money will be amortized in equal monthly installments between the 61<sup>st</sup> and the 121<sup>st</sup> months of the Operating Term, and shall be deemed paid monthly as it amortizes in accordance with such schedule so long as this Agreement is in effect. Any Key Money that has not been amortized in the manner provided in this Section 4.2 ("**Unamortized Key Money**") as of the date of any Termination of this Agreement shall be repaid to Manager upon the effective date of Termination up to the amount of funds then held in the Manager Advance Repayment Account, and to the extent the amount of funds held in the Manager Advance Repayment Account are insufficient to repay the entire balance of the Unamortized Key Money, then in accordance with Section 4.7.2; provided, however, that in the event Owner terminates this Agreement for any reason during the first four Operating Years in accordance with the terms hereof, Owner shall be required to fully repay Manager the full amount of the Unamortized Key Money as a condition to Owner's right to terminate this Agreement.

**4.3** Guaranty. Simultaneously with the execution and delivery of this Agreement, Guarantor shall execute and deliver to Owner the Guaranty in the form attached as **Exhibit N\*\***, guarantying to Owner all financial obligations of Manager in accordance with the terms and conditions of this Agreement (the "**Guaranteed Obligations**"). Notwithstanding anything contained herein or in the Guaranty to the contrary, the Guaranty shall be binding upon the successors and assigns of Guarantor and shall not be discharged in whole or in part by the bankruptcy or dissolution of Guarantor. Upon the occurrence of any of the foregoing, Manager



shall provide a replacement Guaranty in the form attached as **Exhibit N** executed by a replacement guarantor acceptable to Owner and Trustee in their reasonable discretion. The Guaranty and all of Guarantor's liability hereunder shall automatically terminate upon satisfaction of the Guaranteed Obligations. Upon such termination, all references to the Guaranty, the Guarantor, and the Guaranteed Obligations shall be deemed deleted from this Agreement.

**4.4** Termination of Temporary Certificate of Occupancy or Other Material License or Permit. Notwithstanding anything herein to the contrary, if after the Opening Date, Manager is required to cease all or a portion of the operations of the Hotel due to the failure, revocation, lapse, non-issuance or nonreissuance or non-renewal of any Temporary Certificate of Occupancy not caused by Manager's Gross Negligence or Willful Acts (provided that the Manager's good faith compliance with the Temporary Certificate of Occupancy shall not be deemed to constitute Manager's Gross Negligence or Willful Acts), then all duties, responsibilities and obligations of Manager hereunder shall be suspended, excused and tolled day for day for the period of such failure with respect to such portion of the Hotel until Manager is able to commence full operations of the Hotel; provided that Manager shall continue to be obligated to maintain insurance as required under Article 5 herein and shall continue to comply with its covenant set forth in Section 12.23 herein. Manager shall have no liability for any claims associated with or resulting from such failure, revocation, lapse, non-issuance or non-reissuance or non-renewal of the Temporary Certificate of Occupancy not occasioned by the Manager's Gross Negligence or Willful Acts (provided that the Manager's good faith compliance with the Temporary Certificate of Occupancy shall not be deemed to constitute Manager's Gross Negligence or Willful Acts. If after the Opening Date, there is a failure, revocation, lapse, non-issuance or non-renewal of any Temporary Certificate of Occupancy which results in the impediment of operations of a portion of the Hotel, Manager shall continue to lawfully operate and manage that portion of the Hotel which it is able to continue to operate and manage in the manner set forth herein. In the event that, at any time after the first four Operating Years, Manager is required to cease a material portion of the operations of the Hotel due to the failure, revocation, lapse, non-issuance or nonreissuance or non-renewal of any material governmental license or permit, or any withdrawal or revocation of such material governmental license or permit which is not remedied within one hundred eighty (180) days, and provided that such revocation, lapse, non-issuance, nonreissuance, non-renewal, withdrawal or revocation is not due to Manager's Gross Negligence or Willful Acts, or any other Event of Default by Manager, then Manager shall have the right, exercisable upon one hundred eighty (180) days prior written notice to Owner specifying in detail the causes for such loss of license or permit, to terminate this Agreement.

**4.5** 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 4.5, Manager breaches or fails to perform any covenant or agreement made by Manager hereunder and fails to cure such breach or failure within one hundred twenty (120) days after Manager's receipt of a written notice from Owner or Trustee specifying the breach or failure to perform; provided, however, in the event that such cure cannot be effectuated within such one hundred twenty (120) day period and Manager commenced cure within thirty (30) days after Owner's written notice and thereafter diligently pursues all commercially reasonable

efforts to complete such cure, then Manager shall have such additional time as is commercially reasonable to cure such breach or failure of performance, provided that such cure is complete within three hundred (300) days following Owner's written notice of such breach;

(b) Manager fails to pay, on the due date thereof, Taxes, or 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 one hundred twenty (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 Owner;

(c) In the event that Owner has not elected to purchase insurance in accordance with this Agreement, Manager fails to obtain or maintain all insurance that Manager is obligated to obtain and maintain under the terms of this Agreement;

(d) Owner determines, based on an opinion of Bond Counsel, that, due to Manager's actions in contravention with the terms of this Agreement or failure to act in accordance with the terms set forth herein, this Agreement violates the covenants made by Owner in connection with the Bonds issued to finance the Hotel, provided however, that if such actions or failure to act can be cured within thirty (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 thirty (30) days, then Manager shall have thirty (30) days to cure such default;

(e) Manager defaults under the Room Block Agreement beyond the applicable cure period set forth therein, or, if there is no stated cure period for the applicable default, then if Manager fails to cure such default within one hundred twenty (120) days after Manager receives written notice thereof from Owner;

(f) Manager fails to pay any amounts due to Owner (including, without limitation, any amounts owed to Owner under an indemnity, hold harmless or reimbursement clause contained herein) on the date required hereunder and such failure continues for a period of thirty (30) days after Manager receives written notice thereof, provided that if Manager disputes any amount that Owner claims is owed to Owner, Manager may pay such amount to Owner and reserve the right to dispute that such amount is owed, and any such dispute shall be resolved in accordance with the Dispute Resolution Procedures set forth in Section 10.1 if the amount in dispute is \$25,000 or less, or in accordance with applicable law if the amount in dispute is in excess of \$25,000;

(g) Manager fails to deposit cash receipts, checks, money-orders and the like into the Clearing Bank Accounts as soon as is reasonably practicable and such failure continues for a period of five (5) business days after the date that such amounts are required to be deposited under this Agreement;

(h) 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 thirty (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;

(i) Manager makes a representation or warranty to Owner hereunder knowing that such representation or warranty is not true or is misleading in a material respect;

(j) Manager assigns or purports to assign this Agreement or any of its rights hereunder in violation of the provisions of Section 9.2.1 or 9.2.2 of this Agreement;

(k) 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 (1) Operating Expenses, (2) Taxes, Excluded Taxes and Other Charges (but only to the extent that Manager has deposited in the Lockbox Fund collections that are attributable to such Excluded Taxes and Other Charges), or (3) Insurance; (iii) an Event of Default by Owner; or (iv) a material breach by Owner of its obligations hereunder, or a material breach by Trustee of the agreements and obligations benefiting Manager pursuant to Section 5.24 of the Indenture; provided, however, 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;

(l) the Liquor Licenses for the Hotel are not obtained by the Required Opening Date and such failure continues for a period of ten (10) business days after written notice from Owner, or any of the Liquor Licenses are revoked or terminated or otherwise declared ineffective by the applicable governmental authority and is not fully restored within thirty (30) days after revocation or such declaration;

(m) any of the following occur or exist:

(i) Manager or Guarantor files a voluntary case concerning itself under the Bankruptcy Code;

(ii) an involuntary case is filed against Manager or Guarantor under the Bankruptcy Code, and such involuntary case is not dismissed within ninety (90) days after the filing thereof;

(iii) the appointment of a custodian (as defined in the Bankruptcy Code) or a receiver for, or a custodian or receiver taking charge of all or any substantial part of the property of Manager or Guarantor, and such appointment is not revoked or dismissed within ninety (90) days after such appointment is made;

(iv) Manager or Guarantor commences any proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect, or any such proceeding is commenced against Manager and is not dismissed within ninety (90) days after the commencement thereof;

(v) Manager or Guarantor is adjudicated insolvent or bankrupt;

(vi) Manager or Guarantor makes a general assignment of its assets for the benefit of creditors;

(vii) Manager or Guarantor 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;

(viii) all or a substantial part of the property of Manager or Guarantor is attached, and such attachment or levy is not released within ninety (90) days thereafter;

(ix) Manager or Guarantor indicates in writing its consent to, approval of, or acquiescence, in any of the foregoing; or

(n) Manager fails to use its good faith efforts to meet the goals set forth in Section 2.29 and **Exhibit K** to the Agreement, and Manager fails to cure such failure within ninety (90) days following delivery of written notice of such failure by Owner to Manager.

Notwithstanding any provision to the contrary herein contained, if (i) the cure periods provided to Owner 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 fifteen (15) days less than the cure periods provided for under the Indenture; and (ii) Manager is able to demonstrate to the reasonable satisfaction of Owner and the Hotel Consultant that 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, such default shall not constitute an Event of Default herein. Manager shall keep Owner and the Hotel Consultant 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.

**4.6** Event of Default by Owner. An Event of Default shall occur with respect to Owner if and only if:

(a) without limiting any other provision of this Section 4.6, Owner breaches or fails to perform any covenant or agreement made by Owner hereunder in a material respect and fails to cure such breach or failure within one hundred twenty (120) days

after Owner's receipt of written notice from Manager specifying the breach or failure to perform;

(b) Owner fails to pay any money to Manager within the time required hereunder (including, without limitation, any amounts owed to Manager under any agreement contained herein) and such failure continues for a period of thirty (30) days after Manager delivers written notice to Owner specifying such failure;

(c) any representation or warranty made by Owner hereunder is false or misleading in any material respect and (i) there is no reasonable action which Owner could take to cause such representation or warranty to be true, correct and not misleading in all material respects within thirty (30) days after receiving written notice thereof or (ii) if such a reasonable action exists, Owner fails to have caused such representation or warranty to be true, correct and not misleading in all material respects prior to the end of such 30-day period, and in either case, Manager is materially damaged as a result of such false or materially misleading representation or warranty;

(d) Owner makes a representation or warranty to Manager hereunder knowing such representation or warranty is not true or is misleading in a material respect;

(e) Owner assigns or purports to assign this Agreement or any of its rights hereunder in violation of the provisions of Section 9.3 of this Agreement;

(f) Any of the following occur or exist:

(i) Owner files a voluntary case concerning itself under the Bankruptcy Code;

(ii) Any involuntary case is filed against Owner under the Bankruptcy Code and such involuntary case is not dismissed within ninety (90) days after the filing thereof;

(iii) Owner 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;

(iv) 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 Owner, and such appointment is not revoked or dismissed within ninety (90) days after such appointment is made;

(v) Owner commences any proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect, or any such proceeding is commenced against Manager and is not dismissed within ninety (90) days after the commencement thereof;

(vi) Owner is adjudicated insolvent or bankrupt;

(vii) Owner makes a general assignment of its assets for the benefit of creditors;

(viii) all or any substantial part of the property of Owner is attached, and such attachment or levy is not released within ninety (90) days thereafter;

(ix) Owner indicates in writing its consent to, approval of, or acquiescence, in any of the foregoing; or

(x) Owner takes any corporate or partnership action for the purpose of effecting any of the foregoing.

(g) The City (i) moves its convention center to a new location or (ii) designates another hotel as the "headquarters hotel" for the Convention Center or (iii) fails to maintain the Convention Center at the standard of operation which it maintains as of the Effective Date.

(h) Owner violates any of the provisions set forth in Section 2.21.4 hereof.

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

4.7.1.1 Damages. Upon the occurrence of an Event of Default by Manager or Owner, the non-defaulting Party shall have the right, but not the obligation, to take any action lawfully permitted to be taken against the defaulting party to recover damages from the defaulting party and, to the extent available by law, to require specific performance by the defaulting party of its obligations under this Agreement.

4.7.1.2 Termination in First Four Operating Years. The parties have agreed that the non-defaulting party shall not seek to terminate this Agreement upon the occurrence of an Event of Default by the defaulting party for the first four Operating Years of this Agreement. In the event that Owner seeks to terminate this Agreement upon the occurrence of a Manager Event of Default during the first four Operating Years of this Agreement, Owner shall be required, as a condition of terminating the Agreement, to repay in full to Manager the Unamortized Key Money on the effective date of termination.

4.7.1.3 Termination by Owner Upon Manager Default After First Four Operating Years. After the first four Operating Years, Owner shall have the right to immediately terminate this Agreement, without additional notice or cure periods, upon a Manager Event of Default specified in Section 4.5 (g), (j), (k), (m) or (n), and to terminate this Agreement, with an additional notice to Manager of Owner's intention to terminate this Agreement if Manager does not cure within thirty (30) days from

the date of Owner's notice, upon a Manager Event of Default specified in Section 4.5(a), (b), (c), (d), (e), (f), (h), (i) or (l), provided that such Manager Event of Default has or may reasonably be expected to cause material damage to Owner if not cured by Manager.

4.7.1.4 Termination by Manager Upon Owner Default After First Four Operating Years. After the first four Operating Years, Manager shall have the right to immediately terminate this Agreement, without additional notice or cure periods, upon an Owner Event of Default specified in Section 4.6 (e) or (f), and to terminate this Agreement, with an additional notice to Owner of Manager's intention to terminate this Agreement if Owner does not cure within thirty (30) days from the date of Manager's notice, upon an Owner Event of Default specified in Section 4.6(a), (b), (c), (d), (g) or (h), provided that such Owner Event of Default has or may reasonably be expected to cause material damage to Manager if not cured by Owner.

4.7.1.5 Notice of Termination. Upon an event specified in Section 4.7.1.3 or 4.7.1.4, the non-defaulting party shall have the right, subject to the requirements of those sections, and in addition to all other rights provided by law, to terminate this Agreement, by giving written notice to the other Party specifying a date, no earlier than ninety (90) days and no later than three hundred sixty five (365) days after the giving of such notice, when the Agreement shall terminate. In addition, the non-defaulting party shall be entitled to pursue all other remedies available to it under applicable law as a result of such Event of Default.

4.7.1.6 Notice to Trustee of Termination and Trustee Right to Cure. At the same time as Manager delivers a notice to Owner, including without limitation any notice to Owner under Section 4.6 of this Agreement, Manager shall provide Trustee with a copy of the notice, including any notice of a default (failing which the notice of default to Owner shall be deemed ineffective) and Trustee shall have the right but not the obligation to cure any such default to the same extent and for the same period of time afforded to Owner to cure such default under Section 4.6 and 4.7.1.3 of this Agreement and no longer except as otherwise provided in the Subordination Agreement (as defined in Section 6.2.2) then in effect. Manager shall have no personal liability to Owner for any failure to deliver (or delay in delivering) any such notice of default to Owner and Trustee, however, Owner's and Trustee's time period for cure of any default shall not commence until a copy of such notice of default is delivered to both Owner and Trustee, and Manager shall not exercise its right to terminate

this Agreement under this Section 4.7.1 until the applicable cure period has elapsed; provided that if one or more additional defaults shall occur during the cure period for a default, the cure period for each of the later defaults shall be each cure period applicable to each such default and not the cure period applicable to any other default. Manager shall accept any performance by Trustee of any of Owner's covenants or agreements under this Agreement, and any cure of Owner's defaults, as if performed by Owner. If Owner's default is one that cannot be cured by Trustee's payment of money, then until such time as Trustee has obtained possession of the Hotel from Owner or exercised such other remedy which would allow Trustee to cure Owner's defaults, the time period which Trustee shall have to cure Owner's default shall be extended by the time necessary for Trustee to obtain possession of the Hotel or take such action, as the case may be, plus a reasonable time thereafter (but not to exceed ninety (90) days), provided Trustee is diligently pursuing such actions.

**4.7.2 Manager's Source of Payment.** Except to the extent that Owner is required to repay in full any Unamortized Key Money upon termination of Manager during the first Four Operating Years, any Unamortized Key Money, or advances owed to Manager by Owner shall be satisfied solely out of (a) the amounts from time to time in the Manager Advance Repayment Fund and the Surplus Revenue Fund, (b) after satisfaction of all Bonds, and if Owner remains Owner of the Hotel, then out of the general assets of Owner, including Owner's interest in the Hotel and Gross Revenues, and (c) if Owner sells, transfers or conveys the Hotel to a third party, the net sale proceeds (i.e., after payment of normal and ordinary closing costs, payment of all expenses required under the contract of sale and satisfaction of all Bonds and all amounts owing under the Bond Documents) received by Owner upon the sale of the Hotel. So long as any unpaid damages are owed to Manager, such damages shall constitute an ongoing claim against the amounts described in clauses (a), (b) and (c) of this Section. In addition, to the extent that Owner is required to indemnify Manager under Section 12.14.2, such amounts may be satisfied solely out of (a) the amounts from time to time held in the Manager Advance Repayment Fund, the City Advance Repayment Fund and the Surplus Revenue Fund, and (b) if Owner sells, transfers or conveys the Hotel to a third party, the net sale proceeds (i.e., after payment of normal and ordinary closing costs, payment of all expenses required under the contract of sale and satisfaction of all Bonds and all amounts owing under the Bond Documents). So long as any unpaid amounts are owed to Manager, such amounts shall constitute an ongoing claim against the amounts described in this Section

**4.7.3 Remedies of Manager.** In the event Manager alleges an Owner Event of Default, Manager's exercise of its remedies shall follow the provisions of Section 2-86 of the City Code, including the notice provision attached hereto as **Exhibit W**, with the understanding that reference therein to the City shall be deemed to be reference to Owner. Under no circumstances shall Manager cease or delay performance of Manager's obligations under this Agreement unless so directed by Owner.

**4.8 Performance Termination.**



**4.8.1 Right to Terminate.** In addition to any Termination right that Owner has pursuant to Section 4.4 of this Agreement, Owner shall have the right to terminate this Agreement (with Trustee’s consent so long as any Bonds, remain Outstanding) in the event either of the following occurs (each such event a “**Performance Termination Event**”):

(a) with respect to any two (2) consecutive Operating Years during the Performance Test Period, the Series 2009 Performance Standard is not satisfied; or

(b) with respect to any two (2) consecutive Operating Years during the Performance Test Period, the REVPAR Performance Standard is not satisfied.

**4.8.2 Exceptions to Performance Termination Event.**

**4.8.2.1 Manager’s Cure Right.** Notwithstanding Subsection 4.8.1, Manager shall have the right, but not the obligation, to eliminate a Performance Termination Event under Subsection 4.8.1 if, for the second applicable Operating Year, Manager advances the amount of the shortfall in order to satisfy the Series 2009 Performance Standard or the amount necessary to meet the RevPAR Performance Test, as applicable, to Trustee for deposit in the Lockbox Fund; provided however that prior to making such advance, there shall be delivered to Owner and Manager an opinion of Bond Counsel to the effect that such advance will not cause the interest on the Bonds to be included in gross income of the holders thereof for federal income tax purposes; provided further however, that this right may be exercised by Manager not more than once during any five (5) consecutive Operating Years. The amount of any shortfall advance made by Manager under this Section 4.8.2.1 shall bear no interest, and shall become due upon the Termination or expiration of this Agreement, and shall be payable by Owner solely from the Manager Advance Repayment Fund and the Surplus Revenue Account, and otherwise in accordance with Section 4.7.2.

**4.8.2.2 Certain Other Exceptions to Performance Termination Events.** Notwithstanding Section 4.8.1 of this Agreement, a Performance Termination Event shall not exist if the Performance Termination Event is caused by one or more of the following:

(a) the occurrence of a Force Majeure Event during the applicable Operating Year(s);

(b) Owner’s refusal during the applicable Operating Year to allow Manager to make a Capital Improvement included in the approved Capital Budget for such Operating Year(s) if Sufficient Funds are available therefore;

(c) an Event of Default by Owner hereunder during the applicable Operating Year;

(d) a latent defect in the construction of the Hotel, provided such latent defect is discovered and reported to Owner by the commencement of the fifth (5th) Operating Year;

(e) Owner's failure to require Developer to perform required warranty work in accordance with the Hotel Developer Agreement and Developer's failure to perform;

(f) Owner's refusal to disburse or Owner's inability to cause 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

(g) Manager demonstrates to the reasonable satisfaction of Owner and the Hotel Consultant 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 (g) above was the primary cause of the Performance Termination Event occurring during the Performance Test Period.

**4.8.3** Owner's Exercise of Its Termination Rights. Owner shall exercise its Termination rights pursuant to Section 4.7.1 of this Agreement, if at all, by giving notice of such Termination to Manager within ninety (90) days following the scheduled deadline for Manager's delivery of the Certified Financial Statements for the Operating Year on which the Termination is based; provided however, that if Manager does not deliver the Financial Statements by the scheduled deadline, the period of time to exercise such Termination right shall be extended by the number of days that Manager is late with such delivery. Any such notice under this Section 4.8.3 shall specify the effective date of Termination, which date shall be no earlier than ninety (90) days and no later than three hundred sixty five (365) days following the date of Owner's notice of Termination. If Owner fails to deliver notice to Manager within the required ninety (90) day period under this Section 4.8.3, Owner's right to terminate this Agreement pursuant to this Section shall expire as to the Performance Termination Event in question.

**4.9** Termination Upon Sale. Notwithstanding any provision of this Agreement to the contrary, if at any time following the expiration of the seventh (7th) Operating Year, Owner or its successor-in-interest transfers the Hotel or more than a fifty percent (50%) direct or indirect equity interest in Owner or its successor-in-interest pursuant to a bona fide, arms length transaction (whether by fee transfer, a transfer of ownership interests in Owner (excluding the sale of shares in Owner to the public) or otherwise) to a third party that is not an Affiliate of Owner or its constituent owners immediately prior to such conveyance, then, subject to Manager's receipt of the Termination Fee accompanying the notice, 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 forty-five (45) days prior to the conveyance and not later than sixty (60) days after the conveyance, and in any event at least forty-five (45) days prior to the effective date of the Termination, with the effective date of the Termination being selected by Owner or the party acquiring the Hotel in its sole and absolute discretion subject to the foregoing 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 Owner, then

Owner shall 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 Performance Termination Event does not exist, Owner shall pay or cause to be paid to Manager the Unamortized Key Money and a fee (the “**Termination Fee**”) in an amount equal to the sum of (a) the product of (i) the Management Fee for the most recently ended Twelve Month Period multiplied by (ii) the lesser of two or the number of months remaining in the Term divided by twelve (12) and (b) the product of (x) the Centralized Services Fees and Charges for the most recently ended Twelve Month Period multiplied by (y) the lesser of one or the number of months remaining in the Term divided by twelve (12). Notwithstanding anything in this Section 4.9 to the contrary, payment of Termination Fees in connection with a foreclosure of a Mortgage is controlled by Section 4.10 following.

**4.10 Termination Upon Foreclosure.** Except during the first four Operating Years of the Term and as otherwise provided in a Non-Disturbance Agreement, 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) a monetary Event of Default exists under the Indenture, (b) an Event of Default exists under the Indenture which was the result of an action or inaction by Manager, (c) 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 which would permit Owner to otherwise terminate this Agreement, including the obligation to repay Unamortized Key Money immediately if the Termination occurs during the first four Operating Years, (d) an uncured Performance Termination Event has occurred and is continuing beyond a cure right expressly permitted under Section 4.8.2 above or (e) this Agreement is subject to Termination as provided in the Subordination Agreement. Notwithstanding the foregoing, if the purchaser at the foreclosure sale (a “**Foreclosure Purchaser**”) is Owner or an Affiliate of Owner or if Owner or an Affiliate of Owner receives a deed-in-lieu of foreclosure and this Management Agreement is terminated in connection therewith, then Owner or such Affiliate shall pay to Manager the Termination Fee. Manager and Owner intend that Trustee and any such Foreclosure Purchaser and their respective affiliates be and is a third party beneficiary to the foregoing provisions. In the event Owner receives or retains cash on a foreclosure sale, or a deed in lieu, such Termination of this Agreement shall be treated as a breach of this Agreement (unless this Agreement was otherwise terminable by Owner or Trustee pursuant to the terms hereof), and Manager may, as its sole and exclusive remedy, make a claim against Owner to the extent Owner receives cash (in excess of any amount received by Owner with respect to Outstanding amounts under the Bonds and/or Reimbursement Obligations owed by the Owner from such foreclosure sale for damages for such breach in an amount equal to actual damages, but in no event shall damages exceed the calculation of the Termination Fee amount which would be payable to Manager hereunder at the applicable period of time assuming a Termination Fee were payable to Manager at such time; provided, however, 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 Non-Disturbance Agreement or Subordination Agreement and the Indenture.

**4.11 Non Waiver.** If Owner, Trustee or any Mortgagee or the purchaser at a foreclosure sale fails or elects not to exercise its right to terminate this Agreement due to the occurrence of one or more uncured Performance Termination Events or for any other reason

hereunder, such failure to exercise shall not constitute a waiver by Owner, Trustee, Mortgagee or such purchaser of its right to terminate on account of a subsequent Performance Termination Event or any other subsequent right to terminate this Agreement.

**4.12 Actions to be Taken on Termination.** Upon Termination of this Agreement for any reason, the following shall be applicable (in addition to and without limitation of, the rights of the non-defaulting Party to pursue all other remedies available to it under applicable law and in addition to the return of Manager's Unamortized Key Money as provided herein):

**4.12.1 Payment of Out-of Pocket Expenses.** Except in connection with a Termination by Owner based upon a Performance Termination or 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 reimbursed to Manager immediately on receipt of any invoice (together with such reasonable supporting documentation as Owner may request) from Manager therefor, including, but not limited to, expenses arising from or in connection with the severing of Hotel Personnel (with severance benefits calculated according to Legal Requirements and policies applicable generally to employees of Other Omni 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 Gross Negligence or Willful Acts. In furtherance of the foregoing, Owner hereby acknowledges that, as employer of the Hotel Personnel, Manager or its Affiliate has or may have an obligation under the WARN Act or equivalent local law to give advance notice to such employees of any termination of their employees. Failure to comply with this notification obligation could give rise to civil liabilities. Therefore, notwithstanding anything to the contrary contained in this Agreement, Owner shall indemnify, hold harmless and defend Manager and its Affiliates from and against any such liabilities caused by Owner's actions (including Termination of this Agreement) which give rise to such a notification obligation on the part of Manager or any of its Affiliates, unless Manager is given adequate opportunity to comply with applicable notification standards and other Legal Requirements. Manager acknowledges that Owner may, at its election and in consultation with Manager, following Owner's formal notice of the prospective Termination of this Agreement, extend offers to Hotel Personnel and Senior Executive Personnel for continued employment, and Manager further agrees to cooperate with Owner to minimize any and all expenses that Owner incurs under this Section 4.12.1.

**4.12.2 Final Accounting.** Within forty five (45) days after Termination of this Agreement, Manager shall provide to Owner a final and full accounting through the date of Termination of all Management Fees, Centralized Services Fees and Charges, Reimbursable Expenses, and other payments due Manager under the terms of this Agreement through the Termination date; and within forty five (45) days of Owner's receipt of such final and full accounting, Owner shall pay Manager all Management Fees, Centralized Services Fees and Charges, Reimbursable Expenses, and other payments due Manager under the terms of this Agreement through the Termination date or provide Owner's objections thereto. Manager shall also provide financial and other records related to the operation of the Hotel to Owner through the date of Termination and shall continue to provide assistance to Owner after the Termination of this Agreement to the extent necessary for 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.

**4.12.3 Vacating Hotel.** Manager shall peacefully vacate and surrender the Hotel to Owner, with the least possible physical damage to the Hotel caused as a result of Manager's removal of signs and other items bearing the Trademarks.

**4.12.4 Books and Records.** Manager shall deliver to Owner all of the books and records respecting the Hotel and all contracts, leases, and other documents respecting the Hotel that are not Manager's Proprietary Information or confidential employee personnel files not permitted by law to be released by Manager to Owner, maintained by Manager and that are in the custody and control of Manager, including those provided for in Section 2.4 of this Agreement. The Manager will also deliver to Trustee an explanation indicating each bookkeeping account code used by Manager in connection with its management of the Hotel which is not defined in the Uniform System of Accounts, together with a brief description of each coded account.

**4.12.5 Licenses and Permits.** Manager shall deliver to Owner all of the liquor, restaurant, and all other licenses and permits held by Manager or an Affiliate in connection with the operation of the Hotel. In addition, Manager shall assign to Owner (but only to the extent assignable) all of Manager's right, title, and interest in and to all such licenses and permits, provided, however, if Manager has expended any of its own funds in the acquisition of licenses or permits, Owner shall reimburse Manager for such expended funds (to the extent not previously received by Manager), amortized to the extent any such license or permit is for a fixed term. Manager recognizes that all licenses held for the operation of the Hotel are held for the benefit of Owner and Manager has no ownership therein, except in order to fulfill its obligations hereunder. The entity holding the Liquor License shall, upon the request of Owner, 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 the Owner 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 a 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 Gross Negligence or Willful Acts and (b) provide for the Termination of all obligations of Manager and its Affiliates thereunder within ninety (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 Owner of the Hotel or an entity designated by Owner in their attempts to transfer existing licenses and permits or obtain new Liquor Licenses for the Hotel.

**4.12.6 Honoring Reservation Dates.** Subject to the Room Block Agreement, Owner shall honor all business confirmed for the Hotel in the ordinary course of business and in accordance with Section 4.12.14 herein with reservation dates after the Termination; provided,

however, that Owner shall have no obligation to honor rooms at rates less than the lowest rates for each category of room rates included in the then-current Approved Operating Plan and Budget rates.

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

**4.12.8 Trademarks.** If this Agreement is terminated in accordance with the terms hereof or for any other reason whatsoever, Manager shall, at its cost, immediately take all steps reasonably requested by Owner to disassociate the Hotel and Owner from the Trademarks (including the removal of all signage bearing the name or mark of Manager). Owner shall in any event delete all Trademarks from the Hotel name and cease to use all FF&E and operating supplies bearing any of the Trademarks within a reasonable period of time after the Termination (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 Owner for the unamortized cost of such FF&E and operating supplies other than any signage). If Manager fails to remove Trademark-bearing Hotel signage on or prior to the effective date of the Termination, Owner has the right to remove and retain or dispose of all such interior or exterior signage, at Manager's cost. Manager shall have the right to remove from the Hotel, on or before the effective date of the Termination, all operations manuals which constitute Manager's Proprietary Information, policy statements, any other of Manager's Proprietary Information, and all other written materials bearing the Trademarks. Under no circumstances shall Owner copy, reproduce, or retain any of Manager's Proprietary Information or materials bearing the Trademarks. Further, Manager shall have the right to purchase from Owner, for a purchase price equal to Owner's cost, all unbroken cases of any operating supplies then on hand at the Hotel or ordered or purchased and which bear the identification of Manager or Omni Hotels. Owner shall not continue to use any operating supplies or other products or items on hand bearing the Trademarks which are not repurchased by Manager from Owner.

**4.12.9 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 Owner in facilitating the orderly transfer of Owner's records and data contained in Manager's Proprietary Software. Manager shall reasonably cooperate with Owner in order to avoid disruption in the operation of the Hotel in connection with the transition from Manager Proprietary Software to one or more replacement systems and Manager shall be reimbursed for its reasonable costs incurred in connection with such cooperation. To the extent necessary to facilitate the orderly transfer of Owner's records and data, Owner and Manager shall execute Manager's current form of software license agreement at no additional charge other than as previously charged Owner to provide for the use by Owner 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 Owner for a period of time not to exceed the greater of one hundred twenty (120) days following the effective date of the Termination or the Transition Period.

**4.12.10**        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.

**4.12.11**        Special Provisions Regarding Foreclosure. Upon a Foreclosure Event, Trustee shall, subject to the provision of Section 6.2.2 of this Agreement, have the option to elect to terminate this Agreement or to retain Manager, and shall make such election in writing delivered to Manager within one hundred eighty (180) days after such foreclosure. During such one hundred eighty (180) day period after a Foreclosure Event (herein, the “**Transition Period**”), if and only if, and only to the extent, requested in writing by the Foreclosure Purchaser (promptly upon the commencement of the Transition Period), Manager shall continue to manage and operate the Hotel on an interim basis pending the Foreclosure Purchaser’s selection and engagement of a new Manager. As compensation for such interim management, 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 the Foreclosure Event and during the Transition Period, without regard to any claims against Owner. Manager shall not be entitled to receive any Termination Fee related to a Termination under this Section 4.12.11.

**4.12.12**        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, Owner will advance the insufficiency from the Surplus Revenue Fund). If Owner pays its pro rata share of premiums under the chain-wide policies of insurance or the self-insurance program of Manager in advance, Manager shall reimburse Owner for the unearned portion of insurance premiums. Owner consents to the Termination of the insurance program with respect to the Hotel as of the effective date of Termination of this Agreement and agrees that Manager shall have no further obligation, after the effective date of such Termination, to provide or obtain any additional insurance coverage for the benefit of Owner or the Hotel thereafter.

**4.12.13**        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 Owner will cooperate with each other and act in a professional manner to effect an orderly transition of management functions from Manager to Owner, any transferee of Owner or to any managing agent designated by Owner or any transferee of Owner for a period of up to ninety (90) days from the date of notice of Termination (the “**Transition Period**”).

**4.12.14** 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 Owner. Manager will cooperate with Owner in all reasonable respects, but at Owner's sole cost and expense, in the collection of any receivables, and will turn over to Owner any receivables of the Hotel collected directly by Manager after the effective date of Termination. Manager shall, on the effective date of Termination or as soon thereafter as reasonably practicable, but in no event later than five (5) days after the date of Termination, provide Owner with a complete list of (a) all bookings for future reservations or use of Hotel rooms or facilities which may have been accepted or entered into by Manager on or at any time prior to the Termination of this Agreement, (b) the terms applicable thereto, and (c) the amount of advance deposits (if any) received with respect to each such booking. Manager agrees that, except with Owner'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 the Agreement once the Termination date has been established in accordance with the provisions of this Agreement.

**4.12.15** Survival. The provisions contained in this Section 4.12 shall survive the Termination of this Agreement.

**5. INSURANCE [ALL INSURANCE PROVISIONS REMAIN OPEN AND SUBJECT TO FURTHER COMMENT AND REVISION PENDING MANAGER'S REVIEW OF EXHIBIT O]**

**5.1** Maintenance of Insurance Coverage.

**5.1.1** Required Insurance. Subject to Section 5.1.2 of this Agreement, Manager shall, at all times during the Operating Term, and as an Operating Expense of the Hotel, for the benefit of Owner, maintain insurance with respect to the Hotel in accordance with **Exhibit O** attached hereto and Sections \_\_\_\_\_ of the Indenture, provided that if no Bonds are Outstanding, the insurance shall be maintained in accordance with such **Exhibit O** and the applicable provisions of any Mortgage then existing against the Hotel. Such insurance may, at the sole option of Manager, be covered under Manager's blanket insurance policy, subject to compliance with **Exhibit O** and such sections of the Indenture (or Mortgage, if no Bonds are Outstanding). Prior to the Required Opening Date, Manager shall deliver to Owner a Certificate of Insurance. In addition to the foregoing, Manager shall, at its own cost, carry fidelity bonds on its Senior Executive Personnel in the amounts set forth in **Exhibit O** or such higher amounts as may be provided for under Section \_\_\_\_\_ of the Indenture. Notwithstanding any provision to the contrary herein contained, Manager shall ensure that each employee handling cash or receipts of the Hotel (including any person with access to funds in the Lockbox Fund) is covered by a fidelity bond satisfying the requirements of **Exhibit O**.

**5.1.2** Owner's Right to Provide Insurance. If at any time during the Operating Term any one or more of the coverages required pursuant to Section 5.1.1 of this Agreement shall be unavailable to Manager through blanket policies, Manager shall obtain other insurance to provide such coverages, subject to the requirements of Sections 5.1 and 5.2 of this Agreement. In addition, if at any time Manager is unable to place any of the insurance required pursuant to Section 5.1.1 of this Agreement at premiums and otherwise on terms and conditions (including



amounts of coverage and deductibles) at least as advantageous to Owner as the premiums and other terms and conditions available to Owner under blanket insurance policies available to Owner from time to time, then Owner may arrange for such insurance through the blanket policies available to Owner, as a cost and expense of the Hotel that will be paid from the Taxes and Insurance Fund. If Owner desires to place its own insurance, or to require Manager to purchase insurance policies designated by Owner, pursuant to this Section 5.1.2, Owner shall so notify Manager in writing at least sixty (60) days prior to the scheduled effective date of such insurance; provided, however, if Owner is obligated to or assumes the obligation to obtain insurance coverage as provided in this provision and fails to do so, such failure shall be an Event of Default by Owner hereunder.

**5.1.3 Insurance Consultant.** Upon the request of Owner, Manager shall engage, at Owner's Expense, an Insurance Consultant to review the insurance requirements herein and in the Indenture. Upon receipt of the Insurance Consultant's written report and/or written recommendations, Manager shall deliver a copy thereof to each of Owner and Trustee. If the Insurance Consultant recommends increases in all or any of the coverages and Owner approves such increases, Manager shall obtain the approved increases. Costs of the Insurance Consultant shall not impact the Performance Test.

**5.1.4 Special Conditions or Hazards.** Owner shall disclose to Manager prior to the commencement of the Operating Term the presence of any condition or hazard (i) existing as of the commencement of the Operating Term, (ii) that is known to Owner and (iii) that is reasonably likely to create or contribute to any claims, damages, losses, or expenses not typically insured against by the coverages required pursuant to Section 5.1.1 of this Agreement. If any such condition or hazard requires removal, abatement, or any other special procedures, such special procedures shall be performed by Owner 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, Owner and Trustee. Notwithstanding anything contained herein to the contrary, if the existence of any condition or hazard as described above causes Manager to be unable to operate the Hotel as intended, or causes the Termination or temporary suspension of this Agreement, Owner shall not be liable to Manager or any Affiliate of Manager for any consequential damages in the nature of opportunity cost (e.g., Manager's alleged damages based on the argument that it would have taken another opportunity in the Hotel's market had it known of such condition or hazard).

**5.2 Parties Insured and Standard of Insurance.** The carriers of all insurance policies required under this Agreement shall be subject to Manager's approval, which approval shall not be unreasonably withheld. All insurance policies provided for in this Section 5 shall be rated no less than A VIII, in the most recent "Best" insurance guide and shall be authorized or eligible to do business in the state of 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.** The commercial general liability policy and umbrella liability policy shall name Owner as the named insured and City, Manager and Trustee (for the benefit of the Bondholders) as additional named insureds. The property insurance shall (a) name Owner as the named insured, (b) include (if appropriate) a mortgagee endorsement clause in favor of mortgagees, as their interests may appear, and (c) provide coverage for Manager and Trustee (for the benefit of the Bondholders), as their interests may appear as insureds. The workers compensation policy shall waive all rights of subrogation against Owner and Trustee (for the benefit of the Bondholders). All other insurance policies shall name Owner as the named insured and, as appropriate, name City, Manager and Trustee (for the benefit of the Bondholders) as additional insureds, named insureds or provide coverage, as their interests may appear. Notwithstanding anything contained herein to the contrary, in no event shall Manager be obligated to name Owner, Trustee or any other party as an additional insured to any insurance policy maintained by Manager or its Affiliates not solely benefiting the Hotel.

**5.2.2 Amounts of Coverage.** When maintained by Owner, amounts and types of coverages and amounts of deductibles shall 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.

**5.2.3 Waiver of Subrogation Requirements.** Where appropriate and obtainable (including the insurance provided for in **Exhibit O**), all policies shall include the insurer's waiver of subrogation rights against Owner, Manager, Trustee and the Bondholders.

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

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

**5.3 Changes to Insurance Policies.** In the event that either Party desires to make a change in the carrier, type or amount of any of the insurance policies to be maintained under this Agreement, it shall notify the other Party of the desired change at least sixty (60) days in advance of the expiration of the current policy proposed to be changed. The Parties shall promptly thereafter meet to discuss and resolve any questions or disagreements with respect to the proposed change, and each Party agrees not to withhold or delay its consent unreasonably to any such proposed change requested by the other party so long as such requested change is consistent with the standards described in this Article 5. In any event, the parties agree to work diligently and in good faith to resolve any disagreements with respect to the proposed change as quickly as possible so that a determination of the coverage to be maintained for any period of time can be made at least thirty (30) days in advance of the expiration date of the policy or policies proposed to be changed. If the Parties are unable to resolve any disagreement under this Section 5.3, either Party may request arbitration as set forth in Section 10 hereof.

**5.4 Binders and Certificates.** As soon as practicable prior to the effective date of the applicable coverages, the Party obtaining the insurance coverages under this Article 5 shall provide the other Party with binders evidencing that the applicable insurance requirements of this

Agreement have been satisfied and, as soon as practicable thereafter, shall provide certified copies of policies for such insurance or certificates of insurance. As soon as practicable 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.

**5.5** 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.

**5.6** 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 Owner any such incident that is material, and shall provide to Owner a written report semiannually setting forth all accidents and claims for damage relating to the Hotel in the form prepared by Manager for Other Omni Hotels;

(b) cause to be investigated all damage to or destruction of the Hotel, as it becomes known to Manager, shall report to Owner any such incident that is material, together with the estimated cost of repair thereof, and shall provide to Owner a written report semiannually setting forth all damage to or destruction of the Hotel in the form prepared by Manager for Other Omni Hotels;

(c) prepare any and all reports required by any insurance company as the result of an incident mentioned in this Section 5.6, acting as the sole agent for all other named insureds, additional insureds, mortgagees, and loss payees; and

(d) retain on behalf of Owner 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.

**5.7** Review of Insurance. All insurance policy limits provided under this Article 5 shall, at the request of either Party, be reviewed every year following the commencement of the Operating Term, to determine the suitability of such insurance limits in view of exposures reasonably anticipated over the ensuing year. Owner and Manager hereby acknowledge that changing practices in the insurance industry and changes in the local law and custom may necessitate additions to types or amounts of coverage during the Operating Term. Owner agrees to comply with any additional insurance requirements Manager reasonably requests in order to protect the Hotel and the respective interests of Owner and Manager; provided, however, so long as any Bonds are Outstanding, that Owner shall not be required to comply with any such

insurance requirements requested by Manager to the extent the same would violate the Bond Documents.

**5.8** Subcontractor's and Vendor's Insurance. Manager will require each contractor, subcontractor and vendor which provides services on-site at the Hotel to produce a certificate of insurance showing that such Party maintains commercial general liability insurance on an occurrence basis in an amount at least equal to \_\_\_ Million Dollars (\$\_,000,000) per occurrence, workers compensation or its facsimile at statutory levels and employers liability coverage or its equivalent in the amount of \_\_\_ Million Dollars (\$\_,000,000). With respect to any contractor, subcontractor and vendor which provides services on-site-at the Hotel for a period of seven (7) or more consecutive days, Manager will endeavor to require each such Party to name Manager, Owner and City as an additional insureds under such Party's commercial general liability insurance policy.

**5.9** Insurance by Manager. Any insurance provided by Manager under this Section 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 Omni Hotels. Any policies of insurance maintained by Manager pursuant to the provisions of this Section 5 may contain deductible provisions in such amounts as are maintained with respect to Other Omni Hotels, for which Owner shall be responsible or which Manager, at Owner's expense, may pay. The parties hereby acknowledge that Manager is a nonsubscriber to the workers compensation system, and further that Manager does not maintain Employment Practice Liability Insurance; provided, however, if the City requests Employment Practice Liability Insurance and such insurance policy can be provided by Manager in such manner that it is solely applicable to the Hotel (and not other hotels managed by Manager), then Manager shall obtain such Employment Practice Liability Insurance, the costs of which shall be an Operating Expense of the Hotel.

## **6. MORTGAGES**

### **6.1** Authorization to Encumber Hotel.

**6.1.1** Right to Encumber. Subject to the provisions of Sections 6.1, 6.2 and 6.3, Owner shall have the absolute and unrestricted right from time to time in its sole and absolute discretion to encumber all of the assets that comprise the Hotel, any part thereof, or any interest therein, including the real estate on which the Hotel is constructed, the Hotel building and all improvements thereto, all FF&E and hotel equipment and operating supplies placed in or used in connection with the operation of the Hotel, and all accounts, receivables and other personal property relating to the Hotel, as contemplated in any Bonds or Mortgage that is entered into by Owner or its successor-in-interest, and to assign to any holders or such Bonds or Mortgagee as collateral security for any loan secured by the Mortgage, all of Owner's or its successor-in-interest's right, title, and interest in and to this Agreement; provided, however, notwithstanding the foregoing, the prior written consent of Manager shall be required with respect to any loan placed on any part of the Hotel (other than additional bonds and refunding bonds as contemplated under subsection 6.1.2 below), if the principal amount of indebtedness of such loan exceeds the sum of the original aggregate principal amount of the loan against the Hotel that will be satisfied with the proceeds of the new loan, all other amounts due and payable in connection

with the loan that will be satisfied (including any prepayment premiums payable in respect of such loan), and all costs and expenses incurred to obtain the new loan. Owner 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, Unamortized Key Money, the Termination Fee, Centralized 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 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, Owner shall have the absolute right (without any restriction or condition) to issue (i) additional bonds secured by the Hotel, provided the standards set forth in Section \_\_\_ 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, if in the reasonable opinion of Manager delivered within ten (10) 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 Owner shall not issue its additional bonds or refunding bonds until the indenture and related bond documents are in a form that does not materially alter any rights or impose any additional material or economic burdens on Manager, or that reasonably compensates Manager for such alteration of rights or burdens either monetarily or on balance when taking into account any benefits to Manager under such proposed new Indenture. Owner shall deliver to Manager a copy of any new indenture and related bond documents promptly after the execution thereof.

**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 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 amendments.

**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 at Owner's 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.** Owner represents and warrants that, as of the date hereof, the lien and security interests that secure the Bonds are the only lien and security interest encumbering all or any part of the Hotel and its component personal property. Subject to Section 6.1.1 of this Agreement, Manager hereby acknowledges the existence of the Indenture securing

the Bonds and agrees that this Agreement shall be subordinate to the lien of such Indenture. Owner shall deliver to Manager a true and complete copy of the final form of Bond Documents promptly after the execution thereof.

**6.1.6 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 Trustee, Manager or the Bondholders, and neither the officers, agents, employees or representatives of Trustee, Manager or the Bondholders nor any person executing or authenticating the Bonds shall be personally liable thereon or be subject to any personal liability or accountability by reason of the issuance thereof, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the acceptance of this Agreement and the issuance of the Bonds; 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.** Subject to Section 6.3.2, Manager hereby subordinates 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. 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. Owner will reimburse Manager for its Out-of-Pocket legal expenses incurred in reviewing and negotiating any subordination agreement that a Mortgagee requests Manager to execute, up to a maximum of \$10,000, the cost of which shall be an Operating Expense (provided, that such amount shall not be considered an Operating Expense for purposes of the Performance Test).

**6.2.2 Execution of Subordination Agreement.** Subject to Section 6.3.2, 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 Owner or its successor-in-interest or any Mortgagee a commercially reasonable subordination agreement (a "**Subordination Agreement**") that subordinates this Agreement, except for Manager's rights with respect to the Unamortized Key Money, 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 Owner 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's expenses associated with reviewing and negotiating a Subordination Agreement shall be deemed Operating Expenses.

**6.2.3 Manager's Agreements.** Manager covenants and agrees, represents and warrants with and to Owner and for the benefit of Trustee that:

(a) Manager has no right or option of any nature whatsoever, whether pursuant to this Agreement or otherwise, to purchase the Hotel or any portion or any interest therein, and to the extent that Manager has had, or hereafter acquires, any such right or option, the same is acknowledged to be subject and subordinate to the Indenture and the Bonds in all respects and is hereby waived and released as against Trustee or any interest of Trustee.

(b) Manager has no right or option of any nature whatsoever to own or acquire, directly or indirectly, any of Developer or its Affiliates or any interest therein and, to the extent that Manager has had, or hereafter acquires, any such right or option, the same is acknowledged to be subject and subordinate to the Indenture and the Bonds in all respects and is hereby waived and released as against Trustee or any interest of Trustee.

(c) Manager shall not modify, amend or terminate this Agreement without 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 Trustee, forthwith, any such amounts.

(d) A notice in writing by Trustee to Manager advising it that all future performance under this Agreement be made to Trustee (or its agent), shall be construed as conclusive authority to Manager that such performance is to be made to Trustee (or its agent), and Manager shall be fully protected in making such performance to Trustee; and Owner hereby irrevocably constitutes and appoints Trustee the attorney-in-fact and agent of Owner for the purpose of endorsing the consent of Owner on any such notice. The foregoing power is coupled with an interest and shall survive the liquidation, bankruptcy or insolvency of Owner and is in addition to and not in lieu of any terms to such effect contained in the Indenture. Manager agrees that, upon Trustee's revocation of Owner's license to exercise the rights granted by Trustee to Owner 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 "**Owner**" 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 Owner's license, without regard to any claims against Owner.

(e) 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. Trustee shall not be prejudiced in its right to enforce this Agreement by any act or failure to act on the part of Owner or anyone in custody of Owner's assets or property.

**6.2.4** Bankruptcy. Manager agrees not to cause the filing of a petition in bankruptcy against Owner for non-payment of any sum due Manager by Owner 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 Owner, 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 Owner or the proceeds thereof, to creditors of Owner, or upon any indebtedness of Owner, by reason of the liquidation, dissolution or other winding up of Owner or Owner's business, or any sale, receivership, insolvency or bankruptcy proceeding, or assignment for the benefit of creditors, or any proceeding by or against Owner 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 Owner to Manager (including, without limitation, interest and post-petition interest) shall be paid or delivered in accordance with the Indenture (including, without limitation, Section \_\_\_\_ thereof), 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 or distribution or security or proceeds thereof be received by Manager contrary to the provisions of this Agreement, the Indenture, or the Cash Management Agreement, Manager will forthwith deliver the same to Trustee in precisely the form received for application in accordance with the Indenture and, until so delivered, the same shall be held in trust by Manager as property of Trustee.

### **6.3** Subordination Agreements.

**6.3.1** Mortgagee's Right to Terminate Upon Foreclosure. A Mortgagee's rights to terminate this Agreement upon a foreclosure are set forth in Section 4.10 of this Agreement. Furthermore, any such termination must comply with the provisions of Section 4.14 concerning the return of the Unamortized Key Money to Manager. If (i) Trustee, any Affiliate of Trustee or any other Person shall become 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 Trustee, such Affiliate or such other Person, as the case may be, and 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 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 Owner. Said attornment and nondisturbance shall be effective and self-operative as an agreement between Manager and 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 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, after there are no longer any Bonds Outstanding under the Indenture, Owner (or its successor-in-interest) shall not accept a Mortgage unless the Mortgagee agrees to a non-disturbance agreement in form and substance reasonably acceptable to Mortgagee and Manager, 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 held by such Mortgagee, with the understanding that a Mortgagee may condition its delivery of a non-disturbance agreement upon receipt of a Subordination Agreement from Manager, as provide in Section 6.2.2 of this Agreement (a "**Non-Disturbance 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. Trustee may assign any or all of its rights and interests in this Agreement, to a third party in connection with transfer and assignment of any Mortgage, the Bonds and/or the Indenture, with reasonable prior written notice to Manager.

**6.3.4 Assignment of Claims.** Manager will not assign or transfer to others any claim which it has or may hereafter have against Owner while any of the Bonds (including without limitation, post-petition interest) and any other sums due under any of the Bond Documents remain unpaid, unless such assignment or transfer is made expressly subject to the terms and conditions hereof.

## **7. DESTRUCTION; TAKING**

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

**7.1.1** Owner to Restore with Sufficient Available Casualty/Condemnation Amounts. If during the period any Bonds are Outstanding, the whole or any part of the Hotel is damaged or destroyed by fire or other casualty required to be insured against under Section 5 above or Taken, then the Casualty Proceeds and/or the Condemnation Proceeds, as, applicable, shall be paid immediately to Trustee (with the understanding that any Casualty Proceeds and Condemnation Proceeds received by Manager, Owner or other named insured parties shall be immediately turned over to Trustee) for deposit in the Insurance and Condemnation Proceeds Fund; provided, however, the foregoing shall be subject to the rights of Trustee under the Bond Documents to apply the Casualty Proceeds and Condemnation Proceeds to the redemption of some or all of the Bonds. 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 Expense Reserve Fund, and the Surplus Revenue 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**”) who has obtained two (2) bids from licensed general contractors to be mutually agreed upon by Manager and Owner, then Owner 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, Owner shall be under no obligation to, engage a contractor to perform the repair and restoration of the Hotel if (a) the total cost of repairing and/or replacing the damaged portion of the Hotel to the same condition as existed prior to such damage, destruction or Taking would be ten percent (10%) or more of the then total replacement cost of the Hotel (“**Total Casualty**”), as determined by the Independent Architect, (b) in Owner’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) Trustee, pursuant to and in accordance with the Bond Documents, does not make the Casualty Proceeds and/or Casualty Proceeds available for repair or reconstruction.

**7.1.2** Insufficient Available Amounts - Owner’s Option to Terminate or Restore. If Owner does not repair, restore, replace, or rebuild the Hotel due to any of the reasons described in clauses (a), (b), (c) or (d) of Section 7.1.1, then Owner or Manager may terminate this Agreement by giving notice to Manager (which shall be effective ninety (90) days after its delivery pursuant to Section 12.13 below) within thirty (30) days after the report is delivered by the Independent Architect.

**7.2** Casualty or Destruction After Bonds Are No Longer Outstanding; Owner to Restore After Insured Casualty. If, after the Bonds are no longer Outstanding, the Hotel or any part thereof is damaged or destroyed by fire or other casualty required to be covered by the insurance described in Section 5 of this Agreement, then Owner shall repair, restore, replace, or rebuild the Hotel (“**Casualty Restoration**”) as nearly as is reasonably possible to the condition and character of the Hotel immediately prior to the occurrence of the damage or destruction, subject to the following conditions precedent: (a) Owner receives insurance proceeds in an amount sufficient to cover at least ninety percent (90%) of the cost to rebuild and replace the Hotel as certified in a statement of an independent architect who has solicited the bids at two (2)

licensed general contractors to be mutually agreed upon by Manager and Owner, (b) the holder of any Mortgage then existing against all or any of the Hotel allows the Available Casualty and Condemnation Proceeds to be used for the repair and reconstruction of the Hotel, and (c) the repair of the Hotel is not reasonably anticipated by the independent architect to exceed six (6) months and the total cost of repairing and/or replacing the damaged portion of the Hotel to the same condition as existed prior to such damage, destruction or Taking is ten percent (10%) or less of the then total replacement cost of the Hotel. If the conditions set forth in (a), (b), (c) and (d) are not satisfied, Owner shall not be required to repair any damage or destruction of the Hotel and if Owner elects not to repair the Hotel then Owner or Manager may terminate this Agreement by giving notice to the other Party (which shall be effective ninety (90) days after its delivery pursuant to Section 12.14 of this Agreement) within thirty (30) days after the report is delivered by such independent licensed architect. Manager shall cooperate with Owner in obtaining all property damage insurance proceeds payable with respect to the Casualty Restoration so that the same shall be available to Owner as the Casualty Restoration progresses. Owner shall use commercially reasonable efforts to negotiate provisions in any Mortgage to provide that all insurance proceeds covering damage or destruction to any real or personal property used in the operation of the Hotel shall be available for and used exclusively for the funding of the Casualty Restoration.

7.3 Minor Casualty. In event of a “Minor Casualty Loss” which is defined as a loss of less than ten percent (10%) of the total Replacement Cost of the Hotel, then Manager will proceed to process claims with the applicable insurance carriers and make arrangements with contractors and suppliers to repair and replace the damaged portion of the Hotel.

7.4 Permanent Taking After Bonds are no Longer Outstanding.

7.4.1 Termination Right. If after all Bonds are no longer Outstanding: (a) all or substantially all of the Hotel is Taken; (b) in Owner’s reasonable judgment, the portion of the Hotel Taken due to condemnation or due to a total casualty 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 Owner or Manager, then all condemnation or insurance proceeds received by Manager with respect to the Hotel shall be payable to Owner, and this Agreement shall terminate within ninety (90) days after Owner’s or Manager’s notice of termination. If this Agreement is not terminated in accordance with the preceding sentence, then, at Owner’s election, either Owner or a third party shall coordinate such alterations or modifications to the Hotel, or any part thereof, as approved by Owner, 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 Owner 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 Owner operates a Hotel on the Land within twenty four (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 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.

## **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, Owner 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 Owner 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.

**7.5.2** Termination Right. In the event any temporary Taking is reasonably anticipated to continue or continues for six (6) months or longer, either Manager or Owner may terminate this Agreement by delivery of written notice to the other party setting forth a Termination date no sooner than ninety (90) days from the date of the notice.

**7.6** Commencement and Completion of Casualty Restoration. If Owner is required to repair or rebuild the Hotel due to fire or other casualty pursuant to this Section 7, Owner 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 7.5 shall become operative immediately).

**7.7** Effect of Termination. If this Agreement is terminated pursuant to this Section 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 Owner. 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 unless Owner chooses to construct another hotel facility on Land within twelve (12) months.

## **8. BUSINESS INTERRUPTION**

### **8.1 Business Interruption.**

**8.1.1 Manager's Compensation During Business Interruption.** If the Hotel suffers damage or loss that results in an interruption in the operations of the Hotel, Manager shall continue to be obligated to perform its obligations hereunder and shall also 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 Centralized Services Fees and Charges and all Reimbursable Expenses, for the period of the business interruption. The parties further agree that the Business Interruption Insurance to be obtained under this Agreement shall be sufficient to cover all amounts that are required to be paid to Manager under this Section, and that the proceeds of such Business Interruption Insurance shall be deposited into the Account designated for such proceeds in the Indenture, and paid out in the order of priority and in accordance with the procedures required under the Indenture.

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

### **8.2 Proceeds of Business Interruption Insurance.**

**8.2.1 Allocation of Proceeds of Insurance.** If the business of the Hotel is interrupted by any event or peril covered by Business Interruption Insurance, the proceeds of any such insurance shall be paid to Trustee, for 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 Centralized Services Fees and Charges or the Reimbursable Expenses payable by Owner to Manager under this Agreement throughout the covered period of any business interruption up to any Termination Date. 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 8.1 shall satisfy the applicable amounts that Owner would otherwise be required to pay in accordance with Section 8.1, so long as Owner participates in Manager's insurance program or obtains its own Business Interruption Insurance that provides the same level of coverage as is available through Manager's insurance program.

**8.2.2 Deposit of Proceeds of Business Interruption Insurance During Period Bonds are Outstanding.** Notwithstanding any other provision hereof, Owner shall cause any

proceeds of business interruption insurance maintained pursuant to this Agreement (“**Business Interruption Proceeds**”) which are not paid directly to Manager, so long as any Bonds are Outstanding, to be deposited by Trustee when and as received into the Account designated for such proceeds in the Indenture, and the proceeds in such Account shall be distributed in accordance with the procedures required in the Indenture.

**8.2.3** Reduction in Deposits/Amounts Directly Received. Notwithstanding the foregoing, so long as some Bonds are Outstanding, the amounts required to be transferred pursuant to Section 8.2.2 of this Agreement shall be reduced to the extent the insurance carrier has directly paid Business Interruption Proceeds to either Manager or Owner, which reduction shall be allocated in the priority specified in Section 8.2.2.

**8.2.4** Characterization of Business Interruption Proceeds. Business Interruption Proceeds received shall be deemed 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.

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

## **9. ASSIGNMENTS**

### **9.1** Restrictions on Assignment.

**9.1.1** Restriction. Except as expressly provided otherwise in Section 6.1 of this Agreement, Section 4.7 of this Agreement, and the remaining provisions of this Section 9, neither Party may effect an Assignment without the prior consent of the other Party. Notwithstanding the foregoing or any other provision to the contrary contained herein, Owner may assign this Agreement to Trustee for the benefit of the Bondholders, as security for Owner’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 Section 9 shall be a material and non-curable breach of this Agreement by the assigning Party, governed by the terms of Section 4 of this Agreement.

**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 fifty percent (50%) (measured by fair market value or voting power) of the legal and/or beneficial interest (whether partnership interest, corporate stock, shares, or otherwise) during any consecutive twelve-month period; (c) any transfer of an aggregate of more than fifty percent (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 during any consecutive twelve-month period; and (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 fifty percent (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; and (b) owner, as defined in clause (a), of an owner, as defined in clause (a).

**9.1.4** Exclusion of Publicly Traded Stock. Neither any transfer of publicly traded stock nor any public offering of equity ownership interests (whether partnership interest, corporate stock, shares, or otherwise) in either Party or by 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. So long as no Event of Default attributable to Manager has occurred and remains uncured and subject to Section 9.2.2 of this Agreement, Manager shall have the right, without Owner’s consent but upon ten (10) days prior notice to Owner, 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 Omni brand and, in each of clauses (a), (b) and (c) in this Section 9.2.1, continues the hotel management business using the Omni 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 Owner pursuant to which such assignee assumes and agrees to be bound by-all of the terms and provisions of this Agreement;

(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 Omni brand and continue the use of the name of the Hotel;

(c) the Proposed Assignee is recognized as having (or upon such Assignment shall be recognized as having) a national or international chain of Four Diamond Hotels;

(d) the Proposed Assignee shall continue to operate the Other Omni Hotels under the Omni name and to provide the Centralized Services and other services 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 One Hundred Million Dollars (\$100,000,000) as of December 31 of the year preceding the proposed date of Assignment, or the transaction effecting the proposed assignment results in a pro forma decline in net worth of the Proposed Assignee below \$100 million, Manager or the Proposed Assignee shall deliver to Owner and Trustee a guaranty (in form and of substance reasonably satisfactory to Owner and Trustee) executed by (1) a Person having the required net worth guaranteeing all of the obligations and liabilities of the Proposed Assignee under this Agreement or (2) 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 Owner and Trustee a legal opinion, in form and substance, and from a law firm, satisfactory to Owner 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 Owner thirty (30) days' prior written notice of an Assignment to the Assignee, which notice shall (i) identify in reasonable detail owners of the Assignee, (ii) in the case of an Affiliate, provide proof (including a legal opinion) reasonably satisfactory to Owner 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 (including a legal opinion) reasonably satisfactory to Owner and Trustee, and (iv) shall be accompanied by the latest available audited and unaudited financial statements of the Assignee and other information with respect to such proposed assignment reasonably necessary for Owner to determine if the proposed assignment is a permitted assignment under this Article.

### 9.3 Assignment by Owner.

9.3.1 Certain Permitted Assignments. Notwithstanding anything to the contrary in this Agreement but subject to the provisions of Section 4.9 and Section 11.6 of this Agreement, Owner may sell, transfer, assign, or convey the Hotel or any part thereof or any constituent ownership interest in Owner, and effect an Assignment of this Agreement, or any interest therein, to any Person who:

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

(b) is not generally recognized in the community as being of ill repute and is not in any other manner a Person with whom a prudent businessperson would not wish to associate in a commercial venture or a Person that 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 Owner's financial obligations hereunder.



Owner shall give Manager not less than thirty (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 Ownership of the proposed transferee or assignee. 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 Owner 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. In the case of a sale, conveyance or transfer of the Hotel and an assignment of this Agreement, the proposed transferee or assignee shall execute an assignment and assumption agreement in form and substance reasonably acceptable to Manager pursuant to which such assignee/transferee assumes and agrees to be bound by all of the terms and provisions of this Agreement.

**9.3.2 Rights to Encumber.** Without limiting the generality of and notwithstanding Section 9.3.1, Owner 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.

**9.3.3 Assignment to the City.** Owner may assign all of its rights, title and interest in the Hotel and this Agreement to the City at any time without consent of Manager, upon sixty (60) days' prior written notice to Manager specifying the effective date of the assignment.

**9.4 Effect of Permitted Assignments.** A consent to any particular Assignment shall not be deemed to be a consent to any other Assignment or a waiver of the requirement that consent be obtained in the case of any other Assignment. Except as otherwise provided under Section 9.3 of this Agreement, as of any permitted Assignment by Owner or, in the case of an assignment under Section 9.2.2 of this Agreement, Manager (if the terms and conditions thereof are complied with), the assigning Party shall be relieved of all liabilities and obligations under this Agreement accruing after the effective date of such assignment; provided, however, notwithstanding the foregoing or anything to the contrary in Sections 9.2 or 9.3 of this Agreement, no such assignment shall relieve the assigning Party from its liabilities or obligations under this Agreement accruing prior to the effective date of the Assignment; provided further, in the event of an Assignment by Owner, if the assigning Party does not rehire the employees of the Hotel, Owner or the assigning Party shall pay for vacation, sick leave, severance, and other similar benefits (based on length of service) accrued for Hotel Personnel as of the effective date of the Assignment.

## **10. DISPUTES**

### **10.1 Dispute Resolution Procedure.**

Solely with respect to disputes related to a budgetary matter under Section 2.18, or a matter specifically identified in this Agreement as subject to the Dispute Resolution Procedure, the parties agree to resolve the dispute in accordance with this Section 10.1. In the event that a party provides notice of its election to use the Dispute Resolution Procedure, the party shall notify the other party and the Hotel Consultant by written notice of such election. The parties

have agreed that any such dispute shall be decided by \_\_\_\_\_ as their designated Expert, or if such person is not available, then by an Expert selected by the parties from those companies listed on **Exhibit BB** attached hereto for such determination. The parties shall be required to select a single Expert within ten (10) days of the date that either party submits its notice of election to use this procedure. The decision of the Expert shall be final and binding on the parties and shall not be capable of challenge, whether by arbitration, in court or otherwise;

(a) Each party shall be entitled to make written submissions to the Expert, and if a party makes any submission it shall also provide a copy to the other party and the other party shall have the right to comment on such submission (all within the time periods established pursuant to clause (d)). The parties shall make available to the Expert all books and records relating to the issue in dispute and shall render to the Expert any assistance requested of the parties. The costs of the Expert shall be treated as Operating Expenses, but one-half of such costs shall be deducted for the purpose of the Performance Test;

(b) The parties may request a hearing from the Expert, provided that the hearing shall not exceed one Business Day unless otherwise agreed to by the parties and the Expert in writing in advance. The Expert shall make its decision with respect to the matter referred for determination by applying the standard set forth in this Agreement regarding such matter. If this Agreement does not contain a specific standard regarding such matter, then the Expert shall apply the standards applicable to first class hotels in accordance with the Operating Standards, taking into consideration the Operating Standards agreed to by the parties in Section 2.2.1; and

(c) The terms of engagement of the Expert shall include an obligation on the part of the Expert to: (i) notify the parties in writing of their decision within thirty (30) days from the date on which the Expert has been selected (or such other period as the parties may agree or as set forth herein); and (ii) establish a timetable for the making of submissions and replies.

**10.2** Venue and Jurisdiction. The venue of any legal action by any party arising under this Agreement shall be, and any judicial proceedings shall be, in Dallas County, Texas. Each Party irrevocably submits to the jurisdiction of the federal and state courts located in Dallas County, Texas.

## **11. TRADEMARKS AND OTHER PROPRIETARY MATERIALS**

**11.1** Ownership of Trademark. Owner acknowledges and agrees it has no rights to or interest in the Trademarks, and agree not to contest the rights of Manager or its Affiliates in respect of the Trademarks, including any additions or improvements to the Trademarks by whoever developed.

**11.2** Use of Trademarks. As part of the 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.** Owner may not itself use the Trademarks or apply for international, United States federal or state or territorial registration of any rights in the Trademarks. Without Manager's prior consent (which may be withheld in Manager's sole discretion), Owner may not use any of the Trademarks as all or part of its legal name or any other trade or assumed name under which Owner does business, and Owner shall disclose in any trade or assumed name filing that the Hotel is independently managed and that Owner has no ownership rights in the Trademarks. Except as provided in Section 11.3 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 Owner 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 "**Omni**" 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 Omni Name.** Owner recognizes that the name "**Omni**" when used alone or in conjunction with some other words, together with the other names, logos or designs, described on **Exhibit P** attached hereto are owned by Manager or one or more of its Affiliates and are the exclusive property of Manager or its Affiliates (herein called "**Omni Owned Hotel Names**"). Accordingly, Owner agrees that no right or remedy of Owner for any default of Manager hereunder shall, nor shall any provisions of this Agreement, confer upon Owner, its successors or assigns the right to use Omni Owned Hotel Names in the operation of the Hotel, or otherwise, nor to hold the Hotel out as a Omni Hotel, after the expiration or earlier Termination of this Agreement. On the expiration or earlier Termination of this Agreement, Manager shall promptly remove from the Hotel all exterior and interior signs containing any Omni Owned Hotel Name and all forms of advertising, stationery, folio, menus, invoices, contract forms, brochures and other promotional material using an Omni Owned Hotel Name. Owner shall discontinue all use of Omni Owned Hotel Names, including without limitation, any such Omni Owned Hotel Names on all of the foregoing, with the exception that

Owner 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 Omni Owned Hotel Name. Moreover, Owner shall not be responsible for causing billboard companies to remove an Omni Owned Hotel Name from its billboards. In the event of any breach of this covenant by Owner, 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. Manager shall operate the Hotel under the name "**Omni Dallas Convention Center Hotel**". Any change in the name of the Hotel by Manager shall be approved by Owner, City and Trustee, in writing; provided, however, that any such name, of the Hotel shall include the name "**Omni**"; provided further if Manager and its Affiliates change the brand name used in the system-wide identification of the Other Omni Hotels, the Hotel name may be changed, at Manager's expense, without Owner'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 upscale hotel brand or a hotel having a Four Diamond rating with respect to operating standards, then Owner may terminate this Agreement by delivering written notice thereof without payment of any Termination Payment. If at any time the brand name "**Omni**" is no longer generally known as an upscale hotel brand or having a Four Diamond rating with respect to operating standards, then Manager shall operate the Hotel under another comparable hotel brand operated by Manager or its Affiliates that is generally known as an upscale hotel brand or a hotel having a Four Diamond rating with respect to operating standards; provided, however, the foregoing shall not affect Manager's obligation to manage the Hotel under the Operating Standard. If Manager fails so to operate the Hotel under another hotel brand acceptable to Owner, then Owner may terminate this Agreement by delivering written notice thereof to Manager and no Termination Fee shall be payable to Manager hereunder.

**11.5** Obligations of Owner.

**11.5.1** Cooperation with Manager. Owner will work together with Manager, the Convention Center and the Dallas Convention and Visitors Bureau, to develop advertising for the Hotel.

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

**11.5.3** Use of Trademark. Owner shall receive Manager's prior written approval, which approval shall not be unreasonably withheld, prior to using Manager's Trademark in advertising promotions for the Project.

**11.6** Proprietary Information. Owner acknowledges that Manager or one of its Affiliates is or will become owner or licensee of certain intellectual property (the "**Manager's Intellectual Property**") including (a) software in use at one or more Other Omni Hotels and all source and object code versions thereof and all related documentation, flow charts, user manuals, listing, and service/operator manuals and any enhancements, modification, or substitutions

thereof, and (b) Manager's Proprietary Information. Manager shall utilize Manager's Intellectual Property in connection with the operation of the Hotel to the extent that it deems appropriate for the purpose of carrying out its agreements and obligations hereunder, but such use shall be strictly on a non-exclusive basis, and neither such use nor anything contained in this Agreement shall confer any proprietary or other rights in Manager's Intellectual Property upon Owner or any third parties.

## 12. MISCELLANEOUS

**12.1** Interpretation Recitals and Exhibits. The Recitals set forth at the beginning of this Agreement and **Exhibits A-W** 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 Section or an Article is a reference to a 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 Approved 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 Approved 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 Owner 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 of Texas, 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 Substances), or operate or conduct the business of the Hotel in any manner known to constitute or give rise to a nuisance of any kind; provided that Owner recognizes and agrees that operations of the Hotel in the ordinary course of business and the holding of events in the Hotel 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 Room Block Agreement.** Contemporaneously with the execution of this Agreement, Manager and the City shall enter into the Room Block Agreement in the form attached as **Exhibit Q** hereto.

**12.7 Representations and Warranties of Owner.** Owner represents and warrants to Manager as of the Effective Date and the Required Opening Date, as follows:

**12.7.1 Due Organization, etc.** Owner is duly organized, validly existing, and in good standing and is duly qualified to do business in the State of Texas, and has full power, authority, and legal right to execute, perform, and timely observe all of the provisions of this Agreement. Owner's execution, delivery, and performance of this Agreement have been duly authorized.

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

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

**12.7.4 Continuing Legal Existence.** Owner shall, as an Administrative Expense, keep in full force and effect throughout the Operating Term its legal existence as a non-profit local government corporation.

**12.7.5 Required Approvals.** Owner shall maintain throughout the Operating Term all Approvals that are required to be in its name and that are necessary to own and the Hotel, but the foregoing shall not relieve Manager from obtaining permits, licenses, authorizations and other Approvals required hereunder.

**12.7.6 No Adverse Litigation/Condemnation.** Except for a pending City ballot measure that would prohibit the city or Owner from owning the Hotel, information regarding which is publicly available to Manager, there, is no litigation or proceeding pending or threatened against Owner, or to the knowledge of Owner, against the Land, that could adversely affect the validity of this Agreement or the ability of Owner to comply with its obligations under this Agreement. Owner is not aware of any condemnation proceeding pending or threatened against the Land or any portion thereof.

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

**12.7.8 Rights to Purchase.** Owner has not granted any other person the right to purchase the Hotel, except for foreclosure rights contained in the Bond Documents.

**12.7.9 Owner of Hotel.** City is the sole owner of the Site on which the Hotel building is to be built, and City intends to transfer title to the Site to Owner prior to commencement of construction of the Hotel. Owner has full power, authority and legal right to own or lease, as applicable, the Hotel and all of its contents

**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 Owner, delegate certain of its obligations to one or more Affiliates, provided that, if an Affiliate performs services which Manager is required to provide pursuant to this Agreement, Manager shall be ultimately responsible to Owner for the Affiliate's performance, and Owner shall not pay more for the Affiliate's services and expenses than Manager would have been entitled to receive pursuant to this Agreement had Manager performed the services. If an Affiliate otherwise performs services for or provides goods to the Hotel, such goods or services shall be of a quality and supplied at prices and on terms at least as favorable to the Hotel as generally available in the relevant market.

**12.9** The Policy Committee; Formation of Committee. Owner and Manager shall establish a policy committee (the "**Committee**") to coordinate the performance by Owner and Manager of their respective obligations under this Agreement so that the operation and promotion of the Hotel may be conducted in an efficient manner and under the terms and provisions of this Agreement. The purpose of the Committee is more fully set forth in Section 12.10.3 of this Agreement. Owner and Manager shall each appoint three (3) representatives ("**Representatives**") to serve on the Committee, with the persons whose names are listed on **Exhibit R** attached hereto being the persons who are to serve as the initial Representatives. Either Party may, at any time and from time to time, on notice to the other Party, name an alternate for one or more meetings or remove any of its Representatives and appoint a successor or successors; in addition, Owner shall have the right to attend and observe any Committee meeting and shall receive notice simultaneously with the other Parties of the time and place for such Committee meetings. With respect to those matters over which either Party or both Parties are granted approval rights under this Agreement, each Representative and each designated alternate shall have the authority to act for and bind his or her principal in giving or withholding such approval.

**12.9.2** Meetings. The Committee shall hold periodic meetings not less frequently than quarterly on less than ten (10) days' notice from either Party to the other. Meetings shall be held at the Hotel or at any other location agreeable to both Parties as set forth in the notice. No more than two (2) of the Representatives of each Party shall be required to attend any meeting. If the Committee so chooses, it may appoint a secretary to keep minutes of its meetings, and the minutes shall be distributed to all Representatives within thirty (30) days after each meeting.

**12.9.3** Purpose of Committee. The purpose of the Committee meetings is to provide Manager and Owner with a forum in which to discuss any aspect of the Hotel's operations. Manager agrees to discuss with Owner, among other topics, the following: Manager's selection of the Senior Executive Personnel; policies that materially affect Hotel Personnel; special projects recommended by Manager or Owner; the annual Proposed and/or Approved Operating Plan and Budget and the Capital Budget and the periodic updates thereto prepared by Manager; and the marketing program for the Hotel as proposed by Manager from time to time.

**12.10** Governing Law. This Agreement and all disputes relating to the performance or interpretation of any term of this Agreement shall be construed under and governed by the laws of the State of 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 Dallas County;

(b) waives any objection that it may have now or hereafter to the venue of any such suit, action or proceeding in any such court and any claim that any of the foregoing have been brought in an inconvenient forum;

(c) (1) acknowledges the competence of any such court, (2) submits to the jurisdiction of any such court in any such suit, action or proceeding, and (3) agrees that the final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon it and may be enforced in any court to the jurisdiction of which it is or may be subject by a suit upon such judgment, a certified copy of which shall be conclusive evidence of its liability;

(d) submits to the non-exclusive jurisdiction of the State or Federal Courts in Dallas County, as applicable, and agrees that service of process in any suit, action or proceeding may be made upon Manager's Registered Agent at the address as follows:

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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.

**12.11 Waivers, Modifications, Remedies.** No failure or delay by a Party to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by the Party against whom the enforcement of the change, waiver, or Termination is sought and, so long as any Bonds remain Outstanding, with the written consent of Trustee. Owner shall notify Manager of any revisions, amendments, supplements, modifications or other changes to the Indenture and the Cash Management Agreement prior to the effectiveness thereof, as set forth in Article XI of the Indenture. Owner acknowledges that Manager shall have the right to consent to such revisions, amendments, supplements, modifications or other changes to the extent set forth in such Article XI. 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.

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

**12.13 Notices.** Notices, consents, determinations, requests, approvals, demands, reports, objections, directions, and all other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given and to be effective on the date on which such communications are delivered by personal delivery, by facsimile transmission (with telephonic confirmation of receipt), 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 Owner shall also be given by Manager to Trustee in the same manner as given to Owner. Until a Party provides a change in address in accordance with this Section 12.13, notices will be sent to the following addresses:

To Manager:	Omni Hotels Management Corporation 420 Decker Drive Suite 200 Irving, Texas 75062 Attn: President Fax: (972) 871-5666
With a copy to:	The General Manager of the Hotel
With a copy to:	TRT Holdings, Inc. 600 E. Las Colinas Boulevard, Suite 1900 Irving, Texas 75039-5601 Attention: Legal Department
To Owner:	City Manager's Office City of Dallas Dallas City Hall, 7DN 1500 Marilla Dallas, Texas 75201 Attention: City Manager Fax: _____
With a copy to Trustee:	City Attorney's Office City of Dallas Dallas City Hall 7DN 1500 Marilla Dallas, Texas 75201 Attention: City Attorney Fax: _____

**12.14 Indemnity.**

**12.14.1** Manager's Indemnity. To the extent that Claims therefore are in excess of available insurance proceeds, Manager shall indemnify, defend, and hold Owner, City, Trustee, their respective Affiliates, and their respective directors, employees, agents, and assigns harmless (collectively, "**Owner Parties**") from and against, and reimburse Owner Parties for, any and all Claims, but excluding consequential damages caused by Manager (other than Permitted Consequential Damages), which any Owner Party may have alleged against them, incur, become responsible for, or pay out for any reason, but only to the extent arising out of all or any of the following: (a) Manager's Gross Negligent or Willful Acts, but only to the extent the Claims arising out of thereof are in excess of available insurance proceeds, (b) a Manager Event of Default, (c) breach by Manager of any of the Contracts for a reason other than the lack of Sufficient Funds, or (d) a failure of Manager to submit any contracts required to be submitted by Manager for review by Owner and Bond Counsel under Sections 2.1.4, 2.4.1, 2.4.2, or 2.4.3, or Manager's entry into any such contract in contravention of advice provided by Bond Counsel with respect to such contract, or Manager's breach of the representations set forth in Sections 2.4.8, 2.25.1, 2.25.3 or 3.4.3 with respect to Direct or Indirect Profit realized by Manager in connection with Centralized Services Fees and Expenses and Reimbursable Expenses (collectively with respect to clause (d) of this Section 12.14.1, "**Tax Related Indemnities**"). Notwithstanding the foregoing, in no event will Manager's indemnity, hold harmless or defense agreements extend to (i) any breach of any of Owner's obligations, covenants, agreements or representations contained in this Agreement or the Room Block Agreement, (ii) Owner's Negligent or Willful Acts, or (iii) an Event of Default by Owner under this Agreement. Notwithstanding anything to the contrary in this Section 12.14.1 or any other provision of this Agreement, Manager's obligation for Tax Related Indemnities shall not exceed Two Million Dollars (\$2,000,000.00).

**12.14.2** Owner's Indemnity. To the extent that Claims therefore are in excess of available insurance proceeds, but only to the extent that funds are available in the City Advance Repayment Fund and Surplus Revenue Fund, Owner shall indemnify, defend, and hold Manager and its respective Affiliates and Manager's respective directors, employees, agents, and assigns harmless (collectively, "**Manager's Parties**") from and against, and reimburse Manager for, any and all Claims, but excluding consequential damages caused by Owner (other than Permitted Consequential Damages), which Manager 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 Owner's Gross Negligence or Willful Acts, (b) an Owner Event of Default, (c) contamination of or any adverse effects on the environment with respect to the Hotel, provided the same was not caused by Manager or any of its employees, agents, contractors or service providers, and further provided that the contamination occurred during the period Owner's ownership of the Hotel or any environmental condition at the Hotel or the Land; (d) any violation of any Legal Requirements with respect to the design or construction of the Hotel; (e) breach by Owner of any of the Contracts for a reason other than the lack of Sufficient Funds; or (f) any breach or violation of any obligation of Owner hereunder with respect to the tax-exempt status of the Bonds. Notwithstanding the foregoing, in no event will Owner'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 Agreement, (ii) the Manager's Gross Negligence or Willful Acts, or (iii) an Event of Default by Manager under this Agreement. Nothing in this Section 12.14.2 shall in any way limit Owner's right to claim

immunity from any claims of any nature by any third party, other than Manager's Parties to the extent expressly set forth in this Section 12.14.2.

**12.14.3** Indemnification Defense and Settlement. The Indemnifying Party shall have the right to assume the defense of any Claim for which the Indemnifying Party may be obligated to indemnify a Party seeking indemnity. The defense shall be conducted by counsel selected by the Indemnifying Party, subject to approval by the Party seeking indemnity, such approval not to be unreasonably withheld or delayed; provided, however, that the approval shall not be required with respect to counsel designated by the insurer, (ii) so long as the Indemnifying Party (or its insurer) is conducting such defense with reasonable diligence, the Party seeking Indemnity shall not be required to pay the fees or disbursements of any counsel engaged by its insurer for services rendered; and (iii) the Indemnifying Party shall have the right, without the consent of the Party seeking Indemnity, to settle such claim, provided that the Indemnifying Party (or its insurer) pays all amounts due in connection with or by reason of such settlement and, as part thereof, the Party seeking Indemnity is unconditionally released from all liability in respect of such claim. The Party seeking Indemnity shall have the right to participate in the defense of any claim being indemnified and defended by the Indemnity Party at the expense of the Party seeking Indemnity. In no event shall the Party seeking Indemnity: (a) settle any claim as to which it is entitled to indemnification hereunder without the prior written consent of the Indemnifying Party; or (b) if a claim is covered by Indemnifying Party's liability insurance, take or omit to take any action that would cause the insurer not to defend such claim or to disclaim liability in respect thereof. Notwithstanding anything to the contrary in this Section 12.14.3, to the extent that Manager is required to indemnify Owner for a Tax Related Indemnity, the cost of Manager's defense shall be an Operating Expense.

**12.14.4** 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 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 Owner's Gross Negligence or Willful Acts or an Event of Default or breach by Manager or Owner under this Agreement. Notwithstanding any contrary provision of this Section 12.14, Owner and Manager mutually agree for the benefit of each other to look first to the appropriate insurance coverages in effect pursuant to this Agreement in the event any claim or liability occurs as a result of injury to person or damage to property, regardless of the cause of such claim or liability.

**12.14.5** 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**").

**12.15** Force Majeure Events. If, at any time during the Operating Term, Owner or Manager is unable to perform its obligations under this Agreement due to a Force Majeure Event, or if it becomes necessary, in the reasonable opinion of either Owner or Manager (with the understanding that if the situation is not an Emergency), to cease operation of the Hotel in

order to protect the Hotel and/or the health, safety and welfare of the guests and/or employees of the Hotel due to the occurrence of a Force Majeure Event, then Manager may, and Owner may direct Manager to, close and cease or partially cease operation of all or any part of the Hotel as necessary based on the occurrence of the Force Majeure Event, reopening and recommencing operation of the Hotel when Manager and Owner deem that the re-opening and re-commencement of operations may be done-pursuant to applicable Legal Requirements and without jeopardy to the Hotel, its guests or Hotel Personnel. Except as otherwise expressly provided in this Agreement, the time within which a Party is required to perform an obligation (other than the payment of money) shall be extended for a period of time equivalent to the period of delay caused by a Force Majeure Event.

**12.16** Successors and Assigns. Subject to the provisions of Articles 6 and 9, this Agreement shall inure to the benefit of and shall be binding on the successors and assigns of the Parties, and the terms “**Owner**” and “**Manager**” as used in this Agreement shall include all permitted successors and assigns of the original Parties.

**12.17** Estoppel Certificates. On request at any time and from time to time during the Operating Term, Manager shall execute, acknowledge, and deliver to Owner, Trustee or any Mortgagee, within twenty (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 reasonably requested by Owner, Trustee, or a 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 Owner with respect to this Agreement or any Mortgagee or any ground lease covering the Land.

**12.18** Entire Agreement. Subject to Section 6.2.1 herein, this Agreement, the applicable surviving provisions of the Technical and Pre-Opening Services Agreement and the Room Block Agreement 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 Agreement, the Room Block Agreement shall control. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to the execution of this Agreement except as expressly stated in this Agreement. 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.

**12.19** Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

**12.20** Relationship of the Parties. Manager and Owner acknowledge and agree that this Agreement creates an independent contractor relationship, with certain agency rights specifically

set forth herein; provided that, (a) Manager's authority is subject to the terms and conditions of this Agreement, and (b) nothing, contained in this Agreement shall create an agency coupled with an interest. Nothing contained in this Agreement shall constitute, or be construed to be or to create, a partnership, joint venture, or lease between Manager and Owner with respect to the Hotel or the operation thereof. This Agreement shall not be construed at any time to be an interest in real estate or a lien or security interest of any nature against the Hotel, the Hotel or any other land used in connection with the Hotel, or any equipment, fixtures, inventory, motor vehicles, contracts, documents, accounts, notes, drafts, acceptances, instruments, chattel paper, general intangibles or other personal property now existing or that may hereafter be acquired or entered into with respect to the Hotel or the operation thereof. Notwithstanding anything to the contrary in this Agreement or otherwise, in no event shall Manager have any right to bind Owner except as expressly set forth in this Agreement. Owner acknowledges that Manager operates Other Omni Hotels that may be competitive to the Hotel.

#### 12.21 Confidentiality.

**12.21.1** Generally. Subject to Sections 12.21.2 and 12.21.3 of this Agreement and any disclosure required pursuant to the Indenture or pursuant to any applicable Legal Requirement, each Party agrees to keep confidential all information of a proprietary or confidential nature about or belonging to the other Party to which the other Party gains or has access by virtue of the relationship between the Parties. 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 Owner 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 (2) 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 Owner.

**12.21.2** Open Records Information. If Manager receives a request under the Texas Open Records Act pertaining to the Hotel, Manager will promptly inform Owner thereof.

**12.21.3** 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 Bondholders 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.

**12.22 Exculpation.** Notwithstanding any provision to the contrary herein contained, neither Owner, Trustee, Bondholders nor Affiliates of any thereof, nor any officer, director, employee or agent of the same, nor any of their respective heirs, administrators, executors, personal representatives, successors and assigns, shall have any personal liability or other personal obligation with respect to any payment, performance or observance of any amount, obligation, or liability to be paid, performed or observed under this Agreement or any of the representations, warranties, covenants, indemnifications or other undertakings of Owner hereunder and, except as otherwise expressly provided in this Agreement, Manager agrees it shall not seek to obtain a money judgment against Owner, Trustee, Bondholders or Affiliates of any thereof, or against any officer, director, employee or agent of the same, or against any of their respective heirs, administrators, executors, personal representatives, successors or assigns. Manager acknowledges that, unless and until the City assumes the rights and obligations of Owner as an assignee from Owner under this Agreement, the City is a distinct legal entity from Owner, and the City shall have absolutely no liability or obligation hereunder. All accrued liabilities of Owner to Manager at Termination of this Agreement shall be due and owing upon Termination.

**12.23 Restrictive Covenant.** Until the expiration or prior Termination of this Agreement due to an Event of Default by Manager with the intention of causing this Agreement to terminate in order to prevent the enforcement of this Section 12.23, and as a material inducement to Owner entering into this Agreement, Manager and its Affiliates shall not, without the prior written consent of Owner, own, lease, operate, manage, license, franchise, merge with or join through a joint marketing or other similar arrangement, in whole or in part, directly or indirectly, a Restricted Hotel within a two mile radius of the Hotel (the “**Restricted Area**”).

**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 Owner to pay interest on any unpaid Management Fee, but not on any unpaid Subordinated Management Fee for so long as such amounts remain subordinated in accordance with Section 3.1.3) shall bear interest from and after the respective due dates thereof (but in no event earlier than date upon which the Party making the claim for payment notifies the other Party thereof) until the date on which the amount is received in the designated bank account, at an annual rate of interest equal to the rate as specifically set forth herein related to such overdue amount, or if none is specified, then at the prevailing lending rate of the primary bank at which the Hotel maintains its accounts plus three percent (3%); provided that no interest shall be payable on amounts owed by Owner to Manager which Manager is authorized to pay directly to itself under the terms of this Agreement (unless there are insufficient funds in the applicable account(s) therefore and Owner has failed to provide adequate funds following request by Manager in accordance with this Agreement). In no event will Owner be entitled to pay or charge interest in excess of any statutory limitations on interest applicable to Owner.

**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. Owner hereby consents to the execution and delivery by Owner 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 Owner shall extend to 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, Trustee shall have no additional or different rights than Owner has hereunder. To the extent that Trustee makes any demands or exercises any rights under this Agreement, Owner shall have no right to make any contrary demands or exercise any rights that are contrary to those exercised by Trustee. In the event that Manager believes that Owner and Trustee have taken actions or exercised contrary to one another, Manager shall provide written notice to Owner and Trustee, and Manager shall take the action required by the Trustee rather than the action requested by Owner, unless and until Manager receives joint instructions otherwise from Owner and Trustee. Manager shall have no liability to Owner for acting in accordance with any written instructions received by Manager from Trustee. Manager acknowledges that Trustee has certain approval rights to the consents, approvals and other actions by Owner in this Agreement.

**12.27 Sale of Securities.** In the event Owner, or any person controlling Owner (a “**Controlling Person**”) shall, at any time or from time to time, sell or offer to sell, any securities (including the Bonds) issued by Owner, Owner shall clearly disclose to all purchasers and offerors that 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. All terms used in this Section 12.27 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 Owner or Manager hereunder, the applicable time period within which the party receiving the request (the “**receiving party**”) is required to give its approval or disapproval shall not commence until after the receiving party has received (i) a written request for its approval, which shall expressly set forth all items (with specificity) for which the receiving party’s approval is requested and (ii) all reasonable information that the receiving party has requested in order to deliver its approval or disapproval.



**12.30 Exhibits.** The Exhibits which are attached to this Agreement and made a part of this Agreement for all purposes are as follows: [ALL EXHIBITS REMAIN SUBJECT TO REVIEW AND APPROVAL OF ALL PARTIES]

Exhibit A	--	Master Glossary of Terms
Exhibit B	--	Legal Description of the Site
Exhibit C	--	Hotel Developer Agreement
Exhibit D	--	Preliminary Plans and Specifications
Exhibit E	--	Cash Management Agreement
Exhibit F	--	Current Format of Omni Operating Plan and Budget
Exhibit G	--	List of Monthly and Quarterly Reports
Exhibit H	--	Hotel Consultant Evaluation Criteria Exhibit
Exhibit I	--	Annual Independent Accounting Procedures Letter re Centralized Services
Exhibit J	--	Annual Chief Financial Officer Certificate re Centralized Services
Exhibit K	--	SBE and MWBE Policies
Exhibit L	--	Form of Request for Reimbursable Expense
Exhibit M	--	Form of Request for FF&E and Capital Expenses
Exhibit N	--	Guaranty
Exhibit O	--	List of Insurance and Insurance Requirements (including subrogation provisions)
Exhibit P	--	Omni logos and other Omni Used Names
Exhibit Q	--	Room Block Agreement
Exhibit R	--	Manager's and Owner's Representatives on Committee
Exhibit S	--	List of Hotel Consultants
Exhibit T	--	List of Omni Proprietary Software
Exhibit U	--	SBE and M/WBE Policies
Exhibit V	--	Tax Compliance Certificate
Exhibit W	--	Conflict of Interest, Gift to Public Servant and Notice of Contract Claim
Exhibit X		Reserved
Exhibit Y		Four Star Physical Property Requirements
Exhibit Z		Omni Brand Standards
Exhibit AA		Executive Committee Personnel
Exhibit BB		List of Companies from Which Expert is Chosen
Exhibit CC		Owner's Records Retention Policy

**12.31 Amendments to Indenture.** At least ten (10) business days prior to agreeing to any amendment to the Indenture or other Bond Documents, Owner will deliver to Manager copies thereof. Owner will not agree to any provision in any such amendment if in the reasonable opinion of Manager delivered within ten (10) business days after the receipt of the proposed amendments to the Indenture and other Bond Documents such amendments will have the effect of imposing additional material obligations or any economic burdens on Manager, without Manager's prior written consent which consent may not be unreasonably withheld.

**12.32** No Limitation on City's Governmental Functions. The Parties acknowledge that the City is a municipal corporation operating pursuant to the laws of the State of Texas and the City's Charter, in addition to being the controlling entity of Owner, and that no representation, warranty, Consent, Approval or agreement in this Agreement by Owner shall be binding upon, constitute a waiver by or estop the City from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of this Agreement be deemed to waive any immunities granted to the City when performing its Governmental Functions, which are provided under Legal Requirements, including Section 101.0215(a) of the Texas Civil Practice and Remedies Code, as may be amended or replaced. For example, Approval by "Owner" shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, Dallas Water Utilities, the City's Fire Department, Building Inspections Department, Public Works Department, Planning Department and Economic Development Department acting in connection with the performance of the Governmental Functions of the City. Further, any Consent to jurisdiction by Owner is only with respect to matters arising in its capacity as a Party to this Agreement and expressly does not constitute a waiver of the City's legal immunity or a Consent to jurisdiction for any actions, omissions or circumstances, in each case solely arising out of the performance of the Governmental Functions of the City.

**12.33** Ethics Code; Conflicts; Notices. Manager agrees to comply with the Ethics Code, Texas state law regarding conflicts and gifts and the provisions of **Exhibit W** to this Agreement concerning conflicts of interest, gifts to public servants and notices of contract claims.

**12.34** Limitation on Pledging Owner's Credit. Except as is necessary or advisable for the purchase of goods and services or the extension of credit to customers in the ordinary course of business in the operation and management of the Hotel within the scope of this Agreement, Manager shall not borrow any money or execute any credit obligation in the name and on behalf of Owner or pledge the credit of Owner, without Owner's prior written and express consent.

[SIGNATURE PAGE FOLLOWS]

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

OMNI HOTELS MANAGEMENT CORPORATION,  
a Delaware corporation

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

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

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

DALLAS CONVENTION CENTER HOTEL  
DEVELOPMENT CORPORATION,  
a Texas nonprofit local government corporation

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

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

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

**Exhibit A**  
**Master Glossary of Terms**

**[TO BE FURTHER REVISED AS APPROPRIATE TO CONFORM TO DEFINITIONS  
IN INDENTURE AND CASH MANAGEMENT AGREEMENT]**

As used throughout this Agreement and the attached Exhibits, the following terms shall have the respective meanings set forth below:

AAA — means the American Automobile Association or, if the Diamonds rating system for hotels is discontinued or significantly changed, a comparable entity within the hotel industry.

Account or Accounts — means any one or more of the accounts from time to time created in any of the Funds established by the Indenture or by any Supplemental Indenture.

Administrative Expenses — means the reasonable fees and expenses of Owner and the Trustee (inclusive of the salaries and wages of Owner’s executive and administrative personnel, and the fees paid by Owner to the Hotel Consultant, Bond Counsel, auditors and other independent consultants hired by Owner, but exclusive of any legal judgments, settlements or similar resolutions of disputes reduced to a monetary amount against Owner, unless such judgment, settlement, or similar resolution of dispute arises out of the acts or omissions of Manager), paid in accordance with the Indenture and directly relating to the Hotel and limited as provided in the applicable Approved Operating Plan and Budget. Administrative Expenses shall be reasonable. Owner shall have the right to engage legal counsel as it determines appropriate and the fees and expenses of such legal counsel, as approved by the Owner, shall be deemed reasonable. In no event will the total Administrative Expenses used in the calculation of the Performance Test exceed \$100,000 in any Operating Year.

Affiliate or Affiliates — means, with respect to Manager and Owner as of the relevant date in question, any other Person directly or indirectly controlling, controlled by, or under common control with Manager or Owner, as the case may be, and any Person directly or indirectly controlling, controlled by or under common control with such entities. The term “**control**” (including “**controls**,” “**controlled by**,” and “**under common control with**”) shall mean the ability through ownership, direct or indirect, of voting stock or other equity interests, to direct or cause the direction of the management and policies of a person, partnership, corporation, limited liability company or other entity. Without limiting the generality of the foregoing, Affiliate shall include (a) any Person which beneficially owns or holds fifty percent (50%) or more of any class of voting securities of such designated Person or fifty percent (50%) or more of the equity interest in such designated Person and (b) any Person of which such designated Person beneficially owns or holds fifty percent (50%) or more of any class of voting securities or in which such designated Person beneficially owns or holds fifty percent (50%) or more of the equity interest; provided however that for purposes of Section 2.25 of this Agreement, the applicable percentage shall be reduced to ten percent (10%). Under no circumstances shall the Trustee or any Bondholder be deemed to be an Affiliate of the Owner.

Agreement -- has the meaning set forth in the preamble.

Annual Independent Accounting — has the meaning assigned to it in Section 2.22.3 of the Agreement.

Approvals — means licenses, approvals, permits, authorizations, registrations, and the like required by any governmental or regulatory organization or unit having jurisdiction over Owner or the Hotel.

Approved Operating Plan and Budget — means the annual marketing and operating plan and proposed budget for the Hotel prepared by Manager and approved by Owner in accordance with the terms of Section 2.18 of the Agreement.

Approved Plans — has the meaning assigned to it in the Technical Services Agreement.

Architect — means the architect engaged by Developer to design the Hotel, with the understanding that the Architect must be fully licensed under all applicable state and federal laws.

Assignment — has the meaning set forth in Section 9.1.2 of the Agreement.

Available Casualty/Condemnation Amounts — has the meaning set forth in Section 7.1.1 of the Agreement.

Average Competitive REVPAR — means, with respect to any Operating Year, Revenue per Available Room as determined in a Smith Travel Trend Report (“**STAR**” report) produced by Smith Travel Research (or if Smith Travel Research no longer produced the STAR report, a similar report prepared by a successor organization agreed to by the Parties) for the applicable Fiscal Year. shall be as calculated by Smith Travel Research, Inc., or such other reputable independent third party market research firm as may be mutually approved by Manager and Owner.

Bankruptcy Code — means the Bankruptcy Reform Act of 1978, as amended, from time to time, and codified at title 11 of the United States Code.

Base Management Fee — has the meaning assigned to in Section 3.1.2.1 of the Agreement.

Bond or Bonds — means the Series 2009A Bonds, any additional bonds issued by the Owner pursuant to Section \_\_\_\_ of the Indenture, and any refunding bonds issued by the Owner in replacement of all or any of the Series 2009 Bonds.

Bond Counsel — shall mean \_\_\_\_\_, or such other nationally recognized legal counsel as is designated from time to time by Owner as its Bond Counsel, for the purposes described in this Agreement.

Bond Documents — shall mean the Indenture, the Reimbursement Agreement and any other agreement relating to the Series 2009 Bonds and any agreements relating to any other Bonds.

Bondholder -- means the person in whose name any of the Bonds are registered on the books kept and maintained by the Trustee as bond registrar.

Bonds -- means, collectively, the Series 2009A Bonds and the Series 2009B Bonds.

Budget — shall mean the Approved Operating Plan and Budget and the Capital Budget for the applicable Operating Year.

Business Day — means a day of the year that is not a Saturday, Sunday, a legal holiday or a day on which commercial banks are not required or authorized to close in the City of Dallas, Texas, the City of New York, New York, or the city in which the operations office of the Trustee (with respect to payment of the Bonds) is located.

Business Interruption Account — has the meaning set forth in Section 8.2.2 of the Agreement.

Business Interruption Insurance — means insurance coverage against “**Business Interruption and Extra Expense**” (as that phrase is used within the United States insurance industry for application to transient lodging facilities).

Business Interruption Proceeds — has the meaning assigned to it in Section 8.2.2 of the Agreement.

Capital Budget — means that portion of the Approved Operating 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 Agreement.

Capital Expense — means 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 — means an item of any nature incorporated into the Hotel, the cost of which is a Capital Expense.

Cash Management Agreement — means the agreement described in Section 2.15 of the Agreement.

Casualty — shall mean the damage or destruction of the Hotel at any time or times during the Operating Term by fire or other casualty.

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

Casualty Restoration — shall have the meaning assigned to it in Section 7.2 of the Agreement.

Centralized Marketing Program — shall mean the marketing and sales program described in Section 2.23.2 of the Agreement.

Centralized 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 Omni System): (a) group advertising, (b) sales and business promotion services for both individual guests and conventions, (c) national marketing programs, (d) the Omni Reservation Service, (e) credit card services, (f) the Omni Software; (g) accounting services and (h) such additional services, programs or group benefits as are, from time to time, provided generally to all Other Omni Hotels.

Centralized Services Fees and Charges — shall mean the amount charged by Manager for Centralized Services, as provided in Section 3.2.1.

Certificate of Occupancy — shall mean a certificate or certificates, as applicable, issued by the City that permits full, complete, and permanent beneficial occupancy, operation and use of the Project, without any qualification as to the permanent occupancy, operation and use of the Project and without qualification which would materially and adversely affect the Project or the use or operation thereof.

Certificate of Substantial Completion — means a certificate issued and executed by the Architect which provides that based on its on-site inspections, review of the Approved Plans and performance of its contractual obligations and other normal and customary due diligence, the Project has been completed, furnished and equipped in substantial accordance with the Approved Plans, save and except for Punch List Work and, to the knowledge of the Architect, all Legal Requirements (including, without limitation, the Disabilities Acts) and the Construction Documents, save and except for the Punch List Work.

Certified Financial Statements. Means audited financial statements consisting of a balance sheet, a statement of earnings and retained earnings, a statement of cash flows and such other matters as set forth in the Indenture and a certificate of the Independent Accountant to the effect that, subject to any qualifications contained therein, the financial statements fairly present, in conformity with Generally Accepted Accounting Principles, the financial position, results of operations, and cash flows of the Hotel for the Operating Year then ended.

City -- means the City of Dallas, Texas, a political subdivision and home-rule municipality of the State of Texas, principally situated in Dallas County, Texas.

City Advance Repayment Amount – means an amount equal to the amount held in the Manager Advance Repayment Fund at any time, plus an additional amount equal to any advances made by the City to Owner under the Economic Development Agreement between the City and Owner dated \_\_\_\_\_.

City Advance Repayment Fund – means the fund established under that name under Section \_\_\_ of the Indenture, for the purpose of repayment of any advances made by the City to Owner under the terms of the Economic Development Agreement between City and Owner dated \_\_\_\_\_, and for the purpose of funding any amounts owed by Owner to Manager for indemnification under Section 12.14.2 of the Agreement.

Charter -- means the City Charter of Dallas Texas, as amended from time to time.

Claims — has the meaning given it in Section 12.14.1 of the Agreement.

Clearing Bank Account — means an account, bearing the name of the Trustee so long as the Indenture is in effect and otherwise bearing the name of the Owner, at a bank selected by the Owner, for the purpose of depositing all Gross Revenue, whether from Manager, from credit card companies, or anyone, each of which shall be given instructions to make deposits in the Clearing Bank Account pursuant to the Cash Management Agreement. The Clearing Bank Account shall also serve the purpose of obtaining for Manager 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.

Closing Date — means the date on which the Series 2009 Bonds are issued.

Committee — means the policy committee established in accordance with Section 12.9 of the Agreement.

Comparable Convention Center Hotels — has the meaning given it in Section 1.2 of the Agreement.

Competitive Set — means, from time to time during the Operating Term, all hotels with 1,000+ rooms in Dallas County.

Concession Agreement — has the meaning given it in Section 2.3.1 of this Agreement.

Condemnation Proceeds — means the proceeds payable in respect of any Taking of all or a portion of the Project.

Construction Documents — has the meaning assigned to it in the Hotel Developer Agreement.

Continuing Disclosure Agreement -- means the Continuing Disclosure Agreement, dated as of \_\_\_\_\_, 2009, by and between Owner and the City relating to the obligation of such parties to provide certain continuing disclosure information as required pursuant to Rule 15c2-12 promulgated by the Securities and Exchange Commission.

Contracts — means all contracts, agreements and licenses entered into by Manager for or on behalf of Owner.

Convention Center — means the convention center facility (known generally as the Dallas Convention Center) owned by the City, together with all alterations, expansions, reconfigurations or replacements of the same and any and all other structures or improvements from time to time constructed thereto regardless of the use or purpose thereof.



Corporate Personnel — means any personnel from the corporate or regional offices of Manager and its Affiliates or who are otherwise area supervisors for Manager who perform activities in connection with the services provided by Manager under this Agreement.

Debt Service — means, for any Debt Service Payment Date, the amount required to pay the principal of (whether pursuant to a stated maturity or redemption requirements applicable thereto) and/or interest on Outstanding Bonds coming due on such Debt Service Payment Date, including any amounts required to be paid to fund the Senior Reserve Fund Requirement (as defined in the Indenture) and the Subordinate Debt Service Reserve Fund (as defined in the Indenture) in accordance with the terms of the Indenture.

Debt Service Coverage Ratios -- means, for any Operating Year, the actual amount of the Net Operating Revenues for such Operating Year, less the amounts required to be deposited into the Property Tax Fund, the Insurance Premium Fund and the Senior FF&E Fund during such Operating Year, as a percentage of the Debt Service payable for such Operating Year.

Debt Service Coverage Requirement -- means, for any Operating Year, a Debt Service Coverage Ratio which is not less than 1.10:1.00.

Debt Service Payment Date — means, with respect to the Series 2009 Bonds, \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_, 2009, and with respect to any Refunding Bonds, the date on which principal or interest is due and payable thereon.

Developer — means Matthews Southwest Holdings, Inc., a Delaware corporation, the Developer engaged by Owner to develop and construct the Hotel in accordance with the Hotel Developer Agreement, and any successor under the Hotel Development Agreement.

Direct or Indirect Profit – means any form of compensation received by Manager or any of its Affiliates in excess of (i) the Management Fee, (ii) the Eligible Employee Compensation Pool, (iii) the Centralized Services Fee and (iv) any other direct or indirect compensation to which Manager is entitled under this Agreement, including without limitation, any of the following: (a) amounts in excess of Manager's Out-of-Pocket Expenses and (b) any mark-up retained by the Manager or its Affiliates for goods or services provided to the Hotel.

Effective Date — means the date on which the last of Owner or Manager executes this Agreement, as evidenced by the dates of signature on the signature page of the Agreement.

Eligible Employee Compensation Pool – has the meaning given to it in Section 2.20.2.2 of this Agreement.

Emergency — means a situation imminently threatening life, health, or safety or imminently threatening serious risk or damage to the Hotel or the Land.

Emergency Expenses — mean the expenses incurred to remove the existence of an Emergency.

Environmental Laws – means, collectively, (1) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et. Seq., as amended, (2) the

regulations promulgated thereunder, from time to time, (3) all federal, state and local laws, rules and regulations (now or hereafter in effect) dealing with the use, generation, treatment, storage, disposal or abatement of Hazardous Materials, and (4) the regulations promulgated thereunder, from time to time.

Environmental Liabilities – means any liabilities incurred by Manager or Owner with respect to the Site.

Environmental Site Assessments —means [TO BE SUPPLIED IF THERE IS AN ENVIRONMENTAL SITE ASSESSMENT RELATING TO THE SITE THAT DISCLOSES ENVIRONMENTAL CONTAMINATION].

Ethics Code -- means the Ethics Code of the City, as amended from time to time.

Event of Default — means any of the events so defined in Sections 4.5 and 4.6 of the Agreement, as applicable.

Excluded Taxes and Other Charges — means any (a) Gross Receipts Taxes; (b) withholding tax or other employment related taxes; (c) wage, child support or spousal support garnishments; or (d) unclaimed property or wages.

Executive Staff — means the persons employed by Manager as the heads of the various divisions of the Hotel.

Expert – means individuals designated by the Hotel Consultant from the list set forth on **Exhibit BB** attached hereto.

FF&E — means all items of furniture, furnishing, fixtures, and equipment and other personal property used or held for use in storage in the ordinary course of operating the Hotel, the ‘cost of which is ordinarily a Capital Expense, but a portion of which may be currently expensed such as smaller items thereof, or expenditures which are ancillary thereto but which are properly chargeable as an Operating Expense to Property Operations and Maintenance under the Uniform System of Accounts for Hotels.

Force Majeure Event — means fire, storm, earthquake, flood, natural disaster, and other casualty events; terrorist attacks; strikes that are not directly related to acts or labor relations of Manager or its Affiliates; riots or other civil unrest; or a combination of any of the foregoing 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 assigned to it in Section 6.3.1.

Foreclosure Purchaser — means a purchaser of the Project pursuant to a sale conducted pursuant to the Deed of Trust or any other mortgage or deed of trust affecting the Project.

Four Diamond – means the rating category for hotels with that designation used by AAA as currently in effect and, with respect to physical property requirements, described in **Exhibit Y** attached hereto, and, with respect to operating standards, described in **Exhibit Z** attached hereto,

or, if such rating is discontinued or significantly changed, a comparable rating category used for the hotel industry.

Four Diamond Hotel – means a Hotel with a AAA rating of “Four Diamond”.

Fund or Funds — means any one or more, as the case may be, of the separate, special funds established by Section 5.04 of the Indenture or, after repayment of the Bonds, established by Owner and Manager to fund specific portions of the expenses incurred in connection with the ownership, financing, operation and maintenance of the Hotel.

Garage — means the parking garage located beneath the Hotel.

Generally Accepted Accounting Principles — means those conventions, rules, procedures, and practices, consistently applied, affecting all aspects of recording and reporting financial transactions which are generally accepted by major independent accounting firms in the United States. If Owner and Manager cannot agree on what constitutes Generally Accepted Accounting Principles, then the accounting firm then or most recently engaged to prepare the Certified Financial Statements for the Hotel in accordance with Section 2.22.3 of the Agreement shall make the determination on the request of either Party unless the accounting firm is the audit firm for Manager, in which case a different nationally recognized accounting firm shall make such determination. Any financial or accounting terms not otherwise defined herein shall be construed and applied according to Generally Accepted Accounting Principles.

General Manager — means the general manager of the Hotel.

Gross Operating Profit or GOP — means 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 — means all revenue and income of any kind derived directly or indirectly from operations at the Hotel and the Garage and 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 the following shall not be included in determining Gross Operating Revenue:

A. Excluded Taxes and Other Charges, and any other government taxes, duties, levies and/or charges collected directly from patrons or guests, or as a part of the sales price of any goods or services sold at the Hotel;

B. receipts from the financing, sale or other disposition of capital assets and other items not in the ordinary course of the Hotel’s operations and income derived from securities and other property acquired and held for investment;

C. receipts from awards or sales in connection with any Taking, from other transfer 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;

D. proceeds of any insurance, including the proceeds of any Business Interruption Insurance;

E. rebates, discounts, or credits of a similar nature (not including charge or credit card discounts, which shall not constitute a deduction from revenues in determining Gross Operating Revenue, but shall constitute an Operating Expense);

F. consideration received at the Hotel for hotel accommodations, goods and services to be provided at other hotels although arranged by, for or on behalf of, Manager;

G. notwithstanding any contrary requirements of Generally Accepted Accounting Principles, all gratuities collected for the benefit of and paid to Hotel Personnel or to personnel of the Garage;

H. proceeds of any financing;

I. the initial operating funds and working capital loans and any other funds provided by Owner to Manager whether for Operating Expenses or otherwise;

J. 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;

K. interest earned on funds held in any Account;

L. the value of any complimentary rooms, goods or services;

M. refunds to Hotel guests of any sums or credits to any Hotel customers for lost or damaged items; and

N. refunds to parking customers of any sums or credits to any parking customers for lost or damaged items.

Gross Receipts Taxes — means applicable excise, sales, occupancy and use taxes, or similar government taxes, duties, levies or charges collected directly from patrons or guests, or as a part of the sales price of any goods, services, or displays, such as gross receipts, admission, or similar or equivalent taxes, including, but not limited to, any transaction tax, head tax, occupancy tax, amusement tax, beverage tax, or local or state sales tax.

Guarantor – means the party that acts as a guarantor for the obligations of Manager under the Guaranty, as provided in Section 4.3 of this Agreement.

Guaranty – means the Guaranty provided by the Guarantor, as provided in Section 4.3 of this Agreement.

Hazardous Materials -- means any substance or material containing one or more of any of the following: “hazardous material,” “hazardous waste,” “hazardous substance,” “regulated substance,” “petroleum,” “pollutant,” “contaminant,” “polychlorinated biphenyls,” “lead or lead-based paint” or “asbestos” as such terms are defined in any Environmental Law, in such concentration(s) or amount(s) as may impose clean-up, removal, monitoring or other responsibility under any applicable Environmental Law or which may present a significant risk of harm to guests, invitees or employees of the Hotel.

HVAC — means the heating, ventilating and air conditioning systems of the Hotel.

Hotel — has the meaning set forth in Recital D of the Agreement.

Hotel Consultant — means an independent, nationally recognized consulting firm who has not performed any significant work on behalf of Manager or its Affiliates within the past five (5) years, with substantial and significant experience in the first-class convention hotel segment, as chosen by Owner from the list of hotel consultants attached to the Agreement as **Exhibit S**. If any such consulting firm listed on **Exhibit S** hereto no longer qualifies as an independent, nationally recognized consulting firm with substantial and significant experience in the first-class convention hotel segment, Owner shall submit to Manager the names of two (2) nationally recognized consulting firms with substantial and significant experience in the first-class convention center hotel segment, each of whom shall provide a written statement to Manager representing that it will make a fair and impartial judgment in any matter submitted to it pursuant to this Agreement. Manager shall have the right to remove one of such firms from the list of possible hotel consultants in Manager’s reasonable discretion. Owner shall have the right, in its discretion, to select one of the parties named on the list of hotel consultants as the Hotel Consultant, and to replace the Hotel Consultant with any other party named on the list of hotel consultants at any time in Owner’s discretion, with at least thirty (30) days’ prior written notice to Manager.

Hotel Personnel -- means all individuals performing services at the Hotel employed by Manager or an Affiliate of Manager or both.

Hotel Personnel Costs -- means 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 and benefits, employment taxes, training, and severance payments, all in accordance with Legal Requirements and Manager’s policies for Other Omni Hotels.

Immediately Available Funds – shall have the meaning set forth in Section 3.1 of the Agreement.

Indenture — means the Indenture of Trust, dated as of \_\_\_\_\_, 2009, by and between the Issuer and the Trustee pursuant to which the Series 2009 Bonds are issued, together with any Supplements or amendments thereto.

Independent Accountant — the accounting firm of \_\_\_\_\_, or if such firm is not mutually acceptable, another national firm of independent certified public accountants mutually acceptable to Owner and Manager.

Independent Architect — shall have the meaning set forth in Section 7.1.1 of the Agreement.

Index — means the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, Dallas, Texas Average, All Items (1982 - 1984 = 100); provided that (i) in the event that the Consumer Price Index is not available for Dallas, Texas but rather is only available for a larger geographical area, the next smallest geographical area which includes Dallas, Texas shall be substituted as the Consumer Price Index and (ii) in the event the Consumer Price Index is discontinued, the City shall select comparable statistics on the purchasing power of the consumer's dollar in Dallas, Texas as published at the time of said discontinuation by a responsible periodical of recognized authority, with such comparable statistic to be subject to the approval of Manager, which approval may not be unreasonably withheld.

Insurance and Condemnation Proceeds Fund — means the Fund of such name created pursuant to Section 5.02(r) of the Indenture and further described in Section 5.22 of the Indenture.

Insurance Consultant — means an insurance consultant mutually acceptable to Manager and Owner.

Insurance Costs — means insurance premiums relating to liability and casualty coverage and Business Interruption Insurance policies and other insurance policies and coverages maintained with respect to the Hotel as required pursuant to this Agreement, including, without limitation, **Exhibit O** attached to the Agreement.

Insurance Premium Fund -- means the Fund of such name created pursuant to Section 5.02(d) of the Indenture and further described in Section 5.08 of the Indenture.

Key Employees — means the following positions for the Hotel: the Senior Executive Personnel, the director of marketing, the director of food and beverage, the director of security, the director of human resources, the director of housekeeping and the director of engineering.

Key Money -- has the meaning set forth in Section 4.2 of the Agreement.

Key Money Payment – has the meaning set forth in Section 4.14 of the Agreement.

Legal Requirements — means all laws, statutes, acts (including, without limitation, the Texas Open Records 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, (i) the Hotel and the operation thereof, including those relating to employees, zoning, building, health, safety and environmental matters, and accessibility of public facilities, (ii) Manager, (iii) Manager's business operations, and/or (iv) Owner and (b) the requirements of all documents properly filed in the real property

records against the Hotel as of the date of this Agreement and delivered to Manager prior to the Effective Date. Notwithstanding anything contained herein, the term “Legal Requirements”, as same relate to Manager’s compliance with the terms and provisions of this Agreement, shall not be deemed to include any ordinances, rules, regulations, orders, requirements or other laws relating to tax exempt issues, except as otherwise specifically set forth in this Agreement.

Liquor Licenses — means the liquor licenses issued for the Hotel in the name of Manager pursuant to Section 2.4.5 of the Agreement.

Lockbox Fund -- means the Fund of such name established and created pursuant to Section 2 of the Cash Management Agreement.

Management Fee — has the meaning set forth in Section 3.1.1 of the Agreement.

Manager — has the meaning ascribed to it in the preamble.

Manager Advance Repayment Fund – means the Fund established and created pursuant to Section 5.02 of the Indenture for the purpose of repayment to Manager of Unamortized Key Money and Manager advances of shortfall amounts under Section 4.8.2.1.

Manager Advance Maximum Monthly Amount – means an amount equal to 1/48<sup>th</sup> of the sum of the total Unamortized Key Money and the total amounts advanced by Manager to cure a Performance Test Shortfall under Section 4.8.2.1.

Manager Advance Repayment Required Amount – an amount equal to the total Unamortized Key Money plus the total amount of any and all amounts advanced by Manager to cure Performance Test Shortfalls under Section 4.8.2.1.

Manager's Gross Negligence or Willful Acts — means any (a) acts or omissions constituting fraud, gross 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 this 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 Gross Negligence 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 Intellectual Property — has the meaning ascribed to it in Section 11.6 of the Agreement.

Manager’s Proprietary Information — means (a) Manager’s and its Affiliates’ know-how, trade secrets, documents, designs, plans, reports, guest lists, and studies; (b) information Manager reasonably identifies from time to time as confidential; and (c) 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 Omni Hotels and other proprietary information relative to the operating methods,

procedures and policies distinctive to Other Omni Hotels, including without limitation, the contents of the Omni operating manuals information and methodologies relating to the Omni Select Guest Program or other similar programs or the Omni Reservation System and all commercial or financial information (including without limitation, all expenses, calculations and apportionments) relating thereto, and Omni System information.

Monthly Reports — has the meaning set forth in Section 2.22.2 of the Agreement.

Mortgage — means any real estate, leasehold, chattel mortgage, deed of trust, trust deed, security agreement, or similar document or instrument encumbering the Hotel or any part thereof, together with all promissory notes, loan agreements or other documents relating thereto.

Mortgagee — means any holder of a Mortgage.

National Vendor — means any vendor providing goods or services to the Hotel and Other Omni 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 Omni Hotels.

Net Operating Income — means, 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 Senior Debt Service Reserve Fund and Subordinate Debt Service Reserve Fund), exceeds the aggregate of the following: (a) Taxes; (b) Insurance Costs; (c) amounts added to the Senior FF&E Reserve Fund for the same period; and (d) Administrative Expenses. For purposes of determining Net Operating Income as it applies to the Series 2009 Performance Standard, tax amounts dedicated to the repayment of the Series 2009 Bonds, including the State of Texas sales tax receipts from the Hotel, the City of Dallas transient occupancy taxes from the Hotel and the Project specific City of Dallas tax shall be added to Net Operating Income, and expenses incurred by Owner for legal expenses, experts and consultants that are paid as Operating Expenses shall be added to Net Operating Income.

Net Operating Revenues — means Gross Revenues less (a) Operating Expenses and (b) Administrative Expenses.

Non-Disturbance Agreement — has the meaning set forth in Section 6.3.2 of the Agreement.

Omni Brand Standards -- has the meaning set forth in Section 2.2.1 of the Agreement.

Omni Reservation System — means the central reservation system used by Omni to book reservations for all Omni Hotels.

Omni Software — has the meaning set forth in Section 11.6 of the Agreement.

Omni System — means, collectively, the elements uniformly designated from time to time to identify structures, facilities, appurtenances, furniture, fixtures, equipment that provide to the consuming public a similar, distinctive, high quality hotel service identified with the “**Omni**” brand name, in whole or in part; including licensed brands associated with the Omni name, trademarks, logos, servicemarks and the like, access to a “**Omni**” reservation system, publicity



and marketing, training, standards, specifications, policies, inspection programs and manuals containing standards and requirements for the operation of “**Omni**” branded hotels.

Opening Date – means the date that the Hotel opens for business to the general public.

Operating Costs Set Aside Amount — means, for any month, an amount equal to (i) \$\_\_\_\_\_, as such amount shall be increased at the beginning of each Operating Year by a percent equal to the increase in the Index, plus (ii) the amount of payroll due and payable for a pay period of the Hotel, if the pay day for the pay period just ended falls on one of the first five business days of such month.

Operating Expenses —means all those ordinary and necessary expenses, including Reimbursable Expenses, the Base Management Fee and the Subordinate Management Fee incurred in the operation of the Hotel and the Garage in accordance with this Agreement, including the following: Hotel Personnel Costs, the cost of maintenance, repairs and utilities, administrative expenses, the costs of advertising, marketing, and business promotion, and any amounts payable to Manager as set forth in this Agreement, costs and expenses of the Hotel Consultant, costs of operating supplies used in the operation of the Hotel, costs of all services obtained by Manager in connection with the operation of the Hotel, legal, accounting and audit (including internal audit) fees for services directly related to the Hotel, including bookkeeping, record keeping and audit of the Hotel in accordance with this Agreement, and bad debts incurred in the operation of the Hotel, all as determined in accordance with Generally Accepted Accounting Principles and the Uniform System of Accounts. Notwithstanding the foregoing description, unless expressly made an Operating Expense under a specific provision of this Agreement, the following shall not constitute Operating Expenses: (a) Excluded Taxes and Other Charges (save and except for payroll taxes included in Excluded Taxes and Other Charges); (b) Insurance Costs; (c) depreciation and amortization on capitalized assets; (d) Administrative Expenses and other costs and expenses of Trustee, Owner, or Trustee’s or Owner’s personnel, such as entertainment expenses, salaries, wages and employee benefits of Trustee’s or Owner’s employees, directors’ fees, and the expenses of directors or Trustee’s or Owner’s employees to attend board meetings; (e) 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 this Agreement; (f) payments of principal and interest related to any financing of the Hotel; (g) costs covered by Manager’s indemnity obligations as required under this Agreement, which shall be paid by Manager and not constitute Reimbursable Expenses except as specifically provided in Section 12.14.3; (h) costs incurred by Manager to perform obligations, duties, covenants, agreements and responsibilities which, under the express terms of this Agreement, are to be funded from Manager’s own funds, including Manager’s overhead or general expenses, including but not limited to costs, expenses, salaries, wages or other compensation of Corporate Personnel of Manager, telephone, facsimile, telecommunications, computer, duplicating, stationery and postage and any other office expenses incurred at Manager’s principal office, except as may be expressly provided in this Agreement; (h) Capital Expenses, including, without limitation, construction costs of the Project; and (i) payments made and amounts required to paid pursuant to the Hotel Developer Agreement.

Operating Expense Reserve Fund — means the Fund of such name created pursuant to Section 5.02(l) of the Indenture and further described in Section 5.16 of the Indenture.

Operating Standard or Standards — means the standard of management of the Hotel described in Section 2.2.1 of the Agreement.

Operating Term — means the term of this Agreement, as defined in Section 4.1 of the Agreement.

Operating Year — means each full calendar year occurring after the Opening Date during the Operating Term, the calendar year in which the this Agreement terminates, and if the Opening Date occurs prior to July 1 of a calendar year, the period of time from the Opening Date to the end of such calendar year. If the Opening Date occurs prior to July 1 of a calendar year, then the period from the Opening Date until and including December 31 of such year shall constitute the “**first Operating Year.**” If the Opening Date occurs on or after July 1 of a calendar year, then the period from the Opening Date until and including December 31 shall not constitute an Operating Year and the “**first Operating Year**” shall mean the first full calendar year occurring after the Opening Date.

Other Omni Hotels — means all hotels and resorts in the United States that are owned or managed by Manager and/or its Affiliates under the name “**Omni**”, including all such hotels and resorts under such brand that are owned or managed by Manager and its Affiliates.

Out-of-Pocket Expenses — means 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 Affiliate providing services to the Hotel under this Agreement, including, without limitation, reasonable air and ground transportation, meals, lodging, reasonable business entertainment expenses, taxis, gratuities, computer services, document reproduction, printing, promotional materials, stationery, postage, long-distance telephone calls, and facsimiles; provided that the following expenses shall not be reimbursable to Manager under this Agreement: Manager’s overhead or general expenses, including but not limited to costs, expenses, salaries, wages or other compensation of Corporate Personnel of Manager, telephone, facsimile, telecommunications, computer, duplicating, stationery and postage and any other office expenses incurred at Manager’s principal office, any part of Manager’s capital expenses, and any costs for which Manager is liable under this Agreement.

Outstanding — means, as of the date of determination, all Bonds issued and delivered under the Indenture except: (i) Bonds cancelled by the Trustee or delivered to the Trustee for cancellation; (ii) Bonds which matured and been paid in full or have been defeased in accordance with the provisions of Section 8.02 of the Indenture; (iii) Bonds issued in exchange for or in lieu of which other Bonds have been registered and delivered pursuant to the Indenture; and (iv) Bonds alleged to have been mutilated, destroyed, lost, or stolen which have been paid as provided in the Indenture.

Owner — means Dallas Convention Center Hotel Development Corporation, a Texas nonprofit local government corporation, or any corporation or entity which is the surviving,

resulting or transferee corporation or entity in any merger, consolidation or transfer of substantially all the assets of the Owner.

Owner's Gross Negligence or Willful Act — means any (a) acts or omissions constituting fraud, gross negligence, or willful misconduct on the part of Owner or its Affiliates, their officers, directors, employees, agents, or assigns, or (b) criminal violation of law by Owner, Owner's Affiliates or permitted assignees under this Agreement, or any of their respective officers, directors or employees.

Party or Parties — means either or collectively Owner and the Manager.

PCC — has the meaning assigned to it in the Room Block Agreement.

Performance Standard — means either the Series 2009 Performance Standard or the REVPAR Performance Standard.

Performance Termination Event — has the meaning assigned to it in Section 4.8.1 of the Agreement.

Performance Test — means the tests to determine if a Performance Termination Event has occurred.

Performance Test Period — means the period of the Operating Term commencing with the fifth (5th) Operating Year and ending on the last day of the Operating Term.

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

Pre-Opening Services Agreement -- means that certain Pre-Opening Services Agreement dated of event date with the Effective Date, executed by and between Owner and Manager.

Project — means the Hotel and the Site.

Proposed Assignee — has the meaning assigned to it in Section 9.2.1 of the Agreement.

Proposed Operating Plan and Budget — means the annual marketing and operating plan and proposed budget for the Hotel prepared by Manager for approval by Owner in accordance with the terms of Section 2.18 of the Agreement.

Proprietary Information — means information pertaining to Proprietary Software or Manager's Intellectual Property, but only to the extent such information is not in the public domain.

Proprietary Software — means certain computer software specially developed by or for Manager and its Affiliates for use in hotels and resorts managed by Manager and its Affiliates or for use in Other Omni Hotels, as more fully described in **Exhibit T** attached to the Agreement.

Punch List Work -- means work required to be performed by Developer under the Hotel Developer Agreement that is of a minor nature and the non-completion of which will not interfere with the opening of the Hotel, the safe operation and use thereof by guests and Hotel Personnel, without material disruption by the contractors performing such minor work.

Qualified Management Agreement — has the meaning set forth in Recital F of the Agreement.

Quarterly Reports — means the quarterly reports required under Section 2.22.2 of the Agreement.

Receiving Party —has the meaning assigned to it in Section 12.29.

Reimbursable Expenses — means all costs and expenses reimbursable to Manager pursuant to Section 3.4.1 of the Agreement.

Revenue Fund -- means the Fund of such name created pursuant to Section 5.02(b) of the Indenture and further described in Section 5.04 and Section 5.05 of the Indenture.

Required Monthly FF&E Fund Deposit Amount — means the following percentage of the Gross Operating Revenue generated in the preceding month:

1st Operating Year	-	2% of Gross Operating Revenue
2nd Operating Year	-	3% of Gross Operating Revenue
3 <sup>rd</sup> Operating Year	-	4% of Gross Operating Revenue
4th - 15th Operating Years	-	5% of Gross Operating Revenue

Representatives — means the individuals appointed by Owner and Manager in accordance with Section 12.9 of the Agreement to serve on the Committee.

Required Opening Date — means the first date on which (A) (i) ninety five percent (95%) of the guest rooms and (ii) all non-guest room areas of the Hotel are Substantially Complete and available for use by the general public and PCCs (subject to remaining construction work and Punch List Work) and (B) the 90-Day Period (as defined in the Pre-Opening Agreement) has expired or, if earlier, Manager has certified that all categories of Hotel Personnel have completed training and the Hotel is fully operational and available for use on such date by the general public and PCCs (subject to remaining construction work and Punch List Work).

Required Scope of the Hotel — has the meaning ascribed to it in Recital F of the Agreement.

Restricted Area — has the meaning assigned to it in Section 12.23 of the Agreement.

Restricted Hotel — means any hotel which is operated under the “**Omni**” brand as a full service hotel with 500 or more rooms but shall not include or apply to any other products, services or businesses under the “**Omni**” brand.

REVPAR — means, 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 Owner and Manager.

REVPAR Performance Standard — means that the Hotel’s REVPAR for the applicable Operating Year is at least eighty percent (80%) of the REVPAR of the Competitive Set for such Operating Year.

Room Block Agreement — means that certain Room Block Agreement entered into between Owner and Manager, a copy of which is attached to the Agreement as **Exhibit Q**.

Room Block — has the meaning assigned to it in the Room Block Agreement.

Room Rate Schedule — has the meaning assigned to it in Section 2.18.4.1 of the Agreement.

SBE and M/WBE Policies — means the policies adopted by the City to provide small, minority and woman-owned business enterprises with the maximum practical opportunity in the performance of public contracts, as further described in **Exhibit U** of the Agreement.

Semi-Annual Installments of the Subordinate Management Fee — has the meaning assigned to it in Section 3.1.3.3 of the Agreement.

Senior Executive Personnel — means the individuals employed from time to time as the general manager of the Hotel and the director of finance for the Hotel.

Senior FF&E Reserve Fund — means the Fund of such name created pursuant to Section 5.02(e) of the Indenture and further described in Section 5.09 of the Indenture shall have the meaning assigned to in the Indenture.

Senior Lien Bonds -- means the Series 2009A Bonds and any Refunding Bonds issued by the Issuer on a parity with the Series 2009A Bonds.

Series 2009 Bonds — means, collectively, the Series 2009A Bonds and the Series 2009B Bonds.

Series 2009 Performance Standard — means that Net Operating Income for the applicable Operating Year are sufficient to satisfy all Debt Service payments on the Senior Lien Bonds for such Operating Year.

Site or Land-- means the land on which the Hotel is to be developed, as more specifically described in **Exhibit B** of the Agreement.

Subordinate FF&E Reserve Fund — means the Fund of such name created pursuant to Section 5.02(p) of the Indenture and further described in Section 5.20 of the Indenture shall have the meaning assigned to in the Indenture.

Subordinate Management Fee — has the meaning assigned to it in Section 3.1.3.1 of the Agreement.

Subordinate Management Fee Fund — so long as any Bonds remain Outstanding, shall have the meaning assigned to it in the Indenture and after no Bonds remain Outstanding, shall have the meaning assigned to it in Section 3.9 of the Agreement.

Subordination Agreement — shall have the meaning set forth in Section 6.2.1 of the Agreement.

Substantial Completion or Substantially Complete — shall have the meaning set for in the Hotel Developer Agreement.

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 Operating Expense Reserve Fund, Senior FF&E Reserve Fund, Subordinate FF&E Reserve Fund and Surplus Revenue Fund to pay for such Capital Expenses;

C. with respect to property taxes, there shall be sufficient balances in the Property Tax Fund to pay for such costs;

D. with respect to insurance premiums, there shall be sufficient balances in the Insurance Premium Fund to pay for such costs;

E. with respect to Gross Receipts Taxes, there shall be funds available in the Lockbox Fund to pay such taxes at least equal to the collections deposited by Manager into the Lockbox Fund that are attributable to such Gross Receipts Taxes;

F. with respect to the payment of costs to repair and/or replace FF&E or Capital Expenses in connection with budgeted capital improvements, there are sufficient funds in the Senior FF&E Reserve Fund and the Subordinate FF&E Reserve Fund to pay for such costs and Capital Expenses; and

G. with respect to the payment of amounts which were required to have been paid (but were not paid) under the Development Agreement, there shall be amounts available in the Lockbox Fund to pay such amounts.

Supplemental Monthly FF&E Deposit — means the amount determined by Owner by written notice to Manager, not to exceed one percent (1%) of Gross Operating Revenue per month, to be deposited into the Subordinate FF&E Reserve Fund.

Surplus Revenue Fund -- means the Fund of such name created pursuant to Section 5.02(q) of the Indenture and further described in Section 5.21 of the Indenture

Taking or Taken — means a taking as a result of compulsory purchase or acquisition of all or part of the Project, any taking by any governmental authority (or any authority or entity acting on behalf of or purporting to act on behalf of any governmental authority) for any purpose whatsoever or a conveyance by Owner in lieu thereof.

Tax Certificate — means the Tax Compliance Certificate, dated as of the Closing Date executed by the Issuer, as such Tax Compliance Certificate shall be amended from time to time. A copy of the current form of the Tax Certificate is attached hereto as **Exhibit V** of the Agreement.

Tax Related Indemnity – has the meaning ascribed to it in Section 12.14.1.

Taxes — means all taxes, including ad valorem taxes on real property, personal property taxes relating to or assessed in connection with the ownership or operation of the Project, except for Excluded Taxes and Other Charges.

Technical and Pre-Opening Services Agreement — has the meaning ascribed to it in Recital H.

Temporary Certificate of Occupancy — means a certificate or certificates, as applicable, issued by the City of Dallas that permits temporary beneficial occupancy, operation and use of all or a portion of the Project, subject to qualification as to the permanent occupancy, operation and use of the Project.

Termination or termination — when used with respect to this Agreement, means the expiration or sooner cessation or termination of the Agreement for any reason whatsoever and by any person or entity or by operation of law, as the case may be.

Termination Fee — has the meaning ascribed to it in Section 4.9 of the Agreement.

Trademarks — means the trademarks, trade name, service marks, and copyrights associated with the name Omni, and the related marks that include the word Omni, including “**Omni Hotels**,” 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 associated with such names, marks and slogans reflected on **Exhibit P**.

Transition Period — has the meaning ascribed to it in Section 4.12.13 of the Agreement.

Trustee — means U.S. Bank National Association, or its successor as Trustee as provided in Section 10.09 of the Indenture.

Twelve Month Period — means the twelve month period commencing with the date on which the Hotel is open for business to the general public and ending on and including the date immediately preceding the 1st anniversary of the date on which the Hotel is open for business to the general public (which Twelve Month Period shall be the First Twelve Month Period) and each other twelve month period commencing on an anniversary of the date on which the Hotel is open for business to the general public and ending on and including the date immediately preceding the next occurring anniversary of the date on which the Hotel is open for business to the general public (each subsequent Twelve Month Period may also be designated as the Second Twelve Month Period, Third Twelve Month Period, and so on as appropriate).

Unamortized Key Money --- has the meaning set forth in Section 4.2 of the Agreement.

Uniform System of Accounts — means the latest edition of the Uniform System of Accounts for the Lodging Industry that is published by the Hotel Association of New York City, Inc. and approved by the American Hotel & Motel Association (currently, the 10th Revised Edition, 2006).

Variable Expenses -- has the meaning set forth in Section 2.18.7 of the Agreement.



**Exhibit B**  
**Description of Site**

**Exhibit C**  
**Hotel Developer Agreement**

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