

**Cambria Hotel Austin, Texas  
MANAGEMENT AGREEMENT**

THIS MANAGEMENT AGREEMENT (“Agreement”) is made and entered into as of February 20, 2020 (the “Effective Date”) by and between 70 East Avenue Austin, LLC a State of Delaware limited liability company (the “Owner”), and Azul Hospitality – North Bay, LLC a California limited liability company (the “Manager”) with regard to the following facts and circumstances.

RECITALS:

A. Owner is the fee owner of the land (the “Land”) located at 70 East Avenue, Austin Texas 78701, and as more particularly described in **Exhibit A** attached hereto and certain improvements now or hereafter located thereon; and

B. Owner intends to construct improvements on the Land into a Cambria Hotel by Choice (the “Hotel”), with the following anticipated features and amenities:

- Approximately Two Hundred and Twelve (212) hotel units with a guest room mix of single and double bedded guest rooms and larger guest suites;
- Modern fitness facility, pool and guest laundry;
- Meeting facilities of approximately 6,500 sq. ft. square feet;
- Rooftop Bar;
- Brand standard Food & Beverage offerings and lounge; and
- Parking which meets local code and franchisor requirements

C. Manager is engaged in the business of managing hotels and Manager is experienced in the various components of managing hotels; and

D. Subject to the terms and provisions of this Agreement, Owner desires to have Manager manage and operate the Hotel; and

E. Manager desires to perform such services on behalf, and for the account, of Owner in accordance with the terms hereof; and

F. Owner also desires to retain Manager’s services during the design and construction of the Hotel pursuant to a Pre-Opening and Technical Services Agreement in substantially the form attached hereto as **Exhibit “C”** (the “TSA”) in order to

- Provide overall design and concept refinement for the Hotel including guidelines and specifications for the Hotel’s programming and layout of facilities;

- Collaborate with professional services team to assist with a “value engineering approach” on the build-out for the Hotel;
- Provide technical assistance and industry sourcing as requested for the project architect, designer, and engineer;
- Review and provide input on major building systems (HVAC, life safety, etc.) - Azul’s role shall be limited to review and approval of), including the equipment recommended by engineering professionals hired for the project;
- Interior design review;
- Manager managed Food & Beverage facilities programming as well as input and consultation on any leased Food & Beverage facilities;
- Digital communications and computer systems design review;
- Model room review and consultation;
- Ensure that proper operations/amenities are planned and cross-coordinated for appropriate quality and profitability;
- FF&E and OS&E specifications review;
- Secure all necessary service contracts and leases;
- Create operational and staffing infrastructure to include industry best practices;
- Produce all Standard Operating Procedures (SOP’s) and Human Resources policies and procedures;
- Implement opening sales & marketing and yield revenue initiatives for rooms and any Food & Beverage facilities directly managed by Manager;
- Provide a comprehensive pre-opening budget with detailed capital requirements;
- Facilitate all brand communications and operational milestones to ensure a successful opening of the Hotel; and
- Establish and accounting system consistent with Uniform System of Accounts for the Lodging Industry, Eleventh Revised Addition, 2014.

NOW THEREFORE, in consideration of the foregoing recitals and the premises and the mutual covenants herein contained, the parties hereto agree as follows:

## ARTICLE 1 DEFINITIONS

**Section 1.1** Defined Terms. Certain terms in this Agreement have been given specially defined meanings. The defined terms may be used in the singular or plural or in varying tenses or forms, but such variations shall not affect their defined meaning so long as they are written with initial capital letters. As used herein, the following terms shall have the respective meanings indicated:

Accounting Fee shall mean an amount equal to Two Thousand Five Hundred and No/100 Dollars (\$2500.00) per month to be paid to Manager for centralized accounting services and human resource support services which shall include, without limitation, the oversight of daily accounting transactions necessary for the preparation of the monthly financial statements, including general ledger, accounts payable, payroll (in conjunction with the payroll processing firm) and banking and human resource support services. The Accounting Fee will increase by Three Percent (3.0%) annually.

Affiliate shall mean any person or entity that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person or entity. The term “control” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise, and shall in any event include the ownership or power to vote fifty percent (50%) or more of the outstanding equity or voting interests, respectively, of such other person.

Annual Performance Standard shall have the meaning provided in Section 12.4.

Annual Plan shall mean an annual plan for the operation of the Hotel prepared by Manager and approved by Owner in accordance with Section 6.1, consisting of the Operating Budget, Capital Improvements Budget and FF&E Budget and a description or narrative which shall reasonably describe the methods to be employed and the strategies to be adopted in order to achieve the results set forth in such Budgets.

Approved Consultant shall mean CBRE Hotels or another reputable hospitality industry consultant reasonably acceptable to Owner and Manager.

Average Monthly Management Fee shall mean (a) after this Agreement has been in effect for a period of at least twelve (12) calendar months following the Opening Date, one-twelfth (1/12<sup>th</sup>) of the total Management Fees for the twelve (12) full calendar months immediately preceding the event requiring a determination of the Average Monthly Management Fee or (b) prior to such time as this Agreement has been in effect for twelve (12) full calendar months following the Opening Date, the monthly average of the Management Fees for the number of full calendar months following the Opening Date during which this Agreement has been in effect.

Base Fee shall mean an amount equal to three and one quarter percent (3.25%) of Gross Revenues, for the applicable period.

Capital Improvements shall mean any and all major alterations and improvements to the Hotel and all major repairs and replacements to the structural, mechanical, electrical, HVAC, plumbing or vertical transportation elements of the Hotel and certain non-routine repairs and maintenance to the Hotel which are normally capitalized under generally accepted accounting principles, but excluding replacements of FF&E.

Capital Improvements Budget shall mean each annual budget prepared by Manager and approved by Owner as part of the Annual Plan, reflecting the estimated costs for all Capital Improvements which in the reasonable opinion of Owner and Manager are necessary to keep and maintain the Hotel during the applicable Operating Year in good condition and in keeping with the Operating Standards.

Capital Transaction shall mean the sale of the Hotel to a bona fide third party for value or the refinancing of the Hotel.

Competitive Set shall mean the four (4) or more hotels within the Hotel's market area that are most closely comparable to the Hotel in brand, quality, price and market (with due consideration given to age, quality, size, location, amenities, amount of meeting space, and business mix). The Competitive Set will be mutually agreed to by Owner and Manager six months prior to the Opening. If Owner or Manager seeks a change in the Competitive Set based on the commencement of operations of one or more new hotels in the Hotel's market area, or on any cessation of operations or significant change in operations (such as a change in operator or a change in market positioning) of any of the hotels in the current Competitive Set, the party requesting such change shall notify the other in writing of such request. In the event that the parties have not reached agreement on the Competitive Set or any proposed change thereto within thirty (30) days after the notice of such request has been given, such dispute shall be submitted to the Approved Consultant for determination in accordance with the standards outlined in the initial sentence of this definition. The decision of the Approved Consultant shall be final and binding on Owner and Manager.

Condemnation shall mean the acquisition of all or any portion of the Hotel by any Governmental Authority having the power of condemnation or eminent domain, by compulsory acquisition, conveyance in lieu of or under threat of condemnation or like procedure.

Debt Service for any period shall mean the sum of actual regularly scheduled payments (principal and interest) on the Senior Debt.

Depository Account shall mean, initially, one of the four (4) Operating Accounts.

Development shall mean the development of the Hotel to be undertaken by Owner as contemplated by Section 5.6.

Development Scope shall have the meaning provided therefor in Section 5.6(a).

Effective Date shall have the meaning set forth in the preamble to this Agreement and is the date on which this Agreement is valid and binding on Owner and Manager.

Emergency Expenses shall have the meaning set forth in Section 6.3 of this Agreement.

Earnings Before Interest Tax Amortization and Depreciation (EBITDA) as defined by the Uniform System of Accounts

Executive Personnel shall mean all or any one of the following: general manager, director of sales and marketing, and any other key executive of the Hotel designated by Manager.

F&B Gross Revenues shall have the meaning of Gross Revenues except restricted to those departments involved in the rental of conference and meeting facilities and/or the sale of food and beverages, whether served on or off the premises, including but not limited to all charges for room service, facilities fees, banquets and catering fees, for any Manager-managed food & beverage, conference and meeting facilities.

F&B Fee [INTENTIONALLY DELETED]

FF&E shall mean all furniture, fixtures, furnishings and specialized equipment and systems (exclusive of Operating Equipment) necessary or customary (now or in the future) in the reasonable opinion of Owner and Manager needed to operate the Hotel in accordance with the terms of this Agreement, the Franchise Agreement and the Operating Standards, including but not limited to all equipment required for the operation of laundries, dry cleaning facilities, food and beverage facilities, special lighting and other equipment, signs, carpets, drapes, shades, tapestries, pictures, paintings, beds, mattresses, chairs, desks, tables, sofas, wall coverings, televisions, radios, intercoms, telephones and office equipment and machinery.

FF&E Budget shall mean each annual budget prepared by Manager and approved by Owner as part of the Annual Plan, reflecting the estimated costs and expenses for all FF&E which in the reasonable opinion of Manager are necessary or customary in order to operate the Hotel during the applicable Operating Year in accordance with the terms of this Agreement and the Operating Standards.

Force Majeure shall mean acts of God, war, terrorism, insurrection, civil commotion, riots, strikes, lockouts, embargoes, shortages of labor or materials specified or reasonably necessary in connection with the construction, refurbishment, equipping, ownership or management of the Hotel, fire, unavoidable casualties, failure of any applicable Governmental Authority to issue required Governmental Permits and any other occurrence, event or condition beyond the reasonable control of Owner or Manager, whichever shall be applicable.

Franchise Agreement shall mean the agreement between Owner and the franchisor under the Franchise, as referred to in the Recitals.

Governmental Authority shall mean the United States of America, the State of California, and any political or other subdivision of any of the foregoing, and any agency, department, commission, board, bureau, court or instrumentality of any of them which now or hereafter has jurisdiction over Owner, Manager, any part of the Hotel or operation or management of the Hotel.

Governmental Permits shall mean all certificates, licenses and permits from any Governmental Authority required to evidence full compliance by Owner or Manager with all Legal Requirements or required to evidence conformance of the Hotel with all Legal Requirements.

Gross Operating Profit or “GOP” shall have the meaning as such term is defined in the latest version of Uniform System of Accounts, which is EBITDA plus (a) real estate and personal property taxes and other like charges levied or assessed against the hotel, (b) equipment or land leases (c) cost of insurance as set forth in Exhibit D of this agreement, and (d) management fees.

Gross Revenues in respect of any period shall mean all revenues, receipts and income of every kind derived directly or indirectly during such period from all or any part of the Hotel, as finally determined on an accrual basis in accordance with the Uniform System of Accounts and generally accepted accounting principles consistently applied, including but not limited to (i) all rentals and charges for guest rooms, meeting rooms, conference rooms, ballrooms and other public rooms, including but not limited to all charges for room reservations and deposits not refunded to guests; (ii) all sales of food and beverages, whether served on or off the premises, including but not limited to all charges for room service, banquets and catering fees; (iii) all sales or leases of miscellaneous and sundry merchandise and services including but not limited to laundry, valet, garage, parking, telephone, telex, telecopy, e-mail, Internet, check room, vault and other miscellaneous services, cover and minimum charges for guest entertainment, fees charged for the temporary use of facilities at the Hotel, all sales through vending machines that are paid to Owner (as opposed to third party vendors) and all other receipts from business conducted by, through or under Manager at, in, on, about or from the Hotel; (iv) all business interruption insurance awards received in respect of the Hotel; (v) condemnation awards for temporary use of the Hotel; and (vi) all rentals, fees, commissions, concessions and other payments derived from lessees, licensees and concessionaires. For purposes of calculation of the Base Fee and the determination of EBITDA and for calculation of any Incentive Fee, Gross Revenues for any such period shall not include:

excise, sales, transient occupancy and use taxes or similar impositions collected directly from patrons or guests or included as part of the sales price of any goods or services and paid to any Governmental Authority, such as gross receipts, admission or similar equivalent taxes;

sales and other receipts of tenants, licensees and concessionaires, except to the extent payable as rent under a lease or occupancy agreement;

actual bad debts arising from Gross Revenues, provided that any recovered bad debts shall again become part of Gross Revenues in the Operating Year in which they are recovered;

gratuities, service charges or other similar receipts collected for payment to and paid to Hotel employees and complementary food and beverage bills for Hotel employees and guests;

insurance proceeds (subject, however, to the inclusion of business interruption insurance awards as provided in clause (iv) above);

receipts or credits for settlement of claims for loss or theft of or damage to personal property or FF&E;

interest, if any, earned on the Reserve or on funds invested on behalf of Owner;

rents from any concession, retail or office space that is not managed by Manager;  
condemnation awards, except as provided in clause (v) above; and  
proceeds from any Capital Transaction.

Hazardous Materials shall mean (i) any “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder (including petroleum-based products as described therein); (iii) asbestos in any quantity or form which would subject it to regulation under any applicable environmental law; (iv) polychlorinated biphenyls; (v) any substance, the presence of which on the Hotel is prohibited by any Legal Requirements; (vi) underground storage tanks; and (vii) any other substance which by any Legal Requirements requires special handling in its collection, storage, treatment or disposal. In no event, however, shall the term “Hazardous Materials” include (1) chemicals routinely used in office areas, (2) janitorial supplies, cleaning fluids or chemicals necessary for the day-to-day operation or other maintenance of the Hotel, or (3) landscaping supplies and chemicals, to the extent that the disposition, handling, storage or quantity of the items described in (1), (2) and (3) immediately above are at all times in compliance with all applicable Legal Requirements.

Hazardous Materials Contamination shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on or of the Hotel by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Agreement) emanating from the Hotel.

Hotel shall have the meaning provided in the Recitals.

Impositions shall mean all real estate, personal property, utility, business or occupation taxes that cannot be passed along to customers of the Hotel and other taxes (other than income and payroll), imposed by any Governmental Authority which at any time may be assessed, levied or imposed on or with respect to the Hotel.

Incentive Fee in respect of any Operating Year shall mean fifteen percent (15%) of that portion of the Gross Operating Profit (“GOP”) which exceeds the Owner approved Budgeted GOP on an annualized basis.

Income Before Non-Operating Income and Expenses for any period shall have the meaning set forth in the Uniform System of Accounts (i.e. Total Operating Revenue less Total Departmental Expenses less Undistributed Operating Expenses (as defined in the Uniform System of Accounts) less Management Fees.

Independent Auditor shall mean a national firm of independent certified public accountants having hotel experience selected by Manager from time to time and approved by Owner, such approval not to be unreasonably withheld, conditioned or delayed.

Inventories shall mean all food and beverages, fuel, soap, light bulbs, mechanical supplies, cleaning supplies, golf pro shop merchandise, stationery, paper supplies and other similar consumable and expendable items necessary or customary (now or in the future) in the reasonable opinion of Manager in order to operate the Hotel in accordance with the terms of this Agreement, the Franchise Agreement and the Operating Standards.

Legal Requirements shall mean any law, ordinance, order, rule or regulation of any Governmental Authority and any requirement, term or condition contained in any restriction or restrictive covenant affecting Owner, Manager, the Hotel or the construction or operation of the Hotel.

Liabilities shall have the meaning provided therefor in Section 8.4.

Management Fee in respect of any period shall mean the sum of the Base Fee and the Incentive Fee, payable for such period.

Mortgage shall mean any mortgage or deed of trust encumbering all or any portion of the Hotel, whether now in existence or hereafter created.

Mortgagee shall mean the mortgagee or beneficiary (whether one or more) under any Mortgage.

Non-Operating Income and Expenses shall have the meaning provided in the Uniform System of Accounts (i.e. consisting of rent, real property taxes and liability and property insurance).

Offering Notice shall have the meaning provided therefor in Section 10.3.

Opening Date shall mean the date on which the Development is complete and the Hotel is first open for business to the public. Owner shall give Manager not less than ninety (90) days' advance written notice of the proposed Opening Date.

Opening Date Notice shall mean the written notice described in the definition of Opening Date.

Operating Accounts shall mean one or more accounts with a bank or banks designated by Owner and approved by Manager, such approval not to be unreasonably withheld or delayed, bearing a name identifying the Hotel and styled Operating Account, into which all funds advanced to the Hotel by Owner as working capital or otherwise derived from the operation of the Hotel shall be deposited and from which sums shall be withdrawn in accordance with this Agreement. Initially, there shall be four (4) Operating Accounts, the Depository Account, the Operating Account, the Payroll Account and the Petty Cash Account.

Operating Expense shall mean expenses and deductions incurred in the operation of the Hotel by Manager during each Operating Year (and proportionately for any period less than an Operating Year), determined in accordance with the accounting system established by the Uniform System of Accounts (except as modified by this Agreement) including but not limited to the following expenses insofar as they relate to the operation of the Hotel: salaries, wages, fringe



benefits, payroll taxes, workers' compensation costs, and other costs related to Manager's employees in the Hotel, including, without limitation, any claim for wrongful discharge and/or discrimination which expenses are not paid by insurance (provided, however, if such claim is determined to be an amount for which Manager is required to indemnify Owner pursuant to Section 8.4(a) hereof and has in fact paid to Owner, shall not be a deduction); costs of sales and the cost of replacing inventories and fixed asset supplies consumed in the operation of the Hotel such as linen, china, glassware, silver, uniforms and similar items; sales or excise taxes on goods or services provided to the Hotel; a reasonable reserve for uncollectible accounts receivable as determined by Manager; all costs and fees of independent accountants or other third parties who perform services required or permitted hereunder on behalf of the Hotel; the cost and expense of technical consultants and operational experts for specialized services provided to the Hotel; department expenses; administrative and general expenses; credit card and collection expenses; and the cost of Hotel advertising and business promotion and public relations; heat, light and power; routine repairs, maintenance, landscaping, snow removal, and minor alterations including the cost of maintenance contracts for equipment and any insurance costs (including deductibles and self-insured risks); the Accounting Fee; all costs or expenses incurred under any franchise, such as franchise fees if applicable; system charges for such items as reservations, frequent traveler programs, and airline points, system advertising or promotional costs, but excluding the initial fees paid in consideration of granting any franchise; and all other out of pocket actual costs and expenses and fees incurred by the Manager in the proper and efficient operation of the Hotel, including, but not limited to, all licenses, legal fees, travel costs, and out-of-pocket expenses of employees of Manager or its Affiliates employed at the Hotel or performing services for the Hotel such as postage, telephone and express mail; any other cost or charge classified as an operating expense or an administrative and general expense under the Uniform System unless specifically excluded under the provisions of this Agreement. Notwithstanding the foregoing, Debt Service shall not be included as an Operating Expense.

Operating Budget shall mean an annual budget prepared by Manager and approved by Owner as part of the Annual Plan, reflecting in reasonable detail the projected or estimated revenues and expenses in respect of the Hotel for the applicable Operating Year.

Operating Equipment shall mean all blankets, linens, uniforms, silver, china, glassware, crockery, kitchen utensils, cleaning equipment or any other similar items necessary or customary (now or in the future) in the reasonable opinion of Manager in order to operate the Hotel in accordance with the terms of this Agreement, the Franchise Agreement and the Operating Standards.

Operating Standards shall mean the operation of the Hotel in a manner consistent with (i) the initial condition of the Hotel following construction, subject to reasonable wear and tear and damage covered by property insurance, (ii) the requirements of the Franchise Agreement, (iii) current market conditions regarding rental rates and lease terms and conditions with respect to hotels of comparable class, and standing to the Hotel, and (iv) current prudent business and management practices applicable to the leasing, operation, repair, maintenance and management of a hotel comparable in size, character and location to the Hotel, including those concerning compliance with applicable Legal Requirements.

Operating Year shall mean each twelve (12) month period during the Term commencing on January 1 and ending on December 31, except that the first Operating Year shall be that period commencing on the Opening Date and ending on the next succeeding December 31. In the event that this Agreement shall terminate on a date other than December 31, the last Operating Year hereunder shall end on the date of termination.

Opportunity Expenses shall have the meaning set forth in Section 6.3 of this Agreement.

Payroll Account shall mean, initially, one of the four (4) Operating Accounts.

Performance Test shall have the meaning set forth in Section 12.3.

Post Opening Task Force Personnel shall mean Azul corporate or portfolio operations personnel performing services at Hotel for up to thirty (30) days after Opening Date per the Pre Opening Plan in Exhibit C Section 3.1(a) of this agreement.

Preopening Period shall mean the time period extending from Effective Date until the Opening Date.

Preopening Services shall have the meaning provided therefor in the TSA.

Prime Rate shall mean the rate that is announced from time to time by Citibank, N.A. as its “prime”, “base” or similar reference rate of interest for commercial loans.

Proceeds Account [INTENTIONALLY DELETED]

Reimbursable Expenses shall mean Post Opening Task Force Personnel and all travel, lodging, entertainment, telephone, telecopy, postage, courier, delivery, employee training and development, brand and industry conference expenses that are directly related to the Hotel, and any other expenses incurred by Manager that are directly related to its performance of this Agreement. If Manager provides primary revenue management services for the Hotel in lieu of the brand, Manager shall be reimbursed at the same cost level as the brand. The Annual Plan shall include provision for such Reimbursable Expenses, and any Reimbursable Expenses not shown in the Annual Plan shall require Owner’s prior written consent.

Reserve shall mean the reserve established pursuant to Section 5.2(b) of this Agreement to be deposited in one or more accounts with a bank or banks designated by Owner, bearing the name of the Hotel and styled FF&E, Repairs and Replacement Account.

Restoration shall mean the repairing, rebuilding and replacing of the Hotel upon the destruction or damage of the Hotel or any part thereof or upon the taking of the Hotel or any part thereof by Condemnation to a value, condition and character substantially the same as (in the case of damage or destruction) or as near as possible to (in the event of Condemnation) the value, condition and character of the Hotel immediately prior to such damage, destruction or Condemnation.

RevPAR shall mean, with respect to each hotel (including the Hotel) that is a member of the Competitive Set and each Operating Year, the “Revenue Per Available Room” for the hotel

and Operating Year in question, as measured and reported by Smith Travel Research or, if Smith Travel Research shall cease to publish such data in a form usable by the parties for purposes of this Agreement, as measured and reported by such other reputable independent third party market research firm as may be mutually approved by Owner and Manager.

Senior Debt shall mean that certain loan to be obtained by Owner upon completion of construction of the Hotel and secured by a deed of trust in first position against the Hotel.

Term shall mean that period commencing on the Opening Date and continuing until (and including) December 31 of the calendar year in which the Fifth (5<sup>th</sup>) anniversary of the Opening, unless this Agreement shall be sooner terminated or extended as herein provided, in which case the word “Term” shall mean such lesser or extended period of time.

Termination Fee, in respect of any termination of this Agreement pursuant to which a Termination Fee is payable, shall mean an amount equal to (the Lesser of 30 or the number of months remaining in the Term at time of termination) x Trailing Twelve Month Average Monthly Management Fee. If hotel has not been opened a full calendar year at termination, then the approved budget will be used to calculate the appropriate termination fee payable by projecting the Average Monthly Management Fee projected to be paid per the Annual Plan multiplied by thirty (30).

Terms and Conditions shall have the meaning provided therefor in Section 10.3.

Transfer shall have the meaning provided therefor in Section 10.2.

Undistributed Operating Expenses shall have the meaning provided in the Uniform System of Accounts (i.e. consisting of administrative and general expenses, sales and marketing expenses, operation and maintenance of the Hotel and utility costs).

Uniform System of Accounts shall mean the Uniform System of Accounts for the Lodging Industry, currently the Eleventh Revised Edition, 2014, as adopted by the American Hotel and Motel Association and all future amendments and supplements thereto approved by Manager and Owner (such approval not to be unreasonably withheld or delayed). Uniform System of Accounts Summary Operating Statement is illustrated in “Exhibit B”.

**ARTICLE 2  
APPOINTMENT OF MANAGER AND RENEWAL RIGHTS**

**Section 2.1** Appointment of Manager. Owner hereby engages Manager to manage and operate the Property during the Term in accordance with the Annual Plan and the Operating Standards, and Manager hereby accepts such engagement, subject to and in accordance with the terms of this Agreement.

Owner hereby appoints Manager as its sole and exclusive representative to manage and operate the Hotel during the Term in accordance with the Annual Plan, the Operating Standards and the terms and conditions set forth in this Agreement.

### ARTICLE 3 OPERATION OF THE HOTEL

**Section 3.1** Duties and Authority of Manager. Subject to and consistent with the Annual Plan and the Operating Standards, Manager shall have exclusive supervision, control and discretion in the management, maintenance and operation of the Hotel, including, but not limited to, the right, power and authority to (a) enter into such contracts and agreements in the name and at the expense of Owner as Manager may deem to be reasonably necessary or advisable in connection with the management, maintenance and operation of the Hotel, provided, however, that Manager shall not enter into any such contract or agreement without the prior approval of Owner if it obligates Owner for more than Ten Thousand (\$10,000) in any calendar year or has a term, not cancelable upon not more than ninety (90) days' notice, of more than one (1) year, unless such contract or agreement has previously been approved by Owner as part of the Annual Plan; (b) determine and implement charges for guest rooms, food and beverage, and meeting and banquet spaces, which right shall specifically allow Manager to charge varying rates to different customers or groups of customers and allow Manager, in the exercise of reasonable and sound business judgment consistent with the Operating Standards, to permit persons to occupy guest rooms at the Hotel at rates lower than published rates or free of charge or permit persons to dine at the restaurants or lounges located at the Hotel free of charge; (c) determine and implement all phases of advertising, promotion and publicity relating to the Hotel; (d) determine and implement all employment policies (including salaries, wages, fringe benefits and other compensation, the hiring, training and discharge of employees and the establishment of employee retirement, severance and other benefit plans); (e) determine and implement credit policies (including arrangements with credit card organizations); (f) receive, hold and disburse funds, maintain bank accounts, procure Inventories, Operating Equipment, supplies and services; (g) engage independent contractors to provide legal, accounting or other professional or technical services in connection with the operation of the Hotel; (h) initiate, settle or otherwise dispose of litigation or claims which might give rise to litigation, including the adjustment of insurance claims, provided, however, that Manager shall not have such authority without the approval of Owner with respect to any litigation or claim where the amount in controversy exceeds Fifty Thousand Dollars (\$50,000); (i) maintain the Hotel's compliance with all material provisions of the Franchise Agreement (as the same may be amended from time to time); (j) at Owner's written request, assist Owner and its lenders, brokers or buyers in executing any Capital Transaction; and (k) manage and direct generally all activities incidental to the operation of the Hotel in the ordinary course of business. Manager shall operate the Hotel in a businesslike and efficient manner and shall operate the Hotel solely for the operation of a hotel business and for such other activities, which are customary and usual in connection therewith. Manager shall exercise reasonable efforts at all times to operate the Hotel and all of its facilities and activities in a manner consistent with the Operating Standards, the Annual Budget and the provisions of this Agreement. Except as otherwise expressly provided in this Agreement, to the extent that Owner's approval is required for any matter in connection with the foregoing or any other matter in connection with this Agreement, Owner shall approve or disapprove such matter within ten (10) business days after the date of delivery of written notice thereof by Manager; provided, however, that Owner shall approve or disapprove any such matter involving pending litigation concerning the Hotel within five (5) business days after the

date of delivery of written notice thereof by Manager. If Owner does not approve or disapprove any such matter within the specified time periods, Owner shall have deemed to approve such matter.

**Section 3.2** Leases and Concessions. Manager shall not, without the prior approval of Owner, arrange leases or concessions for any restaurant, food service operation or any other commercial or other operation on the Hotel. Any such lease or concession so approved shall be entered into in Owner's name and shall be executed by Owner. As Owner's manager, Manager shall use all reasonable efforts to perform or cause to be performed all of Owner's obligations under all present and future leases and concessions made or granted with respect to the Hotel. Manager shall use reasonable efforts to collect all rents and other sums falling due during the Term under any such leases and concessions and shall deposit the same in the Depository Account.

**Section 3.3** Working Capital. Owner shall at all times, including the Preopening Period, cause sufficient funds to be on hand in the Depository, Operating, and Payroll Accounts to assure the timely payment of all current liabilities of the Hotel, including but not limited to all items entering into the calculation of Income Before Non-Operating Income and Expenses, all other costs and expenses incurred in connection with the Hotel pursuant to the Annual Plan and this Agreement and the performance by Manager of its obligations under this Agreement, all fees, charges and reimbursements payable to Manager hereunder. In no event shall Owner permit the balance in the Depository and Payroll Accounts to be less than an amount equal to the estimated average monthly operating expenses of the Hotel as reflected in the then current Operating Budget. From time to time, upon five (5) days prior written notice from Manager that such funds are required, consistent with the Annual Plan, Owner shall furnish to Manager funds which Manager deems reasonably necessary to assure that the Hotel shall have adequate working capital as herein provided. Owner's failure to supply required working capital in accordance with the provisions of this Section 3.3 shall constitute an Event of Default by Owner and Manager shall be entitled to pursue all of Manager's rights and remedies, including, without limitation, the remedies set forth in Section 12.1. At least ten (10) business days prior to the Opening Date, Owner shall deposit the working capital required by this Section 3.3 into the Depository Account to cover the costs and expenses of the Hotel for the month in which the Opening Date occurs. If the Opening Date is not on the first day of a month, then Owner shall deposit the working capital required by this Section 3.3 into the Depository Account to cover the costs and expenses of the Hotel for the partial month in which the Opening Date occurs plus the costs and expense of the Hotel for the immediately following month.

**Section 3.4** Owner to Bear All Expenses. In performing its duties under any provision of this Agreement and in managing and operating the Hotel, Manager shall act solely for the account and benefit of Owner. All expenses incurred by Manager in performing its duties hereunder and in managing and operating the Hotel shall be borne exclusively by Owner. To the extent that the funds necessary therefor, as reflected in the Annual Plan, are not generated by the operation of the Hotel, they shall be promptly supplied by Owner in the manner provided in Section 3.3 above. Manager shall in no event be required to advance any of its funds or utilize Manager's credit for the operation of the Hotel, nor shall Manager be required to incur any liability in connection therewith, unless Owner shall have

furnished Manager with funds necessary for the discharge thereof. In addition, Manager may not take any of the actions set forth in the immediately preceding sentence without the prior written consent of Owner.

**Section 3.5** Transactions with Affiliates. Manager may engage one or more of its Affiliates or other related parties to furnish goods or services to the Hotel, provided, however, that the terms of any such arrangement shall be consistent with the provisions of Section 3.6 of this Agreement and shall be no less favorable in any material respect to the Hotel than those reasonably obtainable from an unrelated party. Manager will promptly notify Owner of any such engagement of Manager's Affiliates. Amounts payable pursuant to such arrangements shall be in addition to the Management Fee and other amounts payable to Manager under this Agreement.

**Section 3.6** Centralized or Pooled Purchasing. Manager may cause the Hotel to participate, along with other hotels owned, managed or franchised by Manager or one of its Affiliates, in one or more centralized or pooled purchasing programs or arrangements for the procurement of goods or services used in connection with the operation of the Hotel, provided, however, that the terms of any such program or arrangement shall be no less favorable to the Hotel in any material respect than those reasonably obtainable from an unrelated party. Owner acknowledges and agrees that certain of such contracts and arrangements may include termination charges and that, upon the expiration or termination of this Agreement, Owner shall be responsible for any such termination charges arising from such expiration or termination (unless any such contract or contracts are assumable by Owner and Owner elects to so assume such contract or contracts, as they relate to the Hotel, upon such expiration or termination). Owner also acknowledges that Manager from time to time may receive certain volume discounts, refunds, rebates or bonuses in connection with its centralized or pooled purchasing programs or arrangements. Any such refunds, rebates or bonuses that are reasonably allocable to the Hotel in a fair and equitable manner will be paid into the Depository Account. Any refunds, rebates or bonuses attributable to other hotels managed by Manager or its Affiliates may be retained by Manager or such Affiliates. Any such refunds, rebates or bonuses received by Manager or its Affiliates that are not reasonably allocable to the Hotel may be retained by Manager or its Affiliates. Owner reserves the right, at owner's sole cost and expense, to audit any centralized or pooled purchasing program to ensure compliance with section 3.6.

**Section 3.7** Preopening Services. Certain activities shall be undertaken prior to the Opening Date so that the Hotel can function in an orderly and businesslike manner on the Opening Date. Manager shall perform such functions as set forth in the TSA for the compensation described therein. Any Event of Default under the TSA shall be an Event of Default under this Agreement, and any Event of Default under this Agreement shall be an Event of Default under the TSA.

## **ARTICLE 4 PERSONNEL**

**Section 4.1** Employment of Personnel. Manager shall be responsible for and shall have the sole and exclusive right to hire, promote, discharge, supervise, train, transfer and

determine the terms of employment of the Executive Personnel and, through the Executive Personnel, all other administrative, service and operating employees of the Hotel; provided, however, that Owner shall have the right to approve (i) the hiring by Manager of the Hotel's initial general manager and director of sales and (ii) the hiring by Manager of any subsequent general manager or director of sales of the Hotel during the Term, with any such approval not to be unreasonably withheld, conditioned or delayed. All such employees of the Hotel shall be employees of Manager or one of Manager's Affiliates. In addition, Manager may, from time to time, assign one or more of its employees to the staff of the Hotel on a full-time, part-time or temporary basis. Notwithstanding the provisions of this Section 4.1 or any other provision of this Agreement, all costs, expenses and liabilities relating to Hotel employees shall be expenses of operating the Hotel and the responsibility of Manager for acts or omissions of Hotel employees shall not extend beyond responsibility for the gross negligence or willful misconduct of the Executive Personnel and the Executive Personnel's hiring, promoting, discharging, supervising, training and transferring of other Hotel employees.

**Section 4.2** Payment of Employees. Consistent with the Annual Plan, Manager shall be entitled to withdraw from the Depository and/or Payroll Accounts any premium(s) for employment liability insurance covering the employees employed at the Hotel and all wages, salaries, fringe benefits and other compensation paid or payable with respect to all Hotel employees and Manager shall pay such compensation directly to such employees.

**Section 4.3** Personnel Accommodations. Manager shall be permitted to provide free room and board to one member of the Executive Personnel and his or her family for up to thirty (30) days as part of Manager's relocation program. In addition, Manager shall be entitled to thirty-six (36) complimentary room nights and \$5,000 in credit toward food and beverage expenditures per year throughout the Term of this Agreement (the complimentary room nights and food and beverage coverage may not be carried over from one year to another), to be used in any manner in Manager's sole discretion, but subject to the availability (i.e. the provision of complimentary room nights, shall not result in a loss of revenue that otherwise would be available to the Hotel). Any food and beverage expenditures above the \$5,000 credit will be charged at 50% of the retail price, with a maximum of \$5,000.

**Section 4.4** Employee Health Insurance. Manager shall, at no cost to Manager, be responsible for arranging health insurance coverage for employees of the Hotel. Subject to the prior agreement of Owner and Manager and subject to reimbursement of Manager of all applicable costs and expenses (including, but not limited to, those associated with compliance with the Consolidated Omnibus Budget Reconciliation Act of 1985 and an exit premium in connection with the termination of such coverage), Manager may permit the enrollment of some or all of such employees under health insurance plans maintained by Manager.

## ARTICLE 5

## REPAIRS, MAINTENANCE AND CAPITAL IMPROVEMENTS

**Section 5.1** Repairs and Maintenance. During the Term, Manager, at the expense of Owner, shall take good care of the Hotel (other than such portions thereof as are leased to tenants who undertake a duty of repair and maintenance) and maintain the same in good order and condition and make all repairs thereto as may be necessary to maintain and operate the Hotel in accordance with the Annual Plan and the Operating Standards.

**Section 5.2** Repairs and Replacements. Owner shall establish the Reserve to cover the cost of (i) additions to and substitutions, replacements and renewals of FF&E and (ii) certain non-routine repairs and maintenance to the Hotel which are normally capitalized under generally accepted accounting principles such as exterior and interior repainting, resurfacing building walls, floors, roof and parking areas, replacing folding walls and similar items. All amounts in the Reserve shall be the property of Owner, and any interest on amounts in the Reserve shall remain a part of the Reserve. Once each calendar month following the Opening Date, Owner shall transfer from the Depository Accounts into the Reserve an amount equal to the greater of, (i) (x) two percent (2%) of the Gross Revenues for each month during the first year of the Term; (y) three percent (3%) of the Gross Revenues for each month during the second year of the Term; and (x) four percent (4%) of the Gross Revenues for each such month during the third and following years of the Term; and (ii) such amount as is required under the terms and conditions of any debt instrument secured by the Hotel. The amount to be contributed to the Reserve is an estimate of amounts required for the purposes set forth in Section 5.2(a). The parties recognize that the passage of time or unforeseen events or conditions may render such amount insufficient to keep the Reserve at the level required to maintain the Hotel in good repair and condition in keeping with the Operating Standards and this Agreement.

(a) To the extent funds are available in the Reserve or are otherwise supplied by Owner, Manager shall from time to time make such additions to and substitutions, replacements and renewals of FF&E and all such non-routine repairs to the Hotel (as described in Section 5.2(a) above) as Manager shall reasonably deem necessary or desirable, and as provided in the Annual Plan, and Owner shall withdraw funds from the Reserve for such purpose and transfer them to the Depository Account, subject to the requirements of any debt instrument secured by the Hotel. At the end of each Operating Year, any amounts remaining in the Reserve shall be carried forward to the next Operating Year. Any amount remaining in the Reserve upon termination of this Agreement shall be transferred to Owner, subject to the requirements of any debt instrument secured by the Hotel.

**Section 5.3** Capital Improvements. (a) Manager shall promptly notify Owner of the need for all Capital Improvements provided for in the Annual Plan then in effect, whereupon work in respect of such Capital Improvements will be promptly commenced and completed by Owner in accordance with plans, schedules and specifications therefor approved by Manager. Except as otherwise provided herein or in the Annual Plan then in effect, Manager shall make no Capital Improvements in or to the Hotel without the express written approval of Owner. Owner shall not unreasonably withhold its approval with respect to such Capital Improvements as are required in Manager's reasonable opinion to keep the Hotel in a competitive, efficient and economical operating condition in accordance with the Operating Standards. Notwithstanding the



foregoing, if Manager shall, at any time, believe that (i) a dangerous condition exists at the Hotel, (ii) repairs or Capital Improvements are required to comply with any applicable Legal Requirement or (iii) expenditures are required to remedy any condition caused by fire, act of God, flood, earthquake or other like casualty or other emergency, Manager shall (except in the case of an emergency) notify Owner and Manager shall as promptly as possible take all steps and make all expenditures necessary to remedy or cure any such condition or to comply with any applicable Legal Requirement. In addition and without prejudice to any other remedy available to it hereunder or under any Legal Requirements, Manager shall be entitled to terminate this Agreement upon sixty (60) days' prior written notice to Owner if Owner fails to approve any Capital Improvements necessary, in the reasonable opinion of Manager, to allow the Hotel to be operated in accordance with the Operating Standards and this Agreement, unless, within such 60-day period, Owner agrees to fund such Capital Improvements. The cost of all Capital Improvements made under this Section (except as otherwise expressly provided in (Section 5.3(a) above) shall be borne and paid for directly by Owner, but may be made from the Reserve.

**Section 5.4** Enforcement of Guaranties and Warranties. Owner shall furnish to Manager copies of all guaranties and warranties relating to the Hotel. Manager shall use all reasonable efforts to enforce all such guaranties or warranties and Owner shall cooperate with Manager in such efforts.

**Section 5.5** Ownership of Replacements. All changes, repairs, alterations, improvements, renewals or replacements of FF&E and Capital Improvements to the Hotel shall be the property of Owner.

**Section 5.6** Development of the Hotel. The development undertaken by Owner includes the construction of the Hotel on the Land that conforms to the requirements of the Franchise Agreement and the Operating Standards. Owner hereby acknowledges and agrees that the Hotel will be developed in accordance with terms, plans, specifications and standards which are to be (i) developed by Owner in consultation with Manager, and (ii) in compliance with the requirements of the Franchise Agreement and the Operating Standards (the "Development Scope"). The Hotel is to be undertaken pursuant to construction documents to be approved by Owner in consultation with Manager, and the costs of the Development shall be borne and paid for directly by Owner.

## **ARTICLE 6 ANNUAL PLAN, BOOKS, RECORDS AND REPORTS**

**Section 6.1** Preparation of Annual Business Plan. Manager shall submit an Annual Plan to Owner within thirty (30) days following Manager's receipt of the Opening Date Notice. Thereafter, at least forty-five (45) days prior to the end of each Operating Year, Manager shall submit a draft Annual Plan for the succeeding Operating Year. At least thirty (30) days prior to the date on which the Manager is required to submit the Annual Plan during each Operating Year, Owner shall provide to Manager proposed recommendations for the Capital Improvements Budget for inclusion in such year's Annual Plan. In addition, the Annual Plan shall include a comparison against the prior year for all categories contained therein. Owner shall review the Annual Plan and either approve or

notify Manager of any objections to the Annual Plan in writing within: (i) ten (10) days, in the case of the forecast of performance for the first Operating Year following the Opening Date; and (ii) thirty (30) days for all subsequent Annual Plans, of its receipt thereof. Owner's approval of the Annual Plan shall not be unreasonably withheld or delayed. The parties will attempt to resolve in good faith any objections by Owner within thirty (30) days following Manager's receipt of Owner's disapproval.

**Section 6.2** Annual Business Plan Disputes. If Manager and Owner are unable to agree upon an Annual Plan or any details thereof, the final Annual Plan shall be determined by arbitration in accordance with the provisions of Section 13.21 hereof, it being understood that only those details, line items or portions of the Annual Plan which are in dispute shall be the subject of such arbitration. Pending the conclusion of any such arbitration proceeding, the Annual Plan for all purposes under this Agreement shall be as follows: (i) the undisputed items shall be as set forth in the proposed Annual Plan; and (ii) the disputed items shall be modified by increasing the actual expenses incurred by the Hotel during the prior year in accordance with the Consumer Price Index (for purposes hereof, Consumer Price Index shall mean Consumer Price Index-Cities-All Urban Consumer (1982-84=100), issued by the Bureau of Labor Statistics of the United States Department of Labor). Owner and Manager agree that arbitration or mediation shall be the sole procedure for resolving any dispute regarding the Annual Plan.

**Section 6.3** Deviations from Annual Business Plan. Manager shall diligently pursue all feasible measures to enable the Hotel to adhere to the Annual Plan; provided, however, Owner acknowledges and agrees that Manager will not be responsible for any variances from the Annual Plan. In the event that Manager determines that circumstances require that there be material changes in the Annual Plan, Manager shall so notify Owner as soon as practicably possible after the need for such change becomes apparent to Manager. A variation not permitted by this Section 6.3, without Owner's approval, shall be deemed material. Upon approval of the Annual Plan by Owner, Manager shall use diligent and commercially reasonable efforts to operate the Hotel substantially in accordance with the Annual Plan. Manager shall not, without Owner's prior approval, incur any expense for any line-item in the Annual Plan which causes the aggregate expenditures for such line-item to exceed the budgeted amount by the greater of: (i) ten percent (10%) or (ii) Five Thousand and No/100 Dollars (\$5,000.00) for the applicable fiscal period set forth in the Annual Plan; provided that Manager may at Owner's cost and expense, without Owner's approval: (1) pay any expenses (the "Necessary Expenses") regardless of amount, which are necessary, in Manager's good faith judgement for the continued operation of the Hotel in accordance with the Operating Standards; (2) so long as Manager provides notice to Owner of such expense as soon as reasonably practicable, pay any expense (the "Emergency Expenses") regardless of amount which, in Manager's good faith judgment, are immediately necessary to protect the physical integrity or lawful operation of the Hotel or the health or safety of its occupants; and/or (3) pay any third party operating expenses, not to exceed Twenty Five Thousand and No/100 Dollars (\$25,000.00) on an annual aggregate basis, which are, in Manager's good faith judgement commercially desirable to be incurred in order to obtain unbudgeted Hotel revenue in the ordinary course of operating the Hotel in accordance with the then-current Annual Plan; provided that such unbudgeted revenue is sufficient in Manager's professional judgment to offset such expenses

("Opportunity Expenses"); and, provided further, that Manager shall, upon request by Owner, provide to Owner a summary of any Opportunity Expenses incurred in such month and summarize the results of incurring the Opportunity Expenses. Notwithstanding anything herein to the contrary, Manager is not warranting or guaranteeing in any respect the actual operating results of the Hotel.

**Section 6.4** Books and Records; Operating Accounts.

(a) Manager shall keep full and adequate books of account and such other records as are necessary to reflect the results of operation of the Hotel. Such books of account shall be kept in all material respects in accordance with the Uniform System of Accounts. The books of account and all other records relating to, or reflecting the operation of, the Hotel shall be kept at the Hotel, with copies at the corporate office of Manager, and shall be available to Owner and its representatives at all reasonable times for examination, inspection and copying, including read-access via enterprise accounting software. Upon any termination of this Agreement, all of such books and records (or copies thereof) shall be turned over to Owner forthwith (in both paper and electronic form) so as to insure the orderly continuance of the operation of the Hotel, but the books and records through such date of termination shall thereafter be available to Manager at all reasonable times for inspection, examination and copying.

**Section 6.5** Operating Accounts.

During the Term of this Agreement Owner shall establish a Depository Account, an Operating Account and a Petty Cash Account with a bank or banks designated by Owner and approved by Manager, such approval not to be unreasonably withheld or delayed, bearing a name identifying the Hotel and Operating Account, into which all funds shall be deposited and from which sums shall be withdrawn by Owner and Manager pursuant to and in accordance with this Agreement (collectively, the "Operating Accounts"). During the Term of this Agreement Manager shall establish a Payroll Account, with a bank or banks designated by Manager.

(a) Depository Account. Manager shall cause all funds generated or received from the operation of the Hotel to be deposited in the Depository Account, which shall be in the sole name of Owner. Manager shall fund the Operating Account from the Depository Account.

(b) Operating Account. Subject to the requirements of any debt instrument secured by the Hotel (if any), during the Term, Manager shall have sole control of the Operating Account and Manager shall be entitled to pay out of the Operating Account all Operating Expenses and all costs and expenditures which Manager is permitted or required to make pursuant to this Agreement.

(c) Petty Cash Account. Subject to the requirements of any debt instrument secured by the Hotel (if any), during the Term, Manager shall have sole control of the Petty Cash Account and Manager shall be entitled to pay out of the Petty Cash Account miscellaneous Operating Expenses

and all costs and expenditures which Manager is permitted or required to make pursuant to this Agreement.

**(d) Payroll Account.** Manager shall be allowed to withdraw funds from the Depository Account and to deposit them into the Payroll Account. Manager shall have sole control of the Payroll Account and Manager shall be entitled to pay out of the Payroll Account the wages, salaries, fringe benefits and other compensation and expenses relating to Hotel's employees. All funds deposited in the Depository and Payroll Accounts shall not be mingled with Manager's other funds. Manager shall establish controls to ensure accurate reporting, safety and security in connection with all Depository and Payroll Accounts.

Out of the Operating and Payroll Accounts, Manager shall pay all Operating Expenses of the Hotel, any fees or compensation of any kind due it pursuant to this Agreement. Withdrawals from accounts established pursuant to this Agreement shall be signed by representatives of the Manager only, provided such representatives are bonded or otherwise insured, and Manager shall supply Owner with bonds or other insurance upon Owner's request unless said bond or other insurance shall have been placed by Owner and delivered directly by the bonding or insurance company to Owner. Manager shall from time to time provide to Owner a list of the bank accounts then existing or maintained by Manager with respect to the Hotel. Manager shall cooperate with Owner, to allow Owner to access information concerning the bank accounts in which the Operating Accounts are maintained which may be available via the Internet to the extent such information and access may be available from such bank; provided, however, such access shall be limited to viewing such information without any ability to conduct any transactions with respect to such accounts.

Upon expiration or earlier termination of this Agreement all funds in the Operating Accounts shall be delivered to Owner.

#### **Section 6.6** Reports.

**(a)** On or before the twentieth (20th) day of each calendar month during the Term, Manager shall deliver to Owner the following items (collectively, the "Monthly Report"): monthly unaudited financial statements, certified by an officer of Manager, prepared from the books of account maintained by Manager, consisting of a balance sheet and profit and loss statement and a statement of changes in financial position showing the results of the operation of the Hotel, a daily rate and occupancy report, the calculation of Gross Revenues, Adjusted Net Operating Income, statements and calculations of the Management Fee for such calendar month and for the portion of the Operating Year to the end of such calendar month, and a comparison of such results with the results budgeted for such calendar month and portion of the Operating Year in the applicable Annual Plan and with the results at the end of the same calendar month and portion of the Operating Year in the immediately preceding Operating Year, together with commentary on any significant variation from the Annual Plan.

**(b)** Within forty five (45) days after the end of each Operating Year, Manager shall cause to be delivered to Owner the following items (collectively, the "Annual Report"):

financial statements for such Operating Year consisting of at least a balance sheet, a related statement of profit and loss and a statement of changes in financial position, together with a source and application of funds analysis for such Operating Year and the other items required for each Monthly Report, as prepared in accordance with the Uniform System of Accounts and generally accepted accounting principles consistently applied. The annual financial statements shall also include or be accompanied by a statement prepared by an officer of the Manager showing the calculation of the Management Fee for such Operating Year. Unless Owner objects to such annual material within sixty (60) days following Owner's receipt thereof, such financial statements shall be conclusive upon the parties and shall be deemed to be a final determination of the Management Fee for such Operating Year, in the absence of manifest error. The cost of the annual audit shall be included in Operating Expenses.

**ARTICLE 7  
MANAGEMENT FEE, EXPENSE REIMBURSEMENT  
AND REMITTANCES TO OWNER**

**Section 7.1**    Management Fee.

(a) On or before the tenth (10th) day following (i) the date of delivery to Owner of each Monthly Report during the Term, and (ii) the expiration or sooner termination of the Term, Owner shall pay to Manager an amount equal to the Base Fee for the period from the commencement of the then current Operating Year (or, in the case of the January payment, the Operating Year ending on the immediately preceding December 31) to the end of the immediately preceding calendar month or the date of such expiration or sooner termination of the Term, as the case may be, less the aggregate amount of monthly payments theretofore paid in respect of the Base Fee for such Operating Year.

(b)    Incentive Fees. On or before the thirtieth (30th) day following (i) the end of each Operating Year, and, in the case of the final Operating Year, (ii) the expiration or sooner termination of the Term, Owner shall pay to Manager an amount equal to the Incentive Fee payable for such Operating Year.

(c)    Accounting Fee. On or before the tenth (10th) day following (i) the date of delivery to Owner of each Monthly Report during the Term, and (ii) the expiration or sooner termination of the Term, Owner shall pay to Manager the Accounting Fee.

**Section 7.2**    Year-End Adjustment to Management Fee. If for any Operating Year, the aggregate amount of the periodic payments of the Management Fee theretofore paid by Owner to Manager shall be more or less than the Management Fee payable for such Operating Year based upon the final determination of such Management Fee as reflected in the Annual Report in accordance with Section 6.3(b) of this Agreement, then, by way of year-end adjustment, within fifteen (15) days after the delivery of such Annual Report to Owner, Manager shall pay into the Depository Account the amount of any overpayment or withdraw from the Depository and/or Payroll Accounts the amount of any underpayment; provided, however, that in the event that funds in the Depository and/or Payroll Accounts are not sufficient to pay fully the Management Fee payable to Manager hereunder, Owner shall promptly pay to Manager within such 15-day period the amount of such deficiency.

**Section 7.3** Expense Reimbursement. Owner shall be obligated to reimburse Manager for all Reimbursable Expenses incurred by it in connection with the performance of this Agreement. Manager shall submit a monthly invoice for its Reimbursable Expenses showing in reasonable detail the nature and amount of such expenses, and such invoices shall be payable within ten (10) days after submission.

**Section 7.4** Purchasing and Technical Services Fees. To the extent provided for in the Annual Plan or otherwise approved in writing by Owner, Manager or one of its Affiliates shall be entitled to the payment of Reimbursable Expenses incurred with respect to the acquisition, or supervision of installation or construction, of Capital Improvements made in accordance with the Annual Plan or otherwise approved by Owner or FF&E at the Hotel, provided that such Capital Improvements or FF&E are part of a major renovation program affecting all or substantially all of the Hotel.

**Section 7.5** Remittances to Owner. On or before the fifteenth (15th) day of each calendar quarter of each Operating Year, Manager shall remit to Owner all sums in the Depository Account in excess of the then working capital requirements of the Hotel determined in accordance with Section 3.3 of this Agreement.

## **ARTICLE 8 INSURANCE AND INDEMNITIES**

**Section 8.1** Insurance Coverage. Throughout the Term of this Agreement, Manager at the direction of Owner, or Owner at Owner's election, shall provide and maintain, as a property cost and expense, insurance sufficient to furnish to Owner and Manager reasonable and adequate protection in the management and operation of the Hotel. Such insurance shall provide coverage for commercial general liability (which shall include terrorism insurance to the extent it is reasonably available), automobile, garage keepers liability, excess/umbrella liability property insurance and boiler & machinery, all as more particularly set forth on the attached **Exhibit D** subject to a change in insurance market conditions that makes it impossible or impractical to obtain such coverages. All insurance shall be in the name of Owner and Manager as the insureds and shall contain riders and endorsements adequately protecting the interests of Manager as it may appear including, without limitation, provisions for at least twenty (20) days' notice to Manager of cancellation or of any material change therein to the extent such provisions are commercially available. Owner agrees that it will utilize Manager's insurance program to satisfy the requirements of this Section 8.1 unless Owner can obtain the same or more comprehensive coverages at a better price or otherwise on more advantageous terms. Subject to the provision by Owner of the required funds, Manager shall prior to the Opening Date and the commencement of each Operating Year thereafter: (i) furnish Owner with certificates and/or copies of policies evidencing the insurance coverage required pursuant to **Exhibit D**; (ii) pay the premiums therefor in compliance with the payment plan specified by each insurer and (iii) provide Owner with evidence of such payment. It shall be the Manager's obligation as the employer, at the Owner's expense, to obtain Workers Compensation (which shall include terrorism insurance to the extent it is reasonably available), Crime/Fidelity Bond, and Employment Practices coverages as set forth on **Exhibit D**. All insurance provided under this Section 8.1 shall be effected by policies issued by insurance companies having an A.M. Best's rating of not less than A - IX and if Manager is procuring insurance on behalf of Owner, shall name Owner, and if required a mortgage as

additional insured, loss payee, or mortgagee. Further, notwithstanding anything to the contrary stated in Article VIII hereof, all liability insurance provided under this Section 8.1 shall include coverages for the parties' negligence and gross negligence. All insurance policies procured by Manager or Owner, as applicable, shall be primary and non-contributing to any similar insurance carried by Owner or Manager. Manager and Owner agree to explore in good faith terrorism insurance options, the purchase of which shall be at Owner's sole discretion.

**Section 8.2** Waiver of Subrogation - Owner Assumes Risk of Adequacy. Neither Manager nor Owner shall assert against the other, and do hereby waive with respect to each other, or against any other entity or person named as additional insureds on any policies carried under this Article VIII, any claims for any losses, damages, liability or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property arising out of the operation or maintenance of the Hotel, to the extent that the same are covered by the insurance required under this Article VIII. Each policy of insurance shall contain a specific waiver of subrogation reflecting the provisions of this Section 8.2, and a provision to the effect that the existence of the preceding waiver shall not affect the validity of any such policy or the obligation of the insurer to pay the full amount of any loss sustained. Owner and Manager acknowledge that they have agreed on the adequacy of the amounts of any insurance coverage provided under this Agreement and, subject to Section 8.3 of this Agreement, Owner assumes all risks in connection with the adequacy of the amounts of any insurance coverage provided under this Agreement.

**Section 8.3** Indemnities.

(a) Manager shall save, protect, defend, indemnify and hold harmless Owner and its Affiliates and their respective partners, shareholders, directors, officers, employees, members, managers and agents from and against any and all liability, loss, damages, costs, causes of action and expenses, including, without limitation, reasonable attorneys' fees, court costs and fees of experts ("Liabilities") incurred by reason of the management and operation of the Hotel by Manager during the Term insofar and only insofar as such Liabilities are caused by the intentional acts, criminal acts, gross negligence or willful misconduct of Manager. Owner shall save, protect, defend, indemnify and hold harmless Manager and its Affiliates and their respective partners, shareholders, directors, officers, employees, members, managers and agents from and against any and all Liabilities (including those caused by the simple negligence of the indemnitee and those as to which the indemnitee may be strictly liable, except with respect to any Liability that Manager is obligated to indemnify Owner as provided in Section 8.3(a) above) (i) arising out of or incurred in connection with the construction, renovation, management or operation of the Hotel or (ii) which may be asserted or arise as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Hotel of any Hazardous Materials or any Hazardous Materials Contamination or arise out of or result from the environmental condition of the Hotel or the applicability of any Legal Requirements relating to Hazardous Materials, except, in the case of both (i) and (ii) above, those Liabilities caused by the intentional acts, criminal acts, gross negligence or willful misconduct of Manager.

(c) In case an action covered by this Section 8.3 is brought against any indemnified party, the indemnifying party will be entitled to assume the defense thereof, subject to the provisions herein stated, with counsel reasonably satisfactory to such indemnified party,

and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof. The indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of the indemnifying party if the indemnifying party has assumed the defense of the action with counsel reasonably satisfactory to the indemnified party; provided that the fees and expenses of the indemnified party's counsel shall be at the expense of the indemnifying party if (i) the employment of such counsel has been specifically authorized in writing by the indemnifying party or (ii) such indemnified party shall have been advised by counsel that there is a conflict of interest or issue conflict involved in the representation by counsel employed by the indemnifying party in the defense of such action on behalf of the indemnified party or that there may be one or more legal defenses available to such indemnified party which are not available to the indemnifying party (in which case the indemnifying party shall not have the right to assume the defense of such action on behalf of such indemnified party, it being understood, however, that the indemnifying party shall not, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for the indemnified party, which firm shall be designated in writing by the indemnified party).

(d) The provisions of this Section shall survive any termination or expiration of this Agreement, whether by lapse of time or otherwise, and shall be binding upon the parties hereto and their respective successors and assigns.

## **ARTICLE 9 DAMAGE AND CONDEMNATION**

### **Section 9.1 Damage or Destruction.**

(a) If the Hotel shall be totally destroyed or substantially damaged by fire or other casualty, either party may, within sixty (60) days after the occurrence of such event, give written notice to the other terminating this Agreement. For purposes of this Section, the Hotel shall be deemed to have been substantially damaged if the estimated cost of Restoration shall exceed fifty percent (50%) of the cost of replacing the Hotel by constructing, furnishing and equipping a new hotel on the Land substantially the same as the Hotel prior to such casualty. The Hotel shall be deemed to have been partially damaged if it is damaged by fire or other casualty and the estimated cost of Restoration does not exceed fifty percent (50%) of the cost of replacing the Hotel as set forth above.

(b) In the event Owner terminates this Agreement by reason of such damage or destruction, Owner shall, contemporaneously with the giving of notice of such termination and as a condition (which may be waived by Manager without releasing Owner from the liability to make such payment) to the effectiveness of such termination, pay to Manager the applicable Termination Fee.



(c) In the event of (i) any damage to the Hotel by fire or other casualty which does not amount to "substantial damage" as described in subsection (a) above, or (ii) the total destruction of or substantial damage to the Hotel and the failure of either party to terminate this Agreement pursuant to subsection (a) above, then this Agreement shall not terminate, and Owner shall, at its own expense and in accordance with plans and specifications therefor developed by Owner and approved by Manager (which approval shall not be unreasonably withheld or delayed), promptly commence and expeditiously complete the Restoration and all proceeds of property and casualty insurance shall be made available to Owner for this purpose; provided, however, that Manager shall have the right to ensure that such proceeds of insurance shall be applied to the Restoration. Owner shall promptly commence and diligently pursue the Restoration to completion; provided, however, that if Owner shall not fully complete the Restoration within a reasonable period of time after the date of such casualty or eighteen (18) months, whichever is earlier (or such longer period as Manager may approve), then Manager shall have the right to terminate this Agreement upon thirty (30) days' prior written notice to Owner, whereupon Owner shall, within ten (10) days following such notice and as a condition (which may be waived by Manager without releasing Owner from the liability to make such payment) to the effectiveness of such termination, pay to Manager the applicable Termination Fee.

(d) Manager's monthly compensation following damage to the Hotel until the Restoration with respect to such damage is completed shall in no event be less than fifty percent (50%) of the Average Monthly Management Fee at the time the damage occurs.

## **Section 9.2** Condemnation.

(a) If all or a substantial portion of the Hotel shall be taken by Condemnation (other than for temporary use), this Agreement shall terminate as of the date of such taking. A substantial portion of the Hotel shall be deemed taken if in the reasonable opinion of Manager or Owner the part not taken may not be repaired, restored, replaced, rebuilt or utilized so as to constitute a hotel facility in keeping with this Agreement. If this Agreement shall terminate pursuant to the foregoing provisions of this Section, (i) the Condemnation award, after payment of all sums due and payable to any Mortgagee, shall be paid to Owner as its property, provided, however, that Manager may make a separate and distinct claim against the condemning authority for the value of the loss of its interest in this Agreement, and (ii) Owner shall, within ten (10) days following such termination and as a condition (which may be waived by Manager without releasing Owner from the liability to make such payment) to the effectiveness thereof, pay to Manager the applicable Termination Fee. Provided Owner pays the applicable Termination Fee, Manager shall remit to Owner any amount received by it pursuant to any claim it pursues in accordance with clause (i) above.

(b) If a portion of the Hotel shall be taken by Condemnation and this Agreement is not terminated pursuant to subsection (a) above, the Condemnation award relating to damage to or the taking of the Hotel, including any interest thereon, shall be made available to Owner for application to the Restoration of the Hotel made necessary by such taking (provided, however, that Manager shall have the right to ensure that such Condemnation award, together with interest thereon, shall be applied to the Restoration). Such Restoration shall be promptly commenced and expeditiously completed by, and at the expense of, Owner in

accordance with plans and specifications therefor developed by Owner and approved by Manager (which approval shall not be unreasonably withheld or delayed) so as to restore the Hotel as nearly as possible to its value, condition and character immediately prior to the Condemnation.

(c) In the event of a Condemnation of all or part of the Hotel for temporary use, this Agreement shall remain in full force and effect, and the following shall be applicable:

(1) If the Condemnation is for a period not extending beyond the Term, the Condemnation award, including any interest, shall be included in Gross Revenues for the Operating Year or Years in which received. When and if during the Term the period of temporary use shall terminate, Owner shall, at its own expense, after the approval of plans and specifications by Manager, promptly commence and expeditiously complete the Restoration necessary to restore the Hotel to its condition prior to the Condemnation for temporary use; or

(2) If the Condemnation is for a period extending beyond the Term, that portion of the Condemnation award which is attributable to the period up to the expiration of the Term shall be included in Gross Revenues for the Operating Year or Operating Years in which received. The remainder of the Condemnation award shall be paid to Owner as its property.

(d) Manager's monthly compensation following a Condemnation until the Restoration with respect to such Condemnation is completed or during any period of Condemnation for temporary use shall in no event be less than fifty percent (50%) of the Average Monthly Management Fee at the time the Condemnation occurs.

## **ARTICLE 10 ASSIGNMENT**

**Section 10.1** Assignment by Manager. Manager shall not assign or hypothecate its rights and obligations under this Agreement without the prior written consent of Owner, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Manager shall have the right, without the consent of Owner, to assign its interest in this Agreement to (i) any Affiliate of Manager having full right, power and authority to provide to Owner all services and organizational expertise (including applicable trademarks, service marks and marketing services) which Manager is required to provide hereunder, or (ii) any assignee who also acquires all, or substantially all, of the assets of Manager and assumes its obligations hereunder, provided, in each of clauses (i) and (ii), that such assignee is financially responsible, reputable for integrity, honesty and veracity, experienced in managing hotels that are operated similar to the Operating Standards and capable of performing the duties of Manager hereunder and has the qualifications to manage under the brand a Cambria Hotel by Choice (or any successor brand). In such latter event, Manager's liability hereunder shall terminate upon such assignment, but in the event of such an assignment to an Affiliate of Manager, Manager shall continue to be liable under this Agreement to the same extent as though such assignment had not been made. Manager shall also have the right to assign its rights to receive payments hereunder as security for indebtedness or any other obligation.

**Section 10.2** Assignment by Owner.

(a) Except as otherwise expressly provided for herein, without the consent of Manager, Owner may sell, transfer or otherwise convey all or any part of the Hotel or Owner's interest therein ("Transfer"), provided that (i) the transferee takes the Hotel subject to this Agreement (unless this Agreement is terminated as permitted herein with the payment of a Termination Fee), and (ii) such transferee is financially capable of performing the duties of Owner hereunder. Without limiting the generality of the foregoing sentence, provided that the requirements of clauses (i) and (ii) immediately above are satisfied, Owner may Transfer the Hotel to any Affiliate of Owner at any time and without Manager's consent.

(b) Notwithstanding anything to the contrary set forth herein Owner shall have the right, without Manager's consent, to Transfer the entire Hotel in a bona fide, arm's length sale to an independent third party consummated at any time during the Term and to terminate this Agreement upon the closing of such Transfer with payment of applicable Termination Fee with Owner to provide Manager at least sixty (60) days' prior written notice of the closing of such sale and, if applicable, the exercise of such termination right. If Owner does not so exercise such termination right in connection with such a sale, then Owner shall promptly provide to Manager such information concerning the proposed transferee as Manager may reasonably request, and Manager shall have the right to terminate this Agreement, effective upon closing of such sale, upon written notice to Owner not more than fifteen (15) days after Owner has provided to Manager Owner's notice of such sale and such information concerning the proposed transferee as Manager may reasonably request; provided, however, that Manager shall have such right to terminate this Agreement only if such sale is one as to which Manager would have the right to withhold its consent pursuant to the criteria set forth in Section 10.2(c). Any notice of termination given pursuant to this Section 10.2(b) by Owner or Manager shall be deemed ineffective if such proposed Transfer thereafter is not consummated, and shall be effective only upon the closing of such Transfer. Not later than the effective date of any termination of this Agreement pursuant to this Section 10.2(b), and as a condition (which may be waived by Manager without releasing Owner from the liability to make such payment) to the effectiveness of any such termination, Owner shall pay to Manager any applicable Termination Fee.

(c) With respect to any Transfer requiring the consent of Manager, Manager agrees that it will not use its right to grant or withhold consent as a means to extract economic concessions from Owner. Instead, Manager agrees to make its decision based on its evaluation of whether the proposed transferee or assignee has adequate net worth timely to discharge all of the obligations of Owner under this Agreement and whether the persons identified with the proposed transferee or assignee will be persons with a reputation for integrity, honesty and veracity and whether a proposed Transfer will materially adversely affect Ownership, operation and management of the Hotel subject to and in accordance with the provisions of this Agreement. In addition, Manager may consider whether the proposed transferee is, or is affiliated with, another hotel manager or franchisor. Accordingly, for any Transfer that requires Manager's consent hereunder, Manager shall grant or withhold consent to any proposed Transfer on the basis of Manager's evaluations and determinations of the factors enumerated in the preceding sentences.

(d) Provided that this Agreement is not being terminated in accordance with the terms hereof in connection with a Transfer, any transferee or assignee by reason of any such Transfer shall assume and agree to perform all of Owner's duties, obligations and liabilities herein contained pursuant to a written instrument in form and substance satisfactory to Manager and reflecting any amendments to this Agreement reasonably necessary in order to preserve and protect Manager's rights hereunder in light of the change in ownership (but without any change to the economic or liability terms of this Agreement).

(e) The sale or other disposition of greater than fifty percent (50%) of the beneficial interests in Owner (whether partnership interests, shares of stock or other beneficial interests), whether in a single transaction or in a series of transactions, shall be deemed to constitute the sale or disposition of an interest in the Hotel for purposes of this Article.

**Section 10.3** Binding Effect. Subject to the terms of this Article, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

## **ARTICLE 11 OWNER'S COVENANTS**

**Section 11.1** Subordination. The Manager shall enter into a subordination non-disturbance and attornment agreement ("SNDA") that has a reasonable non-disturbance provision, as requested by any Mortgagee secured by the Hotel, and in all events, the Manager shall enter into an SNDA required by a national statistical rating agency, including without limitation, Moody's Investor Services, Standard and Poor's, and Fitch Rating, Ltd.; provided, however, that (i) Manager shall not be obligated to waive or forbear from receiving, on a current basis and as and when due under this Agreement, any and all fees due to it under this Agreement prior to an event of default and any such SNDA, and (ii) Manager shall not be obligated to waive, or to forbear from exercising (unless and to the extent the Manager receives adequate assurance, in Manager's good faith business judgment, that it will be paid or reimbursed for any and all amounts due to Manager under this Agreement during the period of any such forbearance, which period will not exceed sixty (60) days in any event) any right it may have to terminate this Agreement. The provisions of this Section 11.1 shall be self operative but Manager agrees to execute and deliver promptly any document or certificate containing such other terms as may be customary and reasonable confirming such SNDA as Owner or holder of any such lien may reasonably request.

**Section 11.2** Estoppel Certificates. Manager agrees, at any time and from time to time, upon not less than fifteen (15) days' prior notice by Owner or any Mortgagee, to execute, acknowledge and deliver to Owner or such Mortgagee a statement in writing 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) and stating whether or not there exists any default by either Manager or, to the best of Manager's knowledge, Owner, under this Agreement, the Franchise Agreement, the Ground Lease, the Senior Debt (or any Mortgage and related loan documents for a refinancing thereof) or the Subordinated Debt. Upon similar notice, Manager shall be entitled to a similar certificate from Owner.

**ARTICLE 12**  
**DEFAULT AND TERMINATION**

**Section 12.1** Events of Default. **(a)** The following shall constitute “Events of Default” by Manager or Owner, as applicable:

(1) The filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by such party;

(2) The consent to an involuntary petition in bankruptcy or the failure to vacate within thirty (30) days after the date of entry thereof any order approving an involuntary petition by such party;

(3) The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating such party as bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of such party’s assets, and such order, judgment or decree shall continue unstayed and in effect for thirty (30) days after its entry;

(4) The appointment of a receiver or trustee for all or any substantial portion of the property of such party and the order, judgment or decree appointing any such receiver or trustee shall continue unstayed and in effect for thirty (30) days after its entry;

(5) The liquidation, termination or dissolution of such party, or the death or legal incapacity of all of the key principals of either party;

(6) Any representation or warranty made in this Agreement by such party shall be false or misleading in any material respect on the date as of which it is made or deemed made;

(7) The failure of such party to make any payment or provide funds to or on behalf of the other party in accordance with the terms hereof and the continuation of such failure for five (5) days after the date of delivery of written notice from the other party that such payment was not received when due; or the failure of such party to perform, keep or fulfill any of the other covenants, undertakings, obligations or conditions set forth in this Agreement, and the continuance of such failure for a period of thirty (30) days after written notice is given by the other party specifying said failure; provided, however, that in the event such failure is of a nature that it can be cured, but cannot, with due diligence, be cured within thirty (30) days, it shall not constitute an Event of Default unless the defaulting party fails to proceed promptly and with due diligence to cure the same, it being the intention of the parties that with respect to a failure that is susceptible of being cured but not susceptible of being cured within thirty (30) days, the time of such defaulting party within which to cure the same shall be extended for such period (not to exceed sixty (60) additional days) as may be necessary for the curing thereof with the exercise of due diligence.

**(b)** Upon the occurrence of any Event of Default, in addition to and cumulative of any and all rights and remedies available to the non-defaulting party under this Agreement, at law or in equity, the non-defaulting party may give to the defaulting party notice of intention to

terminate this Agreement, whereupon this Agreement shall terminate upon the expiration of thirty (30) days after the giving of such notice (without any additional cure right). In addition to and cumulative of the foregoing, upon the occurrence of any Event of Default on the part of Owner, all earned Management Fees, the Termination Fee (which shall not be payable if termination is the result of a Manager Event of Default) and all other sums payable to Manager under this Agreement shall be immediately due and payable without notice.

**Section 12.2 Default Interest.** If either party hereto shall commit a monetary Event of Default with respect to other party, then such defaulting party shall, without notice or demand, be liable to the non-defaulting party from and after the date of such monetary Event of Default for the payment of all such sums together with interest thereon at a rate equal to the lesser of: (i) prime plus five percent (5%) per annum; or (ii) the highest rate allowed by law. The terms and provisions of this Section shall survive any termination of this Agreement for any reason whatsoever (including the expiration of the Term) and shall continue until all such amounts, together with interest thereon, are paid in full.

**Section 12.3 Special Right of Owner to Terminate.** In addition and without prejudice to any other right that Owner may have to terminate this Agreement under any other provision of this Agreement, Owner shall have the right to terminate this Agreement following the third full twelve month period of opening without payment of any Termination Fee or other fee if, for a reason other than Force Majeure or any act or omission of Owner which causes the Manager to fail to satisfy the Performance Test, (i) the actual Gross Operating Profit is less than ninety percent (90%) of the Forecasted Gross Operating Profit, for any consecutive twelve month period, and (ii) the RevPAR for the Hotel for the same consecutive twelve month period, falls below the ninety percent (90%) of the average RevPAR for the same period of the Competitive Set (the "Performance Test"). In order to exercise the termination right contained in this Section 12.3, Owner shall provide not less than sixty (60) days written notice to Manager and shall pay the Management Fee and any and all other sums due and payable to Manager under this Agreement on or prior to the effective date of termination. In such event, the provisions of Section 12.6 shall apply.

(b) Provided that no Owner Event of Default then exists under this Agreement, and provided that Owner has paid all fees and amounts due and payable to Manager as of the effective date of such termination, Owner may at any time, without any reason, terminate this Agreement by providing not less than sixty (60) days written notice to Manager, accompanied by the applicable Termination Fee. In such event, the provisions of Section 12.6 shall apply.

**Section 12.4 Special Right of Manager to Terminate.** In addition and without prejudice to any other right Manager may have to terminate this Agreement under any other provision of this Agreement, Manager shall have the right to terminate this Agreement upon the occurrence of the following event:

(a) Any Governmental Permit required to be maintained by Owner for the operation of the Hotel, including without limitation any certificate of occupancy or restaurant or liquor license, shall at any time be suspended, terminated or revoked and such suspension, termination or revocation is not due to the fault of Manager and shall continue for a period of thirty (30) days following Manager's delivery of written notice to Owner, unless such

suspension, termination or revocation is subject to cure within such period by reasonable efforts on the part of Manager and Manager fails to take such action.

In the event that Manager elects to terminate this Agreement pursuant to this Section 12.4, Manager shall give Owner written notice of such election whereupon this Agreement shall terminate as of the date set forth in any such notice of termination, which date shall be not less than thirty (30) days after the date such notice is given.

**Section 12.5 Termination of Employees.** In connection with any termination of this Agreement, Manager shall, unless otherwise requested in writing by Owner, give notice of termination of employment to all Hotel employees containing such information as is required by any severance policy applicable to such employees and the provisions of any applicable federal or state plant closing or similar laws. The notice to employees shall be given within ten (10) days after notice of termination is given. Owner shall bear the severance and related costs of terminating such employees, including, but not limited to, any costs under any applicable federal or state plant closing or similar laws; provided, however, that, at Owner's written request to Manager, such termination shall be delayed until the applicable notice period under any applicable federal or state plant closing or similar laws has expired.

**Section 12.6 Responsibilities Upon Termination.** If this Agreement is terminated or is deemed to have been terminated pursuant to the provisions hereof, the following provisions shall apply:

(a) all amounts due and owing between the parties under this Agreement accrued to the date of termination shall become immediately due and payable;

(b) Manager shall assign to Owner all contracts, leases and other instruments as may be in Manager's name relating to the operation of the Hotel and shall use reasonable efforts to obtain all consents necessary therefor;

(c) Manager shall transfer to Owner all of Owner's books and records respecting the Hotel in the custody and control of Manager, in both paper and electronic format, so as to ensure the orderly continuance of the operation of the Hotel, but such books and records shall thereafter be available to Manager as reasonably necessary at all reasonable times for inspection, audit, examination and transcription, at Manager's sole cost, for a period of two years;

(d) Manager shall, to the extent permitted by Legal Requirements, assign and transfer to Owner or Owner's designee Manager's right, title and interest (if any) in and to all liquor and all liquor, restaurant and other Governmental Permits (if any) used by Manager in the operation of the Hotel, and shall use reasonable efforts to obtain all consents necessary therefor. To the extent necessary and permitted under Legal Requirements, during any period necessary to transfer any such Governmental Permits to Owner or Owner's designee, Manager shall reasonably cooperate, at no cost to Manager, to permit the operations subject to such Governmental Permits to continue under Manager's licenses or approvals, by way of example, through a liquor lease;

(e) Manager shall provide to Owner a copy of all data and information (including guest preferences) relating to the operation of the Hotel during the 12 months immediately preceding the Termination Date;

(f) Manager shall send a written notice to guests in the Hotel who have safe deposit boxes, advising them of the termination and requesting the removal and verification of the contents thereof within three days after such date. Manager shall have a representative in the Hotel during such three day period for this purpose. Boxes of guests not responding to such written notice shall be listed at the end of such three day period and such boxes shall be opened in the presence of representatives of Owner and Manager and the contents recorded. Manager shall remain responsible for any claims pertaining to property allegedly deposited in such safe deposit boxes before the date of termination of this Agreement and not recovered by the guests or delivered to Owner;

(g) Manager shall peaceably and quietly surrender and deliver up to Owner possession of the Hotel; and

(h) upon the payment to Manager of all amounts due to Manager hereunder, all remaining amounts in the Depository and Payroll Accounts shall be transferred to Owner.

(i) This Section 12.6 shall survive termination of this Agreement.

## ARTICLE 13 MISCELLANEOUS

**Section 13.1** Use of Names. During the Term of this Agreement, subject to the other provisions of this Section 13.1, the Hotel shall at all times be known and designated under such name as Owner and Manager may agree. Initially, the Hotel shall be known as the “Cambria Hotel Napa” Upon the termination of this Agreement, such portion of the Hotel name which does not contain the word “Cambria” shall continue to be the property of Owner. Owner further agrees that it shall obtain no rights to the names, trade names, trademarks and service marks “Cambria Hotel Napa” or any derivation of the same (unless the Franchise Agreement remains in full force and effect, in which case Owner’s use of such name shall continue to be governed by the Franchise Agreement) or “Azul.” Accordingly, Owner agrees that no right or remedy of Owner for any default of Manager or delivery of possession of the Hotel to Owner upon the expiration or sooner termination of this Agreement, shall confer, nor shall any provisions of this Agreement confer, upon Owner or any person acquiring an interest in Owner or the Hotel, the right to use the trade names, trademarks and service marks “Cambria Hotel Napa” or “Azul” or any derivation of the same (or any successor brand name or names for either of such brands), either alone or in conjunction with some other emblem, design, slogan, word or words, or any other name, tradename, trademark or service mark owned in whole or in part by Manager or any of its Affiliates, either alone or in conjunction with some other design, emblem, slogan, words or words, in the use and operation of the Hotel or any other property. In the event of any Event of Default based upon this covenant by Owner, then Manager shall be entitled to damages, relief by injunction and to any other right or remedy at law or equity. Upon the expiration or sooner termination of this Agreement, Manager shall purchase from Owner any Operating Equipment, Inventories and other supplies bearing any name, trade name, trademark, service mark, design, emblem or slogan



owned by Manager or an Affiliate of Manager, or by Franchisor (unless the Franchise Agreement remains in full force and effect, in which case the Franchise Agreement shall continue to govern) which is the subject of this Section at a cash purchase price equal to the cost thereof as reflected on the books and records of the Hotel. The provisions of this Section shall survive the expiration or sooner termination of this Agreement and shall be binding upon Owner, its successors and assigns.

**Section 13.2** Limitations on Manager's or Owner's Ability to Perform. Notwithstanding any other provision in this Agreement to the contrary, each of Owner and Manager shall be excused from the performance of its obligations under this Agreement (i) to the extent and whenever performance shall be prevented from such compliance by Force Majeure, (ii) to the extent of any Event of Default by the other party of any provision of this Agreement, including but not limited to an Event of Default by Owner for failure to perform any of its obligations under Section 3.3 and Section 3.4 of this Agreement. The provisions of this Section shall operate without prejudice to any other remedy, which Manager or Owner, as applicable, may have under the terms of this Agreement.

**Section 13.3** Negation of Partnership or Joint Venture. Nothing in this Agreement shall constitute or be construed to constitute or create a partnership, joint venture or lease between Owner and Manager with respect to the Hotel.

**Section 13.4** Right to Make Agreement. Each party warrants and represents, with respect to itself, that the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action (as the case may be) and are legal, valid and binding obligations of such party, enforceable in accordance with the terms hereof; and that neither the execution of this Agreement nor performance of the obligations contemplated hereby shall violate any Legal Requirement, result in or constitute a breach or default under any indenture, contract or other commitment or restriction to which it is a party or by which it is bound, or require any consent, vote or approval which has not been obtained, or at the appropriate time shall not have been given or obtained. Each party covenants that it has and will continue to have throughout the Term full right and authority to enter into this Agreement and to perform its obligations hereunder and each party agrees to supply to the other party upon request evidence of such right and authority.

**Section 13.5** Further Assurances. Each party hereto will execute and acknowledge any and all agreements, contracts, leases, licenses, applications, verifications and such other additional instruments as may be requested by the other party hereto in order to carry out the intent of this Agreement and to perfect or give further assurances of any of the rights granted or provided for herein.

**Section 13.6** Approvals by Manager. Owner and Manager agree that whenever Manager is required to give its approval, if any, of plans, specifications, budgets, drawings, schedules or financing, pursuant to this Agreement or otherwise, such approval shall not imply or be deemed to constitute an opinion by Manager nor impose upon Manager any responsibility for the design or construction of the Hotel or any part thereof, including but not limited to its structural integrity and/or life safety requirements, compliance with Legal Requirements, or the adequacy of any such budgets or financing. All reviews and approvals by Manager under the terms of this Agreement

or otherwise are for the sole and exclusive benefit of Manager and no other person or party shall have the right to rely on any such reviews or approvals.

**Section 13.7 Third Party Beneficiaries.** This Agreement has been made and entered into for the sole protection and benefit of Manager and Owner and their respective successors and assigns (but in the case of assigns, so long as any such assignment has been made in accordance with this Agreement), and no other person or entity shall have any right or action under this Agreement, except as otherwise expressly provided in Section 8.4.

**Section 13.8 Notices.** All notices or other communications required or permitted hereunder shall be in writing and addressed as set forth below and either personally delivered, sent by overnight mail (Federal Express or the like), or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by e-mail or facsimile. Notice hereunder shall be deemed to have been properly given or served for all purposes and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice if delivered during ordinary business hours, or, if not, then the following business day; (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility; (iii) if mailed, on the third business day following the date of posting by the United States post office; or (iv) if given by e-mail or facsimile, when the sender receives a confirmation of receipt, if sent during ordinary business hours, or, if not, then the following business day. Any notice, request, demand, direction, or other communication sent by e-mail or facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing. All notices to be given to the parties hereto shall be sent to or delivered using the contact information set forth in this Agreement. Any of the parties may designate a change of address by Notice to the other parties. Whenever in this Agreement the giving of Notice is required, the giving of such Notice may be waived in writing by the person or persons entitled to receive such Notice.

**Section 13.9 Waiver.** No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be consent or waiver to or of any other breach or default by such party hereunder. Except as otherwise provided herein, failure on the part of any party hereto to complain of any act or failure to act by the other party or to declare the other party's Event of Default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

**Section 13.10 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall be construed as a single instrument. Such counterparts may be delivered by facsimile copy or by an e-mailed PDF file.

**Section 13.11 Captions.** The captions used for the Articles and Sections in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement or any Article or Section hereof.

**Section 13.12 Gender.** Unless the context clearly indicates to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having a neuter, masculine or feminine gender shall be deemed to include the others. The term "person" shall be deemed to

include an individual, corporation, partnership, trust, unincorporated organization, government and governmental agency or subdivision, as the context shall require.

**Section 13.13 Unenforceable Provisions.** In the event any provision of this Agreement is declared or adjudged to be unenforceable or unlawful by any Governmental Authority, then such unenforceable or unlawful provision shall be excised herefrom, and the remainder of this Agreement, together with all rights and remedies granted thereby, shall continue and remain in full force and effect.

**Section 13.14 Cumulative Remedies.** All rights, powers, remedies, benefits and privileges available under any provision of this Agreement to any party hereunder are in addition to and cumulative of any and all rights, powers, remedies, benefits and privileges available to such party under all other provisions of this Agreement, at law or in equity.

**Section 13.15 Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby. All prior negotiations, representations and agreements with respect thereto not incorporated in this Agreement are hereby canceled. This Agreement can be modified or amended only by a written document duly executed by the parties hereto or their duly appointed representatives.

**Section 13.16 Governing Law.** This Agreement shall be governed by and construed under the laws of the state of California.

**Section 13.17 Exhibits.** Exhibits referred to in this Agreement, if any, and attached hereto are incorporated herein in full by this reference as if each of such exhibits were set forth in the body of this Agreement and duly executed by the parties hereto.

**Section 13.18 Confidentiality.** Owner agrees not to disclose the terms or conditions of this Agreement to any person other than a Permitted Person (as hereinafter defined); provided, however, that the restrictions of this Section 13.18 shall not apply to any information required to be disclosed by Legal Requirements or to information that becomes public other than by virtue of a breach of this Section. For purposes of this Section, the term “Permitted Person” shall mean (i) the partners, shareholders, directors, officers and employees, or potential partners, shareholders, directors, officers and employees, of Owner, (ii) accountants, attorneys, consultants and other professionals engaged to render services in connection with the Hotel and (iii) lenders and potential lenders to, and potential purchasers of, the Hotel. Permitted Persons shall be informed of the confidential nature of the information disclosed to them and shall be required to agree to act in accordance with the provisions of this Section 13.18 with respect to such information.

**Section 13.19 Alternate Dispute Resolution.**

(a) **Arbitration Required.** Except where a different method for resolving disputes between the parties is expressly set forth in this Agreement, the parties agree for themselves, and each of their respective parent companies, subsidiaries, equity owners and guarantors, and each their respective Affiliates, and each of the shareholders, trustees, beneficiaries, directors, officers, employees or agents of any of the foregoing, that all controversies, disputes, or claims arising from or relating to this Agreement (including the performance or non-performance of any obligations set forth herein or the relationship of the

Parties hereunder) shall be subject to, and resolved in accordance with, this Section 13.19. (For the purposes of this Section 13.19, the term “Party” shall refer to each of the Persons referenced in this Section 13.19(a)).

**(b) Arbitration Procedures.** Any controversy, dispute or claim between the Parties shall be submitted to final and binding arbitration in the City and County of San Diego, California upon demand by a Party by providing notice to the other Party. The arbitration shall be submitted to binding arbitration under the rules of JAMS, Inc., as they exist as of the date of such controversy, dispute or claim, or any successor thereto. The initiating Party shall file and serve its statement of claims concurrently with its delivery of an arbitration notice to the other Party. Within 20 days after the filing and service of the statement of claims, the Party against whom such claims have been asserted shall file and serve an answering statement. If a reply to the answering statement is necessary, the other Party shall file and serve such reply within 10 days after receipt of the answering statement. Each Party shall submit any claim that would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same arbitration proceeding as the claim to which it relates and any such claim that is not so submitted shall be barred. The Parties shall use good faith efforts to attempt to agree on a panel of three arbitrators, and if the Parties are unable to reach agreement within 30 days after the filing and service of all the Parties’ respective pleadings, then JAMS shall appoint the arbitrators in accordance with the Arbitration Rules. The hearing of the arbitration shall be conducted in the City of San Diego, California and shall commence within six months after the initiation of the arbitration proceeding. The Parties acknowledge that the Arbitrator(s)’ subpoena power is not subject to geographic limitations. The award and decision of the Arbitrator(s) shall be conclusive and binding on all Parties, and not subject to appeal, and judgment upon the award may be entered in any court of competent jurisdiction. Any right to contest the validity or enforceability of the award shall be governed exclusively by the California Code of Civil Procedure Section 1280 et. seq. or any successor law. Any such arbitration shall apply California law (without regard to conflict of law principles), and the Parties shall have the discovery rights set forth in California Code of Civil Procedure.

**(c) Arbitration Not Required for Certain Disputes.** Notwithstanding anything to the contrary in this Section 13.19, the Parties shall have the right to commence litigation or other legal proceedings with respect to any claims (a) relating to the preservation or protection of Confidential Information or Manager’s Tradenames, (b) relating to the enforcement of this Section 13.19, (c) to commence legal proceedings seeking such mandatory, declaratory or injunctive relief as may be necessary to define or protect the rights and enforce the obligations contained herein pending the settlement of such claim in accordance with the arbitration procedures set forth in this Section 13.19, (d) to commence legal proceedings involving the enforcement of an arbitration decision or award arising out of this Agreement, or (e) join any arbitration proceeding arising out of this Agreement with any other arbitration proceeding arising out of this Agreement.

**(d) Time Period for Claim.** Except as otherwise prohibited or limited by Legal Requirements, any failure or delay of a Party in asserting a claim arising from or relating to this Agreement shall constitute a waiver of such claim and shall preclude the enforcement of any legal or equitable remedy with respect to such claim, unless written notice specifying such a claim is provided to the other Party within 24 months after the later of: (a) the date such claim

arose; or (b) the date on which the facts giving rise to such a claim were first known (or reasonably should have been known). Nothing in this Section 13.19 shall be deemed to extend or toll any applicable statute of limitations.

(e) Prevailing Party's Expenses. The Prevailing Party in any arbitration, litigation or other legal proceeding arising out of or relating to this Agreement shall be entitled to recover from the losing Party all reasonable fees, costs and expenses for attorneys, experts and other third parties (including its share of the JAMS fees and costs) incurred by the prevailing Party in connection with such arbitration, litigation or other legal proceeding (including any appeals and actions to enforce any arbitration awards and court judgments). If a Party prevails on some, but not all, of its claims, such Party shall be entitled to recover an equitable amount of such fees, costs and expenses, as determined by the applicable Arbitrator(s) or court.

(f) Jurisdiction and Venue. Owner and Manager irrevocably submit to the exclusive jurisdiction and venue of the Federal and State courts located in the City of San Diego, California of in any litigation or other legal proceeding, arising out of or relating to this Agreement or any other dispute between the Parties that is not subject to arbitration under this Section 13.19, and Owner and Manager irrevocably agree that all claims in respect of any such litigation, proceeding must be brought and/or defended in the Federal or State courts located in the City of San Diego, California. No Party may raise the defense that such venue is not a convenient forum for such litigation or other legal proceeding. Owner and Manager agree that service of process for purposes of any such litigation or legal proceeding need not be personally served or served within the State of California, but may be served with the same effect as if Owner or Manager were served within the State of California, by certified mail or any other means permitted by Legal Requirements addressed to Owner or Manager, as applicable, at the address set forth herein.

(g) Special Provisions for Resolution of Disputes Concerning the Annual Plan. Notwithstanding any provision of this Section 13.19 to the contrary, with respect to any dispute concerning the approval of the Annual Plan, the arbitrator shall conduct the related arbitration hearings with a view to completing the same within thirty (30) days after the commencement of such hearings and shall rule thereon by issuing a written opinion within ten (10) days after the close of such hearings.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

Address: c/o Stratus  
Development  
Partners, LLC  
17 Corporate Plaza  
Drive, Suite 200  
Newport Beach, CA  
92660  
Phone: (949) 422-6231  
Fax:  
e-mail: awood@stratusdev.com

“Owner”  
70 East Avenue Austin, LLC  
a Delaware limited liability company  
By: Stratus Development Partners, LLC,  
a California limited liability company  
Its Managing Member

By:   
\_\_\_\_\_  
Andrew Wood  
Managing Member

Address: 800 West Ivy, Suite D  
San Diego, CA 92101  
Phone: 619-223-4200  
Fax: 888-252-6015  
e-mail: rmansur@azulhg.com

“Manager”  
Azul Hospitality – North Bay, LLC, a California  
limited liability company

By:   
\_\_\_\_\_  
Richard Mansur,  
Manager

**Schedule 1.1 (Comp Set)**

**To Be Mutually Determined By Owner and Manager Within 6-Months Prior To Opening**

**EXHIBIT "A"**

Legal Description of the Site

LOTS 3, 4, AND 5, BLOCK 1, OF DRISKILL'S & RAINEY'S SUBDIVISION OF PART OF  
OUTLOT NOS. 72 AND 73 DIVISION "E," AUSTIN TEXAS, KNOWN AS "SOUTH EAST  
END" ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 1, PAGE 22,  
OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.

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**EXHIBIT "B"**

**UNIFORM SYSTEM OF ACCOUNTS**

**SUMMARY OPERATING STATEMENT [FOR OPERATORS]**

Rooms Available

Rooms Sold

Occupancy

ADR

Rooms RevPAR

Total RevPAR

**Operating Revenue**

Rooms

Food & Beverage

Other Operated Departments

Miscellaneous Income

**Total Operating Revenue**

**Departmental Expenses**

Rooms

Food & Beverage

Other Operated Departments

**Total Departmental Expenses**

**Total Departmental Profit**

**Undistributed Operating Expenses**

Administrative and General

Information and Telecommunications Systems

Sales and Marketing

Property Operation and Maintenance

Utilities

**Total Undistributed Expenses**

**Gross Operating Profit**

**Management Fees**

**Income Before Non-Operating Income and Expenses**

**Non-Operating Income and Expenses**

Income

Rent

Property and Other Taxes

Insurance

Other

**Total Non-Operating Income and Expenses**

**Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA)**

**Replacement Reserves**

**EBITDA Less Replacement Reserves**

**EXHIBIT “C”**

**PREOPENING AND TECHNICAL SERVICES EXHIBIT**

**ARTICLE 1  
DEFINITIONS**

**Section 1.1**    Definitions

Capitalized terms used without definition in this Exhibit shall have the meanings given to such terms in the Management Agreement to which it is attached (the “HMA”). In addition, the following terms shall have the meanings set forth below (and any of the following terms that is given a different definition in the HMA and this Exhibit shall be construed in accordance with the meaning set forth in the agreement or exhibit in which such term is used):

(a) Architect - the principal architect engaged by Owner to provide architectural design services with respect to the Hotel.

(b) Commencement of Construction - the commencement of either grading or the construction of the Hotel’s foundation.

(c) Construction Budget – shall have the meaning given to such term in Section 5.9 of this Exhibit.

(d) Interior Designer - the principal interior design architect engaged by Owner to provide interior architectural design services with respect to the Hotel.

(e) Opening Date - the date the Hotel opens for business to the general public, which shall be a date mutually determined by Owner and Manager (the “Parties”, and each a “Party”) based upon their determination that the Hotel can be operated in accordance with the Operating Standards. Upon the request of either Party, the Parties shall confirm the actual Opening Date in writing following its occurrence.

(f) Opening Inventory - shall mean any goods and merchandise to be purchased by Owner and used for retail sale in the ordinary course of business in any gift shop, retail concession or food and beverage outlet operated within the Hotel.

(g) Plans and Specifications - means all plans and specifications for the construction of the Hotel as defined in Section 4.2 of this Exhibit, as developed in consultation with Manager.

(h) Preopening Expenses - the collective reference to all Preopening Personnel Costs, payments made by Manager or its Affiliates, employees, or consultants to third parties for goods and services in connection with the Hotel, consultants’ fees and costs, and any other out-of-

pocket-expenses (without profit or mark-up) incurred by Manager in connection with its performance of the Preopening Services.

(i) Preopening Period - the time period extending from the date of the HMA until the Opening Date.

(j) Preopening Personnel - Hotel employees employed at the Hotel during the Preopening Period.

(k) Preopening Personnel Costs - with respect to Preopening Personnel, those costs that would be classified as Reimbursable Expenses related to Hotel employee pursuant to Article 4 of the HMA, treating all Preopening Personnel as if they were Hotel employees for the Preopening Period.

(l) Preopening Plan - the preopening plan and budget described in Section 3.1 of this Exhibit.

(m) Preopening Services - the services to be performed by Manager and its Affiliates pursuant to Article 3 of this Exhibit.

(n) Technical Services - the services to be performed by Manager and its Affiliates pursuant to Article 4 of this Exhibit.

(o) Technical Services Expenses - all out-of-pocket expenses (without profit or mark-up) incurred by Manager or its Affiliates in connection with the performance of the Technical Services, to the extent consistent with a budget for such expenses set forth in the Preopening Plan or as otherwise approved in writing by Owner.

## **ARTICLE 2**

### **TERM/EARLY TERMINATION**

#### **Section 2.1** Term.

This Schedule shall become effective upon the date of the execution of the HMA and shall continue in full force and effect, unless earlier terminated as provided herein, until all Preopening Services and Technical Services have been performed and paid for in accordance with the provisions of this Schedule.

#### **Section 2.2** Termination Prior to the Opening Date.

(a) Subject in each case to Force Majeure, if the Opening Date of the Hotel shall not have occurred by June 1, 2022 for any reason other than the material breach of obligations under this Agreement or any other provisions of the HMA by Manager, Manager shall have the right to terminate the HMA by notice given to Owner not later than ten (10) days following the applicable date (and in any event prior to the Opening Date) and the HMA (including, without limitation, the rights and obligations of the Parties set forth in this Exhibit) shall be deemed terminated upon Owner's receipt of such notice. If the Parties agree to a revised

Opening Date, Manager shall again have the right to terminate the HMA upon notice to Owner if the conditions precedent to the Opening Date have not occurred by the revised Opening Date.

(b) Upon any such termination of the HMA, Owner shall pay to Manager any then accrued Technical Services Expenses due Manager under this Exhibit, and Manager and Owner shall each perform its other termination obligations set forth in Section 12.7 of the HMA. Notwithstanding anything to the contrary contained herein, if Manager elects to terminate this Agreement and Owner thereafter opens the Hotel, then if Owner does not engage Manager to manage the Hotel, Owner shall pay the Termination Fee to Manager. The obligations of Owner hereunder shall survive the expiration or earlier termination of the HMA.

### **ARTICLE 3**

#### **PREOPENING SERVICES**

##### **Section 3.1** Preopening Plan.

(a) Within one hundred twenty (120) days prior to the proposed Opening Date, Manager shall prepare and deliver to Owner for review and approval a preliminary preopening plan and budget for the execution of activities necessary to open and operate the Hotel to the Standard (the “Preopening Plan”), including the following information:

(1) a preliminary budget and monthly expenditure chart for the Preopening Period, including all Preopening Expenses;

(2) an organization chart of job positions for all individuals, including all Preopening Personnel, who perform the services necessary or advisable to prepare the Hotel for the Opening Date;

(3) a preliminary staffing plan setting forth positions, timing of commencement of employment, and average compensation for Hotel employees as of and after the Opening Date;

(4) a preliminary cost estimate and outline (including an outline of the timing of the implementation) of the critical elements of the Preopening Marketing Plan described in Section 3.6 below;

(5) a description of the employee training programs to be implemented during the Preopening Period and the estimated cost of the programs; and

(6) a preliminary cost estimate for Opening Inventory and for initial cash reserves, including “house banks.”

(b) Within thirty (30) days following Manager’s submission of the Preopening Plan, Owner shall submit to Manager, in reasonable detail, its comments on the preliminary Preopening Plan. Owner and Manager shall work together to reach agreement on the Preopening Plan as soon as reasonably possible. Any dispute between Owner and Manager with respect to the Preopening Plan shall be resolved in the manner provided for resolution of

disputes respecting the Competitive Set by the Approved Consultant as set forth in the HMA. Consistent with the HMA, Owner shall not unreasonably withhold approval of any matter which is required in order to permit the Hotel to be constructed, equipped and operated in accordance with the Operating Standards.

**Section 3.2** Implementation of Preopening Plan.

From the date of approval of the Preopening Plan to the Opening Date, Manager shall perform the activities contemplated by the Preopening Plan. During this period, Manager shall be the representative of Owner and shall perform the duties contemplated in Article 3 of the HMA to the extent reasonably necessary to implement the Preopening Plan. Manager shall submit reports to Owner monthly during this period, on the fifteenth (15th) day of each calendar month, summarizing the results of implementation of the Preopening Plan during the calendar month just ended. The Parties agree that the Preopening Plan shall be updated from time to time during the Preopening Period, by mutual agreement of Owner and Manager, to reflect, among other things, new information and changes in the scope of the Hotel, labor or materials' costs or the Opening Date.

**Section 3.3** Preopening Personnel.

In connection with the Preopening Plan, Manager shall:

- (a) identify, appoint, assign, instruct, and supervise (subject to Owner's approval rights set forth in the HMA) such personnel as are necessary or advisable for the proper staffing and operating of the Hotel and as are contemplated by the approved Preopening Plan;
- (b) train all Hotel employees so that they will be able to perform their duties at the Hotel from and after the Opening Date in accordance with the provisions of the HMA; and
- (c) arrange for personnel from other Manager-operated Hotels to assist with the opening of the Hotel, if such assistance is required.

All decisions regarding employment during the Preopening Period, including the timing of hiring, and including training, compensation, bonuses, health and welfare benefits, other employee benefits, discipline, discharge and replacement, shall be governed by the provisions applicable to Hotel employees under the HMA, and shall be subject to the provisions of the Preopening Plan. As contemplated in the HMA, all Hotel employees shall be employees of Manager or an Affiliate thereof.

**Section 3.4** Initial Annual Plan.

Not less than sixty (60) days prior to the proposed Opening Date, Manager shall deliver to Owner a proposed Annual Plan of the Hotel's operation commencing from the Opening Date. The initial Annual Plan shall be in the form and contain the information required by the HMA, and shall be subject to Owner's approval in accordance with the provisions of the HMA. The Parties

acknowledge that the initial Annual Plan will cover the first Operating Year or portion thereof. Manager may, in Manager's preparation of the proposed Annual Plan for the second Operating Year under Section 6.1 of the HMA, incorporate appropriate portions of the initial Annual Plan prepared under this Section. Manager and Owner shall work together to reach agreement on the initial Annual Plan by the thirtieth (30th) day prior to the Opening Date. If the Parties, despite their good faith efforts, are unable to reach final agreement on the initial Annual Plan by the Opening Date, the matter(s) in dispute may be submitted by either Party to the dispute resolution procedures described in Section 13.19(g) of the HMA. Until the Parties are able to resolve the matter(s) in dispute, the proposed Annual Plan shall govern the areas in dispute.

**Section 3.5** Temporary Preopening Office Space.

At such times as are advisable in light of the construction and opening schedule for the Hotel, Manager shall, at Owner's expense, provide off-site Preopening Personnel with appropriate temporary office space (including provision of necessary power and equipment requirements to accommodate computer systems as well as normal mail, duplication, and administrative tasks) to enable such persons to perform the services required of Manager under this Exhibit during the Preopening Period.

**Section 3.6** Marketing.

Manager and its Affiliates shall develop a marketing plan for the promotion and marketing of the name and facilities of the Hotel both during the Preopening Period and for the balance of the fiscal year in which the Opening Date occurs (the "Preopening Marketing Plan"). The Preopening Marketing Plan shall include: the promotion of the sale of rooms, food and beverage services, and catering services at the Hotel; all communications activities; implementation of market research, sales program, reservations program, and a shared advertising program with other Manager-operated hotels meeting the Operating Standards (if mutually acceptable to Owner and Manager). Those portions of the Preopening Marketing Plan to be performed by Hotel employees shall be subject to Owner's approval and shall be performed by Manager and its Affiliates as part of the Preopening Services.

**ARTICLE 4**  
**TECHNICAL SERVICES**

**Section 4.1** Basic Design Assistance.

Manager shall provide assistance to Owner in the design of the Hotel by: (a) providing Owner with Manager's design brief and guidelines defining Manager's requirements for basic design and specifications consistent with the Operating Standards and the Franchise Agreement; (b) development of the Hotel's food and beverage concepts; (c) providing the interior design philosophy for the Hotel and assistance in the selection of design consultants for the Hotel; and (d) providing consultation and advice to Owner, the Architect, the Interior Designer and other design consultants concerning aesthetic and functional aspects of the Hotel.

## **Section 4.2** Document Review.

(a) Consistent with the provisions of Section 4.1 of this Exhibit, Owner shall prepare and deliver to Manager for Manager's consultation all proposed design plans and specifications (as finalized, the "Plans and Specifications") before adopting any such proposed design plans and specifications, including, without limitation: schematic design documents, design development documents, working drawings and construction documents, each prior to Owner's preparation of construction contract documents, including architectural drawings and mechanical, electrical and plumbing drawings; final construction contract documents; final working drawing and specifications; and shop drawings and/or submittals. Such shop drawings and/or submittals shall include, without limitation: (i) elevator panels; (ii) millwork requested by Manager; (iii) keying schedule; (iv) catalog cuts and shop drawings for fire/life safety systems, plumbing fixtures and toilet accessories; and (v) any contractor proposed substitutions or alternates. Manager shall review and approve all addenda, changes, modifications or additions to the approved Plans and Specifications for compliance with Manager's input provided under this Section.

(b) Within ten (10) business days after receipt by Manager of any part of the proposed Plans and Specifications as contemplated above, Manager shall deliver any suggestions or requests for revision to Owner for resubmittal within the time set forth in such comments. If Manager does not so respond within such 10-business day period, the submittal shall be deemed not to require Manager's consultation. Any resubmittal as contemplated above shall be subject to Manager's consultation on the same basis as an original submission, as set forth above.

## **Section 4.3** Architectural Space Planning.

Manager shall review and provide consultation on guest-room sizes and layouts, provide schematic space layouts for public and service areas of the Hotel, excluding lobbies, dining rooms, bars/lounges, retail shop spaces, public restrooms and mechanical/electrical rooms, review and provide consultation on layouts for public areas of the Hotel, review and provide consultation on allocation of mechanical/electrical rooms with regard to locations and size and provide the following information for integration by the Architect into the Plans and Specifications: (a) layouts to scale of administrative and service areas of the Hotel; (b) locations of furniture and equipment placement in administrative and service areas of the Hotel; (c) locations of electrical and communication terminals (e.g., wifi coverage, telephone and data outlets, sound and lighting controls); (d) elevations and details of service area and front desk essential casework; and the room mix chart. As required, Manager shall assist Owner, the Architect and the Interior Designer with the development of alternative layouts for guest rooms, meeting rooms and other public areas.

## **Section 4.4** Interior Design

Manager shall collaborate with the Interior Designer in the development of interior design concepts for the Hotel and shall ultimately review and provide consultation on final interior design documents and materials developed by Owner and the Interior Designer, including: (a) plans, elevations and details; (b) furniture, furnishings, and equipment selections; (c) materials, finishes, and colors; (d) type and location of public area lighting; and (e) specifications and quantity



schedules. Manager specifically shall review and approve Owner-provided final food and beverage preparation facilities layouts, including equipment floor plans, elevations and details and equipment selections.

**Section 4.5** Telecommunications and Computer Systems.

Manager shall prepare a telephone and data program identifying system operational requirements and the locations of all instruments and prepare a request for proposal for the installation of all telephone and data systems. Upon receipt of vendor proposals, Manager shall review the proposals for compliance with the Hotel's operational requirements and assist Owner in the coordination of the installation and final acceptance of all telephone and data systems. Manager will consult with Owner and supervise any computer consultants engaged in accordance with the Preopening Plan regarding the Hotel's computer systems, including software and hardware, that are to be installed in the Hotel to enable the Hotel to operate at the Operating Standards. Manager will review and approve recommended computer systems for compliance with the Hotel's operational requirements and coordinate installation and final acceptance of the computer system. As to both telecommunications and computer systems, Manager shall provide information necessary to meet the interface and other operational requirements for the reservation system and any other front-office systems to be utilized by Manager.

**Section 4.6** Hotel Cost Estimates.

Manager shall provide the following estimates of costs or services in connection with the Hotel: (a) a preliminary estimate for Operating Equipment on a per guest room or similar basis; and (b) a preliminary estimate of Preopening Expenses and other Preopening Plan items, including initial food and beverage inventories, "house banks," and initial operating cash requirements. In addition, Manager shall review and provide consultation to Owner for Owner-provided estimates for Hotel construction and related Hotel costs, including participation in "value engineering" activities.

**Section 4.7** Model Room Construction.

Manager shall review and provide consultation on the model room design and construction documentation prior to commencement of model room construction, shall assist Owner with specification, quantification and purchasing of Operating Equipment for the model room and shall review and approve model rooms upon completion.

**Section 4.8** Construction Observation/Deficiencies.

Manager shall visit the Hotel site at intervals appropriate to the stage of construction for observation of the progress and quality of the work and assistance regarding field problems and questions.. Manager shall participate with Owner, the Architect and the project engineers in developing and evaluating a punch-list of work to be corrected prior to final acceptance of the Hotel building. In any event, Owner shall prepare and deliver to Manager not later than thirty (30) days before the scheduled Opening Date, a listing of all deficiencies and construction work remaining uncorrected or incomplete (including, without limitation, "punch list" items), which list shall be subject to approval by Manager in Manager's reasonable discretion. Manager shall have

the right to add additional items to such list (whether or not made before or after the Opening Date). Owner shall cooperate with Manager to ensure that all such matters are completed within three (3) months following the Opening Date (if Owner is notified late of any specific item not included in such listing at the Opening Date, then, with respect to such items, three (3) months following such later date), provided that if such matters cannot be completed within such 3-month period, Owner shall commence such actions within such period and thereafter diligently prosecute such work to completion.

**Section 4.9** Schedules.

Manager shall review and comment on Owner-provided project schedule for the design and construction of the Hotel, and shall consult with Owner in establishing an occupancy schedule for Hotel facilities.

**Section 4.10** Operating Equipment and FF&E.

During the Preopening Period, Manager, will review and approve the specifications of all Operating Equipment and FF&E.

**ARTICLE 5**  
**OWNER'S RESPONSIBILITIES**

**Section 5.1** Construction of Hotel.

Owner agrees to construct, furnish and equip on the Site the Hotel in compliance with the Operating Standards and the Franchise Agreement, substantially in accordance with the final Plans and Specifications as provided in Section 4.2 of this Exhibit, in conformity with Legal Requirements, at Owner's own expense, and with all reasonable diligence. Subject to the provisions of Section 3.7 of this Exhibit, Owner agrees to furnish and install all FF&E and Operating Equipment necessary to furnish and equip the Hotel as required to meet the Operating Standards and requirements of the Franchise Agreement in accordance with the final Plans and Specifications. The Plans and Specifications for the Hotel shall be prepared by the Architect, who shall also be responsible for supervision and inspection of the construction.

**Section 5.2** Full Information.

On an ongoing basis during the course of the construction of the Hotel, Owner shall provide Manager with access to the information and technical materials available to Owner that are reasonably necessary or appropriate to enable Manager to perform the Technical Services and the Preopening Services.

**Section 5.3** Schedules and Progress Reports.

(a) Owner shall furnish Manager with time schedules and monthly progress reports for the design, construction and fitting out of the Hotel. Time schedules for the design, construction and fitting out of the Hotel shall be prepared in reasonable detail so as to delineate all major activities related to the design, construction, and fitting out of the Hotel. Owner shall

promptly update schedules as may be required from time to time to reflect the actual progress of the work and any change in conditions affecting the opening of the Hotel for business to the general public.

(b) Owner shall prepare and deliver to Manager monthly construction progress reports, in reasonable detail, outlining the progress of all major activities related to the design, construction, and fitting out of the Hotel. Each such monthly report shall be delivered to Manager by not later than the fifteenth (15th) day of the month following the month to which such report relates and shall include a summary of major construction activities completed in the previous month, labor union disputes or problems (if union labor is utilized), the status of significant tests and inspections, variations from accepted designs, deviations from the current project schedule, and major activities expected to be accomplished during the upcoming month.

**Section 5.4** Access to Site.

Owner shall afford (and shall cause the general contractor of the project to afford) all Preopening Personnel and all consultants engaged by Manager reasonable access to the construction site so that Manager may perform its duties under this Exhibit.

**Section 5.5** Insurance.

Owner shall provide and maintain for the Hotel at all times during the during the Preopening Period policies of insurance consistent with the requirements of the HMA to the extent applicable and otherwise as the Parties shall agree.

**Section 5.6** Model Room.

Prior to Commencement of Construction, Owner shall construct a model room or rooms at the Hotel site or at some other site mutually acceptable to Owner and Manager. The model room(s) shall be used for marketing purposes, to illustrate a typical guest-room concept, detail of construction and FF&E, and to provide a basis for Manager to visualize the typical guest room and corridor layouts, furnishings, and finishes for the Hotel.

**Section 5.7** Approvals.

The procurement of all required Governmental Permits for the construction of the Hotel shall be the responsibility of Owner, and all expenses relating thereto shall be paid by Owner. Manager shall, at Owner's expense, assist with the procurement of any such Governmental Permits to the extent Owner reasonably requests Manager's assistance.

**Section 5.8** Drawings and Other Documentation.

As promptly as reasonably possible following the Opening Date, Owner shall deliver to the Hotel (a) set of record drawings for the Hotel, and (b) operating manuals, warranties, user guides, and similar information for the equipment located at or installed in the Hotel, all of which documentation shall be stored permanently at the Hotel.

**Section 5.9** Hotel Budget and Cost Estimates.

Owner shall provide Manager with a copy of Owner's initial project budget (the "Construction Budget") for the design and construction of the Hotel. Owner shall provide Manager with a copy of all adopted revisions to the initial Construction Budget and shall include a then-current estimate of the cost of the Hotel as part of the monthly construction report required by Section 5.2 of this Agreement.

**Section 5.10** Construction Accounting Services.

Owner shall perform all construction accounting functions, including documentation of all draw requests, compliance with all lender requirements, maintenance of all subcontractor lien release records, updating of all construction budgets and performing all other accounting functions necessary to ensure a smooth and timely construction payment schedule.

**ARTICLE 6**  
**PAYMENTS TO MANAGER**

**Section 6.1** Services Fee.

Owner shall pay to Manager a fee (the "Services Fee") for its Preopening Services and Technical Services per the following schedule; Effective June 1, 2020 and continuing until September 30, 2020 the Technical and Pre-opening Services portion of the HMA shall provide compensation to Azul in the amount of \$2,500 per month. Effective October 1, 2020 and continuing until August 31, 2021 the Technical and Pre-opening Services portion of the HMA shall provide compensation to Azul in the amount of \$6,500 per month. Effective September 1, 2021 and continuing until January 31, 2022 the Technical and Pre-opening Services portion of the HMA shall provide compensation to Azul in the amount of \$9,500 per month. Effective February 1, 2022 and continuing until April 30, 2022 the Technical and Pre-opening Services portion of the HMA shall provide compensation to Azul in the amount of \$10,000 per month. Total initial Services Fees paid to Manager shall equal but not exceed \$159,000 (\$750/per room) provided the Hotel opens by May 1, 2022. In the event that the Opening Date does not occur on the scheduled Opening Date set forth in Owner's initial project schedule and Manager is required to perform additional Preopening Services during such extended Preopening Period, or in the event that the scope of the Preopening Services or responsibilities of Manager hereunder are expanded, the Services Fee payable to Manager shall be fairly and equitably increased for all additional or expanded services performed by Manager as a result thereof, subject to the good faith mutual agreement of the Parties.

**Section 6.2** Reimbursement of Expenses.

Owner shall reimburse Manager for all Preopening Expenses incurred by Manager in the performance of the services contemplated by this Schedule. Owner expressly acknowledges that such services may be for either (a) the exclusive benefit of the Hotel, or (b) the benefit of the Hotel and one or more other Manager-operated hotels, provided that if such activities are not for the exclusive benefit of the Hotel, only an equitable portion of the costs and expenses associated therewith shall be allocated to the Hotel by Manager.

**Section 6.3** Place and Manner of Payment.

(a) Any amounts payable to Manager or its Affiliates under this Exhibit shall be paid to Manager in United States Dollars, in immediately available funds. All payments shall be remitted to Manager at the place for the giving of notice to Manager set forth in the HMA, or to such other place as Manager shall designate to Owner.

(b) Manager shall submit to Owner a monthly payment request including (a) a statement of the Services Fee and all reimbursable Preopening Expenses (other than Preopening Personnel Costs) incurred by Manager during the prior calendar month (accompanied by reasonable substantiation of such expenses), and (b) a statement of Preopening Personnel Costs anticipated to be incurred by Manager with respect to the next calendar month (accompanied by such supporting information as Owner may reasonably request). The monthly payment request shall also contain a statement of any reimbursable expenses previously incurred but not previously submitted to Owner for payment, and a reconciliation of funding and expenditures for the previous month. Within fifteen (15) business days following Manager's submission of each monthly request, Owner shall pay to Manager (or, at Manager's request, deposit into the account described in Section 7.1 of this Exhibit), an amount sufficient to cover the total amount properly requested by Manager in its most recent monthly payment request.

**ARTICLE 7**

**BANK ACCOUNTS/WORKING CAPITAL**

**Section 7.1** Initial Working Capital.

Owner shall deposit cash into the bank account established in accordance with Section 7.1 of this Exhibit, at the time and in the amounts specified in the Preopening Plan (as it may be revised from time to time).

**Section 7.2** Cash Management.

Manager shall invest any funds supplied by Owner under this Schedule in a cash management program managed in accordance with prudent investment practices. All monies derived from investing Owner's funds shall be credited to Owner's account.

**ARTICLE 8**

**OWNERSHIP OF PROJECT DOCUMENTS**

All documents prepared by Owner or the Architect in connection with the design and construction of the Hotel shall be the property of Owner or the Architect, as appropriate. Documents prepared by Manager for the benefit of Owner or the Hotel, including materials relating to space planning and hotel design concepts shall also be Owner's documents; provided, however, that Manager shall be entitled to retain copies of such materials and shall have a cost-free and irrevocable license to use such materials (which shall survive the termination of the HMA for any reason), it being understood that Manager is entitled to make future use of its own work product, so long as such use is not otherwise in conflict with the provisions of the HMA.

## EXHIBIT “D”

### INSURANCE

Owner and Manager agree that it is premature at the Effective Date of the Management Agreement to finalize all insurance coverages set forth in this Exhibit “D”. Accordingly, the coverage amounts set forth herein are subject to adjustment and Owner and Manager shall meet and confer in good faith to establish final coverages and procure policies with such coverage amounts within thirty (30) days prior to the opening date of the Hotel.]

[All coverages are subject to review by each party’s insurance broker; subject to compliance with the Franchise Agreement and Owner’s lender’s loan documents along with Earthquake, Technology and Theft coverage, if applicable.]

A. Pursuant to Section 8.1 of the Management Agreement (the “Agreement”) made and entered into as of February 20, 2020 by and between 70 East Avenue Austin, LLC a Delaware limited liability company (“Owner”), and Azul Hospitality – North Bay, LLC, a California limited liability company (“Manager”), Owner shall, except as otherwise provided in Section 8.1 of the Agreement, procure and maintain insurance in respect of the Hotel (as that term is defined in the Agreement), at Owner’s expense, as follows:

1. Property damage insurance in an amount not less than that stipulated by Owner covering all real and personal property, which insurance shall be written on an “all risks” and replacement cost form;

2. Boiler and machinery coverage insuring against damage to, and against loss or damage caused by an accident or occurrence arising from or related to, boilers, heating apparatus, pressure vessels and pipes, air conditioning apparatus and electrical equipment, which insurance coverage shall be written on a standard, broad form boiler and machinery policy (on a blanket or comprehensive basis) and shall include “repair and replacement” coverage;

3. Commercial general liability insurance with combined single limits of at least \$1,000,000 per occurrence for bodily injury or property damage with an aggregate of \$2,000,000. Coverage should include:

- a) premises and operations liability;
- b) product/completed operations liability;
- c) broad form property damage liability;
- d) blanket contractual liability with respect to all contracts, written and oral;
- e) personal injury liability;
- f) liquor liability;

4. Comprehensive automobile liability insurance with a combined single limit of not less than \$1,000,000 per occurrence covering liability for bodily injury and property damage arising out of Ownership, maintenance or use of all private passenger and commercial vehicles and other equipment required to be licensed for road use;

5. Innkeeper's legal liability insurance covering the property of premises guests in an amount not less than \$2,000 per guest, and \$25,000 aggregate per year;

6. Safe depository insurance in an amount not less than \$25,000 per occurrence;

7. Business interruption insurance written on an "all risks" form either as endorsements to the policies satisfying (1) and (2) above or on a separate policy, such insurance to include specific coverage for Manager's Management Fee calculated based on the Gross Revenues used as the basis for calculation of the business interruption insurance award; and

8. Broad form umbrella/excess liability insurance, which shall cover defense costs on a "first dollar" basis and shall provide coverage not less than "following form" in respect of all underlying coverages, in an amount not less than \$\_\_\_\_\_ covering against excess liability over coverages provided by all primary general liability, automobile liability and employers' liability insurance policies.

B. In addition, Owner and Manager agree that Manager shall maintain the following insurance with respect to Hotel employees, agents and servants, as a Reimbursable Expense:

1. Workers' compensation insurance complying with the statutory workers' compensation law for the state in which the Hotel is located;

2. Employer's liability insurance in an amount not less than \$1,000,000 covering against liability in respect of employees, agents and servants not covered by workers' compensation insurance and against occupational disease benefits;

3. Employee fidelity insurance in an amount not less than \$250,000; and

4. Employment practices coverage in an amount not less than \$1,000,000 per claim/aggregate.

Manager shall also maintain such other insurance as Manager shall reasonably deem necessary for operation of the Hotel, with the prior written approval of Owner.

C. All insurance procured and maintained pursuant to the Agreement shall have such deductibles, limits and coverages, and shall otherwise be in such form, as Owner shall from time to time specify. However, Owner assumes all responsibility and risks with respect to the adequacy of insurance in respect of the Hotel and any and all claims expenses and other required payments in respect of such insurance. With respect to any insurance Manager may procure hereunder, Manager may obtain certain insurance hereunder from an Affiliate.

D. All insurance policies procured and maintained pursuant to the Agreement shall have attached thereto an endorsement that such policy shall not be cancelled or materially changed without at least thirty (30) days prior written notice to the other party and the procuring party (ten (10) days

prior written notice in the case of any such cancellation or material change arising from failure to pay any insurance premium).

E. All property damage insurance procured and maintained pursuant to the Agreement, including, without limitation, insurance procured and maintained pursuant to A(1), A(2) and A(7) above, shall name Owner and Manager as insureds and shall provide for the payment of losses thereunder to Owner and Manager as their respective interests shall appear thereon. All liability insurance procured and maintained pursuant to the Agreement, including without limitation, the policies procured and maintained pursuant to A(3), (4), (5), (6) and (8), shall name Owner, Manager, their Affiliates and their and their Affiliates' respective shareholders, partners, directors, officers, agents and employees as insureds. All policies of Workers Compensation, Employers Liability and Employment Practices insurance pursuant to B (1), (2) and (4) shall include a waiver of subrogation in favor of Owner.

F. Any insurance procured and maintained pursuant to the Agreement by either party may be effected under policies of blanket insurance which may cover other properties managed or owned by such party.