
HOTEL MANAGEMENT AGREEMENT

by and between

AIRPORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO

and

HYATT CORPORATION

Dated as of November 1, 2015

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HOTEL MANAGEMENT AGREEMENT

THIS HOTEL MANAGEMENT AGREEMENT (this “**Agreement**”) is made as of November 1, 2015, by and between the **AIRPORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO** (“**Owner**”) and **HYATT CORPORATION** (“**Manager**”).

RECITALS

A. Owner desires to develop and construct a premier, full-service, first-class, luxury-grade hotel which will be among the best on-airport hotels in the world in terms of its design, operation and environmental attributes (as further described in this Agreement, “**Hotel**”) at a location (“**Site**”) at San Francisco International Airport (“**Airport**”), which Hotel will be operated by a firm knowledgeable and experienced in managing, operating and promoting such hotels.

B. Owner represents that it is authorized to enter into all contracts which relate to matters under its jurisdiction.

C. On May 20, 2014, Owner issued a Request for Proposals (“**RFP**”) and as a result of the selection process prescribed in the RFP and upon the recommendation of the Airport Director, Owner determined that Manager was the qualified proposer receiving the highest evaluation score.

D. Manager represents that it is knowledgeable and experienced in managing, operating and promoting First-Class Hotels, and has performed such services throughout the world.

E. Owner desires to engage Manager to manage and operate the Hotel.

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

G. Owner and Manager intend that this Agreement constitute, and this Agreement shall constitute, a “Qualified Management Agreement”.

H. Owner intends to issue Special Facilities Revenue Bonds (“**Initial Series of Bonds**”) in accordance with the terms of a Trust Agreement (“**Trust Agreement**”). The proceeds of the Initial Series of Bonds, together with certain other funds including amounts contributed by the Manager, are expected to be sufficient to (i) pay the development, construction, pre-opening and initial marketing costs of the Hotel, (ii) pay 100% of Debt Service on the Initial Series of Bonds during the Pre-Opening Period and a portion of Debt Service during the first two (2) Operating Years, (iii) fully fund a Debt Service Reserve Fund for the Initial Series of Bonds, (iv) pay other financing costs, and (v) fully fund a Working Capital

Reserve Fund and Lockbox Fund at their respective required levels as of the Closing Date.

I. On [DATE], by Resolution No. [____], Owner awarded this Agreement to Manager.

J. On [DATE], by Resolution No. [____], the Board of Supervisors of the City and County of San Francisco (“City”) approved this Agreement under San Francisco Charter Section 9.118.

AGREEMENTS

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

ARTICLE I

DEFINITIONS; INTERPRETATION

Section 1.01. Definitions. The following capitalized terms used in this Agreement shall have the meanings set forth below.

“**AAA Rating**” means a diamond rating from the American Automobile Association pursuant to its “Approval Requirements and Diamond Rating Guidelines” as amended from time to time.

“**Account**” or “**Accounts**” means any one or more of the accounts from time to time created in any of the Funds established by the Trust Agreement or by any Supplemental Trust Agreement.

“**ACDBEs**” has the meaning set forth in Exhibit U.

“**ADA**” means the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101-12213, and all regulations and interpretations issued thereunder and all amendments thereto.

“**Additional Bonds**” means all Bonds, other than the Initial Series of Bonds, authorized by and at any time Outstanding pursuant to the Trust Agreement and executed, issued and delivered in accordance with Article III of the Trust Agreement.

“**Administrative Expenses**” means the reasonable fees and expenses of Asset Manager and the Trustee paid in accordance with the Trust Agreement and directly relating to the Hotel and limited as provided in the applicable Operating Budget. Administrative Expenses shall be supported by documentation evidencing such expenses and shall not exceed \$300,000 in any Operating Year, as adjusted each Operating Year for the change in the Bay Area CPI for the immediately preceding calendar year. Administrative Expenses shall not be taken into account for purposes of determining Manager’s compliance with the Performance Tests.

“**ADR**” means, with respect to the Hotel and the Excluded Hotel, the “Average Daily Rate” for the Hotel or the Excluded Hotel, as applicable, calculated in accordance with the methodology used by the Rating Service or such other reputable independent third-party market research firm as may be mutually approved by Owner and Manager.

“**Administrative Code**” means San Francisco Administrative Code.

“**Affiliate**” means, with respect to any Person, as of the relevant date, any other Person directly or indirectly controlling, controlled by, or under common control with such Person, and any Person directly or indirectly controlling, controlled by or under common control with such entities and, without limiting the generality of the foregoing, shall include (i) any Person which beneficially owns or holds 50% or more of any class of voting securities of such designated Person or 50% or more of the equity interest in such designated Person, and (ii) any Person of which such designated Person beneficially owns or holds 50% or more of any class of voting securities or in which such designated Person beneficially owns or holds 50% or more of the equity interest. The term control (including controls,” “controlled by,” and “under common control with”) means the ability through ownership, direct or indirect, of voting stock or other equity interests, to direct or cause the direction of the management and policies of a person, partnership, corporation, limited liability company or other entity; provided, however, solely for purposes of any provision of this Agreement pertaining to contracts between Manager and any of its Affiliates, an Affiliate of Manager shall be deemed to include any entity in which Manager owns (directly or indirectly) more than a 50% equity interest or otherwise participates in more than 50% of the profits or revenues of such entity (excluding such participation that represents management fees to Manager).

“**Agreed Scope of the Hotel**” has the meaning set forth in Section 2.01.

“**Agreement**” means this Hotel Management Agreement.

“**Airport**” means San Francisco International Airport.

“**Airport Rules and Regulations**” means the Rules and Regulations of the Airport adopted by the Commission on October 21, 2014, as the same may be amended from time to time. As of the date of this Agreement, the Airport Rules and Regulations are available online at: <http://media.flysfo.com/media/sfo/about-sfo/sfo-rules-and-regulations.pdf>.

“**Annual Plan**” means the Operating Budget and the Capital Budget for the applicable Operating Year.

“**Annual Report of Independent Accountants**” or “**Report**” has the meaning set forth in Section 4.02(f)

“**Applicable Law**” means: (i) all laws, statutes, acts, ordinances, rules, regulations, permits, licenses, authorizations, directives, orders, requirements and other Approvals of all Governmental Authorities, including the City’s Charter and Administrative Code and the Airport Rules and Regulations, that now or hereafter may be applicable to the Manager, its businesses or operations, Owner and/or the Hotel, and, (a) with respect to obligations of Owner, the acquisition and construction of the Hotel, including those relating to zoning, building, health, safety,

Hazardous Materials, natural resources, environmental matters, and accessibility of public facilities, and (b) with respect to obligations of Manager, the maintenance, use and operation of the Hotel, including those relating to employees, health, safety, Hazardous Materials (to the extent resulting from the operation of the Hotel by Manager) and environmental matters; and (ii) the requirements of all documents properly filed in the real property records with respect to the Property.

“Approvals” means all licenses, approvals, permits, certificates, authorizations, registrations and similar documents required, issued, granted or approved by any Governmental Authority having jurisdiction over Manager, Owner, the Property or the Hotel.

“Approved Plan” or “Approved Plans” has the meaning set forth in the Technical Services Agreement.

“Architect” means the Person or Persons serving as Architect of Record pursuant to the Design-Build Agreement.

“Asset Manager” means a Person with significant experience in the hospitality industry, including at least five (5) years of asset management experience, selected by Owner, with prompt notice of such selection provided by Owner to the Trustee and Manager, which Person may be an employee of Owner.

“Available Casualty/Condemnation Amounts” has the meaning set forth in Section 8.01(a).

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as supplemented and amended (constituting 11 U.S.C. Section 101, *et seq.*).

“Base Management Fee” has the meaning set forth in Exhibit K.

“Bay Area CPI” means the Consumer Price Index for All Urban Consumers, All Items, for the San Francisco-Oakland-San Jose, CA, market area, as published by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-84 as a base of 100, or if such index is discontinued, the most comparable index published by any federal governmental agency.

“BICE” means the Owner’s Building Inspection and Code Enforcement division with the responsibility to administer and enforce the applicable building codes, including the following responsibilities: review and approve all Airport design and construction projects and tenant improvement proposals; issue Airport building permits; inspect all demolition activities and construction installed within Airport boundaries and in conjunction with ongoing Airport projects; enforce compliance with various building codes, construction standards and regulations; and issue certificates of occupancy.

“Bond” or “Bonds” means the Initial Series of Bonds and all Additional Bonds.

“Bond Counsel” means a firm of attorneys, selected by Owner and acceptable to the Trustee, whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized.

“Bond Documents” means the Trust Agreement, the Cash Management Agreement, and the Continuing Disclosure Certificate, if any.

“Brand Standards” means the Grand Hyatt Guest Experience Manual (2015), a copy of which has been provided by Manager to Owner, as the same may be supplemented and amended from time to time.

“Building” means the building to be constructed on the Site in accordance with the Design-Build Agreement, which shall include those components, elements and features set forth in the definition of the Hotel in this Section, and which shall also include the Systems.

“Business Day” means a day that is not a Saturday, Sunday or legal holiday on which banking institutions in the States of California or New York are authorized or required by law or executive order to remain closed or the New York Stock Exchange or The Depository Trust Company is closed.

“Business Interruption Account” means the segregated Account within the Insurance and Condemnation Proceeds Fund in which the Business Interruption Proceeds are to be deposited by the Trustee when and as received, which Account shall be established by the Trustee upon receipt of notice that the carrier of such insurance will be paying claims thereon to the Trustee.

“Business Interruption Insurance” means business interruption insurance maintained pursuant to Section 9.01 and Exhibit N.

“Business Interruption Proceeds” has the meaning set forth in Section 9.01(a).

“Capital Budget” means the approved annual plan and budget setting forth all approved Capital Improvements and Capital Expenses for the Hotel for the relevant Operating Year, prepared in accordance with the terms of Section 3.21.

“Capital Expense” means any item of expense that, according to Generally Accepted Accounting Principles, generally is required to be capitalized rather than expensed on the financial statements for the Hotel.

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

“Capital Reserve Fund” means the Capital Reserve Fund established by the Trust Agreement.

“Capital Reserve Set Aside Amount” means an amount in each Operating Year equal to two percent (2%) of Total Operating Revenues. The Capital Reserve Set Aside Amount shall not be classified as an Operating Expense or Capital Expense; provided, that upon disbursement of

funds from the Capital Reserve Fund, the disbursed amounts shall be classified as an Operating Expense or Capital Expense in accordance with the Uniform System of Accounts and, to the extent consistent therewith, Generally Accepted Accounting Principles.

“Capitalized Interest Account” means, collectively, any Fund or Account created under the Trust Agreement or any Supplemental Trust Agreement and designated as a Capitalized Interest Account.

“Cardholder Data” has the meaning set forth in Section 3.41.

“Cash Management Agreement” means the Cash Management and Lockbox Agreement, substantially in the form attached as Exhibit F, among Owner, the Trustee, the Depository Bank and Manager, or any other agreement with substantially the same terms and conditions with a replacement Depository Bank.

“Casualty” means the damage or destruction of the Hotel at any time or times during the Term by fire or other casualty.

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

“Casualty Restoration” has the meaning set forth in Section 8.01(a).

“Centralized Services” means the collective reference to the following services, programs and group benefits (as are, from time to time, provided generally to all Other Grand Hyatt Hotels): (i) centralized accounting and payroll services; (ii) system-wide marketing, advertising, public relations and promotion, including search engine marketing; (iii) system-wide reservation systems, including for airline and global distribution systems; (iv) frequent guest loyalty and rewards programs; (v) supervision and control services provided to the Hotel; (vi) human resources services provided to the Hotel; (vii) financial services provided to the Hotel; (viii) targeted marketing programs that include the Hotel; (ix) information and technology systems and services provided to the Hotel, including network connectivity, email, internet distribution programs, and high-speed internet services; (x) revenue management services; and (xi) mandatory contract services (including credit card acceptance, music licenses and certain telecommunications services). Centralized Services include Chain Services.

“Centralized Services Fees” means the fixed amount for each Operating Year set forth in Exhibit V, subject to adjustment as set forth in Section 4.02.

“Certificate of Occupancy” means the Temporary or Final Certificate of Occupancy.

“Certificate of Substantial Completion” has the meaning set forth in the Pre-Opening Services Agreement.

“Certified Annual Financial Statements” means audited financial statements consisting of (i) a statement of net position, (ii) a statement of revenues, expenses and changes in net

position, and (iii) a statement of cash flows, and a certificate of the Independent Accountant to the effect that, subject to any qualifications contained therein, the financial statements fairly present, in conformity with the Uniform System of Accounts and, to the extent consistent therewith, Generally Accepted Accounting Principles, the financial position, results of operations, and cash flows of the Hotel for the Operating Year then ended.

“**Chain Services**” means the marketing and sales program generally made available by Manager from time to time to the Hyatt System, including the following as of the Execution Date: (i) convention, business and sales promotion services (including the maintenance and staffing of Hyatt’s global sales offices and regional sales offices located in various parts of the United States and the world), (ii) chain-wide marketing, advertising and public relations services for Other Grand Hyatt Hotels and Hyatt’s other individual full-service brands, (iii) centralized reservations services, (iv) revenue management, and (v) operational departmental supervision and control services for, among others, food and beverage, rooms, accounting, engineering and human resource departments. The Manager may, in its discretion from time to time, change the specific services which are part of the foregoing general services.

“**Chain Marketing Program**” has the meaning set forth in Section 3.25(a)(ii).

“**Charter**” means the Charter of the City effective July 1, 1996, as amended.

“**City**” means the City and County of San Francisco, California.

“**Claims**” has the meaning set forth in Section 7.02.

“**Clearing Bank Accounts**” means the accounts bearing the name of the Trustee at a bank or banks selected by Owner, for the purpose of depositing all Total Operating Revenues, whether from Manager, from Credit Card Companies, or from any other Person, each of which shall be given instructions to make deposits in the Clearing Bank Accounts pursuant to the Cash Management Agreement.

“**Closing**” or “**Closing Date**” means the date of delivery of the Initial Series of Bonds.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations proposed or in effect with respect thereto.

“**Competitive Set**” means, from time to time during the Term, at least four hotels in the Hotel’s immediate market area that are most comparable to the Hotel, including in age, quality, size, price, amenities, amount of meeting space, and business mix. If at any time any of the hotels included in the Competitive Set drops below an Upper Upscale Hotel brand, the Parties shall mutually agree on the substitution of another hotel, if there are any, in the immediate market area which is an Upper Upscale Hotel. If the Parties are unable to reach agreement, the Competitive Set shall be determined by a Hotel Consultant pursuant to the provisions of Section 3.21(k). As of the Execution Date, the Competitive Set shall consist of the following hotels:

- (a) Hilton San Francisco Airport Bayfront;

- (b) Hyatt Regency San Francisco Airport;
- (c) Marriott San Francisco Airport Waterfront; and
- (d) Westin San Francisco Airport.

As of the date of this Agreement, Manager does not expect hotels in the Competitive Set to achieve a AAA Rating equal to or greater than that of the Hotel.

“Condemnation Proceeds” means the proceeds payable in respect of any Taking of all or a portion of the Hotel.

“Construction Fund” means the Construction Fund established by the Trust Agreement, and includes any separate accounts or subaccounts established therein pursuant thereto.

“Continuing Disclosure Certificate” means the Continuing Disclosure Certificate executed by Owner in connection with the issuance of any Series of Bonds pursuant to Rule 15c2-12 promulgated by the Securities and Exchange Commission, as supplemented and amended and any successor thereto.

“Corporate Personnel” means any personnel from the corporate or regional offices of Manager and its Affiliates or who are otherwise area supervisors for Manager, who perform activities in connection with the services provided by Manager under the Technical Services Agreement, the Pre-Opening Services Agreement or this Agreement, respectively.

“Credit Card Company” means each bank, corporation, processor or other entity with which Manager has entered into a merchant’s or other agreement with respect to the processing of charge card, debit card or comparable forms of payment.

“Debt Service” means, as of any date of calculation, with respect to any particular period and with respect to all Bonds, all Bonds of any Series or any portion thereof as the context requires, an amount equal to the sum of (a) interest accruing during such period on such Outstanding Bonds and not accounted for with amounts on deposit in a Capitalized Interest Account held by the Trustee for such Bonds, and (b) that portion of each Principal Payment and Mandatory Sinking Fund Installment for such Outstanding Bonds which would accrue during such period if each such Principal Payment and Mandatory Sinking Fund Installment for such Bonds were deemed to accrue daily in equal amounts from the next preceding Principal Payment Date for such Bonds (or, if there shall be no such preceding date, from a date one year preceding such Principal Payment Date or from the date of issuance of the such Bonds, whichever date is later). Such interest, Principal Payments and Mandatory Sinking Fund Installments for the Outstanding Bonds shall be calculated on the assumption that no Bonds Outstanding at the date of calculation shall cease to be Outstanding except by reason of the payment of principal and Mandatory Sinking Fund Installments on the due dates thereof and on the basis of the actual number of days within the relevant period.

“Debt Service Account” means the account by that name established within the Debt Service Fund pursuant to the Trust Agreement.

“Debt Service Coverage Ratio” means with respect to the Outstanding Bonds, a fraction calculated by dividing the Net Revenues for a particular period of time by the Net Debt Service for the Outstanding Bonds for the same period of time.

“Debt Service Coverage Requirement” means with respect to the Outstanding Bonds, a Debt Service Coverage Ratio for such Bonds which is not less than 1.05:1.00 during the first (1st) Operating Year, not less than 1.15:1.00 during the second (2nd) Operating Year, and not less than 1.25:1.00 for each Operating Year thereafter.

“Debt Service Fund” means the Debt Service Fund established by the Trust Agreement, together with the Accounts established therein.

“Debt Service Reserve Fund” means the Debt Service Reserve Fund established by the Trust Agreement.

“Depository Bank” means such banking institution or institutions as Owner shall from time to time designate in writing to the Trustee at which the account or accounts shall be established and maintained with respect to the Lockbox Fund pursuant to the Cash Management Agreement.

“Design-Build Agreement” means the Design-Build Agreement to be entered into between Owner and Design-Builder, for the design and construction of the Hotel, as supplemented and amended from time to time in accordance with its terms.

“Design-Builder” means the Person or Persons with experience and expertise in the design and construction of hotels to be selected by Owner through a competitive process.

“Development Agreements” means, collectively, all documents and instruments pertaining to the construction or development of the Hotel, including the Design-Build Agreement, the Technical Services Agreement and the Pre-Opening Services Agreement.

“Direct or Indirect Profit” means any form of compensation, other than for the reasonable and actual costs of providing goods, services, supplies, products or equipment (including carrying costs of facilities), whether in the form of a payment, credit, rebate, refund, kick-back, mark-up, revenue sharing, royalty, profit participation, equity participation, barter consideration in the form of goods or services, or any other device, however denominated, and whether similar or dissimilar to any of the foregoing, received by Manager and/or any of its Affiliates, directly or indirectly, in any Operating Year from or on account of the Total Operating Revenues.

“Emergency” means a situation which constitutes an actual and imminent threat of serious harm to human life, health or safety.

“Emergency Expenses” means the expenses that Manager reasonably deems necessary to remove the existence of an Emergency.

“Environmental Claim” means a Claim (including claims for equitable relief), liability (whether based on strict liability or otherwise), investigation, litigation, administrative

proceeding, whether pending or to the knowledge of Owner, threatened, or judgment, order or anticipated damages in law relating to any Hazardous Materials or any matter regulated by any Environmental Law.

“Environmental Laws” means any federal, State, local or administrative law, rule, regulation, order, or requirement relating to industrial hygiene, protection of human health and safety, environmental conditions or Hazardous Materials, whether now in effect or hereafter adopted or amended from time to time, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C Section 9601, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), the California Hazardous Waste Control Law (California Health and Safety Code Section 25100, et seq.), the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Section 25249.5, et seq.); and applicable and controlling federal or state court decisions.

“Environmental Site Assessments” means any assessments, audits, investigations, testing, sampling, analysis and similar procedures conducted on the Property for the purpose of assessing potential liabilities under any Environmental Laws and/or identifying Hazardous Materials.

“Event of Default” means a Manager Event of Default or an Owner Event of Default, as applicable.

“Excess Amount” has the meaning set forth in Section 3.24(a)(ix).

“Excluded Hotel” has the meaning set forth in Section 3.30.

“Excluded Taxes and Other Charges” means any (a) Gross Receipts Taxes; and (b) withholding tax or other employment related taxes.

“Execution Date” means the date as of which this Agreement has been signed by both Manager and Owner.

“FF&E” means all items of furniture, fixtures and equipment used or held for usage at the Hotel, together with all replacements therefor and additions thereto (including information technology systems and equipment), but shall not include operating supplies and equipment.

“FF&E Reserve Fund” means the FF&E Reserve Fund established by the Trust Agreement.

“FF&E Set Aside Amount” means the following:

<u>Opening Date through</u>	1% of Total Operating Revenues
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1 st Operating Year-	
2 nd Operating Year-	2% of Total Operating Revenues
3 rd Operating Year -	3% of Total Operating Revenues
Each Operating Year thereafter-	4% of Total Operating Revenues

The FF&E Set Aside Amount shall be classified as an Operating Expense or Capital Expense, in accordance with the Uniform System of Accounts and, to the extent not inconsistent therewith, Generally Accepted Accounting Principles.

“Final Certificate of Occupancy” means the certificate or certificates, as applicable, issued by BICE that permits full, complete, permanent, unconditional, legal and beneficial occupancy, operation and use for the entirety of the Hotel for each and all of its intended purposes as initially acquired by the Design-Builder with respect to the original construction of the Hotel and the Work pursuant to the Design-Build Agreement.

“First-Class Hotel” means a full-service, luxury hotel with at least a four (4)-diamond AAA Rating and, to the extent of any material change after the Execution Date in the standards for such a rating, consistent with the standards for such rating as of the Execution Date.

“Fiscal Year” means the fiscal year of Owner, currently the twelve (12)-month period ending June 30.

“Force Majeure Event” means fire, storm, tornado, earthquake, flood or other natural disaster; strikes that are not directly caused by acts or labor relations of the Manager or its Affiliates; riots, rebellion or other civil unrest; acts of terrorism; or the closure of a substantial portion of the Airport or a material portion of the Hotel by Governmental Authorities.

“Fund” or ***“Funds”*** means any one or more, as the case may be, of the separate special funds established by the Trust Agreement or by any Supplemental Trust Agreement.

“GAAP” or ***“Generally Accepted Accounting Principles”*** means those conventions, rules, procedures and practices affecting all aspects of recording and reporting financial transactions by governmental entities which (i) are generally accepted by major independent accounting firms in the United States, and (ii) consistently applied in accordance with the City-wide accounting policies adopted from time to time by Owner. If Owner and Manager cannot agree on what constitutes Generally Accepted Accounting Principles, then the accounting firm then or most recently engaged to prepare the Certified Annual Financial Statements for the Hotel in accordance with Section 3.23(c) shall make the determination on the request of either Party, unless such accounting firm is also the auditing firm for Manager, in which case a different Independent Accountant shall make such determination.

“Governmental Authority” means any agency, authority, board, branch, division, department or similar unit of any federal, state, county, city, town, district, or other governmental

entity or unit having jurisdiction over or validly imposing requirements on the applicable Person or the Hotel, including its construction and operation.

“Gross Operating Profit” means for any period of time, the amount by which Total Operating Revenues for such period exceeds Operating Expenses for the same period.

“Gross Receipts Taxes” means applicable excise, sales, occupancy and use taxes, or similar taxes, duties, levies or charges imposed by Governmental Authorities collected directly from patrons or guests, or as a part of the sales price of any goods, services, or displays, such as gross receipts, admission, cabaret or similar or equivalent taxes, including any transaction tax, resale of electricity tax, soft drink tax, head tax, occupancy tax, amusement tax, beverage tax, public utility tax, and/or new service tax.

“Hazardous Materials” means (a) any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Authority to pose a present or potential hazard to human health or safety or to the air, water, soil or environment; and (b) any materials, substances, products, by products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by products, or waste may give rise to liability under any Environmental Laws or permits. “Hazardous Material” includes any material or substance identified, listed, or defined as a “hazardous waste,” hazardous substance,” or “pollutant” or “contaminant” or term of similar import, or is otherwise regulated pursuant to Environmental Laws; any asbestos and asbestos-containing materials; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

“Hotel” means the hotel to be constructed on the Site as further described in Exhibit A.

“Hotel Agreements” mean this Agreement, the Technical Services Agreement and the Pre-Opening Services Agreement.

“Hotel Consultant” means an independent nationally recognized consulting firm with substantial and significant experience in the First-Class Hotel segment listed on Exhibit S and which is appointed by agreement of the Parties or, failing agreement, each Party shall select one (1) such nationally recognized consulting firm and the two (2) respective firms so selected shall select another such nationally recognized consulting firm to be the Hotel Consultant. The Hotel Consultant may not be Manager’s or Owner’s primary hotel consultant or auditor and shall provide a written statement to each of Owner, Trustee and Manager representing that it will make a fair and impartial judgment in any matter submitted to it pursuant to this Agreement.

“Hotel Environmental Requirements” has the meaning set forth in Section 2.03.

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

“Hotel Personnel Costs” means all costs associated with the employment, management or termination of Hotel Personnel, including training expenses, recruitment expenses, the costs of moving Key Personnel, their families and their belongings to the area in which the Hotel is located at the commencement of their employment at the Hotel (subject to the limitations set

forth in this Agreement), wages and salaries, compensation and benefits, employment taxes, training and severance payments, all in accordance with Applicable Law and Manager's policies for Substantially All Other Grand Hyatt Hotels.

"Hurdle Amount" has the meaning set forth in Section 5.05(a).

"HVAC" means heating, ventilation and air conditioning.

"Hyatt" means Hyatt Corporation, a Delaware corporation, and its successors and permitted assigns.

"Hyatt Classification of Accounts" means the classification of accounts generally used by Manager at any particular time in connection with the operation of the Other Grand Hyatt Hotels.

"Hyatt Gold Passport" means the frequent guest program administered by Manager to promote the Hyatt System, as such program may change from time to time.

"Hyatt-Owned Hotel Names" has the meaning set forth in Section 11.04.

"Hyatt Requirements" means Hyatt's standards and requirements for construction and design of Other Grand Hyatt Hotels as set forth in Hyatt's "Design Recommendations and Minimum Standards, Version 5.0 (2010) and Hyatt's "Engineering Recommendations and Minimum Standards, V4.0 (2011) (copies of which have been provided to Owner by Manager), as the same may be supplemented and amended from time to time prior to the date that BICE issues a "notice to proceed with design" to the Design-Builder.

"Hyatt Reservation System" means the reservation system utilized by Manager in connection with the Other Grand Hyatt Hotels.

"Hyatt System" means, collectively, the elements uniformly designated from time to time to identify structures, facilities, appurtenances, furniture, fixtures, equipment that provide to the consuming public a similar, distinctive, high quality hotel service identified with the "Hyatt" brand name, in whole or in part; including licensed brands associated with the Hyatt name, Hyatt Trademarks, logos, service marks and the like, access to a Hyatt Reservation System, and Hyatt publicity and marketing, training, standards, specifications, policies, inspection programs and manuals containing standards and requirements for the operation of "Hyatt" branded hotels.

"Hyatt Trademarks" means the Hyatt trademarks, trade name, service marks, and copyrights associated with the name "HYATT," and the related marks that include the word "HYATT," including "GRAND HYATT," the Hyatt corporate logo or symbol, together with the right to use any and all slogans, derivations, trade secrets, know-how, and trade dress, and all other proprietary rights associated with such names, marks and slogans, certain of which are reflected in Exhibit O.

"Improvements" means the Building and all other structures, buildings, pavement, fencing, landscaping, recreational facilities, plumbing, electrical and telephone lines and computer cables and man-made objects of every type, existing or to be placed on the Site.

“Imputed Market Wage Rate” has the meaning set forth in Section 5.05(b)(ii).

“Indebtedness” as applied to any Person, means: (a) all indebtedness for borrowed money; (b) that portion of obligations with respect to leases that is properly classified as a liability on a statement of net position in conformity with GAAP; (c) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (d) any obligation owed for all or any part of the deferred purchase price of property or services if the purchase price is due more than six (6) months from the date the obligation is incurred or is evidenced by a note or similar written instrument; and (e) all indebtedness secured by any lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby has been assumed by that Person or is nonrecourse to the credit of that Person.

“Independent Accountant” means a national firm of independent certified public accountants, mutually acceptable to Owner and Manager.

“Independent Architect” has the meaning set forth in Section 8.01(a).

“Initial Series of Bonds” means the approximately \$225,000,000 aggregate principal amount of Airport Commission of the City and County of San Francisco Special Facility Revenue Bonds (San Francisco International Airport Hotel) to be issued by Owner pursuant to the Trust Agreement to finance the design and construction of the Hotel.

“Insurance and Condemnation Proceeds Fund” means the Insurance and Condemnation Proceeds Fund established pursuant to the Trust Agreement.

“Insurance Consultant” means an independent insurance consultant, mutually acceptable to Manager, Owner and the Trustee.

“Insurance Costs” means insurance premiums relating to liability and casualty coverage and Business Interruption Insurance policies and other insurance policies and coverages maintained with respect to the Hotel as required pursuant to this Agreement, including Exhibit N.

“Key Money” has the meaning set forth in Section 3.02.

“Key Personnel” means the following positions for Manager: the General Manager, the Director of Finance, the Director of Sales and Marketing, the Director of Food and Beverage and the Director of Engineering.

“Liquor Licenses” means the liquor licenses issued for the Hotel in the name of Manager pursuant to Section 3.07(f).

“Lockbox Fund” means the fund by that name required to be maintained pursuant to the Trust Agreement and established pursuant to the Cash Management Agreement.

“Management Fee” means the Base Management Fee plus the Subordinate Management Fee.

“Manager” means the Hyatt Corporation, a Delaware corporation.

“Manager Event of Default” has the meaning set forth in Section 5.02.

“Manager’s Intellectual Property” has the meaning set forth in Section 11.06.

“Manager’s Proprietary Information” means (a) Manager’s and its Affiliates’ know-how, trade secrets, documents, designs, plans, reports, guest data and lists, and studies; (b) information Manager reasonably identifies from time to time as confidential; (c) personnel information; (d) information that should be treated as confidential under the circumstances surrounding its disclosure including guest history information, account information; (e) Proprietary Software; and (f) information that could cause competitive harm to Manager or any of its Affiliates relating to the Hyatt System and other proprietary information relative to the operating methods, procedures and policies distinctive to the Hyatt System, including the contents of the Hyatt operating manuals, information and methodologies relating to the Hyatt Gold Passport program or other similar programs or the Hyatt Reservation System, and all commercial or financial information (including all expenses, calculations and apportionments) relating thereto, and Hyatt System information.

“Mandatory Sinking Fund Installment” means with respect to any Series of Bonds, the amount required to be paid as the Redemption Price of Bonds subject to mandatory sinking fund redemption on any Principal Payment Date prior to maturity pursuant to the Trust Agreement or the Supplemental Trust Agreement for such Series, as such Mandatory Sinking Fund Installment has been previously reduced by the principal amount of any Bonds of such Series of the maturity in respect of which such Mandatory Sinking Fund Installment is payable which are purchased or redeemed by the Trustee in accordance with the provisions of the Trust Agreement or of any Supplemental Trust Agreement, other than by the prior payment of a Mandatory Sinking Fund Installment.

“MCO” has the meaning set forth in Section 5.05(b)(ii).

“MCO Differential” has the meaning set forth in Section 5.05(b)(ii).

“Mitigation Measures” has the meaning set forth in Section 2.03

“National CPI” means the Consumer Price Index for All Urban Consumers, All Items, for U.S. Cities, as published by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-84 as a base of 100, or if such index is discontinued, the most comparable index published by any federal governmental agency.

“National Vendor” means any vendor providing goods or services to the Hotel and Other Grand Hyatt Hotels under a purchasing program or a contractual arrangement with Manager or any of its Affiliates available to or for the benefit of the Hotel and Other Grand Hyatt Hotels.

“Net Debt Service” means, for purposes of determining the Debt Service Coverage Ratio under Section 3.21, with respect to the Bonds, Debt Service on the Bonds less actual and anticipated investment earnings on amounts held in the Debt Service Reserve Fund.

“Net Operating Income” means, for any period, the amount by which the difference between (i) Gross Operating Profit for such period, less (ii) interest earned on the Debt Service Reserve Fund, the FF&E Reserve Fund, the Capital Reserve Fund and the Working Capital Reserve Fund), exceeds the sum of: (x) Taxes, plus (y) Insurance Costs, plus (z) amounts added to the FF&E Reserve Fund in the same period.

“Net Revenues” means Net Operating Income, less Administrative Expenses, less additions to the FF&E Reserve Fund and the Capital Reserve Fund, plus the earnings on amounts deposited into the Revenue Fund not otherwise included in the definition of Net Operating Income.

“Non-Assignable Contracts” means all contracts related to the Hotel which are not assignable or divisible and/or which are national type contracts and which are identified to Owner by Manager within thirty (30) days of entering into such contracts, as the same are identified on Exhibit P, as updated from time to time.

“Occupancy Agreement” means any concession agreements for the use of any portion of the Hotel for a term in excess of thirty (30) days entered into by Manager; provided, that notwithstanding anything to the contrary in this Agreement, Manager shall not have authority to enter into any lease agreements with third parties with respect to the Hotel.

“Opening Date” means the first date on which the Hotel opens for business as mutually agreed upon by Owner and Manager.

“Operating Budget” means an annual marketing and operating plan and budget for the Hotel prepared by Manager and approved by Owner, all in accordance with Section 3.21.

“Operating Expenses” means all those ordinary and necessary expenses, including Reimbursable Expenses and the Base Management Fee incurred in the operation of the Hotel in accordance with and to the extent provided in this Agreement, Hotel Personnel Costs, the cost of maintenance and utilities, Administrative Expenses (to the extent there are Sufficient Funds therefor), the costs of advertising, marketing, and business promotion, lease payments for equipment to be installed and utilized at the Hotel, and any amounts payable to Manager as its Base Management Fee as set forth in this Agreement, all as determined in accordance with Generally Accepted Accounting Principles. Notwithstanding the foregoing, unless expressly made an Operating Expense under a specific provision of this Agreement, the following shall not constitute Operating Expenses: (a) Taxes and Excluded Taxes and Other Charges (with the exception of payroll taxes included in Excluded Taxes and Other Charges); (b) Insurance Costs; (c) rentals of real property (unless approved in writing by Owner); (d) depreciation and amortization on capitalized assets; (e) Administrative Expenses and other costs and expenses of the Trustee, Owner, or the Trustee’s or Owner’s personnel, such as entertainment expenses, salaries, wages and employee benefits of the Trustee’s or Owner’s employees, directors’ fees, and the expenses of directors or the Trustee’s or Owner’s employees to attend board meetings; (f) costs and professional fees, including the fees of attorneys, accountants, and appraisers, incurred directly or indirectly in connection with any category of expense that would not otherwise be an Operating Expense, unless otherwise expressly provided in this Agreement; (g) payments of principal and interest related to any financing of the Hotel; (h) costs covered by

any of Manager's indemnity, hold harmless and defense agreements contained in this Agreement, all of which shall be funded out of Manager's own funds; (i) costs incurred by Manager to perform obligations, duties, covenants, agreements and responsibilities which, under the express terms of this Agreement, are to be funded from Manager's own funds; (j) Capital Expenses, including construction costs of the Hotel; (k) commissions associated with group sales or conference sales which may become payable during the Pre-Opening Period, but which are attributable to events or bookings scheduled to occur on or after the Opening Date; (l) payments made and amounts required to be paid pursuant to the Design-Build Agreement; and (m) the Subordinate Management Fee.

“Operating Standards” means the standards of management of the Hotel described in Exhibit E.

“Operating Year” means (i) each full Fiscal Year occurring during the Term, (ii) the partial Fiscal Year (if it is such) during which the Opening Date occurs, and (iii) the partial Fiscal Year (if it is such) in which the Termination of this Agreement occurs. If the Opening Date occurs prior to January 1 of a Fiscal Year, then the period from such Opening Date until and including the following June 30 shall constitute the “first Operating Year.” If the Opening Date occurs on or after January 1 of a Fiscal Year, then the first full Fiscal Year beginning as of the July 1 following such Opening Date shall constitute the “first Operating Year.”

“Opinion of Bond Counsel” means a written opinion of Bond Counsel.

“Other Grand Hyatt Hotels” means the hotels and resorts in North America and the Caribbean that are owned or managed by Manager and/or its Affiliates under the name “GRAND HYATT.”

“Out-of-Pocket Expenses” means the reasonable and necessary out-of-pocket costs paid to non-Affiliates of Manager (with no mark-up or Direct or Indirect Profit to Manager) incurred directly by Corporate Personnel providing services to the Hotel under this Agreement, which shall be limited to air travel (economy airfare only), ground transportation (taxis and rentals of intermediate cars only), meals (at moderately priced restaurants), lodging (at hotels with no higher than a three (3)-diamond AAA Rating if not at the Hotel); but excluding any business entertainment expenses, alcoholic beverages, room service meals or gratuities.

“Outstanding” means, with respect to any Bonds as of any date, Bonds theretofore or thereupon being authenticated and delivered under the Trust Agreement except:

- (a) Bonds canceled or delivered for cancellation at or prior to such date;
- (b) Bonds in lieu of or in substitution for which other Bonds have been authenticated and delivered pursuant to the Trust Agreement; and
- (c) Bonds deemed to have been paid, redeemed, purchased or defeased as provided in the Trust Agreement, in any Supplemental Trust Agreement, as applicable, or as provided by law.

“Owner” or **“Commission”** means the Airport Commission of the City and County of San Francisco.

“Owner Authorized Representative” means Owner’s Airport Director or such other Persons as may be designated to act on behalf of the Commission by written certificate furnished to the Trustee and Manager containing the specimen signature of such Persons and signed on behalf of the Commission by the Airport Director, which Person(s) shall be acting solely in his, her or its representative capacity on behalf of Owner and not individually.

“Owner Event of Default” has the meaning set forth in Section 5.03.

“Owner Indemnified Parties” has the meaning set forth in Section 7.02.

“Party” or **“Parties”** means each of Owner and Manager.

“PCI Data Security Standard Requirements” has the meaning set forth in Section 3.41.

“Performance Termination Event” has the meaning set forth in Section 5.05(a).

“Performance Test” means each of the three (3) requirements set forth in Section 5.05(a).

“Periodic Reports” has the meaning set forth in Section 3.23(b).

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

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

“Pre-Opening Budget” has the meaning set forth in Section 3.02 of the Pre-Opening Services Agreement.

“Pre-Opening Marketing Plan” has the meaning set forth in Section 3.04 of the Pre-Opening Services Agreement.

“Pre-Opening Period” means the period of time from the Execution Date until the Required Opening Date.

“Pre-Opening Services” has the meaning set forth in Section 2.01 of the Pre-Opening Services Agreement.

“Pre-Opening Services Agreement” means the agreement of that name by and between Owner and Manager dated as of November 1, 2015, as supplemented and amended.

“Pre-Opening Supplies and Equipment” means all supplies and inventories of consumable items necessary to open and initially operate the Hotel (in the case of consumable items, for a period of not less than ten (10) days), consistent with the Brand Standards.

“Pricing” means all prices, price schedules, rates and rate schedules, and all rents, charges and concession charges for all areas of the Hotel, as established by Manager.

“Principal Payment” means with respect to any Principal Payment Date for any Series of Bonds, an amount equal to the sum of (i) the aggregate principal amount of Outstanding Bonds of such Series which mature on such Principal Payment Date, reduced by the aggregate principal amount of such Outstanding Bonds of such Series which are scheduled to be retired prior to such date as a result of Mandatory Sinking Fund Installments in accordance with the Trust Agreement or a Supplemental Trust Agreement; plus (ii) the aggregate amount of any Mandatory Sinking Fund Installment payable on such Principal Payment Date for the retirement of any Outstanding Bonds of such Series.

“Principal Payment Date” means with respect to any Series of Bonds a date on which principal of or a Mandatory Sinking Fund Installment on such Series of Bonds is due and payable.

“Pro-Forma Debt Service Coverage Ratios” means the Debt Service Coverage Ratios projected for the Initial Series of Bonds as set forth on Exhibit Q.

“Project Manager” means the Consultant hired by the Commission to provide project management support services and construction management for the design and construction of the Hotel.

“Projected Net Revenues” means the amount of Net Revenues for a particular period of time as projected by the Hotel Consultant.

“Property” means the Site and the Improvements.

“Proposed Annual Plan” means the proposed Capital Budget and the Operating Budget for any Operating Year.

“Proposed Manager Assignee” has the meaning set forth in Section 10.02(a).

“Proprietary Information” means information pertaining to Proprietary Software or Manager’s Intellectual Property, but only to the extent such information is not in the public domain, and Manager’s attorney work product related to the Proprietary Software and Manager’s Intellectual Property.

“Proprietary Software” means certain computer software specially developed by or for Manager and its Affiliates for use in hotels and resorts managed by Manager and its Affiliates or for use in Other Grand Hyatt Hotels, including all source and object code versions thereof and all related documentation, flow charts, user manuals, listing and service/operator manuals and any enhancements, modification or substitutions thereof, as more fully described in Exhibit T.

“Qualified Assignee” means any proposed transferee (and its Affiliates) that: (i) is not known in the community as being of bad moral character; (ii) is not in control of or controlled by persons who have been convicted of felonies in any state or federal court; (iii) is not engaged, directly or indirectly, in the operation or management (as opposed to ownership) of hotels which are operated under a nationally or regionally recognized brand and which are competitive to Manager or any of its Affiliates; (iv) does not own, lease or operate any casino or gambling facility, unless such entity or individual is licensed under the gaming laws of the state where such casino or gambling facility is located; (v) is financially capable of performing transferor’s duties and obligations under this Agreement; and (vi) is not a “Specially Designated National or Blocked Person.” For the purposes of this Agreement, a “Specially Designated National or Blocked Person” means: (x) Persons designated by the U.S. Department of Treasury’s Office of Foreign Assets Control from time to time as a “specially designated national or blocked person” or similar status, (y) a Person described in Section 2 of U.S. Executive Order 13224 issued on September 23, 2001, or (z) a Person otherwise identified by a Governmental Authority as a person with whom Manager or its Affiliates are prohibited from transacting business.

“Qualified Management Agreement” means a management or service contract that meets the requirements described in Revenue Procedure 97-13, 1997-1 C.B. 632, as amplified by Notice 2014-67, 2014-46 I.R.B. 822, such that the contract will not result in private business use under Section 141(b) of the Code.

“Rating Service” means STR, Inc. (also known as Smith Travel Research, Inc.), a global provider of competitive benchmarking, information services and research to the hotel industry, or if STR, Inc. no longer provides ratings for hotel brands, then such other Person mutually agreeable to Manager and Owner which then does provide such ratings.

“Redemption Account” means the account by that name established within the Debt Service Fund pursuant to the Trust Agreement.

“Redemption Date” means the date upon which any Bonds are to be redeemed prior to their respective fixed maturities pursuant to the mandatory, extraordinary mandatory or optional redemption provision of the Trust Agreement or any Supplemental Trust Agreement.

“Redemption Price” means, with respect to any Bond, the amount, including any applicable premium, payable upon the mandatory or optional redemption thereof, as provided in the Trust Agreement or any Supplemental Trust Agreement.

“Registered Owner” means the person in whose name any of the Bonds are registered on the books kept and maintained by the Trustee as bond registrar.

“Reimbursable Expenses” means all costs and expenses reimbursable to Manager pursuant to Section 4.04.

“Remedial Action” means actions required to (i) investigate, monitor, clean up, remove, treat, dispose of off-site or in any other way address or respond to the effects of Hazardous Materials in the indoor or outdoor environment so as to render the Hotel safe for its intended use; or (ii) prevent the release or threat of release, or minimize the further release, of Hazardous Materials in the indoor or outdoor environment.

“Required Opening Date” has the meaning set forth in the Pre-Opening Services Agreement.

“Restricted Hotel” means any full-service hotel facility which is operated under the “Hyatt” (without a sub-brand identifier), “Grand Hyatt,” “Park Hyatt,” “Hyatt Regency,” “Hyatt Centric” and “Andaz” brands, or any other full-service Hyatt branded or operated hotel that is rated with a three (3)- or four (4)-diamond AAA Rating.

“Restricted Radius” means the area within a ten (10) mile radius of the front door of the Hotel as set forth in Exhibit R.

“Revenue Fund” means the Revenue Fund established by the Trust Agreement.

“Revenue Stabilization Fund” means the Revenue Stabilization Fund established pursuant to the Trust Agreement.

“Revenues Failure” has the meaning set forth in Section 5.05(b)(i).

“RevPAR” means, with respect to each hotel that is a member of the Competitive Set and with respect to the Hotel, and with respect to any period of time, the “Revenue Per Available Room” for the hotel in question, as measured and reported by STR, Inc., or such other reputable independent third-party market research firm as may be mutually approved by Owner and Manager.

“Room Rate and Occupancy Plan” means that portion of each Annual Plan that sets forth in detail the projected Average Daily Rate and occupancy for each calendar month during the Operating Year in the aggregate and by room, booking source, market segment and/or other appropriate categories as reasonably requested by Owner.

“Schedule of Compensation” has the meaning set forth in Section 3.24(a)(ix)(B).

“Senior Personnel” means the General Manager; the Directors of (i) Rooms, (ii) Food and Beverage, (iii) Sales and Marketing, (iv) Engineering, (v) Human Resources, and (vi) Finance; and the Executive Chef.

“Senior Personnel Bonus Pool” has the meaning set forth in Section 3.24(a)(ix)(A).

“Series” means Bonds identified as a separate series which are authenticated and delivered on original issuance and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to the Trust Agreement, or any Supplemental Trust Agreement.

“Service Provider” has the meaning set forth in Section 3.41.

“Site” means the real property in the County of San Mateo, California, legally described in Exhibit C.

“State” means the State of California.

“**Subcontractor**” means any subcontractor, laborer, supplier, distributor, vendor, manufacturer or materialman that enters into a contract with Manager (or any subcontractor, sub-supplier or sub-consultant thereof at any tier) to provide any portion of the services under this Agreement.

“**Subordinate Management Fee**” has the meaning set forth in Exhibit K.

“**Substantially All**” means ninety-five percent (95%) or more.

“**Sufficient Funds**” means the following to the extent made available to Manager for the purposes for which such funds are designated:

(a) with respect to the payment of Operating Expenses, there are sufficient amounts in the Lockbox Fund and the Working Capital Reserve Fund for the payment of such Operating Expenses;

(b) with respect to Gross Receipts Taxes, there are sufficient amounts in the Lockbox Fund to pay such taxes at least equal to the collections deposited by Manager into the Lockbox Fund that are attributable to such Gross Receipts Taxes;

(c) with respect to Taxes and Insurance Costs, there are sufficient amounts in the Taxes and Insurance Fund to pay for such costs;

(d) with respect to the payment of Capital Expenses in connection with budgeted Capital Improvements, there are sufficient funds in the Capital Reserve Fund to pay for such Capital Expenses; and

(e) with respect to the payment of Capital Expenses in connection with unbudgeted Capital Improvements or an Emergency, there are sufficient amounts in the Working Capital Reserve Fund, the Capital Reserve Fund, and the Revenue Stabilization Fund to pay for such Capital Expenses; and

(f) with respect to the payment of costs to repair and/or replace FF&E, there are sufficient funds in the FF&E Reserve Fund to pay for such costs.

“**Supplemental Trust Agreement**” means any Trust Agreement supplemental to or amendatory of the Trust Agreement, entered into by Owner and the Trustee in accordance with Article XI thereof.

“**Survey**” means a survey of the Site, certified to the Trustee and its successors, assigns and designees by a surveyor reasonably satisfactory to the Trustee.

“**Systems**” include all fixtures, equipment, pipes, lines, wires, ducts, vents, computer cables, security system cables, monitoring system cables, conduits, and other systems and facilities used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, waste water, sewage, and audio and video signals, elevators and escalators.

“Taking” or **“Taken”** means (a) a taking as a result of compulsory purchase or acquisition of all or part of the Hotel, by any Governmental Authority (or any authority or entity acting on behalf of or purporting to act on behalf of any Governmental Authority) for any purpose whatsoever or a conveyance in lieu thereof or (b) any direction, ruling or order of any Governmental Authority requiring conversion of all or part of the Property to another purpose other than for the Hotel.

“Tax Law Requirements” means Section 141(b) of the Code, Treasury Regulations Section 1.141-3, and Rev. Proc. 97-13, 1997-1 C.B. 632, as amplified by Notice 2014-67, 2014-46 I.R.B. 822.

“Taxes” means all taxes, including *ad valorem* taxes on real property, lease-hold excise taxes, transfer taxes, personal property taxes and other assessments imposed by Governmental Authorities relating to or assessed in connection with the ownership or operation of the Hotel, except for Excluded Taxes and Other Charges.

“Taxes and Insurance Fund” means the Taxes and Insurance Fund established pursuant to the Trust Agreement.

“Taxes and Insurance Set Aside Amount” means, with regard to a particular month, an amount equal to one-twelfth of the amount budgeted for real property taxes, if any, assessments, and insurance for the Hotel by the then-current Operating Budget for the Operating Year in which the month falls; provided, that such amount may be adjusted to the extent determined to be necessary to cause the amount to be deposited therein to at least equal the payment for *ad valorem* property taxes, if any, assessments and insurance premiums when due.

“Technical Services Agreement” means the agreement of that name by and between Owner and Manager dated as of November 1, 2015, as supplemented and amended.

“Temporary Certificate of Occupancy” means the certificate or certificates, as applicable, issued by BICE, that permits legal and beneficial occupancy, operation and use of the Hotel, without interruption, for each of its intended purposes, which certificate or certificates may be issued with or without qualification so long as any qualifications shall not prohibit, restrict or impair such occupancy, operation or use, as initially acquired by the Design-Builder with respect to the original construction of the Hotel and the Work pursuant to the Design-Build Agreement.

“Term” has the meaning set forth in Section 5.01(a).

“Termination of this Agreement” means the expiration or sooner cessation or termination of this Agreement.

“Termination Date” means the effective date of the Termination of this Agreement.

“Total Operating Revenues” means all revenue and income of any kind derived directly or indirectly from operations at the Hotel, whether or not arranged by, for or on behalf of another Person or at another location, properly attributable to the period under consideration (including rentals or other payments from licensees or concessionaires of retail space in the Hotel, but not

gross receipts of such licensees or concessionaires), determined in accordance with the Uniform System of Accounts and, to the extent consistent therewith, Generally Accepted Accounting Principles, except that the following shall not be included in determining Total Operating Revenues:

- (a) Excluded Taxes and Other Charges;
- (b) receipts from the financing, sale or other disposition of capital assets and other items not in the ordinary course of the Hotel's operations and income derived from securities and other property acquired and held for investment;
- (c) receipts from awards or sales in connection with any Taking, from other transfers in lieu of and under the threat of any Taking, and other receipts in connection with any Taking, but only to the extent that such amounts are specifically identified as compensation for alterations or physical damage to the Hotel;
- (d) proceeds of any insurance or sureties, including the proceeds of any Business Interruption Insurance;
- (e) rebates, discounts, or credits of a similar nature (not including charge or credit card discounts, which shall not constitute a deduction from revenues in determining Total Operating Revenues, but shall constitute an Operating Expense);
- (f) consideration received at the Hotel for hotel accommodations, goods and services to be provided at other hotels although arranged by, for or on behalf of, Manager; provided, that such consideration is recognized by such other hotels;
- (g) consideration received at other hotels for hotel accommodations, goods and services to be provided at the Hotel arranged by, for or on behalf of, such other hotels; provided, that such consideration is recognized by such other hotels;
- (h) notwithstanding any contrary requirements of Generally Accepted Accounting Principles, all gratuities collected for the benefit of and directly to Hotel Personnel;
- (i) proceeds of any financing;
- (j) the initial operating funds and working capital loans and any other funds provided by Owner to Manager whether for Operating Expenses or otherwise;
- (k) other income or proceeds that do not result from (i) the use or occupancy of the Hotel, or any part thereof, or (ii) the sale of goods, services or other items by or from the Hotel in the ordinary course of business;
- (l) interest earned on funds held in any Fund or Account;
- (m) the value of any complimentary rooms, goods or services;

(n) refunds to Hotel guests of any sums or credits to any Hotel customers for lost or damaged items; and

(o) refunds to parking customers of any sums or credits to any parking customers for lost or damaged items.

“Total Receipts” means Total Operating Revenues plus the following:

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

(q) receipts from awards or sales in connection with any Taking, from other transfers in lieu of and under the threat of any Taking, and other receipts in connection with any Taking, but only to the extent that such amounts are specifically identified as compensation for alterations or physical damage to the Hotel;

(r) proceeds of any insurance or sureties, including the proceeds of any Business Interruption Insurance;

(s) proceeds of any financing;

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

(u) interest earned on funds held in any Account or Fund; and

(v) deposits for room reservations received by Manager prior to the Opening Date of the Hotel.

“Trust Agreement” means the Trust Agreement substantially in the form attached as Exhibit G, by and between Owner and the Trustee, as originally executed and as it may from time to time be amended, modified and supplemented in accordance with the terms thereof.

“Trustee” means U.S. Bank National Association, as trustee under the Trust Agreement, together with any successors or assigns.

“TSA” means the United States Transportation Security Agency, or any successor thereto.

“Unamortized Key Money” has the meaning set forth in Section 3.02.

“Uniform System of Accounts” means the latest edition of the Uniform System of Accounts for the Lodging Industry that is published by the Hotel Association of New York City, Inc. and approved by the American Hotel & Lodging Association (currently, the 11th Revised Edition, 2014).

“*Upper Upscale Hotel*” means a brand of full-service hotels categorized by the Rating Service as being “upper upscale” and, to the extent of any material change after the Execution Date in the standards for such a rating, consistent with the standards for such rating as of the Execution Date.

“*Variable Expenses*” has the meaning set forth in Section 3.21(g).

“*Work*” means the performance by Design-Builder of all its responsibilities and obligations set forth in the Design-Build Agreement. Work shall include providing all materials, labor, services, and documentation required by the Design-Build Agreement to design and construct the Hotel in accordance with the Hyatt Requirements.

“*Working Capital Set-Aside Amount*” means \$1,800,000; provided, that either Party may request the approval of the other Party to an increase in such amount which it believes is necessary or desirable to meet the operating needs of the Hotel; provided further, that if the Parties do not agree on a proposed increase, either Party may refer the matter for resolution by a Hotel Consultant pursuant to Section 3.21(k).

“*Working Capital Reserve Fund*” means the Working Capital Reserve Fund established by the Trust Agreement.

“*Working Capital Reserve Requirement*” means an amount equal to \$2,500,000.

Section 1.02. Interpretation.

(a) The Table of Contents and captions to the Articles and Sections of this Agreement are for convenience of reference only and in no way define, limit, describe or affect the scope or intent of any part of this Agreement.

(b) Defined terms in this Agreement shall include in the singular number the plural and in the plural number the singular.

(c) Unless otherwise stated, any reference in this Agreement to any Person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

(d) Unless otherwise expressly specified, any agreement, contract or document defined or referred to in this Agreement means such agreement, contract or document in the form (including all amendments, schedules, exhibits, appendices, attachments, clarification letters and the like relating thereto) delivered on the Closing Date, and as the same may thereafter be amended, supplemented, replaced or otherwise modified from time to time in accordance with the terms hereof and thereof.

(e) Unless otherwise defined in this Agreement, terms relating to insurance have the meanings customarily associated with such terms in the insurance industry.

(f) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(g) The words “**include**,” “**includes**” and “**including**” shall not be limiting, and shall be deemed in all instances to be followed by the phrase “without limitation.”

(h) Any reference to a Section, Article or Exhibit is a reference to a Section, Article or Exhibit of this Agreement, unless otherwise specified.

(i) The phrase “**and/or**” means either or both of the items referenced thereby.

(j) References to “**days**” mean calendar days unless otherwise indicated.

(k) Unless the context clearly requires otherwise, the word “**or**” is not exclusive.

(l) Unless the language specifies or the context implies that a term of this Agreement is a condition, all of the terms of this Agreement shall be deemed and construed to be covenants to be performed by the designated Party.

(m) Unless expressly stated otherwise in this Agreement, whenever a matter is submitted to a Party for approval or consent in accordance with the terms of this Agreement, that Party has a duty to not unreasonably withhold, condition or delay such approval or consent.

ARTICLE II

THE HOTEL

Section 2.01. Agreed Scope of the Hotel. Owner intends that the Hotel shall be a premier First-Class Hotel and among the best on-airport hotels in the world in terms of its design, operation and environmental attributes, and shall be as further described in Exhibit A (“**Agreed Scope of the Hotel**”). The Parties approve the Agreed Scope of the Hotel and the Agreed Scope of the Hotel shall not be materially changed, except in conformance with the Hotel Agreements and, to the extent required, with the review and approval of any applicable Governmental Authority with jurisdiction over the Hotel.

Section 2.02. LEED Gold Standards. Manager acknowledges and agrees that Owner shall seek to have the Hotel certified at least “LEED Gold for New Construction” by the U.S. Green Building Council (“**LEED Gold - Construction**”). Manager also acknowledges and agrees that Owner may seek the “LEED - Existing Building Operations & Maintenance Gold Certification” (“**LEED Gold – Operations**”) for the Hotel for the duration of the Term. Owner intends to (i) construct the Hotel in a manner that would qualify the Hotel as at least LEED Gold – Construction, and (ii) make, from time to time, the necessary physical renovations and improvements to the Hotel to maintain the LEED Gold – Construction certification and to satisfy any new standards required for the Hotel created after the Execution Date. To the extent the Hotel is certified as LEED Gold - Construction, Manager agrees to operate the Hotel in accordance with LEED Gold – Operations standards as long as (x) there are Sufficient Funds, and (y) such standards do not conflict with the Brand Standards. To the extent that any LEED Gold – Operations standards, including changes thereto that occur after the Execution Date, conflict with or impede Manager's ability to operate the Hotel in accordance with this Agreement, Manager shall provide Owner with notice thereof and Manager and Owner agree to use good faith efforts to resolve the conflict so that the Hotel continues throughout the Term to

be operated in accordance with LEED Gold – Operation standards. Without the prior written consent of Owner in its sole discretion, Manager shall not make any modifications or improvements to the Hotel that would cause the Hotel to fail to meet the LEED Gold – Construction or LEED Gold – Operation standards. Manager further acknowledges that Owner, to the extent practicable, may seek to design, construct and operate the Hotel as a “net-zero energy” building, in which event Manager shall operate the Hotel as such.

Section 2.03. Other Environmental Requirements. Manager acknowledges that Owner will comply with the mitigation measures ("**Mitigation Measures**") applicable to the Hotel included in the Addendum to the Final San Francisco International Airport Master Plan Program Environmental Impact Report, which Addendum was issued by the San Francisco Department of City Planning, Environmental Planning Division, on February 5, 2014. The Mitigation Measures are included in the Mitigation Monitoring and Reporting Program for the Airport Master Plan, adopted by Owner in 1992 and updated for the Hotel in 2014. Manager and Owner acknowledge and agree that, in addition to the Mitigation Measures and compliance with Applicable Law, the Owner shall design and construct the Hotel and Manager shall operate the Hotel in accordance with the other environmental measures applicable to the Hotel set forth in Exhibit D ("**Hotel Environmental Requirements**").

ARTICLE III

GENERAL MANAGEMENT; DUTIES AND RESPONSIBILITIES OF MANAGER

Section 3.01. Engagement of Manager.

(a) ***Exclusive Manager; Standard of Care.*** Subject to the provisions of this Agreement, Owner hereby engages Manager, and Manager hereby agrees to be engaged by Owner and does hereby undertake to supervise, direct and control the management, operation and promotion of all aspects of the Hotel as the exclusive manager and operator of the Hotel during the Term, but without relinquishing Owner’s possessory rights to and interest in the Hotel.

(b) ***Qualified Management Agreement.*** This Agreement is intended to and shall constitute a “Qualified Management Agreement”, and shall be interpreted in accordance with such requirements. Manager represents to Owner that Manager has experience operating hotels that are financed with the proceeds of tax-exempt bonds, and has reviewed and is familiar with the Tax Law Requirements.

(c) ***Tax Covenant.*** Manager agrees that it shall operate and manage the Hotel in a manner which, to the extent of its rights and authority under this Agreement and as otherwise authorized by Owner in writing, preserves the exemption from federal income tax of interest on the Bonds and, in particular, to the extent of its rights and authority under this Agreement and as otherwise authorized by Owner in writing, shall comply with the Tax Law Requirements to avoid conditions under which tax-exempt bond-financed property shall be considered used for an impermissible private business use; provided, however that the foregoing shall not require Manager to breach any of the

provisions of this Agreement unless such action is authorized by Owner, such breach is waived in writing by Owner and the Trustee, and Manager so agrees; and provided, further, that Owner acknowledges and agrees that Manager is not responsible for whether this Agreement constitutes a Qualified Management Agreement.

Section 3.02. Key Money Contribution. Manager shall deliver an amount equal to five million dollars (\$5,000,000.00) (“**Key Money**”) to the Trustee on the date that is thirty (30) days prior to the Opening Date. The Key Money shall be deposited by the Trustee into the Working Capital Reserve Fund, the Lockbox Fund and/or the Construction Fund in accordance with the Trust Agreement. The Key Money shall be deemed to be amortized in equal monthly installments between the 1st and the 120th months of the Term. Any Key Money that has not been amortized in the manner provided in this Section (“**Unamortized Key Money**”) as of the date of any Termination of this Agreement (other than for a Manager Event of Default) shall be repaid to Manager upon the Termination Date. Owner and Manager acknowledge and agree that the Key Money contribution shall not constitute an equity investment by Manager in the Hotel.

Section 3.03. Operating Standards.

(a) ***Operating Standards Defined.*** Manager agrees that, subject to the provisions of this Agreement, including the limitations of Applicable Law, the availability of Sufficient Funds and the design and construction of the Hotel in accordance with all Hyatt Requirements, Manager shall cause the Hotel to be operated for twenty-four (24) hours per day, seven (7) days per week for the entire calendar year, including holidays, during the Term, in accordance with the standards set forth in Exhibit E (collectively, the “**Operating Standards**”).

(b) ***AAA Rating.*** Manager shall request that the American Automobile Association conduct an inspection of the Hotel annually, beginning in the second Operating Year, to determine if the Hotel has attained a four (4)-diamond AAA Rating. The cost of conducting such survey shall be an Operating Expense.

(c) ***Review of Operating Standards.*** Manager and Owner shall jointly review the Operating Standards no less than once per calendar year to determine whether the Operating Standards are being met and, if not, to determine whether the Operating Standards should be modified; provided, that in no event shall Manager be required to modify the Operating Standards to increase the level of performance or in a manner that would cause non-compliance with the Brand Standards, in either case without the prior written consent of Manager. The Parties shall act reasonably and cooperate with one another in conducting such review and determining appropriate modifications to the Operating Standards.

(d) ***Inability to Meet Operating Standards; Modification of Operating Standards.*** If Manager at any time believes that it cannot operate the Hotel in a manner that allows it to meet any one of the Operating Standards without violating another of the Operating Standards, it shall promptly notify Owner thereof accompanied by a detailed written explanation of the circumstances and recommendations as to modifications of the Operating Standards without compromising the operation or quality of the Hotel. Any

such proposed modifications shall be subject to Owner's written approval; provided, that in no event shall Manager be required to modify the Operating Standards in a manner that would cause non-compliance with the Brand Standards or the inability of Manager to satisfy the Performance Tests.

Section 3.04. Changes to Brand Standards. The Parties acknowledge that the Brand Standards may be modified by Manager from time to time. As soon as reasonably practicable, Manager shall provide Owner advance written notice of anticipated modifications to the Brand Standards. Manager agrees that, with the exception of the requirement that the Hotel be in compliance with Applicable Laws and the Hotel Environmental Requirements, should any aspect of the Hotel be considered non-compliant with the Brand Standards, then Owner may request in writing that Manager approve an exception for the Hotel to such Brand Standards, which Manager may approve or reject in its reasonable discretion. If Owner's request for an exception is rejected by Manager, Manager and Owner shall mutually determine how to bring the Hotel into compliance with the applicable Brand Standard. Notwithstanding the foregoing, non-compliance of the Hotel with the Brand Standards shall not be deemed an Owner Event of Default unless Sufficient Funds are available therefor, in which case Owner shall promptly undertake to cure such non-compliance and diligently pursue such cure to completion; provided, that such cure is completed within a period of not to exceed 180 days from the date of such noncompliance or such greater period allowed by Manager to Other Grand Hyatt Hotels that are in non-compliance with such Brand Standard.

For the period through the first five (5) Operating Years, Owner shall not be obligated to comply with any modification to the Hyatt Requirements except: (a) required life, safety, fire, or security improvements; (b) improvements required by Applicable Law; (c) Technology System Upgrades to the extent that any such Technology System Upgrade is being implemented at Substantially All Other Grand Hyatt hotels, and (d) to replace items due to ordinary wear and tear and damage. Thereafter, Owner shall only be obligated to comply with modification of Hyatt Requirements if such modifications: (i) are implemented at Substantially All Other Grand Hyatt Hotels; (ii) do not involve changes to the physical structure of the Hotel, including removal or relocation of support structures or load-bearing walls; (iii) do not conflict with the Hotel Environmental Requirements; or (iv) are approved as part of the Annual Plan. Notwithstanding the foregoing, Owner shall be obligated to comply with modifications of the Hyatt Requirements to the extent of uncommitted amounts available therefor in the Capital Reserve Fund and FF&E Reserve Fund. "**Technology System Upgrade**" means any upgrade or renovation of the Hotel's computer systems, including the property management system, point of sale system, phone system, business center or similar technologies, but does not include any upgrade or renovation of guest-room televisions or other entertainment systems or internet services.

Section 3.05. Adverse Change in Grand Hyatt Brand. If at any time "Grand Hyatt" is no longer a First-Class Hotel brand, then Manager shall operate the Hotel under another comparable hotel brand operated by Manager or its Affiliates approved by Owner that is a First-Class Hotel brand; provided, however, the foregoing shall not affect Manager's obligation to manage the Hotel pursuant to the Operating Standards. If Manager fails so to operate the Hotel under another hotel brand acceptable to Owner, then Owner may terminate this Agreement by delivering written notice thereof to Manager.

Section 3.06. Establishing Rates.

(a) ***Establishing Pricing.*** Manager shall establish the Pricing consistent with the applicable Operating Budget, including the Room Rate Plan, and supervise, direct and control the collection of income of any nature from the Hotel's operations and the giving of receipts in connection therewith; provided, however, the foregoing shall in no way limit (i) Owner's right to review and approve the applicable Operating Budget (including the budgeted Total Operating Revenues and the Room Rate Plan), as provided in Section 3.21(d) below; or (ii) Owner's right to require the appointment of a Hotel Consultant and to the implementation of written recommendations of the Hotel Consultant pursuant to the provisions of Section 3.21(k) below. Further, Manager shall at all times have the right to implement at the Hotel national, regional or brand-wide value rates or promotional rates implemented at Substantially All Other Grand Hyatt Hotels as Manager reasonably deems appropriate.

(b) ***Interim Changes to Pricing.*** If Manager at any time believes that then-current market conditions will not enable Manager to charge daily room rates or other Pricing consistent with the applicable Operating Budget, including the Room Rate Plan, for a period of at least one (1) calendar month, Manager shall provide Owner with prompt written notice thereof. The notice shall include a detailed explanation of the circumstances and Manager's recommendations as to modifications of the Operating Budget. Upon request of Owner, Manager shall meet with Owner or Asset Manager to discuss such proposed modifications. Owner shall have the right to approve any such modifications unless, if the Hotel Consultant has been appointed and is making recommendations pursuant to Section 3.21(k) below, the Hotel Consultant recommends different such modifications, in which case the recommendations of the Hotel Consultant shall be binding on the Parties.

Section 3.07. Negotiation of Contracts.

(a) ***Occupancy Agreements.*** Subject to the remaining provisions of this Section, Manager shall enter into and administer, for the benefit of the Hotel, any Occupancy Agreements for the Hotel. Manager shall be responsible for operating all space within the Hotel, including restaurants and lounges; provided, that Owner reserves the right to contract with third parties for the operation of the restaurants, food outlets, retail store and spa in the Hotel with the prior written consent of Manager. Manager may withhold consent (i) for any such third-party operation that, in Manager's reasonable opinion, would have a material adverse effect on Total Operating Revenues or Operating Expenses or the operation of the Hotel by Manager consistent with the Operating Standards, or (ii) if the operator of such operation is not a Qualified Assignee.

(b) ***Service Contracts.*** Subject to the remaining provisions of this Section and the provisions of Section 3.28, Manager shall negotiate, enter into and administer, for the benefit of the Hotel, service contracts for Hotel operations not otherwise provided by Owner, including contracts for health and safety systems maintenance, natural gas, refuse disposal, telephone, cleaning, elevator and boiler maintenance, air conditioning maintenance, laundry and dry cleaning, master television service, broadband, high-speed

internet access and other technological services as they are developed, use of copyrighted materials (such as music and videos), entertainment, and other services Manager deems advisable. Manager shall use commercially reasonable efforts to include a provision in each contract to provide monthly recurring services (other than public utilities) which permits the contract to be terminated upon thirty (30) days' written notice. In each other contract, Manager shall use commercially reasonable efforts to include termination provisions that are typical at Other Grand Hyatt Hotels for the type of contract at issue. Owner shall provide or cause to be provided telephone, communication, water, sewer, natural gas and electric power services to Hotel at the rates and charges therefor generally applicable to tenants, concessionaires, lessees and other users at the Airport. Owner shall provide electric power to the Hotel at rates equivalent to those in tariffs approved by the California Public Utilities Commission for the Pacific Gas and Electric service area. Manager shall secure natural gas service from the utility company furnishing such service, whether the company delivers such services directly through its own conduits or pipes or through conduits or pipes owned by Owner.

(c) ***Banquet and Meeting Facility Contracts.*** Manager shall negotiate, enter into and administer, for the benefit of the Hotel, contracts for the use of banquet and meeting facilities and guest rooms by groups and individuals.

(d) ***Parking.*** Except for daily use by the general public, Hotel guests and Hotel Personnel in accordance with the Pricing, Manager shall not grant parking privileges within the Hotel without Owner's prior written consent. All parking privileges approved by Owner and granted by Manager shall provide that they are revocable on thirty (30) days advance notice given at the discretion of Owner. Overflow parking and subcontracting of parking management shall be as provided in Section 3.29.

(e) ***Licenses and Permits.*** Subject to the remaining provisions of this Section, Manager shall obtain or cause to be obtained all Approvals required for the management and operation of the Hotel or the making of Capital Improvements, as and when required under Applicable Law; provided, that Manager shall have no obligation to obtain any Certificate of Occupancy or construction-related permits prior to the time that the Temporary Certificate of Occupancy is delivered for the Hotel, such obligation to be an obligation of the Design-Builder under the Design-Build Agreement, or any other Approvals which Design-Builder is obligated to obtain pursuant to the Design-Build Agreement or otherwise related to any part of the Work. Manager shall exercise its commercially reasonable efforts to obtain all Approvals when and as required for the management and operation of the Hotel by Manager. Such Approvals shall include Approvals for health and safety systems maintenance, natural gas, refuse disposal, telephone, cleaning, elevator and boiler maintenance, air conditioning maintenance, laundry and dry cleaning, restaurant equipment, master television service, use of copyrighted materials (such as music and videos), entertainment, alterations, parking and other services Manager deems advisable. Owner shall reasonably cooperate with Manager to the extent necessary in order for Manager to obtain all such Approvals.

(f) ***Liquor Licenses.*** Manager shall be responsible for obtaining the Liquor Licenses for the Hotel prior to the Required Opening Date. The Liquor Licenses shall be

in the name of Manager, to the extent permitted by Applicable Law. Upon Termination of this Agreement, Manager shall reasonably cooperate with any new manager of the Hotel in order to enable the new manager to serve liquor without interruption. Upon receipt of a temporary liquor license by the new operator, Manager shall surrender the Liquor Licenses.

(g) ***Owner Approval of Contracts.***

(i) Owner's prior written approval shall be required for the negotiation, execution or administration of any Occupancy Agreement, service contract, license, permit or agreement; provided, that such approval shall not be required for any such service contract, license, permit or agreement (other than an Occupancy Agreement) that:

(A) (1) has a term (including any automatic renewals thereof) of less than one (1) year, and (2) requires aggregate payments of less than \$50,000; or

(B) Was specifically listed in and approved by Owner as part of the Annual Plan and for which the cost thereof is included in the Annual Plan; or

(C) For natural gas or refuse disposal services to the Hotel.

(ii) In addition, as part of the process of approval of the Operating Budget, Owner may instruct Manager to cause some or all of the contracts providing for payments in any one (1) year in excess of \$50,000 (including contracts for consumable supplies) to be competitively bid by a minimum of three (3) different reputable vendors known to Manager to provide high quality service at competitive prices (at least one (1) of which shall not be either a National Vendor or an Affiliate of Manager and may be designated by Owner, at Owner's election). Manager shall select vendors based on Manager's reasonable judgment of which vendors provide the best combination of cost and quality of goods and services.

(h) ***Certain Limitations.*** Notwithstanding the foregoing, Manager shall not enter into contracts or agreements with third parties involving the management, operation or use of any portion of the Hotel (to the extent otherwise permitted under this Agreement) without first submitting such contracts or agreements for review and approval by Owner (which may consult with Bond Counsel, the cost of which shall be an Administrative Expense) to ascertain whether such contracts could adversely affect the exemption from Federal income tax of interest on the Bonds. Owner shall use its commercially reasonable efforts to obtain such determination within thirty (30) days of such submission. Notwithstanding the foregoing, contracts and agreements with third parties which satisfy the following criteria need not be submitted for review and approval:

(i) contracts for services that are solely incidental to the primary function or functions of the Hotel (for example, contracts for janitorial, equipment repair, billing or similar services);

(ii) contracts to provide services if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties;

(iii) except as otherwise provided in Section 3.28, contracts or arrangements for use of any portion of the Hotel that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied (unless the term of use set forth in the contract or arrangement, including all renewal options, is greater than thirty (30) days); or

(iv) use by a nongovernmental person pursuant to a contract or arrangement (other than a contract or arrangement resulting in ownership of the Hotel by a nongovernmental person) if:

(A) the term of the use under the contract or arrangement including all renewal options is no longer than fifty (50) days; and

(B) the contract or arrangement is a negotiated arm's-length contract or arrangement; and

(C) compensation under the contract or arrangement is at fair market value; and

(D) the property which is the subject of the contract or arrangement is not financed for the principal purpose of providing that property for use by that nongovernmental person.

(i) ***Contracts with Related Parties.*** Notwithstanding anything to the contrary in this Agreement, Manager shall not enter into any contract, license or agreement for the Hotel as a result of which Manager, or any Affiliate of Manager, receives any Direct or Indirect Profit.

(j) ***Provisions Applicable to All Contracts.*** Notwithstanding anything to the contrary in this Agreement, Manager's contracts and agreements with third parties that are entered into specifically with respect to the Hotel shall not exceed the term of this Agreement. Other than Non-Assignable Contracts, Manager shall use commercially reasonable efforts to include in all contracts and agreements, in addition to any provisions that may be required by the provisions set forth in Exhibits B and N, a provision stating that such contracts are fully assignable without restriction to Owner or, at the direction of Owner, to a successor manager of the Hotel. Upon the Termination of this Agreement for any reason whatsoever, Manager shall promptly take all reasonable actions necessary to assign to Owner or its designee all contracts and agreements described in this Section (other than Non-Assignable Contracts as set forth on Exhibit P). In addition, Manager shall use commercially reasonable efforts to include (i) a no personal liability provision

and an indemnity provision in favor of Owner; (ii) a limited liability provision in substantially the form set forth in Section 12.13; (iii) a non-interference provision substantially in the form set forth in Section 3.34; and (iv) a provision naming Owner as the sole third-party beneficiary of such contract or agreement. Notwithstanding anything to the contrary in this Agreement, all contracts, agreements and licenses (including those for goods and services) shall comply with the requirements of this Section. Manager shall comply with its standard practices and policies applicable to Other Grand Hyatt Hotels (including competitive bidding) in the selection of vendors under contracts for goods and services. Manager shall give preference to local vendors when selecting vendors; provided, that the local vendors are competitive in pricing and permit Manager to operate the Hotel in the manner contemplated under this Agreement. Owner and Asset Manager shall have the right to inspect all non-proprietary contracts and agreements related to the Hotel upon reasonable notice to Manager at Owner's expense.

(k) **Bay Area CPI Adjustments.** The dollar amounts specified in subsection (g) above shall be adjusted at the commencement of the second and each subsequent Operating Year by the percentage change in the Bay Area CPI over the prior Operating Year.

Section 3.08. Maintenance of Hotel and FF&E. Manager shall, subject to Sufficient Funds being available for such purpose and Owner providing its approval in cases where such approval is required under this Agreement, keep the Hotel and the FF&E which serves the Hotel in good operating order, repair and condition in accordance with the Operating Standards, including making necessary replacements, improvements, additions and substitutions thereto and, in connection therewith, and formulating and implementing preventative maintenance and other programs designed to efficiently and effectively maintain the condition of the Hotel, including HVAC serving the Hotel, fire and life safety, plumbing and other building systems. Without limiting the foregoing, and subject to compliance with the Operating Budget and Section 3.07, Manager shall negotiate, enter into and administer, for the benefit of the Hotel, maintenance contracts for elevators, escalators and other people movers, major life safety systems, chillers, boilers, and other major HVAC equipment and such other equipment and systems as Manager determines appropriate. In connection with such major life safety systems, chillers, boilers, and other major HVAC equipment, Manager shall arrange to have the Hotel and the FF&E physically inspected at least once each Operating Year (either by a qualified employee of Manager or an outside consultant selected by Manager) and prepare a written report in a form reasonably acceptable to Owner for Owner's review and approval, to the extent such approval is required for such item under Section 3.21(h), in a form consistent with that provided by Substantially All Other Grand Hyatt Hotels. A copy of such written report shall be promptly provided to Owner. A representative of Owner and/or the Asset Manager may accompany Manager on such inspection. Notwithstanding Manager's rights and obligations under the preceding provisions of this Section, and without limiting the rights of Owner and its outside consultants to conduct additional inspections at the expense of Owner, Owner shall have the right to hire an outside consultant (which may be the Asset Manager) to independently inspect the Hotel and the FF&E not more often than once every Operating Year with the cost of such inspection to be paid from the Total Operating Revenues as an Operating Expense. Notwithstanding anything to the contrary in this Agreement, any consultant inspection report or

recommendation shall not be binding on Manager, but shall be taken into consideration by Manager in preparation of the next applicable Annual Plan.

Section 3.09. Supervision and Coordination of Renovations and Improvements. Manager shall (a) subject to Sufficient Funds being available for such purpose, supervise and coordinate the construction and installation of any renovations, improvements, repairs or replacements of a capital nature to the Hotel that may be implemented from time to time in accordance with this Agreement (at no additional fee to Manager unless the additional fee is specifically included in the applicable Capital Budget, and specifically identified as such, or otherwise specifically approved in writing by Owner); (b) reasonably cooperate with Architect, Design-Builder, the Project Manager, the Trustee, Owner and their respective designees and consultants with any related design review and project oversight undertaken by any of them, including abatement or corrective activities undertaken by any of them pursuant to Section 3.39(d); and (c) cooperate with and render assistance, as reasonably necessary, to each of them and their respective employees, agents, contractors and representatives in connection with any such work. Notwithstanding the foregoing, if there is a material expansion of the Hotel, Manager will be paid a reasonable fee in connection with technical services provided for such expansion (consistent with the fees payable in the Technical Services Agreement).

Section 3.10. Purchase of Inventories, Supplies and Consumables. Manager shall, for the benefit of the Hotel, purchase, or arrange for the purchase of, all inventories, provisions, consumable supplies and operating supplies (other than Pre-Opening Supplies and Inventory) that are necessary and proper to maintain and operate the Hotel (including any gift or sundry store within the Hotel operated by Manager) in accordance with the Operating Standards, use the same in the management and operation of the Hotel (subject to the provisions of this Agreement with respect to National Vendors), and act in a commercially reasonable and economical manner in purchasing such items; provided, that Owner shall be the owner of all such inventories, provisions, consumable supplies and operating supplies. The cost of such purchases, including any sales taxes or assessments thereon, shall be an Operating Expense payable solely from amounts on deposit in the Lockbox Fund or otherwise held by the Trustee under the Trust Agreement which are available for such purpose.

Section 3.11. Cooperation with Owner's Purchasers and Consultants. Without limiting Manager's rights under this Agreement, Manager shall reasonably cooperate with Owner, its consultants and any actual or prospective purchaser, lessee, surety, or other lender in connection with any proposed sale, lease or financing of or relating to the Hotel or any part thereof; provided, however, that Manager shall not be required to release to any Person, without Manager's consent, any of Manager's Proprietary Information or Intellectual Property except to the extent required by Applicable Law.

Section 3.12. Legal Services.

(a) ***Retention of Legal Counsel.*** Manager shall retain legal counsel for the Hotel (which legal counsel shall be reasonably acceptable to Owner) to perform legal services in the ordinary course of business of the Hotel under Manager's direction. Manager in its own name for the benefit of the Owner shall, as an Operating Expense, (i) commence ordinary collection lawsuits to collect charges, rent or other income

derived from the Hotel's operations; (ii) after written notice to Owner of such claims, commence legal actions or proceedings or other actions, as Manager prudently and reasonably deems appropriate, to (A) enforce or terminate any contract or other agreements related to the Hotel's operations (other than any agreements between Manager and Owner) and under which the third-party contractor is in default; provided, that Owner has received written notice of such default prior to such enforcement and termination; (B) to oust or dispossess guests, tenants or other persons in possession who are not entitled to occupy the portion of the Hotel which they occupy; and (C) to cancel or terminate any license or concession agreement covering a portion of the Hotel for the breach thereof or default thereunder by the licensee or concessionaire; provided, that Owner has received written notice of such breach prior to such cancellation or termination; (iii) take appropriate steps (as determined by Manager in its reasonable and prudent discretion) to challenge, protest, appeal and/or litigate to final decision in any appropriate court or forum any counterclaims related to the foregoing; provided, that if such counterclaim involves a claim for more than \$25,000 asserted against Manager (provided, that such claim would constitute an Operating Expense or be payable from any Funds) or any counterclaim asserted against Owner, such counterclaim and litigation shall be subject to joint control under Section 3.12(c); and (iv) at the direction of the Owner, take appropriate steps to challenge, protest, appeal and/or litigate to final decision in any appropriate court or forum any Applicable Law affecting the Hotel or any alleged violation of such law; provided, that (A) non-compliance with or violation of the Applicable Law during such challenge, protest, appeal or litigation does not result in the closing of any portion of the Hotel and does not impose any risk of criminal or civil liability on Manager or Owner; and (B) Manager complies with such Applicable Law or remedies such violation of law to the extent necessary to prevent any such closure or risk of liability described in clause (iv)(A). Manager shall provide Owner a monthly report following each calendar month at the same time as other monthly reports to Owner by Manager as required in this Agreement detailing all legal actions instituted by Manager related to the Hotel and the status thereof.

(b) ***Defense of Third-Party Claims.*** The Parties acknowledge and agree that they shall first seek insurance coverage for any third-party claim arising out of or related to the operation of the Hotel from the insurance carrier(s) providing coverage as provided under this Agreement. Manager, through its insurance carrier(s), shall manage the claim resolution process for all such claims.

(c) ***Joint Control of Certain Legal Proceedings.*** With the exception of claims for which Owner is indemnified by Manager pursuant to the terms of Article VII, which shall be managed solely by Manager, (i) legal proceedings of a nature other than those referred to under Section 3.12(a), or (ii) that subject Owner to any liability risk or Manager to liability risk in excess of \$25,000 (provided, that such claim would constitute an Operating Expense or be payable from any Funds), or (iii) any counterclaim asserted against Owner, shall be subject to Owner's and Manager's joint control which shall mean that Owner and Manager shall (i) jointly select counsel reasonably acceptable to both Parties which would represent both Parties (which may be counsel to Owner), (ii) coordinate and reasonably cooperate with regard to case management strategy, (iii) have the right to review pertinent documents prior to submission to court, and

(iv) participate in any settlement discussions. Each Party agrees that it shall act reasonably and in good faith to the extent any settlement affects the liability of the other Party hereto.

(d) **Settlement of Claims.** Notwithstanding anything to the contrary contained in Section 3.12(a), with the exception of claims for which Owner is indemnified by Manager pursuant to the terms of Article VII, which shall be controlled solely by Manager, Manager shall not settle any claim, action, counterclaim or employment claim against Manager (provided, that such claim, action, counterclaim or employment claim would otherwise constitute an Operating Expense or otherwise be payable from any Funds) without Owner's written approval if such settlement would, when aggregated with any other settlements agreed to by Manager without Owner's consent during the then current Operating Year, result in aggregate uninsured liability during the then current Operating Year in excess of \$25,000. Owner shall respond promptly to any request for its approval pursuant to this Section and Owner shall act in good faith to the extent any proposed settlement (or lack thereof) may affect Manager's liability; provided, however, that so long as Owner is acting in good faith, nothing in this Agreement shall be construed as limiting Owner's ability to act in its own economic interest. Owner shall be deemed to have disapproved any proposed settlement unless Owner delivers to Manager a written notice approving such settlement in writing within twenty (20) Business Days after Manager delivers to Owner a written request for Owner's approval of such settlement, together with a detailed description of such settlement. In addition, at the request of Owner and as an Operating Expense, Manager shall take appropriate steps (as determined by Owner in its sole discretion) to challenge, protest, appeal and/or litigate to final decision in any appropriate court or forum any Applicable Law affecting the Hotel or the operation thereof. In any event, Manager shall provide written notice to Owner of all settlements of any claim, action, counterclaim or employment claim, whether or not Owner's approval is required for such settlement. To the extent that any proposed settlement involves a payment by Owner, such settlement shall be subject to the procedures and approvals required under the San Francisco Charter and Administrative Code. The process of seeking to obtain such approvals shall not under any circumstances constitute bad faith, unreasonable delay or the unreasonable withholding of approval under this Agreement.

Section 3.13. Availability of Key Personnel. Manager shall cause the Key Personnel to be available to Owner as Owner may reasonably require after reasonable notice to consult with and advise Owner and its representatives and designees concerning matters related to the business and operation of the Hotel; provided, that such requests do not unreasonably interfere with the applicable Key Personnel's day-to-day or other job responsibilities. Unless expressly approved by Owner in writing, Key Personnel shall be solely committed to the Hotel and shall not supervise any other hotel concurrently and on an ongoing basis with their supervision of the Hotel and the operation thereof. Notwithstanding the foregoing, Owner acknowledges that the Hotel General Manager may have regional area responsibilities overseeing other Hyatt System hotels; provided, however, that such responsibilities shall not adversely affect the performance of the General Manager's responsibilities with respect to the Hotel; and provided further, that a *pro rata* share of the General Manager's compensation and benefits allocable to the General

Manager's performance of such regional area responsibilities shall be deducted from and not paid as a part of Operating Expenses.

Section 3.14. Cooperation Regarding Applicable Law. Owner and Manager shall reasonably cooperate with each other (and, in the case of Manager, promptly deliver to Owner copies of any of the Hotel's books and records requested by Owner) to facilitate each Party's respective compliance with Applicable Law.

Section 3.15. Taxes.

(a) **Gross Receipts Taxes.** Manager shall collect, account for and remit to Governmental Authorities all Gross Receipts Taxes prior to delinquency. If any such Gross Receipts Taxes are deposited in the Lockbox Fund, Manager shall have the right to withdraw the amount of such deposited taxes in order to remit same to the applicable Governmental Authorities.

(b) **Ad Valorem Taxes and Personal Property Taxes.** Manager shall provide to Owner all reasonably required personal property information in connection with any personal property taxes which may be due with respect to the Hotel. Owner shall be responsible for paying all *ad valorem* taxes and personal property taxes prior to delinquency relating to the Hotel from Owner's own funds; provided, that the *ad valorem* property taxes with respect to the Site shall be paid out of the Taxes and Insurance Fund as provided in the Cash Management Agreement; and provided further, that any personal property taxes on Hyatt Software shall be the responsibility of Manager from its own funds. Owner acknowledges that Manager is not a tax advisor and is not acting as such in connection with this Agreement. Owner is responsible for obtaining any available written determination from the taxing authorities or legal opinion specifying an exemption from any Taxes. Manager and Owner shall reasonably cooperate to address any tax disputes involving the Hotel.

Section 3.16. Internal Control Structures. Manager shall maintain an internal control structure designed to provide assurance that the Hotel and Hotel assets are safeguarded from loss or unauthorized use, transactions are executed in accordance with Manager's authority, and financial records are reliable for the purposes of preparing financial statements, all in accordance with the Manager's standard policies and procedures for Other Grand Hyatt Hotels and the terms of this Agreement. The internal control structure shall be supported by the selection, training and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures consistent with Substantially All Other Grand Hyatt Hotels. Owner shall have the right at reasonable times and in a reasonable manner as mutually agreed by the Parties to inventory and label the FF&E at the Hotel for City inventory and internal control purposes.

Section 3.17. Financial Matters. Manager shall keep Owner informed and advised of all material financial and other matters concerning the Hotel and the operation thereof and give due consideration to suggestions which Owner's designees or consultants may offer with respect thereto from time to time, subject in all cases to the terms of this Agreement.

Section 3.18. Collection of Revenues. Manager shall collect all charges, revenues and other amounts due from guests, lessees, licensees and concessionaires of the Hotel and deposit those funds in accordance with the Cash Management Agreement, a copy of which is attached hereto as Exhibit F, and the Trust Agreement. In accordance with Section 5.09(m), this provision shall survive the Termination of this Agreement until all uncollected amounts due during the Term are collected or otherwise accounted for as set forth in Section 5.09(m) to the reasonable satisfaction of Owner and Manager.

Section 3.19. Redirecting Reservations. Neither Manager nor any of its Affiliates shall, on its own initiative rather than that of actual or prospective guests or business customers of the Hotel, seek to have such guests or business customers make reservations or other arrangements for the use of rooms or other facilities or services at any other hotel owned, managed, operated, acquired, leased, franchised, licensed by, merged with or joined through a marketing or other arrangement with Manager, an Affiliate of Manager or any entity in which Manager has an interest (direct or indirect) rather than at the Hotel, if such rooms or other facilities or services are available at the Hotel during the requested period.

Section 3.20. Customary and Usual Tasks. Manager shall perform administrative, management, reporting, cooperation, coordination, supervision and oversight tasks, in addition to those set forth in this Article, as Manager deems reasonably necessary and that are customary and usual in the operation of a hotel of a class and standing consistent with the Hotel and with the Operating Standards.

Section 3.21. Annual Plans.

(a) ***Delivery of Annual Plans.*** On or before May 1 of each Operating Year and on or before sixty (60) days prior to the Opening Date, Manager shall prepare and deliver to Owner and its designees and consultants (provided, that Manager has received written notice of the names and addresses of such designees and consultants at least seven (7) Business Days in advance of delivery) for Owner's review, a preliminary Proposed Annual Plan (which shall include a proposed Room Rate Plan) for the next Operating Year or, in connection with the opening of the Hotel, for the period of time from the Opening Date to the following June 30, following the format set forth in Exhibit H. Owner understands that Manager shall not submit its final Proposed Annual Plan for the next Operating Year or, in connection with the opening of the Hotel, for the period of time from the Opening Date to the following June 30, until May 15 of the applicable prior Operating Year or forty-five (45) days prior to the Required Opening Date, as applicable. Upon request, Manager shall meet with Owner to discuss the preliminary Proposed Annual Plan. The final Proposed Annual Plan shall be subject to the review and approval process set forth in Section 3.21(d).

(b) ***Preparation Standards.*** Manager shall act reasonably and exercise prudent business judgment in preparing the Proposed Annual Plan and any revisions thereto. Owner shall act reasonably and exercise prudent business judgment in approving or rejecting all or any portion of the Proposed Annual Plan. The Proposed Annual Plan shall be subject to the provisions of Section 3.21 below. In addition, Manager and Owner agree that:

(i) the Proposed Annual Plan shall be prepared giving due consideration to all relevant factors, including existing market and economic conditions, and operation of the Hotel in a manner that is consistent with the Operating Standards;

(ii) the Proposed Annual Plan shall be prepared in accordance with Manager's standard planning and budgeting requirements applicable to Substantially All Other Grand Hyatt Hotels; and

(iii) the Proposed Annual Plan shall be in the form used by Manager at Substantially All Other Grand Hyatt Hotels at the time of preparation of the applicable budget and shall include the same line items.

(c) ***Required Information and Projections.*** Each proposed Annual Plan shall include the following in a detailed line-by-line format:

With respect to the proposed Operating Budget:

(i) annualized projections of Total Operating Revenues, Operating Expenses, Gross Operating Profit and Net Operating Income for that Operating Year;

(ii) for each month, the estimated results of operations (including estimated Total Operating Revenues, Operating Expenses, Gross Operating Profit and Net Operating Income);

(iii) for each month, a statement of cash flows, including a schedule illustrating the flow of funds in a form to be agreed upon by Owner and Manager no later than sixty (60) days prior to the anticipated Opening Date and reasonably acceptable to Owner pursuant to the provisions of any anticipated requirements for funding from Total Operating Revenues and the funds held by the Trustee under the Trust Agreement;

(iv) for each month, the proposed Room Rate Plan and other Pricing;

(v) if the proposed Operating Budget shall result in a Debt Service Coverage Ratio of less than the Debt Service Coverage Requirement, Manager shall include with its delivery of the applicable proposed Operating Budget a detailed explanation as to why Manager has not budgeted to attain such ratio;

(vi) for each month, estimates of total labor costs, together with proposed staffing needs by department (based on "full-time equivalents", as appropriate);

(vii) for each month, the estimated amount of accounts receivable and accounts payable that are more than ninety (90) days past due;

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

(ix) for each month, an estimate of Centralized Services Fees (by line item);

(x) for each month, an estimate of Reimbursable Expenses (by line item); and

(xi) a marketing plan consistent with the form of marketing plan used at comparable Other Grand Hyatt Hotels, which shall contain a description of the Hotel's target markets, the Hotel's relative position in those markets, the proposed Pricing for each market segment, the current and future sales plan for the Hotel, the advertising and public relations plan for the Hotel, the proposed staffing for the sales and marketing activities of the Hotel, and the proposed room rate structures and other published operating information, which if available shall include information relating to pricing of goods and services for the hotels in the Competitive Set. Manager shall provide the initial marketing plan to Owner on or before six (6) months prior to the Required Opening Date and annually thereafter by no later than forty-five (45) days prior to Manager's submission to Owner of the proposed Operating Budget. Marketing plans shall be subject to modification as mutually agreed by the Parties.

With respect to the proposed Capital Budget:

(xii) a capital plan, which shall include: (1) a five-year forecast of Capital Expenses needs for the Hotel, (2) a five-year forecast of estimated available funds in the Capital Reserve Fund, (3) a description of the requested Capital Expenditures, associated costs and funding plans for the Operating Year, and (4) an amount (not less than ten percent (10%) of the proposed Capital Budget) to cover unforeseen contingencies that may occur during the Operating Year;

(xiii) an FF&E plan, which shall include: (1) a five-year forecast of FF&E needs and routine capital expenses for the Hotel, (2) a five year forecast of estimated available funds in the FF&E Reserve Fund, (3) a description of the requested FF&E expenditures for the Hotel, associated costs and funding plans for the Operating Year, and (4) a specified amount to cover unforeseen contingencies that may occur during the upcoming Operating Year; and

(xiv) a statement setting forth the basis for and purpose of each line item and a payback analysis for each.

(d) ***Approval of Annual Plan.***

(i) Approval of Room Rate Plan. If Owner exercises its right to disapprove Manager's proposed Room Rate Plan or any amendment thereto pursuant to Section 3.06(b) and Manager disagrees with Owner's reasons for

disapproval of such proposed Room Rate Plan (or modifications thereto), as applicable, then either of the Parties may require the engagement of a Hotel Consultant to review such information and provide recommendations pursuant to Section 3.21(k). The recommendations of the Hotel Consultant regarding the Room Rate Plan shall be binding on the Parties.

(ii) Approval of Annual Plans. Owner and Manager shall meet within fifteen (15) days after Owner's receipt of the final Proposed Annual Plan for any Operating Year pursuant to Section 3.21(a). At such meeting, (A) Owner shall provide to Manager its then current estimate of Administrative Expenses for the next ensuing Operating Year; and (B) Manager shall provide to Owner its final Proposed Annual Plan for the applicable Operating Year, together with an explanation of the changes from the Proposed Annual Plan initially delivered to Owner. To the extent it has approval rights over expenditures in the Annual Plan, Owner shall not disapprove such expenditures set forth in the Proposed Annual Plan that Manager reasonably believes are necessary in order for the Hotel to comply with the Operating Standards, provided, that there are Sufficient Funds therefor, except as provided in 3.21(e) below. If Owner and Manager are unable to agree upon the items in the Proposed Annual Plan for which Owner has approval rights within fifteen (15) days after such initial 15-day period, then within ten (10) days after the expiration of such second 15-day period, Owner shall deliver to Manager its written objections to the Proposed Annual Plan, subject, however, to the provisions of Section 3.21(k) below. If Owner does not deliver to Manager its written approval or disapproval of Proposed Annual Plan within such 10-day period, then such Proposed Annual Plan, shall be deemed to be disapproved by Owner. Owner's objections to a Proposed Annual Plan shall include the specific items disapproved. During the 15-day period following Manager's receipt of Owner's objections, Owner and Manager shall meet to discuss the disapproved items. Within five (5) days after the expiration of such third 15-day period, Manager shall submit to Owner a revised Proposed Annual Plan incorporating such revisions as Owner and Manager agreed upon during such third 15-day period.

(iii) Referral to Hotel Consultant. If the Parties do not agree upon Owner's revisions, then either Party may submit the matter for resolution by the Hotel Consultant pursuant to the provisions of Section 3.21(k) below.

(iv) Interim Annual Plan. Until such time as the parties have agreed on all line items of the Proposed Annual Plan for which Owner has approval rights hereunder, Manager shall have the right to operate the Hotel in accordance with: (A) those line items in the Proposed Annual Plan that do not require Owner approval under this Agreement, and (B) those line items in the Proposed Annual Plan that have been agreed upon by Owner and Manager, and (C) only with respect to those line items in the Proposed Annual Plan not yet approved by Owner (and for which Owner has approval rights under this Agreement) and until resolution by a Hotel Consultant, the corresponding line items in the Annual Plan in effect during the preceding Operating Year (but without duplication of any

“one-time” expenditures, including individual Capital Expenditures and expenses for FF&E, in each case as adjusted for the change in the immediately preceding calendar year in the Bay Area CPI.

(v) Exceptions to Owner Approval Rights. Notwithstanding anything to the contrary in this Agreement, Owner shall not have the right to approve or withhold approval of the following items in each proposed Operating Budget: (A) contracts or arrangements Manager has made on a chain-wide or regional basis, or on business-segment basis applicable to not less than three Other Grand Hyatt Hotels, in accordance with this Agreement; (B) individual compensation for Key Personnel, provided, that such compensation shall be consistent with that for corresponding personnel in the local market; (C) allocable costs for employee benefit programs provided at Substantially All Other Grand Hyatt Hotels; (D) expenditures expressly required by other provisions of this Agreement, including for Management Fees and for Centralized Services; and (E) expenditures reasonably necessary to operate the Hotel in accordance with the Operating Standards, provided, that there are Sufficient Funds therefor.

(e) ***Annual Plan Review Standards.*** Subject to Section 3.21(d)(v), Owner shall have the right to object to any aspect of any Proposed Annual Plan for which it has approval rights if (among other reasons):

(i) the objection and proposed change would not materially (A) impair Manager’s ability to achieve a Performance Test, or (B) interfere with Manager’s performance and satisfaction of its duties and obligations under this Agreement;

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

(iii) as to a proposed Operating Budget, there are not Sufficient Funds available therefor;

(iv) as to a proposed Operating Budget, it shall result in a Debt Service Coverage Ratio of less than the Debt Service Coverage Requirement;

(v) as to a proposed Capital Budget, a proposed Capital Improvement represents a material upgrade to the quality or facilities of the Hotel (as distinct from repairs, maintenance or replacements required to prevent any diminution in quality) that are not, in Owner’s reasonable opinion, required to satisfy the Operating Standards; or

(vi) as to a proposed Capital Budget, any proposed upgrade to the quality or the facilities of the Hotel would (A) require material alterations to the Building as a result of any modifications in Brand Standards made by Manager after the Execution Date, except as necessary to correct an Emergency or to comply with Applicable Law; (B) require purchase of new or replacement FF&E as a result of any modifications in Brand Standards made by Manager after the Execution Date, prior to the earlier of five (5) years from the date of purchase of

such FF&E or the end of the useful life of such FF&E; (C) be imprudent based upon a reasonable weighing of the costs and benefits to the Hotel of the upgrades (taking into account the cost and impact on Hotel revenue and expense of the upgrades, the useful life of the upgrades, and the remaining term of this Agreement); or (D) render funds in the Capital Reserve Fund, the FF&E Reserve Fund, the Working Capital Reserve Fund, or the Revenue Stabilization Fund inadequate for other necessary Capital Expenses or funding of other amounts as contemplated by this Agreement or an existing approved Capital Budget. The foregoing shall not in any way limit Owner's right to approve a proposed Capital Budget as to reasonableness of specifications and cost of implementing any upgrade set forth therein.

(f) ***Permitted Variations from Annual Plan.*** During the Term, Manager (i) shall use commercially reasonable efforts to operate within, and in a manner consistent with, each approved Annual Plan; and (ii) shall not deviate from the budgeted Capital Expenses and FF&E in an approved Capital Budget by more than five percent (5%), except as expressly permitted in subsection (h) below, unless Manager obtains the prior written consent of Owner in its sole discretion.

(g) ***Variable Expenses.*** Owner acknowledges that certain of the expenses described in each Operating Budget (but not the Capital Budget) shall vary based on the occupancy of the Hotel. Accordingly, to the extent that the occupancy of the Hotel for any Operating Year exceeds or falls below the occupancy projected in the approved Operating Budget for such Operating Year, the approved Operating Budget shall be deemed to include corresponding increases or decreases in such Variable Expenses, as applicable; provided, that with respect to increases in expenses, Manager reasonably believes that each such increase will maximize Net Operating Income in the current and/or future Operating Years. Manager shall prepare and deliver to Owner each month a monthly variance report setting forth any deviation from the Annual Plan, including deviations from line items therein. The term "**Variable Expenses**" means Operating Expenses covered by an Operating Budget that reasonably fluctuate as a direct result of business volumes, including labor, food and beverage expenses, other merchandise expenses, operating supply expenses, energy costs, Hyatt Gold Passport expenses, credit card fees and charges and other expenses commonly considered variable expenses in the hotel industry. Manager may submit to Owner for its approval an interim budget to reflect any significant adjustments to the approved Operating Budget or Capital Budget caused by an Emergency or a lack of Sufficient Funds.

(h) ***Permitted Capital Expenditures.*** Notwithstanding anything to the contrary in this Agreement, Manager shall not incur Capital Expenditures that are in excess of those required or permitted under the Capital Budget except for the following: (i) expenditures for the replacement of or additions to FF&E necessary to satisfy Brand Standards which do not exceed twenty thousand dollars (\$20,000) (subject to adjustment each Operating Year based on changes in the Bay Area CPI) for any single expenditure, and two hundred thousand dollars (\$200,000) (subject to adjustment each Operating Year based on changes in the Bay Area CPI) in the aggregate in any Operating Year (provided, that such expenditures shall not thereby cause the Capital Reserve Fund or the FF&E

Reserve Fund to lack sufficient funds to pay for items previously approved as part of the Capital Budget); (ii) Emergency Expenses; provided, that notice of such Emergency and proposed expenditures shall be provided to Owner as soon as practicable and in any event no later than 24 hours after Manager is aware of such event; (iii) expenditures required by Applicable Law; and (iv) expenditures which are necessary to enable the Hotel to meet the Operating Standards in effect at the time the expenditure is made, according to the Owner-approved Annual Plan.

(i) ***Characteristics of Annual Plans.*** Owner acknowledges that (i) the Annual Plan is intended by Manager to be a reasonable estimate of income and expenditure only, subject to unforeseen circumstances or emergencies; (ii) Manager does not give any guarantee, warranty or representation whatsoever in connection with any Annual Plan, other than Manager prepared the same in good faith, utilizing all available facts and commercially prudent business methods; and (iii) a failure of the Hotel to meet the Annual Plan shall not in and of itself constitute a Manager Event of Default or other breach or default by Manager under this Agreement. The preceding sentence shall not, however, be construed as a limitation on (A) Manager's obligations (and Manager shall be in breach of this Agreement if Manager fails) (1) to use commercially reasonable efforts to operate within the Annual Plan; or (2) to obtain Owner's approval prior to making expenditures that exceed in the aggregate the amount of any line item in the approved or authorized Capital Budget by more than ten percent (10%), except as provided in subsection (h) above; or (B) Owner's right to terminate this Agreement under any provision of this Agreement which expressly permits termination, including by reason of (1) a Performance Termination Event or (2) a Manager Event of Default that is not based on the failure of the Hotel to achieve any Annual Plan.

(j) ***Debt Service Coverage.*** In addition to the circumstances otherwise provided in this Agreement, but subject to Section 3.21(d)(v), under each of the following circumstances, Owner may require the appointment of a Hotel Consultant (within thirty (30) days after the receipt of the following information) to make written recommendations as to the operations, management, marketing, improvement, condition or use of the Hotel or any part thereof pursuant to Section 3.21(k) below:

(i) if Owner determines that a proposed Operating Budget will not result in the Debt Service Coverage Requirement being met;

(ii) if Owner determines that the actual Debt Service Coverage Ratio with respect to the Initial Series of Bonds for any four consecutive quarters is less than the Debt Service Coverage Requirement; and

(iii) if the Certified Annual Financial Statements delivered to Owner pursuant to Section 3.23(c) reflects that the Debt Service Coverage Requirement was not achieved.

(k) ***Hotel Consultant.*** Where this Agreement calls for a matter to be referred to a Hotel Consultant for resolution, the following provisions shall apply:

(i) The use of the Hotel Consultant shall be the exclusive means of resolution by the Parties of the matter referred, and the decision of the Hotel Consultant shall be final and binding on the Parties, subject to clause (viii) below.

(ii) Manager and Owner agree to reasonably cooperate with the Hotel Consultant in order to permit the Hotel Consultant to effectively perform its duties and responsibilities in connection with such engagement.

(iii) Each Party shall be entitled to make written submissions to the Hotel Consultant, and if a Party makes any submission it shall also provide a copy to the other Party and the other Party shall have the right to comment on such submission.

(iv) The Parties shall make available to the Hotel Consultant all books and records reasonably related to the matter in dispute and shall render to the Hotel Consultant any assistance reasonably requested of the Parties.

(v) Each Party shall deliver to the other at no additional charge copies of any information, correspondence or documents delivered to the Hotel Consultant contemporaneously with delivering such information, correspondence or documents to the Hotel Consultant.

(vi) Each Party shall also, upon the request of the other Party or the Trustee, meet with the Hotel Consultant to discuss the Hotel Consultant's reports, findings and written recommendations.

(vii) The Hotel Consultant shall make its recommendation with respect to the matter referred for determination by taking into consideration Owner's obligations with respect to the Bonds, then-existing market and economic conditions, and operation of the Hotel in a manner that is consistent with the Operating Standards.

(viii) Each Party shall consider in good faith the recommendations of the Hotel Consultant and shall implement those recommendations to the extent: (i) such recommendations do not cause the Hotel to fail to meet the Operating Standards, including the Brand Standards, (ii) there are Sufficient Funds available therefor, (iii) such recommendations do not cause the Manager to fail to meet the Performance Tests, (iii) such recommendations will not cause a Manager Event of Default, and (iv) such recommendations do not, in the opinion of Bond Counsel, adversely affect the tax-exempt status of the interest on the Bonds.

(ix) The terms of engagement of the Hotel Consultant shall include an obligation on the part of the Hotel Consultant to: (1) notify the Parties in writing of its findings and recommendation(s) within thirty (30) days from the date on which the Hotel Consultant has been selected (or such other period as the Parties

may agree or as set forth in this Agreement); and (2) establish a timetable for the making of submissions and replies.

(x) The fees and expenses of the Hotel Consultant shall be paid as an Operating Expense from amounts on deposit in the Lockbox Fund.

(l) ***Pro-Forma Three-Year Annual Plan Projections.*** On or prior to February 1 of each Operating Year, Manager shall provide Owner with summary of the projected Annual Plans for the next three succeeding Operating Years in sufficient detail for Owner to prepare budgets for up to the next two Operating Years for submission to the City and the airlines serving the Airport.

Section 3.22. FF&E, Capital, Repair and Maintenance Expenses.

(a) ***Generally.*** The Hotel shall be maintained, repaired and improved by Manager, as an expense of the Hotel payable from the appropriate Fund as described in the Cash Management Agreement and the Trust Agreement, as contemplated in the Capital Budget in effect from time to time, to permit operation of the Hotel in accordance with the Operating Standards, but only to the extent of Sufficient Funds.

(b) ***FF&E and Capital Reserve Funds.*** The Trustee shall (subject to and in accordance with the provisions in the Trust Agreement) set aside from Total Operating Revenues on a monthly basis (in arrears) the Capital Reserve Set Aside Amount into the Capital Reserve Fund and the FF&E Reserve Set-Aside Amount into the FF&E Reserve Fund. Owner shall cause the Trustee to maintain the Capital Reserve Fund and the FF&E Reserve Fund as required by the Trust Agreement and to invest the balances therein in accordance with the Trust Agreement. To the extent amounts in the Capital Reserve Fund or the FF&E Reserve Fund are not expended within the Operating Year in which the deposits occur, such amounts shall be accumulated for expenditure in future years, and shall not be credited against the amount of the respective Capital Reserve Set Aside Amount and the FF&E Reserve Set-Aside Amount for the next Operating Year. All requests for FF&E or Capital Expenses shall include detailed back-up documentation including the financial rationale (if any) for such FF&E and Capital Expenses, lien releases, bids, and invoices, as appropriate or required.

(c) ***Use of Capital Reserve Fund and the FF&E Reserve Fund, Working Capital Reserve Fund and Revenue Stabilization Fund.*** The Capital Reserve Fund and the FF&E Reserve Fund, subject to Section 3.21(h), shall be used for the purposes of funding Capital Expenses and FF&E, respectively, but only to the extent that such Capital Expenses or FF&E, respectively, are included in the Capital Budget or otherwise clearly and expressly authorized by this Agreement or consented to in writing by Owner. The Capital Reserve Fund and the FF&E Reserve Fund shall also be available to pay Debt Service on the Bonds to the extent set forth in the Trust Agreement. Notwithstanding anything to the contrary in this Agreement, the Working Capital Reserve Fund shall not be available to pay Debt Service on the Bonds. Manager shall deliver to Owner of a request in the form of Exhibit M, supported by invoices and statements evidencing the applicable Capital Expenses and FF&E; for payment thereof.

(d) ***Defective and Dangerous Conditions.*** If the design or construction of the Hotel is defective and the defective condition causes material damage to the Hotel, poses a risk of serious injury to people or property, or is not in material compliance with Applicable Law, including the provisions of any Certificate of Occupancy, Owner shall, subject to any limitations on warranties contained in the Development Agreements, make immediate demand on, and use commercially reasonable efforts to cause, the Design-Builder to expeditiously remedy such defect or cause such defect to be remedied; provided, however, that Owner shall have the right to challenge in good faith the existence of any alleged defective condition and/or the materiality of such alleged defect and/or any Applicable Law, and unless and until such challenge is settled, Owner shall have no obligation to pursue Design-Builder regarding such alleged defect. Any amounts expended by Owner under this Section shall be paid as an Emergency Expense as provided in this Agreement. Any recovery which Owner receives from Design-Builder or any other party on account of such amounts shall be deposited into the Funds from which monies were withdrawn in order to cure the defective condition (in the reverse order as the monies were withdrawn).

(e) ***Owner's Source of Funds for FF&E and Capital Expenses.*** Notwithstanding anything to the contrary in this Agreement, (i) Owner's obligations to provide funds for FF&E and Capital Expenses shall be limited to funds in the Capital Reserve Fund and the FF&E Reserve Fund, the Working Capital Reserve Fund, and the Revenue Stabilization Fund; and (ii) the availability of funds for FF&E, Capital Expenses or any other expenses shall be limited to the extent provided in the Trust Agreement. In any event, Manager shall exercise commercially reasonable efforts consistent with the Operating Standards to schedule and budget for FF&E and Capital Expenses in a fashion that permits funding solely from the Capital Reserve Fund and the FF&E Reserve Fund (to the extent available under the Trust Agreement).

Section 3.23. Books and Records; Reports; Financial Statements; Meetings.

(a) ***Books and Records.*** During the Term, in accordance with the current policies and standards applicable to Substantially All Other Grand Hyatt Hotels, Manager shall cause books of account, front office records, guest information and other records to be prepared to reflect the operation of the Hotel and the results of operations of the Hotel, including accounts and records pertaining to accounts payable, general ledger and payroll. All books and records shall relate solely to Hotel operations and shall not include (i) records of Owner expenses (including, for example, Debt Service); (ii) fixed asset accounting; and (iii) other records pertaining solely to Owner and its operations separate from Hotel operations. Owner acknowledges that Manager shall not maintain, as part of the Hotel books and records, any fixed asset accounts, and further acknowledges that Manager does not maintain inventories of fixed assets (including, without limitation, FF&E), or conduct interim inventory counts or perpetual inventory records with respect to other items of personal property. Manager may, in its reasonable discretion, handle the Hotel's accounting functions directly or through an Affiliate, as a Chain and System Service, in which event the provisions of Section 3.21 shall apply. All such books of account and records shall be kept in accordance with the Uniform System of Accounts and to the extent consistent therewith, Generally Accepted Accounting

Principles. If during the Term a modification of the Uniform System of Accounts occurs that impacts how Gross Operating Profit is calculated, such change shall be reflected in the reporting, but the calculations set forth in Section 5.05 shall continue to be made as if the modification had not occurred. All books and records shall be reported in the format that Hyatt uses for Substantially All Other Grand Hyatt Hotels and in such other format and including such additional information as may be required in the Trust Agreement, in any Continuing Disclosure Certificate and as may be reasonably required by Owner or the Trustee, provided such requirements do not cause an undue burden on Manager. All of the financial books and records pertaining to the Hotel, including books of account, front office records, and guest records and information, shall be the property of Manager and shall be kept on-site at the Hotel. Upon Termination of this Agreement, all of such books of account and financial records pertaining to the Hotel (excluding (i) sales records and files pertaining solely to Manager's Intellectual Property and Manager's Proprietary Information; and (ii) employee records of Hotel Personnel and other Hyatt personnel) shall be turned over forthwith to Owner so as to ensure the orderly continuance of the operation of the Hotel, but all of such information shall be retained by Owner and made available to Manager at the Hotel, at all reasonable times, for inspection, audit, examination and copying (at Manager's expense) for the period of time required by regulations of the Internal Revenue Service, but in any event not less than five (5) years subsequent to the date of such Termination. Prior to destroying the records, Owner shall notify Manager and provide Manager the opportunity to obtain the records from Owner at Manager's expense.

(b) ***Periodic Reports.*** Manager shall cause to be prepared and delivered to Owner the weekly, monthly and year-to-date operating reports listed on Exhibit I ("**Periodic Reports**") based on information available to Manager. The Periodic Reports shall reflect operational results for the current month and year to date, as well as the then-current Debt Service Coverage Ratio. Manager shall deliver to Owner each Monthly Report on or before the fifteenth day of the month following the month to which such Monthly Report relates. The reports shall be in a format (which may be amended from time to time) substantially similar to the operating reports provided by Manager to Other Grand Hyatt Hotels and in such other format and including such additional information as may be required by the Trust Agreement, or the Continuing Disclosure Certificate and as may be reasonably required by Owner or the Trustee. Upon request of Owner made not more than once each Operating Year, Manager shall have performed an evaluation of the Hotel in accordance with the standards then applied to Substantially All Other Grand Hyatt Hotels, of which the current set of evaluation standards is attached hereto as Exhibit W. Copies of the results of the evaluation shall be provided to Owner and the Trustee.

(c) ***Certified Annual Financial Statements.*** Within ninety (90) days after the end of each Operating Year, Manager shall cause to be prepared and delivered to Owner, as an Operating Expense, Certified Annual Financial Statements for the Hotel for the preceding Operating Year. Owner shall supply to Manager, within thirty (30) days after written request from Manager to do so, information in Owner's possession (and not in Manager's possession) necessary for Manager to cause the Certified Annual Financial Statements to be prepared and delivered. Such Certified Annual Financial Statements

shall be accompanied by the Independent Accountant's calculation of the Debt Service Coverage Ratio for the applicable Operating Year in the manner required by the Trust Agreement; provided, that Owner has previously provided to Manager the Net Debt Service amounts for such Operating Year. All of the Centralized Services Fees shall be consolidated into a single line item in the Certified Annual Financial Statements.

(d) ***Destruction of Records.*** Manager shall not destroy any books and records with respect to the Hotel without identifying the records to Owner and obtaining Owner's prior written approval of the destruction of such identified records. Manager's current record retention policy shall be delivered to Owner prior to the Required Opening Date. Before implementing any change to Manager's record retention policy at the Hotel, Manager shall deliver to Owner any such changes.

(e) ***Owner's Audit Rights.*** Owner, Owner's designees and consultants, and the Trustee shall, at any time throughout the term of this Agreement, have the right to audit and verify the books and records of the Hotel and the operations of the Hotel, upon reasonable prior written notice to Manager. Owner, its designees and consultants, and the Trustee shall also be entitled to conduct limited audits or examinations of the books and records of the Hotel without prior notice no more than two (2) times each Operating Year, when such notice could impair the purposes of the audit). Any audit and verification pursuant to this Section shall be conducted in such a fashion as to interfere as little as reasonably practicable with Manager's normal business operations and during normal business hours. Manager shall reasonably cooperate with Owner, the Trustee and its auditors in connection with such audit and shall promptly make available to Owner, the Trustee and its auditors any and all information relating to the Hotel that they may reasonably request in connection with such audit. Owner shall not be responsible for failure to discover any defalcations during any audit or inspection of the financial records. If Total Operating Revenues or Net Operating Income as set forth in Manager's monthly or annual operating reports to Owner are found to be incorrect by one percent (1%) or more in the case of Total Operating Revenues, or three percent (3%) or more in the case of Net Operating Income (in each case excluding recharacterization of entries to conform to requirements under the Uniform System of Accounts or GAAP), then Manager shall pay to Owner the cost of such audit and correct the misstatements as shown by such audit as soon as practicable. If Manager is not responsible for the cost of the audit under this Agreement, then the cost of an audit conducted pursuant to this Article shall be funded from the Revenue Stabilization Fund. If there is an insufficiency of funds in the Revenue Stabilization Fund, such insufficiency shall be funded from the Working Capital Reserve Fund and if the Working Capital Reserve Fund is not sufficient, then from the Total Operating Revenues as an Operating Expense. Notwithstanding the foregoing, the costs of such audit shall not be included in the calculation of any Performance Test.

(f) ***Meetings.*** Manager shall participate in meetings with Owner and the Asset Manager at the Airport or the Hotel as follows:

- (i) Monthly meetings with Senior Personnel;

(ii) An annual meeting for presentation of the Proposed Annual Plan with Senior Personnel and appropriate regional Corporate Personnel; and

(iii) An annual meeting for discussion of the prior Operating Year's results promptly following delivery of the Certified Annual Financial Statements.

Section 3.24. Personnel. During the Term, Manager shall manage all aspects of the Hotel's human resources functions and shall implement at the Hotel the personnel policies and procedures applicable to Substantially All Other Grand Hyatt Hotels, subject to Applicable Law.

(a) ***Hotel Personnel; Benefits; Compensation; Bonus Pool.***

(i) Responsible Party. Subject to Owner's rights under Section 3.24(a)(iv) below, Manager shall recruit, hire, relocate, pay, supervise, discipline, and dismiss all Hotel Personnel (including the Key Personnel and the Senior Personnel), with the understanding that all Hotel Personnel shall be the employees of Manager, and not Owner.

(ii) Personnel Policies. Manager shall determine and implement all personnel policies and practices relating to the Hotel according to Manager's human resources policies applicable to Other Grand Hyatt Hotels, including the following: (A) policies and practices relating to terms and conditions of employment, screening, selection, training, supervision, compensation, bonuses, severance, pension plans and other employee benefits, discipline, dismissal and replacement; and (B) policies and practices relating to the exercise by any Hotel Personnel of rights under any applicable labor laws in relation to the Hotel. Manager shall not enter into any written employment contracts with any employee of the Hotel that guarantees such employee a position at the Hotel for any period of time, or that offers an additional payment to such employee in addition to such employee's salary, benefits and bonuses that the employee is otherwise entitled to upon termination. Bonuses for Hotel Personnel shall be an Operating Expense.

(iii) Sufficient Personnel. Subject to availability of Sufficient Funds, Manager shall make commercially reasonable efforts to ensure that the number of Hotel Personnel is sufficient to operate the Hotel in accordance with the Operating Standards. Manager shall supervise through the Key Personnel and the Senior Personnel the hiring, discharging, promotion and work performance of all other operating and service employees of the Hotel. Manager shall further take commercially reasonable steps to determine that all members of the Key Personnel and Senior Personnel of the Hotel shall be properly qualified for their positions. The direct compensation payable to Key Personnel and Senior Personnel shall be comparable to the direct compensation paid to the members of the senior executive personnel and executive staff of Other Grand Hyatt Hotels in comparable markets, taking into account the size of the Hotel, it being understood that, subject to the availability of Sufficient Funds and Owner's right to approve staffing plans in the Operating Budget, the Hotel shall at no time be placed at a

competitive disadvantage by Manager with respect to the hiring and maintaining of its Key Personnel and Senior Personnel.

(iv) Owner's Right to Approve Key Personnel. Owner shall have the right to interview and approve the individuals selected by Manager as the Key Personnel prior to their appointment; provided, however, that Owner shall be deemed to have approved the appointment of any such individuals unless Owner delivers notice of (A) its disapproval of such appointment within ten (10) Business Days after Manager's delivery to Owner of a written summary of each such individual's professional experience and qualifications or after Owner has interviewed such candidate, or (B) its desire to interview such candidate after Manager's delivery to Owner of notice of Manager's desire to arrange an interview between Owner and such individual at the Hotel or at another mutually acceptable location (it being agreed that Owner shall forego its right to interview any such individual if Owner is unwilling or unable to have an Owner Authorized Representative participate in the interview within ten (10) Business Days following Manager's notice to Owner of Manager's desire to arrange such an interview); provided, further, neither Owner's exercise nor its failure to exercise any right of approval of a proposed Key Personnel member, shall in any way create any liability or responsibility on the part of Owner or any Affiliate of Owner in connection with the performance by any person of his or her duties as an employee of Manager. If Owner rejects the first two (2) candidates proposed by Manager for any one (1) Key Personnel position each time such position becomes available for hire, Owner shall thereafter choose between the two previously presented candidates and a third candidate so long as the selected individual remains available for hire. Manager shall provide information to Owner regarding each such candidate in order to enable Owner to make a decision regarding such candidate. Such information shall include such candidate's resume, letters of reference (if available), and any other information pertaining to such candidate's qualifications in Manager's possession, together with such candidate's proposed compensation arrangements and relocation costs, and such other information as Owner may reasonably request. Manager hereby acknowledges that reasonable consistency in the Key Personnel is important to the success of the Hotel. Manager agrees that if there is a vacancy in the General Manager's position, that Manager shall make reasonable efforts to find a temporary or permanent replacement within a reasonable period of time thereafter.

(v) Relocation Expenses. If Manager physically relocates any Key Personnel or Senior Personnel to another hotel (and such individual remains employed by Manager or its Affiliates) within two (2) years after his or her arrival at the Hotel (unless at the specific request of the employee as a result of a family emergency or other similar exigency), Manager shall reimburse the Hotel for part of the relocation expenses incurred by Manager as Operating Expenses in relocating such individual's replacement to the Hotel. The reimbursement to be made by Manager to the Hotel pursuant to this provision shall be equal to the total relocation costs incurred by the Hotel under the relocation policy of Manager and

its Affiliates in bringing the replacement employee to the Hotel, multiplied by a fraction, the numerator of which shall be the period of time remaining from the date the departing employee left his or her employment at the Hotel to the date when the departing employee would have been employed at the Hotel for 730 days, and the denominator of which shall be 730. If Manager proposes that the Hotel incur relocation costs expenses in excess of \$60,000 for a General Manager or \$25,000 for any other Key Personnel and Senior Personnel, as applicable, the Parties shall meet and discuss the necessity or desirability of incurring such relocation costs. Each dollar amount provided for in the immediately preceding sentence shall be adjusted for each Operating Year, beginning in the Second Operating Year, by the percentage change, if any, in the Bay Area CPI during the immediately preceding calendar year. Owner may reject any Key Personnel or Senior Personnel proposed by Manager whose relocation expenses would exceed the foregoing amounts. It is understood and agreed that the Hotel shall not incur any expense in connection with the relocation of the departing Key Personnel to his or her new position, regardless of the length of time any such individual is employed at the Hotel.

(vi) Employee Benefits. Manager shall have the right to provide the Hotel Personnel, who are eligible therefor and who are not covered by collective bargaining or similar arrangements, with benefits of (A) incentive plans; (B) pension, profit sharing or other employee retirement plans; and/or (C) disability, health, welfare or other benefit plans now or hereafter applicable to employees of Substantially All Other Grand Hyatt Hotels. Manager may charge the Hotel with its *pro rata* share of the costs and expenses of such Hyatt plan or plans allocated to the Hotel on the same basis as allocated to Other Grand Hyatt Hotels participating in the same benefit plans provided to the Hotel Personnel. All costs associated with such employee benefit plans shall be Operating Expenses. The terms of employment, including hiring, training, compensation, bonuses, employee benefits, discharge and replacement of all Hotel Personnel shall be established and administered by Manager consistent with the applicable provisions of the applicable Operating Budget. All such compensation, bonuses and employee benefits shall be established using Manager's compensation policies and guidelines applicable to Substantially All Other Grand Hyatt Hotels and shall be reasonable as compared to Other Grand Hyatt Hotels (taking into consideration the location and size of the Hotel and Other Grand Hyatt Hotels).

(vii) Prevailing Wages. Manager and its contractors and subcontractors shall comply with applicable provisions of the California Labor Code (Sections 1720 et seq.) and the City's Administrative Code (Section 6.22(E)) relating to the payment of prevailing wages in connection with certain demolition, construction, installation, maintenance or repair work paid in whole or in part from Total Operating Revenues.

(viii) Travel and Reimbursement. Employees of Manager and its Affiliates who travel to the Hotel on a temporary basis to provide technical

assistance or other services to the Hotel shall be permitted to stay at the Hotel, without charge and on a space available basis only.

(ix) Senior Personnel Bonus Pool.

(A) Determination of Senior Personnel Bonus Pool. Commencing with the first Operating Year and continuing for each Operating Year thereafter during the Term (except as provided below with respect to a Termination of this Agreement), Manager shall be provided the amount set forth below as an incentive compensation pool for Senior Personnel (“**Senior Personnel Bonus Pool**”). The Senior Personnel Bonus Pool for each Operating Year shall be an amount equal to \$265,000, adjusted as of each July 1 beginning July 1, 2016, by the change in the Bay Area CPI for the immediately preceding calendar year. For the year in which the Opening Date occurs, the amount of the Senior Personnel Bonus Pool shall be multiplied by the number of days between the Opening Date and the last day of such Operating Year, divided by 365. For the year in which any Termination of this Agreement occurs, the amount of the Senior Personnel Bonus Pool shall be multiplied by the number of days between July 1 and the date of such Termination, divided by 365. Amounts in the Senior Personnel Bonus Pool shall be applied solely to pay compensation to Senior Personnel.

(B) Schedule of Compensation. As part of its Proposed Annual Budget, Manager shall deliver to Owner a schedule of compensation it intends to pay to each of the Senior Personnel, including the maximum amount of the Senior Personnel Bonus Pool (“**Schedule of Compensation**”). The Schedule of Compensation shall be computed by Manager consistent with the compensation paid to employees holding comparable positions at Substantially All Other Grand Hyatt Hotels based upon the performance of such Other Grand Hyatt Hotels.

(C) Increases to Senior Personnel Bonus Pool. In the event that the incentive compensation of the Senior Personnel during an Operating Year exceeds the Senior Personnel Bonus Pool for such Operating Year, then the Senior Personnel Bonus Pool for such Operating Year shall be increased by the amount (“**Excess Amount**”) by which such compensation exceeds the Senior Personnel Bonus Pool for such Operating Year, but in no event will such increase exceed an amount equal to twenty percent (20%) of the sum of the Base Management Fee plus the Subordinate Management Fee for such Operating Year. Bonuses for Senior Personnel shall be payable solely from the Senior Personnel Bonus Pool and the Excess Amount. To the extent the Senior Personnel Bonus Pool plus the Excess Amount is insufficient therefor, such insufficiency shall be the responsibility of Manager payable solely from Manager's own funds and not directly or

indirectly from Total Operating Revenues of the Hotel or any funds held by the Trustee under the Trust Agreement.

(D) *Payment to Manager of Senior Personnel Bonus Pool.*

An amount equal to one-twelfth of the Senior Personnel Bonus Pool for an Operating Year shall be payable directly to the Manager from the Lockbox Fund on the first Business Day of each month. The Excess Amount, if any, for an Operating Year shall be payable directly to Manager from the Lockbox Fund on the first Business Day of the month following its determination.

(E) *Manager Representation.*

Manager represents and warrants that there are no other Hotel Personnel other than the Senior Personnel who provide the primary supervisory management services for the Hotel.

(x) *Non-Discrimination Provisions.* Manager shall comply with the non-discrimination and other employment-related provisions set forth in Exhibit B.

(b) *Employee Status.* None of the Hotel Personnel shall be considered employees of Owner, City or the Trustee. All Hotel Personnel Costs shall be Operating Expenses. Manager shall pay all Hotel Personnel Costs of such employees and the amount of payments shall be reimbursed to Manager by Owner in accordance with Section 4.04. Accordingly, Manager shall establish appropriate payroll accounts covering all such employees of the Hotel.

(c) *Advance Notice Regarding Termination of this Agreement.* Manager shall be responsible for giving notices, if any, required to be given to Manager's employees under any Applicable Law in connection with the Termination of this Agreement and the reasonable costs to provide such notices shall be Operating Expenses. Owner shall, however, provide reasonable prior notice to Manager of any sale of the Hotel by Owner in order to enable Manager to provide notices to employees required by any Applicable Law. Owner shall not be responsible to Manager for any compensation, benefits, or other claims relating to any period after the Termination of this Agreement and arising as a result of Manager's failure to timely deliver any required notification to Hotel Personnel following notice from Owner of an event triggering such notice requirement.

(d) *Labor Relations.* Manager also shall be responsible for compliance with all labor-related provisions set forth in Exhibit B. Manager shall be solely responsible for any negotiation of labor contracts and collective bargaining agreements covering any of the Hotel Personnel. Manager shall keep Owner contemporaneously informed regarding any labor contract and collective bargaining negotiations. All labor contracts and collective bargaining agreements with unions representing Hotel Personnel which would result in an average annual increase in Hotel Personnel Costs of more than three percent (3%) over the term thereof shall be submitted to Owner for review and approval prior to

Manager's execution of any such agreement. Manager shall use commercially reasonable efforts to include in any collective bargaining agreement the ability to assign such agreement to a third party acquiring all or a part the Hotel on Termination of this Agreement or, in the absence of such a third party, to Owner.

Section 3.25. Centralized and Chain Services.

(a) **Generally.** Manager shall furnish or cause its Affiliates to furnish the Centralized Services to the Hotel, and, subject to the remaining provisions of this Section, Owner hereby agrees that Manager may in its discretion cause the Hotel to participate in any or all such Centralized Services. Without limiting the definition of Centralized Services, Manager shall provide the following services, as Centralized Services:

(i) **Accounting.** Manager may, in its reasonable discretion, handle directly, or through an Affiliate, any of the accounting functions for the Hotel, including accounts payable, general ledger, payroll and accounts receivable, or any part thereof, as part of Centralized Services for the purpose of achieving a more cost efficient operation of the Hotel.

(ii) **Marketing and Sales Program.** Manager shall provide Chain Services intended to (A) promote the brand identity of Manager and its Affiliates, (B) advertise to Manager's and its Affiliate's markets, and (C) secure bookings for hotels and resorts, including the Hotel, operated under the "Hyatt" name (the "**Chain Marketing Program**"). In addition, Manager shall coordinate the Hotel's individual marketing program with the Chain Marketing Program and, as appropriate, include the Hotel in the brand identity and national advertising programs conducted as part of the Chain Marketing Program.

(iii) **Bookings/Reservations.** As part of Centralized Services, Manager shall secure bookings for the Hotel through Manager's local, national and worldwide sales and reservations offices and other local, national and worldwide distribution and sales systems, and shall encourage the use of the Hotel by tourists, special groups, travel congresses, travel agencies, airlines and other recognized sources of hotel business. Manager shall operate its reservation system in accordance with the standard policies in place for Substantially All Other Grand Hyatt Hotels. Manager shall develop a local sales program, represent the Hotel at appropriate conventions and travel congresses, and list the Hotel in printings of general tariff bulletins. In addition, Manager shall process reservations for the Hotel through Manager's and its Affiliates worldwide communications network. To facilitate Manager's provision of such reservation services, Owner agrees that the Hotel shall be listed by Manager in all airline reservations systems (which include what are known as global distribution systems) under the applicable code for hotels and resorts operated under the "Hyatt" name.

(iv) **Guest Frequency Program.** Manager shall maintain a guest frequency program consistent with Substantially All Other Grand Hyatt Hotels.

Currently, this program includes the Hyatt Gold Passport guest reward program, and airline and rental car frequent user programs in which Hyatt participates.

(v) Business Software and Hardware System. Manager shall provide or cause to be provided the required business software and hardware system, which may change from time to time. As of the Execution Date, Manager's business software and hardware systems required for the operation and management of the Hotel are set forth in Exhibit T.

(vi) Additional Services. Manager shall further maintain and provide the mandatory or required services provided by Manager (as specified in the then most current version of Manager's Brand Standards manual) not already referenced above, including all Manager-required training and orientation programs (excluding training at the Hotel conducted in the ordinary course of business), Manager's travel agent payment system, guest reimbursements (including guest complaint resolution program, guest assistance program, and customer satisfaction guarantee program), vacation, meetings and convention co-op advertising, and such additional services including additional Hyatt Gold Passport bonus points or bonus airline mileage credit that Hyatt Gold Passport members earn as a result of promotions in which Owner agrees to participate, any optional marketing programs offered by Manager in which Owner agrees to participate, or optional training programs.

(b) ***Centralized Services Fees Limitations.***

(i) Centralized Services Fees shall consist of the reasonable and actual direct costs of rendering Centralized Services to the Hotel and all Other Grand Hyatt Hotels, including any costs or expenses payable to unrelated third-parties (including payments of salaries, wages, compensations and benefits payable to Manager's employees) directly engaged in the rendition of Centralized Services, occupancy costs, costs of equipment leases and capital improvements, and allocation of other direct costs of providing Centralized Services. Centralized Services Fees shall be allocated to the Hotel using a reasonable accounting procedure applied on a consistent basis (which accounting procedure shall at all times comply with the requirements of Section 3.23); and shall not include any Direct or Indirect Profit. If Manager's employees devote less than all of their time to rendering Centralized Services, employee costs shall be allocated in a manner reasonably determined by Manager to reflect the portion of such time devoted by such employees to Centralized Services. Other shared costs, including occupancy costs and utilities, which relate only partially to Centralized Services shall also be allocated by Manager to Centralized Services Fees pursuant to a formula reasonably determined by Manager to reflect the portion of such costs attributable to rendering Centralized Services.

(ii) Manager shall use commercially reasonable efforts to limit Centralized Services Fees in each Operating Year to not more than four percent (4%) of Total Operating Revenues in such Operating Year.

(iii) If an increase in Centralized Services Fees in any Operating Year would exceed the average change in National CPI over the preceding five (5) calendar years, the matter shall be referred to a Hotel Consultant selected by the Parties pursuant to the provisions of Section 3.21(k) for recommendations of reductions in Operating Expenses which in the aggregate will equal the dollar amount by which the increase in such Centralized Services Fees exceeds such average. The recommendations of the Hotel Consultant shall be binding on the Parties.

(iv) In the event that Manager shall enter into any lease, management, operating, license or other similar agreement or amendment thereto with respect to any Other Grand Hyatt Hotel pursuant to which such hotel is allocated Centralized Services Fees on a basis more favorable than that provided to Owner under this Agreement, such more favorable provisions shall be deemed to be immediately incorporated in and a part of this Agreement and Manager shall give prompt written notice thereof to Owner and, upon the request of Owner, shall enter into a written amendment or amendments to this Agreement to incorporate such more favorable provisions.

Section 3.26. Hotel Marketing Program.

(a) ***Development and Implementation of Hotel Marketing Program.*** In addition to including the Hotel in the Chain Services, Manager shall, for no additional fee or compensation, develop and implement a specific marketing program for the Hotel, following Manager's policies and guidelines, which shall provide for the planning, publicity, internal communications, organizing and budgeting activities to be undertaken, and which shall include the following, in each case subject to the Annual Plan:

(i) Production, distribution and placement of promotional materials relating to the Hotel, including materials for the promotion of employee relations;

(ii) Development and implementation of promotional offers or programs that benefit the Hotel and are undertaken by Manager or by a group of Other Grand Hyatt Hotels that includes the Hotel;

(iii) Attendance of Hotel Personnel at conventions, meetings, seminars, conferences and travel congresses;

(iv) Selection of and guidance to, as required, advertising agency and public relations personnel; and

(v) Preparation and dissemination of news releases for national and international trade and consumer publications.

(b) ***Responsibility for Development of Marketing Plan.*** Development and implementation of the Hotel's individual marketing program shall be accomplished primarily by Hotel Personnel, with periodic assistance from Corporate Personnel who have marketing expertise. Any such assistance rendered by Corporate Personnel shall be

at no cost to Owner or the Hotel for such Corporate Personnel's time; provided, that Manager may be reimbursed as an Operating Expense for the Out-of-Pocket Expenses Manager incurs to provide such assistance pursuant to Section 4.04(a), subject, however, to the provisions of Section 3.21. The marketing program shall comply with Manager's sales, advertising and public relations policies and corporate identity requirements, as they may be modified from time to time. Such requirements currently include the following: (i) the "Grand Hyatt" name and mark, which shall be the only trade name and mark or symbol used to identify the Hotel, subject to Section 3.05; (ii) Owner shall obtain Manager's consent prior to publishing any Hotel advertising materials or implementing any advertising programs of its own; and (iii) the Hotel shall participate in all mandatory promotional and mandatory marketing programs of Manager and its Affiliates for so long as they are continued. The cost of the development and implementation of the Hotel's marketing program shall be an Operating Expense and the estimated costs for each Operating Year shall be included in the Operating Budget for such Operating Year. Manager shall reasonably cooperate and coordinate with Owner's marketing staff in the design and implementation of the Hotel's marketing program.

Section 3.27. Automation. The Hotel shall utilize all automation systems necessary to enable the Hotel to function as any Other Grand Hyatt Hotels, in accordance with the terms and conditions set forth in Exhibit J. Upon request, Manager shall provide Owner with a list of software programs and information systems that Manager is utilizing in connection with its management of the Hotel, including Proprietary Software. Upon request, Manager shall provide Owner with a written list of Proprietary Software actually installed in the Hotel by or for Manager. Manager shall be responsible for any property taxes levied by any Governmental Authority on its Proprietary Software. If requested by Owner upon Termination of this Agreement, Manager shall request and use commercially reasonable efforts to obtain extensions of any software or information system licensing agreement for a period (not to exceed ninety (90) days) following such Termination; provided, that Manager shall not be obligated to obtain extensions of any Proprietary Software and systems.

Section 3.28. Purchasing.

(a) *National Vendors.* In the performance of its obligations under Section 3.07, Manager may elect to purchase the items described therein under vendor contracts available to Manager under the purchasing program of Manager and its Affiliates for so long as such a program is maintained. Notwithstanding the foregoing, Manager shall use commercially reasonable efforts to purchase products from those vendors who have the needed items available and at the lowest price. In purchasing goods or services under the purchasing program of Manager or its Affiliates, subject to Manager's obligation to meet Operating Standards, Manager shall provide written evidence to Owner that such goods and services and all costs and fees charged therefor are being furnished on terms and conditions (including payment terms, price, quality and time of delivery) that are the lesser of: (i) terms and conditions not less favorable to Owner than those generally obtained in the competitive, open market; or (ii) those terms and conditions otherwise available to Other Grand Hyatt Hotels. Owner shall be entitled to decline participation in any contract with a National Vendor from which Manager or its Affiliates or related parties receive any payments or administrative fees if Manager is

not able to provide such written evidence. Hotel shall be credited promptly by Manager with its *pro rata* share of any credits or other financial benefits to Manager from all such National Vendors to the extent such credits are for purchase of products for the Hotel, directly or indirectly, in whole or in part. Manager shall not use any National Vendor to supply goods and/or services to the Hotel if such use would result in Manager, or any Affiliate of Manager, receiving any Direct or Indirect Profit.

(b) **ACDBE Requirements.** All purchasing, procurement and leasing of goods and services for the Hotel shall be subject to the ACDBE requirements set forth in Exhibit U.

(c) **Affiliates.** Manager may enter into contracts for goods and services with its Affiliates or related parties for goods and services normally provided by third-party vendors, so long as (i) the contracts do not provide for a price in excess of the market price for such goods and/or services and the goods and/or services are of a quality that would be at least equivalent to that provided by an unrelated third-party contractor pursuant to an arm's-length contract for the same price as is charged by the Affiliate; and (ii) such contracts do not result in any such Affiliate receiving any Direct or Indirect Profit by reason thereof.

Section 3.29. Parking. The Hotel shall include approximately two hundred fifteen (215) surface parking spaces available for use of the Hotel of which up to five (5) may be designated and reserved for use by Key Personnel. Subject to Owner's prior written consent, Manager may designate up to the entire parking lot to be used by a valet service for guests of the Hotel to the extent reasonably necessary to accommodate high parking demand at the Hotel. Manager shall operate and maintain the parking lot. Manager may engage a third-party parking manager to manage and operate the parking lot with the consent of Owner in its sole discretion; provided, that (a) Owner shall have the right to designate any such third-party parking manager subject to Manager's reasonable approval; (b) the third-party parking management agreement shall be in the form of a Qualified Management Agreement drafted by counsel selected by Manager, which form of Qualified Management Agreement shall be subject to approval by Owner and by Bond Counsel in their sole discretion; and (c) the third-party parking manager shall execute an assignment agreement, with respect to its agreement with Manager, with the Trustee and Owner in such form as shall be reasonably required by the Trustee and Owner. All revenue generated by the parking lot shall be included in Total Operating Revenues and all expenses incurred for the management and operation of the parking lot shall be included in Operating Expenses. Except as set forth above, Manager's employees shall not park in the Hotel parking lot but shall use employee parking facilities at the Airport designated by Owner at rates established from time to time by Owner. Owner shall make available to Manager additional on-Airport parking, at such location or locations as shall be determined by Owner in its sole discretion, as and when necessary, in the reasonable determination of Manager, to accommodate overflow parking for Hotel patrons; provided, that the location determined by Owner does not cause Manager to fail to meet the Operating Standard.

Section 3.30. Restrictive Covenant.

(a) During the Term of this Agreement and as a material inducement to Owner entering into this Agreement, Manager and its Affiliates shall not, without the prior written consent of Owner, own, lease, operate, manage, license, franchise or join through a joint marketing or other similar arrangement, in whole or in part, directly or indirectly, a Restricted Hotel within the Restricted Radius. The foregoing restriction shall not apply to the Hyatt Regency San Francisco Airport in Burlingame managed by Manager (“**Excluded Hotel**”).

(b) Manager shall have the right to replace the Excluded Hotel as of and after the time, if any, that Manager is no longer the owner, lessee, operator, manager, licensee, franchisee or joint marketer, in whole or in part, directly or indirectly thereof, but only with a conversion to a Hyatt Regency of an existing hotel building which is within the Restricted Radius as of the Execution Date; provided, that Manager represents in writing to Owner that such conversion is not expected to result in an increase in the then-current AAA Rating of the Excluded Hotel to a four (4)-diamond AAA Rating. The replacement Hyatt Regency shall constitute the Excluded Hotel for all purposes under this Agreement.

Section 3.31. Compliance with City Contracting Provisions. Manager agrees to observe and perform the covenants and agreements set forth in Exhibit B.

Section 3.32. Compliance with Applicable Law and Approvals. Manager shall do or cause to be done all such acts and things in or about the Hotel that Manager, in good faith and exercising prudent commercial judgment, reasonably believes to be necessary to comply with Applicable Law and to obtain and comply with all Approvals during the Term; provided, that Manager shall have no obligation to acquire any Certificate of Occupancy or other construction-related permits or Approvals, such obligation to be solely the obligation of the Design-Builder under the Design-Build Agreement. Manager shall use good faith and exercise reasonable judgment to ensure that the business being conducted at the Hotel is in full compliance with all Applicable Law that are applicable to the operation of the Hotel. Manager does not in any way assume any of Design-Builder’s obligations to comply with Applicable Law or any other laws, rules or regulations or obligations of Design-Builder under the Design-Build Agreement including Design-Builder’s obligation to acquire the Temporary Certificate of Occupancy and to obtain Approvals required under the Design-Build Agreement or otherwise related to any part of the Work. If the cost of Manager’s compliance with the first two sentences of this Section is not a Capital Expense, the cost of compliance shall be an Operating Expense. If such cost of compliance is a Capital Expense, the cost shall be funded in the manner as provided in Section 3.21. Notwithstanding anything to the contrary in this Agreement, Manager shall, at its own expense, comply with all Applicable Law in performing the services required under this Agreement with which Manager would be required to comply even if Manager was not performing such services. This Article shall not be construed to limit the right of either Owner or Manager to contest the applicability of any Applicable Law so long as such contest does not expose the other Party to material risk of criminal sanctions, or civil sanctions for which the other Party is not willing to fully indemnify.

Section 3.33. Airport Security.

(a) Manager shall conduct all of its activities at the Airport in compliance with the Airport Rules and Regulations.

(b) Manager acknowledges that the ability of the Hotel to remain open may be subject to changes in alert status and other actions as determined by Governmental Authorities including the TSA. Failure by Manager to adhere to Airport Rules and Regulations affecting the safety and security of the Airport shall constitute a material breach of this Agreement, unless such failure is the direct result of Owner's written direction to Manager to commit the acts or omissions that caused such failure. Manager shall reimburse Owner for any fines or penalties levied against Owner by Governmental Authorities including the TSA for security violations on the part of Manager or its employees, which amounts shall not constitute an Operating Expense, unless such fines or penalties were the direct result of such written direction from Owner.

(c) The security status of the Airport is subject to change without notice. Should the security status of the Airport change at any time during the term of this Agreement, Owner shall provide a written notice to Manager detailing all applicable security modifications. Manager shall take immediate steps to comply with these security modifications; provided, that such modifications shall be applicable generally to Airport facilities, tenants and contractors. The costs of such compliance shall constitute an Operating Expense.

(d) Manager shall use commercially reasonable efforts to prevent unauthorized Persons from gaining access to restricted flight and public aircraft operational areas and all other nonpublic areas of the Airport.

(e) Manager shall obtain Airport access authorizations and badges as may be required by Owner or the TSA for all of its employees, Subcontractors, and suppliers who will enter the Airport to perform work or make deliveries, and shall be responsible to train each such person with respect to all Airport Rules and Regulations, including without limitation those pertaining to security, and to supervise their compliance with such Airport Rules and Regulations. Manager shall be responsible for paying as an Operating Expense all costs relating to the security check and the preparation of identification badges for each employee, Subcontractor and supplier. Any Person who violates Airport Rules and Regulations may be subject to revocation of his, her or its access authorization. The failure of Manager to perform or provide any services required under this Agreement shall not be excused on account of the revocation for good cause of Airport access authorization of any Person.

(f) Manager shall return to Owner at the Termination of this Agreement, or upon demand by Owner, all access keys issued to it for any area of the Airport, whether or not restricted, and all Airport identification badges issued to its employees, Subcontractors and suppliers. If Manager fails to do so, Manager shall be liable to reimburse Owner for Owner's reasonable costs for work required to prevent compromise

of the Airport security system. Owner may withhold funds in the amount of such reasonable costs from any amounts due and payable to Manager under this Agreement.

Section 3.34. Non-Interference with Operation of Airport. Manager acknowledges that the Hotel is located on Airport property, in close proximity to active runways, roadways and terminal buildings which regularly experience high traffic volumes as part of continuous operation of a major international airport. Manager further acknowledges that the Hotel is in close proximity to areas designated for construction of runways, terminals, access roadways and parking facilities at the Airport, and that Owner may during the Term construct additional facilities at the Airport. Manager shall not operate the Hotel in any manner which interferes with the landing and taking off of aircraft or other normal and security operations at the Airport under current or future conditions or which might otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Airport Director, after providing notice to Manager, may cause the abatement of such interference, with such costs paid by Manager as an Operating Expense. Manager agrees that no liability shall attach to Owner by reason of the operation or maintenance of the Airport; provided, that Owner otherwise complies with its obligations under this Agreement.

Section 3.35. Subordination to Owner Agreements with the United States. This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between Owner and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to Owner for airport purposes, and the expenditure of federal funds for the operation, extension, expansion or development of the Airport.

Section 3.36. Airport Capital Program. During the Term it will be necessary for Owner to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience or interrupt, delay and interfere with development or operation of the Hotel. Owner shall provide advance notice to Manager with regard to matters that reasonably can be anticipated to have a directly disruptive effect on the operation of the Hotel and shall consult with Manager about means to mitigate such disruptive effects. Manager agrees that no liability shall attach to Owner, its officers, agents, employees, contractors, subcontractors and representatives by reason of such inconveniences, interruptions, delays and interferences; provided, that Owner otherwise complies with its obligations under this Agreement. The Performance Tests shall be tolled if and to the extent that Hotel operations are materially and adversely affected by such disruptive effects. Manager hereby releases Owner and waives any right to claim damages for any such inconveniences, interruptions, delays and interferences.

Section 3.37. Prohibition on Borrowing and Other Credit Obligations. Manager may extend credit to customers in the ordinary course of business and enter into contracts authorized under the preceding provisions of this Article. Manager is not authorized to and shall not borrow any money, execute any credit obligations or pledge or encumber any of the Total Operating Revenues in the name of or on behalf of Owner, or pledge the credit of Owner.

Section 3.38. No Disposition; No Leases. Manager is not authorized to and shall not sell, transfer, lease or otherwise dispose of all or any portion of the Hotel, except for FF&E to the extent necessary in the ordinary course of business if such FF&E is unfit for use by reason of damage, depreciation or obsolescence; provided, that Manager shall cooperate with Owner with respect to the procedures for such disposal mandated by Applicable Law or Owner's policies. Disposal shall be by commercially reasonable means and the proceeds thereof shall be transferred to the Trustee for deposit in the Revenue Fund. Manager shall not enter into any grant of concessions for any Hotel operations, retail operations, spa, restaurants or food service except with the prior written consent of Owner in its sole discretion.

Section 3.39. Certain Limitations on Manager's Duties, Obligations and Rights.

(a) ***Sufficient Funds.*** Notwithstanding anything to the contrary in this Agreement, but subject to Section 5.05(b), Manager's obligations, duties, covenants, agreements and responsibilities under this Agreement including specifically those that require the expenditure of funds for the performance thereof and which constitute (without duplication) Operating Expenses, Capital Expenses, other fixed expenses of the Hotel under the Uniform System of Accounts, Taxes, Excluded Taxes and Other Charges (but only to the extent that Manager has deposited in the Lockbox Fund collections that are attributable to such Excluded Taxes and Other Charges) and amounts required to be paid or otherwise funded (but which are not paid or otherwise funded) by the Design-Builder or otherwise under the Design-Build Agreement, are subject to Sufficient Funds being available to Manager.

(b) ***No Representations Concerning Insurance Coverage.*** In connection with any insurance coverage required or obtained under this Agreement, Manager shall advise Owner as to appropriate insurance coverage for all aspects of the Hotel, including the advisability, nature, and extent of the insurance coverages to be provided by Manager for the benefit of the Hotel and/or Owner or any other insurance coverages that Owner should consider for the protection of the Hotel and its operations. Neither Manager nor its Affiliates shall be liable for any error in either Manager's advice under this Section nor any deficiency or error in insurance coverages provided by Manager under this Agreement.

(c) ***Accuracy of Predictions in Financial Reports.*** Any and all financial projections and budgets prepared by Manager under this Agreement, including those contained in the annual Operating Budget are to be prepared by Manager as accurately as is reasonably possible, using good faith, based on information then available to Manager and Manager's prudent business judgment. Any and all such financial projections and budgets are not to be independently relied upon by Owner or any third party as to the results predicted therein, although Manager acknowledges that the same shall be used by Owner and given to Owner's lenders and their financial, professional and legal advisors. Manager does not guarantee the accuracy of the projections and budgets, nor does it guarantee the results of such projections and budgets.

(d) ***Responsibility for Environmental, Construction and Other Real Property Issues.*** If any environmental, construction or real property-related problem

exists at the Hotel during the Term and occurs or arises solely out of activities undertaken (i) prior to the Opening Date at the Hotel or on the Site; or (ii) after the Opening Date and caused by persons or entities other than Manager, Hotel Personnel, their agents or contractors or persons or entities providing services on the Site, or any other person or entity under the management, control, or supervision of Manager, Manager's management services under this Agreement shall not extend to management of any abatement or other correction of such problems, other than abatement and correction which costs \$50,000 or less, oversight of and coordination with any environmental consultant. However, Manager agrees to extend its management services to any such abatement and correction which costs in excess of \$50,000 if Owner requests such services and Manager and Owner are able to agree upon a fair, equitable and reasonable fee and terms for such services. The cost to correct and abate any such problems shall be funded as an Operating Expense up to \$10,000 if a result of Manager's breach of this Agreement, or Manager's negligence or willful misconduct, and otherwise shall be funded from the Revenue Stabilization Fund. If the Revenue Stabilization Fund is not sufficient to pay all such costs, then the deficiency shall be paid from the Working Capital Reserve Fund. Notwithstanding the foregoing, except with respect to any environmental matters or matters relating to construction deficiencies at the Hotel or other items which the Design-Builder is responsible for under the Design-Build Agreement, if Manager determines that any such problem materially impairs or has the capacity to materially impair operations at the Hotel (including any problem which might result in negative publicity or lower occupancy rates), then Manager shall have the right and the obligation to consult with Owner in pursuit of solutions to such problem and Manager may elect, at its option and if approved by Owner, to assume management of such problem as part of its management duties and responsibilities under this Agreement for no additional compensation. Notwithstanding anything to the contrary in this Agreement, Manager, as part of its management services and for no additional compensation shall be solely responsible for overseeing, managing and bearing the cost of the correction or abatement of any environmental, construction and real property-related problems caused by its management and operation of the Hotel or services provided to the Hotel after the Required Opening Date, or any such problem caused by its Affiliates, Hotel Personnel, their agents or contractors or Persons providing services on the Site, or any other Person under the management, control, or supervision of Manager, or any contractors on the Site. Except as otherwise expressly provided in this Agreement, Manager shall not be responsible for any of the Design-Builder's covenants, agreements, obligations or responsibilities under the Design-Build Agreement, as the case may be.

Section 3.40. Asset Manager. Manager acknowledges that Owner is required pursuant to the terms of the Trust Agreement to retain an Asset Manager to perform the duties and responsibilities as set forth in the Trust Agreement. Manager hereby acknowledges and agrees that the Asset Manager is an Owner Authorized Representative and will supervise the activities of Manager at the Hotel and serve as the primary liaison between Owner and Manager. Manager agrees to cooperate with Owner and the Asset Manager fully in order to permit the Asset Manager to effectively perform its duties and responsibilities. Manager shall have the right to rely on any instruction provided by an Owner Authorized Representative.

Section 3.41. PCI Data Security Standard.

(a) The provisions set forth in this Section apply to Manager as a "Service Provider" that either itself, or through a processor, its agent, or Subcontractor, stores, processes, handles or transmits Cardholder Data in any manner. For purposes of this Section, the term "**Cardholder Data**" means personally identifiable data about the cardholder (e.g., the plastic card number, card expiration date in combination with the plastic card number, cardholder name in combination with the plastic card number, track data/magnetic stripe, verification numbers CVV2, CVC2, CID, and PIN Block). "Cardholder Data" also includes other personal information gathered about the cardholder (e.g., addresses and telephone numbers), assigned by the card issuer that identifies the cardholder's account or other cardholder personal information. For purposes of this Section, a "**Service Provider**" means any person or entity that maintains, processes, transmits or otherwise is permitted access to Cardholder Data, including through its provision of services to Owner. Customer Information shall include cardholder data and such other customer information as may be defined elsewhere in this Agreement.

(i) Manager represents and warrants that it shall implement and maintain the most recent Payment Card Industry ("**PCI**") Data Security Standard Requirements ("**PCI Data Security Standard Requirements**") for Cardholder Data, as they may be amended and updated from time to time. The current PCI Data Security Standard Requirements are available on the following internet site: <https://www.pcisecuritystandards.org/>. As evidence of compliance, Manager shall provide, upon request by Owner, current evidence of compliance with these data security standards certified by a third-party nationally recognized by the payment card industry for that purpose.

(ii) Manager shall maintain and protect the security of all Cardholder Data when performing services under this Agreement in accordance with Applicable Law and PCI laws, rules and regulations. Manager shall use reasonable precautions, including physical, software and network security measures, employee screening, training and supervision and appropriate agreements with employees, to (i) prevent anyone other than Manager, Owner or their respective authorized employees from monitoring, using, gaining access to or learning the contents of the Cardholder Data; (ii) protect appropriate copies of Cardholder Data from loss, corruption or unauthorized alteration; and (iii) prevent the disclosure of passwords and other access control information to anyone other than Manager and Owner and their respective authorized employees.

(iii) Manager shall indemnify, defend and hold Owner harmless from and against any and all claims, losses, damages, notices and expenses, including any fines which Owner may be required to pay, which result from Manager's breach of the provisions of this Section. Without limiting the generality of the foregoing, Manager expressly agrees that if Owner pays any fine in connection with a breach by Manager of the provisions of this Section, the foregoing indemnity obligation shall require Manager to reimburse Owner the full amount

of such fine within thirty (30) days of Owner delivering written notice to Manager of Owner's payment of such fine. Manager, at its sole cost and expense, shall fully cooperate with any investigation of any data loss or other breach of Manager's obligations under this Section. Any such reimbursement by Manager shall not constitute an Operating Expense.

(b) The use of Cardholder Data is specifically restricted only to those applications directly pertaining to payments, including transaction authentication, or as required by Applicable Law.

(c) If there is a breach or intrusion into, or otherwise unauthorized access to Cardholder Data stored by or for Manager, Manager shall immediately notify Owner, in the manner required by the PCI Data Security Standard Requirements, and provide Owner and the acquiring financial institution and their respective designees access to Manager's facilities and all pertinent records to conduct an audit of Manager's compliance with the PCI Data Security Standard Requirements. Manager shall fully cooperate with any audits of their facilities and records provided for in this Section. Any costs incurred as a result of the breach or audit shall be the sole responsibility of Manager, and shall not constitute an Operating Expense.

(d) Manager shall maintain appropriate business continuity procedures and systems to ensure availability and security of Cardholder Data in the event of a disruption, disaster or failure of Manager's primary data systems.

(e) Manager's obligation to comply with the PCI Data Security Standard Requirements expressly survives termination or expiration of this Agreement.

(f) Any destruction of Cardholder Data must be completed in accordance with the PCI Data Security Standard Requirements.

Section 3.42. Environmental Sustainability Measures. From time to time, Owner or City may adopt, or issue policies regarding, environmental sustainability measures that would minimize or reduce the environmental effects of Airport facilities and operations. These measures could include energy and water conservation, air quality, fuel efficiency, solid waste reduction and recycling measures. Manager agrees to implement sustainability measures at the Hotel requested by Owner and to cooperate with Owner in the implementation of such sustainability measures.

ARTICLE IV

FEES AND EXPENSES

Section 4.01. Management Fees.

(a) *Obligation for Management Fees.* In consideration for Manager performing all of its management, administrative, oversight, cooperation and coordination services under this Agreement, Manager shall be paid commencing on the

Opening Date through the immediately succeeding June 30 and for each Operating Year thereafter, a “**Management Fee**,” as set forth on Exhibit K.

Owner and Manager agree that, except for Management Fee, Centralized Services Fees, and Reimbursable Expenses, Manager shall not be entitled directly or indirectly to any other fees or compensation in connection with the delivery of services by Manager to Owner pursuant to this Agreement. All such fees, other than the Subordinate Management Fee, shall be treated as Operating Expenses.

(b) ***Payment of Management Fees.*** Subject to the subordination of a portion of the Management Fee as set forth in Exhibit K, one-twelfth of the annual Management Fee for the applicable Operating Year shall be paid on the first Business Day of each month in each Operating Year in arrears. For any Operating Year or other period of time that is a partial twelve (12)-month period, the Management Fee for each month in such partial Operating Year shall be the *pro rata* amount based on the number of days in such partial Operating Year divided by 365. Owner hereby authorizes Manager to withdraw the monthly installment of the Base Management Fee on the first Business Day of each month from the Lockbox Fund.

(c) ***Carryforward of Subordinate Management Fee.*** To the extent there are insufficient funds in any Operating Year to pay all or a portion of the Subordinate Management Fee, the unpaid balance of the Subordinate Management Fee shall accrue, without interest, and be paid if and to the extent there are moneys available therefor in subsequent Operating Years in the order of priority set forth in the Trust Agreement. Notwithstanding the foregoing, the unpaid balance of the Subordinate Management Fee will be paid in full, without interest, upon the expiration or Termination of this Agreement.

Section 4.02. Centralized Services Fees.

(a) ***Hotel’s Share of Costs of Centralized Services.*** Manager and its Affiliates shall be paid for Hotel’s *pro rata* share of Centralized Services a fixed annual amount for each Operating Year as set forth in Exhibit V.

(b) ***Payment of Centralized Services Fees.*** The Centralized Services Fees shall be paid monthly in arrears during the Term as an Operating Expense. Each time that Manager withdraws funds pursuant to the Cash Management Agreement for the payment of Centralized Services Fees, Manager shall be deemed to have made the representations set forth in Section 4.02(e) to each of Owner and the Trustee.

(c) ***Reimbursements, Rebates and Credits.*** To the extent that Manager or any Affiliate of Manager receives, directly or indirectly, (i) a fee or cost reimbursement from any third party, hotel or hotel chain in consideration of the provision of one or more of the Centralized Services to such third party, hotel or hotel chain, or (ii) any rebates, commissions or discounts from vendors or service providers whose costs are included as part of Centralized Services costs (including any profit element), such amounts so received will be offset against Centralized Services costs or rebated to Hotel.

(d) **True-Up of Centralized Services Fees.** Following each Operating Year Manager shall compare the actual expenses paid by Manager to provide the Centralized Services to the Hotel during such Operating Year to the fixed annual amount that has been paid to Manager on a monthly basis during such Operating Year. If Manager's actual expenses are more than the fixed annual amount that has been paid to Manager, the positive difference shall be payable to Manager from the Lockbox Fund. Such difference, if any, may be withdrawn by Manager from the Lockbox Fund annually no sooner than ten (10) Business Days after delivery to Owner by Manager of the Certified Annual Financial Statements for the prior Operating Year required to be delivered pursuant to the this Agreement. If the actual expenses are less than the fixed annual amount that has been paid to Manager, the negative difference, if any, shall be carried forward to the then-current Operating Year to offset the Centralized Services Fees in the current Operating Year.

(e) **Required Representations.** In connection with and as a condition to being paid Centralized Services Fees, Manager represents and warrants to Owner and the Trustee the following: (i) Centralized Services Fees for the applicable Centralized Services represent reimbursement of costs paid by Manager or its Affiliates to unrelated third parties (including payments of salaries, wages, compensations and benefits payable to Manager's employees) for the reasonable and actual costs of providing such Centralized Services to the Hotel and all participating Other Grand Hyatt Hotels, which system wide costs may be determined using reasonable accounting procedures, applied on a consistent basis (which accounting procedures shall at all times comply with the requirements of Section 3.23, and may include carrying costs of facilities of Manager or its Affiliates); (ii) the Centralized Services Fees for the applicable Centralized Services do not include any Direct or Indirect Profit to Manager or its Affiliates; (iii) the allocation of the Centralized Services Fees among the Hotel and all participating Other Grand Hyatt Hotels shall be based on fair, reasonable and equitable allocations established by Manager in accordance with reasonable accounting procedures, consistently applied (which accounting procedures shall at all times comply with the requirements of Section 3.23); and (iv) without limiting clause (iii) preceding, the Hotel's allocated share and each participating Other Grand Hyatt Hotel's allocated share of Centralized Services Fees are and shall be determined using the same formula(s) (including fair, reasonable and equitable variables consistently applied).

(f) **Required Accounting.** Within two hundred twenty (220) days after the end of Manager's fiscal year, or such later date as may be mutually agreed upon by Owner and Manager, Manager shall furnish to Owner and the Trustee a report or reports from one or more Independent Accountants (collectively, the "**Annual Report of Independent Accountants**" or "**Report**") which shall state that the following procedures have been performed:

(i) It obtained schedules prepared by Manager of the Centralized Services Fees allocated to the Hotel during Manager's fiscal year.

(ii) It obtained schedules prepared by Manager of the Centralized Services Fees allocated to Other Grand Hyatt Hotels participating in the Centralized Services for which the Hotel was billed during Manager's fiscal year.

(iii) It agreed the total Centralized Services Fees shown on the schedules obtained in clauses (i) and (ii) to Manager's accounting records.

(iv) For the Centralized Services billed to the Hotel, it recalculated the Centralized Services Fees allocated to the Hotel and to participating Other Grand Hyatt Hotels and determined whether the Centralized Services Fees were computed using an allocation methodology in accordance with reasonable account procedures consistently applied.

(v) It obtained schedules prepared by Manager detailing the costs paid for the Centralized Services.

(vi) It agreed the costs shown on the schedules obtained in clause (v) to Manager's accounting records.

(vii) It compared the total Centralized Services Fees billed to the total costs paid and documented the difference between the total Centralized Services Fees billed and the total costs paid. In addition, it inquired of Manager as to whether any such difference has been billed or refunded to the participating Other Grand Hyatt Hotels or has been carried forward for inclusion in the determination of the subsequent year's Centralized Services Fees.

(viii) It obtained schedules prepared by Manager detailing all amounts received by Manager during Manager's fiscal year that represent Direct or Indirect Profit and indicating if and how such amounts were (A) reflected in Manager's accounting records, and (B) allocated back to the Hotel or Other Grand Hyatt Hotels.

(ix) It inquired of Manager if any of the amounts listed on the schedules obtained in clause (viii) were retained by Manager.

(x) Using the schedules obtained in clause (v), it requested general ledger detail for certain selected accounts reasonably determined by Manager and approved by Owner to be sufficient for purposes of the Report. It traced and agreed selected payment amounts to Manager's accounting records to determine if such payments represent Direct or Indirect Profit that should have been listed on the schedules prepared in clause (viii).

(xi) It prepared a schedule listing any exceptions noted during the performance of the above procedures, and included them in such Report.

Section 4.03. Partial Years. If for any reason this Agreement is terminated prior to the last day of an Operating Year or the first Operating Year, as the case may be, the Management Fee and the Centralized Services Fees for the Operating Year in which the Termination of this

Agreement occurs shall be the *pro rata* amount based on the number of days in such partial Operating Year divided by 365. If the Hotel operations are ceased due to a Casualty, Taking, Emergency or Force Majeure Event, or a failure, revocation, lapse, non-issuance, non-reissuance or nonrenewal of any Certificate of Occupancy, or any other reason beyond the control of Owner for a period of more than thirty (30) days, the Management Fee and the Centralized Services Fees for the partial year of operations shall be the *pro rata* amount based on the number of days in such partial Operating Year divided by 365. Thereafter, until the Hotel operations commence, the Management Fee and Centralized Services Fees shall be paid solely to the extent of Business Interruption Proceeds as set forth in Article VII.

Section 4.04. Reimbursable Expenses.

(a) ***Reimbursable Expenses Defined.*** Subject to the terms of the Cash Management Agreement, the applicable provisions of the Trust Agreement and each Operating Budget, Manager shall be entitled to reimburse itself from the Lockbox Fund in accordance with Section 4.07 for all reasonable costs and expenses incurred by Manager and paid to non-Affiliates that are incurred in the ordinary course of operating the Hotel pursuant to this Agreement (collectively, “**Reimbursable Expenses**”), including the following:

- (i) all Hotel Personnel Costs incurred in accordance with standard personnel policies applicable to Other Grand Hyatt Hotels (as they may be amended from time to time) with respect to any Hotel Personnel employed directly by Manager or its Affiliates;
- (ii) Out-of-Pocket Expenses incurred by Manager directly for the management of the Hotel and for the specific benefit of the Hotel;
- (iii) Centralized Services Fees payable under Section 4.02; and
- (iv) the Hotel’s properly and reasonably allocated share of all costs and charges payable or incurred to third parties for the provision of Centralized Services in accordance with this Agreement or for independent third-party consultants rendering services to the Hotel regularly used by Hyatt in the operation of Other Grand Hyatt Hotels;

provided, that in no event shall Reimbursable Expenses include any amounts paid by Manager, directly or indirectly, for political contributions, political consultant fees, gifts, gratuities, donations to charitable organizations or any other similar expenditures. Reimbursable Expenses shall not include the Senior Personnel Bonus Pool.

Manager shall keep accurate and complete records (including invoices and statements) to evidence that Manager incurred and paid the Reimbursable Expenses and shall provide copies of such records to Owner upon request.

(b) ***Payment of Reimbursable Expenses.*** Reimbursable Expenses properly documented in accordance with Section 4.04(a) shall be paid as Operating Expenses in accordance with the Cash Management Agreement, with the understandings that

(i) Reimbursable Expenses shall be subject to the provisions of Section 4.04, and (ii) any Reimbursable Expenses in excess of amounts available in the Lockbox Fund shall be paid to Manager from the Working Capital Reserve Fund (and, if the Working Capital Reserve Fund is insufficient, then the insufficiency shall be paid from the Revenue Stabilization Fund) within thirty (30) days after Manager delivers to Owner of a request in the form of Exhibit L, supported by invoices and statements evidencing the applicable Reimbursable Expenses; provided, that the same is consistent with the applicable terms and conditions of this Agreement; and provided further, that there are sufficient funds in either the Working Capital Reserve Fund or the Revenue Stabilization Fund. If there are not sufficient funds in the Working Capital Reserve Fund and the Revenue Stabilization Fund within the required 30-day period, then any Reimbursable Expenses shall be paid as soon as there are funds available in the Lockbox Fund, the Working Capital Reserve Fund, or the Revenue Stabilization Fund.

(c) **Required Representations.** In connection with and as a condition to being paid Reimbursable Expenses, Manager represents and warrants to Owner and the Trustee the following: (i) Reimbursable Expenses represent reimbursement of costs paid by Manager or its Affiliates to unrelated third parties (including payments of salaries, wages, compensations and benefits payable to Manager's employees) for the reasonable and actual costs of providing services, supplies, goods, products or equipment under this Agreement to the Hotel and all participating Other Grand Hyatt Hotels; (ii) the Reimbursable Expenses do not include any Direct or Indirect Profit received by Manager or an Affiliate of Manager; (iii) to the extent Reimbursable Expenses represent an allocation of costs between the Hotel and Other Grand Hyatt Hotels, the allocation of the Reimbursable Expenses among Hotel and all participating Other Grand Hyatt Hotels shall be based on fair, reasonable and equitable allocations established in accordance with reasonable accounting procedures, consistently applied (which accounting procedures shall at all times comply with the requirements of Section 3.23); and (iv) without limiting clause (iii) preceding, the Hotel's allocated share and each participating Other Grand Hyatt Hotel's allocated share of any such allocated Reimbursable Expenses are and shall be determined using the same formula(s) (including fair, reasonable and equitable variables consistently applied).

(d) **Costs to Be Borne by Manager.** Except as otherwise provided in this Agreement, the following costs shall be borne by Manager and shall not be paid or reimbursed from Total Operating Revenues (or otherwise by Owner) or charged to the Hotel as an Operating Expense or otherwise by the Manager:

- (i) Centralized purchasing and procurement services that are unrelated to the operation and supervision of the operation of the Hotel;
- (ii) Centralized educational and training programs that are unrelated to the operation and supervision of the operation of the Hotel;
- (iii) Corporate supervision of Hotel operations;
- (iv) Corporate planning and policy;

- (v) Corporate sales and marketing;
- (vi) Corporate finance;
- (vii) Corporate human resources;
- (viii) Corporate legal services;
- (ix) Corporate audits;
- (x) Trademarks;
- (xi) Product research & development;
- (xii) Corporate travel and marketing travel/trade show expenses unrelated to the operation and supervision of the operation of the Hotel; and
- (xiii) Corporate information and technology initiatives;
- (xiv) Other corporate overhead.

Section 4.05. Establishing Clearing Bank Accounts. On or prior to the Opening Date, Manager shall establish a Clearing Bank Account or Accounts on favorable terms for settling electronic transactions effected with bank and non-bank credit cards; provided, however, that the discount and other fees charged by any such bank as well as payment terms shall be competitive with the charges for such services and timeliness of payment prevailing among banks in the Hotel's market area; and provided further, that Manager shall notify Owner and the Trustee in writing of the name and location of each banking institution at which Manager maintains such Accounts, together with such information as Owner shall reasonably request in order to permit a security interest to be established in such Account or Accounts. During the Term, Manager shall promptly deposit during each Business Day all Total Operating Revenues (in excess of the Petty Cash Amount (as defined in the Trust Agreement) retained at the Hotel) into the Clearing Bank Accounts. Manager shall transfer funds in the Clearing Bank Accounts at the end of each Business Day into the Lockbox Fund.

Section 4.06. Working Capital Set-Aside Amount and Working Capital Reserve Fund. No later than the Opening Date from the Key Money, Owner shall deposit (or cause to be deposited) (a) the Working Capital Set-Aside Amount into the Lockbox Fund, and (b) the Working Capital Reserve Requirement into the Working Capital Reserve Fund. Manager shall have access to the Working Capital Set-Aside Amount as provided in the Cash Management Agreement and the Trust Agreement.

Section 4.07. Payment of Operating Expenses. At all times during the Term, Manager shall have the right to withdraw funds from the Lockbox Fund solely for the purpose of paying Operating Expenses (including the Base Management Fee), subject, however, to the terms, provisions and limitations of this Agreement, the Cash Management Agreement, the applicable provisions of the Trust Agreement, and the Trustee's security interest in the Lockbox Fund. All persons whom Manager authorizes as signatories shall conduct themselves in accordance with

Manager's standard accounting policies and practices. Manager shall establish procedures reasonably satisfactory to Owner to ensure control over and accurate reporting of all transactions involving such accounts (including fidelity bonding for all persons handling cash). Owner shall have the right (but shall not be obligated) to designate one or more representatives (who may be employees or officers of Owner) who shall be required to co-sign any check for an expenditure that otherwise is subject to Owner's approval under this Agreement and which is (a) an item not covered by an approved Operating Budget or approved Capital Budget and for an amount exceeding \$25,000 (adjusted annually by the percentage change in the Bay Area CPI over the immediately preceding calendar year), or (b) Emergency Expenses which exceed the authorized spending limitations set forth in Sections 3.21(e), 3.21(g) and 3.21(h).

Section 4.08. Funds, Accounts and Disbursements. Manager agrees that the Cash Management Agreement and the applicable provisions of the Trust Agreement shall control and govern the use of Total Receipts. Without limiting the preceding sentence, Manager acknowledges that the various Funds established under the Trust Agreement are funded in the particular order and priority stated therein.

Section 4.09. Certification of Funds; Budget and Fiscal Provisions. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Payment and performance obligations for each Fiscal Year during the Term are subject to the appropriation of funds for the Agreement. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Owner's regularly scheduled payment obligations hereunder shall not at any time exceed the amount certified by the City Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of Owner are not authorized to request, and Owner is not required to pay or reimburse Manager for, commodities or services provided by Manager which are outside the scope of this Agreement. Officers and employees of Owner are not authorized to offer or promise, nor is Owner required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the Agreement is certified by the City Controller without certification of the additional amount by the City Controller. The City Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

Section 4.10. Limitation on Owner's Obligations. Notwithstanding anything to the contrary in this Agreement, Owner shall not have any responsibility or liability for the Trustee's failure to honor any requests of Owner to disburse amounts from any of the Funds pursuant to the Trust Agreement, but Owner shall use commercially reasonable efforts to enforce the Trustee's obligations under the Trust Agreement. Notwithstanding anything to the contrary in this Agreement, Manager acknowledges and agrees that the only funds which Owner shall be obligated to use to pay any sums due under this Agreement shall be the following (and then only to the extent such funds are made available to Owner to pay sums due under this Agreement and also subject to the limitations contained in and the rights of the Trustee under the Bond Documents): (a) the Working Capital Set-Aside Amount that is to be funded from the Key Money, which Working Capital Set-Aside Amount shall be used solely for the purpose of paying Operating Expenses; (b) Total Operating Revenues, all of which shall be used in accordance with this Agreement, the Cash Management Agreement and the Trust Agreement; and (c) Casualty Proceeds and Condemnation Proceeds received by Manager, Owner or the Trustee for events that

occur during the Term, which proceeds shall be used in accordance with and only for the purposes set forth in Article VII and the Trust Agreement; provided, that Owner's obligations to pay Management Fees and any Unamortized Key Money pursuant to Section 5.09(b) upon a Termination of this Agreement shall be payable by Owner if and to the extent that amounts otherwise provided therefor under this Agreement and the Trust Agreement are insufficient to make such payments.

Section 4.11. Subordination of Agreement. Manager hereby subordinates this Agreement and Manager's rights under this Agreement to the provisions of the Trust Agreement.

Section 4.12. Certain Representations. Manager and Owner represent that the Management Fee was negotiated at arm's-length and, given the terms of this Agreement, is reasonable. Owner represents that, consistent with applicable requirements under the Code with respect to Qualified Management Agreements, it reasonably believes, based solely on the final study of the Hotel prepared by Jones Lang LaSalle Hotels, dated [DATE], 2015, that Owner shall be able to pay Manager all sums payable to Manager under this Agreement when due (subject, however, to all subordination provisions contained in this Agreement and in the Trust Agreement).

ARTICLE V

TERM AND TERMINATION

Section 5.01. Term.

(a) **Term.** Unless sooner terminated pursuant to the provisions of this Agreement, the term of this Agreement shall commence on the Execution Date and continue for a period of ten (10) years from and after the Opening Date (as it may be extended pursuant to paragraph (b) of this Section, the "**Term**"). Notwithstanding the foregoing and the definition of Execution Date, from the Execution Date through the Required Opening Date, only the following sections of this Agreement shall be in effect: the Recitals, 1.01, 1.02, 2.01, 3.01, 3.02, 3.03, 3.04, 3.05, 3.06, 3.07, 3.10, 3.11, 3.14, 3.16, 3.21, 3.22, 3.25 (relating to Pre-Opening allocated Centralized Services), 3.26, 3.28, 3.30, 3.31, 3.32, 3.33, 3.34, 3.35, 3.37, 3.38, 3.39, 3.40, 4.02 (relating to Pre-Opening allocated Centralized Services), 4.04, 4.05, 4.09, 4.10, 4.11, 5.01, 5.02, 5.03, 5.04, 5.06, 5.07, 5.08 and 5.09, and Articles VII, X, XI and XII. On the Opening Date, Manager and Owner shall commence full performance of their respective obligations under this Agreement; provided, that Owner may not terminate this Agreement without the consent of the Trustee.

(b) **Extension of Term.** Owner shall have the option, by written notice to Manager no less than one year prior to the end of the initial Term, to extend this Agreement for an additional five (5)-year term commencing on the expiration date of the initial Term and ending on the five (5)-year anniversary date thereof; provided, that (i) the Hotel is in compliance with the Brand Standards as of the date such notice is received by Manager, and (ii) the Building satisfies the Brand Standards as of the commencement of such five (5)-year renewal term. The Base Management Fee and

Subordinate Management Fee, respectively, for each Operating Year during any such additional five (5)-year term shall be equal to (x) the average of Total Operating Revenues for the eighth (8th) and the ninth (9th) Operating Years, multiplied by (y) two and one-half percent (2.5%) and eighty-three hundredths of one percent (0.83%), respectively, for the eleventh (11th) Operating Year, adjusted for each Operating Year thereafter by the change in the Bay Area CPI for the preceding calendar year.

(c) ***Termination of Technical Services Agreement or Pre-Opening Services Agreement.*** If the Technical Services Agreement or the Pre-Opening Services Agreement is terminated for any reason other than the expiration of the term thereof, then this Agreement shall be deemed terminated; provided, that the Trustee shall have the ability to cure any default under the Technical Services Agreement or the Pre-Opening Services Agreement prior to Termination of this Agreement as set forth therein, in this Agreement or in the Trust Agreement.

(d) ***Termination of Certificate of Occupancy.*** Notwithstanding anything to the contrary in this Agreement, if after the Opening Date, Manager is required to cease all or a portion of the operations of the Hotel due to the failure, revocation, lapse, non-issuance or non-reissuance or non-renewal of any Certificate of Occupancy not caused by Manager's negligence or willful misconduct (provided, that Manager's good faith compliance with such Certificate of Occupancy shall not be deemed to constitute Manager's negligence or willful misconduct), then all duties, responsibilities and obligations of Manager under this Agreement shall be suspended and excused day-to-day for the period of such failure with respect to such portion of the Hotel until Manager is able to commence full operation of the Hotel, and Manager shall not be in default under this Agreement during the period of such failure if such default is due to such failure; provided, that Owner and Manager shall continue to be obligated to maintain insurance as required under Article VI and Manager shall continue to comply with its covenant set forth in Section 3.30. Manager shall have no liability for any Claims or other costs and expenses associated with or resulting from such failure, revocation, lapse, non-issuance or non-reissuance or non-renewal of any Certificate of Occupancy not occasioned by Manager's negligence or willful misconduct (provided, that Manager's good faith compliance with the Certificate of Occupancy shall not be deemed to constitute Manager's negligence or willful misconduct). All costs and expenses incurred by Manager as a result of such failure, revocation, lapse, non-issuance or nonrenewal of such Certificate of Occupancy not caused by Manager's negligence or willful misconduct shall be deemed a Reimbursable Expense. If after the Opening Date, there is a failure, revocation, lapse, non-issuance or non-renewal of any Certificate of Occupancy which results in the impediment of operations of a portion of the Hotel, Manager shall continue to lawfully operate and manage that portion of the Hotel which it is able to continue to operate and manage in the manner set forth in this Agreement. If there is a failure, revocation, lapse, non-issuance or non-renewal of any Certificate of Occupancy after the Opening Date, Manager shall reasonably cooperate with Owner in obtaining a new Certificate of Occupancy. If, due to such a failure, revocation, lapse, non-issuance or non-renewal of any Certificate of Occupancy, the Hotel is not able to be operated and Owner has determined that such Certificate of Occupancy is not obtainable within two

(2) years of the date of such failure, revocation, lapse, non-issuance or non-renewal, then this Agreement shall terminate.

(e) ***Termination for Insufficient Moneys.*** If there are not Sufficient Funds to pay Operating Expenses for a period of at least fifteen (15) consecutive days following the date upon which such funds are due, Manager may elect to terminate this Agreement on the next succeeding Business Day; provided, that Manager shall have provided Owner not less than sixty (60) days' prior written notice of the projected such insufficiency.

Section 5.02. Manager Events of Default. A Manager Event of Default shall occur if:

(a) without limiting other provisions of this Section, Manager breaches or fails to perform any covenant or agreement made by Manager under this Agreement and fails to cure such breach or failure within thirty (30) days after Manager's receipt of a written notice from Owner, the Trustee or the Asset Manager specifying the breach or failure to perform; provided, however, that if more than thirty (30) days is reasonably required to remedy such breach or failure, then Manager shall have an additional ninety (90) days to cure such breach or failure so long as it is diligently pursuing such cure and such cure is likely to occur within such ninety (90) days;

(b) Manager fails to pay, within thirty (30) days from the date due, Gross Receipts Taxes, or withholding or other employment-related taxes; provided, however, that if Manager is contesting the amount of such items in good faith or has made a good faith determination that such Gross Receipts Taxes are not due, Manager may withhold payment of the disputed amount until the earlier of one hundred twenty (120) days after the payment's due date or the date on which the failure to make full payment would result in the assessment of interest or penalties or the imposition of any restriction upon the Hotel, or would otherwise have an adverse effect upon the Hotel or Owner;

(c) Manager fails to pay Insurance Costs when due and such failure is not cured within thirty (30) days after the date due (provided, that such delay in payment for such thirty (30) additional days does not result in a lapse of such insurance coverage and Manager pays any penalty, interest or other additional costs caused by such delay in payment), or permits the insurance coverages required by this Agreement to lapse for any reason;

(d) Owner determines, after consultation with Bond Counsel, that, due to Manager's actions in contravention with the terms of this Agreement or failure to act in accordance with the terms set forth in this Agreement or in a written direction from an Owner Authorized Representative, this Agreement does not constitute a Qualified Management Agreement; provided, however, that if such actions or failure to act can be cured within thirty (30) days of notice thereof to Manager, and Bond Counsel is of the opinion that the interest on the Bonds shall not be includible in gross income of the holders thereof for federal income tax purposes during such thirty (30) days, then Manager shall have thirty (30) days to cure such default;

(e) Prior to the Required Opening Date, a Manager Event of Default has occurred and is continuing under the Technical Services Agreement or the Pre-Opening Services Agreement beyond any applicable grace periods set forth therein;

(f) Manager fails to pay (i) any amounts owed to Owner, and/or the Trustee under an indemnity, hold harmless or reimbursement clause contained in this Agreement), or (ii) any other amounts due under this Agreement on the date required under this Agreement and such failure continues for a period of thirty (30) days after Manager receives written notice thereof;

(g) Manager fails on more than two (2) occasions during the Term to deposit cash receipts, checks, money orders and the like into the Clearing Bank Accounts or Lockbox Fund, as applicable, as soon as is reasonably practicable but in no event more than five (5) days after receipt by Manager thereof;

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

(i) Manager assigns or purports to assign this Agreement or any of its rights under this Agreement in violation of the provisions of Section 10.01 or 10.02;

(j) Manager fails to continuously operate the Hotel during the Term, seven (7) days a week, twenty-four (24) hours a day, subject to the availability of Sufficient Funds;

(k) Pursuant to the Pre-Opening Services Agreement, the Liquor Licenses for the Hotel are not obtained by the Opening Date for reasons within Manager's control and such failure continues for a period of thirty (30) days after written notice from Owner, or any of the Liquor Licenses are revoked or terminated or otherwise declared ineffective by the applicable Governmental Authority due to Manager's act or that of its employees and is not fully restored within thirty (30) days after revocation or such declaration; or

(l) any of the following occur or exist:

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

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

(iii) the appointment of a custodian (as defined in the Bankruptcy Code) or a receiver for, or a custodian or receiver taking charge of all or any

substantial part of the property of Manager, and such appointment is not revoked or dismissed within ninety (90) days after such appointment is made;

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

(v) Manager is adjudicated insolvent or bankrupt;

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

(vii) Manager calls a general meeting of substantially all of its creditors (either in number or in amount) with a view to arranging a composition or adjustment of its debts;

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

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

(x) Manager takes any corporate action for the purpose of effecting any of the foregoing.

(m) Notwithstanding anything to the contrary in this Agreement, no Manager Event of Default shall occur if any item in subsections (a) through (c), (e), (f)(ii), (g), (j), or (k) arises out of, is caused by or results from, to any extent, any of the following:

(i) Force Majeure Event;

(ii) lack of Sufficient Funds for (A) Operating Expenses; (B) Capital Expenses for budgeted Capital Improvements and FF&E, unbudgeted (but approved) Capital Improvements or an Emergency; (C) Taxes, Excluded Taxes and Other Charges (but only to the extent that Manager has deposited in the Lockbox Fund collections that are attributable to such Excluded Taxes and Other Charges); or (D) Insurance;

(iii) an Owner Event of Default;

(iv) failure of the Trustee to make disbursements required under the Trust Agreement; provided that Manager has given notice of such failure to Owner and the Trustee and the Trustee has failed to cure such failure within thirty (30) days after the date of such notice; or

(v) failure, revocation, lapse, non-issuance, non-reissuance or non-renewal of any Certificate of Occupancy not due to Manager's negligence or willful misconduct (provided, that Manager's good faith compliance with such Certificate of Occupancy shall not be deemed to constitute Manager's negligence or willful misconduct).

Manager shall keep Owner and the Asset Manager informed, in writing, of all actions that Manager is taking in order to cure a breach or failure and to satisfy the requirements regarding commencing, pursuing and curing the applicable breach or failure, including satisfaction of time lines regarding the proposed cure and satisfaction of the curative procedure and steps.

Section 5.03. Owner Events of Default. An Owner Event of Default shall occur if:

(a) City fails to budget and appropriate for any Operating Year any material amounts due and payable to Manager pursuant to this Agreement in sufficient time for such payments to be made to Manager within thirty (30) days after Manager delivers written notice to Owner and the Trustee of its failure to receive any such amounts;

(b) Without limiting any other provision of this Section, Owner breaches or fails to perform any covenant or agreement made by Owner under this Agreement and fails to cure such breach or failure within thirty (30) days after Owner's receipt of written notice from Manager specifying the breach or failure to perform; provided, however, that if more than thirty (30) days is reasonably required to remedy such breach or failure, then Owner shall have an additional reasonable period to cure such breach or failure so long as it is diligently pursuing such cure and such cure is likely to occur within ninety (90) days;

(c) Manager is not paid its Management Fee, Centralized Services Fees or Reimbursable Expenses if and to the extent due, within the time required under this Agreement and such failure continues for a period of thirty (30) days after Manager delivers written notice to Owner and Trustee specifying such failure;

(d) Prior to the Required Opening Date, a material Owner Event of Default has occurred and is continuing under the Technical Services Agreement or the Pre-Opening Services Agreement beyond any applicable grace periods set forth therein;

(e) Any representation made by Owner under this Agreement is false or misleading in any material respect and (i) there is no reasonable action which Owner could take to cause such representation to be true, correct and not misleading in all material respects within thirty (30) days after receiving written notice thereof or (ii) if such a reasonable action exists, Owner fails to have caused such representation to be true, correct and not misleading in all material respects prior to the end of such 30-day period;

(f) Owner assigns or purports to assign the Hotel or its ownership rights in the Hotel in violation of the provisions of Section 10.03;

(g) any of the following occur or exist:

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

(ii) Owner consents to the filing of an involuntary petition or an involuntary case is filed against Owner under the Bankruptcy Code, and such involuntary case is not dismissed within ninety (90) days after the filing thereof;

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

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

(v) Owner is adjudicated insolvent or bankrupt;

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

(vii) Owner calls a general meeting of substantially all of its creditors (either in number or in amount) with a view to arranging a composition or adjustment of its debts;

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

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

(x) Owner takes any official action for the purpose of effecting any of the foregoing.

Section 5.04. Rights and Remedies upon Event of Default.

(a) ***Termination.***

(i) Termination by Owner. Upon the occurrence of a Manager Event of Default, Owner shall have the right, but not the obligation, to terminate this Agreement by giving written notice to Manager specifying a date, no earlier than ninety (90) and no later than one hundred forty (140) days after the giving of such notice, when the Agreement shall terminate.

(ii) **Termination by Manager.** Upon the occurrence of an Owner Event of Default, Manager shall have the right, but not the obligation, to terminate this Agreement by giving written notice to Owner specifying a date, no earlier than ninety (90) days and no later than one hundred twenty (120) days after the giving of such notice, when the Agreement shall terminate during which period Owner shall have the right to cure such Owner Event of Default; provided, that Owner shall have one (1) year from the date of such notice to cure such Owner Event of Default so long as (A) Manager continues to be paid its Management Fees, Centralized Services Fees and Reimbursable Expenses as and when due; (B) Owner shall continue to maintain Brand Standards to the extent of Sufficient Funds therefor; and (C) Capital Expenses which are part of each Annual Plan continue to be paid to the extent of Sufficient Funds therefor.

(b) **Other Remedies.** The rights of termination set forth in the preceding subsection (a) shall be in addition to, and not in lieu of, any other rights or remedies at law or in equity by reason of the occurrence of any such Event of Default, it being understood and agreed that the exercise of the remedy of termination shall not constitute an election of remedies and shall be without prejudice to any such other rights or remedies otherwise available to the non-defaulting Party. In addition, a non-defaulting Party shall be entitled to pursue all other remedies available to it under Applicable Law as a result of an Event of Default, including to seek damages and specific performance.

(c) **Trustee Notice and Cure Rights.** At the same time as Manager delivers a notice to Owner under this Section, Manager shall provide the Trustee with a copy of the notice, including any notice of a default (failing which the notice of default to Owner shall be deemed ineffective), and the Trustee shall have the right but not the obligation to cure any such default to the same extent and for the same period of time afforded to Owner to cure such default under Section 5.04 and no longer, except (i) the Trustee shall have two (2) weeks to cure an Owner Event of Default under 5.03(b) after Manager delivers written notice to the Trustee specifying such failure; and (ii) as otherwise provided in this Section, below. Manager shall have no liability to Owner for any failure to deliver (or delay in delivering) any such notice of default to Owner and the Trustee; provided, however, that Owner's and the Trustee's time period for cure of any default shall not commence until a copy of such notice of default is delivered to both Owner and the Trustee; and provided further, that if one or more additional defaults shall occur during the cure period for a default, the cure period for each of the later defaults shall be each cure period applicable to each such default and not the cure period applicable to any other default. Manager shall accept any performance by the Trustee of any of Owner's covenants or agreements under this Agreement, and any cure of Owner's defaults, as if performed by Owner. Notwithstanding anything to the contrary in this Agreement, if Owner's default is one that cannot be cured by the Trustee's payment of money, then until such time as the Trustee has exercised such remedy which would allow the Trustee to cure Owner's defaults, the time period which the Trustee shall have to cure Owner's default shall be extended by the time necessary for the Trustee to take such action, plus a reasonable time thereafter (but not to exceed a total of ninety (90) days); provided, that the Trustee is diligently pursuing such actions.

(d) ***Owner's Source of Payment.*** Any damages owed to Manager by Owner shall be satisfied solely out of (i) the amounts from time to time in the Working Capital Reserve Fund, the Revenue Stabilization Fund, or the Lockbox Fund, and (ii) any insurance proceeds available to Owner.

Section 5.05. Performance Termination.

(a) ***Right to Terminate.*** In addition to any termination right that Owner has pursuant to Section 5.04, Owner shall have the right to terminate this Agreement under any of the following circumstances (each such event a “**Performance Termination Event**”), none of which shall constitute a Manager Event of Default:

(i) **ADR Requirement:** Commencing with the third (3rd) full Operating Year, if the ADR for the Hotel, as certified in writing by Manager’s Chief Financial Officer, is less than 135% of the ADR for the Excluded Hotel in any two (2) Operating Years during all of which Operating Year Manager was the owner, lessee, operator, manager, franchisee or licensee of the Excluded Hotel or any substitute hotel pursuant to Section 3.30;

(ii) **RevPAR Requirement:** Commencing with the fourth (4th) full Operating Year, if the RevPAR for the Hotel is less than 120% of the average RevPAR for the Competitive Set in any two (2) consecutive Operating Years; or

(iii) **NOI Requirement:** Commencing with the fourth (4th) full Operating Year, if Net Operating Income is less than ten million two hundred thousand dollars (\$10,200,000) (the “**Hurdle Amount**”), in any two (2) consecutive Operating Years. The Hurdle Amount shall be adjusted each Operating Year commencing with the fourth (4th) full Operating Year by the Bay Area CPI for the immediately preceding calendar year.

Each of the foregoing requirements is independent of the others. For purposes of this Section, a full Operating Year is an Operating Year consisting of twelve (12) calendar months.

(b) ***Exceptions to Performance Termination Event.***

(i) **Manager’s Limited Right to Cure.** Notwithstanding subsection (a) of this Section, Manager shall have the right (but not the obligation), to cure a Performance Termination Event described under clauses (a)(ii) and/or (iii) of this Section (a “**Revenues Failure**”) as follows.

(A) Manager may cure a Revenues Failure resulting from failing to meet the RevPAR Requirement by the payment to Owner for deposit in the Revenue Fund, within thirty (30) days of receiving a notice of Termination of this Agreement from Owner pursuant to subsection (c) of this Section, for each of the two (2) consecutive Operating Years of such Revenues Failure, the amount equal to the difference between actual Net Operating Income and the imputed amount of Net Operating Income

that would have been achieved for such period had the RevPAR Requirement been met in each such Operating Year.

(B) Manager may cure a Revenues Failure resulting from failing to meet the NOI Requirement by the payment to Owner for deposit in the Revenue Fund, within thirty (30) days of receiving a notice of Termination of this Agreement from Owner pursuant to subsection (c) of this Section, for each of the two (2) consecutive Operating Years of such Revenues Failure, the amount equal to the difference between the actual Net Operating Income and the Hurdle Amount in each such Operating Year.

(C) If a Revenues Failure includes a simultaneous failure in any Operating Year to satisfy the requirements under both clauses (a)(ii) and (iii) above, the payment of the higher of the amounts necessary under (A) or (B) above to cure each of such simultaneous failures shall cure both of such failures in such year. Manager shall have the option to cure a Revenues Failure only one (1) time during the Term.

(D) Upon payment of the amount in (A) or (B) above, as applicable, the Operating Years in which such Revenues Failures occurred shall, for all purposes, be deemed to be Operating Years in which the RevPAR Requirement and the NOI Requirement, as applicable, were met.

(ii) Certain Other Exceptions to Performance Termination Events. Notwithstanding Section 5.05(a), a Performance Termination Event shall be deemed not to have occurred if the Performance Termination Event is caused by: (A) a reduction in Total Operating Revenues as a direct result of: (I) a Capital Improvement which is part of the Annual Plan approved by Owner, (II) a Casualty, (III) a Taking, or (IV) Force Majeure Event; or (B) a lack of Sufficient Funds. Manager shall have the burden of proof to show that the existence of one of the foregoing conditions or events was the cause of the Performance Termination Event. In addition, if and to the extent that the hourly wage applicable to Substantially All Hotel Personnel, as required by the City's Minimum Wage Compensation Ordinance set forth in Administrative Code Chapter 12P ("MCO"), is increased for any Operating Year to an amount in excess of the Imputed Market Wage Rate, as defined below, then the Hurdle Amount for such Operating Year shall be reduced by the amount of the MCO Differential, as defined below.

For purposes of this subsection 5.05(b)(ii), the following terms shall have the following means:

"Imputed Market Wage Rate" means fifteen dollars (\$15) per hour, adjusted upwards by the average percentage increase, if any, in Bay Area CPI over the preceding five (5) calendar years.

“**MCO Differential**” means the total amount by which the wages paid to Hotel Personnel as required by the MCO exceeds the total amount of wages which would have been paid at the Imputed Market Wage Rate, as determined by Manager and approved by Owner.

(c) **Owner’s Exercise of Its Termination Rights.** Owner shall exercise its termination rights pursuant to Section 5.05(a), if at all, by giving notice of Termination of this Agreement to Manager within ninety (90) days following the scheduled deadline for Manager’s delivery of the Certified Annual Financial Statements for the Operating Year on which such Termination is based; provided, however, that if Manager does not deliver the Certified Annual Financial Statements by the scheduled deadline, the period of time to exercise such termination right shall be extended by the number of days that Manager is late with such delivery. Any such notice under this Section shall specify the Termination Date, which date shall be no earlier than ninety (90) days and no later than three hundred sixty-five (365) days following the date of Owner’s notice of such Termination. If Owner fails to deliver notice to Manager within the required 90-day period under this Section, Owner’s right to terminate this Agreement pursuant to this subsection shall expire as to the Performance Termination Event in question.

Section 5.06. Termination upon Prepayment of Management Fee. Notwithstanding anything to the contrary in this Agreement, as an alternative to every other termination provision of this Agreement, Owner may terminate this Agreement at its option for any reason by paying to Manager (i) the present value as of the date of Termination of this Agreement of the Management Fees that would have been payable to Manager from the date of such Termination through the scheduled expiration of this Agreement using a discount rate of five and two-thirds percent (5.66%), plus (ii) the Unamortized Key Money in accordance with Section 3.02; provided, that Owner shall not exercise its rights pursuant to this Section in order to replace Manager with a new operator during the Term.

Section 5.07. Termination Prior to Opening Date. This Agreement is subject to termination upon thirty (30) days prior written notice to the other Party:

(a) by Owner or Manager if Owner does not commence construction of the Hotel within two-and-one-half (2.5) years from the Execution Date;

(b) by Owner prior to commencement of construction of the Hotel if Owner determines in its sole discretion that the Hotel is no longer economically viable, including as a result of changes in: (i) the local lodging market; (ii) financing, construction or operating costs of the Hotel as projected by Owner; (iii) the regional economy; or (iv) other factors; or

(c) by Owner if Manager fails to deliver the Key Money to the Trustee on or before the date that is thirty (30) days prior to Opening Date.

Notwithstanding the foregoing, if Owner takes official action, within a thirty (30)-month period after Owner has terminated this Agreement pursuant to subsection (a) or (b) above, to resume the development of the Hotel on the Site, it shall provide prompt written notice thereof to

Manager. Manager shall have the option to execute a new hotel management agreement with Owner, on the same terms as this Agreement, including the restrictive covenant set forth in Section 3.30. Such option shall be exercised by Manager by written notice to Owner within sixty (60) days of receipt of notice of such option from Owner.

Notwithstanding anything to the contrary in this Agreement, no termination fee shall be payable to either Party in the event this Agreement is terminated pursuant to this Section.

Section 5.08. Termination upon Inability to Issue Bonds. If for any reason, the Initial Series of Bonds are not issued by June 30, 2017, then either Manager or Owner may terminate this Agreement by delivering written notice to the other prior to the issuance of the Initial Series of Bonds. Notwithstanding anything to the contrary in this Agreement, no termination fee shall be payable to either Party in the event this Agreement is terminated pursuant to this Section. Notwithstanding the foregoing, if Owner takes official action, within a thirty (30)-month period after Owner has terminated this Agreement pursuant to this Section, to resume the development of the Hotel on the Site, it shall provide prompt written notice thereof to Manager. Manager shall have the option to execute a new hotel management agreement with Owner, on the same terms as this Agreement, including the restrictive covenant set forth in Section 3.30. Such option shall be exercised by Manager by written notice to Owner within sixty (60) days of receipt of notice of such option from Owner.

Section 5.09. Actions to Be Taken on Termination. Upon Termination of this Agreement for any reason, the following shall be applicable (in addition to and without limitation of, the rights of the non-defaulting Party to pursue all other remedies available to it under Applicable Law):

(a) ***Payment of Reimbursable Expenses.*** All Reimbursable Expenses arising as a result of such Termination or as a result of the cessation of Hotel operations shall be for the account of Owner, and reimbursed to Manager upon receipt of any invoice or invoices (together with such reasonable supporting documentation as Owner may request) from Manager therefor, including expenses for the severing of Hotel Personnel (with severance benefits calculated according to policies applicable generally to employees of Other Grand Hyatt Hotels) incurred by Manager in the course of effecting the Termination of this Agreement or the cessation of Hotel operations; provided, however, that Manager shall be responsible for all liability associated with any failure to comply with the federal Worker Adjustment and Retraining Notification Act of 1988 to the extent due to Manager's negligence or willful misconduct if Manager has received at least ninety (90) days' notice prior to the Termination Date. Manager agrees to reasonably cooperate with Owner to minimize any and all expenses that Owner incurs under this Section.

(b) ***Final Accounting.*** Within forty-five (45) days after Termination of this Agreement, Manager shall provide to Owner a final and full accounting through the date of such Termination of all accrued but unpaid Management Fees, Centralized Services Fees, Reimbursable Expenses, and other payments due Manager under the terms of this Agreement through the date of such Termination. Within fifteen (15) days of Owner's receipt of such final and full accounting, Owner shall pay Manager all such Management

Fees, Centralized Services Fees, Reimbursable Expenses and other payments due Manager under the terms of this Agreement (including any Unamortized Key Money) through the date of such Termination or provide Owner's objections thereto. If Owner disagrees with any amounts claimed by Manager, then Owner shall promptly meet with Manager to discuss resolution of the amounts which Owner disputes. Manager shall also provide financial and other records related to the operation of the Hotel to Owner through the date of Termination of this Agreement and shall continue to provide assistance to Owner after the Termination of this Agreement to the extent necessary for Certified Annual Financial Statements to be prepared. This obligation shall survive the Termination of this Agreement. Manager shall have reasonable access to the Hotel books and records necessary to provide the final accounting.

(c) ***Vacating Hotel.*** Manager shall peacefully vacate and surrender the Hotel to Owner.

(d) ***Books and Records.*** Manager shall deliver to Owner all books and records with respect to the Hotel and all contracts, agreements and other documents with respect to the Hotel that are not Manager's Proprietary Information or confidential employee personnel files not permitted by law to be released by Manager to Owner, maintained by Manager and that are in the custody and control of Manager, including those provided for in Sections 3.07 and 3.23. Manager shall also deliver to Owner an explanation indicating each bookkeeping account code used by Manager for its management of the Hotel which is not defined in the Uniform System of Accounts, together with a brief description of each coded account.

(e) ***Licenses and Permits.*** Manager shall deliver to Owner all of the Liquor Licenses (subject to Applicable Law), restaurant and other Approvals held by Manager or an Affiliate in connection with the operation of the Hotel or any part thereof. In addition, Manager shall assign to Owner (but only to the extent assignable and to the extent applicable solely to the operation of the Hotel) all of Manager's right, title and interest in and to all such Approvals, provided, however, if Manager has expended any of its own funds in the acquisition of Approvals, Owner shall reimburse Manager for such expended funds. Manager recognizes that all Approvals held for the operation of the Hotel are held for the benefit of Owner, and Manager has no ownership therein, except in order to fulfill its obligations under this Agreement. The entity holding the Liquor Licenses shall, upon the request of Owner, enter into a temporary lease, license or such other agreement as may be permitted under Applicable Law to permit the continuous and uninterrupted sale of alcohol beverages at the Hotel consistent with prior operations. In such event, neither Manager nor the party holding the Liquor Licenses shall be entitled to compensation in connection with such arrangement, but shall be reimbursed by Owner for any cost or liability in connection therewith and shall be named as an additional insured on any "dramshop" or other liability insurance pertaining to the sale of alcoholic beverages at the Hotel. In addition, any such temporary lease, license or other arrangement shall (i) include a release of Manager and its Affiliates from all liabilities, obligations, reasonable costs and reasonable expenses, including reasonable attorneys' fees, arising out of or in connection with such temporary lease, license or other agreement, save and except for liabilities, obligations, costs and expenses arising out of Manager's negligence

or willful misconduct; and (ii) provide for the termination of all obligations of Manager and its Affiliates thereunder within ninety (90) days following the date of Termination of this Agreement. Upon the Termination of this Agreement, Manager and the entity holding the Liquor Licenses shall surrender the Liquor Licenses and shall fully cooperate with Owner or Person designated by Owner in its attempts to transfer existing Approvals or obtain new Liquor Licenses for the Hotel.

(f) ***Honoring Reservation Dates.*** Owner shall honor all business confirmed for the Hotel in the ordinary course of business and in accordance with Section 5.09(m) with reservation dates after the Termination of this Agreement; provided, however, that Owner shall have no obligation to honor rooms at nominal or free rates to Manager's employees or members of any Hyatt frequent guest programs, or to honor any gift certificates or redemptions under Hyatt promotional programs, unless reimbursement in an amount at least equal to the amount that would be paid to any Other Grand Hyatt Hotel is provided by Manager. Owner shall assume the obligation to honor all advance booking deposits made by guests or patrons of the Hotel so long as a complete listing thereof has been provided to Owner by Manager and Manager has deposited into the Lockbox Fund (or such other account as directed by Owner or if required by Applicable Law) the funds actually received for such bookings.

(g) ***Assignment of Contracts.*** Manager shall, to the extent required by Owner, assign to Owner its interest (if any) in, and Owner shall assume and confirm in writing its continuing responsibility for all obligations and liabilities relating to, any and all contracts (including collective bargaining agreements, licenses or concession agreements, and maintenance and service contracts) in effect with respect to the Hotel as of the date of Termination of this Agreement, with the exception of Hyatt System contracts that are not transferable. Manager acknowledges that Owner may further assign such interests to the Trustee.

(h) ***Trademarks.*** If this Agreement is terminated in accordance with its terms or for any other reason whatsoever, Owner shall afford Manager sufficient time prior to the effective date of the Termination to take all steps reasonably requested by Owner to disassociate the Hotel and Owner from the Hyatt Trademarks (with the exception of removing signage bearing the name or symbol of Manager and the repair of any damage caused by such removal, which shall be an Owner responsibility and expense). Owner shall in any event delete all Hyatt Trademarks from the Hotel name and cease to use all FF&E and operating supplies bearing any of the Hyatt Trademarks within a reasonable period of time after the Termination of this Agreement but not to exceed ten (10) Business Days (with the understanding that Manager shall cause the removal of all such FF&E and operating supplies bearing any of the Hyatt Trademarks upon Termination of this Agreement or promptly thereafter and shall reimburse Owner for the cost of such FF&E and operating supplies and signage which it uses at another Other Grand Hyatt Hotel or otherwise retains for its use). Manager shall have the right to remove from the Hotel, on or before the Termination Date, all of Manager's Proprietary Information, all other written materials bearing the Hyatt Trademarks, and Manager's Proprietary Software. Under no circumstances shall Owner copy, reproduce, or retain any of

Manager's Proprietary Information, Proprietary Software or materials bearing the Hyatt Trademarks for the purpose of using such materials after the Termination Date.

(i) ***Proprietary Software.*** As of the Termination Date, Manager shall remove all Proprietary Software from the Hotel and shall disconnect the Hotel from its reservations systems and their related software applications. Manager shall provide reasonable assistance to Owner in facilitating the orderly transfer of Owner's records and data contained in Proprietary Software. Manager shall reasonably cooperate with Owner in order to avoid disruption in the operation of the Hotel in connection with the transition from Proprietary Software to one or more replacement systems and Manager shall be reimbursed for its reasonable costs incurred in so cooperating.

(j) ***Protection of Guest Lists.*** Manager and Owner will reasonably cooperate on the communications to be made to guests and business customers that have booked Hotel rooms or Hotel facilities or services prior to Termination of this Agreement for the purpose of informing such guests that the Hotel will no longer be operated by Manager. Manager shall not contact any such guests for the purpose of soliciting such Hotel guests or business customers to cancel their previously-booked Hotel rooms or Hotel facilities or services and transfer such business to any other transient lodging in the local market.

(k) ***Termination of Manager-Provided Insurance.*** If, immediately preceding the date of Termination of this Agreement, the Hotel is included in Manager's insurance program, such participation shall be terminated as of the Termination Date for the periods after such termination date (but without in any way destroying or altering the occurrence base nature of any such policies) and Manager shall have the right to reimburse itself for such premiums which may have accrued to the date of Termination of this Agreement by withdrawing the appropriate amount thereof from the Taxes and Insurance Fund (with the understanding that if the Taxes and Insurance Fund is insufficient, Owner shall advance the insufficiency from the Revenue Stabilization Fund). If Owner pays its *pro rata* share of premiums for the Hotel under the chain-wide policies of insurance or the self-insurance program of Manager in advance, Manager shall reimburse Owner for the unearned portion of Insurance Costs (to the extent such apportionment is available from the insurer or the self-insurance program of Manager). Owner consents to the termination of the insurance program with respect to the Hotel as of the Termination Date and agrees that Manager shall have no further obligation, after the Termination Date, to provide or obtain any additional insurance coverage for the benefit of Owner or the Hotel thereafter.

(l) ***Transition.*** In addition to the actions set forth in this Agreement which are to be taken by the Parties upon the Termination of this Agreement, upon the expiration or earlier Termination of this Agreement, Manager and Owner shall reasonably cooperate with each other to effect an orderly transition of management functions from Manager to Owner, any transferee of Owner or to any managing agent designated by Owner or any transferee of Owner for a period of up to ninety (90) days from the date of notice of such Termination.

(m) **Receivables.** All receivables of the Hotel outstanding as of the Termination Date, including guest ledger receivables, shall continue to be the property of Owner. All payables of the Hotel outstanding as of the Termination Date shall continue to be the obligation of Owner. For a period of ninety (90) days following the Termination Date, Manager shall cooperate with Owner in all reasonable respects, but at Owner's sole cost and expense, in the collection of any receivables, and shall turn over to Owner any receivables of the Hotel collected directly by Manager after the Termination Date and any documentation of payables due and owing as of the Termination Date. Manager shall, on the Termination Date or as soon thereafter as reasonably practicable, but in no event later than five (5) days after the date of such Termination, provide Owner with a complete list of (a) all bookings for future reservations or use of Hotel rooms or Hotel facilities which may have been accepted or entered into by Manager on or at any time prior to the Termination of this Agreement; (b) the terms applicable thereto; (c) the amount of advance deposits (if any) received with respect to each such booking; and (d) all payables outstanding as of the Termination Date and due in the next thirty (30) days. Manager agrees that, except with Owner's prior written consent, Manager shall not book reservations for rooms or public space after (i) the date on which this Agreement expires in accordance with the provisions of the Agreement; or (ii) the date of earlier Termination of this Agreement.

(n) **Survival.** The provisions contained in this Section shall survive the Termination of this Agreement.

ARTICLE VI

INSURANCE

Section 6.01. Maintenance of Insurance Coverage.

(a) **Required Insurance.** Subject to Section 6.01(b), Owner and Manager, respectively, shall, at all times during the Term and as an expense of the Hotel payable from the Taxes and Insurance Fund pursuant to the Trust Agreement, maintain or cause to be maintained insurance with respect to the Hotel in accordance with Exhibit N and with the Trust Agreement. In the event the insurance under the Trust Agreement is modified at any time, Owner and Manager shall agree to corresponding modifications to Exhibit N; provided, that such insurance is available at and on commercially reasonable rates and terms. Such insurance may be provided under Owner's or Manager's blanket insurance policies, subject to compliance with Exhibit N and the Trust Agreement. Prior to the Required Opening Date, Owner and Manager each shall deliver to the other Party certificates of insurance with respect to the insurance required by this Section.

(b) **Owner's Right to Provide Insurance.** Owner may arrange for any insurance required to be provided by Manager pursuant to this Section through blanket or other policies or programs available to Owner, as a cost and expense of the Hotel that shall be paid from the Taxes and Insurance Fund, to the extent available at premiums and otherwise on terms and conditions (including amounts of coverage and deductibles) at least as advantageous as those available through Manager; provided, that Owner shall not

have the right to do so with respect to insurance Manager requires be provided under its blanket policies at all Other Grand Hyatt Hotels. If Owner desires to place its own insurance pursuant to this Section, Owner shall so notify Manager in writing at least sixty (60) days prior to the scheduled effective date of such insurance.

(c) **Insurance Consultant.** Upon the request of Owner (but not less frequently than once every twenty-four (24) months), Manager shall engage, as an Operating Expense, an Insurance Consultant, mutually agreed upon by both Parties, to review the insurance requirements in this Agreement and in the Trust Agreement. Upon receipt of the Insurance Consultant's written report and/or written recommendations, Manager shall deliver a copy thereof to each of Owner and the Trustee. If the Insurance Consultant recommends increases in any of the coverages or modifications in any of the terms of such insurance requirements and Owner approves such increases or modifications, Manager shall obtain the approved increases or modifications, to the extent such insurance is available at and on commercially reasonable rates and terms. Notwithstanding anything to the contrary in this Section, if the Insurance Consultant recommends any reduction in the insurance coverage required pursuant to paragraphs (a) through (g) of Exhibit N, and Owner and Manager each approves such reduction, Manager shall maintain or cause to be maintained insurance at such reduced coverage; provided, that the Insurance Consultant shall have provided a statement to Owner and Manager to the effect that such reduced coverage provides the greatest amount of coverage available, in the judgment of the Insurance Consultant, at and on commercially reasonable rates and terms. Manager shall deliver a copy of any such statement to the Trustee.

Section 6.02. Parties Insured and Standard of Insurance. All insurance policies provided for in this Article shall be from financially responsible insurers rated no less than "A-/XII" by A.M. Best and shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved except to the extent otherwise required by this Agreement. Without in any way limiting the foregoing, the insurance shall conform to all subsections of this Section.

(a) **Named Insureds.** The insurance policies required by this Article, if obtained by Manager, shall name Manager as the named insured and Owner and the Trustee (for the benefit of the Registered Owners of the Bonds) as their interests may appear as additional insureds or, if such policies are obtained by Owner, shall name Owner as named insured and Manager and the Trustee (for the benefit of the Registered Owners of the Bonds) as their interests may appear as additional insureds.

(b) **Amounts of Coverage.** When maintained by Owner, amounts and types of coverages and amounts of deductibles shall be subject to the reasonable approval of Manager; provided, however, if the coverages and amounts conform to the requirements of this Agreement, including Exhibit N, then the coverages and amounts shall be deemed approved by Manager.

(c) **Waiver of Subrogation Requirements.** Where appropriate and obtainable (including the insurance provided for in Exhibit N), all policies shall waive subrogation rights against Manager, Owner, the Trustee and the Registered Owners of the Bonds.

(d) **Term; Notice of Termination.** Each insurance policy shall be for a term of not less than one (1) year; provided, that policies may be obtained for a lesser period to the extent necessary for the term thereof to end concurrently with other related coverages. Each insurance policy shall include a requirement that the insurer provide at least thirty (30) days' written notice of cancellation or material change in the terms and provisions of the policy to Manager, Owner and the Trustee.

(e) **Severability of Interests.** Each insurance policy where obtainable shall include a severability of interest clause.

(f) **Insurance Primary.** All insurance policies obtained by Manager shall be primary and without a right of contribution of any other insurance carried by or on behalf of Owner or the Trustee with respect to their respective interests in the Total Operating Revenues and the Hotel. All insurance policies obtained by Owner shall be primary and without a right of contribution of any other insurance carried by or on behalf of Manager or the Trustee with respect to their respective interests in the Total Operating Revenues and the Hotel.

(g) **Occurrence Policies.** Each insurance policy shall be written on occurrence, rather than claims made, basis, except that boiler and machinery coverage may be on an accident basis and employment practices and directors and officers insurance may be on a claims made basis.

(h) **Agreed Value.** All property insurance policies shall contain an agreed value clause updated by the Insurance Consultant as provided in Exhibit N.

Section 6.03. Binders and Certificates. As soon as practicable prior to the effective date of the applicable coverages, the Party obtaining the insurance coverages under this Article shall provide the other Party with binders evidencing that the applicable insurance requirements of this Agreement have been satisfied and, as soon as practicable thereafter, shall provide certificates of insurance with respect to such coverages. As soon as practicable prior to the expiration date of each such policy, the Party obtaining such insurance shall provide the other Party with binders evidencing renewal of existing or acquisition of new coverages or certificates of insurance with respect thereto. Certified copies of renewed or new policies shall be made available by the Party obtaining insurance coverage under this Article for review by the other Party, upon the written request of such other Party, when such renewed or new policies are available.

Section 6.04. Schedule of Insurance. Upon written request, the Party obtaining insurance under this Article shall furnish the other with a schedule of insurance, listing the policy numbers of the insurance obtained, the names of the companies issuing such policies, the names of the parties insured, the amounts of coverage, the expiration date or dates of such policies, and the risks covered thereby.

Section 6.05. Duties of Manager. Manager shall promptly:

(a) cause to be investigated all accidents and claims for damage relating to the operation and maintenance of the Hotel, as they become known to Manager, shall report to Owner and the Trustee any such incident that is material, and shall either make available for review by Owner electronically on a continuous basis on a secure internet website, or provide to Owner a written report semiannually, setting forth all accidents and claims for damage relating to the Hotel in the form prepared by Manager for Other Grand Hyatt Hotels;

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

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

(d) retain on behalf of Owner all consultants and experts, including architects, engineers, contractors, accountants and attorneys, as needed, and as an expense of the Hotel, assist in analyzing any loss or damage, determining the nature and cost of repair, and preparing and presenting any proofs of loss or claims to any insurers.

Section 6.06. Review of Insurance. All insurance policy limits provided under this Article shall, at the request of either Party, be reviewed every year following the commencement of the Term, to determine the suitability of such insurance limits in view of exposures reasonably anticipated over the ensuing year. Owner and Manager hereby acknowledge that changing practices in the insurance industry and changes in the Applicable Law and industry custom may necessitate additions to types or amounts of coverage during the Term. Owner agrees to comply with any additional insurance requirements Manager reasonably requests in order to protect the Hotel and the respective interests of Owner and Manager; provided, however, that Owner shall not be required to comply with any such insurance requirements requested by Manager to the extent the same would violate the Bond Documents; and provided further, that any such additional insurance requirements, to the extent obtained by Owner, shall constitute a cost and expense of the Hotel that shall be paid from the Taxes and Insurance Fund. If during the Term changes in the insurance industry shall make any description of the required insurance coverages inaccurate or otherwise inappropriate, then Manager shall have the right, by notice to and with the prior written approval of Owner, to revise such requirement to accurately describe, in accordance with then current industry practice, the type of insurance which would be comparable to the required insurance coverage described in this Article or in Exhibit N.

Section 6.07. Subcontractor's and Vendor's Insurance. Manager shall require each Subcontractor which provides services on-site at the Hotel under a contract for \$10,000 or more to include in the applicable contract or agreement a no personal liability clause in favor of Owner and to produce a certificate of insurance showing that such party maintains commercial general

liability insurance in an amount at least equal to \$2,000,000 per occurrence, workers' compensation or its facsimile at statutory levels and employer's liability coverage or its equivalent in the amount of \$1,000,000 each accident/disease - policy limit/disease - each employee. With respect to any Subcontractor which provides services on-site at the Hotel, Manager shall require each such party to name Manager and Owner as an additional insured under such party's commercial general liability insurance policy and waive any rights of subrogation. For contracts for less than \$10,000, Manager shall endeavor to include the insurance provisions and coverages set forth in this Section to the extent Manager deems advisable in Manager's reasonable discretion.

Section 6.08. Insurance by Manager. Any insurance required under this Article may, at Manager's option, be provided under policies of blanket insurance which cover other properties of Manager and its Affiliates, and a *pro rata* portion of such premiums shall be allocated to the Hotel on the same basis as allocated to participating Other Grand Hyatt Hotels. Except as otherwise provided in this Agreement, any policies of insurance maintained or caused to be maintained by Manager pursuant to the provisions of this Article may contain deductible provisions in such amounts as are maintained with respect to Other Grand Hyatt Hotels, which Manager, as a cost and expense of the Hotel, shall pay. Further, in lieu of all or a part of workers' compensation insurance, any or all of the risks covered by such insurance at Manager's option shall be self-insured or self-assumed as a cost and expense of the Hotel under a self-insurance or assumption of risk program similar to those in effect at Other Grand Hyatt Hotels, up to such amounts which such risks are assumed or self-insured at Other Grand Hyatt Hotels with the prior written consent of Owner and the Trustee as to such amounts.

ARTICLE VII

INDEMNIFICATION

Section 7.01. Manager Standard of Care. In performing its services pursuant to this Agreement, Manager shall exercise that degree of skill, care and diligence as is customary and usual for operators of First-Class Hotels in the United States.

Section 7.02. Manager Indemnity. Manager shall indemnify, defend and hold harmless Owner and City and their respective board members, commissioners, officers, employees and agents (collectively, "**Owner Indemnified Parties**") from and against any and all damages, liabilities, costs, claims or expenses (including reasonable attorneys' fees and expenses) incurred by Owner as a result of third-party claims ("**Claims**") arising out of or related to (i) Manager's negligence (using the standard of care set forth in Section 7.01) or willful misconduct, (ii) the negligence or willful misconduct of its Affiliates, Subcontractors, concessionaires, licensees and agents, and (iii) Manager's breach of or default under this Agreement. Notwithstanding anything to the contrary in this Agreement, Manager shall not be obligated to indemnify Owner or the Owner Indemnified Parties for the following:

- (a) Claims for which Owner has received reimbursement for its loss from the proceeds of insurance, and the deductibles and retentions associated with such claims (and, with respect to such coverage, Owner agrees that it will, in good faith, pursue its

available insurance recoveries and/or cooperate with Manager in the pursuit of insurance recoveries prior to making demand on Manager for indemnity); and

(b) Claims arising out of, but only to the extent of, Owner's breach of contract, gross negligence or willful misconduct.

(c) Claims arising out of: (i) the financing of the Hotel, (ii) condemnation and casualty events, and (iii) the design and construction of the Hotel;

(d) Claims arising out of Owner's failure to fund the Working Capital Set-Aside Amount as and to the extent required under this Agreement;

(e) Claims arising out of any contracts directly entered into by Owner with respect to the Hotel or otherwise;

(f) Claims arising out of, but only to the extent of, Owner's failure to provide Manager timely notice of Termination of this Agreement pursuant to Section 3.24 which prevents Manager from providing timely notice to Manager's employees of such Termination as required by Applicable Law.

(g) Claims arising out, but only to the extent of, Manager's execution of but not its performance under any contracts entered into by Manager pursuant to the terms of this Agreement and which are specifically approved by Owner as part of an Annual Plan; and

(h) Minor claims associated with customer satisfaction and similar matters arising in the ordinary course of business that are resolved in accordance with Manager's standard policies and procedures.

Section 7.03. *Environmental Indemnity.* Manager shall indemnify, defend and hold harmless the Owner Indemnified Parties from and against any and all Claims arising out of or related to any release of Hazardous Materials from, in, on or about the Property caused by an act or omission of Manager, its Affiliates, Hotel Personnel, their agents or contractors or Persons providing services on the Site, or any other Person under the management, control or supervision of Manager, at the Hotel or on the Site or otherwise arising as a result of Manager's operation of the Hotel, except to the extent that Manager demonstrates to the reasonable satisfaction of Owner that such release of Hazardous Materials constitutes a condition existing (i) prior to the Opening Date and Manager did not exacerbate such condition; or (ii) after the Opening Date and caused by Persons other than Manager, Hotel Personnel, their agents or contractors or Persons providing services on the Site, or any other Person under the management, control, or supervision of Manager. As used in this Section, release of Hazardous Materials includes any actual spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or on any property or the environment, and includes any threat of release as described herein to the extent regulated under any Environmental Laws.

Section 7.04. *Indemnification Concerning Technology Systems.* Manager shall indemnify, defend and hold harmless the Owner Indemnified Parties from and against any and all Claims arising out of or related to the operation or use of the Hotel's third-party computer

systems, including the property management system, point of sale system, phone system, business center or similar technologies. Owner shall notify Manager promptly in writing of any such Claim, and reasonably cooperate in Manager's response to and defense of such Claim.

Section 7.05. Copyright Infringement. Manager shall also indemnify, defend and hold harmless the Owner Indemnified Parties from and against all Claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use at the Hotel of articles or services supplied in the performance of Manager's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

Section 7.06. Appointment of Counsel. Any Owner Indemnified Party shall be entitled, upon written notice to Manager, to the timely appointment of legal counsel by Manager for the defense of any Claim, which legal counsel shall be subject to the approval of the Owner Indemnified Party. If, in the Owner Indemnified Party's judgment, a conflict of interest exists between the Owner Indemnified Party and Manager at any time during the defense of the Owner Indemnified Party, the Owner Indemnified Party may appoint independent legal counsel of its choice for the defense of the Owner Indemnified Party as to such Claim. Additionally, regardless of whether the Owner Indemnified Party is appointed legal counsel or selects independent legal counsel (a) the Owner Indemnified Party shall have the right to participate in the defense of any Claim and approve any proposed settlement of such Claim; and (b) all costs, expenses and attorneys' fees of the Owner Indemnified Party shall be borne by Manager. If Manager fails to timely pay such costs, expenses and attorneys' fees, the Owner Indemnified Party may, but shall not be obligated to, pay such amounts and be reimbursed by Manager for the same. The Parties hereby acknowledge that it shall not be a defense to a demand for indemnity that less than all Claims asserted against the Owner Indemnified Party are subject to indemnification. If a Claim is covered by Manager's liability insurance, the Owner Indemnified Party shall not take or omit to take any action with the intention of causing the insurer not to defend such Claim or to disclaim liability in respect thereof.

Section 7.07. Payments Not Operating Expenses. Amounts payable by Manager pursuant to this Article shall not constitute Operating Expenses.

Section 7.08. Survival of Indemnification. The obligations set forth in this Section shall survive the Termination of this Agreement. Notwithstanding anything to the contrary in this Agreement, Owner and Manager mutually agree for the benefit of each other to look first to the appropriate insurance coverages in effect pursuant to this Agreement in the event any Claim regardless of the cause of such Claim.

ARTICLE VIII

DESTRUCTION; TAKING

Section 8.01. Destruction, Permanent Taking.

(a) ***Owner to Restore with Sufficient Available Casualty/Condemnation Amounts.*** If the whole or any part of the Hotel is damaged or destroyed by fire or other Casualty required to be insured against under Article VI above or Taken, then the Casualty Proceeds and/or the Condemnation Proceeds, as applicable, shall be paid as soon as practicable to the Trustee (with the understanding that any Casualty Proceeds and Condemnation Proceeds received by Manager, Owner or other named insured parties shall be turned over to the Trustee as soon as practicable) for deposit in the Insurance and Condemnation Proceeds Fund; provided, however, the foregoing shall be subject to the rights of the Trustee under the Bond Documents to apply the Casualty Proceeds and Condemnation Proceeds to the redemption of some or all of the Bonds. If the amounts in the Insurance and Condemnation Proceeds Fund, after such deposit, together with investment income reasonably expected to be received with respect thereto and any other funds available therefor (including amounts on deposit in the Revenue Stabilization Fund and the Working Capital Reserve Fund in that order) (collectively, the “**Available Casualty/ Condemnation Amounts**”), are not applied to the redemption of the Bonds (to the extent permitted under the Bond Documents) and are sufficient to repair or replace the property damaged, destroyed or Taken, as certified in a statement of an independent architect to be mutually agreed upon by Manager and Owner (the “**Independent Architect**”), then Owner shall cause the repair or replacement of the property damaged, destroyed or Taken (“**Casualty Restoration**”). Notwithstanding the foregoing and subject to Section 8.01(b), Owner shall be under no obligation to engage a contractor to perform the repair and restoration of the Hotel if (i) all or substantially all of the Hotel is Taken; (ii) in Owner’s reasonable judgment, the portion of the Hotel Taken is such that the Hotel cannot be restored to economically feasible usefulness; (iii) the damage, destruction or Taking makes it imprudent or unreasonable to operate the remaining portion of the Hotel in accordance with the Operating Standards; or (iv) the Trustee, pursuant to and in accordance with the Bond Documents, does not make the Casualty Proceeds and/or Condemnation Proceeds available for repair or reconstruction.

(b) ***Insufficient Available Amounts - Owner’s Option to Terminate or Restore.*** If Owner does not repair, restore, replace or rebuild the Hotel due to insufficient Available Casualty/Condemnation Amounts and the damage, destruction or taking makes it imprudent or unreasonable to operate the remaining portion of the Hotel in accordance with the Operating Standards, then Owner may terminate this Agreement by giving notice to Manager (which shall be effective ninety (90) days after its delivery pursuant to Section 12.06) within thirty (30) days after the report is delivered by the Independent Architect.

Section 8.02. Taking for Temporary Use.

(a) ***Effect of Temporary Taking.*** Upon a Taking of all or part of the Hotel for temporary use and provided this Agreement is not terminated pursuant to Section 8.02(b), this Agreement shall remain in full force and effect and the awards or other proceeds on account of the Taking (including any interest included or paid with respect to such awards or proceeds), other than any portion of such awards or proceeds attributable to compensation for alterations or physical damage to the real or personal property used in the operation of the Hotel, shall be included in Total Operating Revenues for the period from the Opening Date to the commencement of the first full Operating Year and thereafter for the Operating Year or Years in which received. When and if the temporary use ceases and provided that this Agreement is not terminated pursuant to Section 8.02(b), Owner shall engage a contractor to make all such restoration, repairs and alterations as are necessary to restore the Hotel to its condition prior to the Taking for temporary use. Owner shall require its contractor to commence such restoration, repairs and alterations promptly and complete the same with diligence. Subject to the requirements of Generally Accepted Accounting Principles and the Uniform System of Accounts, the costs of any such work shall not be deducted as Operating Expenses in determining Gross Operating Profit.

(b) ***Termination Right.*** In the event any temporary Taking is reasonably anticipated to continue or continues for six (6) months or longer, either Manager or Owner may terminate this Agreement by delivery of written notice to the other party setting forth a termination date no sooner than thirty (30) days from the date of the notice.

Section 8.03. Commencement and Completion of Casualty Restoration. If Owner is required to repair or rebuild the Hotel due to fire or other Casualty pursuant to this Article, Owner shall commence the Casualty Restoration as soon as practicable after the occurrence of the damage or destruction and shall complete the work with diligence. If a right of Termination of this Agreement does exist, the obligation to commence the Casualty Restoration shall be delayed until the earlier of the giving of the applicable notice of such Termination (in which event the obligation shall not become operative) or the expiration of the applicable notice period (in which event the obligation to commence and complete the Casualty Restoration as provided in this Section shall become operative immediately).

Section 8.04. Effect of Termination. If this Agreement is terminated pursuant to this Article, all expenses arising as a result of the Termination of this Agreement or as a result of the cessation of Hotel operations shall be for the sole account of Owner.

Section 8.05. Reinstatement After Termination. Notwithstanding the foregoing, if Owner takes official action, within a thirty (30)-month period after Owner has terminated this Agreement pursuant to this Article, to resume the operation of the Hotel on the Site, it shall provide prompt written notice thereof to Manager. Manager shall have the option to execute a new hotel management agreement with Owner, on the same terms as this Agreement, including the restrictive covenant set forth in Section 3.30, for a term equal to the remaining term of this Agreement as of the date of such termination. Such option shall be exercised by Manager by written notice to Owner within sixty (60) days of receipt of notice of such option from Owner.

ARTICLE IX

BUSINESS INTERRUPTION

Section 9.01. Business Interruption.

(a) *Manager's Compensation during Business Interruption.* If the Hotel suffers damage or loss that results in an interruption in the operations of the Hotel, Manager shall continue to be obligated to perform its obligations under this Agreement and shall also generally coordinate the efforts of all parties involved in the repair and rebuilding of the Hotel; accordingly, Manager shall continue to receive all amounts that would be due to Manager under this Agreement had such damage or loss not occurred, including the Management Fee, the Centralized Services Fees and all Reimbursable Expenses, for the period of the business interruption; provided, however, for so long as Owner either participates in Manager's insurance program or maintains Business Interruption Insurance which provides benefits no less favorable to Manager than if Owner were participating in Manager's insurance program, the Parties acknowledge that payments pursuant to this Section shall be satisfied only by proceeds of such Business Interruption Insurance ("**Business Interruption Proceeds**") (whether insured through Manager's insurance program or a separate policy); and further provided, that Manager's right to receive payment during the period that Business Interruption Proceeds remain payable shall be subordinate to the payment of Debt Service on the Bonds. In the event of such a business interruption, for purposes of calculating the Centralized Services Fees, the Total Operating Revenues during the period of operation shall be increased by the amount of Business Interruption Proceeds received under the Business Interruption Insurance during the period of the business interruption.

(b) *Owner's Obligations during Partial Operation.* If the Hotel suffers damage or loss that results in an interruption in the operation of the Hotel, Owner shall nevertheless be obligated to pay all expenses of operating and maintaining the Hotel (at the level which is reasonably necessary given the damage or loss that has occurred), except as provided otherwise in Section 9.01(a), regardless of whether there are available to Owner any Business Interruption Proceeds to cover such amounts, and Owner shall be responsible for depositing all such amounts necessary for the operation and maintenance of the Hotel in the Lockbox Fund during the period of the business interruption.

Section 9.02. Proceeds of Business Interruption Insurance.

(a) *Allocation of Proceeds of Insurance.* If the business of the Hotel is interrupted by any event or peril covered by Business Interruption Insurance, the Business Interruption Proceeds shall be paid to the Trustee, for allocation and distribution in accordance with the Trust Agreement; provided, that Manager's right to receive payment in accordance with the Trust Agreement during the period for which Business Interruption Proceeds remain available shall be subordinate to the payment of Debt Service on the Bonds.

(b) ***Deposit of Proceeds of Business Interruption Insurance.*** Notwithstanding anything to the contrary in this Agreement, Owner shall cause any Business Interruption Proceeds to be deposited by the Trustee when and as received in the Business Interruption Account within the Insurance and Condemnation Proceeds Fund, which account Owner shall cause to be established by the Trustee upon receipt of notice that the carrier of such insurance will be paying claims thereon to the Trustee. If Manager receives any Business Interruption Proceeds, Manager agrees to deposit such amounts in the Business Interruption Account held by the Trustee. Owner shall use commercially reasonable efforts to require the Trustee to hold the Business Interruption Account in trust for the intended beneficiaries of such funds separate and apart from any other Funds and Accounts. Owner shall use commercially reasonable efforts to require the Trustee to transfer any amounts deposited in the Business Interruption Account as soon as practicable in the following order of priority:

(i) to the Lockbox Fund, an amount equal to Operating Expenses then due (including the Base Management Fee);

(ii) to the Taxes and Insurance Fund, an amount equal to Taxes or Insurance Costs then due with respect to the ownership and operation of the Hotel;

(iii) to the payment of Administration Expenses when due; and

(iv) to the Debt Service Fund, an amount equal to Debt Service then due on the Bonds;

(v) to the Lockbox Fund, the balance, if any, for application by the Trustee as provided in the Trust Agreement.

(c) ***Reduction in Deposits/Amounts Directly Received.*** Notwithstanding the foregoing, the amounts required to be transferred pursuant to Section 9.02(b) shall be reduced to the extent the insurance carrier has directly paid Business Interruption Proceeds to either Manager or Owner, which reduction shall be allocated in any manner deemed fair and appropriate by Manager, Owner and the Trustee.

(d) ***Characterization of Business Interruption Proceeds.*** Business Interruption Proceeds received shall be deemed Total Operating Revenues and shall be deposited in accordance with the foregoing clause (b) of this Section.

ARTICLE X

ASSIGNMENTS

Section 10.01. Restrictions on Assignment.

(a) ***Restriction.*** Except as expressly provided in this Article, neither Party may effect an Assignment without the prior written consent of the other Party in its sole discretion. Notwithstanding the foregoing or any other provision to the contrary in this

Agreement, Owner may assign this Agreement to the Trustee for the benefit of the Registered Owners of the Bonds, as security for Owner's obligations under the Trust Agreement and the other documents securing the payment of the Bonds. Any Assignment by a Party in violation of the terms of this Article shall be a material and non-curable breach of this Agreement by the assigning Party, governed by the terms of Article IV.

(b) **Definition of Assignment.** The term “**Assignment**” includes the following: (i) assignment, pledge, encumbrance or transfer in any manner of an interest in this Agreement, or any rights or obligations under this Agreement; (ii) any transfer of an aggregate of more than fifty percent (50%) (measured by fair market value or voting power) of the legal and/or beneficial interest of a Party (whether partnership interest, corporate stock, shares or otherwise) during any consecutive twelve (12)-month period; (iii) any transfer of an aggregate of more than fifty percent (50%) (measured by fair market value or voting power) of the legal and/or beneficial interest (whether partnership interest, corporate stock, shares or otherwise) by an investor or investors of any owner of a Party during any consecutive twelve (12)-month period; and (iv) any change in the actual or effective voting control of a Party or an owner of such Party.

(c) **Definition of Owner.** For purposes of this Article, the term “**owner**” means (i) the holder of fifty percent (50%) or more (measured by fair market value or voting power) of the legal and/or beneficial interest (whether partnership interests, corporate stock, shares or otherwise) of an entity; and (ii) the owner, as defined in clause (i), of an owner, as defined in clause (i).

Section 10.02. Permitted Assignments by Manager.

(a) **Certain Permitted Assignments.** So long as no Manager Event of Default has occurred of which Manager has received written notice from Owner and remains uncured after the expiration of any applicable cure period and subject to Section 10.02(b), Manager shall have the right, without Owner's consent but upon thirty (30) days' prior written notice to Owner with the information set forth in Section 10.02(b)(vii) below, to effect an Assignment to any of the following (each a “**Proposed Manager Assignee**”): (i) any Affiliate of Manager; (ii) any successor of Manager that may result from any merger, consolidation or reorganization; or (iii) any Person which constitutes a Qualified Assignee (excluding from such definition clause (iii) thereof) that acquires all or substantially all of the business and assets of the hotel management and license operations associated with hotels and resorts operating under the “Hyatt” brand and, in each of clauses (i), (ii) and (iii) in this Section, has the right to continue the hotel management business using the “Hyatt” brand.

(b) **Conditions Precedent to Assignment.** As a condition precedent to any Assignment under this Section, all of the following shall be satisfied:

(i) the Proposed Manager Assignee shall execute an assignment and assumption agreement in form and substance reasonably acceptable to Owner

pursuant to which such assignee assumes and agrees to be bound by all of the terms and provisions of this Agreement;

(ii) subject to Manager's rights under Section 11.04 below, the Proposed Manager Assignee shall, at all times during the Term, have the right to continue the use of the "Hyatt" brand and continue the use of the name of the Hotel in use immediately prior to such transfer;

(iii) the Proposed Manager Assignee is recognized as having (or upon such Assignment shall be recognized as having) a national chain of First-Class Hotels;

(iv) the Proposed Manager Assignee shall continue to have the right to operate the Other Grand Hyatt Hotels under the Hyatt name and to provide the Centralized Services and other provisions to be furnished by Manager at the standards provided for in and otherwise in accordance with this Agreement;

(v) the Proposed Manager Assignee is not generally recognized in the community as being of ill repute with whom a prudent business person would not wish to associate in a commercial venture or a Person that would be considered by regulators in the gaming industry to be an unsuitable business associate of Manager and its Affiliates;

(vi) if the Proposed Manager Assignee is an Affiliate of Manager, then Manager shall not be relieved of any of its obligations or liabilities under this Agreement; and

(vii) Manager's notice of an Assignment to the Proposed Manager Assignee under Section 10.02(a) shall (A) identify in reasonable detail the owners of the Proposed Manager Assignee; (B) in the case of an Affiliate, provide documentary evidence (including a legal opinion) reasonably satisfactory to Owner and the Trustee that the Proposed Manager Assignee is an Affiliate of Manager; and (C) in the case of a merger, consolidation or reorganization of Manager or acquisition of assets of Manager, provide documentary evidence of the same (including a legal opinion) reasonably satisfactory to Owner and the Trustee.

Section 10.03. Permitted Assignments by Owner.

(a) *Certain Permitted Assignments.* So long as no Owner Event of Default has occurred of which Owner has received written notice from Manager and remains uncured after the expiration of any applicable cure period and subject to Section 10.03(b), Owner shall have the right, without Manager's consent but upon thirty (30) days' prior written notice to Manager with the information set forth in Section 10.02(b)(vii), to effect an Assignment to each of the following (each a "**Proposed Owner Assignee**"): (i) any Affiliate of Owner, or (ii) any Person which constitutes a Qualified Assignee.

(b) **Conditions Precedent to Assignment.** As a condition precedent to any Assignment under this Section, the Proposed Owner Assignee shall execute an assignment and assumption agreement in form and substance reasonably acceptable to Manager pursuant to which such assignee assumes and agrees to be bound by all of the terms and provisions of this Agreement.

(c) **Rights to Encumber.** Without limiting the generality of and notwithstanding Section 10.03(a), Owner may encumber, hypothecate, pledge, assign or grant a security interest in the Hotel and/or this Agreement in connection with the Bonds or other financing transactions.

Section 10.04. Effect of Permitted Assignments. A consent to any particular Assignment shall not be deemed to be a consent to any other Assignment or a waiver of the requirement that consent be obtained in the case of any other Assignment. Except as otherwise provided under Section 10.03 in the case of any permitted Assignment by Owner (if the terms and conditions thereof are complied with) or under Section 10.02(b) in the case of any permitted Assignment by Manager (if the terms and conditions thereof are complied with), the assigning Party shall be relieved of all liabilities and obligations under this Agreement accruing after the effective date of such Assignment; provided, however, notwithstanding the foregoing or anything to the contrary in Sections 10.02 or 10.03, no such Assignment shall relieve the assigning Party from its liabilities or obligations under this Agreement accruing prior to the effective date of the Assignment.

ARTICLE XI

TRADEMARKS AND OTHER PROPRIETARY MATERIALS

Section 11.01. Ownership of Trademarks. Owner acknowledges and agrees it has no rights to or interest in the Hyatt Trademarks, and agrees not to contest the rights of Manager or its Affiliates in respect of the Hyatt Trademarks, including any additions or improvements to the Hyatt Trademarks by whomever developed. Manager acknowledges and agrees it has no rights to or interest in Owner's trademarks, and agrees not to contest the rights of Owner or its Affiliates in respect of Owner's trademarks, including any additions or improvements to Owner's trademarks by whomever developed.

Section 11.02. Use of Trademarks. As part of the management services to be provided under this Agreement, Manager shall use the Hyatt Trademarks as it deems appropriate and advisable in operating the Hotel consistent with the terms of this Agreement, subject to the following terms:

(a) **Prohibition on Use of Trademarks.** Except for specifically identified incidental use in advertising and marketing the Hotel and upon receipt of specific written consent from Manager (which may be withheld in Manager's sole discretion), Owner may not itself use the Hyatt Trademarks or apply for international, United States federal, or state or territorial registration of any rights in the Hyatt Trademarks. Without Manager's prior consent (which may be withheld in Manager's sole discretion), Owner may not use any of the Hyatt Trademarks as all or part of its legal name or any other

trade or assumed name under which Owner does business, and Owner shall disclose in any trade or assumed name filing that the Hotel is independently managed and that Owner has no ownership rights in the Hyatt Trademarks. Except as provided in Section 11.05, no other letter, word, design, symbol or other matter of any kind shall be superimposed on, associated with, or shown in such proximity to the Hyatt Trademarks so as to alter or dilute them and Owner shall not combine any of the Hyatt Trademarks with any other trademark, service mark or logo.

(b) ***Manager's Rights Regarding Hyatt Trademarks.*** Manager reserves the sole right and discretion to:

(i) set reasonable minimum operating standards (consistent with the Operating Standards and the other provisions of this Agreement) associated with the Trademarks for the Hotel which shall be met as a condition of continued association with the "Hyatt" brand name;

(ii) determine how and on what materials the Hyatt Trademarks may be used;

(iii) require the signing of secrecy agreements by Hotel Personnel and third parties (other than Owner) to protect the confidentiality and the proprietary nature of the Hyatt Trademarks;

(iv) subject to any limitations on contracts set forth in this Agreement, including Section 3.07, set standards for and designate approved third-party suppliers of products bearing any of the Hyatt Trademarks, and receive third-party commissions, fees or royalty payments from field of use licenses; and

(v) handle disputes and control actual or threatened litigation with third parties relating to any part of the Hyatt Trademarks.

(c) ***Owner's Rights Regarding Owner's Trademarks.*** Owner reserves the sole right and discretion to:

(i) determine how and on what materials Owner's trademarks may be used;

(ii) require the signing of reasonable agreements by Hotel Personnel and third parties to protect the proprietary nature of Owner's trademarks;

(iii) subject to any limitations on contracts set forth in this Agreement, including Section 3.07, set standards for and designate approved third-party suppliers of products bearing any of Owner's trademarks, and receive third-party commissions, fees or royalty payments from field of use licenses; and

(iv) handle disputes and control actual or threatened litigation with third parties relating to any part of Owner's trademarks.

Section 11.03. Third-Party Intellectual Property Rights. Manager shall not infringe upon or otherwise violate the patent rights, copyrights, trade secrets, trade names, trademarks, service marks or any other intellectual property rights of any Person in its operation and management of the Hotel and the performance of its other services under this Agreement.

Section 11.04. Manager's Rights Regarding Hyatt Name. Owner recognizes that the names "Hyatt" and "Grand Hyatt" when used alone or in conjunction with other words, together with the other names, logos or designs described on Exhibit O are owned by Manager or its Affiliates and are the exclusive property of Manager or its Affiliates (herein called "**Hyatt-Owned Hotel Names**"). Accordingly, Owner agrees that no right or remedy of Owner for any default of Manager under this Agreement shall, nor shall any provisions of this Agreement confer upon Owner, its successors or assigns the right to use Hyatt Owned Hotel Names or any other Hyatt Trademarks in the operation of the Hotel, or otherwise, nor to hold out the Hotel as a Grand Hyatt Hotel, after the expiration or earlier Termination of this Agreement.

Section 11.05. Name of Hotel; Signage; Advertising. Manager shall operate the Hotel under the name "Grand Hyatt at San Francisco International Airport." The words "Grand Hyatt" shall be displayed prominently on the Hotel in letters of approximately equal size. Manager shall not change the signage or physical appearance of the exterior of the Hotel without the prior written approval of Owner in its sole discretion. The size, location and design of all signage not on the Site or the Hotel shall comply with all Owner standards and guidelines and shall be subject to prior written approval by Owner. Owner agrees to display directional signing for the Hotel in the Airport terminal buildings and to permit the use of directional signage for the Hotel on the access roadways to the Airport. If not included in the Work by the Design-Builder, the costs of all such signage may be treated by Owner as a Capital Expense. Any advertising signage by Manager in the Hotel or on the Property shall only be undertaken in conformance with Owner's policies and procedures with respect thereto.

Section 11.06. Proprietary Information. Owner acknowledges that Manager or one of its Affiliates is or shall become the owner or licensee of certain intellectual property (the "**Manager's Intellectual Property**") including Manager's Proprietary Information. Manager shall utilize Manager's Intellectual Property in connection with the operation of the Hotel to the extent that it deems appropriate for the purpose of carrying out its agreements and obligations under this Agreement, but such use shall be strictly on a non-exclusive basis, and neither such use nor anything contained in this Agreement shall confer any proprietary or other rights in Manager's Intellectual Property upon Owner or any third parties.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Representations and Warranties of Manager. Manager represents and warrants to Owner as of the Execution Date as follows:

- (a) **Due Organization.** Manager is duly organized, validly existing, and in good standing, is duly qualified to do business in the State, and has full power, authority and legal right to execute, perform, and timely observe all of the provisions of this

Agreement. Manager's execution, delivery and performance of this Agreement have been duly authorized.

(b) ***Valid and Binding Obligation.*** This Agreement constitutes a valid and binding obligation of Manager, subject to bankruptcy, insolvency and other laws relating to or affecting creditors' rights, to the application of equitable principles and to the exercise of judicial discretion in appropriate cases, and does not and shall not constitute a breach of or default under the corporate documents or bylaws of Manager or the terms, conditions or provisions of any law, order, rule, regulation, judgment, decree, agreement or instrument to which Manager is a party or by which it or any of its assets is bound or affected.

(c) ***No Third Party Approval Required.*** No approval of any third party is required for Manager's execution and delivery and performance of this Agreement that has not been obtained prior to the execution of this Agreement.

Section 12.02. Representations of Owner. Owner represents to Manager as of the Execution Date and the Opening Date, as follows:

(a) ***Due Organization.*** Owner is duly organized and validly existing as a charter city and county under the Constitution and laws of the State, and has full power, authority and legal right to execute, perform, and timely observe all of the provisions of this Agreement. Owner's execution, delivery and performance of this Agreement have been duly authorized.

(b) ***Valid and Binding Obligation.*** This Agreement constitutes a valid and binding obligation of Owner, subject to bankruptcy, insolvency and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases, and to limitation on remedies against municipalities under the laws of the State, and does not constitute a breach of or default under the Charter of Owner or the terms, conditions or provisions of any law, order, rule, regulation, judgment, decree, agreement or instrument to which Owner is a party or by which it or any of its assets is bound or affected.

(c) ***No Third Party Approval Required.*** No approval of any third party is required for Owner's execution, delivery and performance of this Agreement that has not been obtained prior to execution of this Agreement.

(d) ***Environmental.*** Except as disclosed in any Environmental Site Assessments delivered to Manager on or prior to the date of execution of this Agreement, Owner has no actual knowledge that the Site violates any Environmental Law.

Section 12.03. Governing Law; Jurisdiction; Venue. This Agreement and all disputes relating to the performance or interpretation of any term of this Agreement shall be construed under and governed by the laws of the State. To the extent permitted by law, Manager and Owner hereby irrevocably:

(a) consents to any suit, action or proceeding with respect to this Agreement being brought in any state or federal court of competent jurisdiction located in a judicial district which includes the City;

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

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

(d) submits to the non-exclusive jurisdiction of the federal courts in the City, and

(e) agrees that service of process in any suit, action or proceeding may be made upon Manager's registered agent, together with a copy to each address set forth in this Agreement, or such other address of which Manager shall have given by written notice to Owner and agrees that such service shall in every respect be deemed to be effective service upon it in any suit, action or proceeding and shall be taken and held to be valid personal service upon or personal delivery to it, to the fullest extent permitted by law.

Section 12.04. Waivers, Modifications, Remedies. No failure or delay by a Party to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. Neither this Agreement nor any of its terms may be changed or modified, waived or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by the Party against whom the enforcement of the change, waiver or Termination of this Agreement is sought and with the written consent of the Trustee. Owner shall notify Manager of any revisions, amendments, supplements, modifications or other changes to the Trust Agreement and the Cash Management Agreement prior to the effectiveness thereof, as set forth in the Trust Agreement. Owner acknowledges that Manager shall have the right to consent to such revisions, amendments, supplements, modifications or other changes to the extent set forth in the Trust Agreement. No waiver of any breach shall affect or alter this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach of this Agreement. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 12.05. Severability of Provisions. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under Applicable Law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 12.06. Notices. Notices, consents, determinations, requests, approvals, demands, reports, objections, directions and all other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given and to be effective on the date on which such communications are delivered by personal delivery, by facsimile transmission (with telephonic confirmation of receipt), nationally recognized overnight courier service, or by the United States Postal Service after being deposited with the United States Postal Service as Express Mail or as registered or certified matter, postage prepaid, return receipt requested, addressed to the Parties at the addresses specified below, or at such other address as the Party to whom the notice is sent has designated in accordance with this Section. All such communications from Manager to Owner shall also be given by Manager to the Trustee, at the address of the Trustee set forth in the Trust Agreement, and all such communications from Owner to Manager after the Opening Date shall also be given to the general manager of the Hotel at the address of the Hotel. Until a Party provides a change in address in accordance with this Section, notices shall be sent to the following addresses:

To Manager:

With a copy to:

General Manager

[Address of the Hotel]

With a copy to:

To Owner:

With a copy to:

With a copy to:

To the Trustee:

Section 12.07. Successors and Assigns. Subject to the provisions of Articles VI and IX, this Agreement shall inure to the benefit of and shall be binding on the successors and assigns of the Parties.

Section 12.08. Estoppel Certificates. On request at any time and from time to time during the Term, Manager shall execute, acknowledge and deliver to Owner or the Trustee,

within twenty (20) days following Manager's receipt of written request therefor, a certificate: (a) certifying that this Agreement has not been modified and is in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and specifying the modifications); (b) stating whether, to the best knowledge of the signatory of such certificate, any default exists, including any Event of Default, and if so, specifying each default of which the signatory may have knowledge; and (c) providing any additional information and statements reasonably requested by Owner or the Trustee; provided, however, that in no event shall Manager be required to agree to any modifications or waivers with respect to this Agreement or other agreements in effect between the Parties. The Parties acknowledge that the estoppel shall not constitute an amendment, modification or waiver of any term or condition of this Agreement, or any right or remedy of Manager hereunder with respect to any claims that are not known by Manager as of the date of such estoppel certificate. On similar notice or request from Manager, Owner and Trustee shall execute and deliver to Manager a similar certificate.

Section 12.09. Entire Agreement. This Agreement, the Cash Management Agreement, the Technical Services Agreement and the Pre-Opening Services Agreement constitute the entire contract between the Parties relating to the operation of the Hotel and supersedes all prior contracts and understandings, written or oral. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to the execution of this Agreement except as expressly stated in this Agreement. Neither Party shall have any remedy in respect of any untrue statement made by the other Party on which that Party relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that Party's only remedy shall be for breach of contract as provided in this Agreement.

Section 12.10. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

Section 12.11. Relationship of the Parties. Manager and Owner acknowledge and agree that this Agreement creates an independent contractor relationship. Nothing contained in this Agreement shall constitute, or be construed to be or to create, a partnership, joint venture or lease between Manager and Owner with respect to the Hotel or the operation thereof. This Agreement shall not be construed at any time to be an interest in real estate or a lien or security interest of any nature against the Hotel, the Site or any other land used in connection with the Site, or any equipment, fixtures, inventory, motor vehicles, contracts, documents, accounts, notes, drafts, acceptances, instruments, chattel paper, general intangibles or other personal property now existing or that may hereafter be acquired or entered into with respect to the Hotel or the operation thereof. Without limiting the generality of the foregoing, this Agreement shall not constitute or create a possessory interest of Manager in the Hotel pursuant to California Revenue and Taxation Code Section 107 or regulations adopted pursuant thereto. Notwithstanding anything to the contrary in this Agreement, in no event shall Manager have any right to bind Owner except as expressly set forth in this Agreement, nor shall Manager constitute an employee, agent or legal representative of Owner.

Section 12.12. No Personal Liability. Owner, Manager and the Trustee and their respective officers, directors, board members, commissioners, employees, agents or representatives shall not have any personal liability for the payment of any amounts under this

Agreement, the breach of any duties, obligations, covenants, agreements, responsibilities, or the representations and warranties contained in this Agreement.

Section 12.13. Limited Obligations. THE PAYMENT OBLIGATIONS OF OWNER UNDER THIS AGREEMENT (“OBLIGATIONS”) ARE SPECIAL LIMITED OBLIGATIONS OF OWNER PAYABLE SOLELY FROM THE TOTAL OPERATING REVENUES OF THE HOTEL, AMOUNTS HELD BY THE TRUSTEE PURSUANT TO THE TRUST AGREEMENT AND AVAILABLE PROCEEDS OF THE BONDS AS PROVIDED IN THIS AGREEMENT. THE OBLIGATIONS SHALL NOT IN ANY MANNER OR TO ANY EXTENT CONSTITUTE GENERAL OBLIGATIONS OF OWNER OR THE CITY. THE OBLIGATIONS ARE NOT A CHARGE UPON THE REVENUES OR GENERAL FUND OF OWNER OR THE CITY OR UPON ANY MONEYS OR OTHER PROPERTY OF OWNER OR THE CITY OTHER THAN THE TOTAL OPERATING REVENUES OF THE HOTEL, AMOUNTS HELD BY THE TRUSTEE PURSUANT TO THE TRUST AGREEMENT AND AVAILABLE PROCEEDS OF THE BONDS. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY ARE PLEDGED TO THE PAYMENT OF THE OBLIGATIONS. THE OBLIGATIONS ARE NOT SECURED BY A LEGAL OR EQUITABLE PLEDGE OF, OR CHARGE, LIEN, OR ENCUMBRANCE UPON, ANY OF THE PROPERTY OF OWNER OR OF THE CITY OR ANY OF ITS OR THEIR INCOME, REVENUES OR RECEIPTS, EXCEPT TOTAL OPERATING REVENUES OF THE HOTEL; PROVIDED, THAT OWNER’S OBLIGATIONS TO PAY MANAGEMENT FEES AND ANY UNAMORTIZED KEY MONEY PURSUANT TO SECTION 5.09(B) UPON A TERMINATION OF THIS AGREEMENT SHALL BE PAYABLE FROM AVAILABLE FUNDS OF OWNER IF AND TO THE EXTENT THAT AMOUNTS OTHERWISE PROVIDED THEREFOR UNDER THIS AGREEMENT AND THE TRUST AGREEMENT ARE INSUFFICIENT TO MAKE SUCH PAYMENTS.

Section 12.14. Certification of Funds; Budget and Fiscal Provisions. This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Payment and performance obligations for each Fiscal Year during the Term therefore are subject to the appropriation of funds for the Agreement. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors of the City. This Agreement shall not become effective until the City Controller has certified that amounts are or are expected to be available to satisfy Owner’s payment obligations under this Agreement. Owner’s payment obligations hereunder shall not at any time exceed the amount so certified by the City Controller. Except as may be provided by laws governing emergency procedures, officers and employees of Owner are not authorized to request, and Owner is not required to reimburse Manager for, commodities or services beyond the scope of this Agreement unless the change in scope is authorized by amendment and approved as required by Applicable Law. Officers and employees of Owner are not authorized to offer or promise, nor is Owner required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the Agreement is certified without certification of the additional amount by the City Controller.

Section 12.15. Further Assurances. The Parties shall do and procure to be done all such acts, matters and things and shall execute and deliver all such documents and instruments as shall be required to enable the Parties to perform their respective obligations under, and to give effect to the transactions contemplated by, this Agreement.

Section 12.16. Third Parties. Except as provided in the last two sentences of this Section, none of the obligations under this Agreement of either Party shall run to or be enforceable by any party other than the Parties to this Agreement or by a party deriving rights under this Agreement as a result of an assignment permitted pursuant to the terms of this Agreement. The Trustee shall be a third-party beneficiary under this Agreement and all indemnities and disclaimers in favor of Owner shall extend to the Trustee as a third-party beneficiary under this Agreement. As a third-party beneficiary, the Trustee shall also have the right to enforce its rights under this Agreement and exercise any rights it has with respect to the Hotel under the Trust Agreement, as a result of any assignment pertaining to this Agreement, or under any other Bond Document; provided, that other than as expressly provided in this Agreement or as set forth in the Trust Agreement, the Trustee shall have no additional or different rights than Owner has under this Agreement. Manager acknowledges that the Trustee has certain approval rights to the consents, approvals and other actions by Owner in this Agreement.

Section 12.17. Disclosure. In the event Owner shall, at any time or from time to time, sell or offer to sell, any securities (including the Initial Series of Bonds) issued by Owner, Manager shall reasonably cooperate in providing adequate disclosure regarding it in any disclosure document in connection therewith and certify that such information is true and complete in all material respects and does not omit a material fact necessary to make such disclosure true and complete in all material respects for the purposes for which provided.

Section 12.18. Exhibits. The Exhibits which are attached to this Agreement are hereby incorporated into and made a part of this Agreement for all purposes.

Section 12.19. Amendments to Trust Agreement. At least ten (10) days prior to executing any proposed amendment to the Trust Agreement or other Bond Documents, Owner shall deliver to Manager copies thereof. Owner shall not execute any such amendment without Manager's prior written consent if in the reasonable opinion of Manager delivered within ten (10) days after the receipt of the proposed amendments such amendments could adversely affect any of Manager's rights, recourses, remedies, entitlements, benefits, liabilities, burdens or obligations under this Agreement, the Cash Management Agreement or the Trust Agreement.

Section 12.20. Non-Waiver of Government Rights. By entering into this Agreement, Owner is specifically not obligating itself or any other Governmental Authority with respect to any discretionary or regulatory action relating to development or operation of the Hotel, including rezoning, variances, environmental clearances, regulatory plan approvals, code compliance or any other Governmental Authority approvals or regulatory actions which are or may be required or authorized.

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

HYATT CORPORATION

By _____
Name _____
Title _____

AIRPORT COMMISSION OF THE CITY
AND COUNTY OF SAN FRANCISCO

By _____
John L. Martin
Airport Director

Attest:

By _____
Jean Caramatti, Secretary
Airport Commission

Resolution No: _____

Adopted on: _____

Approved as to form:
DENNIS J. HERRERA,
City Attorney

By _____
[Name]
Deputy City Attorney