

**SECOND AMENDED AND RESTATED  
HOTEL MANAGEMENT AGREEMENT  
BETWEEN  
AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.  
AND  
BOYKIN PROSPERA, LLC**

**THIS SECOND AMENDED AND RESTATED HOTEL MANAGEMENT AGREEMENT** (this “**Agreement**”) is made and entered into as of November 1, 2024 (the “**Effective Date**”, between Austin-Bergstrom Landhost Enterprises, Inc., a Texas Public Facility Corporation (“**Owner**”), having its principal office at 3600 Presidential Blvd., Suite 411, Austin, Texas 78719, and Boykin Prospera, LLC, a Delaware limited liability company (“**Manager**”), having its principal offices at 2100 Georgetown Drive, Suite 401, Sewickley, Pennsylvania 15143.

**RECITALS**

- A. The City of Austin, a Texas home-rule municipal corporation (the “**City**”), owns and operates Austin-Bergstrom International Airport (the “**Airport**”), a public municipal airport in Austin, Travis County, Texas;
- B. The City created Austin-Bergstrom Landhost Enterprises, Inc. as a public facility corporation under Chapter 303 of the Texas Local Government Code to develop, finance, construct, and operate a full service hotel at the Airport (the “**Hotel**”);
- C. Pursuant to the Indenture of Trust dated as of October 1, 2017 (“**Indenture**”), between Owner and U.S. Bank National Association, as Trustee (“**Bonds Trustee**”), Owner issued its \$45,600,000 Airport Hotel Senior Revenue Refunding and Improvement Bonds, Series 2017 (together, the “**Bonds**”);
- D. In furtherance of these objectives, pursuant to a Ground Lease Agreement dated as of October 1, 2017, as amended by the First Amendment to the Ground Lease Agreement dated as of August 1, 2021, and as may be amended or amended and restated from time to time (the “**Lease**”), the City leases to Owner the land and buildings at the Airport more particularly described in **Schedule A** hereto (the “**Site**”);
- E. This Agreement amends and restates that certain Amended and Restated Hotel Management Agreement, dated October 1, 2017, with an Effective Date of November 1, 2017 (the “**Prior Agreement**”), as amended by Amendment No. 1 to Amended and Restated Hotel Management Agreement dated September 9, 2022 between Owner and Manager pursuant to which Manager was engaged to operate the Hotel as a Hilton Hotel in accordance with the Franchise and the Indenture (as hereinafter defined);
- F. Owner desires to continue to retain the services of Manager to operate the Hotel, and Manager desires to continue to operate the Hotel, in each case subject to the terms and conditions of this Agreement; and

**NOW, THEREFORE**, for and in consideration of the premises, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Manager agree as follows:

**ARTICLE 1**  
**GENERAL**

- 1.1 This Agreement amends and restates the Prior Agreement in its entirety.
- 1.2 Unless otherwise expressly defined herein, capitalized terms in this Agreement shall be defined as provided in the Indenture.
- 1.3 The following terms were used in this Agreement have the following meanings:
  - A. **Affiliate** means any entity controlling, controlled by or under common control with Manager (control being deemed to mean the ownership of fifty percent (50%) or more of the stock or other beneficial interest in such entity and/or the power to direct the day-to-day operations of such entity).
  - B. **Budgets** shall mean the Budgets described in Section 9.4.
  - C. **Building** shall mean the building located on the Site with two hundred sixty-two (262) guest units, a ground floor lobby area, a full-service restaurant, lobby lounge, outdoor pool and Jacuzzi, meeting and banquet facilities, fitness center, gift shop, and other amenities and any surface parking areas or other improvements related to the Building.
  - D. **Data Security Requirements** shall mean (a) the then current Payment Card Industry Data Security Standards and other applicable information security and operating rules and regulations of the credit card associations and (b) applicable laws, ordinances, statutes, rules, regulations and orders relating to the Hotel now and hereafter in effect and all terms, conditions, requirements and provisions of all permits, with respect to data protection and privacy, including, but not limited to, the California Consumer Privacy Act, as amended, and its implementing regulations.
  - E. **FF&E** shall mean the furniture, furnishings, wall coverings, floor coverings, window treatments, fixtures and hotel equipment (other than Installations and Operating Equipment) and vehicles.
  - F. **Fiscal Year** shall mean each twelve (12) consecutive calendar month period or partial twelve (12) consecutive calendar month period within the Operating Term commencing on January 1st and ending on December 31st (or, with respect to the last year of the Operating Term, the expiration or earlier termination of the Operating Term) unless Owner and Manager otherwise agree.
  - G. **Franchise** shall mean the franchise agreement dated as of October 17, 2017, between Owner and Hilton Franchise Holding LLC, as amended by that

Amendment to Franchise Agreement dated as of December 12, 2017, and as may be amended or amended and restated from time to time.

- H. **Hotel** shall mean the hotel developed and constructed at the Site. The Hotel consists of and includes the Building, FF&E, Installations, Operating Equipment and Operating Supplies, as such terms are defined in this Section 1.3.
- I. **Installations** shall mean the mechanical systems and built-in installations of the Building including, but not limited to, heating, ventilation, air conditioning, electrical and plumbing systems, elevators and escalators, and built-in laundry, refrigeration, filters and pool equipment and other similar systems and items of equipment installed in or affixed to the Building, excluding the FF&E.
- J. **Major Agreements** shall mean the Indenture, the Lease, and the Franchise.
- K. **Non-Operating Expenses** shall mean the cost of Owner-related, or non-operating items as approved by Owner such as capital leases as applicable, Lease payments, depreciation, interest on the Bonds, the “**City Fee**” and “**Administrative Fees and Expenses**” (as such terms are defined in the Indenture) relating to the Hotel or its facilities, which are properly attributable under the Uniform System to the period in question.
- L. **Operating Equipment** shall mean chinaware, glassware, silverware, linens and other items of a similar nature.
- M. **Operating Expenses** shall mean all costs and expenses of maintaining, conducting and supervising the operation of the Hotel and all of its facilities, which are properly attributable under the Uniform System to the period in question, to the extent the same are incurred in accordance with the terms of this Agreement.
  - (i) Operating Expenses shall include the following, to the extent the same are incurred by Manager in accordance with the approved Operating Budget, are expressly permitted by this Agreement or are otherwise approved by Owner:
    - (a) The cost of all Operating Equipment and Operating Supplies;
    - (b) Salaries and wages of Hotel personnel, including costs of payroll taxes and employee benefits. The salaries or wages of off-site employees or executives of Manager shall not be Operating Expenses, provided that if it becomes reasonably necessary for an off-site employee or executive of Manager to temporarily perform services at the Hotel of a nature normally performed by Hotel Employees, his or her salary (including payroll taxes and employee benefits) for such

period only as well as his or her reasonable travel expenses, shall be Operating Expenses and reimbursed to Manager, but the person's salary level shall not, without Owner's prior approval, exceed the amount set forth in the approved Operating Budget for the position to be filled;

- (c) The cost of all other goods and services obtained in connection with the operation of the Hotel including, without limitation, heat, and utilities, laundry, landscaping and exterminating services and office supplies;
- (d) The non-capital cost of all repairs to and maintenance of the Hotel;
- (e) Insurance premiums (or the allocable portion thereof in the case of blanket policies) for all insurance maintained under Article 11 (other than Commercial General Liability insurance and Property insurance) and losses incurred on any self-insured risks (including deductibles);
- (f) All taxes, assessments, permit fees, inspection fees, and water and sewer charges and other charges (other than income or franchise taxes) payable by or assessed against Owner with respect to the operation of the Hotel;
- (g) Data Processing and Network Connectivity Expense;
- (h) All costs and fees of accountants, attorneys, or other third parties who perform services required or permitted hereunder, which under GAAP are expended currently rather than capitalized;
- (i) All expenses for advertising the Hotel and all expenses of sales promotion and public relations activities;
- (j) All out-of-pocket expenses and disbursements incurred by Manager, pursuant to, in the course of, and directly related to, the management and operation of the Hotel under this Agreement. Without limiting the generality of the foregoing, such charges may include all reasonable travel, telephone, telegram, facsimile, air express and other incidental expenses, but, except as otherwise provided in this Agreement, shall not include any of the regular expenses of the central offices maintained by Manager, other than offices maintained at the Hotel for the management of the Hotel. Manager shall maintain and provide to Owner invoices or other evidence supporting such charges;

- (k) Manager's Base Fee and Incentive Fee;
  - (l) Manager's fees for Group Services set forth in Section 7.1 and for Project Services set forth in Section 7.3;
  - (m) Payments under any applicable Franchise;
  - (n) Any other item specified as an Operating Expense in this Agreement; and
  - (o) Any other cost or charge classified as an Operating Expense or an Administrative and General Expense under the Uniform System as specified in the Budgets unless specifically excluded under the provisions of this Agreement or a Major Agreement.
- (ii) Operating Expenses shall not include:
- (a) Amortization and depreciation;
  - (b) The making of or the repayment of any loans or any interest thereon;
  - (c) The costs of any alterations, additions or improvements which for Federal income tax purposes must be capitalized and amortized over the life of such alteration addition or improvement;
  - (d) Payments under any operating ground lease or space lease, including the Lease;
  - (e) Payments into or out of the Renewal and Replacement Fund; or
  - (f) Any item defined as a Non-Operating Expense in this Section 1.3.
- (iii) Notwithstanding anything to the contrary in this Agreement, it is the intention of the parties that every expense classified as an Operating Expense under this Agreement shall be treated as Operating and Maintenance Expenses under the Indenture, unless otherwise expressly provided in the Indenture. For so long as the Indenture is in force and effect, in the event of any inconsistency regarding the classification of Operating Expenses, the provisions of the Indenture shall control.

N. **Operating Supplies** shall mean stock and inventories of paper supplies, cleaning materials, consumable items and food and beverage.

- O. **Payment Card Industry Data Security Standards** shall mean the latest version of Payment Card Industry Data Security Standards, as amended, including any preface and appendices thereto.
- P. **Protected Data** shall mean any information that, either alone or in combination with other information, identifies, relates to, describes, can reasonably be associated with, or can reasonably be linked, directly or indirectly, with a particular individual, and which is obtained, created or shared in connection with the services or obligations performed by Manager under this Agreement. As used in this definition, “individual” shall include, without limitation, employees.
- Q. **Total Revenues** shall mean all income, revenue, and proceeds resulting from the operation of the Hotel and all of its facilities (net of refunds and credits to guests and other items deemed “**Allowances**” under the Uniform System), which are properly attributable under the Uniform System to the period in question.
- (i) Subject to Subsection (ii) below, Total Revenues shall include, without limitation, all amounts derived from:
- (a) The rentals of rooms, meeting space and conference facilities;
  - (b) The sale of food and beverage whether sold in a restaurant, lounge, delivered to a guest room, sold through an in-room facility or vending machines, provided in meeting or banquet rooms or sold through catering operations;
  - (c) Charges for admittance to or the use of any parking facilities, recreational facilities or any entertainment events at the Hotel, which shall mean the net amount received by Owner to the extent that Manager is not responsible for the management of such facilities or events;
  - (d) Rentals paid under office spaces and leases;
  - (e) Charges for other Hotel services or amenities, including, but not limited to, telephone service, wholesale and retail sales of merchandise, vending and game machines, services charges, business center, florist, in-room movies, and valet/laundry services; and
  - (f) The gross amount of any proceeds of business interruption or similar insurance.
- (ii) Total Revenues shall not include:

- (a) Sales, use, excise or occupancy taxes or similar governmental impositions collected by Owner or Manager;
  - (b) Tips, service charges and other gratuities received by or distributed to Hotel Employees;
  - (c) Proceeds of insurance except for proceeds of business interruption insurance;
  - (d) Proceeds of the sale or condemnation of the Hotel, any interest therein or any other asset of Owner, or the proceeds of any loans, financings or refinancings;
  - (e) Capital contributed by Owner or any third party to the Hotel;
  - (f) The receipts (including food and beverage and retail receipts) of any tenant, licensee, or concessionaire under a Concession;
  - (g) Any item defined as Non-Operating Income under the Uniform System (including without limitation, interest on Owner's funds, grants and forgiveness of indebtedness); and
  - (h) Deposits to the Renewal and Replacement Fund.
- (iii) Notwithstanding anything to the contrary in this Agreement, it is the intention of the parties that all revenue classified as Total Revenues under this Agreement shall be treated as Total Revenues under the Indenture, unless otherwise expressly provided in the Indenture. For so long as the Indenture is in force and effect, in the event of any inconsistency regarding the classification of Total Revenues, the provisions of the Indenture shall control.

## ARTICLE 2 OPERATING TERM

- 2.1 This Agreement shall have a term (the “**Operating Term**”) commencing on the Effective Date and shall remain in effect for an initial term expiring on December 31, 2029, and may be extended thereafter for up to two (2) additional twelve (12) month periods, subject to the mutual agreement of the Manager and Owner.
- 2.2 If a new manager has not been chosen by Owner to operate the Hotel at the expiration date of this Agreement, Owner shall have the unilateral right to extend the Operating Term by written notice to Manager on a month-to-month basis (“**Holdover Period**”), until a new management agreement has been executed, and if a new manager is to be chosen, the new manager is ready to assume day-to-day management of the Hotel so long as all amounts due Manager under this Agreement

are paid in full in accordance with the terms of this Agreement, and Manager continues to be paid all such amounts due on a current basis.

### **ARTICLE 3 APPOINTMENT OF MANAGER**

- 3.1 Owner grants to Manager during the Operating Term the right to supervise and direct the management and operation of the Hotel for and on the account of Owner, and Manager hereby accepts said grant and agrees that it will supervise and direct the management and operation of the Hotel, pursuant to the terms of the Major Agreements and this Agreement. Owner agrees that it will cooperate with Manager in every reasonable and proper way to permit and assist Manager to carry out its duties hereunder. Owner and Manager further agree that this Agreement provides for management of the Hotel, that Owner and Manager do not intend to nor does this Agreement grant or create a franchise within the meaning of the Federal Trade Commission Act, any rule or regulation promulgated thereunder, or any other applicable law, rule, regulation or judicial decision.
- 3.2 In accordance with and subject to the Major Agreements, Manager shall conduct a full service hotel operation that will provide the public with good and efficient services and with full service hotel accommodations, including all amenities normally associated therewith. Manager shall at all times operate and manage the Hotel in a professional manner in accordance with prudent management practices and consistent with the requirements of this Agreement, in order to preserve the assets that comprise the Hotel while seeking to optimize the financial performance of the Hotel's operations (subject to availability of sufficient funds and Owner's compliance with its obligations under this Agreement). In its operation of the Hotel, Manager shall comply with all applicable federal, state, and local laws, rules and regulations. Manager shall not knowingly permit or create any electrical or other interference with radio communications between the Airport and aircraft. Manager will not install any new lighting on or about the Site without the prior approval of Owner (such approval not to be unreasonably withheld or delayed), and will remove any lighting on the Site that Manager becomes aware of that will make it difficult for pilots to distinguish between Airport lights and those of the Hotel, impair visibility in the vicinity of the Airport, or otherwise endanger landing, taking off, or maneuvering of aircraft.
- 3.3 This Agreement incorporates each of the Major Agreements by reference. In the event of any inconsistency or conflict between the provisions of the Lease or the Indenture and the provisions of this Agreement, the provisions of the Lease or Indenture, as applicable, shall govern; provided, however, nothing contained herein shall in any way be deemed a waiver or forbearance by Manager of the right to receive amounts due hereunder in accordance with the terms hereof.

### **ARTICLE 4 GENERAL SERVICES BY MANAGER**

- 4.1 Subject to the provisions of Article 3, Owner hereby engages Manager as the exclusive operator of the Hotel during the Operating Term and Manager accepts such engagement. During the Operating Term, Manager shall, as sole and independent contractor engaged by Owner to operate the Hotel and in accordance with the Budgets and the other applicable provisions of this Agreement, and subject to the availability of sufficient funds (to the extent that funds are required to accomplish such compliance):
- A. Recruit, train, direct, supervise, employ and dismiss on-site staff (the “**Hotel Employees**”) for the operation of the Hotel in accordance with the Employment Policies (as defined in Section 5.6).
  - B. Determine and implement all personnel policies and practices, including: (i) terms and conditions of employment, screening, selection, training, supervision, compensation, bonuses, severance, pension plans, and other employee benefits, discipline, dismissal, transfer and replacement; and (ii) the exercise of rights under any applicable labor laws in relation to the Hotel in accordance with the Employment Policies.
  - C. Develop and implement advertising, marketing, promotion, publicity and other similar programs for the Hotel.
  - D. Negotiate and reasonably enter into (i) licenses or concession agreements (collectively, the “**Concessions**”) for stores, office space and lobby space at the Hotel, collect the fees due under such Concessions and otherwise administer the Concessions, and (ii) contracts for the provision of services to the Hotel, as applicable; provided Manager shall not execute and enter into any Concessions, contracts or service agreements that (a) extend beyond twelve (12) months and are not cancelable by Owner without penalty upon sixty (60) days’ notice or less, or (b) provides for aggregate payments by Owner over the life of the contract (taking into account Owner’s early termination rights, if any) in excess of One Hundred Thousand Dollars (\$100,000.00) without the prior written consent of Owner. Manager may not sublease any portion of the Hotel or the Site without the prior written consent of the City and Owner. Manager shall provide Owner with a true and complete copy of each agreement entered into by Manager under this Section 4.1D, and each amendment, extension, renewal or other modification thereof, within ten (10) days after final execution.
  - E. Apply for, process and take all necessary steps to procure and keep in effect in Manager’s name (and/or Owner’s name to the extent required by local and licensing authorities) all licenses (including liquor licenses) and permits required for the operation of the Hotel. Owner agrees to assist Manager in connection with Manager’s efforts to obtain said liquor licenses.
  - F. Purchase or lease (i) all FF&E necessary for the operation of the Hotel in accordance with the Capital Budget and chargeable to the Renewal and

Replacement Fund and (ii) all Operating Equipment and Operating Supplies necessary for the operation of the Hotel from the Revenue Fund.

- G. Review, process and timely pay all valid invoices, bills, and other monetary obligations of the Hotel under contracts, service agreements, equipment leases, and similar agreements.
- H. Provide routine accounting and purchasing services as required in the ordinary course of business.
- I. Maintain the Hotel in a good state of repair and in accordance with all applicable laws, ordinances, regulations, rulings and orders of governmental authorities.
- J. Subject to Section 4.2 below, use commercially reasonable efforts to operate the Hotel in accordance with the Major Agreements.
- K. Implement policies and procedures that result in an effective revenue management process to optimize the Hotel's revenue.
- L. Establish industry standard (or better) administrative policies and procedures, including but not limited to policies and procedures for the collection of revenue, control of expenditures, purchasing of supplies and services, timely payment of accounts payable, control of credit, and scheduling of maintenance, and regularly verify that the policies and procedures are enforced.
- M. Provide, direct, supervise, and manage all such tasks as are customary and usual in the operation of a hotel of the class and standing of the Hotel and which are within Manager's reasonable control as Manager, in good faith and exercising prudent commercial judgment.
- N. Manager understands and agrees that, pursuant to the Lease, the City reserves the right of flight for the passage of aircraft above the surface of the Hotel hereunder in accordance with FAA criteria, and such right of flight shall include the right to cause in such airspace such noises as may be inherent to the operation of aircraft now known or hereafter used for navigation of or flight in the air, and that City reserves the right to use said airspace for landing at, taking off from or operating aircraft on or above the Airport; provided, however, if the foregoing in any way creates a failure to comply with, or satisfy, Brand Standards (as defined in Section 4.3 hereof), Manager shall not be deemed to be in default of Section 4.3 hereof.
- O. Manager shall accept payment for goods, accommodations or services in accordance with the terms of the Franchise.
- P. Manager shall keep the Hotel free from debris and trash and shall make reasonable commercial efforts to keep the Hotel free from any known

hazards created by Manager's operations. Manager shall provide for the handling of all trash and other refuse arising from the operation of the Hotel in accordance with all applicable laws, rules and regulations, and shall provide for its timely removal to a central collection for disposal. Manager shall take appropriate action to exterminate and to prevent the presence of rodents and other vermin in accordance with applicable health and safety codes and Brand Standards (as defined below). Manager shall keep all garbage and recyclable materials in durable, fly and rodent-proof, fireproof containers that are easily cleaned. The containers shall have tight fitting lids, doors, or covers and shall be kept covered when material is not being deposited in them.

- Q. Formulate and implement preventive maintenance and other programs designed to efficiently and effectively maintain the condition of all building areas and mechanical systems of the Hotel.
- R. Manager shall maintain an internal control structure designed to provide reasonable assurance that Hotel assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with Manager's authority, and that financial records are reliable for the purposes of preparing financial statements. The internal control structure shall be supported by the selection, training, and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures.
- S. File insurance claims and incident reports with insurance agents and carriers in a timely manner and in such a manner as not to jeopardize coverage therefor.
- T. Collect, maintain, transmit, disclose, process, and use any Protected Data obtained or derived from the operation of the Hotel in a manner that (i) complies with the terms of this Agreement and the applicable Franchise for the Hotel, and (ii) is designed to achieve and sustain compliance on an on-going basis with the Data Security Requirements; provided, however, that Owner acknowledges and agrees that the Protected Data is collected, maintained, transmitted, disclosed, processed and used in and through systems owned, licensed and/or under the sole control of the Hotel's franchisor and/or Owner or a third party contracted by Owner, and Manager does not warrant, represent, guaranty or have any liability with respect to such systems, software, policies or other matters that may exist or be utilized with respect thereto.
- U. Be available at reasonable times to discuss the operations of the Hotel with Owner and cause the Executive Personnel to be available to consult with and advise Owner or Owner's designees at Owner's reasonable request concerning the business of the Hotel.

- V. Manager shall comply with all applicable federal, state, and local laws, codes, rules, regulations, and license and permitting requirements applicable to the operation of a full service hotel in Austin, Travis County, Texas.
- W. Select one or more Consulting Engineers (as defined in the Indenture) as necessary for compliance by Owner with the Indenture.

4.2 Notwithstanding any other provision of this Agreement to the contrary, Manager's obligations, liabilities, duties and expectations with respect to any Major Agreement (including any franchise agreement, mortgage or any other agreement relating to the Hotel or the Site and mutually agreed by Owner and Manager to be a Major Agreement) shall be subject to the following: (i) true and complete copies thereof shall have been delivered to Manager sufficiently in advance to allow Manager to evaluate the scope of its obligations related thereto and put itself in a position to perform the obligations to be performed by Owner or Manager of the Hotel thereunder and (ii) the provisions thereof and/or compliance with such provisions by Manager (1) are limited to the day-to-day operation, maintenance and non-capital repair and replacement of the Hotel or any portion thereof, (2) do not require contribution of capital or payments of Manager's own funds, (3) do not increase Manager's obligations, liabilities, duties and expectations hereunder or decrease Manager's rights or benefits hereunder, (4) do not limit or purport to limit any corporate activity or transaction with respect to Manager or its Affiliates or any other activity, transfer, transaction, property or other matter involving Manager or its Affiliates other than at the site of the Hotel, and (5) are otherwise within the scope of Manager's duties under this Agreement. Owner acknowledges and agrees, without limiting the foregoing, that any failure of Manager or the Hotel to comply with the provisions of any Major Agreement that Manager is bound to comply with pursuant to this Agreement, arising out of (A) the condition of the Hotel, and/or the failure of the Hotel to comply with the provisions of such Major Agreement, prior to Manager's assuming the day-to-day management thereof, (B) construction activities at the Hotel (except to the extent arising from Manager's or any Affiliate of Manager's management of the same pursuant to Section 4.1(I) above), (C) inherent limitations in the design and/or construction of, location of and/or parking at the Hotel and/or (D) Owner's failure to approve any matter requested by Manager in Manager's reasonable good faith business judgment as necessary or appropriate to achieve compliance with any Major Agreement, shall not be deemed a breach by Manager of any of its obligations under this Agreement.

4.3 Manager acknowledges that Owner is a party to the Franchise with Hilton Franchise Holding LLC, a subsidiary of Hilton Worldwide Holdings Inc. (the "**Brand**"), pursuant to which the Hotel operates under the trade name, trademarks, and service marks ("**Marks**") of the Hilton Hotels Brand and which requires that the Hotel comply with the Brand Standards therein (the "**Brand Standards**"). Owner acknowledges that (i) Manager's ability to manage and operate the Hotel in accordance with the Brand Standards is dependent on Owner's approval of Budgets which are adequate both in terms of operating amounts and capital reserves to

enable Manager to maintain the Brand Standards. Owner and Manager further acknowledge that the Brand may revise, update, amend, change or modify the Brand Standards (“**Revisions**”) from time to time and Owner shall give written notice, in detail, of any such Revisions to Manager as promptly as possible and Manager shall have a commercially reasonable time to implement such actions as are necessary to comply with the Revisions. All costs and expenses incurred by Manager to comply with the terms, conditions, and requirements of the Franchise, the Brand, and the Brand Standards shall be Operating Expenses or amounts otherwise chargeable to the Renewal and Replacement Fund. Manager shall not claim or assert any right, title or interest in the Marks, the Brand or the Franchise, but Owner shall take all actions, including, without limitation, obtaining the written acknowledgment of the Brand, as may be necessary to confer upon Manager the right to use the Marks and operate the Hotel under the Marks, to the same extent available to Owner under the Franchise.

- 4.4 Manager shall consult with and advise Owner, at Owner’s reasonable request, concerning all policies and procedures affecting all phases of the conduct of business at the Hotel. Manager shall meet quarterly with Owner, or more frequently if so desired by Owner, to discuss operating results, personnel matters, on-going marketing activity, capital improvement programs, and other items of interest to Owner.
- 4.5 Manager shall consult with and advise Owner, at Owner’s reasonable request, concerning any and all litigation and/or claims regarding the Hotel, and will not settle any such litigation and/or claims for an amount over Ten Thousand Dollars (\$10,000) without the prior approval of Owner, such approval not to be unreasonably withheld or delayed.
- 4.6 Nothing in this Agreement shall constitute or be construed to be or create a partnership or joint venture between Owner and Manager. Except as otherwise provided in this Agreement, as between Owner and Manager, (a) all debts and liabilities to third persons incurred by Manager in the course of its operation and management of the Hotel in accordance with the provisions of this Agreement shall be the debts and liabilities of Owner and (b) Manager shall not be liable in its individual capacity for any such obligations by reason of its management, supervision, direction and operation of the Hotel in accordance with the provisions of this Agreement as independent contractor for Owner. Manager may so inform third parties with whom it deals on behalf of Owner.
- 4.7 Notwithstanding any other provision of this Agreement to the contrary, Manager will not engage in the following actions without Owner’s prior approval (not to be unreasonably withheld or delayed):
  - A. Institute, prosecute, defend, or settle any pending or threatened legal action or proceeding involving a claim by or against Owner that is unrelated to the operation of the Hotel;

- B. Except for handling claims/litigation regarding the Hotel (as subject to Section 4.5) or otherwise provided for in the Budgets, engage any attorney to represent Owner;
- C. Engage any accounting firm to audit the financial statements;
- D. Engage any independent consultant or expert (other than those for liquor license matters) if the cost is expected to exceed \$5,000.00;
- E. Incur or guarantee any indebtedness on behalf of Owner other than trade payables incurred in accordance with this Agreement or take actions allowing any liens to be placed on the Hotel or other Owner assets;
- F. Sell, transfer, concede, or otherwise dispose of or commit any portion of the Hotel except for disposition of equipment or FF&E in the ordinary course of business;
- G. Except as set forth in Section 4.1(F), enter into any lease for space or equipment;
- H. Execute any design or construction-related contract;
- I. Intentionally deleted;
- J. Transfer or grant easements, rights-of-way or similar rights over or release or discharge any easements, rights-of-way or similar rights benefiting the Hotel and/or its operations, or any portion thereof;
- K. Except as contemplated in the Budgets, make any material changes in the structure, general appearance, or nature of the Hotel;
- L. Consent to any condemnation or expropriation, or participate in any condemnation or expropriation proceeding relating to the Hotel or any portion thereof, except as expressly permitted under this Agreement; or
- M. Agree to terms of, or execute, Franchise Agreement.

#### 4.8 Environmental Compliance.

- A. Manager shall comply with all environmental laws, rules, regulations, orders and/or permits applicable to Manager's operation and management of the Hotel, including but not limited to, the terms of all required permits (about which Manager has knowledge) and all applicable laws relating to the use, storage, generation, treatment, transportation, and/or disposal of hazardous, toxic, or regulated substances. Manager shall not use or store any hazardous, toxic, or regulated substances on or at the Site or Hotel except in such limited quantities as reasonably necessary in the ordinary course of Hotel operations, and then only if such substances are properly labeled and contained, and notice of and a copy of the current material

safety data sheet is made available to the Owner for each such substance. Manager shall not knowingly generate, treat, or dispose of any hazardous, toxic, or regulated substances or waste on or near the Site except in compliance with applicable law, and without first obtaining prior written approval from Owner and obtaining all required permits and approvals from all authorities having jurisdiction over Manager's operations. Manager shall promptly notify Owner of any spills, releases, or other discharges of hazardous, toxic or regulated substances by Manager at the Site and promptly abate, remediate, and remove any of the same in accordance with applicable environmental laws. Manager shall provide Owner with copies of all reports, complaints, claims, citations, demands, inquiries, or notices relating to the environmental condition of the Site, or any alleged material noncompliance with environmental laws by Manager at the Airport within ten (10) days after such documents are generated or received by Manager.

- B. Manager acknowledges that the Airport is subject to the National Pollution Discharge Elimination System Program ("NPDES") and Federal Stormwater Regulations (40 CFR Part 122) and the Texas Pollution Discharge Elimination Program ("TPDES"). In its operations at the Airport, Manager shall comply with all applicable provisions of NPDES, TPDES, Federal and State Stormwater Regulations, and the Airport Storm Water Pollution Prevention Plan, as they may be amended from time to time.
- C. Any and all liabilities, losses, claims, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) that may be incurred by or asserted against the Hotel, Owner and/or Manager under this Section 4.8 shall be allocated between the parties as provided for in Article 19 of this Agreement. The rights and obligations set forth in this Section 4.8 shall survive the termination of this Agreement.

## **ARTICLE 5 HOTEL EMPLOYEES**

- 5.1 All Hotel Employees shall be employees of Manager. Compensation (including, without limitation, all wages and fringe benefits) of the Hotel Employees shall be an Operating Expense, and in accordance with and subject to the approved Budgets, shall be paid or reimbursed to Manager out of the Operating Account (as hereinafter defined). If the amounts in the Operating Account are insufficient, Owner shall authorize the Bonds Trustee to transfer sufficient funds from another account in accordance with and to the extent funded by the Bonds Trustee pursuant to the Indenture, following written demand therefor by Manager. Owner shall at no time interfere with the relationship of any person employed in the operation of the Hotel and shall not during the Operating Term, directly or indirectly, offer employment to any such employee without Manager's prior written consent. Owner shall not interfere with the day-to-day activities Hotel Employees but may direct communications through Executive Personnel and designated Manager's corporate office executive(s) on matters connected with the Hotel and its operations; provided

that, in emergency or life safety situations, if Owner is unable to reach Manager's corporate office executive(s), Owner may direct the General Manager on any needed action with respect to such situation.

5.2 A. Manager may, consistent with the Budgets, enroll the Hotel Employees in pension, medical and health, life insurance and similar employee benefit plans substantially similar to plans in other hotels of similar size and type operated by Manager. Such plans may, with Owner's approval, be joint plans for the benefit of employees at more than one hotel or motel owned, leased or managed by Manager or its Affiliates. Employer contributions to such approved plans during the Operating Term (including any withdrawal liability incurred upon termination of this Agreement) and reasonable administrative fees Manager may expend in connection therewith, shall be the responsibility of Owner and shall be an Operating Expense. The administrative expenses of any joint plans will be fairly and equitably apportioned by Manager among properties covered by such plan. The apportionment shall be based upon the total costs of the administrative expenses multiplied by a fraction, the numerator of which is the total payroll expense of the Hotel, and the denominator of which is the total payroll expense of all hotels participating in the approved joint plans or in a similar and equitable way (or alternatively, Manager may allocate such administrative expenses based upon the number of employees depending on which method is more equitable).

B. Manager and Owner agree that with respect to any withdrawal liability arising under any collective bargaining agreement or other "multi-employer plan" (as defined in Section 3(37) of Employee Retirement Income Security Act of 1974 ("ERISA")) in which the Hotel Employees become participants, the obligations of the parties shall be determined as follows: withdrawal liability arising with respect to Hotel Employees shall be the responsibility of Owner, and Owner shall either pay the amount of such withdrawal liability directly to such plan or reimburse Manager for withdrawal liability payments made to such plan by Manager with respect to Hotel Employees (including withdrawal liability arising after the sale or other termination of this Agreement). If a collective bargaining agreement is in place for the Hotel Employees immediately prior to the termination or expiration of this Agreement, Owner shall cooperate with Manager and sign (or cause the successor employer of the Hotel Employees to sign) an assumption agreement with respect to such collective bargaining agreement. In addition, to the extent permitted under then applicable laws, Manager shall cooperate with Owner in structuring transactions and transferring actual or contingent withdrawal liability to a successor in ownership or purchaser. For purpose of this Section 5.2(B), the term "withdrawal liability" shall mean the actual amount assessed by and payable to a multi-employer pension fund upon a complete or partial withdrawal of the Hotel or Hotel Employees from such fund. Manager and Owner shall cooperate in challenging a plan's assessment of such liability, provided that all costs of litigation, arbitration or other procedures shall be paid by Owner (including any bonds that must be posted). If Manager or its affiliates have employees at other locations who participate in the same multi-employer plan as Hotel Employees, Owner shall be charged with and be responsible only for multi-employer plan withdrawal liability

arising solely with respect to the participation of Hotel Employees in such plan. The provisions of this Section 5.2(B) shall survive the expiration or termination of this Agreement.

- 5.3 To the extent not otherwise booked for third party guests, Manager, in its reasonable discretion, may (i) provide lodging for Manager's employees visiting the Hotel in connection with the performance of Manager's services and allow them the use of Hotel facilities, and (ii) provide the General Manager of the Hotel temporary living quarters within the Hotel and the use of all Hotel facilities, at either a discounted price or without charge in accordance with Manager's standards for other hotels under its management.
- 5.4 If any hotel position is vacant and Manager staffs the position with a temporary employee on loan from another hotel managed by Manager (often referred to as task force), that temporary employee shall be assigned to the Hotel on full-time basis while at the Hotel and not split his/her time with any other property or duties without Owner's consent. If Manager desires for such employee to split his/her time with another property, Manager shall obtain Owner's prior written approval, and the employment costs of such employee shall be proportionally split between the Hotel and the other property.
- 5.5 During the Operating Term and for a period of two (2) years thereafter, Owner agrees that it (and its Affiliates) will not, without the prior written consent of Manager, either directly or indirectly, alone or in conjunction with any other person or entity, (a) solicit or attempt to solicit any general manager (each, a "**General Manager**" and, collectively, "**General Managers**") of the Hotel or any other hotels managed by Manager or any of Manager's corporate level (i.e., not engaged full time in the operation of the Hotel) employees or staff (the "**Corporate Employees**"); collectively, the General Managers and Corporate Employees, the "**Key Employees**") to terminate, alter or lessen Key Employees' employment or affiliation with Manager or to violate the terms of any agreement or understanding between any such Key Employee and Manager, as the case may be, or (b) employ, retain or contract with any Key Employee, unless in each case of the actions described in (a) or (b) it will pay Manager, within thirty (30) days of taking any of the actions described in (a) or (b) above, an amount equal to 2.5 times the aggregate base salary and cash bonus paid to the relevant Key Employee over the twelve (12) month period immediately preceding such action; provided that the restrictions set forth in clauses (a) and (b) above shall not apply to the employment, retention of or contracting with a Key Employee if (i) Manager has not offered such Key Employee employment prior to the termination of this Agreement, (ii) Manager has not offered such Key Employee employment within thirty (30) days from Manager's receipt of notice of the termination of this Agreement, (iii) if Manager has otherwise waived in writing such restriction, or (iv) if this Agreement is terminated by Owner as a result of the commission of any theft, embezzlement or other criminal misappropriation of Hotel or Owner funds or any fraud or felony by any executive of Manager that relates to or materially affects the operation or reputation of the Hotel. The parties agree that Manager's damages resulting from

Owner's violation of the restrictions set forth in clauses (a) and (b) above are not readily determined and that the compensation payable to Manager by Owner as provided by this Section 5.4 is a fair and reasonable estimation thereof.

- 5.6 Manager shall not be liable for any failure of the Hotel to comply prior to January 1, 2004 with all federal, state, local and foreign statutes, laws, ordinances, regulations, rules, permits, judgments, orders and decrees affecting labor union activities, civil rights or employment in the United States, including, without limitation, the Civil Rights Act of 1870, 42 U.S.C. 1981, the Civil Rights Acts of 1871, 42 U.S.C. 1983 the Fair Labor Standards Act, 29 U.S.C., 201, et seq., the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., as amended, the Age Discrimination in Employment Act of 1967, 29 U.S.C., 621, et seq., the Rehabilitation Act, 29 U.S.C. 701, et seq., the Americans With Disabilities Act of 1990, 29 U.S.C. 706, 42 U.S.C. 12101, et seq., the Employee Retirement Income Security Act of 1974, 29 U.S.C., 301, et seq., the Equal Pay Act, 29 U.S.C., 201, et seq., the National Labor Relations Act, 29 U.S.C., 151, et seq., and any regulations promulgated pursuant to such statutes (collectively, as amended from time to time, and together with any similar laws now or hereafter enacted, the "**Employment Laws**"). Manager shall abide by all Employment Laws applicable to Hotel Employees.
- 5.7 Manager shall from time to time develop and implement policies, procedures, and programs for the Hotel (collectively, the "**Employment Policies**") reasonably designed to effect compliance with the Employment Laws. The Employment Policies shall comply with applicable law, and be consistent with industry standards from time to time for reputable hotel management companies (including, but not limited to, policies regarding employee dress codes and employee conduct). To the extent not otherwise prohibited by applicable law, upon request of Owner from time to time, Manager shall make available, for inspection by Owner, (i) copies of all employee policies and procedures, including, without limitation, copies of employee manuals and handbooks, in effect at the Hotel, and (ii) Hotel Employee job classifications, number of Hotel Employees in each job classification, job descriptions (if applicable), pay scales and benefits provided to each job classification.
- 5.8 Manager shall consult with Owner in advance of the hiring of the general manager, controller, director of sales and food and beverage director (the "**Executive Personnel**"), and Manager's selection of each Executive Personnel shall be subject to Owner's approval. Owner shall have the right to interview any candidates for such positions selected by Manager (which request by Manager for Owner's approval shall be accompanied by a written summary of such candidate's professional experience and qualifications); provided that (a) Owner shall be deemed to have approved any Executive Personnel candidate selected by Manager if Owner has not notified Manager in writing of Owner's disapproval of such candidate within ten (10) days following Owner's interview of such candidate or any decline by Owner to interview such candidate, and (b) Owner may not reject more than three (3) qualified candidates for any Executive Personnel position. If

Owner rejects three (3) qualified candidates, Manager can hire any subsequent applicant without Owner approval.

- 5.9 Manager shall promptly inform Owner of any union organizing activities or campaigns, demands or petitions for union recognition, or any NLRB charges or proceedings undertaken with respect to the Hotel or the Hotel Employees. Owner and Manager acknowledge that Manager, as agent for Owner, has executed that certain Labor Agreement With Unite Here International Union Local 23, AFL-CIO, CLC, dated as of September 29, 2023 (the “**Unite Here Union Agreement**”) with respect to certain Hotel Employees. With respect to any amendments or replacements of the Unite Here Union Agreement, Owner shall have the right to direct and control the negotiation of any such amendments or replacements and to approve any amendment or replacement prior to the execution thereof; provided, however, that, subject to this Section 5.9, Manager shall have the right to participate in (or, at the direction of Owner, lead) collective bargaining with the bargaining representative or representatives of Hotel Employees as the employer of such Hotel Employees and to enter into such amendments or replacements approved by Owner. Manager shall meet with Owner prior to commencing or participating in any negotiations with respect to such amendments or replacements, to obtain Owner’s direction with respect to the Hotel’s negotiating strategy (including the strategic decision as to whether to commit the Hotel to participation in a negotiating group bound to mutual defense and acceptance of the group’s collective decision) and to establish a framework of acceptable contract terms (the “**Framework**”). Once the Framework is established, Manager shall consult with Owner as to the status of such collective bargaining negotiations and shall not, without the prior consent of Owner, negotiate in a manner or enter into any binding agreement that is inconsistent with the Framework. Owner acknowledges that, as required by applicable laws governing labor relations, Owner’s right to approve any bargaining agreements, and its right to be advised from time to time on progress of organizational or collective bargaining matters, shall be disclosed to the bargaining representative of any group of Hotel Employees. Notwithstanding any contrary directions or instructions from Owner, Manager shall have the right to refuse the same if it has received the written advice of independent counsel that to conform to such instructions or directions would involve a substantial risk of causing Manager to commit an unfair labor practice or otherwise be violation of applicable laws governing labor relations.
- 5.10 If at any time Owner reasonably requests that the employment of a Hotel Employee be terminated by Manager (whether by means of termination of employment or transfer to another hotel managed by Manager or any of its Affiliates), and such request is made with good reason supported by objective evidence of unsatisfactory performance or behavior by such Hotel Employee, Manager shall reasonably and in good faith consider Owner’s request.
- 5.11 Manager may not physically relocate any Executive Personnel within twenty-four (24) months after his/her arrival at the Hotel (i.e., the time at which such Hotel Employee is put on the Hotel payroll) without Owner’s prior approval (not to be

unreasonably withheld or delayed). If Manager physically relocates any Executive Personnel to another hotel or property managed by Manager or any of its Affiliates thereafter without Owner's prior approval, Manager shall reimburse Owner for part of the relocation expenses incurred in relocating such individual's replacement to the Hotel, if any, as provided in the following two sentences. The reimbursement to be made by Manager to Owner pursuant to this Section 5.11 shall be equal to the total relocation costs incurred by Owner in bringing the transferred Executive Personnel to the Hotel, multiplied by a fraction, the numerator of which shall be the period of time remaining from the date the departing Executive Personnel left his or her employment at the Hotel to the date when the departing Executive Personnel would have been employed at the Hotel for 730 days, and the denominator of which shall be 730. Manager's reimbursement obligation as described in the preceding two sentences shall not apply with respect to the relocation of any Executive Personnel whose transfer from the Hotel to another hotel managed by Manager or any of its Affiliates (a) was requested by Owner or (b) was requested by such Executive Personnel. It is understood and agreed that Owner shall not incur any expense in connection with the relocation of any Hotel Employee to his or her new position at a hotel managed by Manager or any of its Affiliates regardless of the length of time any such individual is employed at the Hotel or the relocation expenses incurred in relocating such Hotel Employee's replacement to the Hotel.

- 5.12 Manager warrants that all employees, contractors, and subcontractors performing work on the Premises will be paid at least the City of Austin's Living Wage in accordance with all applicable Austin City Council Resolutions, including Resolutions Nos. 20080605-047 and 20160324-020, or as may subsequently be amended, and that such Living Wage will be adjusted annually pursuant to Austin City Council Resolution No. 20141016-035, or as may subsequently be amended. Notwithstanding the foregoing, Owner and Manager acknowledge that the Unite Here Union Agreement defines the wages for Hotel Employees who are members of the collective bargaining unit covered by the Unite Here Union Agreement.
- 5.13 Pursuant to Austin City Council Resolution No. 20210603-075, or as may subsequently be amended, Manager and its affiliates and subtenants, if any, must implement a labor peace agreement with any labor organization that seeks to represent employees working as part of this Agreement. The labor peace agreement must include terms allowed by applicable law and Federal Aviation Administration requirements, and that meet the operational standards of the Airport, including, at minimum, a binding and enforceable provision which prohibits work stoppages, boycotts, and other service disruptions by such labor organization, its members, and its agents at any Airport properties.
- 5.14 Manager, upon request by a labor organization, may (to the extent permitted by law) enter into an appropriate voluntary recognition agreement (including "card check" recognition) covering an appropriate bargaining unit of Hotel personnel and may remain neutral in any organizing efforts by a labor organization of Hotel personnel. Manager will execute any collective bargaining agreement as the employer, subject to the conditions set forth below. Manager will consult with

Owner in advance of, and, to the extent practicable, during the course of, negotiations with any labor union as to the terms of the collective bargaining agreement being negotiated. Manager will have no right to enter into any multi-employer group agreement without the prior written approval of Owner which may be granted or withheld in Owner's reasonable discretion.

## **ARTICLE 6 PROVISION OF FUNDS**

- 6.1 Manager shall not be deemed to be in default of its obligations under this Agreement to the extent it is unable to perform any obligation directly or as a result of a lack of available funds from the operation of the Hotel or as otherwise provided by Owner.
- 6.2 Manager shall in no event be required to advance any of its funds (whether by cash advance, waiver or deferral of its management fees or otherwise) for the operation of the Hotel except as otherwise expressly set forth in this Agreement.
- 6.3 Owner shall authorize, to the extent funded by the Bonds Trustee pursuant to the Indenture, following written requisition by Manager to Bonds Trustee, any and all funds as are reasonably requested to satisfy the expenses related to the operations and maintenance of the Hotel, in accordance with the terms of the Indenture and the Budget approved by Owner. Notwithstanding anything contained in the Indenture or the Major Agreements, nothing contained in this Agreement shall be deemed a waiver or forbearance by Manager of the right to receive payment of fees or reimbursements under this Agreement within the time periods set forth herein.

## **ARTICLE 7 GROUP SERVICES**

Except as provided in the definition of "Operating Expenses" and in this Article 7, the normal consulting services of the corporate officers and employees (for the avoidance of doubt, excluding all Hotel Employees) of Manager and Manager's Affiliates, including its corporate executives for operations, room operations, food and beverage, sales and marketing, finance and administration, and real estate, to be rendered from time to time to Manager in connection with the operations of the Hotel, shall be provided at Manager's sole cost and expense and not charged to Owner.

- 7.1 Notwithstanding the foregoing, Owner shall reimburse Manager for certain other services ("Group Services") best provided to Owner and Manager's Affiliates on a group rather than on an individual basis and selected by Owner, the cost of which Group Services shall be allocated on a fair and equitable basis among the Owner and Manager's Affiliates benefiting therefrom in the manner described in, and approved in, the Budgets. The Group Services offered by Manager and, if selected by Owners, shall include, without limitation, the following: (a) accounting, (b) advertising; (c) payroll processed through a payroll processing provider, and IT support services; (d) recruiting; (e) training; (f) purchasing services; (g) revenue

management services; (h) credit card processing services; (i) associate satisfaction surveys; (j) human resources/employee benefits; (k) insurance services; and (l) travel administration. The Group Services offered by Manager on the date hereof, and the vendor, timing and allocation of each of such Group Services are set forth in **Schedule 7.1**, which shall be disclosed in the annual Budget or as they may become known, in which case they will be disclosed and approved in the next profit and loss statement review between Manager and Owner. In no event shall Manager's Affiliates be deemed a party to this Agreement or responsible in any way for Manager's obligations pursuant to this Agreement by virtue of providing the foregoing services to Manager and Owner reimbursing Manager for the expenses in connection therewith. Owner acknowledges and agrees that (i) Manager has disclosed to Owner the types of Group Services Manager currently makes available to properties which it operates, including those that require mandatory participation by the Hotel, (ii) the Hotel is likely to receive substantial benefit from its participation in such Group Services, (iii) Manager is not obligated to provide such Group Services under Article 4 of this Agreement, but will offer such Group Services to the Hotel so long as to the Hotel so long as Manager continues to offer them to other similar hotels operated by Manager or its Affiliates, (iv) Manager is entitled to payment for such Group Services in the matter set forth above in addition to its Base Fee and Incentive Fee, and (v) the receipt by Manager for any such payment does not breach any fiduciary duty or other duty which Manager may have to Owner. To the extent that any such services or benefits are provided to the Hotel by or through the Franchise, if any, pursuant to any Major Agreements, then Manager shall not be obligated to provide and shall not charge the Hotel for the provision of such services.

- 7.2 Owner acknowledges that Manager may enter into purchasing, maintenance or service contracts with respect to the Hotel as are made available generally to properties managed by Manager (“**Multi-Property Programs**”). Manager shall secure competitive prices for such goods and services consistent with the requirements of the Major Agreements. Manager will not charge any profit for any group services or benefits but is entitled to reimbursement for the costs of those specific services performed centrally or purchased on a group basis. Owner acknowledges and agrees that Manager, subject to the Major Agreements and the Budgets, may enter into certain Multi-Property Programs pursuant to which Manager or affiliates of Manager may receive rebates or other volume- based incentive compensation from participating vendors or suppliers of goods or services under such Multi-Property Programs (“**Manager Rebates**”). Owner acknowledges and agrees that (i) Manager has disclosed to Owner the types of Multi-Property Programs Manager currently makes available to properties which it operates and (ii) the Hotel is likely to receive a benefit from its participation in such Multi-Property Programs, which the Hotel could not obtain on its own. The receipt by Manager of any Manager Rebates does not breach any fiduciary or other duty which Manager may have to Owner. Owner may opt-in or-out of the Multi-Property Programs during the budget process each year. All purchasing transactions relating to the Hotel with Affiliates of Manager shall constitute Affiliate Transactions (as hereinafter defined).

- 7.3 Direction and administration of certain projects with respect to the Hotel, including, but not limited to, those described on **Schedule 7.3** (collectively, “**Project Services**”), are not Group Services and are not included within the scope of Manager’s services described in Article 4 of this Agreement. For providing such Project Services (by Manager or Manager’s Affiliates), Manager shall be paid Three Thousand Dollars (\$3,000) per month, to be paid as an Operating Expense.

## **ARTICLE 8 WORKING CAPITAL AND BANK ACCOUNTS**

- 8.1 Subject to Section 6.3, (i) funds for working capital shall be maintained from Total Revenues or other funds available therefor in the trust estate and in accordance with the Indenture, and (ii) in no event will the balance in the Operating Account be less than One Hundred Fifty Thousand Dollars (\$150,000), taking into account anticipated Total Revenues to be received at the Hotel during the applicable period.
- 8.2 Manager further acknowledges and agrees that Owner is a single purpose entity that has no assets or financial resources other than its leasehold interest in the Hotel and the Total Revenues of the Hotel. The Total Revenues are pledged as security to satisfy the payment of the Bonds, as provided in the Indenture.
- 8.3 Manager shall deposit each business day (or as otherwise agreed by Owner in writing) the Total Revenues realized from the operation of the Hotel as required in the Indenture into an account established by Owner for such purpose (the “**Depository Account**”). Funds in the Depository Account are periodically swept up and transferred to the Bonds Trustee in accordance with the Indenture. Manager shall establish and maintain a special account in the name of Manager as agent for and fiduciary of Owner (the “**Operating Account**”) in such federally insured bank, savings and loan or trust company approved by Owner. Any successor or substitute bank, savings and loan or trust company shall be selected in the same manner. Manager shall have no liability for any loss resulting from insolvency, malfeasance or negligence of the bank in which such funds are deposited. Funds received from the Bonds Trustee for payment of Operating and Maintenance Expenses (as defined in the Indenture) shall be deposited in the Operating Account. From the Operating Account, Manager shall pay all Operating Expenses, Non-Operating Expenses and other amounts required to be paid by Manager on Owner’s behalf under this Agreement. Upon request from Owner, Manager shall provide Owner with copies of the bank statements for the Operating Account or any other account maintained by Manager under this Agreement.
- 8.4 The Operating Account shall be in the name of Manager, as agent for and fiduciary of Owner. Except as expressly set forth below, only representatives of Manager shall sign checks or other documents of withdrawal, provided that such representatives shall be bonded or otherwise insured in a manner reasonably satisfactory to Owner. The premiums for bonding or other insurance shall be an Operating Expense except for premiums for bonding and/or insuring off-site Corporate Employees of Manager. Upon the expiration or termination of this Agreement and provided all fees, costs, expenses and obligations incurred under

this Agreement have been paid or discharged, all remaining amounts in the Operating Account and other accounts maintained by Manager under this Article shall be transferred to Owner. Manager shall also have the right, subject to approval from Owner which shall not be unreasonably withheld, to establish any additional bank accounts in the name of Owner that Manager deems reasonably necessary, except for the payroll account which shall be in the name of Manager (dba Hotel). Owner shall also have a signatory right to the Operating Account and any other bank accounts, as applicable; provided, however, that check writing and other documents for the withdrawal of funds from the Operating Account will require the signature approval of (i) an Executive Personnel of Manager only, or (ii) Owner and an Executive Personnel of Manager, but not Owner only. Notwithstanding the foregoing to the contrary, from and after and during the continuance of an Event of Default by Manager under this Agreement, Owner shall be authorized to make withdrawals from the Operating Account and other accounts relating to the Hotel as long as (i) such amounts are applied to Hotel Operating Expenses and not for any other purpose; (ii) Owner in good faith believes any non-payment will have an adverse effect on the Hotel; and (iii) Owner uses commercially reasonable efforts to notify Manager in writing at least two (2) business days prior to the withdrawal outlining the amount and purpose of such withdrawal.

- 8.5 Owner further acknowledges and agrees that Manager shall have no obligation to advance its own funds for any payment and that no provisions herein that call for Manager to make payments, provide funds or which otherwise impose financial obligations on Manager shall be construed to impose such obligations.

## **ARTICLE 9 BOOKS, RECORDS AND STATEMENTS; BUDGETS**

- 9.1 Manager shall keep full and accurate books of account and other records reflecting the results of the operation of the Hotel in accordance with generally accepted accounting principles (“GAAP”) and the “Uniform System of Accounts” (Eleventh Revised Edition 2014, as further revised from time to time) as adopted by the American Hotel and Lodging Association (the “Uniform System”) with such exceptions as may be required by the provisions of this Agreement. Except for the books and records which may be kept in Manager’s home office or other suitable location pursuant to the adoption of a central billing system or other centralized service, the books of account and all other records relating to or reflecting the operation of the Hotel shall be kept at the Hotel, or at another location in Austin, Texas approved by Owner. Owner, the Bonds Trustee, and the independent accounting firms of Owner, shall each have the right and privilege of examining said books and records at any business hours following five (5) calendar days advance notice to Manager. Any such review shall be completed without material disruption to the Hotel operations. All of such books and records including, without limitation, books of account, guest records, and front office records, shall be the property of Owner. Manager shall retain the current year’s books and records through completion of the audit required under Section 9.3 for such Fiscal Year on

Site. To the extent Owner does not provide storage for books and records after completion of the annual audit, Manager shall retain, at Owner's cost, all such books and records for a period of three years after the completion of the audit required under Section 9.3 for the Fiscal Year related to such records, or such longer time as may be required by the City of Austin for records retention. All of such books and records shall thereafter be available to Owner or Owner's representatives at all reasonable times for inspection, audit, examination and transcription for a period of at least as long as the records retention period required by the City of Austin. This Section shall survive termination of this Agreement.

- 9.2 Manager shall deliver (a) to Owner, no later than 11:59 PM Central Standard Time on Friday of the following week, and (b) to Owner and the Bonds Trustee, within twenty (20) days after the end of each month, within twenty (20) days after the end of each calendar quarter, and within thirty (30) days after the end of each Fiscal Year, the items set forth in **Schedule 9.2** to the extent applicable for the specified periods designated on **Schedule 9.2** (collectively, the "**Reports**"); provided, however, with respect to the Monthly Reports and Quarterly Reports, Manager agrees to deliver preliminary Monthly Report and Quarterly Reports within fifteen (15) days after the end of each month or calendar quarter (as applicable) and to the extent such Reports require any additions or adjustments, the updated Monthly Reports and Quarterly Reports will be delivered within twenty (20) days after the end of each month or calendar quarter (as applicable). The Reports shall be prepared in accordance with GAAP and the Uniform System to the extent applicable and shall otherwise be prepared in accordance with Manager's standard financial reporting and budgeting practices. Owner acknowledges that some of the Reports listed on **Schedule 9.2** are not currently part of Manager's reporting package; therefore, to the extent any of the Monthly Reports are not part of Manager's reporting package as of the Effective Date, Manager shall have until January 31, 2025 to formulate and implement such reports for Owner.
- 9.3 Within one hundred-twenty (120) days after the end of the Fiscal Year, Owner is required to furnish to the Bonds Trustee and City an audited annual financial statement. To that end, a certified audit of the Hotel operations and Owner-related accounts and activities shall be performed by a nationally recognized, independent Certified Public Accounting firm with expertise in the lodging industry as appointed by Owner. Manager shall cooperate in good faith with Owner and its auditors and representatives to facilitate such audit, which shall be an expense of operating the Hotel. A copy of the audit report shall be furnished to Manager.
- 9.4 On or before each November 1st during the Operating Term, Manager shall submit to Owner for the next Fiscal Year the following items (collectively, the "**Budgets**"), with the information and items to be included in the Budgets as set forth in **Schedule 9.4**:
- A. A proposed operating budget (the "**Operating Budget**");
  - B. A proposed capital budget (the "**Capital Budget**");

- C. A cash flow forecast (the “**Cash Flow Forecast**”) on a monthly basis;
- D. A plan (the “**Marketing Plan**”); and
- E. Such other Hotel related reports or projections as Owner may reasonably request.

The Budgets shall be prepared in accordance with GAAP and the Uniform System to the extent applicable and shall otherwise be prepared in accordance with Manager’s standard financial reporting and budgeting practices.

If the Budgets (or any component of the Budgets), have not been approved by Owner prior to December 31 of any applicable Fiscal Year, then, until approval of the Budgets (or such components), Manager shall cause the Hotel to be operated substantially in accordance with the prior year’s actual results except for, or as modified by, (a) those components of such Budgets for the applicable Fiscal Year approved by Owner, (b) an adjustment to the disputed Budgets so as to increase (but not decrease) disputed expense items by the same percentage as any percentage increase in the Consumer Price Index-All Urban Consumers (U.S. City Average) (1982-1984 = 100), or any successor index thereto appropriately adjusted (the “**CPI**”), from the CPI in effect on the first day of the first month of the Fiscal Year applicable to such last approved Budget to the CPI in effect on the first day of the first month of the Fiscal Year applicable to the disputed Budgets, (c) the Necessary Expenses which shall be paid as required and (d) the Emergency Expenses which shall be paid as required.

9.5 Upon approval of the Budgets by Owner, Manager shall cause the Hotel to be operated in accordance with the Budgets, except for variances expressly permitted by this Section 9.5. Manager shall not, without Owner’s prior approval:

- A. Incur any expense for any major expense account category (e.g. administrative and general) in the Operating Budget which causes the aggregate expenditures for such account category to exceed the budgeted amount by five percent (5.0%), and further provided that such excess does not cause pre-debt service cash flow to be insufficient to meet debt service for the Bonds, provided that Manager may, without Owner’s approval, (i) pay any expenses (the “**Necessary Expenses**”) regardless of amount, which are set forth on **Schedule 9.5** and are necessary for the continued operation of the Hotel and which are not within the reasonable control of Manager, and (ii) pay any expenses, including capital expenses (the “**Emergency Expenses**”) regardless of amount which, in Manager’s good faith judgment, are immediately necessary to protect the structural and mechanical integrity or lawful operation of Hotel or the health or safety of its occupants; provided, however, that Manager shall use commercially reasonable efforts (i) to notify Owner of any such Necessary Expenses or Emergency Expenses prior to the expenditure of Hotel funds, and (ii) following any

such expenditure, to compensate for increases in Necessary Expenses or Emergency Expenses in an effort to achieve the projected operating results shown in the applicable approved Operating Budget; or

- B. Incur any expense for any individual project in the Capital Budget which causes the aggregate expenditures for such individual project to exceed the budgeted amount by the greater than five percent (5%) more provided that Manager may, without Owner's approval, pay any Emergency Expenses which are capital in nature.
- 9.6 Owner and Manager acknowledge that the estimates of revenues and expenses contained in the Budgets represent Manager's best estimate of the same for the ensuing Fiscal Year which can vary for reasons beyond the control of Manager, such as due to volume of business and levels of hotel occupancy in the area, the mix of businesses, prevailing wage rates, inflation, utility rates, insurance premiums, extraordinary repair and maintenance expenses and change in market conditions. Failure to achieve the results set forth in the Budgets shall under no circumstances be deemed or constitute an Event of Default under this Agreement.
- 9.7 The Budgets are subject to the approval of Owner. For a period of thirty (30) days after receipt of the Budgets, Owner is entitled from time to time to request further details and to submit written comments. Owner agrees to give commercially reasonable consideration to the Budgets and not to unreasonably refuse to accept any items. Owner shall use commercially reasonable efforts to complete its review of the Budgets and communicate its comments and suggested revisions to Manager within thirty (30) days after receipt. Owner shall promptly and prior to the commencement of any Fiscal Year give Manager written notice of Owner's objection and proposals for amendment of any disputed items, and Owner and Manager shall act reasonably to resolve any such differences between them. If Owner and Manager cannot agree upon any Budget within sixty (60) days of the time periods set forth in Section 9.4, then the same shall be deemed a dispute and resolved pursuant to Article 21, the cost of which shall be deemed an extraordinary operating expense.
- 9.8 On or before the last day of each month, Manager shall submit a requisition to the Bonds Trustee for the Operating and Maintenance Expenses required for such month; provided, however that Manager may submit such requisitions on a weekly or bi-weekly basis with the consent of Owner and the Bonds Trustee.
- 9.9 Manager shall cause any designated representative of Owner to be added to the email distribution list provided to Smith Travel Research, or an alternative data reporting service mutually agreed to by the parties in writing, for purposes of direct receipt by such representatives of all reports issued by Smith Travel Research or the alternative reporting service relative to the Hotel.

**ARTICLE 10  
MANAGEMENT FEES AND PAYMENTS TO MANAGER**

- 10.1 Owner shall pay to Manager, on a monthly basis, for services rendered under this Agreement a management fee (the “**Base Fee**”) equal to Two and One-Half Percent (2.5%) of the Total Revenues of the Hotel per month.
- 10.2 In addition to the Base Fee, Owner shall pay to Manager, on an annual basis, an incentive fee (the “**Incentive Fee**”) equal to One-Half Percent (0.5%) of the Total Revenues of the Hotel for the Fiscal Year during the Operating Term; provided, however, that no Incentive Fee shall be due for any such Fiscal Year for which the Hotel fails to maintain a revenue per available room (“**RevPAR**”) yield index, as measured by Smith Travel Research, of at least one hundred twenty-five percent (125%) for the Measurement Year with respect to the Hotel’s “**Competitive Set**”, as defined in **Schedule 15.4** of this Agreement.
- 10.3 In each month during the Operating Term, Manager shall be paid out of the Operating Account the Base Fee, Manager’s fees for Group Services as set forth in Section 7.1 and any other payments, other than the Incentive Fee, due Manager under and subject to the terms of this Agreement for the preceding month. The Manager shall be paid out of the Operating Account the Incentive Fee, if earned for a particular Fiscal Year, within twenty business days after Owner’s receipt of the audit for that Fiscal Year.

## **ARTICLE 11 INSURANCE**

- 11.1 During the Operating Term, to the extent Owner does not place or keep in force the insurance coverages required pursuant to the terms of any Major Agreement, Manager shall cause to be placed and kept in force all forms of insurance required by law or needed to adequately protect Manager, the City, the Bonds Trustee, and Owner, as their respective interests may appear, as set forth in **Schedule 11.1**. To the extent requested by Owner and/or Bonds Trustee, Manager shall place and maintain all insurance reasonably required to fully insure the Hotel throughout the Operating Term. The cost of insurance shall be paid from Hotel Total Revenues (classified as either an Operating Expense or other applicable classification as required in accordance with the Uniform System). Manager shall deliver to Owner, within fifteen (15) days after the date of Owner’s request for same, copies of any policies of such insurance as requested by Owner, and without any need for such request, Manager shall deliver to Owner, within fifteen days after the effective date of any new policy of such insurance, a copy of such policy (subject in each case to extensions of time if the applicable insurance carrier does not deliver such copies within the applicable time period).
- 11.2 Manager acknowledges receipt of the relevant insurance provisions of the Indenture and the Lease, and of the Brand under the Brand Standards. In the event of any conflict among the insurance requirements of the various Major Agreements, the Major Agreement having the strictest requirements shall govern.
- 11.3 At Owner’s cost, Manager shall obtain and deliver to Owner, no later than September 30, 2025, and no later than September 30 of every second year thereafter

during the Operating Term, a report by an independent insurance consultant approved in advance by Owner, certifying compliance by Owner with all requirements in the Major Agreements relating to insurance.

**ARTICLE 12  
TAXES**

- 12.1 To the extent that funds from Total Revenues or funds otherwise provided by Owner are available, Manager shall pay all taxes on their respective due dates on behalf of Owner in following order of priority: (a) payroll, (b) sales and/or use, and (c) occupancy taxes. All Hotel occupancy and sales taxes will be deposited daily in a tax escrow account controlled by Manager for payment as required by the state and any other municipality or taxing authority. (This does not include real estate taxes unless otherwise stated elsewhere in this Agreement). Manager acknowledges that Owner is a nonprofit public facility corporation created under Article 717s, Vernon's Annotated Texas Civil Statutes (now recodified as Chapter 303 Texas Local Government Code), as amended. Owner is a constituted authority and instrumentality of the City of Austin. As such, Owner qualifies for exemption from certain Texas State taxes, including the franchise tax, and the limited sales, excise and use taxes, and to the extent that Owner provides to Manager evidence of such exemption, Manager shall use commercially reasonable efforts to utilize such exemptions when making payments on behalf of Owner to the extent permitted by applicable laws.

**ARTICLE 13  
DAMAGE OR DESTRUCTION; CONDEMNATION**

- 13.1 If fire or other casualty damages the Hotel, Manager shall promptly notify Owner and the Bonds Trustee. This Agreement shall remain in full force and effect subsequent to such casualty provided that either party may terminate this Agreement upon thirty (30) days prior notice to the other party if (a) Owner shall elect to close the Hotel as a result of such casualty (except on a temporary basis for repairs or restoration) or (b) Owner shall determine in good faith not to proceed with the restoration of the Hotel and provided further that Manager may terminate this Agreement upon thirty (30) days prior notice to Owner if fifty percent (50%) or more of the rooms in the Hotel are unavailable for rental for a period of one hundred twenty (120) days or more as a result of such casualty.
- 13.2 If all or any portion of the Hotel becomes the subject of a condemnation proceeding or if Manager learns that any such proceeding may be commenced, Manager shall promptly notify Owner and the Bonds Trustee. Either Owner or Manager may terminate this Agreement on thirty (30) days' notice to the other party if (a) all or substantially all of the Hotel is taken through condemnation or (b) less than all or substantially all of the Hotel is taken, but, in the reasonable judgment of the party giving the termination notice, the Hotel cannot, after giving effect to any restoration as might be reasonably accomplished through available funds from the condemnation award, be profitably operated as a full- service, first-class Hotel.

- 13.3 Any condemnation award or similar compensation shall be the property of Owner, provided that Manager shall have the right to bring a separate proceeding against the condemning authority for any damages and expenses specifically incurred by Manager as a result of such condemnation.
- 13.4 As long as the Bonds are outstanding, any proceed(s) received as a result of a casualty or condemnation proceeding shall be applied in accordance with the Indenture.

#### **ARTICLE 14 EVENTS OF DEFAULT**

- 14.1 The following shall constitute events of default (“**Events of Default**”):
- A. If either party shall be in default in the payment of any amount required to be paid under the terms of this Agreement, and such default continues for a period of twenty (20) days after written notice from the other party;
  - B. If either party shall be in material default in the performance of its other obligations under this Agreement, and such default continues for a period of thirty (30) days after written notice from the other party, provided that if such default cannot by its nature reasonably be cured within such thirty (30) day period, an event of default shall not occur if and so long as the defaulting party promptly commences and diligently pursues the curing of such default, but in no event shall such cure period extend beyond ninety (90) days after such written notice;
  - C. If either party shall (i) make an assignment for the benefit of creditors, (ii) institute any proceeding seeking relief under any federal or state bankruptcy or insolvency laws, (iii) institute any proceeding seeking the appointment of a receiver, trustee, custodian or similar official for its business or assets or (iv) consent to the institution against it of any such proceeding by any other person or entity (an “**Involuntary Proceeding**”);
  - D. If an Involuntary Proceeding shall be commenced against either party and shall remain undismissed for a period of one hundred twenty (120) days;
  - E. If either party shall be in default beyond the date of any applicable grace or cure periods under any Major Agreements;
  - F. If Manager breached its obligations under Article 20 of this Agreement, and such breach shall remain uncured for a period of thirty (30) days (notwithstanding any provisions in **Schedule 20.1** which may be read as to allow Owner to terminate this Agreement without allowing for such a cure period);
  - G. Material theft, larceny, or criminal misappropriation of funds by Manager;

- H. If a default under the Franchise occurs and Owner receives written notice of such default from the franchisor (whether or not such default is subject to cure rights under the Franchise) and the events or circumstances resulting in such default were:
- (a) (i) matters for which Manager was responsible for compliance under the terms of this Agreement and (ii) caused by or in the control of Manager; and
  - (b) not due to Force Majeure, or Owner's refusal to approve actions necessary to comply with the Franchise (including, but not limited to, approving Budgets submitted by Manager pursuant to Section 9.4), or Owner's failure to provide funds in accordance with this Agreement, or Owner's failure to otherwise comply with the Franchise or this Agreement;
- I. If (i) any of Manager's Key Employees shall engage in any act which constitutes fraud, theft, embezzlement or any gross misdemeanor or greater crime or any similar criminal act involving dishonesty in connection with the performance of his or her duties on behalf of Manager with respect to the Hotel and (ii) Manager does not:
- 1. promptly notify Owner upon learning of any such occurrence; and
  - 2. take such actions that are reasonably necessary to remediate the situation and protect the interests of Owner and the Hotel (which may include removing such individual from involvement with the Hotel and/or termination of the individual) within ten (10) business days after written notice from Owner (provided that if such actions cannot by their nature reasonably be completed within such ten (10) business day period, such period shall be extended as reasonably necessary so long as Manager promptly commences and diligently pursues such actions and such actions are completed within a period not to exceed thirty (30) days in the aggregate);
- J. If because of any act or omission on the part of Manager, and without the 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; provided, however, if, at the end of such thirty (30) day period the cure has not been effectuated notwithstanding Manager's diligent and continuous attempts to cure, then the cure period shall be extended for an additional period of sixty (60) days; or

- K. Manager, willfully or in bad faith, falsifies or makes a material misrepresentation on any report required to be made by Manager hereunder, and such report is not corrected within fifteen (15) days of written notice from Owner.
- 14.2 If any Event of Default shall occur, the non-defaulting party may terminate this Agreement on five (5) days prior notice to the defaulting party.
- 14.3 The right of termination set forth in Section 14.2 shall not be in substitution for, but shall be in addition to, any and all rights and remedies for breach of contract available in law or at equity. In no event shall either party be liable to the other party under this Agreement for incidental, consequential or punitive damages.
- 14.4 Neither party shall be deemed to be in default of its obligations under this Agreement if and to the extent that such party is unable to perform such obligation as a result of fire or other casualty, act of God, strike or other labor unrest, unavailability of materials, pandemic, war, terrorism, riot or other civil commotion or any other similar event outside of the reasonable control of such party, preventing the operation of the Hotel in a safe manner or the performance of an obligation of such party in a timely manner (“**Force Majeure Events**”). The party invoking Force Majeure shall give prompt, timely and adequate notice to the other party, by electronic mail, facsimile transmission or telephone confirmed promptly thereafter in writing, and shall use due diligence to remedy any default of its obligations caused by the Force Majeure Event, as soon as reasonably possible; provided, however the failure to give such notice by a party shall not be deemed to lessen, reduce or cancel the effect of the immediately preceding sentence with respect to any such Force Majeure Event.

#### **ARTICLE 15 TERMINATION RIGHTS**

- 15.1 In addition to its rights to terminate this Agreement under Section 14.2 and in addition to all other rights and remedies of Manager, Manager may terminate this Agreement upon five (5) business days’ notice if (i) if the license(s) for the sale of alcoholic beverages in the Hotel are at any time, without fault by Manager, suspended, terminated or revoked and such suspension, termination or revocation shall continue stayed and in effect for a period of sixty (60) consecutive days, or (ii) Owner fails to provide adequate working capital to pay or reimburse Manager for the Operating Expenses of the Hotel to the extent set forth in the applicable approved Operating Budget and any permitted variances under Section 9.5(a), including, but not limited to, the maintenance of the insurance coverages required hereunder, in clause (i) and (ii) if Owner has failed to remedy any such situation within twenty (20) days following Manager’s written notice, and in clause (ii) if Owner has failed to remedy any such situation within three (3) business days following Manager’s written notice, subject to City Council approval if applicable and in accordance with City of Austin Charter.

- 15.2 Owner shall have the right to terminate the Agreement upon Owner's sale or transfer of the Hotel to a bona fide unaffiliated third party, subject to (i) a sixty (60) day advance written notice provided to Manager and (ii) payment of all amounts due Manager under this Agreement through the date of termination.
- 15.3 Owner shall pay no termination fee to Manager should Owner terminate the Agreement due to an Event of Default by Manager pursuant to Article 14.
- 15.4 Owner shall have the right to terminate the Agreement with no termination fee if Manager fails to meet a certain level of operating performance (the "**Performance Test**") as set forth in this Section 15.4; provided, however, that Owner shall not have the right to exercise such termination right if the failure of the Performance Test was caused by Owner's failure to provide sufficient funds as required by this Agreement or by the failure of the Hotel to comply with Brand Standards not caused by Manager (including but not limited to Owner's failure to comply with capital improvements required by the Brand) or a Force Majeure Event (as described in Section 14.4). If in each of any two (2) consecutive full Fiscal Years (each, a "**Measurement Year**") (with the first Measurement Year being Fiscal Year 2025) during the Operating Term, either of the following two (2) events occurs:
- (i) actual Net Revenues for the Measurement Year are less than ninety percent (90.0%) of the budgeted Net Revenues for the Measurement Year (in any Measurement Year, a "**Net Revenues Failure**"); or
  - (ii) the Hotel fails to maintain a RevPAR yield index, as measured by Smith Travel Research, of at least one hundred eighteen percent (118%) for the Measurement Year with respect to the Hotel's "**Competitive Set**", as defined in **Schedule 15.4** of this Agreement (in any Measurement Year, a "**RevPAR Failure**").

Owner may terminate the Agreement without payment of a termination fee upon thirty (30) days' notice to Manager (the "**Termination Notice**") not more than sixty (60) days after the later of Owner's receipt of the audit and Owner's receipt of the determination of the yield index, in each case for such second consecutive Measurement Year. Owner shall pay Manager all amounts due under this Agreement through the date of such termination. Notwithstanding the foregoing, Manager shall have the right to cure any Performance Test failure (thereby nullifying the Termination Notice) by paying Owner, no later than twenty (20) days after Manager's receipt of the Termination Notice, the Cure Payment.

The "**Cure Payment**" is an amount equal to:

- (a) if a Net Revenues Failure has occurred in each of two consecutive Measurement Years, and no RevPAR Failure has occurred in either such Measurement Year, the difference for each Measurement Year between (i) actual Net Revenues and (ii) 90% of budgeted Net Revenues (such difference for any Measurement Year, the "**Net Revenues Cure Amount**");

- (b) if a RevPAR Failure has occurred in each of two consecutive Measurement Years, and no Net Revenues Failure has occurred in either such Measurement Year, the difference for each Measurement Year between (i) the Hotel's actual RevPAR times the number of Hotel available room nights and (ii) 118% of the Competitive Set's RevPAR times the number of Hotel available room nights (such difference for any Measurement Year, the "**RevPAR Cure Amount**"); or
- (c) if a Net Revenues Failure has occurred in one (but not both) of two consecutive Measurement Years in which a Net Revenues Failure and/or a RevPAR Failure has occurred, and a RevPAR Failure has occurred in the other (but not both) of such two consecutive Measurement Years, the sum of (i) the Net Revenues Cure Amount for the Measurement Year in which the Net Revenues Failure occurred and (ii) the RevPAR Cure Amount for the Measurement Year in which the RevPAR Failure occurred.

If both a Net Revenues Failure and a RevPAR Failure has occurred in any of two consecutive Measurement Years in which a Net Revenues Failure and/or a RevPAR Failure has occurred, the Cure Payment for such Measurement Year shall be an amount equal to the greater of (i) the Net Revenues Cure Amount for such Measurement Year and (ii) the RevPAR Cure Amount for such Measurement Year.

- 15.5 Owner may terminate this Agreement without cause and in its sole discretion by giving Manager at least sixty (60) days prior written notice of such termination. In the event of a termination under this Section 15.5, Owner shall pay Manager (i) all amounts due under this Agreement through the date of such termination, and (ii) the monthly Base Fee earned by Manager for the most recent trailing twelve (12) months preceding the effective date of termination multiplied by twelve (12).
- 15.6 Upon the expiration of the Operating Term, by expiration, termination or otherwise, or of any renewal, or extension hereof, Manager shall peaceably quit, deliver up, and surrender the Hotel and the Site to Owner. Manager shall, immediately upon expiration or sooner of this Agreement, remove all furniture, equipment, supplies and other personal property owned by Manager from the Hotel and Site, provided that such removal can be accomplished without material injury to the Hotel or Site and provided that any damage (that did not pre-exist any such removal) caused to such facilities as a result of such removal is repaired by Manager at its own cost and expense to the reasonable satisfaction of Owner. In no event may Manager remove any furniture, equipment, supplies or other personal property owned, or paid for, by Owner, or out of Total Revenues.
- 15.7 Upon the expiration or sooner termination of this Agreement, Manager agrees to the extent permitted by applicable law, to sell, assign, transfer and convey to Owner or its designee all of Manager's right, title, and interest in and to all such licenses (including liquor licenses) and permits, without charge (other than expenses of transfer, which shall be borne by Owner) or (in the event such assignment is not permitted by applicable law) to use its reasonable efforts to provide Owner or its designee with the use and benefits of such licenses until such time as Owner and/or

its designee are able to obtain new licenses, not to exceed one hundred eighty (180) days, and with an indemnification from the assignee to Manager.

- 15.8 At time of surrender, Manager shall transition to the successor manager of the Hotel in an orderly fashion. Manager shall deliver all keys to the Hotel to Owner. Manager shall cooperate with Owner and successor manager of the Hotel, and shall provide the successor manager of the Hotel all information and documentation regarding Manager's operations under this Agreement reasonably requested by the successor manager of the Hotel. Manager shall provide usernames, passwords, and access codes for the Hotel's equipment, computers and computer software appropriately catalogued for ease of use and identification. At least ten (10) days prior to the termination effective date, Manager shall deliver to Owner all usernames, passwords and other materials required to access, manage, modify and control any and all Internet accounts, online travel agent accounts, or similar assets specific to the Hotel and not proprietary to Manager, including but not limited to social media web sites (by way of example only: any Facebook, Twitter, Trip Advisor or Instagram). Manager's obligations under this section shall survive termination of this Agreement.
- 15.9 Upon termination of this Agreement for any reason, Owner or the successor manager of the Hotel shall, to the extent permitted by applicable law and the terms of the contract, assume in writing any or all of the then outstanding contracts to the extent affecting the management and operation of the Hotel which have been executed pursuant to Manager's authority under this Agreement and are not otherwise terminated by Owner or Manager. If Owner or the successor manager of the Hotel assumes a contract under this Section 15.8, Owner shall be solely responsible and liable for any and all obligations of Manager arising under such contract relating to the management and operation of the Hotel. Manager shall cooperate with Owner concerning the transfer of such contracts, including, without limitation, providing Owner with copies of all agreements, correspondence, invoices and other relevant documents. Any reasonable costs incurred by Manager in connection with this Section 15.8 shall be an Operating Expense of the Hotel.
- 15.10 Manager shall cooperate with Owner or any successor management company in connection with Owner's or such successor management company's hiring of Hotel Employees. Manager shall not hinder or frustrate such transition of employment of Hotel Employees, and in connection with any termination of this Agreement, no Hotel Employees may be relocated to another hotel or property managed by Manager or any of its Affiliates unless the relocation is approved by (i) Owner, or (ii) the Hotel Employee.
- 15.11 Upon a termination of this Agreement due to a sale, Manager shall provide the following post-termination services through the end of the month of the sale and then for an additional three (3) full months, all as the availability of funds from Owner allows:
- A. Input and payment of accounts payable;

- B. Collection, processing, and payment of ad valorem taxes
- C. Collection of accounts receivable if not sold to the buyer
- D. Completion of insurance related issues (claims, filings and refunds); and
- E. Final accounting at the end of the Term of this Agreement.

As compensation for the above services, upon the effective date of termination of this Agreement, Owner shall pay Manager a “closeout fee” equal to the Base Fee earned for the month preceding the effective date of termination of this Agreement.

- 15.12 Upon the expiration of the Operating Term, by expiration, termination or otherwise, Manager shall deliver to Owner all passwords and other information necessary (including, without limitation, all financial data on the software utilized by the Hotel and elsewhere relating to the operation of the Hotel in a format that can be readily uploaded at Owner’s expense to a new software system selected by Owner) to facilitate a smooth transition of the operation of the Hotel to Owner or another management company selected by Owner; and Manager shall (to the extent permitted by applicable law) assign to Owner or its designee, including, without limitation, any other management company engaged by Owner to operate the Hotel, all operating licenses for the Hotel which have been issued or are in Manager’s name and in the event that such licenses are not assignable, Manager, at the sole cost and expense of Owner, shall cooperate with Owner, its designee(s), and any new manager of the Hotel in connection with the issuance of new licenses.
- 15.13 Manager shall transfer to Owner such books and records (including originals when only on paper) with respect to the Hotel for the Operating Term as will be needed by Owner to prepare all accounting statements, in accordance with the Uniform System, and tax returns for the Hotel and for Owner, whether for the Fiscal Year in which the termination occurs or for any prior or subsequent Fiscal Year. Such books and records shall include on a reasonable need-to-know basis employee records other than those records which must remain confidential in accordance with Manager’s business practices or policies or applicable laws or regulations of any governmental authority or agency having jurisdiction over such matters.
- 15.14 Manager shall also receive a closeout fee separate from any other compensation due Manager (equal to the Base Fee for the month preceding the termination of this Agreement) upon Owner’s receipt of a closeout report at Owner’s request upon termination of the Agreement to cover costs of transitioning the Hotel to a successor management company. Notwithstanding anything in this Section 15.12 to the contrary, Manager shall receive no closeout fee if the successor management company is an Affiliate of Manager.
- 15.15 Owner acknowledges that Manager or its Affiliate may have an obligation under federal, state or local law to give advance notice to Hotel Employees of any termination of their employment, and that failure to comply with any such notification obligation could give rise to civil liabilities. Manager agrees that Owner

may, at its option, extend the termination date of any termination of this Agreement to a date sufficient to avoid such liability, and Manager agrees to continue to manage the Hotel pursuant and subject to the terms of this Agreement during such period.

## **ARTICLE 16 ASSIGNMENT**

- 16.1 Manager shall not assign, pledge or encumber this Agreement or its interest in this Agreement without Owner's prior written consent; provided however, that Manager shall be entitled to assign this Agreement to a Manager Affiliate without Owner's consent. Any assignee pursuant to this Section 16.1 shall expressly assume in writing all of the obligations of Manager hereunder. Manager shall give Owner written notice of any assignment that is permitted under this Section 16.1 no later than ten (10) business days prior to the effective date of the assignment or transfer, together with copies of the documents evidencing such assignment or transfer. Upon a permitted assignment, the Hotel will continue to be operated in substantially the same manner as it was operated prior to such transfer and with the benefit of (A) support from corporate systems and home office personnel and (B) the Group Services to the same degree as the Hotel did immediately prior to any such assignment (subject to any changes permitted under Section 7.1). Further, Manager shall have the right, without Owner's consent, to collaterally assign its rights to receive payments under this Agreement as security for indebtedness or other obligations. Owner shall not be responsible for any costs that would not have been payable had an assignment, pledge or encumbrance by Manager not occurred.
- 16.2 Owner shall not assign this Agreement without the prior consent of Manager, provided that Owner may without Manager's consent:
- A. mortgage, pledge, hypothecate, or grant a security interest in, any or all of its property, rights, privileges and franchises, including, without limitation, its interest in this Agreement to the Bonds Trustee or other person to whom Owner has obligations under an Indenture, it being acknowledged and agreed by Manager that its rights under this Agreement are subject and subordinate to the lien of any and all mortgages encumbering the Hotel, whether now or hereafter existing, and the provisions of this Section 16.2A shall be self-operative but Manager nonetheless agrees to execute and deliver promptly any document or certificate containing such other terms as may be customary and reasonable confirming such subordination, including, without limitation, a subordination agreement with each holder of a mortgage confirming the subordination of Manager's rights under this Agreement to the lien of the applicable mortgage, as Owner or any mortgagee may request; or
  - B. assign this Agreement to any Affiliate of Owner or any purchaser, lessee or other transferee of substantially all of the assets comprising the Hotel, provided that such Affiliate, purchaser, lessee or transferee expressly

assumes in writing all of the obligations of Owner hereunder from and after the date of the assignment.

- 16.3 Upon any permitted assignment of this Agreement and the assumption of this Agreement by the assignee, the assignor shall be relieved of any obligation or liability under this Agreement arising after the effective date of the assignment.

#### **ARTICLE 17 NOTICES**

- 17.1 Any notice, statement or demand required to be given under this Agreement shall be in writing, sent by certified mail, postage prepaid, return receipt requested, or by nationally-recognized overnight courier, receipt confirmed, addressed if to:

Owner: Austin-Bergstrom Landhost Enterprises, Inc.  
Austin-Bergstrom International Airport  
3600 Presidential Blvd.  
Suite 411  
Austin, TX 78719  
Attention: President  
Email: [aus.commercialmanagement@flyaustin.com](mailto:aus.commercialmanagement@flyaustin.com)

Manager: Boykin Prospera, LLC  
c/o Prospera Hospitality  
2100 Georgetown Drive  
Suite 401  
Sewickley, PA 15143  
Attention: Kevin P. Kilkeary, President  
Email: [kevin.k@prosperahospitality.com](mailto:kevin.k@prosperahospitality.com)

or to such other addresses as Manager and Owner shall designate in the manner provided in this Section 17.1. Any notice or other communication shall be deemed given (a) on the date three (3) business days after it shall have been mailed, if sent by certified mail, or (b) on the date received if it shall have been given to a nationally-recognized overnight courier service. When providing any notice, statement, demand required to be given or otherwise, the sending party must also a copy of the sent materials by contemporaneous e-mail to the addressed recipient or its representative.

#### **ARTICLE 18 ESTOPPELS**

- 18.1 Owner and Manager agree that from time to time upon the request of the other party or a party to a Major Agreement, it shall execute and deliver within ten (10) days after the request a certificate confirming that this Agreement is in full force and effect, stating whether this Agreement has been modified and supplying such other information as the requesting party may reasonably require.

**ARTICLE 19  
INDEMNIFICATION**

- 19.1 MANAGER SHALL INDEMNIFY AND HOLD OWNER (AND OWNER'S AFFILIATES, AGENTS, PRINCIPALS, MEMBERS, OFFICERS, DIRECTORS AND EMPLOYEES) HARMLESS FROM AND AGAINST ALL LIABILITIES, LOSSES, CLAIMS, DAMAGES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES) THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH PARTY ARISING FROM (A) THE FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF MANAGER, (B) SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 14.4, THE BREACH BY MANAGER OF ANY PROVISION OF THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY ACTION TAKEN BY MANAGER WHICH IS BEYOND THE SCOPE OF MANAGER'S AUTHORITY UNDER THE AGREEMENT, (C) ANY VIOLATIONS OF APPLICABLE LAW BY MANAGER, (D) SUBJECT TO SECTION 19.3, ANY EMPLOYMENT CLAIMS, OR (E) ANY SUCH LOSSES, CLAIMS, DAMAGES, COSTS OR EXPENSES WHICH RESULTED DIRECTLY FROM THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUDULENT ACTS OF MANAGER'S CORPORATE PERSONNEL IN HIRING, TRAINING, OR SUPERVISING HOTEL EMPLOYEES; PROVIDED, HOWEVER, OWNER SHALL NOT MAKE ANY CLAIM AGAINST MANAGER FOR, NOR SHALL MANAGER BE LIABLE FOR, ANY ALLEGED ERRORS OF GOOD FAITH JUDGMENT MADE BY MANAGER IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT. OWNER SHALL PROMPTLY PROVIDE MANAGER WITH WRITTEN NOTICE OF ANY CLAIM OR SUIT BROUGHT AGAINST IT BY A THIRD PARTY WHICH MIGHT RESULT IN SUCH INDEMNIFICATION.
- 19.2 TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS AND WITH FULL RESERVATION OF ALL AVAILABLE DEFENSES AND IMMUNITIES, EXCEPT AS SET FORTH IN SECTION 19.1, OWNER SHALL INDEMNIFY AND HOLD MANAGER (AND MANAGER'S AFFILIATES AGENTS, PRINCIPALS, SHAREHOLDERS, PARTNERS, MEMBERS, OFFICERS, DIRECTORS AND EMPLOYEES) HARMLESS FROM AND AGAINST ALL LIABILITIES, LOSSES, CLAIMS, DAMAGES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES) THAT MAY BE INCURRED BY OR ASSERTED AGAINST SUCH PARTY AND THAT ARISE FROM OR IN CONNECTION WITH (A) ANY NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF OWNER OR ANY THIRD PARTY OR (B) SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 14.4, THE BREACH BY OWNER OF ANY PROVISION OF THE AGREEMENT. TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS AND WITH FULL RESERVATION OF ALL AVAILABLE DEFENSES AND IMMUNITIES, OWNER SHALL INDEMNIFY AND HOLD MANAGER HARMLESS FOR

ANY LOSS SUSTAINED AS A RESULT OF A WRONGFUL TERMINATION (INCLUDING BUT NOT LIMITED TO THE LOSS OF FEES AND DAMAGES) RESULTING FROM WARN ACT LIABILITIES TRIGGERED BY TERMINATION ON SHORT OR NO NOTICE. MANAGER SHALL PROMPTLY PROVIDE OWNER WITH WRITTEN NOTICE OF ANY CLAIM OR SUIT BROUGHT AGAINST IT BY A THIRD PARTY WHICH MIGHT RESULT IN SUCH INDEMNIFICATION AND OWNER SHALL HAVE THE OPTION OF DEFENDING ANY CLAIM OR SUIT BROUGHT AGAINST MANAGER WITH COUNSEL SELECTED BY OWNER AND REASONABLY SATISFACTORY TO MANAGER. MANAGER SHALL COOPERATE WITH OWNER OR ITS COUNSEL IN THE PREPARATION AND CONDUCT OF ANY DEFENSE TO ANY SUCH CLAIM OR SUIT.

- 19.3 Supplementing the provisions of Section 19.1 and 19.2, if any claim shall be made against the Hotel, Owner and/or Manager which is based upon a violation or alleged violation of the Employment Laws (an “**Employment Claim**”), the Employment Claim shall fall within Manager’s indemnification obligations under Section 19.1 only if it is based upon Manager’s willful misconduct or gross negligence (including such willful misconduct or gross negligence as may arise in the hiring, supervision or dismissal of any Hotel Employee).
- 19.4 IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THIS AGREEMENT INCLUDES INDEMNIFICATION PROVISIONS WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY OWNER OF MANAGER FROM CLAIMS OR LOSSES ARISING AS A RESULT OF MANAGER’S OWN NEGLIGENCE OR THE NEGLIGENCE OF MANAGER’S EMPLOYEES WHETHER OR NOT SUCH NEGLIGENCE IS PASSIVE OR ACTIVE.
- 19.5 Any and all other liabilities, losses, claims, damages, costs and expenses (including, but not limited to, reasonable attorneys’ fees and expenses) that may be incurred by or asserted against the Hotel, Owner and/or Manager, to the extent not paid for by insurance, shall be an Operating Expense of the Hotel and shall be borne by Owner and paid or reimbursed to Manager out of the Operating Account or if the amounts therein are insufficient by Owner upon demand by Manager, unless a final judgment of a court of competent jurisdiction determines that such liabilities, losses, claims, damages, costs and expenses fall within the scope of Sections 19.1 or 19.3.
- 19.6 If, in any judicial proceeding, a court of competent jurisdiction shall find that the term or scope of one or more of the separate covenants of Sections 19.1, 19.2 or 19.3 are unenforceable, then in that event the unenforceable provision shall be modified by said court to the maximum extent to permit enforcement thereof, and the substitute provision shall be incorporated herein. The parties hereto expressly consent to said court making any such modification.
- 19.7 In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against Manager arising out of or

concerning this Agreement, or the operation or management of the Hotel, Manager shall give written notice thereof to Owner within ten (10) days after being notified of such claim, demand, suit, or action. Such notice shall enclose a true copy of all written claims, and if the claim is not written or the information is not discernible from the written claim, state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the person, firm, corporation, or other entity making such claim or that instituted or threatened to institute any type of action or proceeding, the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened.

- 19.8 The provisions of this Article shall survive the termination of this Agreement with respect to acts, omissions, and occurrences arising during the Operating Term.

**ARTICLE 20  
NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

- 20.1 Manager will comply with each of the provisions of **Schedule 20.1**.
- 20.2 Manager hereby agrees that it will include the above clauses in all subleases and/or subcontracts at the Hotel and cause such subcontractors to similarly include clauses in further subleases/subcontracts.
- 20.3 Pursuant to Department of Transportation Regulation (DOTR) 49 CFR Part 23, Appendix A, Manager shall make a good faith effort to use certified DBEs at a level to equal or exceed ten percent (10%) of the dollar value of the Hotel's projected gross revenues. A DBE is a small business concern owned and controlled by socially and economically disadvantaged individuals, to include SBA Section 8(a) certificate holders. Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, Black Americans, Hispanic Americans, Asian-Pacific Americans and Asian- Indian Americans. If Manager qualifies as a DBE, the Agreement goal shall be deemed to have been met. Manager shall submit such reports to Owner as may be required to demonstrate compliance with the aforementioned provisions.
- 20.4 Manager covenants that it will comply fully with applicable laws, regulations and building codes governing nondiscrimination in public accommodations and commercial facilities, including, without limitation, the requirements of the Americans with Disabilities Act and all regulations thereunder, and that the Hotel shall remain in compliance throughout the Operating Term.

**ARTICLE 21  
MEDIATION**

- 21.1 Should any dispute arise between the parties to this Agreement the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within ten (10) days after receipt of the

request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within twenty (20) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below.

- 21.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within twenty (20) days, a mediator trained in mediation skills to assist with resolution of the dispute. The parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within twenty (20) days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The mediation shall take place in Austin, Texas. The parties agree to participate in mediation in good faith for up to thirty (30) days from the date of the first mediation session.

## **ARTICLE 22 MISCELLANEOUS**

- 22.1 Owner and Manager 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.
- 22.2 Manager shall not enter into any transaction or arrangement between Manager (on the one hand) and an Affiliate of Manager (on the other hand) relating to goods or services utilized at the Hotel that has not been approved by Owner (“**Affiliate Transaction**”). Prior to obtaining Owner’s consent, Manager shall obtain competitive bidding from at least three (3) unrelated parties. Any Affiliate Transaction will include a provision to allow Owner to terminate the agreement with or without cause, and will be on terms of any such arrangement, when taken as a whole, shall not be materially less favorable to the Hotel than the prevailing terms of similar such arrangements obtainable on a commercially reasonable basis from unrelated parties in the area of the Hotel. Manager shall promptly notify Owner of any proposed engagement of Manager’s Affiliates to the extent such engagement and affiliation is not included in the applicable Budgets.
- 22.3 During the Operating Term, Manager or any Affiliate thereof, shall not own, lease or manage any hotel that is a member of the competitive set as compiled by Smith Travel Research or an alternative data reporting service mutually agreed to by the parties in writing and as agreed to annually in the Budgets.
- 22.4 This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, superseding all prior agreements or undertakings, oral or

written. Owner acknowledges that in entering into this Agreement Owner has not relied on any projection of earnings, statements as to the possibility of future success or other similar matter, which may have been prepared by Manager.

- 22.5 The headings of the titles to the several articles of this Agreement are inserted for convenience only and are not intended to affect the meaning of any of the provisions hereof.
- 22.6 A waiver of any of the terms and conditions of this Agreement may be made only in writing and shall not be deemed a waiver of such terms and conditions on any future occasion.
- 22.7 This Agreement shall be binding upon and inure to the benefit of Owner and Manager and their respective successors and permitted assigns.
- 22.8 Owner may have access to have confidential or proprietary information of Manager concerning its business affairs, property, methods of operation, processing systems or other information related to Manager. Owner shall maintain or request to be maintained the confidentiality of all such information at all times. Manager shall mark or otherwise designate all confidential information as such. This Section 22.8 shall not apply to: information that at the time of disclosure was generally available to the public; information that, subsequent to its disclosure, is published or otherwise becomes available to the public through any means other than an act or omission of Owner; information that was previously known to Owner free of any obligation to keep it in confidence or that is subsequently developed in good faith by Owner; and information rightfully acquired in good faith from a third party on a non-confidential basis. Further, Owner may disclose Confidential Information if required to do so by applicable law, rule or regulation, or a court or other governmental authority of competent jurisdiction including without limitation, the Texas Public Information Act (Texas Local Government Code Chapter 552). The provisions of this Section 22.8 shall survive the expiration or termination of this Agreement.
- 22.9 Except for those provisions herein which are for the benefit of lenders, none of the obligations hereunder of either party shall run to or be enforceable by any party other than the parties to this Agreement; provided, however, that in the event of a default by Owner under the Indenture, the Bonds Trustee may enforce the obligations of Manager hereunder subject to any rights or mitigating provisions of Manager contained in this Agreement.
- 22.10 The parties hereto agree and acknowledge this Agreement must conform in all respects to the provisions of the Major Agreements and the applicable Tax Code and that Owner shall obtain an affirmative opinion of counsel upon the execution of this Agreement. The parties agree to negotiate in good faith any required modifications to the terms and provisions of this Agreement, necessary, to attain an affirmative opinion of counsel; so long as such changes do not reduce the fees payable to Manager or modify the indemnification provisions of the parties hereunder.

- 22.11 This Agreement may be changed or modified only by an agreement in writing signed by the parties hereto and no oral understandings shall be binding as between the parties.
- 22.12 Owner and Manager each represents and warrants to the other that no broker or finder was retained by such party to render services in connection with any of the transactions contemplated hereby and that no fees are due to any third party with respect thereto.
- 22.13 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 in which the Hotel is located. Venue for any dispute arising out of or concerning this Agreement, either administrative or judicial, shall be proper and lie exclusively in Travis County, Texas.
- 22.14 Manager and Owner each represent to the other that the execution, delivery and performance of this Management Agreement (i) has been duly authorized by all requisite corporate action, (b) has been duly and validly executed and delivered, and (c) constitutes a valid and binding obligation of such party, enforceable in accordance with its terms.
- 22.15 This Agreement is subject to the provisions of any agreement heretofore made between the City and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, or the expenditure of federal funds for the development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the FAA Modernization and Reform Act of 2012, as amended. Owner represents that as of the date hereof there are no existing agreements with the United States Government in conflict with the express provisions hereof.
- 22.16 Manager agrees to (a) conduct annual on-site internal human resources process visits for reviewing Manager's compliance with Manager's Employment Policies and, as necessary, take appropriate actions to address any deficiencies identified, and (b) conduct annual on-site accounting process visits for reviewing Manager's compliance with Manager's accounting policies and, as necessary, take appropriate actions to address any deficiencies identified.
- 22.17 Owner may terminate this Agreement without payment of a termination fee if it is found that gratuities were offered or given by Manager or its agents or representatives (at the direction of Manager) to any official or employee of Owner or the City with a view toward securing favorable treatment with respect to the performance of this Agreement.
- 22.18 Manager and Owner acknowledge and agree that this Agreement creates an independent contractor relationship, with certain agency rights specifically set forth herein; provided that (a) Manager's authority is subject to the terms and conditions

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

- 22.19 TAX EXEMPT BONDS COMPLIANCE. Manager understands that the Owner has financed the Hotel with proceeds of bonds, the interest of which is excludable from “gross income” for federal income tax purposes, and that, therefore, this Agreement is intended to be and shall constitute a services contract not resulting in private business use of the Hotel within the meaning of Section 141(b)(6) of the Internal Revenue Code and Section 1.141-3(b)(4) of the Treasury Regulations and shall be interpreted in accordance with the requirements thereof. Owner and Manager represent that compensation for the services provided by Manager is reasonable, and it is consistent with industry standards. The proposed Operating Budget shall include the proposed methodology and structures for setting room rates for each market segment. Manager agrees that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the Owner with respect to the Hotel. In furtherance thereof, Manager agrees not to claim any depreciation or amortization deduction, investment tax credit, or deduction that an owner would otherwise be allowed with respect to the Hotel. Manager and Owner agree to make a good-faith effort to amend the Agreement, to the extent necessary to ensure compliance with the Section 141(b)(6) of the Internal Revenue Code and Section 1.141-3(b)(4) of the Treasury Regulations. Notwithstanding anything to the contrary herein, if the Owner notifies Manager that, based upon written advice from Owner’s bond counsel (a copy of which advice or opinion is provided to Manager with such notice), it is necessary that Manager cease an activity at the Hotel, otherwise take affirmative action at the Hotel or agree to amend this Agreement in order to preserve the tax-exempt status of the Bonds, then Manager shall agree to amend this Agreement on terms agreed upon by Manager and Owner in order to comply with the federal tax requirements, and/or cease such activity or otherwise take such action as reasonably necessary to comply with the federal income tax requirements.

*[Remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, Manager and Owner have duly executed this Agreement the day and year first above written.

AUSTIN-BERGSTROM LANDHOST  
ENTERPRISES, INC.

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Name: Gregory S. Milligan  
Title: President

BOYKIN PROSPERA, LLC

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Name: Kevin P. Kilkeary  
Title: President

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## Schedule A

February 16, 1999

FIELD NOTE DESCRIPTION OF 10.003 ACRES OF LAND OUT OF THE SANTIAGO DEL VALLE TEN LEAGUE GRANT ABSTRACT No. 24 IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN (168.96 ACRE) TRACT OF LAND AS CONVEYED TO THE UNITED STATES OF AMERICA BY DEED RECORDED IN VOLUME 709 PAGE 181 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING ALL OF THAT CERTAIN (10.003 ACRE) TRACT OF LAND AS DESCRIBED IN THAT CERTAIN MEMORANDUM OF LEASE AGREEMENT RECORDED IN VOLUME 13368 PAGE 19 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½” iron rod found (N 111390.6312 E 14303.0967, coordinate values based upon BACS Coordinate System, a local coordinate system) for the most Westerly corner of that certain (10.003 acre) tract of land as described in that certain Memorandum of Lease Agreement as recorded in Volume 13368 page 19 of the Real Property records of Travis County; Texas, for the most Westerly corner and PLACE OF BEGINNING of the herein described tract, and from which ½” iron rod found bears S 45 deg. 00’ 00” W 589.89 ft.:(bearing basis)

THENCE with the Northwest line of said (10.003 acre) lease tract, N 44 deg. 59’ 56” E 649.74 ft. to a ½” iron rod set with a plastic cap imprinted with “Bush Surveying, Inc.” for the most Northerly corner of said (10,003 acre) tract, and for the most Northerly corner of this tract;

THENCE with the Northwest line of said (10.003 acre) lease tract, S 44 deg. 58’ 16” E 636.40 ft. to a ½” iron rod set with a plastic cap imprinted with “Bush Surveying, Inc.” for a point of curvature;

THENCE along a curve to the right with a radius of 47.00 ft. For an arc length of 72.65 ft. And which chord bears S 00 deg. 16’ 00” W 65.63 ft. to a ½” iron rod found for a point of tangency;

THENCE with the Southeast line of said (10.003 acre) lease tract, S 44 deg. 53’ 38” W 574.41 ft. to a point falling at the Northwest face of a concrete wall for the most Southerly corner of said (10.003 acre) lease tract, and being the most Southerly corner of this tract;

THENCE with the Southwest line of said (10.003 acre) lease tract. the following three (3) courses and distance;

- 1) N 45 deg. 00’ 03” W 248.99 ft. to a ½” iron rod found;
- 2) N 83 deg. 18’ 19” W 45.88 ft. to a ½” iron rod found;
- 3) N 44 deg. 59’ 33” W 400.64 ft. to the PLACE OF BEGINNING, containing 10.003 acres of land.

SURVEYED: February 5, 1999.

**SCHEDULE 7.1**

**GROUP SERVICES**

Vendor	Service	Timing	Allocation	Category
Prospera Hospitality	Postage	Quarterly	By Usage	Accounting
Prospera Hospitality	FedEx	Monthly	By Usage	Accounting
M3 Accounting & Analytics	Back Office Accounting System	Monthly	Fixed	Accounting
M3 Accounting & Analytics	1099 Processing	Annually	# Vendors	Accounting
Paylocity	Payroll Processing	Monthly	# Employees	Accounting
Paylocity	W-2 Processing	Annually	# Employees	Accounting
PNC Bank	Benefit Account Analysis Fees	Monthly	By Property	Accounting
J J Keller & Associates	Labor Law Posters	Semi-Annual	# Employees	Administration - HR
Navex Global	Ethics Point - Employee Call Center	Annually	# Employees	Administration - HR
Navex Global	Ethics Point - Compliance Awareness	Annually	# Employees	Administration - HR
Unifocus LP	AOS/MOS Surveys	Annually	# Employees	Administration - HR
Eckert Seamans Cherin & Mellott	Legal Services	Monthly	By Usage	Legal
Andrews, Bob	Property Travel	As Needed	By Property	Administration - Travel
Andrezjwski, Don	Property Travel	As Needed	By Property	Administration - Travel
Breed, Tim	Property Travel	As Needed	By Property	Administration - Travel
Jones, Eric	Property Travel	As Needed	By Property	Administration - Travel
Kilkeary, Kevin	Property Travel	As Needed	By Property	Administration - Travel
LaValle-Denk, Michelle	Property Travel	As Needed	By Property	Administration - Travel
Paylocity/CIGNA, etc.	Group Insurance	Weekly	By Participants	Employee Benefits
Brown & Brown	EPLI, Crime, Cyber, Etc	Annually	# Employees	Insurance
Paylocity/Zenith	Workers Compensation	Weekly	By Payroll	Insurance
All Lines Technology	IT Technical Services	Monthly	By Usage	IT Support Services
Trademark Q	IT Technical Services	Monthly	By Usage	IT Support Services
Indeed/Checkr	Employment Advertising	Monthly	By Usage	Recruiting Revenue
CBRE	Hotel Horizons	Annually	By Property	Management Revenue
CoStar Realty	STR Reports	Monthly	By Property	Management Revenue
Prospera Hospitality	Property Revenue Management Services	Monthly	By Property	Management Revenue

### **SCHEDULE 7.3**

#### **PROJECT SERVICES**

- Property and General Liability Insurance procurement, claims facilitation and audit
- Hotel renovation oversight / review meetings
- Oversight of major capital expenditure projects
- Union negotiations
- Oversight of Franchise Agreement negotiations
- Paycheck Protection Program (PPP) & Employee Retention Tax Credit (ERTC) and other governmental program administration
- Other projects as agreed upon by Owner and Manager from time to time

## **SCHEDULE 9.2**

### **REPORTING REQUIREMENTS**

All terms in quotation marks are defined within the Uniform System and retain the same meaning herein.

#### **A. Weekly Reports**

Manager shall deliver to Owner no later than 11:59 PM Central Standard Time on Friday of the following week, the following weekly report package:

1. Month-to-date occupancy, average daily rate, RevPAR, room revenue, and F&B revenue as compared with approved operating budget and prior year;
2. A forecast of occupancy, average daily rate, RevPAR, room revenue, and F&B revenue for the remainder of the month compared with the approved operating budget and prior year
3. Any material events of note occurring during the week or material updates to events of note mentioned in previous reports.

#### **B. Monthly Reports**

Manager shall deliver to Owner and to the Bonds Trustee within fifteen (15) days after the end of each month the following monthly report package:

1. An executive summary noting highlights of operations for such month
2. Financial reports, in PDF format and Excel:
  - i. line item profit and loss statement with all departmental schedules and the "Summary Operating Statement for Managers" for the month, year to date, the same periods the prior year, and approved operating budget;
  - ii. line item profit and loss statement with all departmental schedules and the "Summary Operating Statement for Managers" for the most recent preceding 12 months (i.e. Trailing 12 months);
  - iii. balance sheet as of the end of the month and change from prior month-end and prior year-end;
  - iv. statement of cash flows/sources and uses of cash;
  - v. general ledger for the month;
  - vi. occupied room details, occupancy and average daily rate by market segment for the month, year to date, the same periods the prior year, and approved operating budget; and
  - vii. departmental statistics including F&B with covers and average check amounts by meal period for the month, year to date, prior year, and the approved operating budget.
3. Source of business report (Room revenue)
4. Group pace report
5. Group Rooms and Catering bookings (definite and tentative) with group or event name for the next 12 months
6. Monthly Smith Travel Research & Hotelligence (or equivalent) reports

7. Commentary on the P&L with explanations of any notable line item variances from either the approved budget or the previous year
8. Accounts receivable aging with collection notes for accounts outstanding for over 60 days
9. Reforecast of the P&L (summary schedule only) by calendar month to the end of the fiscal year showing variance to the approved budget
10. Forecast of available cash at month-end for each of the next three months
11. List of rooms and other services provided on a complimentary basis during the month including the business purpose of each
12. Social media review or reputation management reports
13. Guest satisfaction scores and rankings for the month
14. Brand inspection reports
15. Project status report on the approved Capital Budget indicating the following for each approved project: amount per original Capital Budget, forecast, spent to date and variance, status, and estimated month of completion
16. Status of competitive hotels relative to: demand, supply, access, leadership, or similar matters
17. Hotel Executive Personnel open positions or changes
18. Status of any litigation
19. Status of any material insurance claims
20. Itemized payments made to Manager and its Affiliates of any kind (fees, reimbursements, Group Services, etc.)
21. FF&E expenditures
22. Amounts chargeable to the Renewal and Replacement Fund

**C. Quarterly Reports**

Manager shall deliver to Owner and the Bonds Trustee within fifteen (15) days after the end of each quarter the following quarterly report package:

1. An executive summary noting highlights of operations for such quarter
2. Financial reports, in PDF format and Excel:
  - i. line item profit and loss statement with all departmental schedules and the “Summary Operating Statement for Managers” for the quarter, year to date, the same periods the prior year, and approved operating budget;
  - ii. line item profit and loss statement with all departmental schedules and the “Summary Operating Statement for Managers” for the most recent preceding 12 months (i.e. Trailing 12 months);
  - iii. balance sheet as of the end of the quarter and change from prior quarter-end and prior year-end;
  - iv. statement of cash flows/sources and uses of cash;
  - v. general ledger for the quarter;
3. Reforecast of the P&L (summary schedule only) by calendar month to the end of the fiscal year showing variance to the approved budget
4. A summary of year-to-date capital expenditures and budgeted amounts for the balance of the year, indicating for each approved project the original cost estimate, revised forecast, spent to date and variance, and estimated month of completion

5. For so long as the Indenture is in force and effect, each quarterly Report shall provide a calculation of the Net Revenues and the Aggregate Debt Service due on the Bonds, in accordance with the Indenture, as may be amended from time to time

#### **D. Annual Reports**

Manager shall deliver to Owner and the Bonds Trustee within thirty (30) days after the end of each Fiscal Year the following annual report package:

1. An executive summary noting highlights of operations for the Fiscal Year
2. Financial reports, in PDF format and Excel:
  - i. line item profit and loss statement with all departmental schedules and the “Summary Operating Statement for Managers” for the quarter, year to date, the same periods the prior year, and approved operating budget;
  - ii. line item profit and loss statement with all departmental schedules and the “Summary Operating Statement for Managers” for the most recent preceding 12 months (i.e. Trailing 12 months);
  - iii. balance sheet as of the end of the quarter and change from prior quarter-end and prior year-end;
  - iv. statement of cash flows/sources and uses of cash;
  - v. general ledger for the quarter;
3. Reforecast of the P&L (summary schedule only) by calendar month to the end of the fiscal year showing variance to the approved budget
4. A summary of capital expenditures for the year, indicating for each approved project the original cost estimate, revised forecast, spent to date and variance, and estimated month of completion
5. For so long as the Indenture is in force and effect, each Fiscal Year Report shall provide a calculation of the Net Revenues and the Aggregate Debt Service due on the Bonds, in accordance with the Indenture, as may be amended from time to time;
6. Manager agrees to provide to Owner as part of its Reports, an annual report prepared in accordance with the Uniform System, or such other report template or templates as are provided by Owner from time to time and are reasonably acceptable to Manager; and such other Hotel related reports as Owner may reasonably request; provided, however, any additional costs or expenses associated, or incurred by Manager directly or indirectly in connection, with such reports shall be an Operating Expense of the Hotel.

## **SCHEDULE 9.4**

### **BUDGET REQUIREMENTS**

In addition to the requirements for submitting information relating the Budgets as defined under Section 9.4 of this Agreement, Manager is to include the following information in the Budgets to be submitted to Owner on or before November 1<sup>st</sup> of the Operating Term for the next Fiscal Year.

#### **A. Operating Budget**

The proposed Operating Budget for the following Fiscal Year submitted to Owner for approval shall include the following information, including the prior year's information and all by month:

1. Detailed line-item revenue and expense budget in conformance with the Uniform System.
2. Occupied rooms, ADR and Room revenue broken down by market segment
3. Composition of the proposed competitive set to be used for the coming year
4. Forecasted RevPAR Index
5. Food covers and average check by meal period and by outlet
6. The proposed methodology and structures for setting room rates for each market segment.

During the Budgets review process, Manager will review and discuss Manager's assumptions and formulas with Owner to assist in Owner's review.

Supporting documentation to be submitted with the proposed Operating Budget shall include the following:

1. Staffing plan by position including hours for hourly positions
2. Hourly wage and salary assumptions by position
3. Bonus and commission formula
4. Wage and benefits survey for the market area
5. Detail of costs of Manager's Group Services, allocation formula, and estimated reimbursable expenses to Manager and its Affiliates
6. List of professionals, consultants and specialists engaged or to be engaged by Manager to perform services on behalf of Manager which are included in Manager's duties (i.e. outsourcing or sub-contracting) as set forth in Article 4 or any other provision of the Agreement

The proposed Operating Budget will include a high-level 5 year forecast (budgeted year plus 4) – summary schedule only.

#### **B. Capital Budget**

The proposed Capital Budget submitted to Owner for approval shall include a five-year plan with the following components provided for years 1 through 5:

1. Item description
2. Why it is needed
3. Total cost including tax and freight

The proposed Capital Budget submitted to Owner for approval shall also include a detailed one-year plan with the following components:

4. Item description
5. Why it is needed
6. Vendor (if known)
7. Quantity
8. Per unit Price
9. Total cost including tax and freight
10. Planned month for implementation

**C. Cash Flow Forecast**

The proposed Cash Flow Forecast for the following Fiscal Year submitted to Owner for approval shall include the following information:

1. Detailed line-item cash flow items in conformance with the Uniform System, on a monthly basis for the following Fiscal Year.
2. High-level cash flow items in conformance with the Uniform System, on an annual basis for the following five (5) Fiscal Years, tying together the five-year Operating Budget and Capital Budgets.

**D. Marketing Plan**

The proposed Marketing Plan shall include the following, at a minimum:

1. Analysis of prior three years' ADR, Occupancy, and RevPAR
2. Analysis of prior three years' Smith Travel Research (or an alternative data reporting service mutually agreed to by the parties in writing) index for ADR, Occupancy, and RevPAR
3. For each market segment: future potential, competitors, challenges
4. For each competitive set hotel: anticipated material changes thereto such as management, ownership, renovations, etc.
5. Action plans by market segment including schedule and cost
6. Action plans for each F&B outlet

**SCHEDULE 9.5**

**NECESSARY EXPENSES**

- Utility costs
- Insurance premiums
- Taxes
- Debt service
- Payments under the Franchise

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## **SCHEDULE 11.1**

### **INSURANCE REQUIREMENTS**

#### **I. MANAGER'S INSURANCE REQUIREMENTS**

##### **A. General Requirements**

1. Within five (5) days of complete execution of this Agreement, Manager shall obtain the required insurance as stated herein and provide the City, the Bonds Trustee, and Owner a Certificate of Insurance as proof of coverage. If coverage period ends during the Operating Term of the Agreement, Manager must, prior to the end of the coverage period, forward a new Certificate of Insurance to City, the Bonds Trustee, and Owner as verification of continuing coverage for the duration of this Agreement.

2. Approval of insurance and the required minimums by the City, the Bonds Trustee, and Owner does not relieve or decrease the liability or responsibility of the Manager hereunder and will not be construed to be a limitation of liability on the part of the Manager.

3. Insurance coverage must: (a) be written by companies licensed to do business in the State of Texas at the time the policy is issued, and (b) with an A.M. Best rating of B+VII or better.

4. All endorsements naming the City, the Bonds Trustee, and Owner as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate:

City of Austin  
Department of Aviation  
Attention: Executive Director  
3600 Presidential Boulevard, Suite 411  
Austin, Texas 78719

Austin-Bergstrom Landhost Enterprises, Inc.  
Attention: President  
3600 Presidential Boulevard, Suite 411  
Austin, Texas 78719

5. The "Other" insurance clause does not apply to the City, the Bonds Trustee, and Owner where the City, the Bonds Trustee, and Owner are an additional insured shown on any policy. It is intended that policies required in this Agreement covering the City, the Bonds Trustee, Owner, and Manager will be considered primary coverage as applicable.

6. If insurance policies are not written for amounts specified below, Manager shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it must follow the form of the primary coverage.

7. City, the Bonds Trustee, and Owner shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

8. City, the Bonds Trustee, and Owner reserves the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by City, the Bonds Trustee, or Owner based upon changes in statutory law, court decision, the history of the industry or financial condition of the insurance company as well as the Manager.

9. Subject to the availability of funds therefore, Manager shall not cause or permit any insurance to lapse or to be canceled during the Operating Term of this Agreement.

10. Manager shall be responsible for paying from Hotel Total Revenues premiums, deductibles and self-insured retentions, if any, stated in policies.

**B. Specific Coverages**

1. **Commercial General Liability Insurance** with a minimum bodily injury and property damage limit of \$25,000,000 per occurrence for coverages A & B. The policy must contain the following provisions:

- a. Blanket contractual liability coverage for liability assumed under this contract;
- b. Innkeeper's Liability;
- c. Assault and Battery coverage;
- d. Independent Contractors coverage;
- e. Products and Completed operations;
- f. The City, the Bonds Trustee, and Owner shall be listed as an additional insured, endorsement CG 2010, or equivalent coverage;
- g. Thirty (30) Day Notice of Cancellation in favor of City, the Bonds Trustee, and Owner, endorsement CG 0205, or equivalent coverage;
- h. Waiver of Transfer of Right of Recovery Against Others in favor of City, the Bonds Trustee, and Owner, endorsement CG 2404, or equivalent coverage;
- i. Fire Legal Liability with minimum limits of \$50,000.

2. **Business Automobile Liability Insurance** for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$5,000,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of the City, the Bonds Trustee, and Owner:

- a. Additional Insured endorsement CA 2048, or equivalent coverage;
- b. Waiver of Subrogation endorsement CA 0444, or equivalent coverage;
- c. Thirty (30) Day Notice of Cancellation endorsement CA 0244, or equivalent coverage.

3. **Worker's Compensation and Employers Liability** coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Sec. 401.) with minimum policy limits for employers liability of \$1,000,000 bodily injury each accident \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The following endorsements shall be added to the policy:

- a. Waiver of Subrogation in favor of the City, the Bonds Trustee, and Owner, form WC420304, or equivalent coverage;
- b. Thirty (300 day Notice of Cancellation/Material Change in favor of the City, the Bonds Trustee, and Owner, form WC 420601, or equivalent coverage.

4. **Property Insurance.** Manager shall provide Property Insurance covering the Building, the Installations, and the FF&E under an "All Risk" or Special Causes of Loss form. The policy shall also include coverage without limitation for boiler and machinery, earth movement, and flood. The coverage shall be provided on a replacement costs basis for the 100% value of the Property and must contain the following provision:

- a. Loss Payee Clause in favor of City and Owner.

5. **Business Interruption Insurance.** Manager shall provide Business Interruption Insurance covering loss of income for a minimum period of twelve (12) months resulting from interruption of business caused by an occurrence insured against under the Section 4. Property Insurance.

6. **Fidelity/Commercial Crime Insurance** including Third Party Employee Crime coverage to protect the assets and property of the Owner and City with limits of not less than \$3,000,000 per claim. Manager's insurance will be primary to any insurance carried by the City.

7. If Manager is serving/selling alcoholic beverages, Manager must provide **Liquor Legal Liability Policy** with a minimum limit of \$25,000,000 per occurrence for bodily injury and property damage arising from the acts or omissions of Manager or Manager's employees, representatives, agents, or subcontractors in the performance of this Agreement.

**II. CONTRACTOR AND SUBCONTRACTOR REQUIREMENTS.** Manager shall require any Contractor or subcontractor cleaning, maintaining, repairing, or otherwise working on the Site to provide insurance coverage as follows:

**A. General Requirements**

1. Contractor's insurance coverage must be written by companies: (a) licensed to do business in the State of Texas at the time the policies are issued, and (b) with an A.M. Best rating of B+VII or better.

2. All endorsements such as additional insured, waivers, and notices of cancellation endorsements as well as the attached certificate shall indicate the City, the Bonds Trustee, and Owner as follows:

City of Austin  
Department of Aviation  
Attention: Executive Director  
3600 Presidential Boulevard, Suite 411  
Austin, Texas 78719

Austin-Bergstrom Landhost Enterprises, Inc.  
Attention: President  
3600 Presidential Boulevard, Suite 411  
Austin, Texas 78719

3. The "other" insurance clause does not apply to the City, the Bonds Trustee, and Owner where the City, the Bonds Trustee, and Owner is an additional insured shown on any policy. It is intended that policies required in the Contract, covering the Manager, City, the Bonds Trustee, Owner, and the Contractor will be considered primary coverage as applicable.

4. If insurance policies are not written for amounts specified above, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it must follow the form of the primary coverage.

5. The City, the Bonds Trustee, and Owner shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

6. The City, the Bonds Trustee, and Owner reserves the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City, the Bonds Trustee, or Owner based upon changes in statutory law,

court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

7. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

8. The Contractor shall be responsible for paying the premiums, deductibles and self-insured retentions, if any, stated in policies.

9. The Contractor shall provide the City, the Bonds Trustee, and Owner thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

10. If City, the Bonds Trustee, or Owner owned property is being transported or stored off-site by the Contractor, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect the City, the Bonds Trustee, or Owner's property.

11. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of the Contractor.

## **B. Specific Coverages**

1. Contractor shall carry insurance in the types and amounts indicated below for the duration of the Contract, which includes items owned by the City, the Bonds Trustee, and Owner in the care, custody and control of the Contractor prior to and during the period during which services are provided.

2. **Workers' Compensation and Employers' Liability** coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401) and minimum policy limits for employers liability of \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The City, the Bonds Trustee, and Owner will accept workers' compensation coverage written by the Texas Workers Compensation Insurance Fund.

3. The Contractor's policy must apply to the State of Texas and include these endorsements in favor of the City, the Bonds Trustee, and Owner:

- a. Waiver of Subrogation, form WC 420304, or equivalent coverage;
- b. Thirty (30) day Notice of Cancellation, form WC 420601, or equivalent coverage.

4. **Commercial General Liability Insurance** with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy must contain the following provisions:

- a. Blanket contractual liability coverage for liability assumed under this contract;
- b. Medical expense coverage with a limit of \$5,000 for any one person;
- c. Independent Contractors coverage;
- d. The City, the Bonds Trustee, and Owner shall be listed as an additional insured, endorsement CG 2010, or equivalent coverage;
- e. Thirty (30) Day Notice of Cancellation in favor of City, the Bonds Trustee, and Owner, endorsement CG 0205, or equivalent coverage;
- f. Waiver of Transfer of Right of Recovery Against Others in favor of City, the Bonds Trustee, and Owner, endorsement CG 2404, or equivalent coverage;
- g. Fire Legal Liability with minimum limits of \$50,000.

5. **Business Automobile Liability Insurance** for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the City, the Bonds Trustee, and Owner:

- a. Additional Insured endorsement CA 2048, or equivalent coverage;
- b. Waiver of Subrogation endorsement CA 0444, or equivalent coverage;
- c. Thirty (30) Day Notice of Cancellation endorsement CA 0244, or equivalent coverage.

6. Builders' Risk Insurance on an all risk physical loss form in the amount of the maximum contractor amount for any improvements made to the Premises. Coverage shall commence upon the date any work with respect to such improvements begins and shall continue until the work is complete and a Completion Notice is issued with respect to the improvements. The City and Owner shall be a mortgagee/loss payee on the policy. If off-site storage is permitted with respect to the work, coverage shall include transit and storage in an amount sufficient to protect any property being transported or stored.

**SCHEDULE 15.4**

**COMPETITIVE SET**

“Competitive Set” shall mean, initially, the following hotels:

Hyatt Place Austin Airport  
Hilton Garden Inn Austin Downtown  
Courtyard Austin Airport  
Marriott Austin South  
Hilton Garden Inn Austin Airport  
DoubleTree Austin Central  
Holiday Inn Austin Town Lake

Any future changes to the defined competitive set as shown in Schedule 15.4 shall be mutually agreed to in writing between Manager and Owner. The Competitive Set shall be reviewed from time to time by Manager and Owner in the event there is a change in the market that supports an adjustment in the Competitive Set. By way of example only and not of limitation, changes in the market may include the construction of a new hotel or the conversion and/or the renovation of an existing hotel that results in such hotel becoming competitive with the Hotel (or no longer being competitive with the Hotel).

## SCHEDULE 20.1

### REQUIRED FEDERAL PROVISIONS

A. Compliance with Nondiscrimination Provisions. During the performance of this Agreement, Manager, for itself, its assignees, and successors in interest (hereinafter collectively referred to as “Manager”) agrees as follows:

1. **Compliance with Regulations:** Manager will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Non-discrimination:** Manager, with regard to the work performed by it during the term of this Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of contractors, including procurements of materials and leases of equipment. Manager will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Agreements, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by Manager for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by Manager of Manager’s obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Manager will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of Manager is in the exclusive possession of another who fails or refuses to furnish the information, Manager will so certify to Owner or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Manager’s noncompliance with the Non-discrimination provisions of this contract, Owner will impose such sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to withholding payments to the Manager under the Agreement until the Manager complies, and/or cancelling, terminating, or suspending the Agreement, in whole or in part.

6. **Incorporation of Provisions:** Manager will include the provisions of paragraphs one through six of this Exhibit I, Section (A) in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Manager will take action with respect to any contract or procurement as Owner or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Manager becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, Manager may request Owner to enter into any litigation to protect the interests of Owner. In addition, Manager may request the United States to enter into the litigation to protect the interests of the United States.

B. Real Property Acquired or Improved Under the Airport Improvement Program. Manager for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Manager will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

C. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program. Manager for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that Manager will furnish its services in compliance with all other requirements imposed by or pursuant to the List of Nondiscrimination Acts And Authorities.

D. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Manager, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- ii. 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- iv. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- v. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- vi. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- vii. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- viii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- ix. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

E. General Civil Rights Provision. In all its activities within the scope of its airport program, the Manager agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. If the Manager transfers its obligation to another, the transferee is obligated in the same manner as the Manager. The above provision obligates the Manager for the period during which the property is owned, used or possessed by the Manager and the airport remains obligated to the Federal Aviation Administration.

F. Right of Re-entry. In the event of breach of any of the above Nondiscrimination covenants, Owner will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

G. Subcontracts. Manager agrees that it shall insert the above six provisions (Section (A) through Section (F)) in any agreement by which Manager grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public under this Agreement