

Alcohol Beverage License Application

Instructions: This application must be typed or printed legibly and executed under oath. Each question must be fully answered. If space provided is not sufficient to answer the question please use a separate sheet of paper.

Holding an alcohol beverage license with the City of Hapeville is a privilege.

☒ New ☐ Amended

Date: 05/22/2019

Mindy L. Thompson, Esq.

Contact Name: Sard & Leff, LLC Phone: (770) 644-0800

Business/Trade Name: Merritt Hospitality, LLC

D/B/A: Hilton Atlanta Airport (Andiamo)

Email: mthompson@sardandleff.com

Emergency Contact Name: Edward M. Walls Phone: (678) 425-6091

Business Address: 1031 Virginia Avenue, Atlanta, GA 30354

TYPE OF BUSINESS

- | | |
|---|---|
| ☐ Convenience Store | ☐ Specialty Beverage Store |
| ☐ Grocery Store | ☐ Restaurant |
| ☒ Hotel/Motel | ☐ Restaurant under 2,000 Sq. Ft. |
| ☐ Package Store | ☐ Wholesale |
| ☐ Manufacturer | ☐ Other: _____ |

TYPE OF LICENSE AND FEES

<u>Retail</u>		<u>On-Premise Consumption</u>		<u>Wholesale/Manufacturer</u>	
☐ Beer/Wine	\$3,150.00	☐ Beer/Wine	\$3,150.00	☐ Beer/Wine	\$3,150.00
☐ Package	\$5,000.00	☒ Beer/Wine/Liquor	\$5,000.00	☐ Beer/Wine/Liquor	\$5,000.00

On-Premise Consumption below 2,000 Sq. Ft.

- | | |
|---------------------------------|-----------|
| ☐ Beer | \$750.00 |
| ☐ Wine | \$750.00 |
| ☐ Liquor | \$1600.00 |

APPLICANT INFORMATION

Please submit a passport photograph of owner(s) with completed application.

Full Name: Anthony R. Rutledge
on behalf of Merritt Hospitality, LLC Date of Birth: ██████ 1971

Current Address: 530 Main Street North, Southbury, CT 06488

Spouse Name: Valerie T. Rutledge

Address of Applicant (if different for the past 5 years):

N/A

Name and Location of Employers for the last five years: 05/2005 - Present: Merritt Hospitality, LLC - Norwalk, CT

Have you been arrested in the last five years? ☐ Yes ☒ No (If yes, explain)

N/A

Has your spouse been arrested in the last five years? ☐ Yes ☒ No (If yes, explain)

N/A

BUSINESS INFORMATION

Type of business entity: ☐ Sole Proprietorship ☐ Partnership ☐ Corporation ☒ Other
Limited Liability Company

Has an Occupational Tax Certificate been obtained and paid for said business? ☐ Yes ☒ No (If not issued by the City of Hapeville please include a copy with application.) Applied for.

Federal Tax ID Number: 52-2353526

State Tax ID Number: Applied for

Do you own the property? ☐ Yes ☒ No (If no, please provide name, address, and contact number for the landlord. A copy of the Lease must be attached to this application.) WS HAA Owner, LLC

Name each person(s) having a financial interest in the Establishment.

Full Name	Position	Social Security Number	Address	% of Interest
Merritt Hospitality, LLC*	Hotel Management Company	52-2353526	101 Merritt - 7 Corporate Park, Norwalk, CT 06851	
WS HAA Owner, LLC*				100%

Have you or anyone with interest in the establishment ever or do you currently hold an alcohol beverage license with any other municipality, county, or state? ☒ Yes ☐ No

If so, have you or anyone holding interest in the establishment ever been placed on probation or had your license revoked? ☐ Yes ☒ No (If yes, please explain on separate sheet of paper and attach hereto.)

*At time of closing, scheduled for 06/21/2019

Provide name, address, Social Security Number, and phone number for each Manager if different from owner. A passport photograph, Personnel Statement, and Background Check must be submitted for each manager.

Full Name	Social Security Number	Address	Phone Number
Edward M. Walls	xxx-xx- [REDACTED]	2605 Shumard Oak Drive, Braselton, GA 30517	(678) 425-6091

BUSINESS SPECIFIC INFORMATION On File.

County Tax Parcel ID _____ Zoning District _____

Nearest Intersection: _____

Building Square Footage: _____ Business Square Footage (if not using entire building): _____

Patio/Outdoor Dining Square Footage (if applicable): _____

Number of Parking Spaces for business? (Attach site plan showing designated, striped parking and lighting)

If shared parking, detail of how many are dedicated to the business and details of other businesses sharing parking (addresses). _____

Hours/days of operation: _____

Description of adjacent properties (residential/commercial) _____

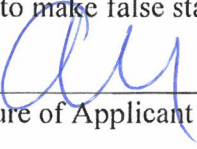
If application is for Retail Sale, attach a surveyor's certificate containing the following information:

- ☐ A scale drawing of the building and/or proposed building
- ☐ The proposed off-street parking facilities available to the building and all outdoor lighting on the premises
- ☐ The exact location of the business, including street address, ward, and county tax map number
- ☐ Current zoning classification of the location
- ☐ The distance from the business to each of the following: the nearest school, church building, and the nearest alcoholic treatment center owned and operated by state, county or municipality.

VERIFICATION OF APPLICATION

I hereby make application for an Alcohol Beverage License for the City of Hapeville. I understand that holding this license is a privilege. I do hereby affirm and swear that the information provided herein is true, complete and accurate, and I understand that any inaccuracies may be considered just cause for invalidation of this application and any action taken on this application. I understand the City of Hapeville reserves the right to enforce any and all ordinances regardless of payment of license fee and further that it is my/our responsibility to conform with said ordinances in full. I hereby acknowledge that all requirements shall be adhered to. I can

read the English language and I freely and voluntarily have completed this application. I understand that it is a felony to make false statements or writings to the City of Hapeville pursuant to O.C.G.A. §16-10-20.

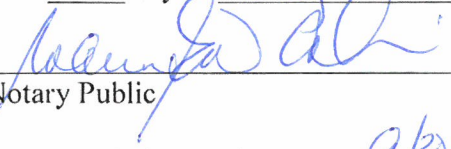

Signature of Applicant or Agent

Anthony R. Rutledge

Print or Type Name

I certify that Anthony R. Rutledge (name of applicant) personally appeared before me, and that he signed his name to the foregoing statements and answers made therein, and under oath, has sworn that said statements and answers are true.

This 20th day of May, 2019.


Notary Public

My commission expires on: 9/30/2021

Melanie EW Collier
Notary Public, State of Connecticut
My Commission Expires Sept 30, 2021



Alcoholic Beverage Personnel Statement

For Official Use Only

Type of License: Beer/ Wine/ Liquor

Business: Merritt Hospitality, LLC

Address: 1031 Virginia Avenue, Hapeville

Telephone: _____

Instructions: This personnel statement must be executed under oath or affirmation by every person having any ownership or profit sharing interest in, or managing any place of business applying for license from the City of Hapeville, Georgia to sell or deal in alcoholic beverages or liquors. Please type or print clearly in ink. If not legible, Statement will not be accepted. Each question must be fully answered. If the space provided is not sufficient, answer the question on a separate sheet and indicate in the space provided that such separate sheet is attached. A personnel statement, including two (2) passport-size photographs and two (2) fingerprint cards are required by Questions 35 and 36, for all owners/managers/assistant managers and must be submitted with every license application.

1. Edward Marion Walls 2605 Shumard Oak Drive Braselton, GA 30517
Full Name of Applicant Address of Applicant
2. Social Security Number
[REDACTED]
3. Driver's License Number
[REDACTED] GA
4. Date of Birth Place of Birth
[REDACTED]/1953 Lodi, Ohio
5. U.S. Citizen
 - a. ☒ By Birth
 - b. ☐ Naturalized
 - Date, Place and Court By birth _____
 - Petition Number _____
 - Certificate Number _____
 - Derived Parent Certificate Number(s) _____
 - Alien Registration Number _____
 - Native Country _____
 - Date of Port Entry _____
6. How long have you been a legal resident of Georgia? 0 Years 5 Months

7. Marital Status ☐ Single ☐ Married ☐ Widowed ☒ Divorced ☐ Separated

8. If married, give Spouse's full name N/A

9. Physical Description of Applicant _____ Race W Sex M Height 6'4"
Weight 225 Age 65 Hair Color Grey Eyes Blue

10. Education and training specific to restaurant/alcohol field.

TIPS training and has more than twenty-five (25) years of hotel management experience.

11. Have you ever used or been known by any other name ☐ Yes ☒ No

12. List maiden name, names by former marriages, former names changed legally or otherwise, aliases or nicknames. For each, list the period during which you were known by this name. Ed Walls

13. Are you a registered voter in the State of Georgia ☒ Yes ☐ No

County registered

Gwinnett

Number of years registered

3 Months

14. For the last calendar year, did you file and pay any County property tax ☒ Yes ☐ No

Name of County

Gwinnett and Broward (Florida) Counties

15. For the last calendar year, did you file and pay any City property tax ☐ Yes ☒ No

Name of City

16. Employment record for the past ten (10) years (Give most recent experience first, if self-employed give details)

	From	To	Employer	Occupation Duties	Reason for leaving
(a)	7/1996	9/27/2014	Starwood Hotels and resorts	General Manager;	Hotel sold
(b)	9/28/2014	7/13/2018	Hilton	General manager	New Job
(c)	7/30/2018	-Present	HEI hotels (chateau elan)	General Manager	
(d)					
(e)					
(f)					
(g)					
(h)					

17. List, with your most recent place of residence first, all of your residences for the past ten (10) years

	Date From/To	Street	City	State
(a)	7/1997-10/2011	345 Quiet Water Lane	Atlanta	GA
(b)	10/2011-5/2017	4218 N Ocean Drive	Hollywood	FL
(c)	5/2017- 11/2018	916 Polk Street	Hollywood	FL
(d)	11/2018- present	2605 Shumard Oak Drive	Braselton	GA
(e)				

20. Military Service ☐ Yes ☒ No

List Serial Number _____ Branch of Service _____
 Period of Service _____ Date of Discharge _____
 Type of Discharge received _____

21. Have you ever been convicted of a felony relating to violence, illegal substances, gambling, theft or alcohol use, or of a crime opposed to decency and morality, or who has been convicted of a crime involving violation of the ordinances of the city or any other city or county relating to the use, sale, taxability or possession of malt beverages, wine or liquor, or violations of the laws of the state and federal government pertaining to the manufacture, possession, transportation or sale of

malt beverages, wine or intoxicating liquors, or the taxability thereof within five (5) years preceding this application? ☐ Yes ☒ No

22. Full name of dealer and trade name, if any, submitting application of which this personnel statement is a part.

Merritt Hospitality LLC

23. Position of applicant in dealer's business.

General Manager

24. Does applicant have any ownership/profit sharing interest in business? ☐ Yes ☒ No
Describe.

State annual salary of applicant or the estimated annual profit or compensation derived from this business. \$

Salary

25. Do you have any financial interest in any bar, lounge, tavern, restaurant, or other place of business where alcoholic beverages are sold and consumed on the business premises? ☐ Yes ☒ No If Yes, explain.

26. Do you have any financial interest or are you employed in any wholesale or retail liquor business other than the business submitting the license application of which this personnel statement is a part? ☒ Yes ☐ No If Yes, give names and locations and amount of interest in each.

General Manager of the Chateau Elan Winery and Resort, Braselton GA

27. Do you have any financial interest or are you employed in any business engaged in distilling, bottling, rectifying or selling (wholesale, retail or manufacturing) alcoholic beverages in this State or outside this State which has not otherwise been disclosed in this statement. ☐ Yes ☒ No If yes, explain.

28. Have you ever had any financial interest in an Alcoholic Beverage business which was denied a liquor permit ☐ Yes ☒ No If yes, explain.

29. Has any Alcoholic Beverage business in which you hold or have held any financial interest or have been employed, ever been cited for any violation for the rules and regulations of the State Revenue Commissioner relating to the sale and distribution of distilled spirits. ☐ Yes ☒ No If yes, explain.

30. Have you ever been denied a bond by a commercial surety company? ☐ Yes ☒ No
If yes, explain.

31. Are you related by blood, marriage or adoption to any persons engaged in any business handling alcoholic beverages, whiskeys or liquors in the State of Georgia.
☐ Yes ☒ No

32. Personal References. Give three (3) personal references, not relatives (i.e., former employers, fellow employees or school teachers who are responsible adults, business or professional men or women) who have known you well during the past five (5) years.

Name

Anne Hotte

Residence

2831 NE 40th Ct. Ft Lauderdale Florida 33308

Business Address

330 N Federal Hwy Hollywood FL 33020

Telephone Number

Number of Years Known

8 years

Name

Marty Shuham

Residence

4201 North Ocean Drive# 401 Hollywood Florida 33019

Business Address

1930 Harrison St # 208, Hollywood, FL 33020

Telephone Number

Number of Years Known

7 years

Name

Judge Daniel Casey

Residence

4730 Pierce St, Hollywood FL 33021

Business Address

Broward County 17th Circuit Court, 201 SE 6th St, Fort Lauderdale, FL 33301

Telephone Number

Number of Years Known

8 years

33. Attach two (2) passport-size photographs (front view). Write name on back of photographs and also the name of dealer submitting a license application. Initial here if such photographs are attached. *EW*

34. There must be submitted with this personnel statement the fingerprints of applicant on two (2) fingerprint cards, which will be furnished by the City of Hapeville. Initial here that such fingerprint cards are attached. _____

NOTE: Before signing this statement, check all answers and explanations to see that you have answered all questions fully and correctly. This statement is to be executed under oath or affirmation and subject to the penalties of false swearing and it includes all attached sheets submitted herewith.

Verification

I, Edward M. Walls, applicant, do solemnly swear, subject to criminal penalties for false swearing, that the statements and answers made by me to the foregoing questions in this application for a City of Hapeville license as a dealer in alcoholic beverage and liquors are true, and no false or fraudulent statement or answer is made therein to procure the granting of such license. I hereby submit for an Alcoholic Beverage Privilege License Personnel Statement for the City of Hapeville. I do hereby swear or affirm that the information provided herein is true, complete and accurate, and I understand that any inaccuracies may be considered just cause for invalidation of this statement and any related application and any action taken on this statement and any related application. I understand the City of Hapeville reserves the right to enforce any and all ordinances regardless of payment of license fees and further that it is my/our responsibility to conform to said ordinances in full. I hereby acknowledge that all requirements shall be adhered to. I can read the English language and I freely and voluntarily have completed this statement. I understand that it is a felony to make false statements or writings to the City of Hapeville pursuant to O.C.G.A. § 16-10-20.



Applicant's Signature
(Full name in ink)

Edward M. Walls

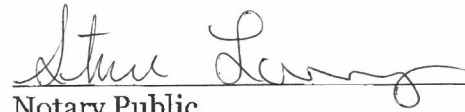
Applicant's Name
(Print or Type)

I certify that
Edward M. Walls

(the above named applicant)

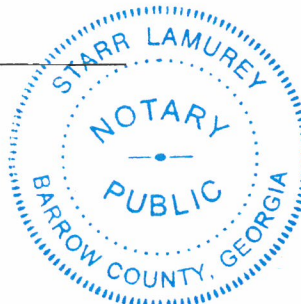
is personally known to me, and that he signed his name to the foregoing statements and answers made therein, and, under oath, has sworn that said statements and answers are true.

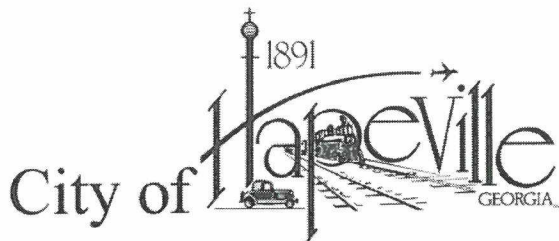
This 15th day of May, 2019.


Notary Public

Seal:

personnel statement.doc





Georgia Bureau of Investigation
Georgia Crime Information Center

Consent Form

I hereby authorize **HAPEVILLE POLICE DEPARTMENT** to receive any Georgia criminal history record information pertaining to me which may be in the files of any state or local criminal justice agency in Georgia.

Edward Marion Walls

Full Name (print)

[REDACTED] GA.
Driver's License Number and State

2605 Shumard Oak Drive
Address Braselton GA 30517

Merritt Hospitality LLC
Company Name

M
Sex

W
Race

[REDACTED] 1953
Date of Birth

[REDACTED]
Social Security Number

[Signature]
Signature

5/16/19
Date

Purpose Codes Used (check appropriate one)

- ☒ Employment (Licensing, Public/Private employment, Firefighter employment Adoptions, Education employment, and Military Recruitment) (E)
☐ Employment with mentally disabled (M)
☐ Employment with elder care (N)
☐ Employment with children (W)
☐ Criminal Justice Employment (J)
☐ Public Access (GA Felonies Only) (P)
☐ Used by Law Enforcement Only (C) _____ Case Number
☐ Pre-employment or Employment of Police Officers (Z)

Inquiry ran by: _____

If ran Purpose Code C Officer Signature: _____



Mr. Edward M. Walls, Agent

City of Hapeville Alcoholic Beverage License Applications (Change of Ownership)

Merritt Hospitality, LLC d/b/a Hilton Atlanta Airport

1031 Virginia Avenue, Atlanta, GA 30354

USA
Georgia
GOVERNOR Nathan Deal

092053

DRIVER'S LICENSE

DL NO. 065685889 DOB [REDACTED] 1953
CLASS C EXP 2026

EDWARD M WALLS

2603 SHUMARD OAK DR
BRASELTON, GA 30517-6020
GWINNETT

Restrictions A End NONE
Iss 01/03/2019

Sex M Eyes BLU
Hgt 6'-04" Wgt 215 lb

DDI 367808671830044721

COMMISSIONER *James B. Jones*

Edward M. Walls

DONOR ♥

Rev 07/01/2015 3678086718300401

 www.dds.ga.gov
(678) 413-8400

MEDICAL INFORMATION:
None

CLASS: C-S 26,000 lbs. GVWR and Trailer ≤ 10,000 lbs. All recreational vehicles included

ENDORSEMENTS: None

RESTRICTIONS: A-None



09/20/1953

MANAGEMENT AGREEMENT

between

WS HAA Owner, LLC

and

MERRITT HOSPITALITY, LLC

for the

HILTON ATLANTA AIRPORT HOTEL

[____], 2019

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SCHEDULE 1	Hotel Components
EXHIBIT A	Description of Premises
EXHIBIT B	Centralized Services
EXHIBIT C	Sample Incentive Fee Calculation
EXHIBIT D	Transition Budget

MANAGEMENT AGREEMENT

This Management Agreement (the “**Agreement**”) is made and entered into as of this [__] day of [____], 2019 (the “**Effective Date**”) by and between WS HAA Owner, LLC, a Delaware limited liability company (“**Owner**”), and MERRITT HOSPITALITY, LLC, a Delaware limited liability company (“**Operator**”).

RECITALS:

A. Owner is, or shall become prior to the Commencement Date, the fee owner of the Premises, which, together with associated improvements, parking areas and personal property, is presently known as the “Hilton Atlanta Airport Hotel” and is defined herein as the “**Hotel**”.

B. Operator is engaged in the business of managing and operating hotels.

C. Owner and Operator desire to enter into this Agreement for the management and operation of the Hotel in accordance with the terms and conditions and subject to the limitations contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Operator covenant and agree as follows:

ARTICLE 1 **DEFINITIONS**

1.1 **Definitions.** In this Agreement and any Exhibits, the following terms shall have the following meanings:

“**Accounting Period**” shall mean each calendar month during each Fiscal Year.

“**Accounting Services**” shall have the meaning set forth in Section 10.4.

“**Accounting Services Fee**” shall mean an annual amount equal to \$30,000, payable monthly as provided in Section 11.3.

“**Adjusted GOP**” shall mean, for any Fiscal Year, Gross Operating Profit less the sum of: (i) Management Fees (excluding the Incentive Fee), (ii) Taxes, (iii) Insurance Costs, (iv) Equipment Lease Costs, (v) the Reserve; and (vi) Owner’s Priority Return.

“**ADR Provider**” shall have the meaning set forth in Section 27.2(a).

“**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**” (and correlative terms) shall mean the power, whether by contract, equity ownership or otherwise, to direct the policies or management of a person or entity. A natural person is related to another natural person if he or she is a spouse, parent, or lineal descendant of the other person.

“Agreement” shall have the meaning set forth in the introductory section of this Agreement.

“Annual Operating Budget” shall mean an annual operating projection for the Hotel prepared and submitted by Operator to Owner and approved by Owner for each Fiscal Year pursuant to Section 4.2(a).

“Annual Plan” shall mean an annual business plan for the operation of the Hotel prepared by Operator and approved by Owner, which shall include the Annual Operating Budget and the Capital Budget, and any other material included therein by Operator as provided in Section 4.2.

“Arbitrator” shall have the meaning set forth in Section 27.2(c).

“Base Fee” shall have the meaning set forth in ARTICLE 11.

“Building” shall mean, collectively, the buildings (including all roof coverings and exterior facades and any walkways and bridges) and all structural elements of such buildings, all of which are a part of the Hotel, together with such elements servicing and/or supporting the Hotel.

“Building Systems” shall mean any mechanical, electrical, plumbing, heating, ventilating, air conditioning, sanitation, water treatment, sewer treatment and disposal, life safety systems, vertical transportation systems and other similar operating and monitoring systems and items of equipment installed in or upon, and affixed to, the Hotel.

“Capital Budget” shall mean a proposed estimate of FF&E Expenditures and Capital Improvements prepared by Operator and submitted to Owner and approved by Owner for each Fiscal Year pursuant to Section 4.2(b).

“Capital Improvements” shall mean any expenditures properly categorized under GAAP as capital in nature, for any alterations, improvements, replacements, and additions to the Building, the Building Systems or FF&E.

“Centralized Services” shall have the meaning set forth in Section 4.6.

“Centralized Services Charge” shall have the meaning set forth in Section 4.6.

“Claims” shall have the meaning set forth in Section 22.1.

“Commencement Date” shall mean the date on which Operator assumes the management and operation of the Hotel and all or substantially all of the Hotel is open for business to the general public.

“Competitive Set” shall mean initially, the following list of hotels: (i) [_____], subject to any revisions to such list agreed upon by Owner and Operator from time to time, which revisions, to the extent applicable, will occur during the Annual Plan process.

“Corporate Personnel” shall mean any of Operator’s executive level personnel holding a position of Vice President or higher from Operator’s corporate headquarters who perform activities

at or on behalf of the Hotel in connection with the services provided by Operator under this Agreement.

“**CPI**” shall mean the Consumer Price Index for All Urban Consumers, United States City Average, All Items (1982-84=100), issued by the Bureau of Labor Statistics of the United States Department of Labor.

“**Default Rate**” shall mean the lesser of (i) the Prime Rate plus five percent (5%) per annum or (ii) the highest lawful rate permitted by applicable Legal Requirements from time to time.

“**Depository Account**” shall have the meaning set forth in Section 9.2.

“**Effective Date**” shall mean the date of this Agreement as set forth in the introductory paragraph.

“**Equipment Lease Costs**” shall mean costs and expenses incurred by Owner in connection with the leasing or financing of equipment used in the operation and maintenance of the Hotel.

“**Event of Default**” shall mean any of the events described in ARTICLE 15, provided that any condition contained therein for the giving of notice or the lapse of time, or both, has been satisfied.

“**Expert**” shall mean an independent, neutral and impartial individual having not less than ten (10) years of experience in or for the hospitality industry in the area of expertise on which the dispute is based (e.g. with respect to operational matters, experience in the management and operation of hotels of a similar nature as the Hotel or, with respect to financial matters, experience in the financial or economic evaluation or appraisal of hotels) and shall not have any conflict of interest with either party.

“**Fiscal Year**” shall mean the fiscal year that ends on the last day of each calendar year. The first Fiscal Year shall be the period commencing on the Commencement Date and ending on December 31st of the same calendar year in which the Commencement Date occurs. Except as otherwise expressly set forth in this Agreement, the words “full Fiscal Year” shall mean any Fiscal Year containing not fewer than three hundred sixty five (365) days. A partial Fiscal Year after the end of the last full Fiscal Year and ending with the expiration or earlier termination of the Term shall constitute a separate Fiscal Year.

“**Force Majeure Event**” shall mean any one or more of the following events or circumstances that, alone or in combination, directly or indirectly, materially and adversely affect the operation of the Hotel: (i) fire, earthquake, hurricane, tornado, flood, storm or other casualty; (ii) epidemics, quarantine restrictions or other public health restrictions or advisories; (iii) performance of Capital Improvements reasonably required to maintain the Hotel in accordance with the Operating Standards which materially and adversely affect the income generating areas of the Hotel or any other area material to the operation of the Hotel; (iv) strikes, lockouts, or other labor interruptions generally (as opposed to any such events directed specifically against Operator or its Affiliates not involving or related to the Hotel); (v) war, rebellion, riots, acts of terrorism, or other civil unrest or commotion; shortage of critical materials or supplies; (vi) disruption to local,

national or international transport services; (vii) embargoes, lack of materials, water, power or telephone transmissions necessary for the operation of the Hotel in accordance with this Agreement; (viii) action or inaction of governmental authorities having jurisdiction over the Hotel; or (ix) any other event beyond the reasonable control of Owner or Operator, but in all instances excluding the financial inability of either party to perform or otherwise meet its obligations.

“Furniture, Fixtures and Equipment” or “FF&E” shall mean all furniture, furnishings, wall coverings, fixtures, carpeting, rugs, fine arts, paintings, statuary, decorations, and hotel equipment and systems located at, or used in connection with, the operation of the Premises as a hotel, including without limitation, major equipment and systems required for the operation of kitchens, bars, laundry and dry cleaning facilities, office equipment, dining room wagons, major material handling equipment, major cleaning and engineering equipment, telephone systems, computerized accounting and vehicles (including the costs associated with the purchase, installation and delivery thereof) together with all replacements therefor and additions thereto, but in all events excluding Operating Equipment and Supplies.

“FF&E Expenditures” shall mean any expenditures pertaining to FF&E and not constituting Capital Improvements.

“GAAP” shall mean those conventions, rules, procedures and practices, consistently applied, affecting all aspects of recording and reporting financial transactions which are generally accepted by major independent accounting firms in the United States. Any financial or accounting terms not otherwise defined herein shall be construed and applied according to GAAP.

“GOP Test” shall have the meaning set forth in Section 17.2.

“Gross Operating Profit” or “GOP” shall mean the amount by which Gross Revenues of the Hotel exceed Operating Expenses of the Hotel.

“Gross Revenues” shall mean all revenues and receipts of every kind derived from the Hotel and all departments and parts thereof, as finally determined on an accrual basis in accordance with the Uniform System of Accounts, including, but not limited to, revenues and income (both cash and credit transactions) before commissions and discounts for prompt or cash payments, from (a) the rental of rooms and lobby space; (b) exhibit or sales space of any kind, including without limitation, charges for reservations, deposits and cancellation fees not refunded to guests; (c) income from vending machines, health club membership fees, wholesale and retail sales of merchandise, service fees and charges; (d) business interruption insurance claims in respect of the Hotel; (e) condemnation awards for temporary use of the Hotel; (f) license, lease and concession fees and rentals or other management income received by Owner (but not including the gross receipts of any licensees, lessees and concessionaires); (g) food and beverages sales, and (h) other sales of every kind conducted by, through or under Operator in connection with the Hotel. Gross Revenues shall not include (i) federal, state and municipal excise, sales 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; (ii) proceeds arising from the sale or other disposition of property described in Section 1231 of the Internal Revenue Code or of capital assets; (iii) proceeds from condemnation and payments received on account of insurance policies (other than the proceeds from business interruption insurance and from condemnation awards for temporary use of the Hotel when

received); (iv) proceeds from claims for damages suffered by Operator or Owner, unless in recompense for a lost revenue item; (v) interest earned on the Reserve; or on any funds in the Operating Accounts; (vi) gratuities, including tips and service charges which are paid to the Hotel Employees by third parties; (vii) gross receipts received by licensees, lessees and concessionaires at the Hotel; (viii) proceeds from any sale, financing or refinancing of the Hotel or any interest therein; and (ix) any funds supplied by Owner to the reserve or to provide Working Capital, or which otherwise is defined as Owner's Invested Capital or Owner's Additional Invested Capital.

"Guest Data" shall mean all guest profiles, contact information, histories, preferences, and other information obtained in the ordinary course of business from guests of the Hotel during such guests' stay at the Hotel, or during such guests' use of the facilities associated with the Hotel.

"Hotel" shall have the meaning set forth in Recital A of this Agreement, as further described on Schedule 1 attached hereto.

"Hotel Employees" shall mean all individuals performing services in the name of the Hotel at the Hotel, in connection with the Hotel's business, whether employees of Operator or its Affiliate, but in any event, excluding the Corporate Personnel and any other personnel employed by Operator to perform services on a non-exclusive basis at other System Hotels.

"Hotel Executive Staff Member" shall mean each of the general manager, controller, director of revenue management, director of sales/marketing and director of food and beverage at the Hotel from time to time (or such equivalent position), to the extent such positions exist at the Hotel.

"Implied Fiduciary Duties" shall have the meaning set forth in Section 11.1(b).

"Incentive Fee" shall have the meaning set forth in Section 11.1(b).

"Indemnified Party" shall mean any party entitled to indemnification pursuant to ARTICLE 22.

"Indemnifying Party" shall mean any party required to indemnify an Indemnified Party pursuant to ARTICLE 22.

"Insurance Costs" shall mean all insurance premiums or other costs paid for any insurance policies (including business interruption insurance) maintained by or on behalf of Owner with respect to the Hotel.

"Inventories" shall mean "Inventories of Supplies" as defined in the Uniform System of Accounts, such as soap, toilet paper, stationery, writing pens, food and beverage inventories, paper products, menus, expendable office and kitchen supplies, fuel, supplies and items similar to any of the foregoing.

"Legal Proceedings" shall mean all complaints, counterclaims or cross-claims filed in a court of competent jurisdiction, any notice of any claim of violation of any legal requirement by any governmental agency or authority, or any summons or other legal process, in each instance by or against the Hotel or by or against Owner, or Operator in connection with the Hotel.

“Legal Requirements” shall mean (a) all laws, ordinances, statutes, regulations and orders relating to the Hotel and the Premises now or hereafter in effect, including but not limited to, environmental laws and (b) all terms, conditions, requirements and provisions of (i) all Permits; (ii) all leases; and (iii) all liens, restrictive covenants and encumbrances affecting the Hotel or the Premises or any part thereof.

“Lender” shall mean the holder of any Mortgage.

“License Agreement” shall mean the applicable franchise or license agreement issued to Owner by Hilton Franchise Holding LLC (or any successor thereto); should for any reason the License Agreement as above defined terminate or cease to exist, then the term **“License Agreement”** shall thereafter mean the franchise or license agreement from time to time entered into by Owner with respect to the branding and operation of the Hotel.

“Licensor” shall mean the “Franchisor” under the License Agreement.

“Litigation Claims” shall have the meaning set forth in Section 27.2(a).

“Major Renovations” shall mean a contemporaneously made set or series of alterations, additions and/or improvements to the Hotel or any material renovation, remodeling or refurbishing of the Hotel (or any portion thereof) implemented by Owner or required under a so-called “property improvement plan” imposed under a License Agreement, which customarily would be managed by a third party project manager, but which shall not include any routine Repairs and Maintenance with respect to Capital Improvements or FF&E.

“Management Fee” shall mean collectively the Base Fee and Incentive Fee, all as set forth in ARTICLE 11 hereof.

“Measurement Year” shall have the meaning set forth in Section 17.2(a).

“Mediator” shall have the meaning set forth in Section 27.2(a).

“Mortgage” shall mean, collectively, each of the documents evidencing or securing current or future indebtedness on the Hotel in favor of any Lender.

“Multi-Property Programs” shall have the meaning set forth in Section 4.7.

“Notice” shall have the meaning set forth in ARTICLE 19.

“Notice of Proposed Sale” shall have the meaning set forth in Section 21.2.

“OFAC” shall have the meaning set forth in Section ARTICLE 25(d).

“Operating Account” shall mean an account or accounts, bearing the name of the Hotel and owned by Owner, established by Operator in a federally insured bank or trust company selected by Owner.

“Operating Equipment and Supplies” shall mean supply items which constitute “Operating Equipment and Supplies” under the Uniform System of Accounts, all miscellaneous serving equipment, linen, towels, uniforms, silver, glassware, china and similar items.

“Operating Expenses” shall mean all those ordinary and necessary expenses incurred in the operation of the Hotel determined in accordance with GAAP and the Uniform System of Accounts.

“Operating Standards” shall mean the operation of the Hotel in a first class manner in accordance with (i) the requirements under the applicable License Agreement; (ii) this Agreement; (iii) Legal Requirements; and (iv) the standards, policies and programs in effect from time to time that Operator reasonably determines are applicable to the operation, maintenance and repair of comparable hotels within the System Hotels.

“Operator” shall have the meaning set forth in the introductory section of this Agreement.

“Operator Indemnified Parties” shall have the meaning set forth in Section 22.2.

“Operator Rebates” shall have the meaning set forth in Section 4.7.

“Operator’s Grossly Negligent or Willful Acts” shall mean any gross negligence, willful misconduct, or fraud committed by Operator or the Corporate Personnel in the performance of Operator’s duties under this Agreement. The acts or omissions (including gross negligence, willful misconduct or fraudulent acts or omissions) of the Hotel Employees (excluding the general manager and the controller) shall not be imputed to Operator or to the Corporate Personnel, or be deemed to constitute Operator’s Grossly Negligent or Willful Acts, unless such acts or omissions resulted directly from the gross negligence, willful misconduct or fraudulent acts of Operator, the Corporate Personnel, the general manager and/or the controller in directing the Hotel Employees.

“Owner” shall have the meaning set forth in the introductory section of this Agreement.

“Owner Indemnified Parties” shall have the meaning set forth in Section 22.2.

“Owner’s Additional Invested Capital” shall mean any additional amounts advanced by Owner for Working Capital and for Capital Improvements in excess of the Reserve, calculated on a cumulative basis.

“Owner’s Annual Plan Objections” shall have the meaning set forth in Section 4.2.

“Owner’s Invested Capital” shall mean an amount equal to the purchase price paid by Owner for the Hotel, plus Owner’s due diligence and related costs (including closing costs) in connection with Owner’s acquisition of the Hotel, and Working Capital, subject to an adjustment by Owner by written notice to Operator within sixty (60) days of the closing of the acquisition of the Hotel.

“Owner’s Priority Return” shall mean an amount equal to a nine and one half percent (9.5%) unlevered cash on cash return of: (i) Owner’s Invested Capital; and (ii) Owner’s Additional Invested Capital.

“Performance Test” shall have the meaning set forth in Section 17.2.

“Permits” shall mean all governmental or quasi-governmental licenses and permits, including but not limited to any certificate of occupancy, business licenses and liquor licenses.

“Premises” shall mean the land on which the Hotel is located, which land is described in Exhibit A attached hereto.

“Prime Rate” shall mean the rate per annum announced, designated or published from time to time by JP Morgan Chase Bank N.A. as its “prime”, “reference” or “base” rate of interest for commercial loans.

“Privileged Information” shall have the meaning set forth in Section 23.16.

“Prohibited Persons” shall have the meaning set forth in Section ARTICLE 25(d).

“Reimbursable Expenses” shall mean all reasonable travel, lodging, entertainment, telephone, facsimile, postage, courier, delivery, employee training and other expenses reasonably incurred by Operator in accordance with the standard policies for expenses reasonably incurred by Operator on its own behalf and which are directly related to its performance of this Agreement, but in no event will Reimbursable Expenses include or duplicate expenses for Operator’s overhead or Centralized Services.

“Repairs and Maintenance” shall have the meaning set forth in Section 8.1.

“Reserve” shall mean an account maintained as a reserve for FF&E Expenditures and Capital Improvements.

“Revenue Data Publication” shall mean Smith’s STR Report, a monthly publication distributed by STR, Inc., or an alternative source, reasonably satisfactory to both parties, of data regarding the average daily rate, occupancy and RevPAR of hotels in the general area of the Hotel, including, without limitation, the Competitive Set.

“Revenue Per Available Room” or **“RevPAR”** shall mean for any Fiscal Year the number derived by dividing (i) net room revenue (in accordance with the Uniform System of Accounts), by (ii) the number of available guest rooms in the Hotel.

“RevPAR Test” shall have the meaning set forth in Section 17.2.

“Rules” shall have the meaning set forth in Section 27.2(c).

“Sale of the Hotel” shall mean any voluntary sale, assignment, transfer or other disposition, for value or otherwise, of the fee simple title to the site and/or all or substantially all of the assets comprising the Hotel other than through foreclosure or deed in lieu of foreclosure or other similar procedure of financing permitted by this Agreement. For purposes of this Agreement, a Sale of the Hotel shall also include: (i) a lease (or sublease) of all or substantially all of the Hotel or site; or (ii) any sale, assignment, transfer or other disposition, for value or otherwise, voluntary

or involuntary, in a single transaction or a series of related transactions, of the controlling interest in Owner.

“Sale Termination Notice” shall have the meaning set forth in Section 17.1.

“State” shall mean the State in which the Hotel is located or other as designated.

“System Hotels” shall mean all or substantially all hotels operated by Operator or its Affiliates from time to time within the United States

“Taxes” shall mean all real and personal property taxes and other governmental impositions. Notwithstanding the foregoing, the term “Taxes” as used in this Agreement shall specifically exclude (a) all sales, use, excise, and hotel occupancy taxes collected directly from patrons and guests or as part of the sales price of any goods, services or displays and paid over to federal, state or municipal governments, (b) all income, franchise and municipal licenses or similar taxes of Owner or Operator or their respective Affiliates, and (c) any and all utility consumption costs.

“Term” shall have the meaning set forth in Section 3.1.

“Termination Fee” shall mean an amount determined as follows:

(a) From and after the Commencement Date until the end of the thirty-sixth (36th) full calendar month following the Commencement Date, an amount equal to (I) the product of (A) thirty-six (36) minus the number of full calendar months for which the Base Fee has been paid to Operator since the Commencement Date, multiplied by (B) the quotient of (i) the Base Fee payable for the twelve (12) full calendar months immediately preceding the date of a termination of this Agreement, divided by (ii) twelve (12). If at the time of termination of this Agreement the Base Fee shall have been payable for less than twelve (12) full calendar months, then the Termination Fee shall equal the product of (X) thirty-six (36) minus the number of full calendar months for which the Base Fee has been paid to Operator since the Commencement Date, multiplied by (Y) the quotient of (i) the Base Fee paid for each full calendar month following the Commencement Date plus the Base Fee payable under Operator’s proforma for each additional month up to and including the twelfth (12th) full calendar month following the Commencement Date, divided by (ii) twelve (12).

(b) From and after the end of the thirty-sixth (36th) full calendar month following the Commencement Date, an amount equal to zero.

“Threshold Adjustment Event” shall mean the occurrence of a Force Majeure Event, a material casualty or condemnation of all or any portion of the Hotel, Capital Improvements that result in displacement of rooms or amenities for in excess of [___] room nights in any calendar month or negatively impact the average daily rate of a Hotel, an adjustment to the Competitive Set, including any rebranding occurring at one or more of the Competitive Set hotels, or an Owner Event of Default.

“Transfer” any assignment of this Agreement, transfer of any direct or indirect ownership interest in Owner, or Sale of the Hotel.

“Transition Budget” shall have the meaning set forth in Section 11.3.

“Uniform System of Accounts” shall mean the Uniform System of Accounts for the Lodging Industry, 11th Revised Edition, 2014, as published by the Hotel Association of New York City, Inc. or any later edition thereof.

“WARN Act” shall have the meaning set forth in Section 18.1.

“Working Capital” shall mean and refer to the funds which are reasonably necessary for the day-to-day operation of the Hotel’s business, including, without limitation, amounts sufficient for the maintenance of petty cash funds, operating bank accounts, receivables, payrolls, prepaid expenses, advance deposits, funds required to maintain Inventories, amounts due to/or from Operator and/or Owner less accounts payable and accrued current liabilities, and all other costs and expenses incurred in connection with the Hotel pursuant to this Agreement and the performance by Operator of its obligations under this Agreement.

1.2 **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all genders; the singular shall include the plural, and the plural shall include the singular. The titles of Articles, Sections and Subsections in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement, and all references in this Agreement to Articles, Sections, Subsections, paragraphs, clauses, sub-clauses or exhibits shall refer to the corresponding Article, Section, Subsection, paragraph, clause or sub-clause of, or exhibit attached to, this Agreement, unless specific reference is made to the articles, sections or other subdivisions of, or exhibits to, another document or instrument.

1.3 **Exhibits.** All exhibits and schedules and other attachments attached hereto are by this reference made a part of this Agreement.

ARTICLE 2

ENGAGEMENT OF OPERATOR

2.1 **Engagement and Duties of Operator.** Owner hereby engages and appoints Operator, pursuant to the terms of this Agreement, to operate and manage the Hotel, and Operator hereby agrees and contracts to operate, manage and supervise the Hotel pursuant to the terms of this Agreement and the Operating Standards (including the then-applicable Annual Plan). Subject to the terms of this Agreement, Hotel operations shall be under the exclusive supervision and control of Operator, which, except as otherwise specifically provided in this Agreement, shall be responsible for the proper and efficient operation, maintenance and repair of the Hotel in accordance with the terms of this Agreement. Except as specifically set forth in this Agreement, Operator shall have full discretion and control respecting matters relating to management and operation of the Hotel, including, without limitation, charges for rooms and commercial space, credit policies, food and beverage services, other Hotel services, employment policies, granting of concessions or leasing of space within the Hotel, receipt, holding and disbursement of funds, maintenance of bank accounts, procurement of Inventories, supplies and services, promotion and publicity, retain and direct legal counsel for the Hotel in the name of and as agent for Owner with respect to any matter regarding the operation of the Hotel; and, in general, all activities necessary

for operation of the Hotel. Operator shall devote its knowledge, experience and efforts to operate and manage the Hotel pursuant to this Agreement and in accordance with the Operating Standards.

Notwithstanding the foregoing grant of authority to Operator, Owner's prior written approval (not to be unreasonably delayed, conditioned or withheld (except as otherwise provided in Section 4.3 with respect to subparagraph (d))) shall be required for the following:

- (a) the execution of (and provide Owner with a true and complete copy of) any contract (i) requiring total annual payments in excess of \$25,000, as adjusted for increases in CPI every Fiscal Year after the initial Fiscal Year, or (ii) which has a term in excess of one (1) year (unless such agreement is terminable by Owner or Operator upon not more than thirty (30) days' notice without fee or penalty);
- (b) with respect to claims asserted against Owner and/or the Hotel, for any matter for which aggregate legal fees, liabilities and/or out of pocket settlement amounts are anticipated to exceed \$50,000; provided, however, Operator shall have the right to control the defense, including settlement, of any Legal Proceeding involving claims which are covered by Operator procured insurance programs (so long as Owner shall have no liability with respect to such claims, including any obligation to indemnify Operator under this Agreement);
- (c) tenant leases of any space at the Premises (including rooftop leases) other than as provided in the Annual Plan (and which shall not include ordinary guest room and banquet space operations); and
- (d) the negotiation and execution of any union, collective bargaining or similar agreements affecting the Hotel.

ARTICLE 3

TERM

3.1 **Term.** The operating term shall commence on the Effective Date and expire on the tenth (10th) anniversary of the Commencement Date (the "**Term**"), unless sooner terminated pursuant to the terms of this Agreement. In the event the Commencement Date does not occur by September 30, 2019, then either party shall have the option, in its sole and absolute discretion and without penalty or liability, to terminate this Agreement by delivery of written notice to the other party. If either party exercises its termination right in accordance with this Section 3.1, then all sums then due and payable to Operator and its Affiliates under this Agreement for the period of time prior to the date of termination shall be immediately due and payable. Owner and Operator shall confirm the Commencement Date in writing within ten (10) days after the Commencement Date occurs upon request of either party.

ARTICLE 4

USE AND OPERATION OF THE HOTEL

4.1 Hotel Employees.

(a) Operator shall have the sole right, as Operator reasonably deems appropriate for the proper operation, maintenance and security of the Hotel, to: (i) select, appoint, hire, promote, direct, supervise, train and discharge all Hotel Employees; and (ii) establish and maintain all policies relating to the employment of the Hotel Employees. Operator shall use commercially reasonable efforts and exercise reasonable care to select qualified and competent employees. Operator shall use commercially reasonable efforts to cause Operator's employment practices to comply with all Legal Requirements. All Hotel Employees shall be solely employees of Operator; provided, however, all of the costs, expenses and liabilities associated with the Hotel Employees shall be Operating Expenses, and shall include, by way of example and not limitation, all costs and expenses (including, without limitation, all employment and benefit related expenses incurred by Operator with respect to the Hotel Employees), such as severance pay, unemployment compensation and health insurance and related costs (i.e., in order to comply with COBRA-type regulations) as a result of the termination of Hotel Employees. Notwithstanding anything to the contrary contained herein, Owner shall have the right to interview and approve each individual selected by Operator to hold a position as a Hotel Executive Staff Member prior to his or her appointment, which approval shall not be unreasonably withheld or delayed. Prior to appointing an individual to a Hotel Executive Staff Member position, Operator shall provide Owner with a written summary of such individual's professional experience and qualifications and shall offer Owner the opportunity to interview the candidate at the Hotel or another mutually acceptable location. Owner will forego its right to interview any such individual if Owner or its authorized representative is unwilling or unable to participate in the interview within ten (10) days following Operator's offer. Owner shall be deemed to have approved the appointment of any such individual unless Owner delivers notice of its disapproval of such appointment within ten (10) days after Operator's offer to Owner to interview the candidate. Owner acknowledges that it may not reject more than three (3) qualified candidates proposed by Operator for any Hotel Executive Staff Member position. Owner further acknowledges that, notwithstanding Owner's right to interview and approve the hiring of each individual to hold a position as a Hotel Executive Staff Member, Operator shall have sole discretion to remove or replace any such individual (with such replacement subject to the approval rights set forth herein) (provided Operator shall not relocate the general manager or director of sales to any other System Hotel without the prior consent of Owner within thirty-six (36) months of such individual's hire).

(b) Operator may, from time to time, assign one or more of its corporate employees to the staff of the Hotel on a full-time, part-time or temporary basis, and the pro-rata share of the costs, expense and liabilities of such corporate employee of Operator shall be fairly and equitably allocated as an Operating Expense of the Hotel.

(c) Operator may elect to use the services of its Affiliates in fulfilling its obligations under this Agreement. If an Affiliate of Operator performs services Operator is required to provide, Operator shall be ultimately responsible to Owner, and Owner shall not pay more for the Affiliate's services and expenses than Operator would have been entitled to receive under this Agreement had Operator performed the services. If an Affiliate of Operator provides goods to the Hotel, such goods shall be supplied at prices and on terms at least as favorable to the Hotel as generally available in the relevant market.

(d) Any Hotel Employees who are not then represented by a collective bargaining representative shall be entitled to participate in the incentive programs, profit sharing and/or other

employee retirement, disability, health, welfare or other benefit plan or plans then made available by Operator to similarly situated employees of other System Hotels, in accordance with their respective terms. Operator will have the right to charge the Hotel with its allocable share of the cost of any such plan or plans and any contributions to be made thereunder provided that such charges and contributions shall be determined by Operator in good faith on a fair and equitable basis with respect to charges and contributions imposed for the same or similar plans at other hotels then managed by Operator, subject to Legal Requirements, and to the extent set forth in the Annual Operating Budget. Operator's rights under this Subsection (d) shall be subject to the condition that Operator shall not put into effect any amendment to any existing plan, or adopt any additional plan, which is not imposed upon all other similarly situated System Hotels.

(e) During the Term of this Agreement and for a period of twelve (12) months following termination, Owner shall not, and shall use reasonable efforts to ensure that its Affiliates do not, hire, solicit for hire, make any referrals for employment, retain as a consultant, or use the services of, any person who is employed at the Hotel as a Hotel Executive Staff Member and any Corporate Personnel, and Owner shall use reasonable efforts to prevent any other company (and any Affiliate of such other company) working on behalf of Owner or its Affiliates (including, without limitation, companies that operate or manage hotels for Owner or its Affiliates) from hiring, retaining as a consultant or using the services of any such person. The foregoing shall not prohibit Owner, any Owner Affiliate or any other company working on behalf of Owner or its Affiliates from hiring, retaining as a consultant or using the services of any such person to the extent such person is responding to a general advertisement or other solicitation of employment not specifically directed towards any Hotel Executive Staff Member or Corporate Personnel. The provisions of this section shall survive expiration or termination of this Agreement.

4.2 **Annual Plan.** [Operator shall use the existing Fiscal Year 2019 budget prepared by the existing Hotel manager as a guide to operate the Hotel pending delivery of Operator's Fiscal Year 2019 Annual Plan. On or before the date that is ninety (90) days following the Commencement Date, Operator shall submit to Owner an Annual Plan ("**Annual Plan**") for the remaining portion of the 2019 Fiscal Year and Owner either shall accept the initial Annual Plan submitted to Owner as provided above or shall submit to Operator a detailed list of Owner's objections or questions to the Annual Plan. Owner and Operator shall meet and discuss Owner's Annual Plan objections and shall coordinate expeditiously and in good faith to agree upon an Annual Plan for the 2019 Fiscal Year. On or before November 1st of each year following the Commencement Date, Operator shall submit to Owner an Annual Plan for the next Fiscal Year and on or before December 1st of each year following the Commencement Date, Owner either shall accept the Annual Plan submitted to Owner as provided above or shall submit to Operator a detailed list of Owner's objections or questions to the Annual Plan ("**Owner's Annual Plan Objections**"). Within seven (7) days after Operator's receipt of Owner's Annual Plan Objections, Owner and Operator shall agree upon a date to meet and discuss Owner's Annual Plan Objections with the goal of agreeing upon an Annual Plan for the subject Fiscal Year. In the event Owner objects to the Annual Plan or any specific items expense in the Annual Plan and Owner and Operator are unable to reach agreement thereon as provided above prior to commencement of the Fiscal Year in question, pending such agreement, the Annual Plan or the specific item or items of expense (not revenue) in question shall be suspended and replaced for such period of disagreement by an amount equal to the actual Operating Expenses for the immediately preceding Fiscal Year subject to an adjustment equal to the percentage increase in the CPI over the last twelve (12) month period

immediately preceding the start of the Fiscal Year in question. Notwithstanding anything to the contrary contained herein, Owner shall not have the right to withhold its approval with respect to the following aspects of the Annual Plan: (i) employee wages, compensation, and benefit programs to the extent applied on a system-wide basis to the other hotels managed by Operator, taking into account fluctuation for local market conditions; (ii) the Centralized Services Charge, and (iii) costs over which Operator has no reasonable control, including, without limitation, taxes, insurance, utility rates, payments due under Mortgages and Legal Requirements.

(a) The proposed Annual Operating Budget shall incorporate Operator's good faith reasonable estimates of the items of revenue and expense contained therein and shall contain the proposed budget for operations for the succeeding Fiscal Year. When approved by Owner, the proposed Annual Operating Budget shall become the approved Annual Operating Budget. Any revisions, substitutions or additions to the Annual Operating Budget must be approved by Owner in writing.

(b) The Capital Budget shall contain the proposed budget for FF&E Expenditures from the Reserve and the budget for Capital Improvements for the succeeding Fiscal Year. Operator shall submit good faith reasonable estimates for Capital Improvements and for FF&E Expenditures for such succeeding Fiscal Year. When approved by Owner, the proposed Capital Budget shall become the approved Capital Budget. Approval of the Capital Budget constitutes an authorization for Operator to expend money for Capital Improvements and for FF&E as provided in the Capital Budget, unless Owner's approval thereof specifically requires Operator to obtain additional approvals prior to commencing such work. Any revisions, substitutions or additions to the approved Capital Budget must be approved by Owner in writing.

(c) Operator shall use commercially reasonable efforts to operate the Hotel in accordance with the approved Annual Plan. The parties acknowledge that: (i) the approved Annual Plan is an estimate only; (ii) unforeseen circumstances during the course of the applicable Fiscal Year may make adherence to the approved Annual Plan impracticable or impossible; and (iii) Operator shall be entitled to depart therefrom due to causes of the foregoing nature. Operator may (w) incur variable expenses directly attributable to occupancy or revenues above forecasted levels; (x) pay all taxes, utilities, insurance premiums and charges provided for in contracts and leases entered into pursuant to this Agreement that are not within Operator's ability to control; (y) make any expenditures reasonably required on an emergency basis to avoid or mitigate damage to the Hotel or injury to persons or property, provided that Operator notify Owner as promptly as reasonably possible; and (z) make any expenditures necessary to comply with, or to cure or prevent any violation of any Mortgage and Legal Requirements. In addition to, and without limiting the foregoing, Operator shall be permitted, in its discretion and without the approval of Owner, to deviate from the approved Annual Operating Budget as follows: by up to ten percent (10%) of the approved department expense line item, or by up to five percent (5%) of the aggregate total expenditures in the approved Annual Operating Budget. If Operator determines that circumstances will result in material changes between actual results and the approved Annual Plan during the course of the Fiscal Year, Operator shall, within thirty (30) days of such determination, notify Owner, which shall include a reforecast of revenues and expenses through the remainder of the Fiscal Year. Unless otherwise specified, all references to the Annual Plan in this Agreement shall be deemed to refer to the Annual Plan approved by Owner, subject to Operator's right to depart therefrom pursuant to this Section 4.2(c).

4.3 **Labor Relations.** Operator may negotiate with any union lawfully entitled to represent the Hotel Employees and may execute collective bargaining agreements or labor contracts resulting therefrom that have been approved by Owner in Owner's sole and absolute discretion, as provided in Section 2.1(d). Owner shall have the right to have one or more representatives attend and participate in all such negotiations.

4.4 **Liquor License.** Operator shall obtain all alcoholic beverage licenses either in its name or its designee and shall maintain the alcoholic beverage licenses in good standing and effect, free of all liens (with the exception of any lien granted to Owner herein) and in compliance with the conditions imposed upon such alcoholic beverage licenses by any alcoholic beverage control commission or other governmental authority or agency, pursuant to the License Agreement. Operator further covenants and agrees that upon termination of this Agreement, whether upon its expiration or at any sooner termination thereof, it shall execute any documentation and perform any other acts which may be reasonably necessary or appropriate to effect the transfer or issuance of an alcoholic beverage license to the subsequent owner or Operator of the Hotel, provided that Operator shall not incur liability or cost in connection with such transfer or issuance. Owner covenants and agrees to pay any and all costs (including reasonable attorney's fees) incurred by Operator or its designee in effecting the transfer or obtaining such licenses and such covenant and agreement shall survive the expiration or termination of this Agreement.

4.5 **Notice of Violations.** Operator shall promptly notify Owner in writing of any written notice received from any regulatory or governmental body regarding an actual or perceived violation of any Legal Requirements.

4.6 **Centralized Services.** To the extent not otherwise provided by Licensor pursuant to the terms and conditions of the License Agreement, Operator may provide or cause its affiliated companies to provide for the Hotel the benefit of certain reservation systems, centralized accounting services, IT services, purchasing services, revenue management services, training, satisfaction surveys, and/or other centralized services as may be made available generally to similar properties managed by Operator from time to time (individually and collectively, the "**Centralized Services**"). The cost of all Centralized Services ("**Centralized Services Charge**") shall be (a) set forth in the applicable Annual Operating Budget, (b) allocated to the Hotel on an equitable basis with all other hotels utilizing the Centralized Services of Operator or its Affiliates, (c) reimbursed to Operator on a cost reimbursement basis and without mark-up or profit to Operator, and (d) shall not exceed the costs which Owner otherwise would have incurred if such services otherwise were provided on-site at the Hotel, which costs may include, without limitation, salaries (including payroll taxes and employee benefits) of employees and officers of Operator and its Affiliates engaged in the provision of the Centralized Services, costs of all equipment employed in the provision of such Centralized Services, and a reasonable charge for the development costs of Operator or its Affiliates. The Centralized Services currently provided by Operator, along with the Centralized Services Charge as of the Effective Date, are described in Exhibit B attached hereto. The Centralized Services and the Centralized Services Charge shall be subject to change from time to time, subject to clauses (a)-(d) above.

4.7 **Multi-Property Programs.** Owner acknowledges and agrees that, subject to the applicable Annual Operating Budget, Operator may, in Operator's reasonable discretion, enter into certain purchasing, maintenance, service or other contracts with respect to the operation of

the Hotel and other hotels operated by Operator (collectively, “**Multi-Property Programs**”) pursuant to which Operator or its Affiliates may receive rebates, discounts, cash or other incentives, administration fees, concessions, profit participations, stock or stock options, investment rights or similar payments or economic considerations (collectively, “**Operator Rebates**”) from the vendors or suppliers of goods or services provided under such Multi-Property Programs. When taking bids or issuing purchase orders, Operator shall secure for, and shall credit to, Owner any Operator Rebates (less Operator’s expenses related thereto) in connection with such purchase. Operator shall promptly remit to Owner’s benefit in the Operating Account the value of all Operator Rebates (less Operator’s expenses related thereto) received by Operator or any of its affiliates in connection with any purchases described herein.

ARTICLE 5

USE OF NAME

5.1 **Name.** During the Term of this Agreement, the Hotel shall at all times be known and designated by the name set forth in the applicable License Agreement or by such other name as from time to time may be approved by Owner. Operator shall make or cause to be made any fictitious name filings or disclosures required by the laws of the State with respect to the use of such name for or in connection with the Hotel.

ARTICLE 6

ADVERTISING

Subject to the provisions of the License Agreement, Operator shall arrange and contract for all advertising, which Operator may reasonably deem necessary, in accordance with Section 4.2, for the operation of the Hotel. So long as the License Agreement may be in effect, Operator generally shall advertise the Hotel under the name required by the License Agreement for the Hotel.

ARTICLE 7

RESERVE FOR FF&E

7.1 **Reserve for Replacement of FF&E.** The Reserve shall be funded pursuant to Section 7.2, and Operator shall be authorized to use amounts in the Reserve to pay for the cost of FF&E Expenditures and Capital Improvements.

7.2 **Transfers to Reserve for FF&E.** Commencing on the Commencement Date and continuing thereafter during the remainder of the Term, Operator shall deposit monthly into the Reserve for FF&E and Capital Improvements an amount equal to the amounts required by Lender and/or by Licensor; provided that in no event will the amounts to be deposited monthly into the Reserve be less than an amount equal to four percent (4%) of Gross Revenues throughout the Term.

7.3 **Annual Adjustment.** At the end of each Fiscal Year and following receipt by Operator of the annual accounting referred to in ARTICLE 10, an adjustment will be made if necessary and if available, so that the appropriate amount shall have been deposited in the Reserve for such Fiscal Year.

7.4 **Maintenance of Reserve.** The proceeds from the sale of FF&E no longer needed for the operation of the Hotel shall be deposited in the Reserve, but not credited against the obligation to deposit cash in such fund for the then current Fiscal Year. All interest earned or accrued on amounts invested from the Reserve shall be added to the Reserve (but shall not be credited against Owner's obligations to fund the Reserve), and shall not constitute Gross Revenues or be included therein.

7.5 **Accumulation of Reserve and Additional Cost of FF&E and Capital Improvements.** Owner and Operator acknowledge and agree that portions of the Reserve may, from time to time in accordance with the then-current Annual Plan, be used for more significant expenditures than could be reserved for in a single year. Accordingly, at the end of each Fiscal Year, any amounts remaining in the Reserve shall be carried forward to the next Fiscal Year, and shall be in addition to the amount to be reserved in the next Fiscal Year. In the event at any time there are insufficient funds in the Reserve for any Fiscal Year to pay the cost of FF&E Expenditures in accordance with the Annual Plan, then Owner will, within thirty (30) days after request therefor by Operator, provide the additional funds to Operator to pay for such excess.

ARTICLE 8

REPAIRS AND MAINTENANCE AND CAPITAL IMPROVEMENTS

8.1 **Repairs and Maintenance.** Operator shall, from time to time, make such expenditures from the Reserve (or, to the extent insufficient, from funds otherwise provided by Owner) for (a) FF&E Expenditures and (b) repairs and maintenance of HVAC, mechanical and electrical systems, exterior and interior repainting; resurfacing building walls and floors; resurfacing parking areas; replacing folding walls; and miscellaneous similar expenditures (collectively, "**Repairs and Maintenance**") as required by the License Agreement, any Mortgage, Legal Requirements, Annual Plan and otherwise in the condition required by this Agreement. Except in the event of an emergency, Force Majeure Event or otherwise under circumstances in which it would be unreasonable to seek to obtain prior approval (and provided that Operator shall notify Owner of any such expenditure within a reasonable time given the nature and scope of the emergency), all expenditures for the foregoing shall be as provided in the Annual Plan. If any such Repairs and Maintenance shall be made necessary by any condition against the occurrence of which Owner has received the guaranty or warranty of the builder of the Hotel or of any supplier of labor or materials for the Hotel or of any supplier of labor or materials for the construction of the Hotel, then Operator shall, at Owner's direction, invoke said guarantees or warranties in Owner's or Operator's name and Owner shall cooperate in all reasonable respects with Operator in the enforcement thereof.

8.2 **Capital Improvements.** Owner shall, from time to time, at its sole expense (which may include funds deposited in the Reserve), make such Capital Improvements in or to the Hotel as Owner shall determine are necessary to comply with the Operating Standards. If Capital Improvements shall be required at any time during the Term by the terms of the License Agreement, to maintain the Hotel in accordance with the Operating Standards or Legal Requirements, or because Operator and Owner jointly agree upon the desirability thereof, then in such event all such Capital Improvements shall be made with as little hindrance to the operation of the Hotel as reasonably possible. Notwithstanding the foregoing, as long as the Hotel can continue to operate without interruption, Owner shall have the right to contest the need for any

such Capital Improvements required by any Legal Requirements and may postpone compliance therewith, if so permitted by law and if such postponement will not expose Operator to any civil or criminal liability. All recommendations by Operator of Capital Improvements shall be submitted in conjunction with the Capital Budget for the Fiscal Year described in Section 4.2(b). In the event that Owner elects to perform Major Renovations to the Hotel, Owner may request Operator to oversee the performance of the Major Renovations, in which case the parties shall enter into an agreement for project management services in a form and on such terms and conditions (including the amount of any project management fees) mutually acceptable to both parties.

8.3 **Liens.** Owner and Operator shall cooperate and use all commercially reasonable efforts to prevent any liens from being filed against the Hotel that arise from any maintenance, changes, repairs, alterations, improvements, renewals or replacements in or to the Hotel.

8.4 **Notice of Force Majeure Event.** In the event of any occurrence constituting a Force Majeure Event, Operator shall promptly notify Owner of such occurrence and shall keep Owner informed as to the extent and impact thereof on the Hotel.

ARTICLE 9

WORKING CAPITAL AND OPERATING ACCOUNT; DISTRIBUTION OF EXCESS CASH

9.1 **Working Capital.** Owner shall provide initial Working Capital in an amount equal to \$1,000 per guest room at the Hotel. Owner shall at all times cause sufficient Working Capital to be on hand in the Operating Account. In no event shall Owner permit the Working Capital in the Operating Accounts to be less than an amount equal to the estimated monthly operating expenses of the Hotel for the ensuing sixty (60) day period, as reflected in the then current Annual Operating Budget. From time to time, upon fifteen (15) days prior written notice from Operator that such funds are required, Owner shall furnish to Operator funds that Operator deems reasonably necessary to assure that the Hotel shall have adequate Working Capital as herein provided.

9.2 **Depository Account.** All monies received by Operator in the operation of the Hotel shall be received in trust by Operator for the benefit of Owner and shall be deposited in a “**Depository Account**” in Owner’s name, with certain of Owner’s employees as authorized signatories, in a bank or trust company selected by Owner. Such monies shall not be commingled with other funds belonging to Operator and shall be swept on a daily basis into the Operating Account.

9.3 **Operating Account.** Owner and Operator shall also establish an Operating Account for paying the Hotel’s expenses permitted herein to be charged to the Hotel and/or Owner. The Operating Account shall be in Owner’s name, with Operator’s employees as the authorized signatories, in a bank or trust company selected by Owner. Operator shall pay all Operating Expenses of the Hotel and amounts owed Operator and its Affiliates hereunder (including the Management Fee and Centralized Services Charges) out of the Operating Account. Checks drawn on the Operating Account or other documents of withdrawal from such accounts shall be signed by a designated representative of Operator approved by Owner. The Operating Account shall provide that, upon Owner’s written direction, Operator and its representatives may be removed

as authorized signatories of such account but only upon termination of this Agreement. Owner shall make arrangements to deposit from the Depository Account into the Operating Account on a daily basis any money which is required to cover payments from the Operating Account permitted herein, including any payments for capital expenditures permitted herein. If Owner fails to do so and such failure continues for three (3) business days after notice from Operator, such failure shall be deemed an Owner Event of Default and Owner shall indemnify and hold Operator harmless from any loss or expense Operator might incur as a result of such deposit not having been made, and Operator may exercise its right to terminate pursuant to Section 15.2. All risk of loss with respect to funds in the Operating Account shall be borne by Owner.

9.4 Distribution of Excess Cash. Within twenty-five (25) days of the close of each Accounting Period, Operator shall distribute to Owner all sums remaining in the Operating Account in excess of the then Working Capital requirements of the Hotel determined in accordance with Section 9.1 of this Agreement.

9.5 Lender Requirements. The provisions of this ARTICLE 9 shall be subject to the requirements of any Lender. Operator will cooperate with all cash management and other similar requirements reasonably imposed by any Lender, provided such cash management or other requirements acknowledge that so long as Operator is managing the Hotel, Operator shall continue to receive payment of Management Fees, Reimbursable Expenses and payroll expenses as contemplated herein.

ARTICLE 10

BOOKS, RECORDS AND STATEMENTS

10.1 Books and Records. Operator shall keep full and adequate books of account and other records reflecting the results of operation of the Hotel in accordance with the Uniform System of Accounts and GAAP. The books of account and all other records relating to or reflecting the operation of the Hotel shall be kept either at the Hotel or at Operator's corporate offices and shall be available to Owner and its representatives and its auditors or accountants, at all reasonable times for examination, audit, inspection and transcription at Owner's sole cost and expense. All of such books and records pertaining to the Hotel shall be the property of Owner. Upon any termination of this Agreement, all of such books and records forthwith shall be turned over to Owner at a location designated by Owner so as to insure the orderly continuance of the operation of the Hotel, but such books and records shall thereafter be available to Operator at all reasonable times for inspection, audit, examination and transcription for a period of three (3) years. In addition to the Hotel's books and records, Operator shall maintain Guest Data in accordance with its privacy policy and the License Agreement; provided, however, Owner and Operator shall jointly own all Guest Data, and each may use such Guest Data in any commercially reasonable manner that: (a) does not violate the terms of this Agreement, (b) during the Term of this Agreement, does not interfere with and/or is not detrimental to the operation or financial performance of the Hotel, and (c) does not violate any Legal Requirements applicable to the use of Guest Data.

10.2 Financial Reports.

(a) Operator shall deliver to Owner within twenty (20) days following the close of each Accounting Period a monthly profit and loss statement reflecting a comparison of periodic and year-to-date actual revenues and expenses with the Annual Operating Budget as well as a periodic and year-to-date comparison of such actual revenues and expenses with those of the prior Fiscal Year.

(b) Within seventy-five (75) days after the end of each Fiscal Year, Operator shall deliver to Owner an annual accounting, showing the results of operation of the Hotel during the Fiscal Year and a computation of Gross Revenues, Operating Expenses, and Gross Operating Profit, if any, and any other information necessary to make the computations required hereby or which may be requested by Owner, all for such Fiscal Year. The annual accounting for any Fiscal Year shall be controlling over the interim accountings for such Fiscal Year.

(c) Operator shall prepare and deliver any additional reports or information as Owner is required to provide under the License Agreement.

10.3 Audits by Owner. Owner shall have the right to audit, conducted either by Owner's internal personnel or by a third party auditor retained by Owner, at its expense and not as an Operating Expense of the Hotel (except as provided below), all items of expense and revenue under this Agreement including, but not limited to, Gross Revenues, Operating Expenses, depreciation, the Management Fee and the Reserve. Operator shall cooperate and assist with such audit. In the event that an audit reflects an underpayment to Owner or Operator or an overpayment to Operator or Owner, Operator shall correct same by a corrective payment to Owner or Operator, as appropriate, within ten (10) days following notice of the audit results to Operator, subject to Owner's and Operator's right to challenge the audit results in accordance with the provisions of ARTICLE 27 of this Agreement. In the event any audit establishes that Operator has overstated or understated Gross Revenues or Operating Expenses by more than five percent (5%), the costs of such audit shall be paid for by Operator (and shall not be an Operating Expense of the Hotel).

10.4 Accounting Services. Subject to the provision of sufficient input, review, approval and signoff by Owner, during the Term, Operator (or its Affiliate) shall render certain accounting services to and on behalf of Owner, which shall include:

(a) separate from the Hotel books and records, the maintenance of Owner's corporate books of account, including without limitation capital accounting (to be performed under Operator's capitalization policy) and check cutting services with respect to Owner's FF&E account for the payment of FF&E Expenditures;

(b) the provision of financial reporting services, utilizing Operator's standard reports, which shall be delivered within the reporting deadlines required by Lender, but in no event less than twenty (20) days monthly, forty five (45) days quarterly and ninety (90) days annually;

(c) the making of all of Owner's required payments with respect to (i) any Mortgage (on behalf of Owner in satisfaction of Owner's obligations under Section 23.5), (ii) Taxes (as set forth in Section 13.1) and (iii) Insurance Costs (as set forth in Section 12.1);

(d) if applicable, the processing of Lender requisitions from the Reserve;

- (e) coordination of deliverables for Lender reporting requirements;
- (f) cooperation with an independent accounting firm approved in Owner's sole discretion in connection with securitization vehicle reporting deadlines and audit procedures under Regulation AB; and
- (g) other related services as mutually agreed by Owner and Operator from time to time (collectively, the "**Accounting Services**").

In consideration for its provision of the Accounting Services hereunder, Operator shall receive the Accounting Services Fee, which amount shall be payable pursuant to Section **Error! Reference source not found.**, and which reflects Operator's cost reimbursement only, without mark-up or profit to Operator. In the event the scope of the Accounting Services is materially increased (including through use of reports other than Operator's standard forms), the Accounting Services Fee may be increased as mutually determined by the parties. Owner may elect at any time to terminate the Accounting Services by delivery of seventy five (75) days' prior written notice to Operator, in which event the date of termination of the Accounting Services will be the last day of the calendar quarter following the month in which Operator receives Owner's written notice of termination, and the Accounting Services Fee shall cease to be due from and after the date of such termination.

ARTICLE 11

MANAGEMENT FEES AND OTHER PAYMENTS

11.1 Management Fee. For each Fiscal Year or portion thereof, Operator shall receive, by a distribution made by Operator out of the Operating Account at the end of each Accounting Period, subject to delivery of the monthly reports described in Section 10.2(a) (except with respect to the Incentive Fee, which, if due, shall be paid at the end of each calendar quarter upon the submission of the reports described in Section 10.2(b) with respect to such calendar quarter) in respect of its management services hereunder, a management fee calculated as follows (collectively, the "**Management Fee**"):

- (a) a base fee (the "**Base Fee**") in an amount equal to two and one half percent (2.5%) of Gross Revenues in respect of any applicable period; plus
- (b) an incentive fee (the "**Incentive Fee**") in an amount equal to fifteen percent (15%) of Adjusted GOP for such Fiscal Year. A sample calculation of the Incentive Fee is attached hereto as Exhibit C.
- (c) Notwithstanding the forgoing, the aggregate Management Fee payable in any given Fiscal Year shall not exceed four percent (4%) of Gross Revenues for such Fiscal Year.

11.2 Payment of Management Fee. The Incentive Fee shall be computed separately for each Fiscal Year and shall not be accumulated from Fiscal Year to Fiscal Year. The Incentive Fee shall be prorated for any partial Fiscal Year (provided that in the event this Agreement is terminated due to an Event of Default by Operator, no Incentive Fee shall be payable with respect to the Fiscal Year in which such termination occurs). The Incentive Fee shall be adjusted, if necessary, within sixty (60) days after receipt by Owner of the annual accounting for such Fiscal

Year or receipt by Operator of Owner's documentation supporting the calculation of Owner's Priority Return. Upon request by Operator, Owner shall provide sufficient evidence and back up documentation to support Owner's calculation of Owner's Priority Return, including without limitation sufficient evidence and back up documentation to allow Operator to properly verify Owner's Invested Capital and Owner's Additional Invested Capital. Owner or Operator shall be entitled to audit the determination and calculation of the Management Fee. In the event that an audit reflects an underpayment or overpayment of the Management Fee to Operator, Operator shall correct same by a corrective payment to Owner or Operator, as appropriate, within ten (10) days following notice of the results of such audit to the other party, subject to Owner's and Operator's right to challenge the audit results in accordance with the provisions of ARTICLE 27 of this Agreement. The calculation and payment of the Incentive Fee shall survive the termination of this Agreement.

11.3 Other Payments. Operator shall receive, by a distribution made by Operator out of the Operating Account at the end of each Accounting Period, the Centralized Services Charges and Accounting Services Fee for each Accounting Period concurrently with the payment of the Base Fee at the end of each Accounting Period. Operator shall also receive reimbursement from Owner for those reasonable out of pocket costs actually incurred by Operator which are or were directly and exclusively related to transitional management services provided by Operator prior to the Commencement Date, as outlined in the Transition Budget attached hereto as Exhibit D (the "**Transition Budget**"). Additionally, Operator shall, in accordance with the Annual Plan, be entitled to reimburse itself directly from the Operating Account for all Reimbursable Expenses incurred by it in connection with the performance of this Agreement. If requested by Owner, Operator shall provide a statement showing in reasonable detail the nature and amount of such expenses, together with supporting documentation reasonably requested by Owner.

11.4 Treatment of Proceeds of Business Interruption Insurance and Condemnation Awards. In the event of a casualty or condemnation for temporary use resulting in the payment of business interruption insurance (with respect to such casualty) or a condemnation award (with respect to such condemnation for temporary use), the amount of such proceeds shall be considered a part of Gross Revenues for the purpose of computing Operator's Management Fee, unless such Management Fees are paid directly to Operator by way of receipt of business interruption proceeds.

ARTICLE 12

INSURANCE

12.1 Insurance Requirements. Owner shall retain the right, upon written notice to Operator, to procure and maintain, as an Operating Expense of the Hotel, the policies required in subsections (a), (b), (c), (d), (e), (f), (g) or (l) of this Section 12.1 given, however, that such policies shall be placed with responsible and properly authorized companies, meet the minimum requirements as contained in this ARTICLE 12, the coverage provisions provided shall apply to Operator's benefit as provided in this Agreement, and with respect to subsection (l) of this Section 12.1, if there is a deficiency in the coverage of the Cyber Liability Insurance policy procured or maintained by Owner, Operator shall have the right to elect to procure Cyber Liability Insurance coverage addressing any such deficiency, as an Operating Expense of the Hotel. Operator will procure and maintain, as an Operating Expense of the Hotel, the policy required in subsection (h) of this

Section 12.1 with a responsible and properly authorized company that meets the minimum standards contained in this ARTICLE 12. Operator will procure and maintain, at Operator's sole cost and not as an Operating Expense of the Hotel, the policies required in subsections (i), (j) and (k) of this Section 12.1 with responsible and properly authorized companies that meet the minimum standards contained in this ARTICLE 12; provided, however, Operator shall only be responsible for the payment of the premiums for such policies as procured by Operator, and any deductibles payable in connection with any claim or loss, any losses suffered under such policies, or any other claims, costs or expenses associated with such policies, shall be borne by Owner. Notwithstanding Operator's agreement to pay the cost of the premiums associated with the policies required in subsections (i), (j) and (k), in the event Owner elects to modify the deductibles under such policies or otherwise adjust coverage under such policies and such modifications result in an increase in premium, Owner shall be responsible for any increase in premium associated with such modification. All policies evidencing such insurance in this ARTICLE 12 shall name both Owner and Operator as named or additional insureds as their interests may appear, and may, at Owner's election, name any mortgagee, lien holder or other security interest holder of all or any part of the Hotel as an additional insured thereunder, as its interest may appear. The party which procures the insurance required under subsections (d) and (e) of this Section 12.1 will procure such coverage on a primary and non-contributory basis to the other party.

(a) An "all risk" policy (including, at Owner's option, Difference in Conditions coverage which shall include earthquake, windstorm and flood) insuring all real and personal property, in an amount Owner and Operator shall mutually deem advisable.

(b) Insurance on the Hotel against loss or damage from an accident to and/or caused by boilers, heating apparatus, pressure vessels, pressure pipes, electrical or air conditioning equipment, in an amount as Owner shall deem advisable.

(c) Business interruption and extra expense insurance, on a loss sustained basis, against the perils enumerated in subsections (a) and (b) above, including Operator's Management Fees and the Centralized Services Charges as provided under this Agreement.

(d) Commercial General Liability Insurance, including coverage for bodily injury (including coverage for death, mental anguish), full liquor liability, inn keepers legal liability (this coverage can be provided through a 3rd party crime policy upon Owner consent), personal injury and advertising liability including premises-operations, independent contractors' protective, products-completed operations, broad form property damage (including coverage for explosion, collapse and underground hazards), and including cross liability and severability of interests, blanket contractual liability for liability and claims occurring upon, in on or about the Hotel and, without exclusion for assault, battery or sexual molestation. Coverage shall be extended to include liability arising out of spas, treatments, massages as applicable, with the following minimum limits:

- (i) \$1,000,000 Each Occurrence;
- (ii) \$2,000,000 General Aggregate;
- (iii) \$1,000,000 Personal and Advertising Injury; and
- (iv) \$2,000,000 Products-Completed Operations Aggregate.

Such policy shall provide coverage on a on a per occurrence basis and be endorsed to have the General Aggregate apply on a per location/ per project basis. The Contractual Liability Insurance shall include coverage sufficient to meet the indemnity obligations in this Agreement.

(e) Umbrella/Excess Liability Insurance on a follow form basis with a per occurrence and annual aggregate limit of \$100,000,000 per location / project. Coverage shall be excess of Commercial General Liability Insurance, Auto Liability and Employers Liability with such coverage being concurrent with and not more restrictive than underlying insurance.

(f) Comprehensive Automobile Liability Insurance, including coverage for owned, non-owned, leased and hired autos, in the minimum amount of \$1,000,000 combined single limit for Bodily Injury and Property Damage for automobiles used in the performance of Operator's obligations hereunder.

(g) Such additional insurance as may be required by any mortgagee or lessor of the Hotel or any part thereof, together with insurance against such other risks as Owner deems necessary and that is now, or hereafter is, customary to insure against in the operation of similar properties, considering the nature of the business and the geographic and climatic nature of the Hotel's location.

(h) Worker's Compensation coverage with statutory limits and employer's liability with limits not less \$1,000,000 and similar insurance as may be required by law or as Operator shall deem advisable.

(i) Employment Practices Liability Insurance in amounts not less than \$2,000,000 covering employee harassment, discrimination, retaliation, wrongful termination. Such policy shall contain an endorsement to provide for coverage relating to claims from third parties, with coverage including but not limited to third party discrimination.

(j) Fidelity or Crime insurance in such reasonable amounts as Owner and Operator shall deem advisable but not less than \$1,000,000, which policy shall specify that any loss involving funds of Owner shall be payable to both Operator and Owner with Owner as primary loss payee. A contracting services endorsement or other endorsement to provide for coverage of employees of Operator taking money or property of Owner or guests shall be attached to said policy.

(k) Professional Liability (Errors and Omissions) Insurance in amount not less than \$2,000,000 covering the management, marketing, and hospitality services provided on behalf of the Hotel by Corporate Personnel.

(l) Cyber Liability Insurance with limits of not less than \$2,000,000 each claim and \$2,000,000 general aggregate covering liabilities for financial loss resulting or arising from website media content liability, breaches of security, and damage, destruction or theft of data. If Operator shall have access to personally identifiable information, such insurance shall also cover liabilities for the failure to prevent unauthorized access to data containing such information including violations of privacy laws and regulations. Furthermore, the insurance shall cover data breach expenses, including but not limited to consumer notification, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring

or remediation services. The coverage shall be written on a claims made and reported basis. Operator's insurance shall be primary and required to respond to and pay prior to any other available coverage of Owner.

Owner and Operator may agree for Operator to procure and maintain the policies required in subsections (a), (b), (c), (d), (e), (f) or (g) of this Section 12.1, as an Operating Expense to the Hotel, on Owner's behalf and upon Owner's approval. Operator shall cause each contractor employed at the Hotel to maintain insurance coverages equivalent to those standard in the industry but in no event less than the primary Commercial General Liability Insurance and Worker's Compensation limits required above. Operator shall cause each contractor to include the same additional insured requirements and certificates of insurance as noted above for Operator.

12.2 General Insurance Requirements.

(a) Certificates of insurance, containing all conditions applying to the Hotel, shall be delivered to Owner or Operator, as applicable, upon renewal of all policies of insurance that must be maintained under the terms of this Agreement. All policies shall contain an endorsement providing a thirty (30) day written notice of cancellation, material change, or non-renewal to Owner and Operator.

(b) Each policy of insurance shall provide that the carrier shall have no right of subrogation against either party hereto, their agents or employees by separate endorsement.

(c) No deductible or self-insured retention required by Operator hereunder shall exceed \$25,000 unless written consent is provided by Owner; provided, however, that:

- (i) those policies associated with Sections 12.1(h) or (k) shall be excluded;
- (ii) with respect to the policy associated with Section 12.1(j), the deductible or self-insured retention required by Operator hereunder shall not exceed \$50,000 unless written consent is provided by Owner;
- (iii) with respect to the policy associated with Section 12.1(l), the deductible or self-insured retention required by Operator hereunder shall not exceed \$150,000 unless written consent is provided by Owner;
- (iv) with respect to the policy associated with Section 12.1(i), the deductible or self-insured retention required by Operator hereunder shall not exceed \$250,000 unless written consent is provided by Owner; and
- (v) in the event Owner elects to modify the deductibles of those policies associated with Section 12.1(i), (j), or (l), or otherwise adjust the coverage under such policies, and such modifications or adjustments result in an increase in the premium, Owner shall be responsible for any increase in the premium associated with such modification or adjustment.

(d) All insurance shall be written with companies approved by Owner, licensed in the state in which the Hotel is located and having a Best's Rating of not less than A-XI, unless otherwise approved by Owner.

(e) At Owner's request, Operator shall provide information pertaining to Operator's policies and procedures governing claims, emergency preparedness, and loss prevention. This is to include regular reports on claim and insurance litigation activity at the Hotel.

(f) Any insurance required to be provided pursuant to this ARTICLE 12 may be provided under policies of blanket insurance which cover other properties and activities of Owner or Operator, as applicable. The cost of any blanket coverage shall be equitably prorated among the properties and activities covered, provided that the portion of such cost allocated to the Hotel shall be no greater than if the same insurance coverage were written separately. Upon request, any such proration by Owner or Operator of blanket coverage shall be subject to the reasonable approval of the other party.

(g) The parties acknowledge that, as of the Effective Date, Operator will not provide the policies required in Sections 12.1(a), (b) and/or (c) within Operator's shared master property insurance program; provided, however, that Owner may elect to have Operator provide such insurance at any time during the Term, in which case the provisions of this Section 12.2(g) shall apply. If at any time during the Term, Owner elects to have Operator provide the policies required in Sections 12.1(a), (b) and/or (c) within Operator's shared master property insurance program, certain coverage limits will be shared with other properties owned and/or managed by Affiliates of Operator. Owner agrees that if there is a loss at the Hotel that results in a reduction of the amount of insurance coverage with respect to other properties covered by such master property insurance program, all costs of reinstating the full amount of coverage with respect to such other properties to the coverage that was available for such other properties under such master property insurance program immediately prior to such loss at the Hotel shall be borne by Owner as an expense of the Hotel. Conversely, if there is a loss at another property covered by such master insurance program that results in a reduction of the amount of insurance coverage with respect to the Hotel, all costs of reinstating the full amount of coverage with respect to the Hotel shall not be borne by Owner as an expense of the Hotel, but shall be borne by Operator or the owner of the applicable property that suffered such loss. The obligations of Owner and/or Operator pursuant to this Section 12.2(g) shall survive (i) the expiration or termination of this Agreement or termination of similar agreements, if any, related to Operator's affiliated properties on the shared program; and (ii) any election of Owner or Operator to remove the Hotel from the master insurance program and/or the removal of any of Operator's affiliated properties from the shared master insurance program. Owner and Operator agree to use commercially reasonable efforts in reinstating the coverage limits to the amount of coverage available immediately prior to such loss; provided, however, Owner and Operator shall be required, at a minimum, to reinstate the amounts of coverage necessary to comply with the requirements of any third party mortgagee or franchisor of the properties covered by the master insurance program. Notwithstanding the foregoing, (A) after a loss the relevant party will only be required to reinstate coverage, if any, up to an amount that results in a total amount of coverage that is sufficient for all properties under the program that are also obligated to a reinstatement provision, if Owner and Operator mutually agree at their sole discretion that the remaining amount of coverage is sufficient; provided if Owner and Operator do not mutually agree, an independent third-party consultant (i.e., a consultant who has not had any

direct relationship with either party in the preceding twenty-four (24) month period) selected by Operator will make such determination, (B) the amount of coverage to be reinstated by the relevant party will be limited to what is sufficient only for the properties in Operator's master shared insurance program that are obligated by the same reinstatement provisions per this Section 12.2(g) and (C) the maximum amount of lost shared limit to be reinstated by the relevant party after a loss will be equal to the amount of lost shared limit that was lost due to a loss at the relevant party's property. Owner also agrees that it shall bear as an expense of the Hotel all costs for any additional limits or coverages that may be requested by Owner that are above the limits in such master insurance program. Owner may elect to remove the Hotel from Operator's master insurance program upon thirty (30) days prior written notice (or upon three (3) business days prior written notice if such termination is effective on the annual renewal date of such master insurance program). Any premium prepaid by Owner for such terminated coverage shall be credited to Owner in an amount calculated by the insurance carrier in its sole and absolute discretion. Operator will use reasonable efforts to give written notice to Owner within ten (10) business days after any property is added or removed from Operator's shared master insurance program and will confirm the same upon request by Owner.

ARTICLE 13

REAL AND PERSONAL PROPERTY TAXES; UTILITIES

13.1 **Taxes.** Operator shall pay, for and on behalf of Owner from funds of the Hotel, all real estate taxes, all personal property taxes and all betterment assessments levied against the Hotel or any of its component parts. Operator shall promptly deliver to Owner all notices of assessments, valuations and similar documents to be filed by Owner, which are received from taxing authorities by Operator.

13.2 **Utilities, Etc.** To the extent sufficient funds are available in the Operating Account or otherwise made available in a timely manner by Owner, Operator shall promptly pay all fuel, gas, light, power, water, sewage, garbage disposal, telephone and other utility bills currently as they are incurred in connection with the Hotel from the Gross Revenues or Working Capital.

ARTICLE 14

DAMAGE OR DESTRUCTION; CONDEMNATION

14.1 Damage or Destruction.

(a) If the Hotel or any portion thereof shall be damaged or destroyed at any time or times during the Term by fire, casualty or any other cause commonly covered by fire and extended coverage insurance, to the extent required or permitted by any Lender and to the extent insurance proceeds are made available by Lender for such purpose, Owner will at its own cost and expense and with due diligence, repair and/or restore the Hotel so that after such repair and/or restoration, the Hotel shall be in substantially the same condition as it was immediately prior to such damage or destruction.

(b) Owner shall notify Operator within thirty (30) days after Owner determines whether or not Lender will permit, and make insurance proceeds available to carry out, such repair and/or

restoration, in which case Owner shall complete such repair and/or restoration pursuant to the last sentence of Section 14.1(a).

(c) If Owner advises Operator as provided in clause (b) above that Lender will not permit, and make insurance proceeds available to carry out, such repair and/or restoration, or fails to advise Operator as provided in clause (b) above, Operator may terminate this Agreement by written notice to Owner, within one hundred fifty (150) days after such damage or destruction, in which case, Owner shall pay to Operator the Termination Fee (provided Owner's obligation to pay the Termination Fee shall be limited to the extent of insurance proceeds which are made available to pay such Termination Fee).

14.2 Condemnation. If the whole of the Hotel shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition or like proceeding by any competent authority or if such a portion thereof shall be taken or condemned as to make it imprudent or unreasonable, in the sole opinion of Owner, to use the remaining portion as a hotel of the type and class immediately preceding such taking or condemnation, then this Agreement shall terminate as of the date title vests in the condemning authority. Operator has no interest in any award paid to Owner; however, Operator shall have the right, in the case of a condemnation that results in the termination of this Agreement, to institute a separately available administrative proceeding or judicial action intended to determine just compensation in connection with the condemnation, for the purpose of representing Operator's compensable interest in this Agreement. If only a part of the Hotel shall be taken or condemned and the taking or condemnation of such part does not, in the opinion of Owner, make it unreasonable or imprudent to operate the remainder as a hotel of the type and class immediately preceding such taking or condemnation, this Agreement shall not terminate, and so much of any award to Owner shall be made available as shall be reasonably necessary for making alterations or modifications of the Hotel, or any part thereof, so as to make it a satisfactory architectural unit as a hotel of similar type and class as prior to the taking or condemnation.

14.3 Reinstatement. If within twelve (12) months following any termination of this Agreement pursuant to Section 14.1 or 14.2, Owner or any of its Affiliates intends to commence repair and/or restoration of the Hotel, Owner shall promptly give notice to Operator in writing of such intention, and at Operator's election (exercisable by giving written notice to Owner within thirty (30) days of the date upon which Operator receives such notice from Owner), this Agreement shall be deemed reinstated in accordance with all the terms and conditions hereof (and Operator shall repay to Owner any Termination Fee received by Operator within ten (10) days after the Hotel is substantially re-opened). Operator's duties shall be suspended until the Hotel is substantially reopened and the termination date (and Term) shall be extended to reflect the period of time the Hotel is closed. The provisions of this Section 14.3 shall survive the expiration or termination of this Agreement.

14.4 Mortgage Requirements. Actions as to damage or destruction and condemnation shall be taken only in a manner that is consistent with the terms and conditions of any Mortgage and any conflict between those terms and conditions and the provisions of this Agreement shall be resolved in favor of such Mortgage.

ARTICLE 15

EVENTS OF DEFAULT

15.1 Operator Defaults. Each of the following shall constitute an Event of Default by Operator:

- (a) The failure of Operator to perform, keep or fulfill any of the covenants, undertakings, obligations or conditions to be kept, observed or performed by Operator and such failure shall continue for a period of (i) ten (10) days after written notice from Owner to Operator with respect to payment of any funds or delivery of any of the financial reports required under Section 10.2, or (ii) thirty (30) days after written notice from Owner to Operator with respect to any other obligations of Operator under this Agreement; provided that if such failure is incapable of cure within such thirty (30) day period, then the cure period shall be extended provided that Operator commenced the cure during such initial thirty (30) day period and thereafter diligently and continuously pursues the cure thereof to completion, not to exceed in any event ninety (90) days after Owner's delivery of such notice.
- (b) If Operator shall apply for or consent to the appointment of a receiver, trustee or liquidator of Operator or of all or a substantial part of its assets, admit in writing its inability to pay its debts as they come due, make a general assignment for the benefit of creditors, take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against Operator in any bankruptcy, reorganization or judgment or decree shall be entered by any court of competition jurisdiction, on the application of a creditor, adjudicating Operator bankrupt or insolvent or approving a petition seeking reorganization of Operator or appointing a receiver, trustee or liquidator of Operator or of all or a substantial part of its assets or a decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.
- (c) The filing of a voluntary petition in bankruptcy or insolvency or a petition for liquidation or reorganization under any bankruptcy law by Operator, or Operator shall consent to, acquiesce in, or fail timely to controvert, an involuntary petition in bankruptcy, insolvency or an involuntary petition for liquidation or reorganization filed against it.
- (d) The filing against Operator of a petition seeking adjudication of Operator as insolvent or seeking liquidation or reorganization or appointment of a receiver, trustee or liquidator of all or a substantial part of Operator's assets, if such petition is not dismissed within ninety (90) days.
- (e) Failure of Operator to maintain at all times throughout the term hereof all of the insurance required to be maintained by Operator under ARTICLE 12, if such failure is not cured within fifteen (15) days after written notice specifying such failure is given by Owner to Operator.

15.2 Owner Defaults. Each of the following shall constitute an Event of Default by Owner:

- (a) The failure of Owner to pay or furnish to Operator any money Owner is required to pay or furnish to Operator in accordance with the terms hereof on the date the same is payable, if such failure is not cured within ten (10) days after written notice specifying such failure is given by Operator to Owner. If any sum of money is not paid within ten (10) days following the date the same becomes due and payable under this Agreement, and Operator has advanced such sum on behalf of Owner, such sum shall bear interest at the Default Rate from the date Operator advanced

such sum on behalf of Owner until the date Owner actually pays such sum. If the failure to pay relates to the Management Fee, such sum shall bear interest at the Default Rate from the date due until the date actually paid.

(b) The failure of Owner to perform, keep or fulfill any of the other covenants, undertakings, obligations or conditions set forth in this Agreement (other than a failure to pay or furnish to Operator any money Owner is required to pay or furnish to Operator), including without limitation, the failure of Owner to respond to written requests by Operator to approve expenditures or to authorize procedures necessary to maintain the standards of the Hotel in accordance with the Operating Standards, if such failure shall continue for a period of thirty (30) days after written notice by Operator or Licensor to Owner specifying the matters or conditions which constitute the basis for such Event of Default, provided that if such failure is incapable of cure within such thirty (30) day period, then the cure period shall be extended provided that Owner commences the cure during such initial thirty (30) day period and thereafter diligently and continuously pursues the cure thereof to completion.

(c) If Owner shall apply for or consent to the appointment of a receiver, trustee or liquidator of Owner of all or a substantial part of its assets, or admit in writing its inability to pay its debts as they come due, make a general assignment for the benefit of creditors, take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against Owner in any bankruptcy, reorganization or insolvency proceeding, or if an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Owner a bankrupt or insolvent or approving a petition seeking reorganization of Owner or appointing a receiver, trustee or liquidator of Owner or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.

(d) The filing of a voluntary petition in bankruptcy or insolvency or a petition for liquidation or reorganization under any bankruptcy law by Owner, or Owner shall consent to, acquiesce in, or fail timely to controvert, an involuntary petition in bankruptcy, insolvency or an involuntary petition for liquidation or reorganization filed against it.

(e) The filing against Owner of a petition seeking adjudication of Owner as insolvent or seeking liquidation or reorganization or appointment of a receiver, trustee or liquidator of all or a substantial part of Owner's assets, if such petition is not dismissed within ninety (90) days.

(f) Failure of Owner to maintain at all times throughout the term hereof all of the insurance required to be maintained by Owner under ARTICLE 12, if such failure is not cured within fifteen (15) days after written notice specifying such failure is given by Operator to Owner.

ARTICLE 16

TERMINATION UPON EVENT OF DEFAULT; OTHER REMEDIES

16.1 **Termination.** Upon the occurrence of an 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: (a) terminate this Agreement without penalty, effective upon receipt of written notice of termination by the defaulting party; and (b) pursue any

and all other remedies available to the non-defaulting party at law or in equity. In addition to and cumulative of the foregoing, upon the occurrence of any Event of Default on the part of Owner, all Management Fees, Reimbursable Expenses, Accounting Services Fees and all other sums then due and payable to Operator under this Agreement shall be immediately due and payable without notice. In no event shall the provisions of this Agreement with respect to the payment of a Termination Fee upon the termination of this Agreement under certain circumstances be construed as defining or limiting the amount recoverable by Operator from Owner by reason of any Event of Default on the part of Owner.

16.2 Operator's Rights to Perform.

- (a) If Owner shall fail to make any payment or to perform any act required of Owner pursuant to this Agreement, Operator may (but shall not be obligated to), without further notice to, or demand upon, Owner and without waiving or releasing Owner from any obligations under this Agreement, make such payment (either with its own funds or with funds withdrawn for such purpose from the Operating Accounts) or perform such act. All sums so paid by Operator from its own funds, together with interest thereon at the Default Rate from the date of making such expenditure by Operator, shall be payable to Operator on demand.
- (b) Operator shall have the right to set-off against any payments to be made to Owner by Operator under any provision of this Agreement and against all funds from time to time in the Operating Accounts any and all liabilities of Owner to Operator. Operator may withdraw from the Operating Accounts from time to time such amounts as Operator deems desirable in partial or full payment of all or any portion of said liabilities, the amount of such withdrawals to be paid by Owner to Operator on demand and to be replaced in the respective account and fund.
- (c) Owner shall have the right to set-off against any payments to be made to Operator by Owner any amounts owed by Operator to Owner under this Agreement.

ARTICLE 17

OWNER'S ADDITIONAL TERMINATION RIGHTS

17.1 Termination on Sale. If at any time during the Term, Owner sells, leases or otherwise transfers or conveys (a) the Hotel, or (b) seventy-five percent (75%) or more of the direct or indirect interests in Owner, in each case to a person or entity which is not an Affiliate of Owner in a bona fide arm's length transaction, Owner shall have the right to terminate this Agreement by giving prior written notice (the "**Sale Termination Notice**") to Operator; provided that if such transfer shall occur at any time prior to the third (3rd) anniversary of the Commencement Date, Owner shall pay to Operator, as a condition of such termination, the Termination Fee, subject to Section 21.2. The Sale Termination Notice shall set forth an estimate of the effective termination date of this Agreement, which date shall not be less than sixty (60) days subsequent to the date of the Sale Termination Notice. The actual termination shall be effective as of the closing of the sale, regardless of the estimate provided in the Sale Termination Notice. Accordingly, Owner shall, upon reasonable notice, have the right to extend the effective date of such termination for a reasonable period of time based on delays in the closing, provided that Owner shall pay all actual costs reasonably incurred by Operator in postponing the effectiveness of such termination. As a further condition of any termination of this Agreement by Owner under this Section 17.1, Owner

shall pay to Operator, on or before the effective date of such termination all amounts due Operator and its Affiliates under this Agreement for the period of time prior to the date of termination.

17.2 Performance Termination.

(a) Subject to the provisions of this Section 17.2, Owner may terminate this Agreement in accordance with the procedure described below, if for any full Fiscal Year from and after the expiration of Fiscal Year 2019 (i.e., commencing with Fiscal Year 2020) (each a “**Measurement Year**”), subsections (i) and (ii) below are applicable for such Measurement Year (collectively, the “**Performance Test**”):

(i) the Gross Operating Profit for such Measurement Year is less than ninety percent (90%) of the budgeted Gross Operating Profit set forth in the approved Annual Operating Budget for such Measurement Year (the “**GOP Test**”); and

(ii) the RevPAR of the Hotel for such Measurement Year is less than the following percentage of the annualized RevPAR for the Competitive Set (the “**RevPAR Test**”): (A) for Fiscal Year 2020, one hundred and ten percent (110%); (B) for Fiscal Year 2021, one hundred and fifteen percent (115%); (C) for Fiscal Year 2022, and every Fiscal Year thereafter for the remainder of the Term, one hundred and twenty percent (120%).

(b) If the Performance Test is not satisfied and Owner elects to exercise its right to terminate this Agreement pursuant to this Section, (i) Owner shall give written notice to Operator of such election within sixty (60) days after the receipt by Owner of the annual accounting (as set forth in Section 10.2) for such Measurement Year; and (ii) the notice shall specify a termination date no sooner than ninety (90) days after the giving of such notice. No Termination Fee shall be payable upon any termination of this Agreement pursuant to this Section 17.2. Within sixty (60) days following its receipt of Owner’s notice of termination, Operator may elect, which election may be exercised only once during the Term, to pay to Owner an amount which, when added to the actual aggregate amount of the Gross Operating Profit for the Measurement Year in question, equals the amount of Gross Operating Profit that would have been necessary to satisfy the GOP Test for such Measurement Year. Upon such payment, the Performance Test shall be deemed to have been satisfied for such Measurement Year, Owner shall not have a right to terminate this Agreement based upon such Measurement Year and Owner’s election to do so shall be of no further force and effect.

(c) In the event that there is a Threshold Adjustment Event, Owner and Operator will reasonably cooperate to equitably adjust the GOP Test and the RevPAR Test, as applicable. If the parties cannot agree as to the equitable adjustment within thirty (30) days following written request for adjustment by either party, the matter will be submitted to an Expert, as provided and in accordance with the procedures set forth in Section 27.1.

ARTICLE 18

TRANSFER AND REMITTANCE TO OWNER UPON TERMINATION

18.1 Transfer to Owner. Upon any termination of this Agreement, whether due to the occurrence of an Event of Default or otherwise, Operator shall cooperate with Owner and shall execute all documents or instruments requested by Owner in connection with the transfer to

Owner or its nominee of the Permits and the License Agreement used or useful in connection with the operation of the Hotel (including without limitation executing any interim beverage agreement or similar agreement reasonably required to allow alcoholic beverages to continue to be sold at the Hotel after such termination in accordance with Legal Requirements pending issuance of temporary or new Permits with respect to such sales to Owner or its designee, so long as such successor Owner provides Operator with an indemnity, in form and substance reasonably acceptable to Operator, indemnifying Operator from any and all claims and liability associated with such interim agreements and continued use of such Permits); provided, however, if such termination is due to a reason other than a default by Operator under this Agreement, Owner will reimburse Operator for Operator's reasonable expenses to effect such transfer, or the imposition of liability by Operator. Without limiting the generality of the foregoing, Operator shall cause its officials to execute any necessary documents to effectuate the orderly transfer to Owner or its designee of the Permits and the License Agreement or the renewal thereof to Owner or Owner's designee if appropriate. In the event that this Agreement terminates for any reason, a sufficient number of Hotel Employees will be hired by Owner or its successor, assign or designee, so as not to cause a "mass layoff" or "plant closing", as defined in the Workers Adjustment and Retraining Act, 29 USC, sec 2101 et seq. (the "**WARN Act**"). Owner hereby agrees to indemnify, defend and hold Operator harmless from and against any and all claims asserted against or incurred by Operator related to: (a) hiring, discharging, offering to hire or failing to hire any of the Hotel Employees; (b) termination of the Hotel Employees by reason of the termination of this Agreement; or (c) Owner's failure to take, or cause to be taken, the action necessary with respect to Hotel Employees so that Operator will not be required to comply with the WARN Act or any other similar Legal Requirements.

18.2 Remittance to Owner. Upon the expiration or termination of this Agreement, after payment of all Operating Expenses for which bills were received to such date, Operator's Management Fee, Reimbursable Expenses, Accounting Services Fee, any Termination Fee and any other amounts then due and payable to Operator, and after withholding a reasonable amount determined by Operator to be necessary to pay for any continuing liabilities or payables that may become due following such termination, all remaining amounts in: (a) the Reserve and (b) the Operating Account, shall be transferred by Operator to Owner.

ARTICLE 19

NOTICES

All notices, elections, acceptances, demands, consents and reports (collectively "**notice**") provided for in this Agreement shall be in writing and shall be given to the other party at the address set forth below or at such other address as any of the parties hereto may hereafter specify in writing.

To Owner: c/o Wheelock Street Capital LLC
660 Steamboat Road, 3rd Floor
Greenwich, CT 06830
Attention: Lawrence Settanni
Email: settanni@wheelockst.com

With a copy to:

Goodwin Procter LLP
601 S. Figueroa Street, 41st Floor
Los Angeles, CA 90017
Attention: Chauncey Swalwell
Email: cswalwell@goodwinprocter.com

To Operator: Merritt Hospitality, LLC
101 Merritt 7 Corporate Park
1st Floor
Norwalk, Connecticut 06851
Attention: Clark W. Hanrattie
Email: chanrattie@heihotels.com

With a copy to:

Dentons LLP
2398 East Camelback Road, Suite 850
Phoenix, Arizona 85016
Attn: Rick Ross and Meghan Cocci
Phone: (602) 508-3900
Email: rick.ross@dentons.com and meghan.cocci@dentons.com

Such notice or other communication may be given by personal delivery, by Federal Express or other nationally recognized overnight carrier, by electronic mail, or by United States registered or certified mail, return receipt requested, postage prepaid, deposited in a United States post office or a depository for the receipt of mail regularly maintained by the post office. All notices, demands, consents and reports shall be deemed received upon acceptance or rejection of delivery.

ARTICLE 20

CONSENT AND APPROVAL

Except as herein otherwise provided, whenever in this Agreement the consent or approval of Operator or Owner is required, such consent or approval shall not be unreasonably withheld or delayed. Such consent or approval shall also be in writing only and shall be executed only by an authorized officer or agent of the party granting such consent or approval.

ARTICLE 21

TRANSFERS

21.1 **Transfers.** Except as herein otherwise provided, neither party may cause or permit a Transfer without the prior written consent of the other party (which consent may be withheld or conditioned in such other party's sole discretion); provided however, that either party shall be entitled to assign this Agreement (a) to an Affiliate of such party and (b) in connection with a corporate transaction involving such party in which all or substantially all of such party's assets are transferred to an Affiliate of such party. Operator shall have the right to assign its economic rights to receive payments under this Agreement (as opposed to a pledge of the ownership interests in Operator) as security for indebtedness or other obligations. Additionally, Operator

may transfer this Agreement and its rights hereunder to a successor by merger, sale of all or substantially all of its assets or interest in Operator, as applicable, or otherwise by operation of law.

21.2 Assignability upon Sale. Notwithstanding anything to the contrary in Section 21.1, if Owner decides to enter into a Sale of the Hotel with a third party, then at such time as Owner enters into a firm commitment for the Sale of the Hotel, Owner shall deliver a written notice (the “**Notice of Proposed Sale**”) of the proposed Sale of the Hotel to Operator stating the name of the prospective purchaser or tenant, as the case may be, and, thereafter shall provide all other information concerning the proposed purchaser or tenant reasonably requested by Operator and which such purchaser or tenant has provided to Owner or Owner’s Affiliates. Within fifteen (15) days of Operator’s receipt of the Notice of Proposed Sale, Operator shall notify Owner of its election to either: (a) continue operating the Hotel following such Sale of the Hotel, or (b) terminate this Agreement. In the event Operator enters into an agreement to operate the Hotel following such Sale of the Hotel, Operator shall not have the right to receive the Termination Fee in connection with such Sale of the Hotel. In the event Operator does not enter into an agreement to operate the Hotel following the closing of the Sale of the Hotel Operator shall have the right to receive the Termination Fee.

21.3 Prohibited Sale. Notwithstanding anything to the contrary in Section 21.2, Owner may not cause or permit a Transfer to any Prohibited Person.

ARTICLE 22 **INDEMNITY**

22.1 Indemnity by Owner. Owner shall indemnify, defend and hold Operator, its Affiliates and their respective directors, trustees, officers, employees, agents and assigns (collectively the “**Operator Indemnified Parties**”) harmless for, from and against any and all third-party liabilities, claims, demands, actions, causes of action, judgments, orders, damages, costs, expenses, and losses (including reasonable attorney’s fees and costs) (collectively, “**Claims**”) which Operator Indemnified Parties might incur, become responsible for, or pay out for any reason, directly or indirectly arising out of, relating to or resulting from: (a) this Agreement, including the negotiation of or entering into this Agreement; (b) the development, construction, ownership and/or operation of the Hotel from and after the Effective Date, (c) any reporting to the IRS, Owner’s lenders or any party relying on Owner’s books and records by Owner or by Operator (on behalf of and as directed by Owner, in connection with Operator’s provision of the Accounting Services pursuant to Section 10.4 of this Agreement); and (d) other activities relating to the Hotel, except to the extent caused by Operator’s Grossly Negligent or Willful Acts.

22.2 Indemnity by Operator. Operator shall indemnify, defend and hold Owner, its Affiliates and their respective directors, trustees, officers, employees, agents and assigns (collectively the “**Owner Indemnified Parties**”) harmless for, from and against any and all Claims which Owner Indemnified Parties might incur, become responsible for, or pay out for any reason, directly or indirectly arising out of, relating to or resulting from this Agreement, to the extent caused by Operator’s Grossly Negligent or Willful Acts.

22.3 Indemnification Procedure. Any Indemnified Party shall be entitled, upon written notice to the Indemnifying Party, to the timely appointment of counsel by the Indemnifying Party for the defense of any claim, which counsel shall be subject to the approval of the Indemnified Party. If, in the Indemnified Party's reasonable judgment, a material conflict of interest exists between the Indemnified Party and the Indemnifying Party at any time during the defense of the Indemnified Party, the Indemnified Party may appoint independent counsel of its choice for the defense of the Indemnified Party as to such claim. Additionally, regardless of whether the Indemnified Party is appointed counsel or selects independent counsel (a) the Indemnified Party shall have the right to participate in the defense of any claim and approve any proposed settlement of such claim, such approval to be in such party's sole and absolute discretion, and (b) all costs, expenses and attorneys' fees of the Indemnified Party shall be borne by the Indemnifying Party. If the Indemnifying Party fails to timely pay such costs, expenses and reasonable attorneys' fees, the Indemnified Party may, but shall not be obligated to, pay such amounts and be reimbursed by the Indemnifying Party for the same, which amounts shall bear interest at the Default Rate until paid in full. The parties hereby acknowledge that it shall not be a defense to a demand for indemnity that less than all claims asserted against the Indemnified Party are subject to indemnification. If a claim is covered by the Indemnifying Party's liability insurance, the Indemnified Party shall not take or omit to take any action that would cause the insurer not to defend such claim or to disclaim liability in respect thereof. Further, the Indemnified Party shall cooperate with the Indemnifying Party in the defense of the claim (at the Indemnifying Party's cost), shall not settle the claim without the consent of the Indemnifying Party, and shall not take any action which prejudices the defense of the claim.

22.4 Survival/Miscellaneous. The provisions of this ARTICLE 22 shall survive the expiration or earlier termination of this Agreement. Owner and Operator mutually agree for the benefit of each other to look first to the appropriate insurance coverages in effect pursuant to this Agreement in the event any claim or liability occurs as a result of injury to person or damage to property, regardless of the cause of such claim or liability. In no event shall the settlement by either party of any claim brought by a third party (including Hotel Employees) in connection with the ownership or operation of the Hotel be deemed to create any presumption of the validity of the claim, nor shall any such settlement be deemed to create any presumption that the acts or omissions giving rise to such claim constituted Operator's Grossly Negligent or Willful Acts.

ARTICLE 23

MISCELLANEOUS

23.1 Further Assurances. Owner and Operator shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding and enforceable as between them and as against third parties.

23.2 Waiver. The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed a waiver of such terms and conditions on any future occasion.

23.3 Successors and Assigns. Subject to and limited by ARTICLE 21, this Agreement shall be binding upon and inure to the benefit of Owner, its successors and permitted assigns, and shall be binding upon and inure to the benefit of Operator, its successors and permitted assigns.

23.4 **Governing Law.** This Agreement shall be construed, both as to its validity and as to the performance of the parties, in accordance with the laws of the State of New York.

23.5 **Compliance with Mortgage and License Agreement.** In carrying out their respective duties and obligations under the terms of this Agreement, Owner and Operator shall take no action that could reasonably be expected to constitute a material default under any Mortgage or the License Agreement and will take such actions as are reasonably necessary to comply therewith. Owner shall be responsible for making all payments under any Mortgage.

23.6 **Amendments.** This Agreement may not be modified, amended, surrendered or changed, except by a written document signed by Owner and Operator agreeing to be bound thereby.

23.7 **Estoppel Certificates.** Owner and Operator agree, at any time and from time to time, as requested by the other party, upon not less than ten (10) days' prior written notice, to execute and deliver to the other a written statement (a) certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified and stating the modifications), (b) certifying the dates to which required payments have been paid, and (c) stating whether or not, to the best knowledge of the signer, the other party is in default in performance of any of its obligations under this Agreement, and if so, specifying each such default of which the signer may have knowledge, it being intended that such statement delivered pursuant hereto may be relied upon by others with whom the party requesting such certificate may be dealing.

23.8 **Inspection Rights.** Owner shall have the right to inspect the Hotel and examine the books and records of Operator pertaining to the Hotel at all reasonable times during the Term upon reasonable notice to Operator, and Owner and the holder of any Mortgage shall have access to the Hotel and the books and records pertaining thereto at all times during the Term to the extent necessary to comply with the terms of any Mortgage, all to the extent consistent with applicable Legal Requirements and the rights of guests, tenants and concessionaires of the Hotel, and all to the extent the same will not interfere with the operation and management of the Hotel.

23.9 **Subordination.** This Agreement, any extension hereof and any modification hereof shall be subject and subordinate to a Mortgage as provided therein. The provisions of this Section shall be self-operative and no further instrument of subordination shall be required; however, Operator will execute and return to Owner (or to Lender, as designated by Owner) such documentation as Owner or Lender may reasonably request to evidence the subordination of this Agreement to the Mortgage (and, if required by a Lender, the assignment of this Agreement to such Lender as additional security in connection with such Mortgage).

23.10 **Effect of Approval of Plans and Specifications.** Owner and Operator agree that in each instance in this Agreement or elsewhere wherein Operator is required to give its approval of plans, specifications, budgets and/or financing, no such approval shall imply or be deemed to constitute an opinion by Operator, nor impose upon Operator any responsibility for the design or construction of additions to or improvements of the Hotel, including but not limited to structural integrity or life/safety requirements or adequacy of budgets and/or financing. The scope of Operator's review and approval of plans and specifications is limited solely to the adequacy and relationship of spaces and aesthetics of the Hotel in order to comply with the Operating Standards.

23.11 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, superseding all prior agreements or undertakings, oral or written.

23.12 **Time is of the Essence.** Time is of the essence in this Agreement.

23.13 **Interpretation.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision.

23.14 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the parties hereto and all of which shall constitute one and the same agreement. Counterparts of this Agreement received by electronic transmission shall be deemed originals for all purposes.

23.15 **Partial Invalidity.** In the event that any one or more of the phrases, sentences, clauses or paragraphs contained in this Agreement shall be declared invalid by the final and unappealable order, decree or judgment of any court, this Agreement shall be construed as if such phrases, sentences, clauses or paragraphs had not been inserted, unless such construction would substantially destroy the benefit of the bargain of this Agreement to either of the parties hereto.

23.16 **Confidentiality.** The parties agree that the terms, conditions and provisions set forth in this Agreement are strictly confidential and the parties agree to keep strictly confidential any information of a confidential nature about or belonging to a party or to any Affiliate of a party to which the other party gains or has access by virtue of the relationship between the parties (collectively, “**Privileged Information**”). Except as disclosure may be required to obtain the advice of professionals or consultants, or financing for the Hotel from a Lender, or in furtherance of a permitted assignment of this Agreement, or as may be required to comply with Legal Requirements (including reporting requirements applicable to public companies), each party shall make commercially reasonable efforts to ensure that Privileged Information is not disclosed to the press or to any other third party without the prior consent of the other party. Notwithstanding the foregoing, the parties hereby acknowledge that Operator shall have the authority to release information regarding the Hotel to STR, Inc. (or a similar organization mutually agreed upon by the parties). The obligations set forth in this Section shall survive any termination or expiration of this Agreement. The parties shall cooperate with one another on all public statements, whether written or oral and no matter how disseminated, regarding their contractual relationship as set forth in this Agreement or the performance of their respective obligations under this Agreement.

23.17 **No Third Party Rights.** This Agreement shall inure solely to the parties hereto. Notwithstanding any other provision of this Agreement, no third party shall have any rights pursuant to the terms of this Agreement.

ARTICLE 24

NO REPRESENTATIONS AS TO INCOME OR FINANCIAL SUCCESS OF HOTEL

In entering into this Agreement, Operator and Owner acknowledge that neither Owner nor Operator has made any representation to the other regarding projected earnings, the possibility of future success or any other similar matter respecting the Hotel, and that Operator and Owner

understand that no guarantee is made to the other as to any specific amount of income to be received by Operator or Owner or as to the future financial success of the Hotel.

ARTICLE 25

REPRESENTATIONS OF OPERATOR

In order to induce Owner to enter into this Agreement, Operator does hereby make the following representations and warranties:

- (a) this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Operator enforceable in accordance with the terms hereof;
- (b) there is no claim, litigation, proceeding or governmental investigation pending, or as far as is known to Operator, threatened, against or relating to Operator, the properties or business of Operator or the transactions contemplated by this Agreement which does, or may reasonably be expected to, materially and adversely affect the ability of Operator to enter into this Agreement or to carry out its obligations hereunder, and there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Owner;
- (c) neither the consummation of the transactions contemplated by this Agreement on the part of Operator or to be performed, nor the fulfillment of the terms, conditions and provisions of this Agreement, conflicts with or will result in the breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement, indenture, instrument or undertaking to which Operator is a party or by which it is bound; and
- (d) Operator is not, and shall not become, a person or entity with whom U. S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named in OFAC’s Specially Designated and Blocked Person’s List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, or Support Terrorism), or other governmental action (such persons and entities being “**Prohibited Persons**”).

ARTICLE 26

REPRESENTATIONS OF OWNER

In order to induce Operator to enter into this Agreement, Owner does hereby make the following representations and warranties:

- (a) this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with the terms hereof;
- (b) there is no claim, litigation, proceeding or governmental investigation pending, or as far as is known to Owner, threatened, against or relating to Owner, the properties or business of Owner or the transactions contemplated by this Agreement which does, or may reasonably be expected to, materially and adversely affect the ability of Owner to enter into this Agreement or to carry out its obligations hereunder, and there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Operator;

(c) neither the consummation of the transactions contemplated by this Agreement by this Agreement on the part of Owner to be performed nor the fulfillment of the terms, conditions and provisions of this Agreement, conflicts with or will result in the breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement, indenture, instrument or undertaking to which Owner is a party or by which it is bound; and

(d) Owner is not, and shall not become, a person or entity with whom U. S. persons or entities are restricted from doing business under regulations of OFAC of the Department of the Treasury (including those named in OFAC's Specially Designated and Blocked Person's List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, or Support Terrorism), or other governmental action.

ARTICLE 27

DISPUTE RESOLUTION

27.1 Expert Determination. Notwithstanding anything to the contrary in Section 27.2, any dispute, claim or issue arising under this Agreement with respect to: (a) the proper inclusion or exclusion of items in revenues, expenses and other financial computations contemplated herein, (b) the proper computation of the Base Fee, Incentive Fee, charges for Centralized Services, Accounting Services or Reimbursable Expenses, (c) disputes relating to the Annual Plan, including expenses related to satisfying Operating Standards, (d) disputes as to the Performance Test or changes in the Competitive Set, or (e) other matters as to which this Agreement expressly provides for dispute resolution by an Expert, shall be resolved in accordance with this Section by one Expert. Notwithstanding the foregoing, the parties shall have the right to commence litigation or other Legal Proceedings with respect to any Litigation Claims. The decision of the Expert shall be final and binding on the parties and shall not be capable of challenge, whether by arbitration, in court or otherwise, except to the extent of any manifest error in such Expert's determination. The costs of the Expert and the proceedings shall be borne as directed by the Expert unless otherwise provided for herein. In the event the parties are unable to agree on an Expert or otherwise disagree as to whether the disputed matter qualifies for Expert determination, either party shall have the right, prior to submitting such matter to an Expert, to initiate the mediation and arbitration procedures contemplated below.

27.2 Mediation/Arbitration. Except with respect to the matters described in Section 27.1 above, if any claim, dispute or difference of any kind whatsoever (a "**Dispute**") shall arise out of or in connection with or in relation to this Agreement whether in contract, tort, statutory, or otherwise, and including any questions regarding the existence, scope, validity, breach or termination of this Agreement, the following procedures shall apply:

(a) The parties shall first attempt to settle such Dispute by participating in at least ten (10) hours of mediation, which mediation shall be administered by JAMS (or if JAMS no longer exists, another mutually acceptable alternative dispute resolution provider) (the "**ADR Provider**"). A designated individual mediator who is a member in good standing of the ADR Provider will then be mutually selected by the parties to conduct the mediation; provided that such mediator must have at least ten (10) years' experience as a mediator and must not have any conflict of interest with either party (the "**Mediator**"). If the parties are unable to agree upon the identity of the

Mediator within five (5) days after the complaining party has notified the other party that a Dispute exists, then, subject to the requirements of this Section, the ADR Provider shall select a qualified Mediator of its choosing who shall act as the Mediator of the Dispute. The mediation will be a nonbinding conference between the parties conducted in accordance with the applicable rules and procedures of the ADR Provider. The mediation shall take place in New York, New York. Neither party may initiate litigation or arbitration proceedings with respect to any Dispute until the mediation of such Dispute is complete; provided, however, the parties shall have the right to commence litigation or other Legal Proceedings with respect to any claims solely relating to: (i) preserving or protecting proprietary information, (ii) emergency or injunctive relief, (iii) enforcement of the dispute resolution provisions of this Agreement, or (iv) enforcement of the decision and/or award by any Expert or Arbitrator hereunder (“**Litigation Claims**”). Any mediation will be considered complete: (a) if the parties enter into an agreement to resolve the Dispute; or (b) if the Dispute is not resolved after completion of ten (10) hours of such mediation. The parties shall share equally in the cost of the mediation.

(b) If any Dispute remains between the parties after the mediation is complete, then the Dispute shall be submitted to final and binding arbitration pursuant to the procedures set forth in this Section; provided, however, the parties shall have the right to commence litigation or other Legal Proceedings with respect to any Litigation Claims. The parties agree that the Arbitrator shall have the power to order equitable remedies, including specific performance and injunctive relief.

(c) An arbitral tribunal of one arbitrator (the “**Arbitrator**”) shall be established in conformity with the Comprehensive Arbitration Rules and Procedures of JAMS or such other rules of a successor ADR Provider mutually agreed upon by the parties (the “**Rules**”) in effect at the time such arbitration is commenced; provided, however, the parties agree that such Arbitrator shall have not less than ten (10) years’ experience in or for the hospitality industry in the area of expertise on which the dispute is based (e.g. with respect to operational matters, experience in the management and operation of hotels of a similar nature as the Hotel or, with respect to financial matters, experience in the financial or economic evaluation or appraisal of hotels). Each party shall appoint a person to appoint the Arbitrator within five (5) days of the date of a request to initiate arbitration, and the two appointed persons will then jointly appoint the Arbitrator (provided that the Arbitrator shall not be the same person as the Mediator) within ten (10) days thereafter. If the appointed persons or the Arbitrator is not appointed within the time limits set forth in the preceding sentence, such person(s) or Arbitrator shall be appointed by the ADR Provider (subject to the hospitality qualification standards set forth above). In rendering a decision hereunder, the Arbitrator shall take into account the Operating Standards of the Hotel and other applicable provisions of this Agreement.

(d) The arbitration, regardless of the amount in dispute, shall be conducted in accordance with the Rules. Any arbitration shall take place in New York, New York. The Arbitrator shall apply the substantive law of the State of New York. No party to any Dispute shall be required to join any other party as a party to the Dispute pursuant to the arbitration provisions set forth in this ARTICLE 27.

(e) The Arbitrator’s monetary awards may include a requirement that the losing party bear reasonable attorneys’ fees and costs of the arbitration proceeding, but, in no event shall award punitive or exemplary damages of any kind. Unless the Arbitrator determines otherwise, each

party to an arbitration proceeding shall be responsible for all fees and expenses of such party's attorneys, witnesses, and other representatives, and one-half of the other fees and expenses of the Arbitrator, and the other costs of the arbitration shall be allocated to and paid by (a) the party or parties initiating the respective arbitration proceeding, and (b) the party or parties against whom the respective arbitration proceeding is brought. The award rendered in any arbitration commenced hereunder shall be final and binding upon the parties, and each party hereby waives any claim or appeal whatsoever against it or any defense against its enforcement.

(f) The obligation to arbitrate under this Section is binding on the parties and their respective successors and assigns.

Until such time as a final determination of any Dispute is obtained pursuant to this Section and, notwithstanding any termination of or default under, or alleged termination of or default under, this Agreement, all parties to this Agreement involved in such Dispute shall remain liable for, and shall be required to continue to satisfy, their respective obligations under this Agreement.

27.3 **Survival.** This Section shall survive the expiration or termination of this Agreement.

ARTICLE 28

TERMINATION OF THE LICENSE AGREEMENT

Owner reserves and shall have the right in its sole discretion, at any time and without the consent or approval of (but with notice to) Operator, to terminate the License Agreement, provided, however, that Owner shall have no such right in order to establish its own independent operations, such as an operation without a franchise or license or in its own hotel name.

ARTICLE 29

RELATIONSHIP OF PARTIES

29.1 Owner and Operator acknowledge and agree that in operating the Hotel, entering into contracts, accepting reservations, and conducting financial transactions for the Hotel, Operator acts on behalf of and as agent for Owner with respect to the rights and obligations contemplated by this Agreement and assumes no independent contractual liability nor shall Operator be obligated to extend its own credit with respect to any obligation incurred in operating the Hotel or performing its obligations under this Agreement.

29.2 The relationship between the parties hereto shall be that of principal, in the case of Owner, and agent, in the case of Operator, with respect to the rights and obligations contemplated by this Agreement. Nothing contained in this Agreement shall constitute, or be construed to constitute or create, a partnership, joint venture or lease between Owner and Operator with respect to the Hotel. This Agreement is for the benefit of Owner and Operator and shall not create third-party beneficiary rights.

29.3 This Agreement shall be interpreted in accordance with general principles of contract interpretation without regard to the common law principles of agency (except as expressly provided for in this Agreement), and any liability between the parties shall be based solely on principles of contract law and the express provisions of this Agreement. To the extent any duties,

fiduciary or otherwise, that exist or may be implied for any reason whatsoever, including without limitation those resulting from the relationship between the parties, and including without limitation all duties of loyalty, good faith, fair dealing, care, full disclosure, or any other duty deemed to exist under the common law principles of agency or otherwise (collectively, the “**Implied Fiduciary Duties**”), are inconsistent with, or would have the effect of modifying, limiting or restricting the express provisions of this Agreement, the terms of this Agreement shall prevail.

29.4 For purposes of assessing Operator’s duties and obligations under this Agreement, the parties acknowledge that the terms and provisions of this Agreement and the duties and obligations set forth herein are intended to satisfy any fiduciary duties which may exist between the parties. The parties also hereby unconditionally and irrevocably waive and release any right, power or privilege either may have to claim or receive from the other party any punitive, exemplary, statutory, or treble damages or any incidental or consequential damages with respect to any breach of the Implied Fiduciary Duties. Furthermore, Owner specifically consents to all transactions and conduct by Operator and its Affiliates described in this Agreement, including those set forth below, and waives any Implied Fiduciary Duties which Operator may owe to Owner now, or which may arise in the future, in connection with such transactions or conduct. Owner acknowledges and agrees that its consent to the transactions and conduct by Operator described in this Agreement, and its waiver of any Implied Fiduciary Duties otherwise owed by Operator: (a) has been obtained by Operator in good faith; (b) is made knowingly by Owner based on its adequate informed judgment as a sophisticated party after seeking the advice of competent and informed counsel; and (c) arises from Owner’s knowledge and understanding of the specific transactions and actions or inactions of operators that are normal, customary, and reasonably expected in the hotel industry generally for this segment of the hotel industry.

The rest of this page is intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

OWNER:

WS HAA Owner, LLC a Delaware limited liability company

By: _____

Name: _____

Title: _____

OPERATOR:

MERRITT HOSPITALITY, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

SCHEDULE 1
HOTEL COMPONENTS

1. Total Guest Rooms - approximately 507
2. Meeting Space - approximately 34,000 square feet and 11,000 square feet of pre-function space across 16 meeting rooms, including the 10,000 square foot grand ballroom and a 7,200 square foot junior ballroom
3. Food and Beverage Facilities - four (4) food and beverage outlets, which are, as of the Effective Date, known as Andiamo, Finish Line Sports Bar, Herb N' Kitchen, and Magnolia Grill, and in-room dining
4. Other Facilities - indoor and outdoor pools, fitness center, business center, private club level lounge
5. Parking - valet and paid self-parking

EXHIBIT A
DESCRIPTION OF PREMISES

[Attached]

EXHIBIT B
CENTRALIZED SERVICES

[Attached]

EXHIBIT C
SAMPLE INCENTIVE FEE CALCULATION

EXHIBIT D
TRANSITION BUDGET



Business Name & Address:
Merritt Hospitality, LLC d/b/a Hilton Atlanta Airport – 1031 Virginia Avenue, Atlanta, GA 30354

[illegible]



Merritt Hospitality, LLC d/b/a Hilton Atlanta Airport – 1031 Virginia Avenue, Atlanta, GA 30354

Date and Signature of Owner

[illegible]

WESTERN SURETY COMPANY • ONE OF AMERICA'S OLDEST BONDING COMPANIES



Effective Date: May 14th, 2019

Western Surety Company

LICENSE AND PERMIT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

Bond No. 64642660

That we, Merritt Hospitality, LLC dba Hilton Atlanta Airport

of Atlanta, State of Georgia, as Principal,
and WESTERN SURETY COMPANY, a corporation duly licensed to do surety business in the State of

Georgia, as Surety, are held and firmly bound unto the

City of Hapeville, State of Georgia, as Obligee, in the penal

sum of Five Thousand and 00/100 DOLLARS (\$5,000.00),
lawful money of the United States, to be paid to the Obligee, for which payment well and truly to be made,
we bind ourselves and our legal representatives, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas, the Principal has been
licensed Retail Malt Beverage, Wine & Distilled Spirits Consumption on Premises City o
_____ by the Obligee.

NOW THEREFORE, if the Principal shall faithfully perform the duties and in all things comply
with the laws and ordinances, including all amendments thereto, pertaining to the license or permit
applied for, then this obligation to be void, otherwise to remain in full force and effect until
May 14th, 2020, unless renewed by Continuation Certificate.

This bond may be terminated at any time by the Surety upon sending notice in writing, by First Class
U.S. Mail, to the Obligee and to the Principal at the address last known to the Surety, and at the expiration
of thirty five (35) days from the mailing of said notice, this bond shall ipso facto terminate and the Surety
shall thereupon be relieved from any liability for any acts or omissions of the Principal subsequent to said
date. Regardless of the number of years this bond shall continue in force, the number of claims made
against this bond and the number of premiums which shall be payable or paid, the Surety's total limit of
liability shall not be cumulative from year to year or period to period, and in no event shall the Surety's total
liability for all claims exceed the amount set forth above. Any revision of the bond amount shall not be
cumulative.

Dated this 15th day of May, 2019.

Merritt Hospitality, LLC DBA Hilton Atlanta
Airport

Principal

Principal

WESTERN SURETY COMPANY

By Paul T. Bruffat
Paul T. Bruffat, Vice President

Western Surety Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That WESTERN SURETY COMPANY, a corporation organized and existing under the laws of the State of South Dakota, and authorized and licensed to do business in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the United States of America, does hereby make, constitute and appoint

Paul T. Bruflat of Sioux Falls,
State of South Dakota, its regularly elected Vice President,
as Attorney-in-Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, the following bond:

One Retail Malt Beverage, Wine & Distilled Spirits Consumption on Premises City of Hapeville

bond with bond number 64642660

for Merritt Hospitality, LLC dba Hilton Atlanta Airport
as Principal in the penalty amount not to exceed: \$ 5,000.00

Western Surety Company further certifies that the following is a true and exact copy of Section 7 of the by-laws of Western Surety Company duly adopted and now in force, to-wit:

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys-in-Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

In Witness Whereof, the said WESTERN SURETY COMPANY has caused these presents to be executed by its
Vice President with the corporate seal affixed this 15th day of May,
2019.

ATTEST

L. Nelson

L. Nelson, Assistant Secretary

WESTERN SURETY COMPANY

By

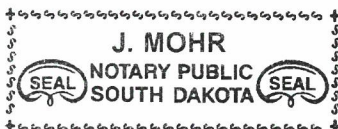
Paul T. Bruflat

Paul T. Bruflat, Vice President

STATE OF SOUTH DAKOTA }
COUNTY OF MINNEHAHA } ss

On this 15th day of May, 2019, before me, a Notary Public, personally appeared
Paul T. Bruflat and L. Nelson

who, being by me duly sworn, acknowledged that they signed the above Power of Attorney as Vice President
and Assistant Secretary, respectively, of the said WESTERN SURETY COMPANY, and acknowledged said instrument to be the voluntary act and deed of said Corporation.



My Commission Expires June 23, 2021

J. Mohr

Notary Public

To validate bond authenticity, go to www.cnasurety.com > Owner/Obligee Services > Validate Bond Coverage.

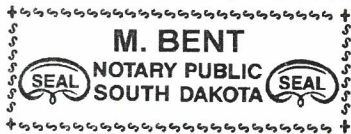


STATE OF SOUTH DAKOTA }
COUNTY OF MINNEHAHA } ss

ACKNOWLEDGMENT OF SURETY
(Corporate Officer)

On this 15th day of May, 2019, before me, the undersigned officer, personally appeared Paul T. Bruflat, who acknowledged himself to be the aforesaid officer of WESTERN SURETY COMPANY, a corporation, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



M. Bent

Notary Public — South Dakota

My Commission Expires March 2, 2020

ACKNOWLEDGMENT OF PRINCIPAL
(Individual or Partners)

STATE OF Connecticut }
COUNTY OF Fairfield } ss

On this 20th day of May, 2019, before me personally appeared Anthony Rutledge, known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

My commission expires September 30, 2012

Melanie EW Collier

Notary Public

Melanie EW Collier
Notary Public, State of Connecticut
My Commission Expires Sept 30, 2021

STATE OF _____ }
COUNTY OF _____ } ss

ACKNOWLEDGMENT OF PRINCIPAL
(Corporate Officer)

On this _____ day of _____, _____, before me personally appeared _____, who acknowledged himself/herself to be the _____ of _____, a corporation, and that he/she as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as such officer.

My commission expires _____

Notary Public


Western Surety Company

License or Permit No. _____

LICENSE AND PERMIT
BOND
As

of _____

State of _____

Name of Applicant

Address

Filed _____

Approved this _____

day of _____

STATE OF GEORGIA

Secretary of State
Corporations Division
315 West Tower
#2 Martin Luther King, Jr. Dr.
Atlanta, Georgia 30334-1530

CERTIFICATE OF AUTHORITY

I, **Brian P. Kemp**, the Secretary of State and the Corporations Commissioner of the State of Georgia, hereby certify under the seal of my office that

MERRITT HOSPITALITY, LLC
a Foreign Limited Liability Company

has been duly formed under the laws of Delaware and has filed an application meeting the requirements of Georgia law to transact business as a foreign Limited Liability Company in this state.

WHEREFORE, by the authority vested in me as Secretary of State, the above Limited Liability Company is hereby granted, on **04/08/2011**, a certificate of authority to transact business in the State of Georgia as provided by Title 14 of the Official Code of Georgia Annotated. Attached hereto is a true and correct copy of said application.

WITNESS my hand and official seal in the City of Atlanta
and the State of Georgia on April 8, 2011



Brian P. Kemp
Secretary of State

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "SMILEZZZZ, LLC", CHANGING ITS NAME FROM "SMILEZZZZ, LLC" TO "MERRITT HOSPITALITY, LLC", FILED IN THIS OFFICE ON THE TWELFTH DAY OF FEBRUARY, A.D. 2004, AT 4:23 O'CLOCK P.M.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

3448162 8100

040101165

AUTHENTICATION: 2929713

DATE: 02-13-04

FEB-12-2004 14:36
FEB-11-2004 17:27

HEI HOSPITALITY LLC

1203 P.02/04 P.03

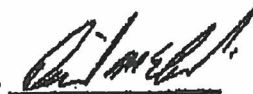
**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF FORMATION
OF
SMILEZZZZ, LLC**

Smilezzzz, LLC (the "LLC") is a limited liability company organized under the Delaware Limited Liability Company Act, 6 Del. C. §§18-101 et seq. (the "Act") on October 19, 2001. This Certificate of Amendment to the Certificate of Formation of the LLC, dated as of February 12, 2004, is duly executed and filed by the undersigned, as a duly authorized person, for the purpose of amending the Certificate of Formation of the LLC pursuant to Section 18-202 of the Act.

FIRST, the name of the LLC as set forth on the first Certificate of Amendment of the Certificate of Formation of the LLC is "Smilezzzz, LLC"

SECOND, the Certificate of Formation of the LLC is hereby amended to reflect that the name of the LLC shall now be "Merritt Hospitality, LLC."

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment as of the date first written above.



David McCaslin,
Authorized Person

L/BC/10112004

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:34 PM 02/12/2004
FILED 04:23 PM 02/12/2004
SRV 040101165 - 3448162 FILE

TIMES JOURNAL, INC.

P.O. BOX 1633
ROME GA 30161-1633

PHONE: 770-428-9411
FAX: 1888

Advertising Payment Receipt

Account number:	200382	Credit Card #:	*****6000
Account name:	SARD & LEFF LLC 3789 ROSWELL ROAD ATLANTA GA 30342	Approval Code:	180878[264451343]
		Credit Holder Name:	
Phone number:	770-644-0800		
Payment number:	184457		
Payment date:	05/15/19		
Amount:	240.24		
Payment description:	CREDIT CARD PAYMENTS		

Ad Number:	171911	Class Code:	A
Ad Taker:	jdoll	Salesperson:	M208
First Words:	MERRITT		

**Legal Advertisement
On Premise Consumption**

Applications have been made by Merritt Hospitality, LLC at 1031 Virginia Avenue, Atlanta, GA 30354 for the issuance of 2019 Alcohol Beverage On-Premise Consumption of Beer, Wine and Liquor. WS HAA Owner, LLC (hotel owner) and Edward M. Walls (hotel manager).

☐ **PROOF O.K. BY:** _____ ☐ **O.K. WITH CORRECTIONS BY:** _____

PLEASE READ CAREFULLY • SUBMIT CORRECTIONS ONLINE

MA-171911 (100%)

ADVERTISER: SARD & LEFF LLC

PROOF CREATED AT: 5/16/2019 12:59:37 PM

SALES PERSON: MAM208

NEXT RUN DATE: 05/22/19

SIZE: 2X2

PROOF DUE: 05/22/19 19:00:00

PUBLICATION: MA-SOUTH FULTON

Inspection No: IAL 19 - 003

Inspection Date: 5/23/2019

Inspection Time:

Inspector: Brian Eskew

Inspection Report



Inspection and Compliance Orders

Facility:	Hilton Andiamo	Address:	1031 A Virginia AVE		
Phone:					
Fax:		City:	Hapeville		
Email:		State:	GA	Postal Code:	30354
Contact:	Mindy Thompson	Work:			
Email:	mthompson@sardandjeff.com	Cell:	(770) 644-0800		

Inspection Type:	Inspection Business License
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Violation Code	Days to Correct *	Violation/Notes	Location
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Inspection Notes

Approved For Alcohol License

Owner/Representative:

Inspector:

B. C. A.

A variance procedure is available. Please contact the inspector named for further assistance with this or any other matter.

* Number of days to correct from date inspected.



Alcohol License Establishment Planning & Zoning Form

Date: May 28, 2019

Business Name: Merritt Hospitality, LLC DBA Hilton Atlanta Airport (Andiamo)

Business Address: 1031 Virginia Avenue

Business Owner: Anthony R. Rutledge

Business Owner Address: 530 Main Street North, Southbury, CT 06488

Contact: Mindy L. Thompson, Esq. (Sard & Leff, LLC)

Contact Phone: (770) 644-0800

Contact Email: mthompson@sardandleff.com

Building Square Footage: 505,000 SF

Square footage of Business Unit: Not provided

Will the establishment provide patio/outdoor dining? No

Number of Parking Spaces Provided: 526

STAFF USE ONLY

Zoning Classification: C-2, General Commercial

Sec. 93-14-3. - Permitted uses.

The following uses are permitted within any C-2 zone:

(24) Hotels and Motels

(36) Restaurants, carry-out restaurants, drive-in restaurants or drive-through restaurants.

Does the proposed use require a Conditional Use Permit? No.

Number of parking spaces required by zoning: 507

Outdoor dining: Not applicable.

Staff Recommendation: The proposed location complies with zoning. The application may be approved.



Zoning Compliance

Zoning Classification: C-2, General Commercial. The business is a hotel restaurant which previously had an approved occupational tax permit in the C-2 district under the prior owner.

Alcoholic Beverage Ordinance Compliance

Sec. 5-3-4. – Standards for approval, denial, renewal, suspension or revocation.

- (1) The nature of the neighborhood immediately adjacent to the proposed location, that is, whether the same is predominantly residential, industrial or business.

Property is located in a commercial district.

Sec. 5-6-3. - On-premises consumption regulations generally.

The following regulations shall apply to licensed on-premises consumption establishments:

(b) No licensee shall advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under this article. (b) No pouring of liquor, malt beverages, or wine, or any other on-premises alcohol service shall be permitted between the hours of 12:00 a.m. and 8:00 a.m. for licensed establishments whose property lines abut an area zoned residential, and 2:00 a.m. and 8:00 a.m. for all others. Except for bed and breakfasts and hotels, all patrons shall vacate such licensed establishments whose property lines abut an area zoned residential no later than 12:45 a.m., and 2:45 a.m. for all others. For purposes of this subsection, "residential" shall mean any parcel of land designated for use as a single or multifamily dwelling and duplexes.

There are no residential properties abutting the proposed location.

- (2) The proximity of churches, school buildings, school grounds, college campuses, and alcoholic treatment centers owned and operated by the state or any county or municipal government therein.

There is no minimum distance required for on-site premises consumption from the nearest school/school grounds.

- (3) Whether the proposed location has adequate off-street parking facilities or other parking available for its patrons.

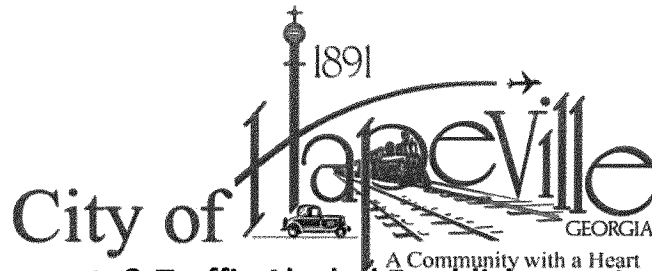
Adequate parking exists.

- (4) Whether the location would tend to increase and promote traffic congestion and resulting hazards therefrom.

There is no anticipated increase in traffic or concerns regarding congestion.

700 Doug Davis Drive
Hapeville, GA 30354

Ph: 404-669-2111
Fax 404-669-2140



Police, Code Enforcement, & Traffic Alcohol Establishment Inspection Report

Date: May 29, 2019

Business Name: Atlanta Airport Hilton Hotel-Andiamo Restaurant

Address: 1155 Virginia Avenue, Ste F, Atlanta, GA 30054

Exterior Observations:

Condition of Signage: Satisfactory

Window Signage & Visibility: Satisfactory

Condition of Property: Satisfactory

Exterior Illumination: ☐ Low Level ☒ Moderate Level ☐ High Level

Employee ID Badges: ☒ In Compliance ☐ Non-Compliant ☐ N/A

Interior Observations:

Interior Illumination: ☐ Low Level ☒ Moderate Level ☐ High Level

☐ Unknown

Cameras: ☐ In Compliance ☐ Non-Compliant ☒ N/A

Broken Packages: ☐ In Compliance ☐ Non-Compliant ☒ N/A

Traffic Considerations:

Private Property Accidents 0 Notes: _____

COMPLIANCE: To resolve this issue please N/A from premises within N/A days from receipt of this notice to be considered for an Alcohol License.

RIGHT TO APPEAL: Appeals are made thru the ARB, City of Hapeville Mayor and Council by contacting City Hall at 404-669-2100. Non-compliance may result in a Court Citation.

Additional Violations Noted: _____

History:

Law Enforcement: 33 calls Code Enforcement: 1 calls

Inspector's Signature

05/29/18