



# Pima County Clerk of the Board

Robin Brigode

Julie Castañeda  
Deputy Clerk

Administration Division  
130 W. Congress, 5<sup>th</sup> Floor  
Tucson, AZ 85701  
Phone: (520)724-8449 • Fax: (520)222-0448

Document and Micrographics Mgt. Division  
1640 East Benson Highway  
Tucson, Arizona 85714  
Phone: (520) 351-8454 • Fax: (520) 791-6666

October 3, 2016

Andrea Dahlman Lewkowitz  
La Paloma Country Club  
2600 N. Central Avenue, Suite 1775  
Phoenix, AZ 85004

RE: Arizona Liquor License No.: 14103033  
d.b.a. La Paloma Country Club

Dear Ms. Lewkowitz:

Enclosed is a copy of the Affidavit of Posting relative to your Liquor License Application for a Series 14, Private Club, which was received in our office on September 6, 2016. The Hearing before the Pima County Board of Supervisors has been scheduled for Tuesday, October 18, 2016, at 9:00 a.m. or thereafter, at the following location:

Pima County Administration Building  
Board of Supervisors Hearing Room  
130 W. Congress, 1st Floor  
Tucson, AZ 85701

Should you have any questions pertaining to this matter, please contact this office at (520)724-8449.

Sincerely,

A handwritten signature in cursive script that reads "Robin Brigode".

Robin Brigode  
Clerk of the Board

Enclosure



Arizona Department of Liquor Licenses and Control
800 W Washington 5th Floor
Phoenix, AZ 85007-2934
www.azliquor.gov
(602) 542-5141

AFFIDAVIT OF POSTING

Date of Posting: 9-9-16

Date of Posting Removal: 9-30-16

Applicant's Name: La Paloma Country Club
Lewkowitz Andrea Dahlman
Last First Middle

Business Address: 3660 E. Sunrise Drive Tucson 85718
Street City Zip

License #: 14103033

I hereby certify that pursuant to A.R.S. 4-201, I posted notice in a conspicuous place on the premises proposed to be licensed by the above applicant and said notice was posted for at least twenty (20) days.

Armando Tenorizas Process Server 503068003
Print Name of City/County Official Title Phone Number

[Signature] #7694 9-30-16
Signature Date Signed

Return this affidavit with your recommendations (i.e., Minutes of Meeting, Verbatim, etc.) or any other related documents. If you have any questions please call (602) 542-5141 and ask for the Licensing Division.

DEPT OF REVENUE & FINANCE



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Phone: (520) 351-8454 • Fax: (520) 791-6666

TO: Development Services, Zoning Division  
FROM: Katrina Martinez  
Administrative Support Specialist  
DATE: September 7, 2016  
RE: Zoning Report - Application for Liquor License

Attached is the application of:

Andrea Dahlman Lewkowitz  
d.b.a. La Paloma Country Club  
3660 E. Sunrise Drive  
Tucson, AZ 85718

Arizona Liquor License No. 14103033  
Series 14, Private Club  
New License   
Person Transfer   
Location Transfer

ZONING REPORT

DATE: 9/8/16

Will current zoning regulations permit the issuance of the license at this location?

Yes  No

If No, please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pima County Zoning Inspector

When complete, please return to [cob\\_mail@pima.gov](mailto:cob_mail@pima.gov)

SEP 08 16 09:23 AM PCC/KCF/DD



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Tucson, Arizona 85714  
Phone: (520) 351-8454 • Fax: (520) 791-6666

TO: Pima County Sheriff's Department  
Investigative Support Unit

FROM: Katrina Martinez  
Administrative Support Specialist

DATE: September 7, 2016

RE: Sheriff's Report - Application for Liquor License

Attached is the application of:

Andrea Dahlman Lewkowitz  
d.b.a. La Paloma Country Club  
3660 E. Sunrise Drive  
Tucson, AZ 85718


Arizona Liquor License No. 14103033  
 Series 14, Private Club  
 New License  X  
 Person Transfer   
 Location Transfer

SHERIFF'S REPORT

DATE: 09/19/16

Is there any reason this application should not be recommended for approval?

- NOTHING NOTED

  
 \_\_\_\_\_  
 Investigative Support Unit Supervisor

When complete, please return to [cob\\_mail@pima.gov](mailto:cob_mail@pima.gov)

SFP 151610437 PCD/KCF/RD  
AR3



16 SEP 1 14. Lic PM12:15

Arizona Department of Liquor Licenses and Control
800 W Washington 5th Floor
Phoenix, AZ 85007-2934
www.azliquor.gov
(602) 542-5141

16-18-9261

Application for Liquor License
Type or Print with Black Ink

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE
A service fee of \$25 will be charged for all dishonored checks (A.R.S. § 44-6852)

SECTION 1 This application is for a:

- Interim Permit (Complete Section 5)
New License (Complete Sections 2, 3, 4, 13, 14, 15, 16)
Person Transfer (Complete Section 2, 3, 4, 12, 13, 14, 16)
Location Transfer (Bars and Liquor Stores Only)
Probate/ Will Assignment/ Divorce Decree
Government (Complete Sections 2, 3, 4, 10, 13, 16)
Seasonal

SECTION 2 Type of Ownership:

- J.T.W.R.O.S. (Complete Section 6)
Individual (Complete Section 6)
Partnership (Complete Section 6)
Corporation (Complete Section 7)
Limited Liability Co (Complete Section 7)
Club (Complete Section 8)
Government (Complete Section 10)
Trust (Complete Section 6)
Tribe (Complete Section 6)
Other (Explain)

SECTION 3 Type of license

1. Type of License: Series 14 LICENSE # 14103033

SECTION 4 Applicants

- Individual Owner/Agent's Name: Lewkowitz Andrea Dahlman
Owner Name: Merritt Hospitality, LLC
Business Name: La Paloma Country Club
Business Location Address: 3660 E. Sunrise Drive Tucson AZ 85718 Pima
Mailing Address: 2600 N. Central Avenue, Suite 1775 Phoenix AZ 85004
Business Phone: (520)742-6000 Daytime Contact Phone: (602) 200-7222
Email Address: andrea@lewklaw.com
8. Is the Business located within the incorporated limits of the above city or town? Yes No
9. Does the Business location address have a street address for a City or Town but is actually in the boundaries of another City, Town or Tribal Reservation? Yes No
If yes, what City, Town or Tribal Reservation is this Business located in: Pima County
10. Total Price paid for Series 6 Bar, Series 7 Beer & Wine Bar or Series 9 Liquor Store ( license only) \$

Fees: Application \$100.00 Interim Permit \$100.00 Department Use Only Site Inspection Finger Prints Total of All Fees \$200.00
Is Arizona Statement of Citizenship & Alien Status for State Benefits complete? Yes No
Accepted by: [Signature] Date: 9/1/16 License # 14103033

**SECTION 5 Interim Permit**

- If you intend to operate business when your application is pending you will need an interim permit pursuant to ARS § 4-203.01
- There **MUST** be a valid license of the same type you are applying for currently issued to the location or for the replacement of a Hotel/Motel license with a Restaurant license pursuant to A.R.S. § 4-203.01.

1. Enter license number currently at the location: 14103025

2. Is the license currently in use?  Yes  No If no, how long has it been out of use? \_\_\_\_\_

**Attach a copy of the license currently issued at this location to this application.**

I, Marshall J. Donat <sup>AMES</sup> declare that I am the CURRENT OWNER, AGENT, OR CONTROLLING PERSON on the stated license and location.  
(Print Full Name)

X \_\_\_\_\_ State of CONNECTICUT County of FAIRFIELD  
(Signature of CURRENT Individual Owner/Agent) The foregoing instrument was acknowledged before me this

My commission expires on: JAN. 31, 2014 25<sup>TH</sup> of AUGUST, 2016  
Date Day Month Year

Renaris Capello  
Signature of NOTARY PUBLIC

**SECTION 6 Individual, Partnership, J.T.W.R.O.S, Trust, Tribe Ownerships**

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE, AN "APPLICANT" TYPE FINGERPRINT CARD AND \$22 PROCESSING FEE FOR EACH CARD.

**Individual**

Last	First	Middle	%Owned	Mailing Address	City	State	Zip Code

Is any person other than above, going to share in profit/losses of the business?  Yes  No  
 If Yes, give name, current address, and telephone number of person(s). Use additional sheets if necessary.

Last	First	Middle	Mailing Address	City	State	Zip Code	Phone #

**Partnership**

Name of Partnership: \_\_\_\_\_

General-Limited	Last	First	Middle	%Owned	Mailing Address	City	State	Zip Code
<input type="checkbox"/> <input type="checkbox"/>								
<input type="checkbox"/> <input type="checkbox"/>								
<input type="checkbox"/> <input type="checkbox"/>								
<input type="checkbox"/> <input type="checkbox"/>								

**J.T.W.R.O.S (Joint Tenant with Rights of Survivorship)**

Name of J.T.W.R.O.S: \_\_\_\_\_

Last	First	Middle	Mailing Address	City	State	Zip Code

STATE OF ARIZONA  
DEPARTMENT OF LIQUOR LICENSES  
AND CONTROL  
ALCOHOLIC BEVERAGE LICENSE  
License 14103025

Issue Date: 9/14/2012

Expiration Date: 10/31/2016

Issued To:

ANDREA DAHLMAN LEWKOWITZ, Agent  
WESTERN HOST INC, Owner

Location:

LA PALOMA COUNTRY CLUB  
3660 E SUNRISE DR  
TUCSON, AZ 85718

Mailing Address:

ANDREA DAHLMAN LEWKOWITZ  
WESTERN HOST INC  
LA PALOMA COUNTRY CLUB  
15147 N SCOTTSDALE RD STE H-210  
ATTN: JASON CREED  
SCOTTSDALE, AZ 85254

**EXP 10/31/2016**

POST THIS LICENSE IN A CONSPICUOUS PLACE

'16 SEP 1 11:49. Lic. PM12:15

**SECTION 6 - continued**

**TRUST**

Name of Trust: \_\_\_\_\_

Last	First	Middle	Mailing Address	City	State	Zip Code

**TRIBE**

Name of Tribal Ownership: \_\_\_\_\_

Last	First	Middle	Mailing Address	City	State	Zip Code

**SECTION 7 Corporations/ Limited Liability Co**

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE, AN "APPLICANT" TYPE FINGERPRINT CARD AND \$22 PROCESSING FEE FOR EACH CARD.

Corporation Complete Questions 1, 2, 3, 4, 5, 6, and 7

L.L.C. Complete Questions 1, 2, 3, 4, 5, 6, and 7

1. Name of Corporation/ L.L.C.: Merritt Hospitality, LLC

2. Date Incorporated/Organized: 7/8/2016 State where Incorporated/Organized: Delaware

3. AZ Corporation or AZ L.L.C File No: R-2106413-6 Date authorized to do Business in AZ: 7/12/2016

4. Is Corp/L.L.C. Non Profit?  Yes  No

5. List Directors, Officers, Members in Corporation/L.L.C:

Last	First	Middle	Title	Mailing Address	City	State	Zip Code
See attached							

(Attach additional sheet if necessary)

6. List all Stockholders / percentage owners who own 10% or more:

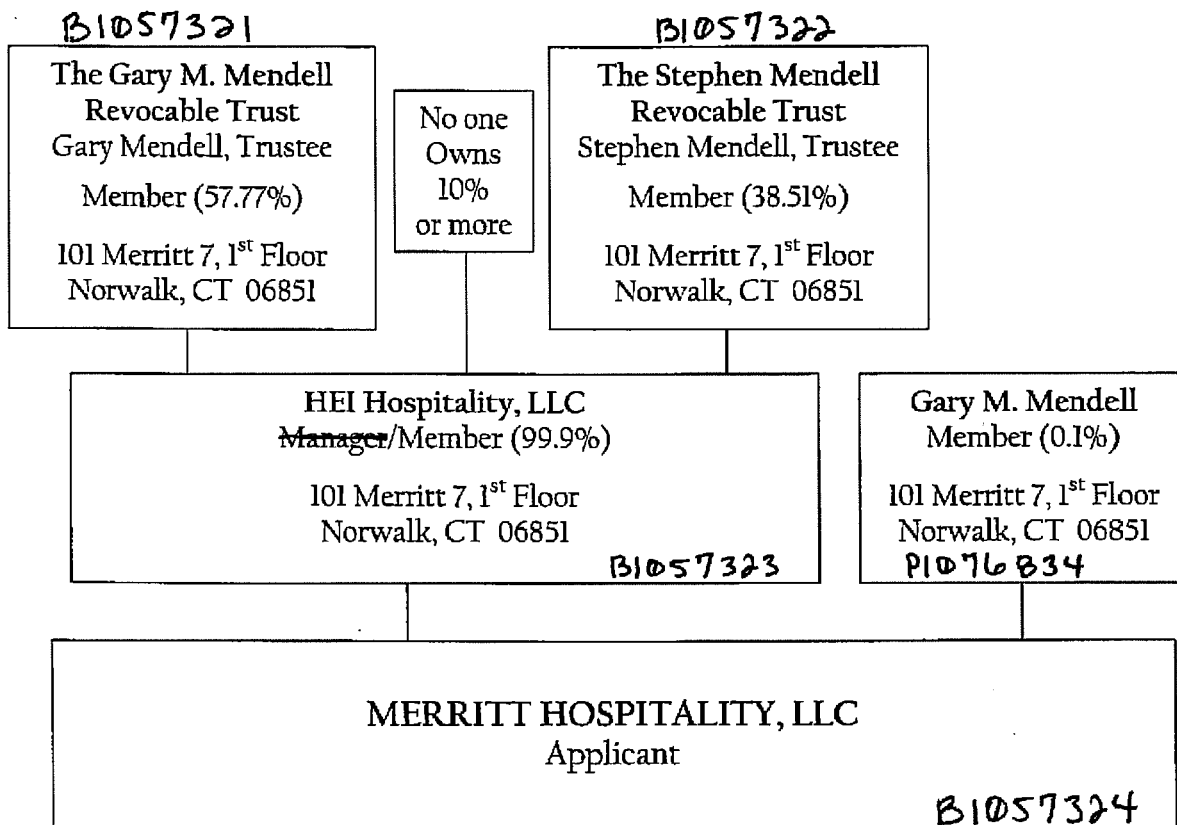
Last	First	Middle	%Owned	Mailing Address	City	State	Zip Code
See attached							

(Attach additional sheet if necessary)

7. If the corporation/ L.L.C are owned by another entity, attach an Organizational **FLOWCHART** showing the structure of the ownership. Attach additional sheets as needed in order to disclose the Officers, Directors, Members, Managers, Partners, Stockholders and percentage owners of those entities.



Merritt Hospitality, LLC  
Ownership Chart



**SECTION 8 Club Applicants**

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE, AN "APPLICANT" TYPE FINGERPRINT CARD AND \$22 PROCESSING FEE FOR EACH CARD

1. Name of Club: \_\_\_\_\_
2. Is Club non-profit?  Yes  No
3. List all controlling members (minimum of four (4) requested)

Last	First	Middle	Mailing Address	City	State	Zip Code

(Attach additional sheet if necessary)

**SECTION 9 Probate, Will Assignment or Divorce Decree of an existing Liquor License**

1. Current Licensee's Name: \_\_\_\_\_  
(Exactly as it appear on the license) Last First Middle
2. Assignee's Name: \_\_\_\_\_  
Last First Middle
3. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_

ATTACH TO THIS APPLICATION A CERTIFIED COPY OF THE WILL, PROBATE DISTRIBUTION INSTRUMENT, OR DIVORCE DECREE THAT SPECIFICALLY DISTRIBUTES THE LIQUOR LICENSE TO THE ASSIGNEE.

**SECTION 10 Government (for cities, towns, or counties only)**

1. Government Entity: \_\_\_\_\_
2. Person/Designee: \_\_\_\_\_  
First Last Middle Day time Contact Phone #

A SEPARATE LICENSE MUST BE OBTAINED FOR EACH PREMISE FROM WHICH SPIRITUOUS LIQUOR IS SERVED.

**SECTION 11 Location to Location Transfer: Series 6 Bar, Series 7 Beer & Wine Series 9 Liquor Stores only)**

1. Current Business: Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
(Exactly as it appears on license)
2. New Business: Name: \_\_\_\_\_  
Address: \_\_\_\_\_
1. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_

16 SEP 1 19. Lic. #M1215

**SECTION 12 Person to Person Transfer**

**Questions to be completed by Current Licensee (Bar and Liquor Stores Only- Series, 06, 07, and 09)**

1. Individual Owner / Agent Name: \_\_\_\_\_ Entity: \_\_\_\_\_  
Last First Middle (Individual, Agent, Etc.)

2. Ownership Name: \_\_\_\_\_  
(Exactly as it appears on license)

3. Business Name: \_\_\_\_\_  
(Exactly as it appears on license)

4. Business Location Address: \_\_\_\_\_  
Street City State Zip

5. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_

6. Current Mailing Address: \_\_\_\_\_  
Street City State Zip

7. Have all creditors, lien holders, interest holders, etc. been notified?  Yes  No

8. Does the applicant intend to operate the business while this application is pending?  Yes  No

If yes, complete Section 5 (Interim Permit) of this application; attach fee, and current license to this application.

9. I, (Print Full Name) \_\_\_\_\_ hereby authorize the department to process this Application to transfer the privilege of the license to the applicant provided that all terms and conditions of sale are met. Based on the fulfillment of these conditions, I certify that the applicant now owns or will own the property rights of the license by the date of issue.

I, (Print Full Name) \_\_\_\_\_, declare that I am the **CURRENT OWNER, MEMBER, PARTNER STOCKHOLDER or LICENSEE** of the stated license. I have read the above Section 12 and confirm that all statements are true, correct, and complete.

**NOTARY**

X \_\_\_\_\_  
(Signature of CURRENT Individual Owner/Agent)

State of \_\_\_\_\_ County of \_\_\_\_\_  
The foregoing instrument was acknowledged before me this

My commission expires on: \_\_\_\_\_  
Date

\_\_\_\_\_ of \_\_\_\_\_  
Day Month Year

\_\_\_\_\_  
Signature of NOTARY PUBLIC

16 SEP 1 Lic. Lic. #1215

**SECTION 13 Proximity to Church or School**

Questions to be completed by all in-state applicants.

A.R.S. § 4-207. (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizontal feet of a fenced recreational area adjacent to such school building.

The above paragraph DOES NOT apply to:

- a) Restaurant license (§ 4-205.02) Series 12
- b) Hotel/motel license (§ 4-205.01) Series 11
- c) Microbrewery Series 3
- d) Craft Distillery Series 18

- e) Government license (§ 4-205.03) Series 5
- f) Fenced playing area of a golf course (§ 4-207(B)(5))
- g) Wholesaler Series 4
- h) Farm Winery Series 13

1. Distance to nearest School: 5,808 ft Name of School: Catalina Foothills High School  
(If less than one (1) mile note footage)  
 Address: 4300 E. Sunrise Drive, Tucson, AZ 85718

2. Distance to nearest Church: 7,920 ft Name of Church: Catalina Foothills Church  
(If less than one (1) mile note footage)  
 Address: 2150 E. Orange Grove Road, Tucson, AZ 85718

**SECTION 14 Business Financials**

1. I am the:  Lessee  Sub-lessee  Owner  Purchaser  Management Company

2. If the premise is leased give lessors: Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
Street City State Zip

3. Monthly Rent/ Lease Rate: \$ \_\_\_\_\_

4. What is the remaining length of the lease? Yrs. \_\_\_\_\_ Months \_\_\_\_\_

5. What is the penalty if the lease is not fulfilled? \$ \_\_\_\_\_ or Other: \_\_\_\_\_  
(Give details-attach additional sheet if necessary)

6. Total money borrowed for the Business not including lease? \$ 0.00  
 Please List Lenders/People you owe money to for business.

Last	First	Middle	Amount Owed	Mailing Address	City	State	Zip

(Attach additional sheet if necessary)

7. What type of business will this license be used for (be specific)?  
Country Club

8. Has a license or a transfer license for the premises on this application been denied by the state with in the past (1) year?  Yes  No If yes, attach explanation.

9. Does any spirituous liquor manufacture, wholesaler, or employee have an interest in your business?  Yes  No

10. Is the premises currently license with a liquor license?  Yes  No

If yes, give license number and licensee's name:

License #: 14103025 Individual Owner /Agent Name: Andrea Dahlman Lewkowicz  
(Exactly as it appears on license)

## MANAGEMENT AGREEMENT

This Management Agreement (the "Agreement") is made and entered into as of this 1 day of September, 2016 (the "Effective Date") by and between SWVP LA PALOMA, LLC, a Delaware limited liability company ("Owner"), and MERRITT HOSPITALITY, LLC, a Delaware limited liability company ("Operator").

### RECITALS:

A. Owner is the fee owner of the Premises which, together with associated improvements, parking areas and personal property, is presently known as the Westin La Paloma Resort & Spa located at 3800 E. Sunrise Drive, Tucson, Arizona 85718, and is defined herein as the "Hotel".

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

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

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

### ARTICLE 1 DEFINITIONS

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

"Accounting Period" shall mean each calendar month (or portion thereof) each Fiscal Year.

"Adjusted GOP" shall mean, for any Fiscal Year, Gross Operating Profit less the sum of the following non-operating income, expense and other items: (i) the Base Fee, (ii) Taxes, (iii) Insurance Costs, (iv) the amount required to be funded into the Reserve as required by Section 7.2, but in no event in an aggregate amount of more than four percent (4.0%) of Gross Revenues, (v) any payments under equipment leases for equipment used at the Hotel (excluding Third-Party Operated Areas, and to the extent not already included in Operating Expenses) and (vi) Owner's Priority Return.

"Adjusted Gross Revenues" shall mean Gross Revenues less Gross Revenues earned by the Hotel pursuant to the Troon Agreement and the Resort Retail Agreement.

"ADR Provider" shall have the meaning set forth in Section 27.2(a).

**"Affiliate"** shall mean any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with another person or entity. The term **"control"** (and correlative terms) shall mean the power, whether by contract, equity ownership or otherwise, to direct the policies or management of a person or entity. Without limiting the foregoing, an **"Affiliate"** also includes any partner or a partnership of any party to this Agreement, any member or membership parties thereto and any corporation, partnership, individual or trust related to or controlling or controlled by such partnership, individual or trust related to or controlling or controlled by such partnership party or its partners or such membership party or its members. A natural person is related to another natural person if he or she is a spouse, parent, or lineal descendant of the other person. Notwithstanding the foregoing, in no event shall any real estate investment or real estate fund made by or under the control of HEI Hospitality, LLC or its principals constitute an **"Affiliate"** of Operator.

**"Agreement"** shall have the meaning set forth in the introductory section of this Agreement.

**"Annual Operating Budget"** shall mean an annual operating projection for the Hotel (excluding Third-Party Operated Areas) prepared and submitted by Operator to Owner and approved by Owner for each Fiscal Year pursuant to Section 4.2(a).

**"Annual Plan"** shall mean an annual business plan for the operation of the Hotel (excluding Third-Party Operated Areas) prepared by the Operator and approved by the Owner, which shall include the Annual Operating Budget, the Capital Budget, and any other material included therein by Operator as provided in Section 4.2.

**"Arbitrator"** shall have the meaning set forth in Section 27.2(c).

**"Base Fee"** shall have the meaning set forth in ARTICLE 11.

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

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

**"Capital Budget"** shall mean Operator's proposed estimate of FF&E Expenditures and Capital Improvements submitted to Owner each Fiscal Year pursuant to Section 4.2(b).

**"Capital Improvements"** shall mean any expenditures properly categorized under GAAP as capital in nature, for any alterations, improvements, replacements, and additions to the Building or the Building Systems but shall not include any FF&E Expenditures.

**"Centralized Services"** shall have the meaning set forth in Section 4.6.

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

**“Commencement Date”** shall mean the date on which Operator assumes the management and operation of the Hotel.

**“Competitive Set”** shall mean initially, the following list of hotels: i) Hilton Tucson El Conquistador, ii) Loews Ventana Canyon Resort, iii) Omni Tucson National Resort & Spa, iv) JW Marriott Tucson Starr Pass Resort & Spa, and v) Ritz-Carlton Dove Mountain, subject to any revisions to such list agreed upon by Owner and Operator from time to time.

**“Corporate Personnel”** shall mean any of Operator’s executive level personnel holding a position of Vice President or higher from Operator’s corporate headquarters who perform activities at or on behalf of the Hotel in connection with the services provided by Operator under this Agreement.

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

**“Default Rate”** shall mean the lesser of (i) the Prime Rate plus 4% per annum or (ii) the highest lawful rate permitted by applicable Legal Requirements from time to time.

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

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

**“Employee Claims”** shall mean any and all claims (including all fines, judgments, penalties, costs, litigation and/or arbitration expenses, attorneys’ fees and expenses, and costs of settlement with respect to any such claim) by any employee of Operator against Owner or Operator related to the employment at the Hotel of such employee. “Employee Claims” shall include, without limitation, the following: (i) any claim related to an alleged breach of an employment related contract affecting employees at the Hotel provided the contract has been disclosed to Owner prior to the date hereof or is approved by Owner in its reasonable discretion after the date hereof; and (ii) any claim alleging that one or more state or federal laws relating to employees has been violated.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended.

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

**“Expert”** shall mean an independent, neutral and impartial individual having not less than ten (10) years’ experience in or for the hospitality industry in the area of expertise on which the dispute is based (e.g. with respect to operational matters, experience in the management and

operation of hotels of a similar nature as the Hotel or, with respect to financial matters, experience in the financial or economic evaluation or appraisal of hotels) and shall not have any conflict of interest with either party.

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

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

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

**"Force Majeure Event"** shall mean any one or more of the following events or circumstances that, alone or in combination, directly or indirectly, materially and adversely affects the operation of the Hotel: (i) fire, earthquake, hurricane, tornado, flood, storm or other casualty; (ii) epidemics, quarantine restrictions or other public health restrictions or advisories; (iii) strikes, lockouts, or other labor interruptions; (iv) war, rebellion, riots, acts of terrorism, or other civil unrest or commotion; shortage of critical materials or supplies; (v) disruption to local, national or international transport services; (vi) embargoes, lack of materials, water, power or telephone transmissions necessary for the operation of the Hotel in accordance with this Agreement; or (vii) action or inaction of governmental authorities having jurisdiction over the Hotel, but in all instances excluding the financial inability of either party to perform or otherwise meet its obligations.

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

**"GOP Test"** shall have the meaning set forth in Section 17.2.



**“Gross Operating Profit” or “GOP”** shall mean the amount by which Gross Revenues of the Hotel exceed Operating Expenses of the Hotel (which, for the avoidance of doubt, excludes the Base Fee).

**“Gross Revenues”** shall mean all revenues and receipts of every kind derived from the Hotel and all departments and parts thereof, as finally determined on an accrual basis in accordance with the Uniform System of Accounts, including, but not limited to, revenues and income (both cash and credit transactions) before commissions and discounts for prompt or cash payments, from the rental of rooms and lobby space, exhibit or sales space of any kind, including without limitation, charges for reservations, deposits and cancellation fees not refunded to guests; income from vending machines, health club membership fees, wholesale and retail sales of merchandise, service fees and charges, business interruption insurance claims in respect of the Hotel, condemnation awards for temporary use of the Hotel, license, lease and concession fees and rentals or other management income received by Owner (but not including the gross receipts of any licensees, lessees and concessionaires), revenues (including, but not limited to, any lease or rent payments) from the Third-Party Operated Areas, food and beverages sales, and other sales of every kind conducted by, through or under Operator in connection with the Hotel. Notwithstanding the above, Gross Revenues shall not include (i) federal, state and municipal excise, sales and use taxes or similar impositions collected directly from patrons or guests or included as part of the sales price of any goods or services, or any refunds or rebates received from tax appeals of any of these taxes; (ii) refunds or rebates received from appeals of Taxes paid; (iii) proceeds arising from the sale or other disposition of property described in Section 1231 of the Internal Revenue Code or of capital assets; (iv) proceeds from condemnation and payments received on account of insurance policies (other than the proceeds from business interruption insurance and from condemnation awards for temporary use of the Hotel when received); (v) proceeds from claims for damages suffered by Operator or Owner, unless in recompense for a lost revenue item; and (vi) interest earned on the Reserve.

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

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

**“Hotel Employees”** shall mean all individuals performing services in the name of the Hotel at the Hotel (excluding Third-Party Operated Areas), in connection with the Hotel’s business, whether employees of Operator or its Affiliates, but in any event, excluding the Corporate Personnel.

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

**“Implied Fiduciary Duties”** shall have the meaning as defined in ARTICLE 29.

16 SEP 1 09:16 PM '15

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

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

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

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

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

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

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

**"Lender"** shall have the meaning set forth in the definition of "Mortgage".

**"License Agreement"** shall mean the applicable franchise or license agreement issued to Owner by Westin Hotel Management, L.P.; should for any reason the License Agreement as above defined terminate or cease to exist, then the term "License Agreement" shall thereafter mean the franchise or license agreement from time to time entered into by Owner with respect to the branding and operation of the Hotel, subject to the terms of Section 28.

**"Licensor"** shall mean Westin Hotel Management, L.P., a Delaware limited partnership; should for any reason the License Agreement as above defined terminate or cease to exist, then the term "Licensor" shall mean the licensor as defined in any license agreement from time to time entered into by Owner with respect to the branding and operation of the Hotel.

**"Litigation Claims"** shall have the meaning set forth in Section 27.2(b).

**"Major Renovations"** shall mean a contemporaneously made set or series of alterations, additions and/or improvements to the Hotel or any material renovation, remodeling or refurbishing of the Hotel (or any portion thereof) implemented by Owner or required under a so-called "property improvement plan" imposed under a License Agreement, which customarily

would be managed by a third party project manager, but which shall not include any routine Repairs and Maintenance with respect to Capital Improvements or FF&E.

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

**"Measurement Year"** shall have the meaning set forth in Section 17.2(a).

**"Mediator"** shall have the meaning set forth in Section 27.2(a).

**"Mortgage"** shall mean, collectively, each of the documents evidencing or securing current or future indebtedness encumbering the Hotel in favor of a third party lender or financial institution or any successor thereto or replacement thereof (the **"Lender"**).

**"Multi-Property Programs"** shall have the meaning set forth in Section 4.7.

**"Notice"** shall have the meaning set forth in ARTICLE 19.

**"Notice of Proposed Sale"** shall have the meaning set forth in Section 21.2.

**"OFAC"** shall have the meaning set forth in ARTICLE 25(c).

**"Operating Account"** shall mean Owner's operating account for the Hotel that exists as at the Effective Date, bearing the name of the Hotel, or, if elected by Owner and Operator, such other account or accounts established by Operator in a federally insured bank or trust company selected by Owner.

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

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

**"Operating Standards"** shall mean the operation of the Hotel in a manner consistent with the requirements under the applicable License Agreement; provided, however, that in the event there is no License Agreement in effect, such standards shall mean those standards of management and operation that are comparable to hotels in the Competitive Set with generally similar services and amenities as the Hotel.

**"Operator"** shall have the meaning set forth in the introductory section of this Agreement.

**"Operator Indemnified Parties"** shall have the meaning set forth in Section 22.2.

**"Operator Rebates"** shall have the meaning set forth in Section 4.7.

16 SEP 1 10:49 AM '15

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

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

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

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

**“Owner’s Priority Return”** shall mean, with respect to each Fiscal Year (pro-rated for any partial Fiscal Year), an amount equal to the following: (i) for full Fiscal Year 2017, \$7,750,000, (ii) for full Fiscal Year 2018, \$8,850,000, (iii) for full Fiscal Year 2019, \$9,150,000 and (iv) for full Fiscal Year 2020 and any full Fiscal Year through the end of Term, the Owner’s Priority Return for such full Fiscal Year shall be equal to the Owner’s Priority Return for the immediately preceding Fiscal Year plus any increases in CPI for the-then current Fiscal Year.

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

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

**“Premises”** shall mean the land on which the Hotel is located, which land is more particularly described in that certain Special Warranty Deed dated as of March 30, 2005, from CAESAR PARK HOTELS & RESORTS TUCSON COMPANY, a Delaware corporation, as grantor, to SCG TUCSON PROPERTY, L.L.C., a Delaware limited liability company (Owner’s predecessor in interest), as grantee, and recorded on April 5, 2005 in the official records of Pima County, Arizona, as Docket No. 12524 Page 4695.

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

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

**“Prohibited Persons”** shall have the meaning as defined in ARTICLE 25(c).

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

will Reimbursable Expenses include or duplicate expenses for Operator's overhead or Centralized Services.

**"Repairs and Maintenance"** shall have the meaning as defined in Section 8.1.

**"Reserve"** shall mean an account maintained as a reserve for FF&E Expenditures.

**"Resort Retail Agreement"** shall mean that certain Retail Operations Agreement dated December 30, 2014, between Owner and Resort Retail Incorporated (**"Resort Retail"**), whereby Resort Retail was engaged to manage and operate the Hotel's two retail shops, currently named Sunstations and Essentials. Should for any reason the Resort Retail Agreement as above defined terminate or cease to exist, then the term "Resort Retail Agreement" shall thereafter mean the management or license agreement from time to time entered into by Owner with respect to the operation of the Hotel's retail shops as approved by Operator in accordance with Section 2.2.

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

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

**"RevPAR Penetration Index"** shall mean a percentage that is calculated by dividing (i) the actual RevPAR for the Hotel, by (ii) the actual average RevPAR for the hotels in the Competitive Set, as set forth in the Revenue Data Publication.

**"RevPAR Test"** shall have the meaning set forth in Section 17.2.

**"Rules"** shall have the meaning set forth in Section 27.2(c).

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

**"Sale Termination Notice"** shall have the meaning set forth in Section 17.1.

**"State"** shall mean the State in which the Hotel is located or other as designated.

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

**"Taxes"** shall mean all real and personal property taxes and other governmental impositions. Notwithstanding the foregoing, the term "Taxes" as used in this Agreement shall specifically exclude (a) all sales, use, excise, and hotel occupancy taxes collected directly from patrons and guests or as part of the sales price of any goods, services or displays and paid over to federal, state or municipal governments, (b) all income, franchise and municipal licenses or similar taxes of Owner or Operator or their respective Affiliates, and (c) any and all utility consumption costs. For the purpose of calculating the Incentive Fee, Taxes shall be equal to \$1,387,000 for the full Fiscal Year 2016 and increased by three (3%) for each subsequent full Fiscal Year.

**"Term"** shall have the meaning set forth in Section 3.1.

**"Termination Fee"** shall mean an amount determined as follows:

(a) From and after the Commencement Date until the end of the thirty sixth (36th) full calendar month following the Commencement Date an amount equal to the product of (A) the sum of (i) thirty-six (36) less (ii) number of full calendar months of Term since the Commencement Date multiplied by (B) the quotient of (i) the Management Fees payable for the twelve (12) full calendar months immediately preceding the date of a termination of this Agreement, divided by (ii) twelve (12). If at the time of termination of this Agreement the Base Fee shall have been payable for less than twelve (12) full calendar months, then the Termination Fee shall equal the product of (X) the sum of (i) thirty six (36) less (ii) number of full calendar months of Term since the Commencement Date multiplied by (Y) the average monthly Management Fee paid for each full Accounting Period in which this Agreement was in effect up to and including the last full calendar month immediately preceding the termination date;

(b) From and after the first day of the thirty seventh (37th) full calendar month following the Commencement Date, an amount equal to zero.

**"Third-Party Operated Areas"** shall have the meaning as defined in Section 2.2.

**"Third-Party Operators"** shall have the meaning as defined in Section 2.2.

**"Threshold Adjustment Event"** shall mean the occurrence of a Force Majeure Event; casualty or condemnation of all or any portion of the Hotel; an adjustment to the Competitive Set, including any rebranding or material renovations occurring at one or more of the Competitive Set hotels; undertaking of Capital Improvements which materially and adversely affect the income generating areas of the Hotel or any other area material to the operation of the Hotel unless such Capital Improvements are contemplated in the Annual Plan for the Fiscal Year in question; or an Owner Event of Default.

**"Transfer"** shall mean any assignment of this Agreement, transfer of any direct or indirect ownership interest in Owner, or Sale of the Hotel.

**"Troon Agreement"** shall mean that certain Country Club Management Agreement dated March 1, 1997, between Owner (as successor in interest to the prior Hotel owners) and Troon Golf, L.L.C., a Delaware limited liability company ("Troon"), as amended from time to

time, whereby Troon was engaged to manage and operate the Hotel's country club facilities which includes the golf course operations and tennis facility operations, as more fully defined in the Troon Agreement; should for any reason the Troon Agreement as above defined terminate or cease to exist, then the term "Troon Agreement" shall thereafter mean the management or license agreement from time to time entered into by Owner with respect to the operation of the Hotel's country club operations (including the golf course operations and the tennis facility operations) as approved by Operator in accordance with Section 2.2.

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

"WARN Act" shall have the meaning as defined in Section 18.1.

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

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

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

## **ARTICLE 2**

### **ENGAGEMENT OF OPERATOR**

2.1 **Engagement and Duties of Operator.** Owner hereby engages and appoints Operator, pursuant to the terms of this Agreement, to operate and manage the Hotel, and Operator hereby agrees and contracts to operate, manage and supervise the Hotel for and on behalf of Owner in accordance with the Annual Plan (subject to Section 4.2(c)) and pursuant to the terms of this Agreement. Subject to the terms of this Agreement, Hotel operations shall be under the exclusive supervision and control of Operator, which, except as otherwise specifically provided in this Agreement, shall be responsible for the proper and efficient operation, maintenance and repair of the Hotel in accordance with the terms of this Agreement. Subject to the terms of this Agreement, Operator shall have full discretion and control with respect to all matters relating to

management and operation of the Hotel, including, without limitation, charges for rooms and commercial space, credit policies, food and beverage services, other Hotel services, employment policies, granting of concessions or leasing of space within the Hotel, receipt, holding and disbursement of funds, maintenance of existing bank accounts (existing accounts to remain in place, absent Owner's express agreement to move funds to a new account), procurement of Inventories, supplies and services, promotion and publicity, recommending legal counsel for the Hotel with respect to any matter regarding the operation of the Hotel (subject to Owner's right to choose legal counsel unless otherwise permitted hereunder), retaining and directing legal counsel once chosen or approved by Owner (unless otherwise permitted hereunder), and, in general, all activities necessary for operation of the Hotel. Operator shall (i) use commercially reasonable efforts to perform its management and operation of the Hotel in a manner generally consistent with the goal of maximizing the Hotel's business and financial performance and preserving the Hotel's assets on a long-term basis and (ii) devote its knowledge, experience and efforts to operate and manage the Hotel pursuant to this Agreement and in accordance with the Operating Standards. Operator's obligations with respect to any Third Party Operated Areas shall be limited to the extent of those obligations expressly set forth herein with respect to any particular Third Party Operated Areas.

Notwithstanding the foregoing grant of authority to Operator, Owner's prior written approval (not to be unreasonably delayed, conditioned or withheld) shall be required for the following:

(a) the execution of (and provide Owner with a true and complete copy of) any contract (i) requiring total annual payments in excess of Twenty-Five Thousand Dollars (\$25,000), which amount shall be adjusted for increases in CPI every Fiscal Year after the initial Fiscal Year, or (ii) has a term in excess of one (1) year (unless such agreement is terminable by Owner or Operator upon not more than thirty (30) days' notice without fee or penalty); and

(b) with respect to uninsured claims, Operator shall obtain Owner's prior written approval for any matter for which aggregate legal fees are anticipated to exceed Fifty Thousand Dollars (\$50,000), which amount shall be adjusted for increases in CPI every Fiscal Year after the initial Fiscal Year; provided, however, Operator shall have the right to control the defense, including settlement, of any legal proceeding involving: (i) claims which are covered by Operator procured insurance programs, or (ii) multiple hotels managed by Operator or its Affiliates or business practices of Operator or its Affiliates applicable to multiple hotels, and allocate the costs of defense, settlement, and liability to the Hotel in a fair and equitable manner according to the relative legal risk faced by the Hotel.

**2.2 Third-Party Operated Areas.** Owner and Operator acknowledge that during the Term, certain areas of the Hotel may be operated by third parties (the "**Third-Party Operators**") under a lease, management agreement, license agreement, franchise agreement or similar agreement. Any areas of the Hotel operated by Third-Party Operators in accordance with this Section 2.2 are referred to in this Agreement as "**Third-Party Operated Areas**". As of the Effective Date, the Third-Party Operated Areas of the Hotel are listed on Schedule III attached hereto. After the Effective Date, any lease, operating agreement, license agreement, franchise agreement or similar agreement entered into by Owner with a Third-Party Operator shall: (i) be



consistent with the terms of this Agreement; (ii) allow Operator to operate the remainder of the Hotel in accordance with the Operating Standards and the terms of this Agreement; (iii) require such Third-Party Operator to operate the applicable Third-Party Operated Area in accordance with the Operating Standards and otherwise in a manner consistent with the operation of the Hotel as contemplated under this Agreement; and (iv) be subject to the review and prior written approval of both Owner and Operator. Operator, with the support of Owner, shall use good faith efforts to ensure that all Third-Party Operated Areas are operated and maintained in a manner consistent with the operation of the Hotel as contemplated under this Agreement and that each Third-Party Operator cooperates with Operator with respect to the integration of operation of the applicable Third-Party Operated Area with the Hotel. In the event Operator reasonably determines that either: (i) the GOP as calculated under this Agreement will be materially and adversely affected as a result of any new Third-Party Operator agreement entered into after the Effective Date, or (ii) Operator's duty to oversee the operation and maintenance of the Third Party Operated Areas becomes unreasonably burdensome and time consuming, the parties shall reasonably agree on equitable adjustments to be made to the economic terms contained herein (e.g., Base Fee, Incentive Fee, and/or the Performance Test) to account for the loss of GOP or the undue burden on Operator's time caused by its duty to oversee the Third Party Operated Areas, as applicable. In the event the parties are unable to agree on the appropriate modifications to the economic terms contained herein, such dispute shall be resolved by an Expert as provided and in accordance with the procedures set forth in Section 27.1.

16 SEP 1 11:47 AM '21

**ARTICLE 3**  
**TERM**

3.1 **Term.** The operating term shall commence on the Commencement Date and expire on the tenth (10th) anniversary of the Commencement Date (the "**Term**"), unless sooner terminated pursuant to the terms of this Agreement.

**ARTICLE 4**  
**USE AND OPERATION OF THE HOTEL**

4.1 **Hotel Employees.**

(a) Operator shall have the sole right, as Operator deems appropriate for the proper operation, maintenance and security of the Hotel, to: (i) select, appoint, hire, promote, direct, supervise, train and discharge all Hotel Employees; and (ii) establish and maintain all policies relating to the employment of the Hotel Employees, provided, however, that the compensation and benefits of all Hotel Employees must be consistent with the applicable approved Annual Operating Budget or otherwise approved by Owner. Operator shall use commercially reasonable efforts and exercise reasonable care to select qualified and competent employees. Operator shall use commercially reasonable efforts to cause Operator's employment practices to comply with all Legal Requirements. All Hotel Employees shall be employees of Operator; provided, however, all of the costs, expenses and liabilities associated with the Hotel Employees shall be Operating Expenses, and shall include, by way of example and not limitation, all costs and expenses (including, without limitation, all employment and benefit related expenses incurred by Operator with respect to the Hotel Employees), such as severance pay, unemployment compensation and health insurance and related costs (i.e., in order to comply with COBRA-type

regulations) as a result of the termination of Hotel Employees. Notwithstanding anything to the contrary contained herein, Owner shall have the right to interview and approve the individual selected by Operator as the general manager prior to his or her appointment, which approval shall not be unreasonably withheld or delayed. Prior to appointing a general manager, Operator shall provide Owner with a written summary of such individual's professional experience and qualifications and shall offer Owner the opportunity to interview the candidate at the Hotel or another mutually acceptable location. Owner will forego its right to interview any such individual if Owner or its authorized representative is unwilling or unable to participate in the interview within ten (10) days following Operator's offer, so long as the candidate makes himself or herself readily available to be interviewed by Owner within the ten-day period. Owner shall be deemed to have approved the appointment of any such individual unless Owner delivers notice of its disapproval of such appointment within ten (10) days after Operator's offer to Owner to interview the candidate. Owner further acknowledges that, notwithstanding Owner's right to interview and approve the hiring of the general manager of the Hotel, Operator shall have sole discretion to remove or replace the general manager of the Hotel (with such replacement subject to the approval rights set forth herein) but agrees to notify Owner before terminating the general manager of the Hotel.

(b) Operator may, from time to time, assign one or more of its corporate employees to the staff of the Hotel on a full-time, part-time or temporary basis, and the pro-rata share of the costs, expense and liabilities of such corporate employee of Operator shall be fairly and equitably allocated as an Operating Expense of the Hotel. In the event that any Hotel Employee's services are shared with (or salary is subsidized through a sharing arrangement with) another hotel managed by Operator or one of its Affiliates, such Hotel Employee shall be identified together with a description of his/her responsibilities and the amount and source of any subsidy, together with a breakdown of the relative time expended with respect to the Hotel and each such other hotel.

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

(d) Any Hotel Employees who are not then represented by a collective bargaining representative shall be entitled to participate in the incentive programs, profit sharing and/or other employee retirement, disability, health, welfare or other benefit plan or plans then made available by Operator to similarly situated employees of other similarly situated hotels managed by Operator, in accordance with their respective terms. Operator will have the right to charge the Hotel with its allocable share of the cost of any such plan or plans and any contributions to be made thereunder provided that such charges and contributions shall be determined by Operator in good faith on a fair and equitable basis with respect to charges and contributions imposed for the same or similar plans at other hotels then managed by Operator, subject to Legal Requirements. Operator's rights under this Subsection (d) shall be subject to the condition that

Operator shall not put into effect any amendment to any existing plan, or adopt any additional plan, which is not imposed upon all other similarly situated hotels managed by Operator.

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

4.2 **Annual Plan.** Operator shall use the existing Fiscal Year 2016 budget prepared by the existing Hotel manager as a guide to operate the Hotel pending delivery of Operator's stub year 2016 Annual Plan. On or before the date that is ninety (90) days following the Commencement Date, Operator shall submit to Owner an Annual Plan ("**Annual Plan**") for the remaining portion of the Fiscal Year in which the Commencement Date occurs and Owner, within thirty (30) days of receipt, either shall accept the initial Annual Plan submitted to Owner as provided above or shall submit to Operator a detailed list of Owner's objections or questions to the Annual Plan. Owner and Operator shall meet and discuss Owner's Annual Plan objections and shall coordinate expeditiously and in good faith to agree upon an Annual Plan for the remaining portion of the Fiscal Year in which the Commencement Date occurs. On or before November 15<sup>th</sup> of each year following the Commencement Date, Operator shall submit to Owner an Annual Plan for the next Fiscal Year and on or before December 31st of each year following the Commencement Date, Owner either shall accept the Annual Plan submitted to Owner as provided above or shall submit to Operator a detailed list of Owner's objections or questions to the Annual Plan ("**Owner's Annual Plan Objections**"). Within seven (7) days after Operator's receipt of Owner's Annual Plan Objections, Owner and Operator shall agree upon a date to meet and discuss Owner's Annual Plan Objections with the goal of agreeing upon an Annual Plan for the subject Fiscal Year. In the event Owner objects to the Annual Plan or any specific items of expense in the Annual Plan and Owner and Operator are unable to reach agreement thereon as provided above prior to commencement of the Fiscal Year in question, pending such agreement, the Annual Plan or the specific item or items of expense (not revenue) in question shall be suspended and replaced for such period of disagreement by an amount equal to the actual Operating Expenses for the immediately preceding Fiscal Year subject to an adjustment equal to the percentage increase in the CPI over the last twelve (12) month period immediately preceding the start of the Fiscal Year in question; provided, that with respect to a dispute pertaining to the Annual Plan for the first Fiscal Year, pending such agreement, the Hotel shall be operated in accordance with the Annual Plan for such first Fiscal Year submitted by Operator to Owner. Notwithstanding anything to the contrary contained herein, Owner shall not have the right to withhold its approval with respect to the following aspects of the Annual Plan: (i) employee benefit programs to the extent applied on a system-wide basis to the other hotels managed by Operator, taking into account fluctuation for local market conditions; (ii) the Centralized Services Charge (unless Owner has elected not to participate in the Centralized Services in accordance with Section 4.6); and (iii) costs over which Operator has no control, including, without limitation, taxes, insurance,

16 SEP 1 11:41 AM '15

utility rates and Legal Requirements. The Annual Plan shall be comprised of the Annual Operating Budget and Capital Budget.

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

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

(c) Operator shall use commercially reasonable efforts to operate the Hotel, as nearly as practicable, in accordance with the approved Annual Plan. The parties acknowledge that: (i) the approved Annual Plan is a reasonable estimate only; (ii) unforeseen circumstances during the course of the applicable Fiscal Year may make adherence to the approved Annual Plan impracticable or impossible; and (iii) Operator shall be entitled to depart therefrom due to changes in financial, economic and other conditions and circumstances beyond Operator's reasonable control, and pursuant to the terms herein. In the event of an emergency, Force Majeure Event or otherwise under circumstances in which it would be impossible or unreasonable to seek to obtain prior approval (and provided that Operator shall notify Owner of any such expenditure within a reasonable time given the nature and scope of the emergency), Operator may (y) make any expenditures reasonably required on an emergency basis to avoid or mitigate damage to the Hotel or injury to persons or property; and (z) make any expenditure necessary to comply with, or to cure or prevent any violation of Legal Requirements. Operator may also deviate from the approved Annual Plan to the extent Operator reasonably determines that such deviation is required for compliance with this Agreement, the License Agreement, Legal Requirements, or any Mortgage; provided that Operator shall not incur costs or expenses or make expenditures that would cause the (i) expenditures for any department expense line item to exceed the budgeted amount of such approved departmental expense line item by more than five percent (5%), or (ii) total expenditures for the operation of the Hotel to exceed the aggregate total expenditures in the approved Annual Operating Budget by more than five percent (5%), in each case without Owner's prior approval and in connection with any deviation permitted hereunder, Operator shall use reasonable efforts to inform Owner of such deviation in connection with the monthly reporting described in Section 10.2. Any approval by Owner required pursuant to this Section 4.2 (c) shall not be unreasonably withheld, conditioned or delayed. Unless otherwise specified, all references to the Annual Plan in this Agreement shall be deemed to refer

to the Annual Plan approved by Owner, subject to Operator's right to depart therefrom pursuant to this Section 4.2(c).

4.3 **Labor Relations.** Operator may negotiate with any union lawfully entitled to represent the Hotel Employees and Operator agrees to keep Owner informed of the course of any such union negotiations. However, subject to Legal Requirements, Operator shall not negotiate or enter into collective bargaining agreements or labor contracts resulting therefrom without the prior written consent of Owner (such consent not to be unreasonably withheld, conditioned or delayed).

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

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

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

16 SEP 1 11:47 AM '24

same terms and conditions as made available to all System Hotels utilizing the Centralized Services. Owner may terminate the Hotel's participation in any Centralized Services in connection with Owner's approval of the Annual Plan.

4.7 **Multi-Property Programs.** Owner acknowledges and agrees that, Operator may enter into certain purchasing, maintenance, service or other contracts with respect to the operation of the Hotel and other hotels operated by Operator (collectively, "**Multi-Property Programs**") pursuant to which Operator or its Affiliates may receive rebates, discounts, cash or other incentives, administration fees, concessions, profit participations, stock or stock options, investment rights or similar payments or economic considerations (collectively, "**Operator Rebates**") from the vendors or suppliers of goods or services provided under such Multi-Property Programs. Operator shall secure for, and shall credit to, Owner any Operator Rebates (less Operator's expenses related thereto) in connection with such purchase. Operator shall promptly remit to Owner's benefit in the Operating Account the value of all Operator Rebates (less Operator's expenses related thereto) received by Operator or any of its affiliates in connection with any purchases described herein.

#### **ARTICLE 5** **USE OF NAME**

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

#### **ARTICLE 6** **ADVERTISING**

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

#### **ARTICLE 7** **RESERVE FOR FF&E**

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

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

calculating the Incentive Fee, the Reserve contribution shall not exceed four percent (4%) of Gross Revenues.

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

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

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

## **ARTICLE 8**

### **REPAIRS AND MAINTENANCE AND CAPITAL IMPROVEMENTS**

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

16 SEP 1 10:41 AM '15



8.2 **Capital Improvements.** Owner shall, from time to time, at its sole expense (and/or if requested by Owner, funded from the Reserve, to the extent permitted or required under the License Agreement and the Mortgage, and provided there are sufficient funds in the Reserve), make such Capital Improvements in or to the Hotel as Owner or Operator shall determine are necessary to comply with the Operating Standards. If Capital Improvements shall be required at any time during the Term by the terms of the License Agreement, to maintain the Hotel in accordance with the Operating Standards or Legal Requirements, or because Operator and Owner jointly agree upon the desirability thereof, then in such event all such Capital Improvements shall be made with as little hindrance to the operation of the Hotel as reasonably possible. Notwithstanding the foregoing, as long as the Hotel can continue to operate without interruption, Owner shall have the right to contest the need for any such Capital Improvements required by any Legal Requirements and may postpone compliance therewith, if so permitted by law and if such postponement will not expose Operator to any civil or criminal liability. All recommendations by Operator of Capital Improvements shall be submitted in conjunction with the Capital Budget for the Fiscal Year described in Section 4.2(b). In the event that Owner elects to perform Major Renovations to the Hotel, Owner may request Operator to oversee the performance of the Major Renovations, in which case the parties shall enter into an agreement for project management services in a form and on such terms and conditions (including the amount of any project management fees) mutually acceptable to both parties.

8.3 **Liens.** Owner and Operator shall cooperate and use all commercially reasonable efforts to prevent any liens from being filed against the Hotel that arise from any maintenance, changes, repairs, alterations, improvements, renewals or replacements in or to the Hotel, and, if any such liens are filed, Operator shall use reasonable commercial efforts to obtain the release thereof prior to the institution of legal proceedings in connection therewith. The cost of obtaining such release shall be at Owner's cost and not as an Operating Expense, unless the imposition of the lien results from a default caused solely by an Operator Event of Default, in which event the cost of obtaining such release shall be borne by Operator.

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

## **ARTICLE 9**

### **WORKING CAPITAL AND OPERATING ACCOUNT; DISTRIBUTION OF EXCESS CASH**

9.1 **Working Capital.** Owner shall provide initial Working Capital in an amount equal to Four Hundred Eighty-Seven Thousand Dollars (\$487,000). Owner shall at all times cause sufficient Working Capital to be on hand in the Operating Account. In no event shall Owner permit the Working Capital in the Operating Accounts to be less than an amount equal to the estimated monthly operating expenses of the Hotel for the ensuing sixty (60) day period, as reflected in the then current Annual Operating Budget. From time to time, upon five (5) days prior written notice from Operator that such funds are required, Owner shall furnish to Operator funds that Operator deems reasonably necessary to assure that the Hotel shall have adequate Working Capital as herein provided. In the event Owner fails to supply required Working



Capital in accordance with the provisions of this Section or if Operator otherwise deems such action to be necessary, Operator may use all or part of the funds in the Reserve to supplement the Operating Accounts in order to defray or pay the Hotel's operating costs and expenses. Owner shall promptly replenish the Reserve for all sums so used or transferred.

9.2 **Depository Account.** All monies received by Operator in the operation of the Hotel shall be received in trust by Operator for the benefit of Owner and shall be deposited in Owner's "**Depository Account**" that exists as at the Effective Date, in Owner's name with certain of Owner's employees as authorized signatories, or in such other account as elected by Owner and Operator, in a bank or trust company selected by Owner. Such monies shall not be commingled with other funds belonging to Operator and shall be swept on a daily basis into the Operating Account.

9.3 **Operating Account.** Operator shall use the Operating Account for paying the Hotel's expenses permitted herein to be charged to the Hotel and/or Owner. The Operating Account shall be in Owner's name, with Operator's employees as the authorized signatories, in a bank or trust company selected by Owner. Operator shall pay all Operating Expenses of the Hotel and amounts owed Operator and its Affiliates hereunder (including the Management Fee, Reimbursable Expenses and Centralized Services Charges) out of the Operating Account. Checks drawn on the Operating Account or other documents of withdrawal from such accounts shall be signed by a designated representative of Operator approved by Owner. The Operating Account shall provide that, upon Owner's written direction, Operator and its representatives may be removed as authorized signatories of such account but only upon termination of this Agreement. Owner shall make arrangements to deposit from the Depository Account into the Operating Account on a daily basis any money which is required to cover payments from the Operating Account permitted herein, including any payments for capital expenditures permitted herein. If Owner fails to do so and such failure continues for three (3) business days after notice from Operator, such failure shall be deemed an Owner Event of Default and Owner shall indemnify and hold Operator harmless from any loss or expense Operator might incur as a result of such deposit not having been made, and Operator may exercise its right to terminate pursuant to Section 15.2. All risk of loss with respect to funds in the Operating Account shall be borne by Owner.

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

9.5 **Lender Requirements.** Owner and Operator shall make such reasonable modifications to the receipt and disbursement of Hotel funds as may be necessary to comply with any cash management procedures required by any Lender so long as such cash management procedures permit for the timely payment of Management Fees, Reimbursable Expenses, Centralized Services and Operating Expenses.

16 SEP 1 11:47 AM '21

**ARTICLE 10**  
**BOOKS, RECORDS AND STATEMENTS**

10.1 **Books and Records.** Operator shall keep full and adequate books of account and other records reflecting the results of operation of the Hotel (excluding Third-Party Operated Areas) in accordance with the Uniform System of Accounts and GAAP. The books of account and all other records relating to or reflecting the operation of the Hotel shall be kept either at the Hotel or at Operator's corporate offices and shall be available to Owner and its representatives and its auditors or accountants, at all reasonable times for examination, audit, inspection and transcription at Owner's sole cost and expense. All of such books and records pertaining to the Hotel shall be the property of Owner. Upon any termination of this Agreement, all of such books and records forthwith shall be turned over to Owner at a location designated by Owner so as to insure the orderly continuance of the operation of the Hotel, but such books and records shall thereafter be available to Operator at all reasonable times for inspection, audit, examination and transcription for a period of five (5) years. In addition to the Hotel's books and records, Operator shall maintain Guest Data in accordance with its privacy policy and the License Agreement; provided, however, Owner and Operator shall jointly own all Guest Data, and each may use such Guest Data in any commercially reasonable manner that: (i) does not violate the terms of this Agreement, (ii) during the Term of this Agreement, does not interfere with and/or is not detrimental to the operation or financial performance of the Hotel, and (iii) does not violate any Legal Requirements applicable to the use of Guest Data.

10.2 **Financial Reports.**

(a) On or before the fifteenth (15th) day of each Accounting Period during the Term, Operator shall deliver to Owner a reasonably detailed monthly unaudited operating report reflecting the operational results of the Hotel for the preceding Accounting Period and the Fiscal Year to date, reasonably satisfactory in form and substance to Owner and any lender providing financing to Owner or its Affiliates, which report shall be prepared in accordance with GAAP and the Uniform System of Accounts from the books of account maintained by Operator for the Hotel ("**Monthly Financial Report**") and shall include (i) a balance sheet with current month and prior year comparisons and differences in reasonable detail, (ii) a profit and loss statement, containing a statement of income and expenses for the preceding calendar month and for the elapsed portion of the then-current Fiscal Year through the end of such month (including a summary income statement as well as departmental detail), (iii) an estimate of the projected income and expenses through the end of such Fiscal Year, by month ("**Full Year Forecast**"), (iv) a statement of net cash flow from the operation of the Hotel (excluding Third-Party Operated Areas) in reasonable detail, containing a statement of net cash flow for such month and for the elapsed portion of the then-current Fiscal Year through the end of such month and an estimate of the projected income and expenses through the end of such Fiscal Year, (v) statements and calculations of the Management Fee, Reimbursable Expenses and any other amounts payable to Operator or its Affiliates hereunder, (vi) a schedule of capital expenditures for all Capital Improvements, Major renovations, capital projects and additions to and substitutions, replacements and renewals of FF&E, showing in reasonable detail items budgeted, actual expenditures to date and the amount of expenditures projected for completion, (vii) an estimate of the projected upcoming remittance to Owner under Section 9.4, showing in

reasonable detail the calculation thereof and (vii) a description of any variances that have occurred and that are expected to occur between the applicable Annual Plan and actual results. Any Monthly Financial Report shall not include any Third Party Operated Areas except to the extent such information relating to any particular Third Party Operated Area is provided to Operator by Owner or by any such Third Party Operated Area (and Operator shall have the right to rely on such information).

(b) Within thirty (30) days after (i) the end of each Fiscal Year during the term of this Agreement or (ii) termination of this Agreement, Operator shall cause to be delivered to Owner unaudited financial statements for such Fiscal Year, consisting of at least a balance sheet and related statement of profit and loss, together with a statement of cash flows for such Fiscal Year and a statement showing the calculations of the Management Fee, Reimbursable Expenses and any other amounts payable to Operator or its Affiliates hereunder for such Fiscal Year (“**Annual Financial Report**”). The cost of any independent review or audit shall be an Operating Expense. Any Annual Financial Report shall not include any Third Party Operated Areas except to the extent such information relating to any particular Third Party Operated Area is provided to Operator by Owner or by any such Third Party Operated Area (and Operator shall have the right to rely on such information).

(c) In addition to the reports and statements described above, Operator shall provide to Owner such other unaudited reports and such additional information relating to the books of accounts or the operation of the Hotel (which may include Third-Party Operated Areas if Operator is provided with the required details to produce such reports) as may be required under any loan documents that Owner shall have provided to Operator or as Owner may reasonably request provided that the cost to prepare such reports is *de minimis*. The cost of such additional reports and/or information shall be an Operating Expense.

10.3 **Audits by Owner.** Owner shall have the right to audit, conducted either by Owner’s internal personnel or by a third party auditor retained by Owner, all items of expense and revenue under this Agreement including, but not limited to, Gross Revenues, Operating Expenses, depreciation, the Management Fee and the Reserve. The costs of such audit shall be Owner’s cost or, upon Owner’s election, an Operating Expense of the Hotel. Operator shall cooperate and assist with such audit. In the event that an audit reflects an underpayment to Owner or Operator or an overpayment to Operator or Owner, Operator shall correct same by a corrective payment to Owner or Operator, as appropriate, within ten (10) days following notice of the audit results to Operator, subject to Owner’s and Operator’s right to challenge the audit results in accordance with the provisions of ARTICLE 27 of this Agreement.

## **ARTICLE 11**

### **MANAGEMENT FEES AND OTHER PAYMENTS**

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

(a) a base fee (the "**Base Fee**") in an amount equal to (i) two and one-half percent (2.5%) of Adjusted Gross Revenues; plus

(b) an incentive fee (the "**Incentive Fee**"), in an amount equal to twenty percent (20%) of Adjusted GOP. A sample calculation of the Incentive Fee is attached hereto as Exhibit C.

Notwithstanding anything to the contrary contained herein, in no event shall the aggregate annual Management Fee paid to Operator hereunder exceed four percent (4%) of Gross Revenues, less revenues from the Third Party Operated Areas.

**11.2 Payment of Management Fee.** The Management Fee generally shall be computed separately for each Fiscal Year and shall not be accumulated from Fiscal Year to Fiscal Year. The Incentive Fee shall be prorated for any partial Fiscal Year. The Incentive Fee shall be adjusted, if necessary, within sixty (60) days after receipt by Owner of the annual accounting for such Fiscal Year. Owner or Operator shall be entitled to audit the determination and calculation of the Management Fee. In the event that an audit reflects an underpayment or overpayment of the Management Fee to Operator, Operator shall correct same by a corrective payment to Owner or Operator, as appropriate, within ten (10) days following notice of the results of such audit to the other party, subject to Owner's and Operator's right to challenge the audit results in accordance with the provisions of ARTICLE 27 of this Agreement. The calculation and payment of the Incentive Fee shall survive the termination of this Agreement.

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

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

## **ARTICLE 12** **INSURANCE**

**12.1 Insurance Requirements.** Owner shall retain the right to procure and maintain, at Owner's expense, the policies required in subsections (a), (b), (c), (d), or (e) of this Section 12.1 given, however, that such policies shall be placed with responsible and properly authorized companies, meet the minimum requirements as contained in this ARTICLE 12, and the coverage provisions provided shall apply to Operator's benefit. Should Owner exercise such right, Operator will retain the right to procure contingent liability coverage at Owner's expense with Owner's prior written approval, which shall not be unreasonably withheld. Operator will procure and maintain, on Owner's behalf and expense (except for the coverage in subsection (i), which shall be at Operator's expense), the policies required in subsections (f), (g), (h) (i) and (j) of this Section 12.1 with responsible and properly authorized companies that meet the minimum standards contained in this ARTICLE 12. The policies evidencing such insurance in subsections (b), (c), (d), (e) or (j) of this Section 12.1 shall name both the Owner and Operator as named or additional insureds as their interests may appear, and may, at Owner's election, name any mortgagee, lien holder or other security interest holder of all or any part of the Hotel as an additional insured thereunder, as its interest may appear.

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

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

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

(d) Commercial general liability insurance including coverage for bodily injury (BI) and property damage (PD) arising out of premises, operations, products and completed operations; personal injury (PI) liability; innkeeper's legal liability; liquor liability; blanket contractual liability; advertising liability; automobile liability, including owned, non-owned, or borrowed vehicles; garage liability and garage keeper's legal liability, all with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, with excess liability coverage of not less than the amount of excess liability coverage required under the License Agreement for property damage, bodily injury, personal injury or death. The terms and limits required herein can be met through any combination of primary and excess insurance. These policies shall provide that the insurance will be deemed primary, and that any other insurance available to the non-insuring party shall not be called upon by these policies to contribute to a loss. Owner represents that as of the Effective Date, the commercial general liability policy does not contain an exclusion for humiliation, harassment and abuse or molestation however the insuring party agrees to notify the non-insuring party should coverage exclusion be added at any time during the Term. If such coverage is provided on a so called "blanket" basis, such coverage shall apply on a per location basis, and if such policy contains an overall policy aggregate the parties agree that the limit shall

16 SEP 1 11:47 AM '21

not be less than \$10,000,000, and the insuring party warrants to notify the non-insuring party in the event that such aggregate is reduced by seventy-five percent (75%) or greater.

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

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

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

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

(i) Professional Liability (Errors and Omissions) Insurance in amount not less than \$2,000,000 covering the management, marketing, and hospitality services provided on behalf of the Hotel by corporate personnel of Operator and its Affiliates (but not covering the Hotel Executive Staff Members or any other Hotel Employees).

(j) Cyber Liability Insurance with limits of not less than \$1,000,000 each claim and \$1,000,000 general aggregate covering liabilities for financial loss resulting or arising from intellectual property infringement (excluding patent infringement and misappropriation of trade secrets), breaches of security, damage, destruction or theft of data, business income/network interruption, extra expense, data asset restoration and cyber extortion/terrorism. If Operator shall have access to personally identifiable information, such insurance shall also cover liabilities for the failure to prevent unauthorized access to data containing such information including violations of privacy laws and regulations.

(k) Owner and Operator may agree for Operator to procure and maintain the policies required in subsections (a), (b), (c), (d) or (e) of this Section 12.1, on Owner's behalf and expense, and upon Owner's approval.

## **12.2 General Insurance Requirements.**

(a) Certificates of insurance, containing all conditions applying to the Hotel, shall be delivered to Owner or Operator, as applicable, not more than ten (10) days after the expiration date of all policies of insurance that must be maintained under the terms of this Agreement. All

policies shall contain an endorsement providing a thirty (30) day written notice of cancellation or non-renewal to Owner and Operator.

(b) To the extent waivers of subrogation are acceptable to the carrier, each policy of insurance shall provide that the carrier shall have no right of subrogation against either party hereto, their agents or employees by separate endorsement.

(c) The limits provided for hereunder shall be increased from time to time to give effect to increases in current liability exposure and inflationary cost increases. Changes in the amounts and types of insurance provided for hereunder shall be made as part of the Annual Operating Budget review process.

(d) Any deductibles applicable to any of the required insurance shall constitute Insurance Costs. Owner acknowledges any deductible applicable to any of the required insurance provided by Operator may need to be modified to respond to insurance market trends, customer demands, economic conditions, technological advances, and other factors affecting the hotel industry and its risks, as they may change from time to time. Owner agrees that Operator shall have the right, in its reasonable discretion, to modify the deductible as Operator deems advisable.

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

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

(g) Any insurance required to be provided pursuant to this ARTICLE 12 may be provided under policies of blanket insurance which cover other properties and activities of Owner or Operator, as applicable. The cost of any blanket coverage shall be prorated among the properties and activities covered in a commercially reasonable manner. Upon request, any such proration by Owner or Operator of blanket coverage shall be subject to the reasonable approval of the other party.

(h) Owner acknowledges that, if Owner elects to have Operator provide insurance within Operator's shared master insurance program, certain coverage limits will be shared with other properties owned and/or managed by Affiliates of Operator. Owner agrees that if there is a loss at the Hotel that results in a reduction of the amount of insurance coverage with respect to other properties covered by such master insurance program, all costs of reinstating the full amount of coverage with respect to such other properties to the coverage that was available for such other properties under such master insurance program immediately prior to such loss at the Hotel shall be borne by Owner as an expense of the Hotel. Conversely, if there is a loss at another property covered by such master insurance program that results in a reduction of the amount of insurance coverage with respect to the Hotel, all costs of reinstating the full amount of coverage with respect to the Hotel shall not be borne by Owner as an expense of the Hotel, but shall be borne by Operator or the owner of the applicable property that suffered such loss. The obligations of

16 SEP 1 10:13 AM '2015



Owner and/or Operator pursuant to this Section 12.2(h) shall survive (i) the expiration or termination of this Agreement or termination of similar agreements, if any, related to Operator's affiliated properties on the shared program; and (ii) any election of Owner or Operator to remove the Hotel from the master insurance program and/or the removal of any of the Operator's affiliated properties from the shared master insurance program. Owner and Operator agree to use commercially reasonable efforts in reinstating the coverage limits to the amount of coverage available immediately prior to such loss; provided, however, Owner and Operator shall be required, at a minimum, to reinstate the amounts of coverage necessary to comply with the requirements of any third party mortgagee or franchisor of the properties covered by the master insurance program. Notwithstanding the foregoing, (A) after a loss the relevant party will only be required to reinstate coverage, if any, up to an amount that results in a total amount of coverage that is sufficient for all properties under the program that are also obligated to a reinstatement provision, if Owner and Operator mutually agree at their sole discretion that the remaining amount of coverage is sufficient; provided if Owner and Operator do not mutually agree, an independent third-party consultant (i.e., a consultant who has not had any direct relationship with either party in the preceding twenty-four (24) month period) selected by Operator will make such determination, (B) the amount of coverage to be reinstated by the relevant party will be limited to what is sufficient only for the properties in Operator's master shared insurance program that are obligated by the same reinstatement provisions per this Section 12.2(h) and (C) the maximum amount of lost shared limit to be reinstated by the relevant party after a loss will be equal to the amount of lost shared limit that was lost due to a loss at the relevant party's property. Owner also agrees that it shall bear as an expense of the Hotel all costs for any additional limits or coverages that may be requested by Owner that are above the limits in such master insurance program. Owner may elect to remove the Hotel from Operator's master insurance program upon thirty (30) days prior written notice (or upon three (3) business days prior written notice if such termination is effective on the annual renewal date of such master insurance program). Any premium prepaid by Owner for such terminated coverage shall be credited to Owner in an amount calculated by the insurance carrier in its sole and absolute discretion. Operator acknowledges that currently all properties in Operator's shared master insurance program are owned by Affiliates of Operator. Operator will use reasonable efforts to give written notice to Owner within ten (10) business days after any property is added or removed from Operator's shared master insurance program and will confirm the same upon request by Owner.

### **ARTICLE 13**

#### **REAL AND PERSONAL PROPERTY TAXES; UTILITIES**

13.1 **Taxes.** To the extent sufficient funds are available in the Operating Account or otherwise made available in a timely manner by Owner, Operator shall pay from Gross Revenues, on or before the dates the same become delinquent and within the time period allowed for the full amount of any discount permitted by Legal Requirements, with the right to pay the same in installments to the extent permitted by Legal Requirements, all real estate taxes, all personal property taxes and all betterment assessments levied against the Hotel or any of its component parts, provided however, that Operator shall have no liability whatsoever with respect to the payment of such taxes and assessments. Operator shall promptly deliver to Owner all



notices of assessments, valuations and similar documents to be filed by Owner, which are received from taxing authorities by Operator.

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

**ARTICLE 14**  
**DAMAGE OR DESTRUCTION; CONDEMNATION**

**14.1 Damage or Destruction.**

(a) If the Hotel or any portion thereof shall be damaged or destroyed at any time or times during the Term by fire, casualty or any other cause commonly covered by fire and extended coverage insurance and the cost of repairing such damage and restoring the Hotel to substantially its condition immediately prior to such damage or destruction, as reasonably estimated by Owner based upon estimates Owner receives from contractors and other reasonable and customary evidence, will not exceed thirty percent (30%) of the replacement value of the Hotel, Owner will, at its own cost and expense and with due diligence, repair and/or restore the Hotel so that after such repair and/or restoration, the Hotel shall be in substantially the same condition as it was immediately prior to such damage or destruction.

(b) If the cost of such repair and/or restoration will, as so reasonably estimated by Owner, exceed thirty percent (30%) of the replacement value of the Hotel, then Owner shall, within one hundred twenty (120) days after such damage or destruction, elect by notice to Operator either (x) to carry out such repair and/or restoration, in which case Owner shall complete such repair and/or restoration pursuant to the last sentence of Section 14.1(a) or (y) to terminate this Agreement. Should Owner elect to terminate this Agreement pursuant to this Section 14.1, Owner shall provide written notice of such election to Operator, specifying a termination date (the "**Casualty Termination Date**") of not less than sixty (60) days (or such greater time as may be required for Operator to comply with applicable laws such as the WARN Act or other Legal Requirements) nor more than one hundred twenty (120) days after the giving of such notice. Owner shall pay Operator on the Casualty Termination Date any amounts that may be due Operator under this Agreement; provided however, that Operator shall not be paid a Termination Fee.

(c) If Owner, within such one hundred twenty (120) day period either (i) advises Operator that Owner will not so repair and/or restore such damage or destruction or (ii) fails to advise Operator of Owner's decision, Operator may terminate this Agreement by written notice to Owner, within one hundred fifty (150) days after such damage or destruction, in which case, Operator shall not be paid a Termination Fee.

(d) In the event the termination of this Agreement pursuant to Section 14.1(b) or 14.1(c) occurs within the first sixty (60) months of the Term and, if within twenty-four (24) months following such termination, Owner or any of its Affiliates intends to commence repair and/or restoration of the Hotel, then Owner shall either (1) reinstate this Agreement for the remainder of

the Term (extended to reflect the period of time the Hotel is closed) in which case this Agreement shall be deemed reinstated in accordance with all the terms and conditions hereof, provided that, Owner shall promptly give notice to Operator in writing of such intention to reinstate this Agreement, and provided further, that Operator has agreed to such reinstatement by giving written notice to Owner within thirty (30) days of the date upon which Operator receives such notice from Owner, or (2) pay to Operator the Termination Fee, if any, to be calculated as of the date of the casualty event. The provisions of this Section 14.1(d) shall survive the expiration or termination of this Agreement.

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

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

## **ARTICLE 15**

### **EVENTS OF DEFAULT**

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

(a) The failure of Operator to pay any sum of money to Owner provided for herein when the same is payable, if such failure is not cured within ten (10) days after written notice specifying such failure is given by Owner to Operator unless Owner has failed to pay or furnish to Operator any money required to be paid to Operator in accordance with this Agreement. If any sum of money is not paid within ten (10) days following the date same becomes due and payable under this Agreement, such sum shall bear interest from the date due until the date actually paid at the Default Rate, provided that any interest so payable shall not constitute an Operating Expense under this Agreement.

(b) An assignment by Operator in violation of the provisions of ARTICLE 21 hereof; provided, however, Owner's sole and exclusive remedy in connection with an Event of Default under this Section 15.1(a) shall be to terminate this Agreement, without the payment of any Termination Fee.

(c) The failure of Operator to perform, keep or fulfill any of the covenants, undertakings, obligations or conditions to be kept, observed or performed by Operator and such failure shall continue for a period of thirty (30) days after written notice from Owner to Operator specifying such failure; provided that if such failure is incapable of cure within such thirty (30) day period, and Operator proceeds during such thirty (30) day period to commence cure with all due diligence, then Operator shall have an additional period of thirty (30) days within which to effectuate the cure. If, at the end of such additional thirty (30) day period the cure has not been effectuated notwithstanding Operator's diligent and continuous attempts to cure, then at the request of Operator, Owner shall extend the cure period for up to an additional thirty (30) day period. For the avoidance of doubt, Operator acknowledges that missing or failing the Performance Test is not an Operator default subject to cure pursuant to this Agreement. If Operator fails the Performance Test, then the terms of Section 17.2 prevail over this Section 15.1.

(d) (i) If because of an Operator default under this Agreement, and without any fault of Owner, any required licenses for the sale of alcoholic beverages or any other licenses or permits critical to the sale of alcoholic beverages at the Hotel are at any time suspended, terminated or revoked, and such suspension, termination or revocation shall continue unstayed and in effect for a period of more than thirty (30) consecutive days or more, or (ii) if the right to serve alcoholic beverages in the Hotel (but only to the extent of any license held by Operator or its Affiliates) shall otherwise be suspended for a period of more than thirty (30) consecutive days; in the event of any such suspension, termination or revocation, Operator shall immediately proceed to cause the entity holding the liquor license to use commercially reasonable efforts to cause the prompt reinstatement of such licenses, permits or rights. If at the end of such thirty (30) day period the cure has not been effectuated notwithstanding diligent and continuous attempts to cure, then at the request of Operator, Owner shall extend the cure period for up to an additional thirty (30) days.

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

(f) The filing of a voluntary petition in bankruptcy or insolvency or a petition for liquidation or reorganization under any bankruptcy law by Operator, or Operator shall consent

16 SEP 1 11:41 AM '21

to, acquiesce in, or fail timely to contest, an involuntary petition in bankruptcy, insolvency or an involuntary petition for liquidation or reorganization filed against it.

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

(h) Failure of Operator (but excluding such a failure which results from the default by Owner in paying amounts payable hereunder by Owner) to maintain at all times throughout the term hereof all of the insurance required to be maintained by Operator under ARTICLE 12, if such failure is not cured within fifteen (15) days after written notice specifying such failure is given by Owner to Operator.

(i) If, an Operator default under this Agreement is the sole cause of a default under the License Agreement, and without any fault of Owner, which may, if uncured (provided such default is capable of cure), permit Licensor to terminate the License Agreement and such default continues beyond applicable cure periods, if any.

(j) If, an Operator default under this Agreement is the sole cause of a default under the Mortgage for which Operator has the control and discretion to address, which, if uncured (provided such default is capable of cure), results in Lender accelerating or foreclosing the Mortgage and such default continues beyond applicable cure periods, if any.

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

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

(b) An assignment by Owner in violation of the provisions of ARTICLE 21 hereof.

(c) The failure of Owner to perform, keep or fulfill any of the other covenants, undertakings, obligations or conditions set forth in this Agreement (other than a failure to pay or furnish to Operator any money Owner is required to pay or furnish to Operator), including without limitation, the failure of Owner to approve expenditures or to authorize procedures necessary to maintain the standards of the Hotel in accordance with the Operating Standards, if such failure shall continue for a period of thirty (30) days after written notice by Operator or Licensor to Owner specifying the matters or conditions which constitute the basis for such Event of Default, provided that if such failure is incapable of cure within such thirty (30) day period, and Owner proceeds during such thirty (30) day period to cure with all due diligence, then the cure period shall be extended for up to an additional thirty (30) days within which to effectuate the cure. If, at the end of such additional thirty (30) day period the cure has not been effectuated

notwithstanding Owner's diligent and continuous attempts to cure, then at the request of Owner, Operator shall extend the cure period for up to an additional thirty (30) day period.

(d) If because of a default under the Mortgage, if any, not caused by the act or omission of Operator, the Mortgage shall be foreclosed, or the Hotel sold in lieu of foreclosure.

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

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

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

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

(i) If, because of any act or omission on the part of Owner, there shall occur a default under the License Agreement, which may, if uncured, permit Licensor to terminate the License Agreement and such default shall continue beyond applicable grace periods, if any.

## **ARTICLE 16**

### **TERMINATION UPON EVENT OF DEFAULT; OTHER REMEDIES**

16.1 **Termination.** Upon the occurrence of an Event of Default, in addition to and cumulative of any and all rights and remedies available to the non-defaulting party under this Agreement, at law or in equity, the non-defaulting party may: (i) terminate this Agreement without penalty, effective upon receipt of written notice of termination by the defaulting party; and (ii) pursue any and all other remedies available to the non-defaulting party at law or in equity. In addition to and cumulative of the foregoing, upon the occurrence of any Event of Default on the part of Owner, all Management Fees, Reimbursable Expenses, Centralized Services Charges and all other sums then due and payable to Operator under this Agreement

shall be immediately due and payable without notice. In no event shall the provisions of this Agreement with respect to the payment of a Termination Fee and the other fees described in the preceding sentence upon the termination of this Agreement under certain circumstances be construed as defining or limiting the amount recoverable by Operator from Owner by reason of any Event of Default on the part of Owner. Notwithstanding anything to the contrary contained in this Agreement, Owner and Operator each waive and agree that they shall have no right to seek or recover consequential, indirect, speculative or punitive damages upon any breach or default under this Agreement, except if the Event of Default on the part of Operator arises as a result of an act of fraud by Operator (but excluding any Hotel Employees) under this Agreement.

#### **16.2 Operator's Rights to Perform.**

(a) If Owner shall fail to make any payment or to perform any act required of Owner pursuant to this Agreement, Operator may (but shall not be obligated to), without further notice to, or demand upon, Owner and without waiving or releasing Owner from any obligations under this Agreement, make such payment (either with its own funds or with funds withdrawn for such purpose from the Operating Accounts or the Reserve) or perform such act. All sums so paid by Operator and all necessary incidental costs and expenses incurred by Operator in connection with the performance of any such act, together with interest thereon at the Default Rate from the date of making such expenditure by Operator, shall be payable to Operator on demand.

(b) Operator shall have the right to set-off against any payments to be made to Owner by Operator under any provision of this Agreement and against all funds from time to time in the Operating Accounts and the Reserve, any and all liabilities of Owner to Operator. Operator may withdraw from the Operating Accounts and the Reserve from time to time such amounts as Operator deems desirable in partial or full payment of all or any portion of said liabilities, the amount of such withdrawals to be paid by Owner to Operator on demand and to be replaced in the respective account and fund.

### **ARTICLE 17**

#### **OWNER'S ADDITIONAL TERMINATION RIGHTS**

17.1 **Termination on Sale.** Owner shall have the unrestricted right to sell the Hotel, whether through a conveyance of the Hotel or a conveyance of the direct or indirect equity interests in Owner, or otherwise to an unrelated third party purchaser in a bona fide arm's length transaction. If, during the Term, the Hotel is sold by Owner pursuant to this Section 17.1 and this Agreement is to be terminated upon the closing thereof, then Owner shall provide written notice of termination of this Agreement (the "**Sale Termination Notice**") to Operator not less than sixty (60) days prior to the anticipated date of closing of the sale of the Hotel and shall pay to Operator upon, or prior to, the closing thereof and the termination of this Agreement, any amounts that may be due to Operator or its Affiliates under this Agreement. In addition, should the date of closing of the sale of the Hotel and the termination of this Agreement occur within thirty-six (36) months after the Commencement Date, Operator shall be paid the Termination Fee. The actual termination shall be effective as of the closing of the sale, regardless of the estimate provided in the Sale Termination Notice. Accordingly, Owner shall, upon reasonable notice, have the right to extend the effective date of such termination for a reasonable period of time based on delays in the closing, provided that Owner shall pay all actual costs reasonably

incurred by Operator in postponing the effectiveness of such termination. Notwithstanding the foregoing or anything else contained in this Agreement to the contrary, no Termination Fee shall be payable by Owner to Operator upon the termination of this Agreement pursuant to this Section 17.1 in the event that, following such termination, Operator continues to operate the Hotel for a new owner on substantially similar terms as the terms set forth in this Agreement or if a sale of the Hotel occurs at any time following the end of the thirty-sixth (36<sup>th</sup>) month following the Commencement Date.

## 17.2 Performance Termination.

(a) Subject to the provisions of this Section 17.2, Owner shall have the right to terminate this Agreement, without payment of any penalty, premium or Termination Fee, if, as shown on the annual audited statements, the Hotel fails the Performance Test, as defined below, for any full Fiscal Years following the Commencement Date (each such full Fiscal Year, a "Measurement Year"). Commencing with the first full Fiscal Year following the Commencement Date (i.e. Fiscal Year 2017 which shall be considered the first Measurement Year), Owner may terminate this Agreement in accordance with the procedure described below, if for any Measurement Year, subsections (i) or (ii) below are applicable (collectively, the "Performance Test"):

- (i) (a) For full Fiscal Years 2017 and 2018, the Gross Operating Profit for any such Measurement Year is less than ninety-five percent 95% of the Pro Forma, attached hereto as Schedule II, for such Measurement Year, and (b) for full Fiscal Year 2019 and for each Fiscal Year thereafter during the Term of this Agreement, the Gross Operating Profit for any such Measurement Year is less than ninety-five percent 95% of the budgeted Gross Operating Profit for such Measurement Year (collectively, the "GOP Test"); or
- (ii) the RevPAR Penetration Index of the Hotel for such Measurement Year is less than ninety-eight (98%) (the "RevPAR Test").

Notwithstanding the above, for the first two full Fiscal Years following the Commencement Date, the Performance Test shall consist of only the GOP Test. Operator's performance will not be reviewed under the RevPAR Test during the first two full Fiscal Years of the Term. Beginning with the third full Fiscal Year after the Commencement Date (i.e. Fiscal Year 2019), and continuing for the Term of this Agreement, the Performance Test will incorporate both the GOP Test and the RevPAR Test, as defined immediately above.

(b) If the Performance Test is not satisfied and Owner elects to exercise its right to terminate this Agreement pursuant to this Section, Owner shall give written notice to Operator of such election within ninety (90) days after the receipt by Owner of the annual accounting (as set forth in Section 10.2) for such Measurement Year; and (ii) the notice shall specify a termination date no sooner than sixty (60) days after the giving of such notice.

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



**ARTICLE 18**  
**TRANSFER AND REMITTANCE TO OWNER UPON TERMINATION**

18.1 **Transfer to Owner.** Upon any termination of this Agreement, whether due to the occurrence of an Event of Default, the expiration of the Term, or otherwise, Operator shall cooperate with Owner and shall execute all documents or instruments requested by Owner in connection with the transfer to Owner or its nominee of the Permits and any contracts or other agreements used or useful in connection with the operation of the Hotel; provided, however, if such termination is due to a reason other than a default by Operator under this Agreement, Owner will reimburse Operator for Operator's reasonable expenses to effect such transfer, or the imposition of any liability on Operator. Without limiting the generality of the foregoing, Operator shall cause its officials to execute any necessary documents to effectuate the orderly transfer to Owner or its designee of the Permits and such contracts and agreements or the renewal thereof to Owner or Owner's designee if appropriate. In the event that this Agreement terminates for any reason, a sufficient number of Hotel Employees will be hired by Owner or its successor, assign or designee, and retained for at least 90 days thereafter, so as not to cause a "mass layoff" or "plant closing", as defined in the Workers Adjustment and Retraining Act, 29 USC, sec 2101 et seq. (the "WARN Act"). Owner hereby agrees to indemnify, defend and hold Operator harmless from and against any and all claims asserted against or incurred by Operator related to: (a) hiring, discharging, offering to hire or failing to hire any of the Hotel Employees; (b) termination of the Hotel Employees by reason of the termination of this Agreement; or (c) Owner's failure to take, or cause to be taken, the action necessary with respect to Hotel Employees so that Operator will not be required to comply with the WARN Act or any other similar Legal Requirements. Owner shall provide sufficient funds to pay to all employees of the Hotel who will not be continuing their employment as a result of such termination all such accrued and unpaid salaries, vacation pay, sick leave benefits, workers' compensation and unemployment insurance costs and prorated bonuses incurred and reasonable severance costs.

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

18.3 **Settlement Upon Termination.**

(a) All software used at the Hotel which is owned by Operator or by any of its Affiliates or any licensor to them shall in all events remain the exclusive property of Operator, its Affiliate or the licensor, as the case may be, and nothing contained in this Agreement shall confer on Owner the right to use any of such software; provided, however, Operator shall provide Owner or its designee with the factual information specific to the Hotel contained in such software upon the reasonable request of Owner, either in machine-readable form or, if not possible, in paper form, so long as any license or privacy policy by which Operator has the right to use the software is not violated thereby. Notwithstanding anything to the contrary set forth above or elsewhere in this



Agreement, Owner acknowledges that Operator has developed tools, models, techniques and systems related to the operation and management of hotels managed by Operator, and that all such tools, models, techniques and systems are and shall remain (i) confidential and proprietary to Operator and (ii) the exclusive property of Operator; provided, however, Owner shall be deemed the owner of any software used at the Hotel which has been paid for by Owner.

(b) Following termination, in addition to Owner's other post-termination obligations set forth in this Agreement, Owner shall indemnify, defend and hold harmless Operator, its Affiliates, and all of their respective officers, directors, shareholders, members, employees, agents, successors and assigns from and against any claims, liabilities, liens, suits, judgments, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) arising from or connected with (i) any Hotel employee worker's compensation claims, (ii) any other costs on account of employment of the Hotel employees, including, without limitation, Employee Claims and any payments, liabilities or obligations under any collective bargaining agreement or multiemployer pension plan, (iii) any claims associated with the Hotel where Operator is named as a potentially liable party, in each case arising or accruing during the Term and except to the extent that Operator is required to indemnify Owner with respect thereto pursuant to Section 22.2. ALL INDEMNITIES IN THIS PARAGRAPH WILL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW FOR THE BENEFIT OF THE OPERATOR, EVEN IF THE APPLICABLE CLAIM IS CAUSED BY THE ACTIVE OR PASSIVE, JOINT, CONCURRENT OR COMPARATIVE NEGLIGENCE OF THE OPERATOR, AND REGARDLESS OF WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED UPON OR ALLEGED AGAINST THE OPERATOR. If this Agreement will be terminated or there will be a change of ownership of the Hotel or any other similar situation that could give rise to liability of Operator under any collective bargaining agreement or any multiemployer pension plan or any related requirements under ERISA, then Owner shall provide Operator with evidence of satisfaction of such liability or security therefor, in each case reasonably satisfactory to Operator, including, but not limited to the posting of any bond or other security that may be required or advisable under ERISA, such multiemployer pension plan or such collective bargaining agreement. In connection with Owner's indemnification obligations hereunder, concurrently with the termination of this Agreement, Owner shall deposit with an escrow agent mutually acceptable to Owner and Operator an amount equal to 110% of the anticipated cost of any outstanding or anticipated worker compensation claims under clause (i) above or any Employee Claims that are not reasonably anticipated to be covered by insurance, provided that in no event shall such amounts escrowed limit Owner's obligations hereunder. Subject to the terms of a mutually acceptable escrow agreement, the escrowed funds shall be released to pay the costs and expenses incurred in connection with such claims and any remaining balance shall be released to Owner upon the final and non-appealable disposition or settlement of all such claims; provided that there is no ongoing or threatened in writing lawsuit, claim, litigation, arbitration, mediation, case or other legal proceeding with respect to clause (i) above or any Employee Claims, then any remaining escrowed funds shall be released to Owner at the earlier of (i) the expiration of the statute of limitations under applicable law for bringing or filing any such claims and (ii) Operator's reasonable determination that there is no longer any reasonably expected potential loss with respect to any Hotel Employee.

16 SEP 1 11:41 AM '15

The terms of this Article 18 shall survive the expiration or earlier termination of this Agreement.

**ARTICLE 19**  
**NOTICES**

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

To Owner: SWVP La Paloma LLC  
12790 El Camino Real, Suite 150  
San Diego, California 92130  
Attention: Mark Schlossberg and Cary Mack  
Email: mark@swvp.com and cmack@swvp.com

With a copy to: Southwest Value Partners  
12790 El Camino Real, Suite 150  
San Diego, California 92130  
Attention: Elizabeth Bonacci  
Email: ebonacci@swvp.com

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

With a copy to: Goodwin Procter LLP  
Three Embarcadero Center, 24<sup>th</sup> Floor  
San Francisco, CA 94111  
Attn: Benjamin C. Tschann

Such notice or other communication may be given by Federal Express or other nationally recognized overnight carrier or by electronic mail in which case notice shall be deemed given upon confirmed delivery. Notice may be mailed by United States registered or certified mail, return receipt requested, postage prepaid, deposited in a United States post office or a depository for the receipt of mail regularly maintained by the post office. If mailed, then such notice or other communication shall be deemed to have been received by the addressee on the third (3<sup>rd</sup>) day following the date of such mailing. Such notices, demands, consents and reports may also be delivered by hand, in which case it shall be deemed received upon delivery.

**ARTICLE 20**  
**CONSENT AND APPROVAL**

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

**ARTICLE 21**  
**TRANSFERS**

21.1 **Transfers.** Operator may not Transfer its interest in this Agreement without the prior written consent of Owner, which consent may be withheld or conditioned in Owner's sole discretion. Operator shall have the right to assign its rights to receive payments under this Agreement as security for indebtedness or other obligations. Owner may not Transfer its interest in this Agreement or the Hotel without the prior written consent of Operator, which consent may be withheld or conditioned in Operator's sole discretion except (i) to any Affiliate, and (ii) as set forth in Section 21.2.

21.2 **Assignability upon Sale.** Notwithstanding anything to the contrary in Section 21.1, if Owner decides to enter into a Sale of the Hotel with a third party but does not intend to terminate this Agreement upon such sale pursuant to Section 17.1, then at such time as Owner enters into a firm commitment for the Sale of the Hotel, Owner shall deliver a written notice (the "**Notice of Proposed Sale**") of the proposed Sale of the Hotel to Operator stating the name of the prospective purchaser or tenant, as the case may be, and thereafter, Owner shall provide all other information concerning the proposed purchaser or tenant reasonably requested by Operator and which such purchaser or tenant has provided to Owner or Owner's Affiliates. Within fifteen (15) days of Operator's receipt of the Notice of Proposed Sale, Operator shall notify Owner of its election to either: (i) continue operating the Hotel pursuant to this Agreement following such Sale of the Hotel, or (ii) terminate this Agreement. In the event the proposed purchaser or tenant has been approved by the Licensor but Operator has elected to terminate this Agreement, Operator shall not have the right to receive the Termination Fee in connection with such termination. In the event the proposed purchaser or tenant is not approved by Licensor, Operator shall have the right to receive the Termination Fee (if any) in connection with such termination. In the event Operator approves such prospective purchaser or tenant, unless such Sale of the Hotel is prohibited by Section 21.3, then this Agreement shall be assigned to the purchaser or tenant and concurrently with the closing of such Sale of the Hotel, the purchaser or tenant, as the case may be, shall, by appropriate instrument in form reasonably satisfactory to Operator, assume all of Owner's obligations under this Agreement. Upon any such Sale of the Hotel, the assigning Owner shall be released from all obligations and liabilities arising under this Agreement on or after the effective date of such assignment.

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

15 SEP 1 11:41 AM '15

**ARTICLE 22**  
**INDEMNITY**

22.1 **Indemnity by Owner.** Owner shall indemnify, defend and hold Operator, its Affiliates and their respective directors, trustees, officers, employees, agents and assigns (collectively the “Operator Indemnified Parties”) harmless for, from and against any and all third-party liabilities, claims, demands, actions, causes of action, judgments, orders, damages, costs, expenses, and losses (including reasonable attorney’s fees and costs) which Operator Indemnified Parties might incur, become responsible for, or pay out for any reason, directly or indirectly arising out of, relating to or resulting from: (i) this Agreement, including the negotiation of or entering into this Agreement; (ii) the development, construction, ownership and/or operation of the Hotel prior to and after the Effective Date, and (iii) other activities relating to the Hotel, except to the extent caused by Operator’s Grossly Negligent or Willful Acts.

22.2 **Indemnity by Operator.** Operator shall indemnify, defend and hold Owner, its Affiliates and their respective directors, trustees, officers, employees, agents and assigns (collectively the “Owner Indemnified Parties”) harmless for, from and against any and all third-party liabilities, claims, demands, actions, causes of action, judgments, orders, damages, costs, expenses, and losses (including reasonable attorney’s fees and costs) which Owner Indemnified Parties might incur, become responsible for, or pay out for any reason, directly or indirectly arising out of, relating to or resulting from this Agreement, to the extent caused by Operator’s Grossly Negligent or Willful Acts.

22.3 **Indemnification Procedure.** Any Indemnified Party shall be entitled, upon written notice to the Indemnifying Party, to the timely appointment of counsel by the Indemnifying Party for the defense of any claim, which counsel shall be subject to the approval of the Indemnified Party. If, in the Indemnified Party’s reasonable judgment, a material conflict of interest exists between the Indemnified Party and the Indemnifying Party at any time during the defense of the Indemnified Party, the Indemnified Party may appoint independent counsel of its choice for the defense of the Indemnified Party as to such claim. Additionally, regardless of whether the Indemnified Party is appointed counsel or selects independent counsel (i) the Indemnified Party shall have the right to participate in the defense of any claim and approve any proposed settlement of such claim, such approval not to be unreasonably withheld, and (ii) all costs, expenses and attorneys’ fees of the Indemnified Party shall be borne by the Indemnifying Party. If the Indemnifying Party fails to timely pay such costs, expenses and reasonable attorneys’ fees, the Indemnified Party may, but shall not be obligated to, pay such amounts and be reimbursed by the Indemnifying Party for the same, which amounts shall bear interest at the Default Rate until paid in full. The parties hereby acknowledge that it shall not be a defense to a demand for indemnity that less than all claims asserted against the Indemnified Party are subject to indemnification. If a claim is covered by the Indemnifying Party’s liability insurance, the Indemnified Party shall not take or omit to take any action that would cause the insurer not to defend such claim or to disclaim liability in respect thereof. Further, the Indemnified Party shall cooperate with the Indemnifying Party in the defense of the claim (at the Indemnifying Party’s

cost), shall not settle the claim without the consent of the Indemnifying Party, and shall not take any action which prejudices the defense of the claim.

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

**ARTICLE 23**  
**MISCELLANEOUS**

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

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

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

**23.4 Governing Law.** This Agreement shall be construed, both as to its validity and as to the performance of the parties, in accordance with the laws of the [State of Arizona]. [Note to Draft: to be confirmed upon review of this Agreement by HEI's local counsel]

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

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

**23.7 Estoppel Certificates.** Owner and Operator agree, at any time and from time to time, as requested by the other party, upon not less than ten (10) days' prior written notice, to execute and deliver to the other a statement (i) certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as

16 SEP 1 11:41:13 AM 2015

modified and stating the modifications), (ii) certifying the dates to which required payments have been paid, and (iii) stating whether or not, to the best knowledge of the signer, the other party is in default in performance of any of its obligations under this Agreement, and if so, specifying each such default of which the signer may have knowledge, it being intended that such statement delivered pursuant hereto may be relied upon by others with whom the party requesting such certificate may be dealing.

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

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

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

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

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

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

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

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

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

16 SEP 1 11:47:02 PM '15

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

#### **ARTICLE 24**

#### **NO REPRESENTATIONS AS TO INCOME OR FINANCIAL SUCCESS OF HOTEL**

In entering into this Agreement, Operator and Owner acknowledge that neither Owner nor Operator has made any representation to the other regarding projected earnings, the possibility of future success or any other similar matter respecting the Hotel, and that Operator and Owner understand that no guarantee is made to the other as to any specific amount of income to be received by Operator or Owner or as to the future financial success of the Hotel.

#### **ARTICLE 25**

#### **REPRESENTATIONS OF OPERATOR**

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

(a) this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Operator enforceable in accordance with the terms hereof;

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

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

#### **ARTICLE 26** **REPRESENTATIONS OF OWNER**

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

(a) this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with the terms hereof;

(b) there is no claim, litigation, proceeding or governmental investigation pending, or as far as is known to Owner, threatened, against or relating to Owner, the properties or business of Owner or the transactions contemplated by this Agreement which does, or may reasonably be expected to, materially and adversely affect the ability of Owner to enter into this Agreement or to carry out its obligations hereunder, and there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Operator;

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

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



(e) Owner holds fee simple title to the Premises, and enjoys the use and operation of the Hotel building, improvements and the real property on which the Hotel is situated. Owner has full power, authority and legal right to so use said real property, to permit the same to be managed by Operator and otherwise to perform and observe the provisions of this Agreement.

**ARTICLE 27**  
**DISPUTE RESOLUTION**

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

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

(a) The parties shall first attempt to settle such Dispute by participating in at least ten (10) hours of mediation, which mediation shall be administered by JAMS (or if JAMS no longer exists, another mutually acceptable alternative dispute resolution provider) (the "**ADR Provider**"). A designated individual mediator who is a member in good standing of the ADR Provider will then be mutually selected by the parties to conduct the mediation; provided that such mediator must have at least ten (10) years' experience as a mediator and must not have any conflict of interest with either party (the "**Mediator**"). If the parties are unable to agree upon the identity of the Mediator within five (5) days after the complaining party has notified the other party that a Dispute exists, then, subject to the requirements of this Section, the ADR Provider shall select a qualified Mediator of its choosing who shall act as the Mediator of the Dispute. The mediation will be a nonbinding conference between the parties conducted in accordance with the applicable rules and procedures of the ADR Provider. The mediation shall take place in Tucson, Arizona. Neither party may initiate litigation or arbitration proceedings with respect to any Dispute until the mediation of such Dispute is complete; provided, however, the parties shall have the right to commence litigation or other legal proceedings with

16 SEP 1 11:49 AM 12/16

respect to any claims solely relating to: (i) preserving or protecting proprietary information, (ii) emergency or injunctive relief, (iii) enforcement of the dispute resolution provisions of this Agreement, or (iv) enforcement of the decision and/or award by any Expert or Arbitrator hereunder ("**Litigation Claims**"). Any mediation will be considered complete: (a) if the parties enter into an agreement to resolve the Dispute; or (b) if the Dispute is not resolved after completion of ten (10) hours of such mediation. The parties shall share equally in the cost of the mediation.

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

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

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

(e) The Arbitrator's monetary awards may include a requirement that the losing party bear reasonable attorneys' fees and costs of the arbitration proceeding, but, in no event shall award punitive or exemplary damages of any kind. Unless the Arbitrator determines otherwise, each party to an arbitration proceeding shall be responsible for all fees and expenses of such party's attorneys, witnesses, and other representatives, and one-half of the other fees and expenses of the Arbitrator, and the other costs of the arbitration shall be allocated to and paid by (a) the party or parties initiating the respective arbitration proceeding, and (b) the party or parties against whom the respective arbitration proceeding is brought. The award rendered in any

arbitration commenced hereunder shall be final and binding upon the parties, and each party hereby waives any claim or appeal whatsoever against it or any defense against its enforcement.

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

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

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

**ARTICLE 28**  
**TERMINATION OF THE LICENSE AGREEMENT**

Owner reserves and shall have the right in its sole discretion, at any time and without the consent or approval of (but with notice to) Operator, to terminate the License Agreement, provided, however, that (i) Owner shall have no such right in order to establish its own independent operations, such as an operation without a franchise or license or in its own hotel name unless this Agreement is terminated prior to or simultaneously with the termination of the License Agreement and Owner has paid Operator the Termination Fee (if any); and (ii) in the event of such a termination by Owner, Operator shall have the right of approval (which right shall be reasonably exercised) of any new franchise or license for a Hotel unless this Agreement is terminated and Owner has paid Operator the Termination Fee (if any) prior to or simultaneously with the termination of the License Agreement.

**ARTICLE 29**  
**RELATIONSHIP OF PARTIES**

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

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

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

16 SEP 1 11:47. LDC PH1216

principles of contract law and the express provisions of this Agreement. To the extent any duties, fiduciary or otherwise, that exist or may be implied under common law principles of agency (collectively, the “**Implied Fiduciary Duties**”), are inconsistent with, or would have the effect of modifying, limiting or restricting the express provisions of this Agreement, the terms of this Agreement shall prevail.

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

*The rest of this page is intentionally left blank.*

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

**OWNER:**

SWVP La Paloma, LLC,  
A Delaware limited liability company

By: [Signature]  
Name: [Signature]  
Title: Authorized Representative

**OPERATOR:**

MERRITT HOSPITALITY, LLC,  
a Delaware limited liability company

By: [Signature]  
Name: Anthony Rutledge  
Title: Vice President

16 SEP 1 11:47 AM '15

*Signature Page to Management Agreement*

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**SECTION 15 Restaurant or hotel/motel license applicants**

- 1. Is there an existing Restaurant or Hotel/Motel Liquor License at the proposed location?  Yes  No
- 2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. § 4-203.01; and complete SECTION 5 of this application.
- 3. All Restaurant and Hotel/Motel applicants must complete a Restaurant Operation Plan form provided by the Department of Liquor Licenses and Control.
- 4. As stated in A.R.S. § 4-205.02. (H)(2), a Restaurant is an establishment which derives at least forty (40) percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from sales of food and spirituous liquor on the licensed premises. By applying for this  Restaurant  Hotel/Motel, I certify that I understand that I must maintain a minimum of forty (40) percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit form with this application.

\_\_\_\_\_  
(Applicant's Signature)

5. I understand it is my responsibility to contact the Department of Liquor Licenses and Control to schedule an inspection when all tables and chairs are on site, kitchen equipment, and, if applicable, patio barriers are in place on the licensed premises. With the exception of the patio barriers, these items are not required to be properly installed for this inspection. Failure to schedule an inspection will delay issuance of the license. If you are not ready for your inspection 90 days after filing your application, please request an extension in writing; specify why the extension is necessary; and the new inspection date you are requesting.

\_\_\_\_\_  
(Applicant's Initials)

160001 Lic. PM12015

**SECTION 16 Diagram of Premises**

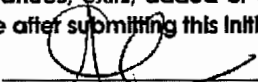
Check ALL boxes that apply to your business:

- Entrances/Exits       Liquor storage areas      **Patio:**       Contiguous
- Walk-up windows       Drive-through windows       Non Contiguous

1. Is your licensed premises currently closed due to construction, renovation or redesign?  Yes  No  
If yes, what is your estimated completion date? \_\_\_\_\_

Month/Day/Year

- 2. **Restaurants and Hotel/Motel** applicants are required to draw a detailed floor plan of the kitchen and dining areas including the locations of all kitchen equipment and dining furniture. Place for diagram is on section 16 number 6.
- 3. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored on the premises unless it is a restaurant (see # 3 above).
- 4. Provide the square footage or outside dimensions of the licensed premises. Please do not include non-licensed premises such as parking lots, living quarters, etc.
- 5. **As stated in A.R.S. § 4-207.01 (B), I understand it is my responsibility to notify the Department of Liquor Licenses and Control when there are changes to the boundaries, entrances, exits, added or deleted doors, windows, service windows or increase or decrease to the square footage after submitting this initial diagram.**

  
\_\_\_\_\_  
(Applicant's Initials)

**SECTION 16 Diagram of Premises – continued**

6. On the diagram please show only the areas where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored. It must show all entrances, exits, interior walls, bars, hi-top tables, dining tables, dining chairs, dance floor, stage, game room, and the kitchen. DO NOT include parking lots, living quarters, etc. When completing diagram, North is up ↑.

If a legible copy of a rendering or drawing of your diagram of the premises is attached to this application, please write the words "DIAGRAM ATTACHED" in the box provided for the diagram on the application.

**DIAGRAM OF PREMISES**

Diagram attached

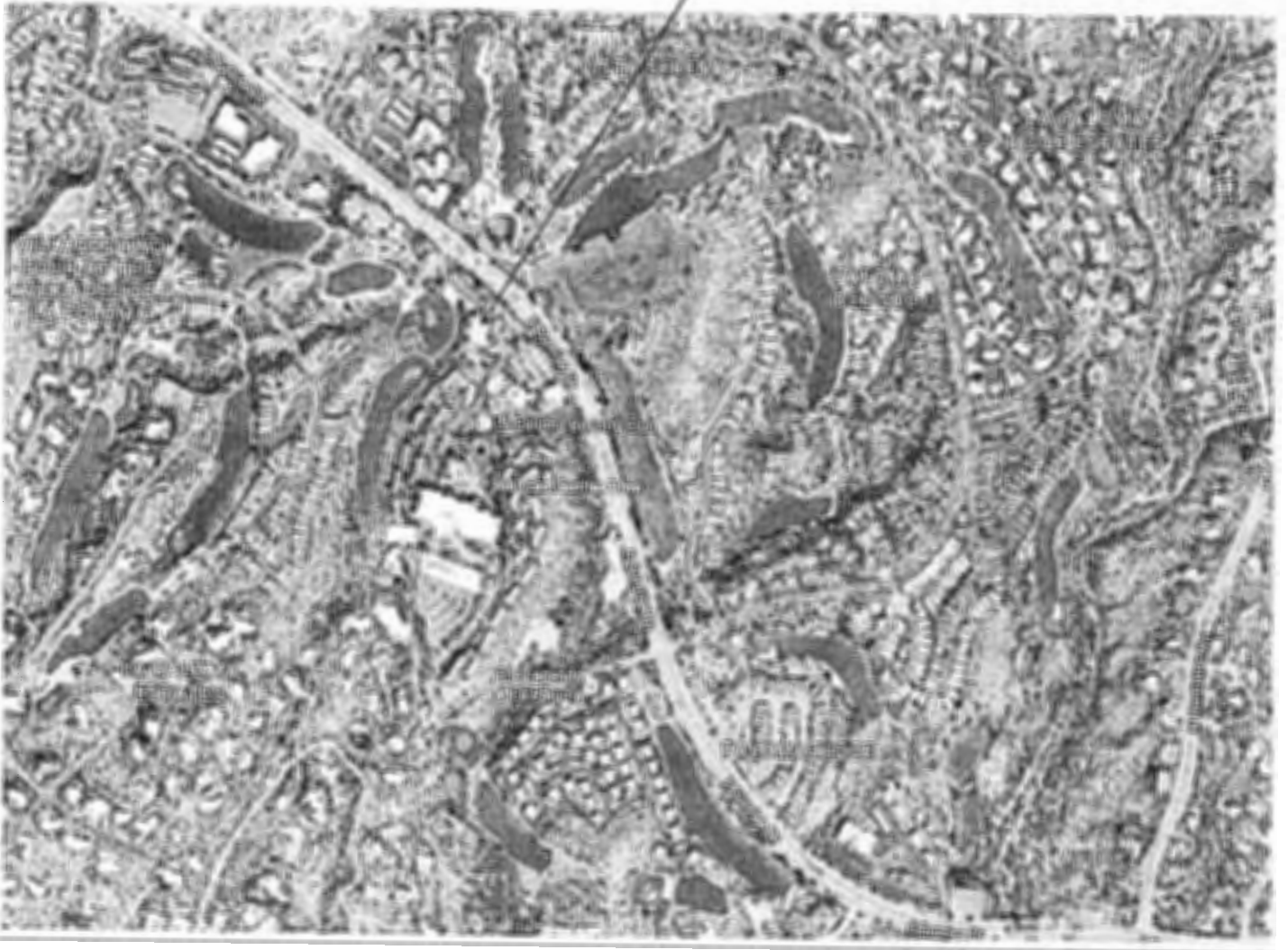
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La Paloma Country Club

3660 E. Sunrise Drive  
Tucson, AZ 85718

Country Club = 33,345 SF  
Tennis Club = 10,000 SF  
27-Hole Golf Course = 9,147,000 SF

Country Club





16 SEP 1 11:47 AM Lic. PM12416

La Paloma Country Club

3660 E. Sunrise Drive  
Tucson, AZ 85718

LIQUOR  
STORAGE

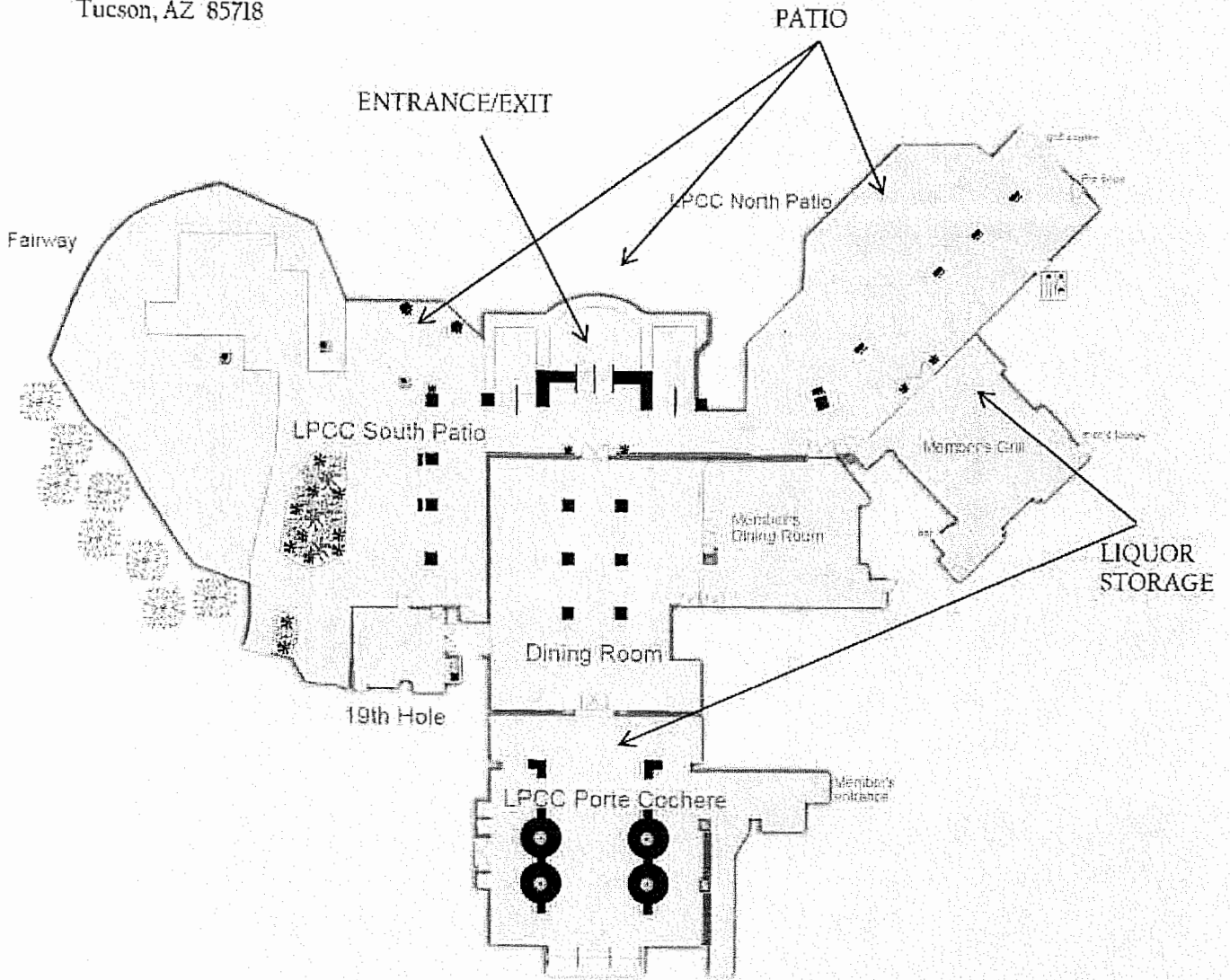


□ = licensed area

La Paloma Country Club

3660 E. Sunrise Drive  
Tucson, AZ 85718

16 SEP 1 Lic. Lic. #M12316



**SECTION 17 SIGNATURE BLOCK**

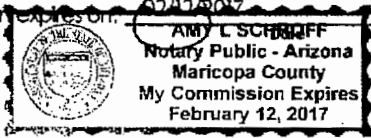
**NOTARY**

I, (Print Full Name) Andrea Dahlman Lewkowicz, hereby declare that I am the Owner/Agent filing this application as stated in Section 4 # 1. I have read this application and verify all statements to be true, correct and complete.

X *[Signature]*  
(Signature of Current Individual Owner/Agent)

State of Arizona County of Maricopa  
The foregoing instrument was acknowledged before me this

My commission expires on 02/12/2017



31 of August, 2016  
Day Month Year  
*[Signature]*  
Signature of NOTARY PUBLIC

**A.R.S. § 41-1030. Invalidity of rules not made according to this chapter; prohibited agency action; prohibited acts by state employees; enforcement; notice**

B. An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.

D. THIS SECTION MAY BE ENFORCED IN A PRIVATE CIVIL ACTION AND RELIEF MAY BE AWARDED AGAINST THE STATE. THE COURT MAY AWARD REASONABLE ATTORNEY FEES, DAMAGES AND ALL FEES ASSOCIATED WITH THE LICENSE APPLICATION TO A PARTY THAT PREVAILS IN AN ACTION AGAINST THE STATE FOR A VIOLATION OF THIS SECTION.

E. A STATE EMPLOYEE MAY NOT INTENTIONALLY OR KNOWINGLY VIOLATE THIS SECTION. A VIOLATION OF THIS SECTION IS CAUSE FOR DISCIPLINARY ACTION OR DISMISSAL PURSUANT TO THE AGENCY'S ADOPTED PERSONNEL POLICY.

F. THIS SECTION DOES NOT ABROGATE THE IMMUNITY PROVIDED BY SECTION 12-820.01 OR 12-820.02.