

**HYATT PLACE HOTEL  
FRANCHISE AGREEMENT**

**between**

---

**and**

**HYATT PLACE FRANCHISING, L.L.C.**

**DATED:** \_\_\_\_\_, 201\_\_

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## **EXHIBITS**

Exhibit A	–	DEFINED TERMS
Exhibit B	–	BASIC TERMS
Exhibit C	–	RIGHT OF FIRST OFFER FOR STRATEGIC MARKETS
Exhibit D	–	PROPERTY IMPROVEMENT PLAN (“PIP”) (if applicable)
Exhibit E	–	FRANCHISEE’S OWNERSHIP
Exhibit F	–	GUARANTY AND ASSUMPTION OF OBLIGATIONS

## HYATT PLACE HOTEL FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** is made and entered into as of \_\_\_\_\_, 201\_\_ (this “**Agreement**”) by and between \_\_\_\_\_, a (“**Franchisee**”) and **HYATT PLACE FRANCHISING, L.L.C.**, a Delaware limited liability company (“**Hyatt**”).

### PRELIMINARY STATEMENT

Franchisee is the owner of, or has the right to occupy, certain real property located at the Site. Hyatt has the right to grant franchises for the establishment and operation of Hyatt Place Hotels. Franchisee wishes to enter into this Agreement to obtain a franchise to use the Hotel System to operate a Hyatt Place Hotel located at the Site. In addition to other terms defined in this Agreement, the initial capitalized terms shall have the meanings set forth in Exhibit A.

**NOW, THEREFORE**, Franchisee and Hyatt agree as follows:

### ARTICLE I

#### GRANT OF FRANCHISE, TERM AND AREA OF PROTECTION

1.1. **Grant of Franchise**. Hyatt grants Franchisee, and Franchisee accepts, the non-exclusive right and obligation to use the Hotel System during the Term (defined below in Section 1.2) to build or convert, and operate, the Hotel at the Site under the Proprietary Marks in accordance with this Agreement’s terms.

1.2. **Term**. The term of this Agreement (the “**Term**”) will commence on the Effective Date and expire without notice on the date which is twenty (20) years after the Opening Date, subject to its earlier termination as set forth in this Agreement.

1.3. **Rights in Area of Protection During AOP Term**. The “**Area of Protection**” is the geographic area described in Exhibit B. Subject to the one exception below, during the limited period of time set forth in Exhibit B (the “**AOP Term**”), neither Hyatt nor any of its Affiliates will open and operate, nor authorize any other party to open and operate, any other Hyatt Place Hotels the physical premises of which are located within the Area of Protection. The one exception to this restriction is that, if Hyatt or any of its Affiliates acquires (whether through purchase, sale, merger, consolidation, or other transaction) during the AOP Term another chain, franchise system, group or portfolio of at least four (4) hotels, or acquires the right to operate or manage another chain, franchise system, group or portfolio of at least four (4) hotels, one (1) or more of which hotels are located, or are under contract or construction to be located, in the Area of Protection (as Hyatt and its Affiliates have the right to do), Hyatt and/or its Affiliates then will have the unrestricted right to convert, or cause to be converted, the acquired hotel(s) within the Area of Protection from its (or their) original trade identity to operate under the Proprietary Marks and the Hotel System, and then to operate, or authorize any other party to operate, such hotel(s) as Hyatt Place Hotels, even if one (1) or more of the other acquired hotels, whether operating within or outside the Area of Protection, are not converted to Hyatt Place Hotels. Franchisee acknowledges that its rights in the Area of Protection apply only during the AOP

Term. Following the AOP Term, Franchisee will have no territorial rights or protection whatsoever, whether within or outside the Area of Protection, and Hyatt and its Affiliates may open and operate, and authorize any other parties to open and operate, other Hyatt Place Hotels the physical premises of which are located within the Area of Protection, including pursuant to franchise agreements and other agreements signed during the AOP Term.

1.4. **No Other Restrictions.** Except for the limited exclusivity provided in Section 1.3, there are no restrictions on Hyatt or its Affiliates; Franchisee's rights under this Agreement are nonexclusive in all respects; the Hotel has no territorial protection whatsoever; and Hyatt and its Affiliates have the right without any restrictions at all to engage in any and all activities Hyatt and they desire (including with respect to any and all types of lodging facilities), at any time and place, whether or not using the Proprietary Marks or any aspect of the Hotel System, whether or not those activities compete with the Hotel, and whether or not Hyatt or its Affiliates start those activities themselves or purchase, are purchased by, merge with, acquire, are acquired by, or affiliate with businesses that already engage in such activities. Hyatt and its Affiliates may engage in all activities not expressly prohibited in this Agreement. Hyatt and its Affiliates may use or benefit from, among other things, common hardware, software, communications equipment and services, administrative systems, reservation systems, franchise application procedures, central purchasing, approved vendor lists, and personnel. Franchisee will have no right to pursue any claims, demands, or damages as a result of these activities, whether under breach of contract, unfair competition, implied covenant of good faith and fair dealing, divided loyalty, or other theories, because Franchisee has expressly allowed Hyatt and its Affiliates to engage in all such activities without restriction.

Franchisee acknowledges that Hyatt's Affiliates currently operate other franchised and non-franchised systems for lodging facilities (including full service and select service hotels, time-share or interval ownership facilities, and vacation clubs) that use different brand names, trademarks, and service marks, including those with the "Hyatt" name as part of their brand name, some of which might operate and have facilities in the Area of Protection during the AOP Term, that will compete directly with Franchisee. Except as expressly described in Section 1.3, none of those activities, even other uses of the "Hyatt" name, will constitute a violation of this Agreement. Only the operation of a Hyatt Place Hotel the physical premises of which are located within the Area of Protection during the AOP Term would constitute a violation of this Agreement, unless the one exception noted in Section 1.3 applies.

1.5. **Right of First Offer.** If Hyatt determines that the Site is located in a strategic market for Hyatt and its Affiliates, then simultaneously with signing this Agreement, Hyatt and Franchisee shall sign and deliver to each other the Right of First Offer attached as Exhibit C. Hyatt and Franchisee acknowledge that, unless they sign and deliver to each other the Right of First Offer, the terms of the Right of First Offer and Exhibit C shall not apply to the Hotel or Franchisee.

## ARTICLE II

### DEVELOPMENT AND OPENING OF THE HOTEL

Franchisee agrees to develop the Hotel in accordance with the Hotel System's details, as set forth in the Manual or otherwise in writing. Franchisee must bear the entire cost of developing and constructing the Hotel, including professional services, financing, insurance, licensing, contractors, permits and FF&E.

2.1. Hotel Development-New Development. This Section 2.1 applies only if Franchisee is constructing a new Hotel at the Site. If Franchisee is not constructing a new Hotel at the Site, then Section 2.2 shall apply, and not this Section 2.1.

(a) Franchisee's managing owner or senior operations officer must attend at Franchisee's expense a briefing at Hyatt's headquarters in Chicago, Illinois or another location Hyatt specifies to acquaint Franchisee with Hyatt's building process and support structure within six (6) months after the Effective Date.

(b) Franchisee must prepare and submit to Hyatt for its approval within four (4) months after the Effective Date preliminary plans for the Hotel, including site layout and outline specifications (the "**Preliminary Plans**"). The Preliminary Plans must comply with the Design Standards, Hotel System and System Standards.

(c) Franchisee must prepare and submit to Hyatt for its approval within six (6) months after the Effective Date complete working drawings and specifications for the Hotel, with such detail and containing such information that Hyatt requires, covering: the Hotel property; all structural, mechanical, electrical, plumbing, heating, ventilating, air conditioning and life safety equipment and systems; major architectural features and systems, including site layout and outline specifications; and all proposed FF&E (the "**Detailed Plans**"). The Detailed Plans must comply with the Preliminary Plans (in the form that Hyatt approved them) and the Design Standards, Hotel System and System Standards.

(d) Construction of the Hotel may not begin until Hyatt has approved the Detailed Plans in writing. For purposes of this Agreement, construction of the Hotel is deemed to have begun when the vertical construction of the Hotel portion of the building begins for mixed use projects or upon pouring concrete for the Hotel's foundation or finished slab for all other projects. After Hyatt approves the Detailed Plans, Franchisee may not make any material changes to them (including any changes to any structural or life safety equipment or systems, the number and/or type of guest rooms or common areas, or any architectural features) without Hyatt's prior written consent, which Hyatt will not unreasonably withhold. If material changes in the Detailed Plans are required during the course of construction, Franchisee must notify Hyatt and seek Hyatt's consent as promptly as reasonably possible.

(e) Construction must begin within twelve (12) months after the Effective Date. Franchisee shall notify Hyatt within (5) days after Franchisee commences

construction of the Hotel. Construction shall continue uninterrupted (unless interrupted by Force Majeure) until the Hotel is completed. Franchisee must construct the Hotel according to the Detailed Plans (in the form that Hyatt approved them) and the Design Standards, Hotel System and System Standards.

2.2. **Hotel Development-Conversion of an Existing Facility.** This Section 2.2 applies only if Franchisee is not constructing a new Hotel at the Site but instead is converting an existing hotel at the Site to a Hyatt Place Hotel. If Franchisee is not converting an existing hotel at the Site to a Hyatt Place Hotel, then Section 2.1 shall apply, and not this Section 2.2.

(a) Franchisee's managing owner or senior operations officer must attend at Franchisee's expense a briefing at Hyatt's headquarters in Chicago, Illinois or another location Hyatt specifies to acquaint Franchisee with Hyatt's building process and support structure within three (3) months after the Effective Date.

(b) Franchisee agrees to renovate the Hotel in accordance with, and within the time frames set forth on, the PIP attached as Exhibit D and in accordance with Franchisee's renovation plans for the Hotel (the "**Renovation Plans**"). At Hyatt's request, Franchisee agrees to submit the proposed Renovation Plans to Hyatt for Hyatt's approval. The Renovation Plans must comply with the attached PIP, the Hotel System and System Standards. If Hyatt requires Franchisee to submit the proposed Renovation Plans, renovations may not begin until Hyatt approves the Renovation Plans in writing. After Hyatt approves the Renovation Plans, Franchisee may not make any material changes to them (including any changes to any structural or life safety equipment or systems, the number and/or type of guest rooms or common areas, or any architectural features) without Hyatt's prior written consent, which Hyatt will not unreasonably withhold.

(c) If this Agreement anticipates Franchisee's conversion of an existing franchised or managed facility to a Hyatt Place Hotel, then before any Proprietary Marks (including signage) are installed or displayed at the Site, and before the Hotel is authorized to open as a Hyatt Place Hotel, Franchisee must submit evidence reasonably satisfactory to Hyatt of the termination of Franchisee's previous franchise or management agreement in accordance with applicable legal requirements.

2.3. **Data Installation and IT Services.** Before the Hotel begins operating under the Proprietary Marks, Hyatt shall provide data installation services relating to the initial set-up of the CRS, GDS and ADS at the Hotel and IT project management implementation services relating to the Hotel's computing environment. Franchisee must pay Hyatt's standard fees and reimburse Hyatt for its personnel's travel and other expenses relating to these services on or before the date upon which Hyatt provides these services.

#### 2.4. **Opening the Hotel.**

2.4.1 **Opening Deadline and Extension.** Franchisee must open and begin operating the Hotel under the Hotel System and the Proprietary Marks (a) within twenty-four (24) months after the Effective Date if Franchisee is constructing a new Hotel at the Site

pursuant to Section 2.1, or (b) within six (6) months after the Effective Date (unless otherwise provided in the PIP) if Franchisee is not constructing a new Hotel at the Site but instead is converting an existing hotel at the Site to a Hyatt Place Hotel pursuant to Section 2.2 (as applicable, the “**Opening Deadline**”). If Franchisee wants to request an extension of the Opening Deadline, Franchisee must submit a written request and a Ten Thousand Dollar (\$10,000) extension fee to Hyatt before the Opening Deadline. If Hyatt approves the extension, Hyatt will set a new Opening Deadline, the extension fee will be non-refundable, and Hyatt may (at its option) require Franchisee to modify any previously-approved Detailed Plans, or Renovation Plans and the PIP (as applicable), to comply with the then current design, equipment and other aspects of the Hotel System. If Hyatt denies the extension, Hyatt will refund the extension fee.

2.4.2 **Conditions for Opening.** Franchisee must not open or begin operating the Hotel under the Proprietary Marks until: (a) Franchisee has properly developed and equipped the Hotel in compliance with this Agreement and all applicable laws, rules and regulations; (b) all pre-opening training for the Hotel’s personnel has been completed to Hyatt’s satisfaction; (c) all amounts then due to Hyatt and its Affiliates have been paid; (d) Franchisee has obtained all required certificates of occupancy, licenses and permits to operate the Hotel; (e) Franchisee has given Hyatt copies of all insurance policies required under this Agreement, or such other evidence of insurance coverage and payment of premiums as Hyatt requests; (f) Franchisee has submitted to Hyatt a written certification that the Hotel is in compliance with the approved Detailed Plans or Renovation Plans (as applicable), was constructed in compliance with the PIP (if applicable), Design Standards, Hotel System and System Standards, and is in compliance with all applicable laws, together with other certifications from Franchisee’s architect and/or other professionals pursuant to Section 2.5; and (g) Hyatt has conducted a final pre-opening inspection and given Franchisee its written authorization to open the Hotel under the Proprietary Marks. Within ten (10) days after the Hotel is ready to open for business under the Proprietary Marks, Franchisee must ask Hyatt to conduct a final inspection, which Hyatt shall promptly conduct. Franchisee agrees to open the Hotel under the Proprietary Marks within ten (10) days after Hyatt’s authorization, which Hyatt will not unreasonably withhold or delay. Hyatt’s determination that Franchisee has met all of Hyatt’s pre-opening requirements will not constitute a representation or warranty, express or implied, that the Hotel complies with any laws or a waiver of Franchisee’s non-compliance, or of Hyatt’s right to demand full compliance, with such pre-opening requirements or any other provision of this Agreement. Franchisee shall indemnify Hyatt for all costs and expenses that Hyatt incurs directly or indirectly as a result of Franchisee’s failure to open the Hotel on or before the anticipated Opening Date specified by Franchisee or the Opening Deadline, whichever is earlier, including any amounts that Hyatt pays with respect to customers whose reservations at the Hotel are cancelled due to Franchisee’s failure to open the Hotel by that date.

2.5. **Hyatt’s Role as an Advisor.** Hyatt agrees to use reasonable efforts in connection with its review and approval of the Preliminary Plans and Detailed Plans or the Renovation Plans (as applicable) and its approval to open the Hotel under the Proprietary Marks, including by making a reasonable number of visits to the Site and providing reasonable guidance and advice relating to the Hotel’s development or conversion. Hyatt’s review and approval of the Preliminary Plans and Detailed Plans or the Renovation Plans (as applicable), its providing construction, design, architectural, planning and/or related services in connection with the Hotel

(whether before or after signing this Agreement), and/or its approval to open the Hotel under the Proprietary Marks are intended only to determine compliance with Hyatt's pre-opening requirements. Hyatt will have no liability to Franchisee for the Hotel's construction or renovation. It is Franchisee's responsibility to make sure that the Hotel complies with Hyatt's requirements, the Americans with Disabilities Act and similar rules, other applicable ordinances, building codes, and permit requirements. Franchisee acknowledges that Hyatt acts only in an advisory capacity and is not responsible for the adequacy or coordination of any plans or specifications, for the integrity of any structures, for the Hotel's compliance with any applicable laws (including the Americans with Disabilities Act), any building code of any governmental authority, or any insurance requirement, or for obtaining necessary permits, all of which shall be Franchisee's sole responsibility and risk. Franchisee shall give Hyatt a written certificate or opinion from Franchisee's architect, licensed professional engineer, or recognized expert consultant on the Americans with Disabilities Act stating that the Hotel conforms to the Design Standards, requirements of the Americans with Disabilities Act, related federal regulations and all other applicable state and local laws, regulations, and other requirements governing public accommodations for persons with disabilities. At Hyatt's request, Franchisee must give Hyatt copies of all other certificates of architects, contractors, engineers, and designers and such other similar verifications and information as Hyatt reasonably requests.

2.6. **Comfort Letter.** Franchisee must cause each Lender, each Ground Lessor (if applicable), the owner of fee simple title to the Hotel's real property and improvements (if Franchisee is not that owner), and each other entity with an interest (or any power or right, conditional or otherwise, to acquire an interest) in the Hotel's real property and improvements (each a "**Comfort Letter Party**") to sign a comfort letter or other agreement that Hyatt reasonably specifies under which such Comfort Letter Party agrees to assume Franchisee's obligations under this Agreement (subject to Hyatt's rights under Article XII) if the Comfort Letter Party or any of its Affiliates acquires title or otherwise assumes possession, or the right to sell or direct the disposition of, the Hotel's real property and improvements. Franchisee shall pay Hyatt its then current comfort letter fee for each comfort letter that Hyatt negotiates relating to the Hotel.

2.7. **Hyatt Place Hotels and the Hotel System Outside the United States.** Franchisee acknowledges that Hyatt and its Affiliates may operate, and authorize others to operate, Hyatt Place Hotels outside the United States providing additional, fewer and/or different amenities and services to guests than Hyatt Place Hotels in the United States typically provide, or that otherwise operate in a manner that is substantially different from the manner in which Hyatt Place Hotels in the United States typically operate. Hyatt may establish and periodically modify the Hotel System and System Standards for Hyatt Place Hotels in the United States in a manner that is different from the Hotel System and System Standards that apply to some or all Hyatt Place Hotels outside the United States.

## ARTICLE III

### TRAINING, GUIDANCE AND ASSISTANCE

#### 3.1. Orientation and Training.

3.1.1 Owner Orientation. Within one hundred eighty (180) days after the Effective Date, Franchisee's managing owner or senior operations officer must attend an owner orientation program at Hyatt's headquarters in Chicago, Illinois. Hyatt does not charge a fee for this orientation program.

3.1.2 General Manager and Sales Director Training Programs. Before opening the Hotel for business under the Proprietary Marks, the Hotel's general manager and sales director must attend and successfully complete Hyatt's training programs and curriculum for their respective positions. Franchisee (or the Management Company in accordance with Section 4.2) must hire the Hotel's sales director and ensure that he or she begins working full time on his or her duties for the Hotel at least six (6) months before the Hotel opens. If Franchisee or the Management Company replaces the Hotel's general manager or sales director during the Term, his or her replacement must attend and successfully complete the applicable training programs that Hyatt reasonably specifies within ninety (90) days (or such longer period Hyatt periodically designates) after assuming his or her position. Hyatt will designate the dates, locations, and duration of all training.

3.1.3 Training for Other Hotel Personnel. Franchisee or the Management Company must designate the general manager or other member of the Hotel management team whom Hyatt approves as the Hotel's certified trainer. That person must attend and successfully complete Hyatt's training program for certified hotel trainers before opening the Hotel for business under the Proprietary Marks. If Franchisee or the Management Company replaces the Hotel's certified trainer during the Term, his or her replacement must attend and successfully complete the applicable training programs that Hyatt reasonably specifies within ninety (90) days (or such longer period Hyatt periodically designates) after assuming his or her position. Hyatt will designate the dates, locations, and duration of training. Once the Hotel's certified trainer has successfully completed Hyatt's training program, that certified trainer must at Franchisee's expense administer and implement a training program for all Hotel personnel in accordance with the System Standards.

3.1.4 On-Site Training. Hyatt will send one (1) or two (2) trainers (at Hyatt's option) to assist with training the Hotel staff and otherwise provide assistance in connection with the Hotel's grand opening under the Proprietary Marks. Franchisee must pay Hyatt's then current fee and the trainer(s)' travel and living expenses associated with this training. The trainer(s) will arrive at or before the Hotel's grand opening under the Proprietary Marks and stay for the period that Hyatt specifies. Hyatt may (at its option) conduct this training on more than one visit. The trainer(s) will generally assist and train Hotel staff with aspects of day-to-day operations, including laundry, customer service, food and beverage, and gallery host stand operations.

3.1.5 Supplemental and Optional Training. Hyatt may, at such times and places as it deems best, require the Hotel's Core Management and/or other personnel Hyatt

specifies to participate in regional and national meetings and other training programs that Hyatt periodically specifies. These individuals must attend any supplemental training within the time period that Hyatt reasonably specifies after Franchisee receives notice from Hyatt that such training is required. Hyatt also may, at its option, offer various optional training programs from time to time during the Term. Supplemental and optional training may be conducted by, and tuition and other fees may be payable to, Hyatt, its Affiliates, or third parties that Hyatt designates.

3.1.6 **Training Fees and Expenses.** Franchisee must pay Hyatt's then current fees for the initial and any additional general manager, sales director, certified trainer and other training programs that the Hotel's personnel attend. Franchisee also is responsible for all costs of transportation, meals, lodging, salaries, and other compensation for Hotel personnel incurred in connection with training. If Hyatt holds any training at the Hotel, Franchisee must provide free lodging for Hyatt's representatives.

3.2. **Manual.** Hyatt shall provide Franchisee access to the Manual during the Term. Franchisee must comply with the terms of the Manual, as Hyatt periodically modifies it, other than any employment-related or other policies and procedures which are clearly indicated in the Manual as being for Franchisee's optional use. The Manual may include audiotapes, videotapes, compact disks, computer software, other electronic media, and/or written materials. It contains System Standards and information on Franchisee's other obligations under this Agreement. Hyatt may modify the Manual periodically to reflect changes in System Standards. Franchisee agrees to keep its copy of the Manual current and in a secure location at the Hotel and to restrict (and ensure the Management Company restricts) access to the Manual in accordance with Hyatt's policies, as Hyatt periodically modifies them. If there is a dispute over its contents, Hyatt's master copy of the Manual controls. Franchisee agrees that the Manual's contents are part of the Confidential Information.

At Hyatt's option, Hyatt may post some or all of the Manual on a restricted website or extranet to which Franchisee will have access. If Hyatt does so, Franchisee agrees to monitor and access the website or extranet for any updates to the Manual, System Standards, or other aspects of the Hotel System. Any passwords or other digital identifications necessary to access the Manual on a website or extranet are part of the Confidential Information. Hyatt may require Franchisee to return a portion or the entire copy of the Manual given to Franchisee in paper or other tangible form after Hyatt posts the Manual on a restricted website or extranet.

3.3. **CRS, GDS, ADS, National Directory and IT Services.** During the Term, Hyatt shall provide Franchisee access to the CRS, listings in advertising publications that Hyatt periodically specifies, and listing in the National Directory. Hyatt also may, at its option, provide IT project management implementation services and other services relating to the computing equipment and other technology at the Hotel during the Term. Franchisee must pay Hyatt's reasonable fees and reimburse Hyatt's expenses in connection with such assistance.

3.4. **General Guidance and Assistance.** During the term, Hyatt may advise Franchisee from time to time regarding the Hotel's operation based on Franchisee's reports or Hyatt's evaluations and inspections, and may guide Franchisee with respect to (a) System Standards that Hyatt Place Hotels use, (b) purchasing required and authorized FF&E and other items and

arranging for their distribution to Franchisee, (c) advertising and marketing materials and programs, (d) employee training, and (e) administrative, recordkeeping, and accounting procedures. Hyatt may guide Franchisee in the Manual, in bulletins or other written materials, by electronic media, by telephone consultations, and/or at Hyatt's headquarters or the Hotel. If Franchisee requests, and Hyatt agrees to provide, additional or special guidance, assistance, or training, Franchisee agrees to pay Hyatt's then applicable charges, including Hyatt's personnel's per diem charges and travel and living expenses. Any specific training, guidance or assistance that Hyatt provides does not create an obligation (whether by course of dealing or otherwise) to continue providing that specific training, guidance or assistance, all of which Hyatt may periodically modify. Other Arrangements and Delegation. Hyatt may make arrangements with its Affiliates or other third parties to provide development, marketing, operations, administration, technical, and support functions, facilities, services, and/or personnel related to the Hotel System. Hyatt and its Affiliates also may use any functions, facilities, programs, services, and/or personnel used in connection with the Hotel System in Hyatt's and its Affiliates' other business activities, even if these other business activities compete with the Hotel or the Hotel System. Franchisee agrees that Hyatt has the right to delegate the performance of any portion or all of its obligations under this Agreement to third party designees, whether these designees are its Affiliates, agents, or independent contractors with whom Hyatt contracts to perform these obligations. If Hyatt does so, the third party designees will be obligated to perform the delegated functions for Franchisee in compliance with this Agreement. However, unless Hyatt notifies Franchisee in writing of its delegation of any such obligations or transfers this Agreement pursuant to Section 12.9, Franchisee agrees that it shall look only to Hyatt and not to any other person or entity (including an Affiliate of Hyatt) for the performance of such obligations, as only Hyatt (and not any of Hyatt's Affiliates or any other person or entity) have undertaken such obligation.

3.5. **Annual Conventions.** Hyatt may, at its option, hold an annual convention for all or a certain group of Hyatt Place Hotels and/or all or certain other Hyatt-Affiliated Hotels (the "**Annual Convention**") at a location Hyatt periodically designates. Hyatt may require the Hotel's general manager and other key Hotel personnel to attend the Annual Convention. Franchisee must pay Hyatt's then current attendance fee for each person from the Hotel who attends the Annual Convention. Franchisee also must pay all expenses that its attendees incur to attend the Annual Convention.

## **ARTICLE IV**

### **OPERATION OF THE HOTEL**

4.1. **Marketing, Central Reservations and Technology Fund.** Hyatt or its designee will administer a Marketing, Central Reservations and Technology Fund for the Hyatt Place Hotel network (the "**Fund**"). Franchisee must make Contributions to the Fund according to Section 6.2(b). The Fund may, as Hyatt periodically determines, cover the Hotel and other Hyatt Place Hotels operating in any geographic area that Hyatt deems appropriate, such as, for example, Hyatt Place Hotels operating only in the United States, in a larger international region that Hyatt periodically defines, or globally. For administrative convenience, Hyatt may (but is not required to) collect the Contributions before passing them on to the Fund. Hyatt Place Hotels that Hyatt or its Affiliates own and operate in the geographic area that the Fund covers will

contribute to the Fund on the same percentage basis as franchisees. Hyatt also has the right to collect for deposit into the Fund any advertising, marketing, or similar allowances paid to Hyatt by suppliers who deal with Hyatt Place Hotels and with whom Hyatt agrees to so deposit these allowances.

Hyatt will determine and direct all programs that the Fund finances, with sole control over the creative concepts, materials, and endorsements used and their geographic, market, and media placement and allocation, including by determining on its own the amounts to be spent for the various purposes identified in this Section 4.1. The Fund may pay for preparing and producing video, audio, and written materials and electronic media; developing, implementing, maintaining and improving the Hotel System Website and/or related strategies; developing, implementing, operating, maintaining and improving the CRS, GDS, ADS, and National Directory and any other related or successor programs or systems; developing, implementing, maintaining and improving any video, computer-related or other technology for use or sale by Hyatt Place Hotels; planning, coordinating and conducting various sales efforts for Hyatt Place Hotels; market research and other research and development activities relating to improving the Hotel System; administering customer relationship management programs; administering regional and multi-regional marketing, advertising and promotional programs, including purchasing trade journal and other media advertising and using advertising, promotion, and marketing agencies and other advisors to provide assistance; and supporting public relations and other advertising, promotion, and marketing activities. The Fund periodically will give Franchisee samples of advertising, marketing, and promotional formats and materials at no cost. Hyatt will sell Franchisee multiple copies of these materials at Hyatt's direct cost of producing them, plus any related shipping, handling, and storage charges.

Hyatt will account for the Fund separately from its other assets (but Hyatt need not segregate the Fund from its assets). Hyatt will not use the Fund for any of its general operating expenses. However, Hyatt may use the Fund to pay the reasonable salaries, benefits and expenses of personnel who manage, administer and/or perform services for or on behalf of the Fund, including those who account for Contributions; the Fund's other administrative costs, including any taxes on Fund contributions; travel expenses of personnel while they are on Fund business; meeting costs; rent, utilities, other overhead costs, and other costs for equipment, supplies and other materials relating or allocable to Fund business; and other expenses that Hyatt incurs in activities reasonably related to administering or directing the Fund and its programs, including conducting market research and other research and development activities, public relations, preparing advertising, promotion, and marketing materials, collecting and accounting for Contributions, paying Providers for services relating to the CRS, GDS and ADS, and paying for technical and support functions.

The Fund will not be Hyatt's asset. Although the Fund is not a trust, Hyatt will hold all Contributions for the benefit of the contributors and use Contributions only for the purposes described in this Section 4.1. Hyatt does not owe any fiduciary obligation to Franchisee for administering the Fund or any other reason. The Fund may spend in any fiscal year more or less than the total Contributions in that year, borrow from Hyatt or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. Hyatt will use all interest (if any) earned on Contributions to pay costs before using the Fund's other assets.

Hyatt will prepare an annual, unaudited statement of Fund collections and expenses and give Franchisee a copy of the statement upon written request. Hyatt may have the Fund audited periodically, at the Fund's expense, by an independent certified public accountant. Hyatt may incorporate the Fund or operate it through a separate entity whenever Hyatt deems appropriate. The successor entity will have all of the rights and duties specified in this Section 4.1.

Hyatt intends the Fund to maximize recognition of the Proprietary Marks, patronage of Hyatt Place Hotels, and the productive and efficient operation of the CRS, GDS and ADS, any related or successor programs or systems, and other technologies. Although Hyatt will try to use the Fund in a manner that will benefit all contributing Hyatt Place Hotels, Hyatt need not ensure that Fund expenditures in or affecting any geographic area are proportionate or equivalent to Contributions by Hyatt Place Hotels operating in that geographic area or that any Hyatt Place Hotel benefits directly or in proportion to its Contributions from the programs and other products and services that the Fund finances.

Hyatt has the right, but no obligation, to use collection agents and institute legal proceedings at the Fund's expense to collect Contributions. Hyatt also may forgive, waive, settle, and compromise all claims by or against the Fund. Except as expressly provided in this Section 4.1, Hyatt assumes no direct or indirect liability or obligation to Franchisee for collecting amounts due to, maintaining, directing, or administering the Fund.

Hyatt may at any time defer or reduce Contributions of a Hyatt Place Hotel franchisee and, upon thirty (30) days' prior written notice to Franchisee, reduce or suspend Contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Fund. If Hyatt terminates the Fund, Hyatt will distribute all unspent Fund amounts to Hyatt's then existing franchisees, and to Hyatt and its Affiliates, in proportion to their and Hyatt's respective Contributions during the preceding twelve (12)-month period.

4.2. **Management of the Hotel.** Unless Hyatt approves pursuant to this Section 4.2 or otherwise in writing, Franchisee must at all times retain and exercise direct management control over all aspects of the Hotel's business and must be the employer of the Hotel's Core Management and other personnel.

4.2.1 **Management Arrangements.** Franchisee may not enter into a Management Arrangement without Hyatt's prior written consent, which Hyatt will not unreasonably withhold if the Management Company meets Hyatt's minimum qualifications, ensures that its personnel attend and satisfactorily complete required training programs and signs the documents Hyatt requires to protect the Proprietary Marks, Copyrighted Materials and Confidential Information and to reflect the Management Company's agreement to perform its management responsibilities and otherwise operate the Hotel in compliance with this Agreement (collectively, the "**Management Company Documents**"). Nevertheless, Hyatt may refuse to approve a Management Company which is a Brand Owner. If Hyatt approves a Management Arrangement as of the Effective Date, the Management Company's name is listed in Exhibit B. Even after Hyatt approves a Management Arrangement, if the Management Company at any time becomes a Brand Owner or otherwise fails to meet Hyatt's minimum qualifications (as Hyatt may periodically modify them) or to comply with any of the Management Company Documents, then, without limiting Hyatt's other rights and remedies under this Agreement and

applicable law, Hyatt may revoke its approval of a Management Arrangement. If Hyatt does so, then Franchisee must promptly terminate the Management Arrangement and either assume direct control of the Hotel's management and operation or engage another Management Company under a Management Arrangement that Hyatt has approved in writing.

4.2.2 **General Manager Qualification, Approval and Removal.** Franchisee or the Management Company (as applicable) is solely responsible for hiring the Core Management and other Hotel personnel and determining the terms and conditions of their employment. Before any general manager for the Hotel is engaged, Franchisee must submit to Hyatt the identity and qualifications of the proposed candidate, including resume, work history, experience, references, background verifications and other information that Hyatt reasonably requests. Hyatt shall have the right to conduct an in-person interview of the proposed general manager and Franchisee shall reimburse Hyatt for all related travel and other expenses. Franchisee or the Management Company (as applicable) shall not engage any general manager for the Hotel unless he or she has been approved by Hyatt, which approval Hyatt will not unreasonably withhold or delay. Even after Hyatt approves a general manager for the Hotel, Hyatt may, at its option and without limiting its other rights and remedies, revoke that approval if that general manager fails to ensure that the Hotel satisfies Hyatt's quality assurance requirements or other operational standards. If Hyatt revokes its approval of the Hotel's general manager, then Franchisee or the Management Company (as applicable) must hire a replacement general manager that Hyatt approves in accordance with this Section 4.2.2 within thirty (30) days after receiving Hyatt's notice.

4.2.3 **Core Management Staffing.** Franchisee or the Management Company (as applicable) must hire and properly train all Core Management and have a Core Management team in place at the Hotel at all times. Franchisee must ensure that each member of the Hotel's Core Management: (a) spends at least forty (40) hours per week at the Hotel fulfilling his or her management and operational responsibilities (subject to vacation and other policies for time off for full-time employees); and (b) does not concurrently maintain a position at another lodging facility or in any other capacity related to the lodging industry.

4.3. **System Standards.** Subject to Article X, Franchisee must operate the Hotel twenty-four (24) hours a day, every day, and use the Hotel and its premises solely for the business franchised under this Agreement. Franchisee may not operate, or allow any third party to operate, a time share office or desk or any other area from which time share interests, similar interests, or rights relating to any other property or service are offered or sold on or from any part of the Hotel premises. Franchisee must at all times ensure that the Hotel is operated in compliance with the Hotel System, the Manual (other than any employment-related or other policies and procedures which are clearly indicated in the Manual as being for Franchisee's optional use), and all other mandatory System Standards Hyatt periodically communicates to Franchisee, as Hyatt may periodically modify them. System Standards may regulate, among other things:

- (a) Franchisee's obligation to maintain the Hotel in a clean, safe, and orderly manner, including periodic cleaning, repainting and redecorating of the Hotel and repair and replacement of FF&E;

(b) the provision of efficient, courteous, competent, prompt, and high-quality service to the public;

(c) quality standards and the types of services, concessions, amenities and other items that Franchisee may or must use, promote, or offer at the Hotel;

(d) standards and specifications for FF&E, supplies, and other goods and services that the Hotel uses or sells;

(e) Franchisee's use of the Proprietary Marks, including the display, style, location, and type of signage and all uses of the Proprietary Marks and/or references to the Hotel in connection with any social networking or social media sites or tools;

(f) directory and reservation service listings of the Hotel and methods for using required and authorized GDS and ADS;

(g) creating a favorable response to the name "Hyatt Place" and the names of any brand extensions, other Proprietary Marks and brand-specific programs bearing the "Hyatt" name;

(h) honoring all nationally recognized credit cards and other payment mechanisms that Hyatt periodically designates and entering into all necessary credit card and other agreements with the issuers of those cards and other applicable parties;

(i) mystery shopper programs, guest relations programs, and guest complaints and resolution programs, including reimbursing dissatisfied guests for their costs of staying at the Hotel and participating in other guest satisfaction programs in the manner Hyatt periodically specifies;

(j) delivering to Hyatt or otherwise providing Hyatt access to the Guest Information and Franchisee's sales and customer database;

(k) record retention policies and programs;

(l) policies and procedures regarding the collection, storage, use, processing and transfer of personal data (which includes information that identifies or is capable of identifying an individual), payment card data, or other financial data and information, including any data privacy or data security compliance programs and any payment card industry data security standards, together with any related audit or certification requirements;

(m) the Quality Assurance Program, including deficiency action policies and other measures concerning the Hotel's compliance with the Hotel System, the Manual and System Standards; and

(n) participation in and compliance with the terms of all of Hyatt's mandatory marketing, reservation service, rate and room inventory management, advertising, cooperative advertising, guest frequency, social responsibility, discount or

promotional, customer award, customer loyalty, Internet, computer, training, and operating programs, including a property management system that interfaces with the CRS or any other central reservation system Hyatt periodically adopts. Hyatt may periodically establish and/or coordinate these programs with third parties Hyatt designates. These third parties might (but need not) be Hyatt's Affiliates. Franchisee must sign and comply with any license, participation and other agreements Hyatt periodically specifies relating to these programs.

Despite Hyatt's right to establish and periodically to modify System Standards for the Hotel and modify the Hotel System as Hyatt deems best, Franchisee retains the right to control, and responsibility for, the Hotel's day-to-day management and operation and implementing and maintaining System Standards at the Hotel. Because complete and detailed uniformity under many varying conditions might not be possible or practical, Franchisee acknowledges that Hyatt specifically reserves the right and privilege, as Hyatt deems best, to vary the Hotel System and System Standards for any Hyatt Place Hotel based upon the peculiarities of any condition or factors that Hyatt considers important to that hotel's successful operation. Franchisee has no right to require Hyatt to grant Franchisee a similar variation or accommodation.

Hyatt's mandatory System Standards do not include any employment-related or other policies or procedures which are clearly indicated in the Manual as being for Franchisee's optional use. Franchisee will determine to what extent, if any, these optional policies and procedures should apply to the Hotel's operations. Franchisee acknowledges that Hyatt does not dictate or control labor or employment matters for franchisees and their employees and will not be responsible for the safety and security of Hotel employees or patrons.

4.4. **Uses and Sources of FF&E and Other Products and Services.** Franchisee must purchase or lease, install, and maintain at the Hotel all FF&E and other items that Hyatt periodically specifies for the Hotel, consistent with the Hotel System. Franchisee may not install at the Hotel, without Hyatt's prior written consent, any FF&E or other items Hyatt has not previously approved. Franchisee may use at the Hotel only FF&E, supplies, and other goods and services that conform to the System Standards.

Hyatt may require Franchisee to acquire a particular model or brand of FF&E, supplies, and other goods and services that are available from only one manufacturer or supplier. Hyatt also may require Franchisee to acquire FF&E, supplies, and other goods and services only from Hyatt (or its Affiliate) or from one or more sources that Hyatt periodically designates or approves. If Franchisee wishes to obtain any FF&E, supplies, or other goods and services for which Hyatt has established standards or specifications from a source that Hyatt has not previously approved as meeting the System Standards, Franchisee must send Hyatt a written request with any information and samples Hyatt considers necessary to determine whether the item and source meet Hyatt's then current criteria. Upon Hyatt's request, Franchisee must reimburse Hyatt's costs in reviewing Franchisee's request and evaluating the item and/or source. If Franchisee complies with Hyatt's processes and procedures, Hyatt will respond to Franchisee's request within a reasonable time period. Franchisee may not purchase any FF&E, supplies or other goods or services for the Hotel unless the purchase is from a source Hyatt designates or approves or, for those goods or services that Hyatt does not require Franchisee to acquire only from designated or approved sources, unless Hyatt has approved in writing that the

good or service Franchisee proposed meets Hyatt's standards and specifications. Hyatt may modify the System Standards in this area as Hyatt deems best. Hyatt reserves the right, at its option, to revoke its approval of certain sources or items if they fail to continue to meet the System Standards. Hyatt may refuse any of Franchisee's requests if Hyatt already has designated a particular source for, or model or brand of, FF&E, supplies or other goods or services that Hyatt (in its sole judgment) determines to be critical to the Hotel System and Hyatt does not desire to expand the list of approved sources, models, or brands. Hyatt may make this decision as it deems best. Hyatt and its Affiliates have the right to receive rebates, commissions, payments, benefits and other material consideration from suppliers on account of their actual or prospective dealings with Franchisee and other franchisees and owners of Hyatt Place Hotels, but neither Hyatt nor its Affiliates will receive rebates from suppliers based solely on the volume of Franchisee's purchases from those suppliers unless Hyatt either forwards those rebates to Franchisee, contributes those rebates to the Fund, or otherwise uses those rebates for the benefit of the Hotel System or the Hyatt Place Hotel network.

4.5. **CRS, GDS, ADS and Guest Room Rates.** Franchisee must participate in, connect with, and use the CRS, GDS and ADS in the manner Hyatt periodically designates for offering, booking, modifying, and communicating guest room reservations for the Hotel. Franchisee may only utilize the GDS and ADS that Hyatt periodically authorizes. Franchisee must honor and give first priority on available rooms to all confirmed reservations that the CRS, GDS or ADS refers to the Hotel. The CRS and approved GDS and ADS are the only reservation systems or services that the Hotel may use for reservations.

Franchisee will establish the Hotel's room rates and submit them to Hyatt promptly upon Hyatt's request. Franchisee is solely responsible for notifying the reservation center of any changes in the Hotel's room rates. Franchisee must monitor and ensure that the Hotel's current room rates are properly reflected in the CRS, and must notify Hyatt promptly about any discrepancies between the Hotel's actual room rates and the room rates listed in the CRS. Franchisee may not charge any guest a rate for any reservation higher than the rate that the reservations center specifies to the guest at the time he or she makes the reservation. Except for special event periods, Franchisee may not charge any rate exceeding the rate Franchisee submits in writing for sale by the CRS. Franchisee must comply with Hyatt's "best price guarantee" and related policies, as Hyatt periodically modifies them.

4.6. **Upgrading the Hotel and CapEx Account.** Franchisee may not make any material changes to the Hotel's construction, including any changes to any structural or life safety equipment or systems, the number and/or type of guest rooms or common areas, or any architectural features, without Hyatt's prior written consent and complying with such conditions and procedures that Hyatt periodically establishes for such changes. Without limiting Hyatt's rights and Franchisee's obligations under Section 4.3, Hyatt may require Franchisee at any time and from time to time during the Term to upgrade or renovate the Hotel, including by altering the Hotel's appearance and/or replacing a material portion of improvements and/or FF&E, to comply with then current building decor, appearance, trade dress standards and other aspects of the Hotel System that Hyatt has established and then requires for new similarly situated Hyatt Place Hotels(subject to Reasonable Deviations). This upgrading or renovation may obligate Franchisee to invest additional capital in the Hotel and/or incur higher operating costs. Franchisee agrees to implement such upgrading and renovation within the time period Hyatt requests, regardless of

their cost or the point during the Term when Hyatt requires Franchisee to do so, as if they were part of this Agreement as of the Effective Date, provided that all such upgrades and renovations apply to similarly situated Hyatt Place Hotels (subject to Reasonable Deviations).

In order to assist Franchisee in having funds available to make any necessary capital expenditures at the Hotel and comply with its obligations under this Section 4.6 (but without limiting those obligations), Franchisee shall deposit into a separate account that Franchisee controls an amount equal to (a) three percent (3%) of the Hotel's Gross Rooms Revenue accrued during the First Year, (b) four percent (4%) of the Hotel's Gross Rooms Revenue accrued during the Second Year, and (c) five percent (5%) of the Hotel's Gross Rooms Revenue accrued during the balance of the Term. Upon Hyatt's reasonable request, Franchisee will periodically provide Hyatt information concerning the funds in and expenditures from that account. Franchisee shall use such funds only for the purpose of making approved capital expenditures and complying with its upgrade and other obligations under this Section 4.6, although such obligations may require Franchisee to spend more than the amount then in that account.

4.7. **Inspections/Compliance Assistance and Quality Assurance Program.** Hyatt may inspect the Hotel at any time, with or without notice to Franchisee, to determine whether Franchisee and the Hotel are complying with the Hotel System, System Standards, and other terms and conditions of this Agreement. Franchisee must permit Hyatt's representatives to inspect or audit the Hotel at any time and give them free lodging (subject to availability) during the inspection period.

The Hotel must participate in the quality assurance, compliance and guest satisfaction programs that Hyatt periodically develops and modifies (collectively, the "**Quality Assurance Program**"). Franchisee must pay its allocable share of all fees and other costs associated with the Quality Assurance Program. As part of the Quality Assurance Program, Hyatt and/or its representatives and designees may evaluate whether the Hotel is complying with the Hotel System and System Standards. If Hyatt determines that the Hotel is not complying with the Hotel System, System Standards, or any other terms and conditions of this Agreement and instructs Franchisee to correct those deficiencies, then, without limiting Hyatt's other rights or remedies under this Agreement, any other agreement or applicable law, Franchisee must: (a) reimburse Hyatt for its costs related to that non-compliance, including fees, travel and living expenses and other costs for administering any necessary actions, follow-up inspections, audits or re-evaluation visits until the deficiencies have been fully corrected, and (b) ensure that applicable Hotel personnel attend meetings and additional training programs that Hyatt specifies, at Franchisee's sole expense, relating to that non-compliance.

4.8. **Compliance With Laws.** Franchisee must strictly comply with all laws, rules, regulations and other legal and governmental requirements concerning the Hotel's development and operation, including by (a) ensuring that the Hotel is at all times in full compliance with the Americans with Disabilities Act and similar rules; (b) paying all taxes when due; (c) obtaining and maintaining trade or fictitious name registrations; and (d) obtaining and maintaining all licenses and permits necessary to operate the Hotel, including all licenses required to sell alcoholic beverages at the Hotel (unless Hyatt, at its sole option, has determined that no alcoholic beverages may be offered at or from the Hotel's premises). Franchisee agrees to comply, and to assist Hyatt to the fullest extent possible in its efforts to comply, with the Anti-Terrorism Laws.

In connection with that compliance, Franchisee (on behalf of itself and its Owners) certifies, represents, and warrants as of the Effective Date that none of Franchisee's nor any Owner's property or interests is subject to being blocked under, and that Franchisee and its Owners otherwise are not in violation of, any of the Anti-Terrorism Laws.

4.9. **No Diverting Business.** Franchisee must refer guests and customers, wherever reasonably possible, only to Hyatt Place Hotels or other Hyatt-Affiliated Hotels, not use the Hotel or the Hotel System to promote a competing business or other lodging facility, and not divert business from the Hotel to a competing business.

4.10. **No Brand Owners.** Franchisee represents and warrants to Hyatt that neither Franchisee nor any of its Owners is a Brand Owner and agrees that neither Franchisee nor any of its Owners at any time during the Term shall be or become a Brand Owner.

## **ARTICLE V**

### **ADVERTISING AND MARKETING**

5.1. **Pre-Opening Marketing.** Franchisee must conduct a pre-opening marketing program for the Hotel according to Hyatt's requirements. At least one hundred twenty (120) days before the Hotel's grand opening, Franchisee must prepare and submit to Hyatt for its approval a written pre-opening marketing program that satisfies Hyatt's requirements and contemplates spending at least an amount equal to One Hundred Dollars (\$100) multiplied by the number of guest rooms at the Hotel. Franchisee must change the program as Hyatt specifies and implement the approved program.

5.2. **Participation in Advertising and Marketing.** Franchisee acknowledges that promoting Hyatt Place Hotels as a single chain in the United States is an important part of the Hotel System. Franchisee must participate in and use, in the manner that Hyatt specifies, all advertising, marketing, and promotional activities, materials and programs that Hyatt periodically requires for the Hotel.

5.3. **Approval of Marketing Programs.** Subject to Hyatt's requirements and at Franchisee's expense, Franchisee may conduct local and regional marketing, advertising and promotional programs for the Hotel. Franchisee shall pay Hyatt the reasonable fees that Hyatt periodically establishes for optional marketing, advertising and promotional materials Franchisee orders from Hyatt for these programs. Franchisee must conduct these programs in a dignified manner and in accordance with the System Standards.

Before using them, Franchisee must submit to Hyatt for its prior approval all advertising, marketing, promotional, and public relations plans, programs, and materials that Franchisee desires to use or in which Franchisee or the Hotel desires to participate, including any materials and uses of the Proprietary Marks in digital, electronic, computerized or other form, whether on a Travel Services Website or Franchisee Organization Website (each as defined in Section 5.4) or otherwise. If Franchisee does not receive written disapproval within fifteen (15) business days after Hyatt receives the materials, they are deemed to be approved. Franchisee may not use any advertising, marketing, promotional, or public relations materials or engage in any such plans or

programs that Hyatt has not approved or has disapproved and must discontinue using any previously-approved materials and engaging in any previously-approved plans or programs within the timeframe Hyatt specifies after Franchisee receives written notice from Hyatt.

#### 5.4. Websites and Electronic Media.

(a) Hyatt may maintain (or authorize any other entity to maintain) the Hotel System Website to advertise, market and promote all or substantially all of the Hyatt Place Hotel network (and, at Hyatt's option, other Hyatt-Affiliated Hotels). Hyatt currently provides each participating Hyatt Place Hotel a separate webpage on the Hotel System Website. Franchisee must periodically provide Hyatt (or Hyatt's designee) all information and other materials concerning the Hotel that Hyatt periodically requests relating to the Hotel's webpage and promptly notify Hyatt whenever any information concerning the Hotel on the Hotel's webpage is no longer accurate. By providing Hotel-related information and materials, Franchisee is representing to Hyatt that they are accurate and not misleading and do not infringe any third party's intellectual property or other rights. Hyatt shall have the final decision about all information or materials appearing on the Hotel System Website, including the Hotel's webpage. As between Hyatt and Franchisee, Hyatt owns all intellectual property rights and other rights in and to the Hotel System Website, including all information and materials on the Hotel's webpage, the log of "hits" by visitors, and any personal or business data that visitors supply or the Hotel System Website obtains. Hyatt may implement and periodically modify System Standards for the Hotel System Website, use the Fund's assets to develop or maintain the Hotel System Website and/or its content, and discontinue the Hotel System Website and/or any of its content (including separate webpages for participating Hyatt Place Hotels) at any time.

(b) Franchisee may not develop, maintain or authorize any website or other electronic medium (other than the Hotel System Website) that either has the word "hyatt" or any similar word, or any of the Proprietary Marks, as part of its domain name or URL or that accepts reservations for the Hotel (other than through an approved link to a Hotel System Website) or otherwise sells any products or services associated with the Hotel or any of the Proprietary Marks. In addition, except for the Hotel System Website, approved ADS, and as otherwise provided in this Section 5.4, Franchisee may not develop, maintain or authorize any other website, other online presence or other electronic medium that describes or in any other way promotes the Hotel or displays any of the Proprietary Marks. Franchisee may, with Hyatt's approval and subject to the conditions in Section 5.3 and this Section 5.4, authorize any Travel Services Website or Franchisee Organization Website to list and promote the Hotel together with other hotels. A "Travel Services Website" is a website operated by a third party (which is not an Affiliate of Franchisee) that promotes and sells travel-related products and services for a number of hotel brands, including other Hyatt-Affiliated Hotels. A "Franchisee Organization Website" is a website that mentions the Hotel and other hotels in which Franchisee and its Affiliates have an interest as part of Franchisee's and its Affiliates' portfolio of properties and that has a primary purpose of promoting the entire portfolio (rather than only promoting the Hotel). Franchisee shall submit to Hyatt for its approval all proposed uses of the Proprietary Marks, references to the Hotel, links to a

Hotel System Website, and other information concerning a Travel Services Website or Franchisee Organization Website as Hyatt periodically requests. Hyatt will not unreasonably withhold its approval of Franchisee's use of a Travel Services Website or Franchisee Organization Website. Hyatt may implement and periodically modify, and Franchisee must comply with, System Standards relating to any Travel Services Websites, Franchisee Organization Websites and other electronic uses of the Proprietary Marks, and may withdraw its approval of any website, other online presence or other electronic medium that no longer meets Hyatt's minimum standards.

5.5. **Cooperative Advertising Programs.** Hyatt may identify a region in which two (2) or more Hyatt Place Hotels are located in order to establish a local or regional advertising cooperative (a "Cooperative"). Hyatt may form, change, dissolve and merge Cooperatives. The Cooperative's purpose will be to collect funds from its members and to plan, discuss, organize, develop, utilize, produce, disseminate, and implement marketing, advertising and promotional programs and materials on a collective basis (and to cover related expenses) for participating Hyatt Place Hotels. Hyatt will not require Franchisee to participate in a Cooperative. However, if Franchisee chooses to participate in the Cooperative, Franchisee must do so according to the Cooperative's rules, including paying the Hotel's allocable share of any advertising, marketing, promotional and other programs that the Cooperative conducts. All restrictions under this Agreement relating to any advertising, marketing or promotional programs that Franchisee conducts also apply to any such programs that the Cooperative conducts.

## **ARTICLE VI**

### **FEES AND PAYMENTS**

6.1. **Application Fee.** Hyatt and Franchisee acknowledge that, before Hyatt and Franchisee signed this Agreement, Franchisee paid Hyatt an application fee listed in Exhibit B, which is an amount equal to Sixty Thousand Dollars (\$60,000) plus an additional Four Hundred Dollars (\$400) for each guest room at the Hotel in excess of one hundred fifty (150) guest rooms (the "Application Fee"). The Application Fee was fully earned by Hyatt and non-refundable upon Hyatt's approval of Franchisee's franchise application before Hyatt and Franchisee signed this Agreement.

In addition, if Hyatt and Franchisee agree to add additional guest rooms to the Hotel during the Term, then Franchisee must pay Hyatt an additional Application Fee in an amount equal to Four Hundred Dollars (\$400) multiplied by the number of additional guest rooms. When Franchisee requests Hyatt's approval of Franchisee's plans to develop the additional guest rooms, Franchisee must pay Hyatt a non-refundable PIP fee of Five Thousand Dollars (\$5,000). Hyatt will apply this PIP fee toward the additional Application Fee if Hyatt approves Franchisee's plans. If the PIP fee exceeds the additional Application Fee, Hyatt may keep the excess. The remaining portion of the additional Application Fee is due, fully earned by Hyatt, and non-refundable on the date Hyatt approves Franchisee's plans to develop the additional guest rooms.

6.2. **Monthly Fees to Hyatt.** On or before the tenth (10<sup>th</sup>) day of each month or such later day of the month that Hyatt periodically specifies (the “**Payment Day**”), Franchisee shall pay Hyatt:

(a) a “**Royalty Fee**” equal to five percent (5%) of the Hotel’s Gross Rooms Revenue accrued during the preceding month;

(b) a Contribution to the Marketing, Central Reservations and Technology Fund equal to three and one-half percent (3.5%) of the Hotel’s Gross Rooms Revenue accrued during the preceding month. At any time during the Term, Hyatt may, upon thirty (30) days’ prior notice to Franchisee, periodically increase the Contribution, but it will not exceed four percent (4%) of the Hotel’s Gross Rooms Revenue; and

(c) all fees and other amounts that Hyatt then has paid or has agreed to pay on Franchisee’s behalf to any Providers. If any Provider assesses a single or group fee or other charge that covers all or a group of Hyatt Place Hotels or other Hyatt-Affiliated Hotels to which that Provider provides products or services, Franchisee agrees that Hyatt’s allocation of that fee or other charge among the Hotel and other participating hotels is final. The Providers may periodically increase the fees and other charges they impose. At Hyatt’s option, Franchisee must begin paying these fees and other charges directly to the applicable Provider(s).

6.3. **Payments to Other Parties.** Franchisee agrees to pay on a timely basis, as and when due, all amounts owed to third parties (including Hyatt’s Affiliates) arising out of the Hotel’s operation (excluding only amounts owed which are reasonably in dispute), including: (a) applicable commissions to travel agents and third party reservation service charges and otherwise participate in any Hotel System travel agent commission payment program, as Hyatt periodically modifies it; (b) all commissions and fees for reservations Franchisee accepts through any sources (including the Internet), whether processed through Hyatt, the CRS, or any Provider’s reservation system or billed directly to Franchisee; (c) all contributions for cooperative advertising programs in which Franchisee agrees to participate, as required in Section 5.5; (d) charges for computer, telephone and other equipment related to the CRS; and (e) all fees and assessments due for guest frequency programs and other marketing programs Hyatt periodically initiates that are attributable to the Hotel.

6.4. **Electronic Funds Transfer.** Franchisee must make all payments for Royalty Fees, Contributions, and other amounts due to Hyatt and its Affiliates under this Agreement or otherwise in connection with the Hotel by electronic funds transfer (“**EFT**”). Franchisee must sign the documents Hyatt periodically specifies to allow Hyatt and its Affiliates to debit the applicable bank account for the Hotel automatically or otherwise process these payments through EFT. Franchisee also must sign any additional or new forms and complete any reasonable procedures Hyatt periodically establishes for EFT. Hyatt periodically may change the procedure for payments and require Franchisee to (a) make its payments to a designated bank account by wire transfer or other means Hyatt specifies and (b) sign any authorizations or other documents required to implement that procedure. Funds must be available in Franchisee’s account to cover Hyatt’s withdrawals. Franchisee may not change its bank, financial institution, or account without first telling Hyatt.

6.5. **Late Fee and Late Payment Interest.** Franchisee agrees to pay Hyatt a late fee of Two Hundred Twenty-Five Dollars (\$225) for each required payment not made on or before its original due date and for each required payment or authorized automatic debit not honored by Franchisee's financial institution. The late fee is not interest or a penalty but compensates Hyatt for increased administrative and management costs due to Franchisee's late payment. In addition, all amounts that Franchisee owes Hyatt that are more than seven (7) days late, or that are not available for withdrawal by automatic debit when due (if the amounts are payable by automatic debit), will bear interest accruing as of their original due date at one and one-half percent (1.5%) per month or the highest commercial contract interest rate the law allows, whichever is less. Hyatt may debit Franchisee's bank account automatically via EFT for the late fee and interest. Franchisee acknowledges that this Section 6.5 is not Hyatt's agreement to accept any payments after they are due or Hyatt's commitment to extend credit to, or otherwise finance Franchisee's operation of, the Hotel.

6.6. **Application of Payments.** Despite any designation Franchisee makes, Hyatt may apply any of Franchisee's payments to any of Franchisee's past due indebtedness to Hyatt or its Affiliates. Hyatt may set off any amounts Franchisee or its Affiliates owe Hyatt or its Affiliates against any amounts that Hyatt or its Affiliates owe Franchisee or its Affiliates. Franchisee may not withhold payment of any amounts Franchisee owes Hyatt or its Affiliates due to Hyatt's alleged nonperformance of any of its obligations under this Agreement.

6.7. **Taxes on Franchisee's Payments.** In addition to any sales, use, excise, privilege or other transaction taxes that applicable law requires or permits Hyatt to collect from Franchisee for the sale, lease or other provision of goods or services under this Agreement, Franchisee shall pay to Hyatt an amount equal to all federal, state, local or foreign (a) sales, use, excise, privilege, occupation or any other transactional taxes, and (b) other taxes or similar exactions, no matter how designated, that are imposed on Hyatt or that Hyatt is required to withhold in connection with the receipt or accrual of Royalty Fees or any other amounts payable by Franchisee to Hyatt under this Agreement, excluding only taxes imposed on Hyatt for the privilege of conducting business and calculated with respect to Hyatt's net income, capital, net worth, gross receipts, or some other basis or combination thereof, but not excluding any gross receipts taxes imposed on Hyatt or its Affiliates for Franchisee's payments intended to reimburse Hyatt or its Affiliates for expenditures incurred for the benefit and on behalf of Franchisee. Franchisee shall make any additional required payment pursuant to this Section 6.7 in an amount necessary to provide Hyatt with after-tax receipts (taking into account any additional payments required hereunder) equal to the same amounts that Hyatt would have received under this Agreement if such additional tax liability or withholding had not been imposed or required.

6.8. **Non-Refundability.** Unless otherwise specified, all fees that Franchisee paid to Hyatt before or simultaneously with the execution of this Agreement, or pays to Hyatt during the Term, are non-refundable.

ARTICLE VIIBOOKS AND RECORDS, AUDITS AND REPORTING

7.1. **Financial Reports.** At Hyatt's request, Franchisee must prepare and deliver to Hyatt the operating statements, profit and loss statements, balance sheets, and other reports relating to the Hotel that Hyatt periodically requires, prepared in the form, by the methods, and within the timeframes that Hyatt periodically specifies in the Manual or otherwise. The reports must contain all information Hyatt periodically requires and be certified as accurate in the manner Hyatt periodically requires. Without limiting the generality of the foregoing, on or before the tenth (10th) day of each month (or such later date that Hyatt reasonably specifies from time to time), Franchisee agrees to prepare and send Hyatt a statement for the previous month, certified by Franchisee's chief financial or principal accounting officer, listing Gross Rooms Revenue, other Hotel revenues, room occupancy rates, reservation data, the amounts currently due under Article VI, and other information that Hyatt deems useful in connection with the Hotel System. The statement will be in the form and contain the detail Hyatt reasonably requests from time to time and may be used by Hyatt for all reasonable purposes.

Within ninety (90) days after the end of Franchisee's fiscal year, Franchisee must send Hyatt one or more of the following as Hyatt may request, certified by Franchisee's chief financial or principal accounting officer to be true and correct: (a) complete financial statements relating to the Hotel for that fiscal year (including a balance sheet, statement of operations and statement of cash flow) prepared in accordance the Uniform System of Accounts; (b) Franchisee's income tax returns for the Hotel for that year; and (c) statements reflecting all Gross Rooms Revenue and all sources and amounts of other Hotel revenue generated during the year. Hyatt may require Franchisee to have audited financial statements prepared annually during the Term.

7.2. **Notification.**

7.2.1 **Lender and Ground Lessor Information.** Franchisee must send Hyatt current contact information for each Lender and Ground Lessor upon Hyatt's request or any change in the Lender's or Ground Lessor's information. Upon Hyatt's request, Franchisee must provide Hyatt copies of all ground leases, subleases and other arrangements with any Ground Lessor. Franchisee must promptly send Hyatt a copy of any notice of default, notice of termination, or other exercise of any default rights or remedies that Franchisee receives from or delivers to any Lender or Ground Lessor, together with all other information that Hyatt reasonably requests relating to any such defaults or termination. Franchisee agrees that Hyatt may, at its option and without breaching any rights of or obligations to Franchisee, have discussions and share information with any Lender, Ground Lessor, supplier or other vendor concerning the Hotel or Franchisee.

7.2.2 **Guarantor Net Worth Threshold.** Franchisee must provide Hyatt on an annual basis financial statements or other documents that Hyatt reasonably specifies, certified by Franchisee or the Guarantor in the manner Hyatt specifies, demonstrating that at least one Guarantor then maintains the Guarantor Net Worth Threshold. If at any time during the Term

there is not at least one Guarantor who maintains the Guarantor Net Worth Threshold, then, in addition to and without limiting Hyatt's other remedies and rights under this Agreement and applicable law, Hyatt may require Franchisee thereafter to provide Hyatt audited financial statements on an annual basis demonstrating that at least one Guarantor then maintains the Guarantor Net Worth Threshold.

7.2.3 **Other Actions or Events.** Franchisee must notify Hyatt in writing within ten (10) days after Franchisee receives information or documentation about any lawsuit, action, or proceeding, or the issuance of any injunction, award, or decree of any court, quasi-judicial body, or governmental agency, that might adversely affect the Hotel, Franchisee's ability to perform its obligations under this Agreement, or Franchisee's financial condition.

7.3. **Preparation and Maintenance of Books and Records.** Franchisee agrees to: prepare on a current basis in a form satisfactory to Hyatt, and preserve for at least four (4) years, complete and accurate records concerning Gross Rooms Revenue and all financial, operating, marketing, and other aspects of the Hotel; and (b) maintain an accounting system that fully and accurately reflects all financial aspects of the Hotel, including books of account, tax returns, governmental reports, daily reports, profit and loss and cash flow statements, balance sheets, and complete quarterly and annual financial statements relating to the Hotel. Hyatt reserves the right to access Franchisee's computer system independently to obtain sales information, occupancy information, and other data and information relating to the Hotel. Franchisee must send Hyatt upon its reasonable request, in the form and format that Hyatt periodically specifies, any information relating directly or indirectly to the Hotel that Hyatt does not access independently from Franchisee's computer system.

7.4. **Audit.** Hyatt may at any time during Franchisee's regular business hours, and with prior notice to Franchisee, examine Franchisee's and the Hotel's business, bookkeeping, and accounting records, sales and income tax records and returns, and other records. Franchisee agrees to cooperate fully with Hyatt's representatives and independent accountants in any examination. If any examination discloses an understatement of the Hotel's Gross Rooms Revenue, Franchisee agrees to pay Hyatt, within fifteen (15) days after receiving the examination report, the Royalty Fees, Contributions and other fees due on the amount of the understatement, together with the late fee and interest on the understated amounts from the date originally due until the date of payment in accordance with Section 6.5. Furthermore, if Hyatt determines that an examination is necessary due to Franchisee's failure to furnish reports, supporting records, or other information as required, or to furnish these items on a timely basis, or if Hyatt's examination reveals a Royalty Fee or Contribution underpayment to Hyatt of three percent (3%) or more of the total amount owed during any six (6)-month period, or that Franchisee willfully understated the Hotel's Gross Rooms Revenue, Franchisee agrees to reimburse Hyatt for the costs of the examination, including the charges of attorneys and independent accountants and the travel expenses, room and board, and compensation of Hyatt's employees. These remedies are in addition to Hyatt's other remedies and rights under this Agreement and applicable law.

## ARTICLE VIII

### RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION

8.1. **Relationship of the Parties.** Franchisee is an independent contractor. Neither Hyatt nor Franchisee is the legal representative or agent of, or has the power to obligate, the other for any purpose. The parties have a business relationship defined entirely by this Agreement's express provisions. No partnership, joint venture, affiliate, agency, fiduciary, or employment relationship is intended or created by this Agreement. Hyatt and Franchisee may not make any express or implied agreements, warranties, guarantees, or representations, or incur any debt, in the name or on behalf of the other nor represent that Hyatt's and Franchisee's relationship is other than franchisor and franchisee. Hyatt will not be obligated for any damages to any person or property directly or indirectly arising out of the Hotel's operation or the business Franchisee conducts under this Agreement.

8.2. **Franchisee's Notices to Public Concerning Independent Status.** Franchisee must take the actions that Hyatt periodically requires to minimize the chance of a claim being made against Hyatt or its Affiliates for any occurrence at the Hotel or for acts, omissions, or obligations of Franchisee or anyone affiliated with Franchisee or the Hotel. Such steps may include giving notice in private and public rooms and on advertisements, business forms, and stationery and other places, making clear to the public that Hyatt is not the Hotel's owner or operator and is not accountable for events occurring at the Hotel.

8.3. **Franchisee's Indemnification and Defense of Hyatt.**

8.3.1 **Indemnification.** In addition to Franchisee's obligation under this Agreement to procure and maintain insurance, Franchisee agrees to indemnify and hold harmless Hyatt, its Affiliates, and its and their respective owners, officers, directors, agents, employees, representatives, successors, and assigns (the "**Hyatt Indemnified Parties**") against, and to reimburse any one or more of the Hyatt Indemnified Parties for, all Losses directly or indirectly arising out of, resulting from, or in connection with (a) the application Franchisee submitted to Hyatt for the rights granted under this Agreement; (b) the construction, development, use, occupancy, or operation of the Hotel, including any claim or allegation relating to the Americans with Disabilities Act or any similar law concerning public accommodations for persons with disabilities; (c) any bodily injury, personal injury, death, or property damage suffered by any Hotel guest, customer, visitor, or employee; (d) claims alleging either intentional or negligent conduct, acts, or omissions by Franchisee, any Management Company or other contractor of Franchisee (or any of Franchisee's or its contractor's agents, employees or representatives), or Hyatt or its Affiliates (or any of Hyatt's or their agents, employees or representatives) relating to the operation of the Hotel or the Hotel System, subject to Section 8.4.1; or (e) Franchisee's breach of the terms and conditions of this Agreement.

8.3.2 **Defense.** Franchisee agrees to defend (at Franchisee's expense) the Hyatt Indemnified Parties from and against any and all Proceedings directly or indirectly arising out of, resulting from, or in connection with any matter described in Section 8.3.1(a) through (e), including those alleging a Hyatt Indemnified Party's negligence or willful misconduct, subject to Section 8.4.1. Each Hyatt Indemnified Party may at Franchisee's expense defend and control the

defense of any Proceeding described in this Section 8.3.2 and agree to settlements and take any other remedial, corrective, or other actions, without limiting Franchisee's obligations under Section 8.3.1, provided that the Hyatt Indemnified Party will seek Franchisee's advice and counsel, and keep Franchisee informed, with regard to any proposed or contemplated settlement.

8.3.3 **Survival and Mitigation.** The obligations under this Section 8.3 will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination. A Hyatt Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its Losses, in order to maintain and recover fully a claim against Franchisee under this Section 8.3. Franchisee agrees that a failure to pursue a recovery or mitigate a Loss will not reduce or alter the amounts that a Hyatt Indemnified Party may recover from Franchisee under this Section 8.3. Franchisee's obligation to indemnify the Hyatt Indemnified Parties shall not be limited in any way by reason of any insurance that any Hyatt Indemnified Party maintains.

8.3.4 **Separate Counsel and Settlement.** If separate counsel is appropriate in Hyatt's opinion because of actual or potential conflicts of interest, Hyatt may retain attorneys and/or independently defend any Proceeding subject to indemnification under this Section 8.3 at Franchisee's sole expense. No party may agree to any settlement in any Proceeding that could have an adverse effect on Hyatt, its Affiliates, the Hotel System, or other franchisees without Hyatt's prior approval.

8.3.5 **Notice of Action.** Franchisee shall notify Hyatt immediately (but not later than five (5) days following Franchisee's receipt of notice) of any Proceeding naming any Hyatt Indemnified Party as a defendant or potential defendant and shall include with such notification copies of all correspondence or court papers relating to the Proceeding.

8.3.6 **Right to Control Defense of Certain Proceedings.** Without limiting Hyatt's rights or Franchisee's obligations under this Section 8.3, Hyatt (or its designee) has the right to defend and control the defense of any class action or other Proceeding involving both the Hotel and any other Hyatt Place Hotel or Hyatt-Affiliated Hotel, regardless of whether Hyatt or any of the other Hyatt Indemnified Parties are named defendants in that Proceeding. Franchisee shall promptly reimburse Hyatt for the Hotel's proportionate share of all reasonable expenses that Hyatt incurs in connection with any Proceeding covered by this Section 8.3.6. Hyatt shall allocate those expenses equitably among the Hotel and all other Hyatt Place Hotels and Hyatt-Affiliated Hotels involved in the action in any manner that Hyatt reasonably determines.

#### 8.4. **Hyatt's Indemnification and Defense of Franchisee.**

8.4.1 **Indemnification.** Hyatt agrees to indemnify and hold harmless Franchisee, its Affiliates, and its and their respective owners, officers, directors, agents, employees, representatives, successors, and assigns (the "**Franchisee Indemnified Parties**") against, and to reimburse any one or more of the Franchisee Indemnified Parties for, any and all Losses (including defense costs and other Losses incurred in defending any Proceeding described in Section 8.3.2, if applicable) directly or indirectly arising out of, resulting from, or in connection with (a) a final decision by a court of competent jurisdiction not subject to further appeal that Hyatt, its Affiliate, or any of their respective employees directly engaged in willful

misconduct or gross negligence or intentionally caused the property damage or bodily injury that is the subject of the claim, so long as the claim is not asserted on the basis of theories of vicarious liability (including agency, apparent agency, or employment) or Hyatt's failure to compel Franchisee to comply with this Agreement, which are claims for which the Franchisee Indemnified Parties are not entitled to indemnification under this Section 8.4; or (b) any trademark infringement Proceeding disputing Franchisee's authorized use of any Proprietary Mark under this Agreement, provided that Franchisee has timely notified Hyatt of, and complies with Hyatt's directions in responding to, the Proceeding.

8.4.2 **Defense.** Hyatt agrees to defend (at Hyatt's expense) the Franchisee Indemnified Parties from and against any and all Proceedings described in Section 8.4.1(b). At Hyatt's option, Hyatt and/or its Affiliate(s) may defend and control the defense of any other Proceeding arising from or relating to the Proprietary Marks or Franchisee's use of any Proprietary Mark under this Agreement. Hyatt may agree to settlements and take any other remedial, corrective, or other actions with respect to any Proceeding described in this Section 8.4.2, provided that Hyatt will seek Franchisee's advice and counsel, and keep Franchisee informed, with regard to any proposed or contemplated settlement.

8.4.3 **Survival and Mitigation.** The obligations under this Section 8.4 will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination. A Franchisee Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its Losses, in order to maintain and recover fully a claim against Hyatt under this Section 8.4. Hyatt agrees that a failure to pursue a recovery or mitigate a Loss will not reduce or alter the amounts that a Franchisee Indemnified Party may recover from Hyatt under this Section 8.4. Hyatt's obligation to indemnify the Franchisee Indemnified Parties shall not be limited in any way by reason of any insurance that any Franchisee Indemnified Party maintains.

## **ARTICLE IX**

### **INSURANCE**

At Franchisee's expense, Franchisee must procure and at all times during the Term maintain such insurance as may be required by the terms of any lease or mortgage on the premises where the Hotel is located, and in any event no less than the following:

(1) the following property insurance:

(a) Property insurance (or builder's risk insurance during any period of construction) on the Hotel building(s) and contents against loss or damage by fire, lightning, windstorm, and all other risks covered by the usual all-risk policy form, all in an amount not less than ninety percent (90%) of the full replacement cost thereof and a waiver of co-insurance. Such policy shall also include coverage for landscape improvements and law and ordinance coverage in reasonable amounts.

(b) Boiler and machinery insurance against loss or damage caused by machinery breakdown or explosion of boilers or pressure vessels to the extent applicable to the Hotel.

(c) Business interruption insurance covering loss of profits and necessary continuing expenses, including Royalty Fees, Contributions and other amounts due to Hyatt and its Affiliates under or in connection with this Agreement, for interruptions caused by any occurrence covered by the insurance referred to in subsections (a) and (b) above and providing coverage for the actual loss sustained.

(d) If the Hotel is located in whole or in part within an area identified by the Federal-Flood Management Agency, flood insurance in a reasonable amount for a hotel of this type in the geographic area, to include business interruption for lost profits, continuing expenses and Royalty Fees, Contributions and other amounts due to Hyatt and its Affiliates under or in connection with this Agreement.

(e) If the Hotel is located in an "earthquake zone" as determined by the U.S. Geological Survey, earthquake insurance in a reasonable amount for a hotel of this type in the geographic area, to include business interruption for lost profits, continuing expenses, and Royalty Fees, Contributions and other amounts due to Hyatt and its Affiliates under or in connection with this Agreement.

(f) If the Hotel is located in a "Tier 1 or Tier 2 named windstorm zone" as determined by Franchisee's insurance underwriters, named windstorm insurance in a reasonable amount for a hotel of this type in the geographic area, to include business interruption for loss of profits and continuing expenses, including Royalty Fees, Contributions and other amounts due to Hyatt and its Affiliates under or in connection with this Agreement.

(g) If the Hotel is located in a "Tier 1 or Tier 2 terrorism zone" as determined by Franchisee's insurance underwriters, certified and non-certified terrorism insurance for the property, as long as it is not more than two (2) times Franchisee's "all-risk" property premium.

(2) Workers' Compensation insurance in statutory amounts on all Hotel employees and Employer's Liability Insurance in amounts not less than One Million Dollars (\$1,000,000) per accident/disease.

(3) Commercial General Liability Insurance for any claims or losses arising or resulting from or pertaining to the Hotel or its operation, protecting Franchisee and Hyatt (and its Affiliates) with combined single limits of Two Million Dollars (\$2,000,000) per each occurrence for bodily injury and property damage. If the general liability coverages contain a general aggregate limit, such limit shall be not less than Two Million Dollars (\$2,000,000), and it shall apply in total to the Hotel only by specific endorsement. Such insurance shall be on an occurrence policy form and include premises and operations, independent contractors, blanket contractual, products and completed operations, advertising injury, employees as additional insureds, broad form property damage,

personal injury to include false arrest and molestation, incidental medical malpractice, severability of interests, innkeeper's and safe deposit box liability, and explosion, collapse and underground coverage during any construction.

(4) Liquor Liability (if the Hotel distributes, sells, serves, or furnishes alcoholic beverages, subject to Section 4.8) for combined single limits of bodily injury and property damage of not less than Two Million Dollars (\$2,000,000) each occurrence.

(5) Business Auto Liability, including owned, non-owned and hired vehicles for combined single limits of bodily injury and property damage of not less than Two Million Dollars (\$2,000,000) each occurrence.

(6) Umbrella Excess Liability on a following form basis, primary and excess, per occurrence and in the aggregate, in amounts not less than: (i) Fifteen Million Dollars (\$15,000,000), if the Hotel has less than seven (7) stories; (ii) Twenty-Five Million Dollars (\$25,000,000), if the Hotel has between seven (7) and eleven (11) stories; and (iii) One Hundred Million Dollars (\$100,000,000), if the Hotel has twelve (12) stories or more. Hyatt may require Franchisee to increase the amount of coverage if, in Hyatt's judgment, such an increase is warranted.

(7) Comprehensive crime insurance to include employee dishonesty coverage, loss inside the premises, loss outside the premises, money orders and counterfeit paper currency, depositor's forgery coverage and computer fraud.

(8) Such other insurance as may be customarily carried by other hotel operators on hotels similar to the Hotel.

The liability policies referenced in Sections (3) through (6) above in this Article IX shall be endorsed to include certified and non-certified terrorism insurance in an amount not less than the limit(s) of each applicable policy.

Hyatt may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverage at any time to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances. All insurance must by endorsement specifically name Hyatt and any Affiliates that Hyatt periodically designates (and Hyatt's and their employees and agents) as additional insureds. Any deductibles or self-insured retentions that Franchisee maintains (excluding deductibles for high hazard risks in high hazard geological zones, such as earthquake, flood and named windstorm, which shall be as required by the insurance carrier) shall not exceed Twenty-Five Thousand Dollars (\$25,000), or such higher amount as Hyatt (at its option) may approve in writing in advance. Franchisee must purchase each policy from an insurance company reasonably acceptable to Hyatt and licensed, authorized or registered to do business in the state where the Hotel is located. However, this licensing requirement shall not apply to those insurers providing Umbrella Excess Liability above Two Million Dollars (\$2,000,000) under Subsection (6) above. All required insurance must be specifically endorsed to provide that the coverages will be primary to any valid and collectible insurance available to any additional insureds and shall have a waiver of subrogation in favor of Hyatt. All policies must

provide that they may not be canceled, non-renewed, or materially changed without at least thirty (30) days' prior written notice to Hyatt. Franchisee may satisfy its insurance obligations under blanket insurance policies that cover Franchisee's and its Affiliates' other properties so long as such blanket insurance fulfills the requirements in this Agreement.

Franchisee must deliver to Hyatt a certificate of insurance (or certified copy of such insurance policy if Hyatt requests) evidencing the coverages required above and setting forth the amount of any deductibles. Franchisee must deliver to Hyatt renewal certificates of insurance (or certified copies of such insurance policy if Hyatt requests) not less than ten (10) days after their respective inception dates. Franchisee's obligation to maintain insurance shall not relieve Franchisee of its obligations under Section 8.3.

If Franchisee fails for any reason to procure or maintain the insurance required by this Agreement, Hyatt shall have the right and authority (although without any obligation to do so) to immediately procure such insurance and to charge Franchisee the cost together with a reasonable fee for Hyatt's expenses.

## ARTICLE X

### CONDEMNATION AND DAMAGE 10.1 CONDEMNATION.

10.1.1 **Relocating the Hotel.** Franchisee must immediately notify Hyatt of any proposed taking of any portion of the Hotel by eminent domain, condemnation or expropriation. If Hyatt agrees that all or a substantial portion of the Hotel is to be taken, condemned or expropriated, then, upon Franchisee's request, Hyatt may (but has no obligation to) allow Franchisee to relocate the Hotel to a new location within the Area of Protection that Franchisee selects (subject to Hyatt's approval) within four (4) months after the taking, condemnation or expropriation. If Franchisee develops a new Hyatt Place Hotel at a new location within the Area of Protection that Hyatt approves (a "Relocated Hotel"), and if Franchisee opens that Relocated Hotel according to Hyatt's specifications and this Agreement's other terms and conditions (including the applicable provisions of Article II) within twenty-four (24) months after closing the Hotel, then the Relocated Hotel shall thereafter be deemed to be the Hotel franchised under this Agreement.

10.1.2 **Termination Upon Condemnation.** If a taking, condemnation or expropriation involving all or a substantial portion of the Hotel occurs, and if following such taking, condemnation or expropriation:

- (a) Hyatt elects not to allow Franchisee to develop a Relocated Hotel;
- (b) Franchisee promptly notifies Hyatt that Franchisee will not develop a Relocated Hotel; or
- (c) Franchisee and Hyatt do not agree to a new location for a Relocated Hotel within the four (4)-month period specified above,

then either party may terminate this Agreement immediately upon written notice to the other. If this Agreement is terminated pursuant to this Section 10.1.2, and if Franchisee and its Owners

sign a Termination Agreement, then Franchisee shall not be required to pay liquidated damages pursuant to Section 16.5 at the time of termination. However, such Termination Agreement shall provide that if Franchisee or any of its Affiliates begins construction on or operation of a select service hotel (other than a Hyatt Place Hotel or another Hyatt-Affiliated Hotel) at any location within the Area of Protection at any time during the twenty-four (24)-month period following the effective date of termination of this Agreement, then Franchisee or its Owners must pay Hyatt liquidated damages equal to Four Thousand Dollars (\$4,000) multiplied by the number of guest rooms in that new select service hotel. If Franchisee and its Owners fail to sign such Termination Agreement within a reasonable time after Hyatt delivers it to Franchisee, then Franchisee must pay Hyatt liquidated damages pursuant to Section 16.5 at the time of termination, in addition to complying with its other post-termination obligations under this Agreement.

10.1.3 **Termination for Failure to Develop Relocated Hotel.** If Hyatt and Franchisee agree to a new location for a Relocated Hotel pursuant to Section 10.1.1 but Franchisee fails to develop and open the Relocated Hotel according to this Agreement's terms and conditions within twenty-four (24) months after the Hotel's closing, then Hyatt may terminate this Agreement immediately upon written notice to Franchisee and Franchisee must pay Hyatt liquidated damages pursuant to Section 16.5, in addition to complying with its other post-termination obligations under this Agreement.

10.2. **Damage.** If the Hotel is damaged by fire or other casualty, Franchisee must notify Hyatt immediately. If the cost to repair the damage is less than or equal to the Damage Threshold (defined below), or if the cost to repair the damage exceeds the Damage Threshold but Franchisee notifies Hyatt within a reasonable time after the casualty that it intends to repair the damage and operate the Hotel as a Hyatt Place Hotel, then Franchisee must repair the damage promptly according to the System Standards and this Agreement's other terms and conditions. The "Damage Threshold" means the greater of (a) sixty percent (60%) of the market value of the Hotel immediately prior to the time of fire or other casualty, or (b) the amount of insurance proceeds made available to Franchisee in connection with the fire or casualty. If the damage or repair requires Franchisee to close all or any portion of the Hotel, then Franchisee must commence reconstruction as soon as practicable (but in any event within four (4) months) after closing the Hotel and reopen for continuous business operations as a Hyatt Place Hotel as soon as practicable (but in any event within twenty-four (24) months) after closing the Hotel, but not without complying with this Agreement's other terms and conditions (including the applicable provisions of Article II).

If the cost to repair the damage from a fire or other casualty exceeds the Damage Threshold and Franchisee either fails to notify Hyatt within a reasonable time after the casualty that it intends to repair the damage and operate the Hotel as a Hyatt Place Hotel, or notifies Hyatt that Franchisee elects not to repair the damage and operate the Hotel as a Hyatt Place Hotel, then either party may terminate this Agreement immediately upon written notice to the other. If this Agreement is terminated pursuant to this Section 10.2, and if Franchisee and its Owners sign a Termination Agreement, then the amount of liquidated damages payable pursuant to Section 16.5 shall not exceed the amount of any insurance proceeds that Franchisee receives relating to the fire or other casualty. Franchisee must provide Hyatt such documentation as Hyatt may reasonably request to calculate the Damage Threshold and the insurance proceeds Franchisee receives in connection with any fire or other casualty. However, such Termination Agreement

shall provide that if Franchisee, any of its Affiliates, or any other entity (including any buyer of the Hotel) begins construction on or operation of a select service hotel at the Site other than a Hyatt Place Hotel or another Hyatt-Affiliated Hotel at any time during the twenty-four (24)-month period following the effective date of termination of this Agreement, then Franchisee or its Owners must pay Hyatt liquidated damages equal to the difference between (a) the amount that would have been payable pursuant to Section 16.5 at the time of termination, less (b) the amount of liquidated damages actually paid at the time of termination pursuant to this Section 10.2.

10.3. **Extension of Term.** The Term will be extended for the period of time during which the Hotel is closed due to fire or other casualty. Franchisee need not make any payments of Royalty Fees or Contributions while the Hotel is closed by reason of condemnation or casualty unless Franchisee receives insurance proceeds compensating Franchisee for lost Gross Rooms Revenue during such period.

## **ARTICLE XI**

### **PROPRIETARY RIGHTS**

11.1. **Ownership and Goodwill of Proprietary Marks, Copyrighted Materials, and Confidential Information.** Hyatt's Affiliate has licensed the Proprietary Marks, Copyrighted Materials, and Confidential Information to Hyatt to use and sublicense in franchising, developing, and operating Hyatt Place Hotels. Franchisee's right to use the Proprietary Marks, Copyrighted Materials, and Confidential Information is derived only from this Agreement and is limited to Franchisee's developing and operating the Hotel according to this Agreement and all System Standards that Hyatt prescribes during the Term. Franchisee's unauthorized use of the Proprietary Marks, Copyrighted Materials, or Confidential Information is a breach of this Agreement and infringes Hyatt's and its Affiliate's rights in them. Franchisee acknowledges and agrees that its use of the Proprietary Marks, Copyrighted Materials, and Confidential Information and any goodwill established by that use are exclusively for Hyatt's and its Affiliate's benefit and that this Agreement does not confer any goodwill or other interests in the Proprietary Marks, Copyrighted Materials or Confidential Information upon Franchisee, other than the right to develop and operate the Hotel under this Agreement. Franchisee may not at any time during or after the Term contest or assist any other person or entity in contesting the validity, or Hyatt's and its Affiliate's ownership, of the Proprietary Marks, Copyrighted Materials, or Confidential Information.

11.2. **Limitations on Franchisee's Use of Proprietary Marks.** Franchisee agrees to use the Proprietary Marks as the Hotel's sole identification, except that Franchisee must identify itself as the Hotel's independent owner in the manner that Hyatt periodically specifies. Franchisee may not use any Proprietary Mark: (a) as part of any corporate or legal business name; (b) with any prefix, suffix, or other modifying words, terms, designs, or symbols (other than logos Hyatt licenses to Franchisee); (c) in providing or selling any unauthorized services or products; (d) as part of any domain name, homepage, meta tags, keyword, electronic address, or otherwise in connection with a website (unless Hyatt has approved such use in advance); or (e) in any other manner Hyatt has not expressly authorized in writing. If Hyatt discovers Franchisee's unauthorized use of the Proprietary Marks, in addition to Hyatt's other rights and remedies under

this Agreement and applicable law, Hyatt may require Franchisee to destroy (with no reimbursement from Hyatt) all offending items reflecting such unauthorized use.

Franchisee may not use any Proprietary Mark in advertising the transfer, sale, or other disposition of the Hotel or an ownership interest in Franchisee or any of its Owners without Hyatt's prior written consent, which Hyatt will not unreasonably withhold. Franchisee agrees to display the Proprietary Marks prominently as Hyatt periodically prescribes at the Hotel and on forms, advertising, supplies, and other materials Hyatt periodically designates. Franchisee agrees to give the notices of trade and service mark registrations that Hyatt periodically specifies and to obtain any fictitious or assumed name registrations required under applicable law.

11.3. **Notification of Infringements and Claims.** Franchisee agrees to notify Hyatt immediately of any apparent infringement or challenge to Franchisee's use of any Proprietary Mark, Copyrighted Materials, or Confidential Information, or of any person's claim of any rights in any Proprietary Mark, Copyrighted Materials, or Confidential Information, and not to communicate with any person other than Hyatt, its Affiliates, and its and their attorneys, and Franchisee's attorneys, regarding any infringement, challenge, or claim. Hyatt and its Affiliates may take the action it and they deem appropriate (including no action) and control exclusively any Proceeding arising from any infringement, challenge, or claim or otherwise concerning any Proprietary Mark, Copyrighted Materials, or Confidential Information. Franchisee agrees to sign any documents and take any other reasonable actions that, in the opinion of Hyatt's and its Affiliates' attorneys, are necessary or advisable to protect and maintain Hyatt's and its Affiliates' interests in any Proceeding or otherwise to protect and maintain Hyatt's and its Affiliates' interests in the Proprietary Marks, Copyrighted Materials, and Confidential Information. Hyatt or its Affiliate will reimburse Franchisee's reasonable out-of-pocket costs for taking any requested action.

11.4. **Discontinuing Use of Proprietary Marks.** If it becomes advisable at any time for Hyatt and/or Franchisee to modify, discontinue using, and/or replace any Proprietary Mark and/or to use one or more additional, substitute, or replacement trade or service marks together with or instead of any previously-designated Proprietary Mark, Franchisee agrees to comply with Hyatt's directions within a reasonable time after receiving notice. Neither Hyatt nor its Affiliates will reimburse Franchisee for any costs or expenses incurred in connection with such directions, including expenses of changing the Hotel's signs, any loss of revenue due to any modified or discontinued Proprietary Mark, or Franchisee's expenses of promoting a modified or substitute trademark or service mark. Hyatt's rights in this Section 11.4 apply to any and all of the Proprietary Marks (and any portion of any Proprietary Mark) that this Agreement authorizes Franchisee to use. Hyatt may exercise these rights at any time and for any reason, business or otherwise, Hyatt thinks best. Franchisee acknowledges both Hyatt's right to take this action and Franchisee's obligation to comply with Hyatt's directions.

11.5. **Confidential Information.** Hyatt and its Affiliates possess (and will continue to develop and acquire) Confidential Information, some of which constitutes trade secrets under applicable law. Franchisee will not acquire any interest in Confidential Information, other than the right to use certain Confidential Information as Hyatt specifies while operating the Hotel during the Term. Franchisee agrees that the Confidential Information is proprietary to Hyatt and its Affiliates, includes Hyatt's and its Affiliate's trade secrets, and is disclosed to Franchisee only

on the condition that Franchisee agrees, and Franchisee hereby does agree, that Franchisee: (a) will not use Confidential Information in any other business or capacity; (b) will keep confidential each item deemed to be a part of Confidential Information, both during and after the Term (afterward for as long as the item is not generally known in the hotel industry); (c) will not make unauthorized copies of any Confidential Information disclosed via electronic medium or in written or other tangible form; and (d) will adopt and implement reasonable procedures that Hyatt periodically specifies to prevent unauthorized use or disclosure of Confidential Information.

Confidential Information does not include information, knowledge, or know-how that Franchisee can demonstrate lawfully came to its attention before Hyatt or its Affiliate provided it to Franchisee directly or indirectly; that, at the time Hyatt or its Affiliate disclosed it to Franchisee, already had lawfully become generally known in the hotel industry through publication or communication by others (without violating an obligation to Hyatt or its Affiliate); or that, after Hyatt or its Affiliate disclose it to Franchisee, lawfully becomes generally known in the hotel industry through publication or communication by others (without violating an obligation to Hyatt or its Affiliate). However, if Hyatt includes any matter in Confidential Information, anyone who claims that it is not Confidential Information must prove that one of the exclusions provided in this paragraph is satisfied.

11.6. **Guest Information.** All Guest Information is Hyatt's property and part of Confidential Information. Hyatt has the right from time to time during the Term, without notice to Franchisee, to access the Hotel's property management system and other computer systems to retrieve Guest Information. Hyatt and its Affiliates may use, and allow others to use, the Guest Information in any manner that Hyatt deems appropriate (subject to applicable law). During the Term and following the expiration or termination of this Agreement, Franchisee may use, and allow its Affiliates and others to use, any Guest Information stored in the Hotel's property management system database in any manner that Franchisee deems appropriate (subject to applicable law) at Franchisee's own risk, provided that Franchisee complies, and ensures that any recipients of that Guest Information from Franchisee (whether directly or indirectly) comply, with Hyatt's then current policies and procedures regarding the collection, storage, use, processing and transfer of personal and/or financial data. If there is an actual or suspected breach of security or unauthorized access of Guest Information or other information from the Hotel's property management system or other computer system database, Franchisee must notify Hyatt promptly.

11.7. **Innovations.** All inventions, innovations and discoveries relating to a Hyatt Place Hotel and based or relying upon any element of the Hotel System (collectively, "**Innovations**"), whether or not protectable intellectual property and whether created by or for Franchisee, its Affiliates or contractors, or its or their employees, must be promptly disclosed to Hyatt and will be deemed to be Hyatt's sole and exclusive property, part of the Hotel System, and works made-for-hire for Hyatt. However, Franchisee may not use any Innovation in operating the Hotel or otherwise without Hyatt's prior written consent. If any Innovation does not qualify as a "work made-for-hire" for Hyatt, by this paragraph Franchisee assigns ownership of that Innovation, and all related rights to that Innovation, to Hyatt and agrees to take whatever action (including signing assignment or other documents) that Hyatt requests to evidence its ownership or to help Hyatt obtain intellectual property rights in the Innovation.

## ARTICLE XII

### OWNERSHIP OF FRANCHISEE AND TRANSFER

#### 12.1. Ownership of Franchisee and Guarantors.

12.1.1 **Franchisee's Owners.** Franchisee represents and warrants that Exhibit E completely and accurately identifies all Owners and describes their ownership interests (whether direct or indirect) in Franchisee. Without limiting Hyatt's rights or Franchisee's obligations under this Article XII, upon Hyatt's reasonable request, Franchisee agrees to provide Hyatt information about the identity of the Owners and their ownership interests (whether direct or indirect) in Franchisee from time to time using the forms and formats that Hyatt reasonably specifies.

12.1.2 **Guaranty.** Franchisee must ensure that each Controlling Owner which Hyatt periodically specifies, whether that person or entity owns its interest as of the Effective Date or acquires that interest during the Term (subject to Hyatt's rights and Franchisee's obligations under this Article XII), signs Hyatt's then current form of Guaranty and Assumption of Obligations (the "**Guaranty**"), the current form of which is attached as Exhibit F.

12.1.3 **Guarantor Net Worth Threshold.** Franchisee represents and warrants that at least one Guarantor satisfies the Guarantor Net Worth Threshold as of the Effective Date, and Franchisee agrees to ensure that at least one Guarantor continues to satisfy the Guarantor Net Worth Threshold at all times during the Term. Upon at least ninety (90) days' written notice to Franchisee, Hyatt may periodically increase the amount of the Guarantor Net Worth Threshold if Hyatt determines, in its reasonable judgment, that its risk or exposure with respect to this Agreement and the liquidated damages that would be payable upon the termination of this Agreement pursuant to Section 16.5 have increased since the Effective Date (or Hyatt's most recent increase in the Guarantor Net Worth Threshold, as applicable). Franchisee agrees to comply with the modified Guarantor Net Worth Threshold, either by demonstrating to Hyatt's satisfaction that a then existing Guarantor satisfies the modified Guarantor Net Worth Threshold or by presenting a substitute Guarantor who signs Hyatt's then current form of Guaranty reflecting the modified Guarantor Net Worth Threshold, by the end of that ninety (90)-day period. Franchisee agrees to, and shall cause its Guarantors to, reasonably cooperate with Hyatt in connection with all auditing and reporting requirements relating to the Guarantor Net Worth Threshold, whether contained in this Agreement or the Guaranty.

12.2. **Transfer by Franchisee — Defined.** Franchisee acknowledges that the rights and duties this Agreement creates are personal to Franchisee and its Controlling Owners and that Hyatt has granted Franchisee the rights under this Agreement in reliance upon Hyatt's perceptions of Franchisee's and its Controlling Owners' collective character, skill, aptitude, attitude, business ability, and financial capacity. Accordingly, unless otherwise specified in this Article XII, neither this Agreement (or any interest in this Agreement), the Hotel or substantially all of its assets, nor any ownership interest in Franchisee or any Owner (if such Owner is a legal entity) may be transferred without complying with the terms and conditions applicable to such transfer in this Article XII. A transfer of the Hotel's ownership, possession, or control, or substantially all of its assets, may be made only with a transfer of this Agreement. Any transfer

without complying with the terms and conditions applicable to such transfer in this Article XII, including Hyatt's approval (where such approval is required under this Agreement), is a breach of this Agreement.

In this Agreement, the term "**transfer**" includes a voluntary, involuntary, direct, or indirect assignment, sale, gift, or other disposition of any interest in this Agreement; Franchisee; the Hotel or substantially all of its assets; any of Franchisee's Owners (if such Owner is a legal entity); or any right to receive all or a portion of the Hotel's, Franchisee's, or any Owner's profits or losses or any capital appreciation relating to the Hotel, Franchisee or any Owner. An assignment, sale, gift, or other disposition includes the following events: (a) transfer of ownership of capital stock, a partnership or membership interest, or another form of ownership interest; (b) merger or consolidation or issuance of additional securities or other forms of ownership interest; (c) any sale or other transfer of a security or other interest convertible to an ownership interest; (d) transfer in a divorce, insolvency, or entity dissolution proceeding or otherwise by operation of law; (e) transfer by will, declaration of or transfer in trust, or under the laws of intestate succession; and (f) pledge of or other grant of a security interest in this Agreement (to someone other than Hyatt), the Hotel or an ownership interest in Franchisee or one of its Owners as security, foreclosure upon the Hotel, or Franchisee's transfer, surrender, or loss of the Hotel's possession, control, or management.

12.3. **Non-Control Transfers.** If Franchisee (and each Guarantor) is substantially complying with this Agreement, then, subject to the other provisions of this Article XII, Franchisee and/or any of its Owners may consummate any Non-Control Transfers, without seeking or receiving Hyatt's consent, if:

- (a) neither the proposed transferee nor any of its direct and indirect owners (if the transferee is a legal entity) is a Brand Owner;
- (b) Franchisee notifies Hyatt at least ten (10) days before the transfer's effective date; and
- (c) such transfer does not, whether in one transaction or a series of related transactions (regardless of the time period over which these transactions take place), result in the transfer or creation of a direct or indirect Controlling Ownership Interest in Franchisee.

12.4. **Control Transfers.** Franchisee must notify Hyatt in writing at least ten (10) days in advance of Franchisee's listing the Hotel or a direct or indirect Controlling Ownership Interest in Franchisee for sale and promptly send Hyatt all information that Hyatt reasonably requests regarding any proposed sale. In connection with any proposed Control Transfer, Franchisee must submit to Hyatt, on behalf of the proposed transferee, a complete application for a new franchise agreement (the "**Change of Ownership Application**"), accompanied by payment of Hyatt's then current application fee (although no such fee is due if the transfer is to the spouse, child, parent, or sibling of the Owner(s) or from one Owner to another). If Hyatt does not approve the Change of Ownership Application and consent to the proposed Control Transfer, Hyatt will refund any application fee paid, less Seven Thousand Five Hundred Dollars (\$7,500) for processing costs. Hyatt will process the Change of Ownership Application according to this

Section 12.4 and its then current procedures, including review of criteria and requirements regarding upgrading the Hotel, credit, background investigations, operations ability and capacity, prior business dealings, market feasibility, guarantees, and other factors concerning the proposed transferee(s) (and, if applicable, its direct and indirect owner(s)) that Hyatt deems relevant. Hyatt has sixty (60) days from its receipt of the completed and signed Change of Ownership Application to consent or withhold its consent to the proposed Control Transfer.

If Franchisee (and each of its Guarantors) is substantially complying with this Agreement, then, subject to the other provisions of this Article XII, Hyatt will not unreasonably withhold its approval of a Control Transfer if all of the following conditions are met before or concurrently with the effective date of the Control Transfer:

(a) the transferee and each of its direct and indirect owners (if the transferee is a legal entity) has, in Hyatt's judgment, the necessary business experience, aptitude, and financial resources to operate the Hotel and meets Hyatt's then applicable standards for Hyatt Place Hotel franchisees;

(b) Franchisee has paid all Royalty Fees, Contributions, and other amounts owed to Hyatt, its Affiliates, and third party vendors, has submitted all required reports and statements, and has not violated any provision of this Agreement or any other agreement with Hyatt or its Affiliate, in each case during both the sixty (60)-day period before Franchisee requested Hyatt's consent to the transfer and the period between Franchisee's request and the effective date of the transfer;

(c) the transferee's general manager and other Hotel management personnel that Hyatt specifies, if different from the Hotel's general manager and management personnel, satisfactorily complete Hyatt's required training programs;

(d) the transferee and its owners shall (if the transfer is of this Agreement), or Franchisee and its Owners shall (if the transfer is of a Controlling Ownership Interest in Franchisee or one of its Controlling Owners), sign Hyatt's then current form of franchise agreement and related documents for use with existing Hyatt Place Hotels (including guarantees and assumptions of obligations), any and all of the provisions of which may differ materially from any and all of those contained in this Agreement, including the Royalty Fee and Contributions, and the term of which franchise agreement will be equal to the remaining unexpired portion of the Term;

(e) Franchisee signs a Termination Agreement and Franchisee and all Guarantors sign all documents Hyatt requests evidencing their agreement to remain liable or assume liability for all obligations to Hyatt and its Affiliates existing before the effective date of the transfer;

(f) Hyatt has determined that the purchase price and payment terms, considering the transferee's capital structure, will not adversely affect the transferee's operation of the Hotel;

(g) the transferee (if the transfer is of this Agreement) or Franchisee (if the transfer is of a Controlling Ownership Interest in Franchisee or one of its Controlling

Owners) agrees (regardless of cost) to renovate, remodel and/or expand the Hotel, which may include structural alterations, adding or replacing improvements and FF&E, and otherwise modifying the Hotel, as Hyatt requires to comply with the Hotel System and System Standards then applicable for new similarly situated Hyatt Place Hotels, subject to Reasonable Deviations; and

(h) Franchisee (if Franchisee will no longer operate the Hotel) and its transferring Owners agree that they will not directly or indirectly at any time or in any manner identify itself or themselves in any business as a current or former Hyatt Place Hotel or as one of Hyatt's franchisees; use any Proprietary Mark, any colorable imitation of a Proprietary Mark, or other indicia of a Hyatt Place Hotel in any manner or for any purpose; or utilize for any purpose any trade name, trade or service mark, or other commercial symbol that suggests or indicates a connection or association with Hyatt or its Affiliates.

Hyatt may review all information regarding the Hotel that Franchisee gives the proposed transferee, correct any information that Hyatt believes is inaccurate, and give the transferee copies of any reports that Franchisee has given Hyatt or Hyatt has made regarding the Hotel. Franchisee acknowledges that Hyatt's discussions with any proposed transferee (or its owner(s)) relating to any proposed transfer, including an evaluation of the proposed transferee's (and its owners') qualifications, the terms and conditions of the proposed transfer, and/or the transferee's plans for operating the Hotel, are designed to protect Hyatt's business interests and will not constitute improper or unlawful conduct relating to the proposed transfer.

12.5. **Permitted Transfers.** Notwithstanding Section 12.4:

(a) Franchisee may mortgage the Hotel (but not this Agreement) to a Lender without having to obtain Hyatt's prior approval and without complying with the other terms and conditions of Section 12.4, provided the Lender signs Hyatt's form of comfort letter pursuant to Section 2.6; and

(b) any Owner who is an individual may, without Hyatt's prior written consent and without complying with the other terms and conditions of Section 12.4, transfer his or her interest in Franchisee (or Franchisee's Owner) to a trust or other entity that he or she establishes for estate planning purposes, as long as he or she is a trustee of or otherwise controls the exercise of the rights in Franchisee (or Franchisee's Owner) held by, the trust or other entity, continues to comply with and ensures the trust's or other entity's compliance with the applicable provisions of this Agreement (if such Owner is a Guarantor), and notifies Hyatt in writing of the transfer at least ten (10) days prior to its anticipated effective date. Dissolution of or transfers from any trust or other entity described in this Section 12.5(b) are subject to all applicable terms and conditions of Section 12.3 or 12.4.

12.6. **Transfers of Equity Interest Upon Death.** Upon the death or mental incompetency of a person with a Controlling Ownership Interest in Franchisee or one of its Controlling Owners, that person's executor, administrator, or personal representative ("**Representative**") must, within six (6) months after the date of death or mental incompetency,

transfer the Owner's interest in Franchisee or the Controlling Owner to a third party, subject to Hyatt's approval and the conditions set forth in Section 12.4. In the case of a transfer by devise or inheritance, if the heirs or beneficiaries cannot meet the conditions of Section 12.4 within this six (6)-month period, the Representative will have nine (9) months from the date of death or mental incompetency to dispose of the interest, subject to Hyatt's approval and the conditions set forth in Section 12.4. Hyatt may terminate this Agreement if this required transfer fails to occur in compliance with this Agreement within the required timeframe.

## 12.7. **Public Offerings and Disclosures.**

12.7.1 **Public Offering of Securities.** Notwithstanding Sections 12.3 and 12.4, neither Franchisee nor any Controlling Owner may offer any ownership interests or other securities in a public offering for which a registration statement must be filed with the Securities and Exchange Commission or any similar regulatory agency (whether within or outside the United States) having jurisdiction over the sale of securities.

12.7.2 **Offering Materials.** Franchisee agrees to submit to Hyatt for its prior approval all disclosure documents and other written or electronic materials that Franchisee or any Owner (or any of their agents or representatives) intends to provide to any offeree or prospective purchaser of any ownership interests or other securities in Franchisee or any Owner (if that owner is an entity) which contain information about Hyatt, this Agreement, Hyatt's relationship with Franchisee, or the network of Hyatt Place Hotels or other Hyatt-Affiliated Hotels (other than the Hotel) (collectively "**Offering Materials**"). No Offering Materials may imply or state (by use of the Proprietary Marks or otherwise) that Hyatt is participating as an underwriter, issuer, or Franchisee's representative, suggest that Hyatt endorses the offering or agrees with any financial projections, or otherwise contain any information about Hyatt, this Agreement, Hyatt's relationship with Franchisee or the network of Hyatt Place Hotels or other Hyatt-Affiliated Hotels (other than the Hotel) that Hyatt disapproves. Hyatt's review and approval of the Offering Materials will not in any way be Hyatt's endorsement of the offering or representation that Franchisee or its Owner has complied or is complying with applicable laws. Hyatt's approval will mean only that Hyatt believes the references in the Offering Materials to Hyatt, this Agreement, Hyatt's relationship with Franchisee and the network of Hyatt Place Hotels or other Hyatt-Affiliated Hotels (other than the Hotel), and the use in the Offering Materials of the Proprietary Marks, are acceptable to Hyatt. Franchisee must pay Hyatt a non-refundable fee equal to Five Thousand Dollars (\$5,000) to review the proposed Offering Materials. Hyatt may require changes to the Offering Materials for the purposes specified above and has the right to request and receive a full indemnification from all participants in the offering before issuing Hyatt's consent.

12.8. **Non-Waiver of Claims.** Hyatt's consent to a transfer is not a representation of the fairness of the terms of any contract between Franchisee (or its Owners) and the transferee, a guarantee of the Hotel's or transferee's prospects of success, or a waiver of any claims Hyatt has against Franchisee (or its Owners) or of Hyatt's right to demand the transferee's full compliance with this Agreement or any other agreement with the transferee.

12.9. **Transfer by Hyatt.** Franchisee represents that Franchisee has not signed this Agreement in reliance on any particular direct or indirect owner, director, officer, or employee

remaining with Hyatt in that capacity. Hyatt may change its ownership or form and/or assign this Agreement and any other agreement to a third party without restriction. After Hyatt's assignment of this Agreement to a third party who expressly assumes the obligations under this Agreement, Hyatt no longer will have any performance or other obligations under this Agreement. Such an assignment shall constitute a release of Hyatt and a novation with respect to this Agreement, and the assignee shall be liable to Franchisee as if it had been an original party to this Agreement.

### ARTICLE XIII

#### SUCCESSOR FRANCHISE

13.1. **Right to a Successor Franchise Agreement.** When this Agreement expires:

(a) if Franchisee (and each Guarantor) has substantially complied with this Agreement during its Term;

(b) if Franchisee and its Owners then meet Hyatt's then applicable standards for franchisees and owners of franchisees of Hyatt Place Hotels;

(c) if Franchisee received passing Quality Assurance Scores (as defined in the Manual) on all evaluations conducted during the preceding three (3)-year period;

(d) if Franchisee (and each Guarantor) is, both on the date Franchisee gives Hyatt written notice of Franchisee's election to exercise the Successor Franchise Right (as defined below) and on the date on which the term of the successor franchise commences, in full compliance with this Agreement, including all System Standards; and

(e) provided that Franchisee has the right to maintain possession of the Hotel for at least ten (10) years following this Agreement's expiration and agrees (regardless of cost) to renovate, remodel, and/or expand the Hotel (which may include structural alterations), add or replace improvements and FF&E, and otherwise modify the Hotel as Hyatt requires to comply with the Hotel System and System Standards then applicable for new similarly situated Hyatt Place Hotels (subject to Reasonable Deviations),

Hyatt will offer Franchisee the right to enter into a successor franchise agreement to operate the Hotel as a Hyatt Place Hotel for a term commencing immediately upon the expiration of this Agreement and expiring ten (10) years from that date (the "**Successor Franchise Right**") in accordance with Section 13.3. If Franchisee (and each Guarantor) is not, both on the date Franchisee gives Hyatt written notice of Franchisee's election to exercise the Successor Franchise Right and on the date on which the term of the successor franchise agreement is scheduled to commence, in full compliance with this Agreement, including all System Standards, Franchisee acknowledges that Hyatt need not enter into a successor franchise agreement with Franchisee, whether or not Hyatt notified Franchisee (or such Guarantor) of the non-compliance or had, or chose to exercise, the right to terminate this Agreement during its Term.

13.2. **Grant of a Successor Franchise.** Franchisee agrees to give Hyatt written notice of Franchisee's election to exercise the Successor Franchise Right no more than twenty-one (21)

months, and no less than eighteen (18) months, before this Agreement expires. Simultaneously with submitting its notice to exercise the Successor Franchise Right, Franchisee shall pay Hyatt its then current PIP fee, which is non-refundable. Hyatt agrees to give Franchisee written notice (“**Hyatt’s Notice**”), not more than ninety (90) days after Hyatt receives Franchisee’s notice, of Hyatt’s decision:

(a) to enter into a successor franchise agreement with Franchisee (subject to the other terms and conditions of this Article XIII);

(b) to enter into a successor franchise agreement with Franchisee on the condition that Franchisee corrects existing deficiencies of the Hotel or in Franchisee’s operation of the Hotel (subject to the other terms and conditions of this Article XIII); or

(c) not to enter into a successor franchise agreement with Franchisee based on Hyatt’s determination that Franchisee and/or its Guarantors have not satisfied any one or more of the conditions in Section 13.1.

If applicable, Hyatt’s Notice will:

(i) describe the renovation, remodeling, expansion, improvements, and/or modifications required to bring the Hotel into compliance with the Hotel System and System Standards then applicable for similarly situated new Hyatt Place Hotels (subject to Reasonable Deviations), which must be completed to Hyatt’s satisfaction at least three (3) months before the Term expires; and

(ii) state the actions Franchisee must take to correct operating deficiencies and the time period in which Franchisee must correct these deficiencies.

If Hyatt elects not to enter into a successor franchise agreement with Franchisee, Hyatt’s Notice will describe the reasons for its decision. If Hyatt elects to enter into a successor franchise agreement with Franchisee, Franchisee’s effective exercise of the Successor Franchise Right is subject to Franchisee’s full compliance with all of the terms and conditions of this Agreement through the date of its expiration, in addition to Franchisee’s compliance with the obligations described in Hyatt’s Notice.

If Hyatt’s Notice states that Franchisee must cure certain deficiencies of the Hotel or its operation as a condition to Hyatt’s entering into a successor franchise agreement with Franchisee, Hyatt will give Franchisee written notice of Hyatt’s decision not to enter into a successor franchise agreement with Franchisee, based upon Franchisee’s failure to cure those deficiencies, at least ninety (90) days before this Agreement expires. However, Hyatt need not give Franchisee this ninety (90) days’ notice if Hyatt decides not to enter into a successor franchise agreement with Franchisee due to Franchisee’s breach of this Agreement during the ninety (90)-day period before it expires. If Hyatt fails to give Franchisee:

(1) notice of deficiencies in the Hotel, or in Franchisee’s operation of the Hotel, within ninety (90) days after Hyatt receives Franchisee’s timely election to

exercise the Successor Franchise Right (if Hyatt elects to enter into a successor franchise agreement with Franchisee under subparagraphs (b) and (ii) above); or

(2) notice of Hyatt's decision not to enter into a successor franchise agreement with Franchisee at least ninety (90) days before this Agreement expires, if this notice is required,

Hyatt may unilaterally extend the Term for the time period necessary to give Franchisee either reasonable time to correct deficiencies or the ninety (90) days' notice of Hyatt's refusal to grant a successor franchise. If Franchisee fails to notify Hyatt of Franchisee's election to enter into a successor franchise agreement within the prescribed time period, Hyatt will deem this to be Franchisee's decision not to exercise the Successor Franchise Right or enter into a successor franchise agreement with Hyatt.

13.3. **Agreements/Releases.** If Franchisee satisfies all of the other conditions for a successor franchise agreement, Franchisee and its Owners (as applicable) agree to sign the form of franchise agreement and any ancillary agreements Hyatt then customarily uses in granting franchises for Hyatt Place Hotels (modified as necessary to reflect the fact that it is for a successor franchise and that there will be no further renewal or successor franchise rights), which may contain provisions that differ materially from any and all of those contained in this Agreement, except that Hyatt will not charge a successor franchise fee. Franchisee and its Owners further agree to sign general releases, in a form satisfactory to Hyatt, of any and all claims against Hyatt and its Affiliates and its and their respective owners, officers, directors, employees, agents, representatives, successors, and assigns. Hyatt will consider Franchisee's or its Owners' failure to sign these agreements and releases and to deliver them to Hyatt for acceptance and execution within thirty (30) days after their delivery to Franchisee to be an election not to enter into a successor franchise agreement.

## **ARTICLE XIV**

### **DISPUTE RESOLUTION**

14.1. **Arbitration.** All controversies, disputes, or claims between Hyatt (and/or its Affiliates and its and their respective owners, officers, directors, agents, and/or employees), on the one hand, and Franchisee (and/or its Affiliates and Guarantors and its and their respective owners, officers, directors, agents and/or employees), on the other hand, arising out of or related to: Hyatt's (or any of its Affiliates') relationship with Franchisee;

(a) this Agreement or any other agreement between Franchisee and Hyatt or any of its Affiliates;

(b) Hyatt's (or any of its Affiliates') relationship with Franchisee;

(c) the scope or validity of this Agreement or any other agreement between Franchisee and Hyatt or any of its Affiliates, or any provision of any of those agreements (including the validity and scope of the arbitration obligation under this Section 14.1, which Hyatt and Franchisee acknowledge is to be determined by an arbitrator, not a court); or

(d) any aspect of the Hotel System or any System Standard must be submitted for binding arbitration to the American Arbitration Association (the "AAA"). The arbitration proceedings will be conducted by one (1) arbitrator and, except as this Section 14.1 otherwise provides, according to the AAA's then current commercial arbitration rules. The arbitrator must be a licensed attorney, have hotel industry experience, and be listed on the AAA's National Roster of Neutrals (or such other equivalent replacement roster of experienced arbitrators that the AAA designates). All proceedings shall be conducted at a suitable location chosen by the arbitrator that is within ten (10) miles of Hyatt's then current principal business address. The arbitrator shall have no authority to select a different hearing locale. All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. Sections 1 et seq.) and not by any state arbitration law.

The arbitrator has the right to award any relief that he or she deems proper, including money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief, and attorneys' fees and costs, provided that the arbitrator may not declare any Proprietary Mark generic or otherwise invalid or, except as expressly provided in Section 14.5 below, award any punitive, exemplary, or treble or other forms of multiple damages against either party (Hyatt and Franchisee hereby waiving to the fullest extent permitted by law, except as expressly provided in Section 14.5 below, any right to or claim for any punitive, exemplary, and treble and other forms of multiple damages against the other). The award of the arbitrator shall be conclusive and binding upon all parties and judgment upon the award may be entered in any court of competent jurisdiction.

Hyatt and Franchisee agree to be bound by the provisions of any limitation on the period of time in which claims must be brought under applicable law or this Agreement, whichever expires earlier. Hyatt and Franchisee further agree that, in any arbitration proceeding, each must submit or file any claim that would constitute a compulsory counterclaim (as defined by the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any claim that is not submitted or filed as required is forever barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either Franchisee or Hyatt or any of their related parties.

Hyatt and Franchisee agree that arbitration will be conducted on an individual, not a class-wide, basis; that only Hyatt (and/or its Affiliates and its and their respective owners, officers, directors, agents, and/or employees, as applicable) and Franchisee (and/or its Guarantors and Affiliates and its and their respective owners, officers, directors, agents and/or employees, as applicable) may be the parties to any arbitration proceedings described in this Section 14.1; and that an arbitration proceeding between Hyatt (and/or its Affiliates and its and their respective owners, officers, directors, agents, and/or employees) and Franchisee (and/or its Guarantors and Affiliates and its and their respective owners, officers, directors, agents and/or employees) may not be consolidated with any other arbitration proceeding between Hyatt and any other person or entity. Notwithstanding the foregoing or anything to the contrary in this Section 14.1 or Section 18.2, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute that otherwise would be subject to arbitration under this Section 14.1, then all parties agree that this arbitration clause shall not

apply to that dispute and that such dispute shall be resolved in a judicial proceeding in accordance with this Article XIV (excluding this Section 14.1).

Despite Hyatt's and Franchisee's agreement to arbitrate, Hyatt and Franchisee each have the right to seek temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction; provided, however, that Hyatt and Franchisee must contemporaneously submit the dispute for arbitration on the merits as provided in this Article XIV. The provisions of this Section 14.1 are intended to benefit and bind certain third party non-signatories and will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination.

14.2. **Governing Law.** All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. Sections 1 et seq.). Except to the extent governed by the Federal Arbitration Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) or other federal law, this Agreement, the franchise, and all claims arising from the relationship between Hyatt (and/or any of its Affiliates) and Franchisee will be governed by the laws of the State of Illinois, without regard to its conflict of laws rules, except that any Illinois law regulating the offer or sale of franchises, business opportunities, or similar interests, or governing the relationship between a franchisor and a franchisee or any similar relationship, will not apply unless its jurisdictional requirements are met independently without reference to this Section 14.2.

14.3. **Consent to Jurisdiction.** Subject to the parties' arbitration obligations and the provisions below, Franchisee and its Owners agree that all actions arising under this Agreement or otherwise as a result of the relationship between Franchisee and Hyatt (and/or any of its Affiliates) must be commenced in the state or federal court of general jurisdiction closest to Hyatt's then current principal business address, and Franchisee (and each Owner) irrevocably submits to the jurisdiction of those courts and waives any objection Franchisee (or the Owner) might have to either the jurisdiction of or venue in those courts. Nonetheless, Franchisee and its Owners agree that Hyatt may enforce this Agreement and any arbitration orders and awards in the courts of the state or states in which Franchisee (or any of its Owners) is domiciled or the Hotel is located.

14.4. **Attorneys' Fees.** If either party initiates a formal legal proceeding under or relating to this Agreement or the relationship between Franchisee and Hyatt (and/or any of its Affiliates), the non-prevailing party in that proceeding (as determined by the judge or arbitrator, as applicable) must reimburse the prevailing party for all of the prevailing party's costs and expenses that it incurs, including reasonable accounting, attorneys', arbitrators', and related fees.

14.5. **Waiver Of Punitive Damages And Jury Trial.** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS FOR THIRD PARTY CLAIMS UNDER SECTIONS 8.3 AND 8.4, AND EXCEPT FOR PUNITIVE, EXEMPLARY, AND TREBLE AND OTHER FORMS OF MULTIPLE DAMAGES AVAILABLE TO EITHER PARTY UNDER FEDERAL LAW, HYATT AND FRANCHISEE (AND FRANCHISEE'S OWNERS) WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY, AND TREBLE AND OTHER FORMS OF MULTIPLE DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE

BETWEEN HYATT AND FRANCHISEE (AND/OR FRANCHISEE'S OWNERS), THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS.

SUBJECT TO THE PARTIES' ARBITRATION OBLIGATIONS, HYATT AND FRANCHISEE (AND FRANCHISEE'S OWNERS) IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER HYATT OR FRANCHISEE.

14.6. **Limitations of Claims.** EXCEPT FOR CLAIMS ARISING FROM FRANCHISEE'S NON-PAYMENT OR UNDERPAYMENT OF AMOUNTS FRANCHISEE OWES HYATT OR ANY OF ITS AFFILIATES, ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR HYATT'S (OR ANY OF ITS AFFILIATES') RELATIONSHIP WITH FRANCHISEE WILL BE BARRED UNLESS A LEGAL PROCEEDING (IN THE REQUIRED OR PERMITTED FORUM) IS COMMENCED WITHIN EIGHTEEN (18) MONTHS FROM THE DATE ON WHICH THE PARTY ASSERTING THE CLAIM KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THE CLAIMS.

## **ARTICLE XV**

### **DEFAULT AND TERMINATION**

15.1. **Termination by Hyatt After Opportunity to Cure.** Hyatt has the right to terminate this Agreement, effective on the date stated in Hyatt's written notice (or the earliest date permitted by applicable law), if:

(a) Franchisee fails to pay Hyatt or any of its Affiliates any fees or other amounts due under this Agreement or any other agreement between Franchisee and Hyatt or any of its Affiliates and does not cure that default within ten (10) days after delivery of Hyatt's written notice of default to Franchisee;

(b) Franchisee fails to pay when due any financial obligation to a Provider and does not cure that default within thirty (30) days after delivery of Hyatt's written notice of default to Franchisee;

(c) Franchisee fails to begin or continue the construction or renovation of the Hotel in accordance with the timeline set forth in Article II, or fails to open the Hotel on or before the Opening Deadline (as extended pursuant to Section 2.4.1, if applicable), and does not cure that default within thirty (30) days after delivery of Hyatt's written notice of default to Franchisee;

(d) Franchisee fails to comply with any other provision of this Agreement, the Manual, any aspect of the Hotel System or any System Standard and does not cure that default within thirty (30) days after delivery of Hyatt's written notice of default to Franchisee;

(e) Franchisee fails to comply with any other agreement with Hyatt or its Affiliates relating to the Hotel and does not cure that default within thirty (30) days (or such shorter time period that the other agreement specifies for curing that default) after delivery of Hyatt's written notice of default to Franchisee;

(f) Franchisee fails to send Hyatt a copy of the recorded deed, an executed lease for at least the Term, or other evidence satisfactory to Hyatt of Franchisee's right to control the Hotel's premises before Franchisee begins construction or any material renovation of the Hotel or within ten (10) days after Hyatt's request for such information or materials;

(g) Franchisee does not buy, maintain, or send Hyatt evidence of required insurance coverage and does not cure that default within ten (10) days after delivery of Hyatt's written notice of default to Franchisee;

(h) Franchisee fails to pay when due any federal or state income, service, sales, or other taxes due on the Hotel's operation and does not cure that default within thirty (30) days after delivery of Hyatt's written notice of default to Franchisee, unless Franchisee is in good faith contesting its liability for those taxes or has received an extension from the applicable government agency of the time within which to make such payments; or

(i) Franchisee fails to ensure that at least one Guarantor satisfies the Guarantor Net Worth Threshold and does not cure that default (by providing the financial statements and other documents described in Section 7.2.2 demonstrating that at least one Guarantor then satisfies the Guarantor Net Worth Threshold) within sixty (60) days after delivery of Hyatt's written notice of default to Franchisee.

15.2. **Termination by Hyatt Without Opportunity to Cure.** Hyatt may terminate this Agreement immediately, without giving Franchisee an opportunity to cure the default, effective upon delivery of written notice to Franchisee (or such later date as required by law), if:

(a) Franchisee or any Guarantor admits its inability to pay its debts as they become due or makes a general assignment for the benefit of creditors; suffers an action to dissolve or liquidate Franchisee or any Guarantor; commences or consents to any case, proceeding, or action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors; suffers an appointment of a receiver, trustee, custodian, or other official for any portion of its property or the Hotel; takes any corporate or other action to authorize any of the actions set forth above in this Section 15.2(a); has any case, proceeding, or other action commenced against it as debtor seeking an order for relief, or seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other official for it or any portion of its property or the Hotel, and such case, proceeding, or other action results in an order for relief against it that is not fully stayed within seven (7) business days after being entered or remains un-

dismissed for forty-five (45) days; has an attachment of Fifty Thousand Dollars (\$50,000) or more on all or any part of the Hotel or any of its assets that remains for at least ninety (90) days; or fails, within sixty (60) days after the entry of a final judgment against it in any amount exceeding One Hundred Thousand Dollars (\$100,000), to discharge, vacate, or reverse the judgment, to stay its execution, or, if appealed, to discharge the judgment within thirty (30) days after a final adverse decision in the appeal;

(b) Franchisee ceases constructing and/or operating the Hotel at the Site under the Proprietary Marks, or loses possession of or the right to possess all or a significant part of the Hotel, for any reason except as otherwise provided in this Agreement;

(c) Franchisee or any of its Affiliates contests in any court or other Proceeding all or any portion of Hyatt's or its Affiliate's ownership of the Hotel System or the validity of any Proprietary Mark, Copyrighted Materials, or Confidential Information, or registers or attempts to register any Proprietary Mark or a derivative thereof;

(d) Franchisee (or any of its Owners) makes a transfer in violation of Article XII;

(e) Franchisee fails to identify the Hotel to the public as a Hyatt Place Hotel or discontinues operating the Hotel as a Hyatt Place Hotel, and it is not unreasonable for Hyatt under the facts and circumstances to conclude that Franchisee does not intend to continue to operate the Hotel under the Proprietary Marks;

(f) Franchisee or any of its Owners or Guarantors is, or is discovered to have been, convicted of a felony or enters or is discovered to have entered a plea of no contest to a felony;

(g) Franchisee or any of its Owners or Guarantors commits any action or any other offense likely in Hyatt's reasonable opinion to reflect materially adversely upon Hyatt, the Hotel System, or the Proprietary Marks, including any violation of laws or regulations relating to discrimination, equal employment, or equal opportunity;

(h) Franchisee knowingly maintains false books and records of account or knowingly submits false or misleading reports or information to Hyatt, including any information Franchisee provided or failed to provide on its franchise application;

(i) Franchisee (or any of its Owners) knowingly makes any unauthorized use or disclosure of any part of the Manual or any other Confidential Information;

(j) Hyatt determines that a serious threat or danger to public health or safety results from the construction, maintenance, or operation of the Hotel, such that an immediate shutdown of the Hotel or construction site is necessary to avoid a substantial liability or loss of goodwill to the Hotel System;

(k) Hyatt exercises its right to terminate this Agreement pursuant to Section 10.1 or 10.2;

(l) Franchisee violates any law, ordinance, or regulation and does not begin to cure the violation immediately after receiving notice from Hyatt or any other party and to complete the cure as soon as is reasonably practicable or within the timeframe allowed by law, whichever is shorter;

(m) Franchisee (1) fails on three (3) or more separate occasions within any twelve (12) consecutive month period to comply with this Agreement, whether the failures relate to the same or different obligations under this Agreement and whether or not Hyatt notifies Franchisee of or Franchisee corrects the failures; or (2) fails on two (2) or more separate occasions within any six (6) consecutive month period to comply with the same obligation under this Agreement, whether or not Hyatt notifies Franchisee of or Franchisee corrects the failures; or

(n) Franchisee's or any of its Owners' assets, property, or interests are blocked under any Anti-Terrorism Law, or Franchisee or any of its Owners otherwise violate any Anti-Terrorism Law.

15.3. **Suspension of Rights and Services.** Upon Franchisee's failure to remedy any default or failure to comply with this Agreement specified in any written notice issued to Franchisee under Section 15.1 (following any cure period specified for such default or failure in Section 15.1) or Section 15.2, Hyatt has the right, until Franchisee remedies such default or failure to Hyatt's satisfaction, to (a) suspend Franchisee's right to use, and Franchisee's access to, the CRS, the GDS and ADS, and any advertising materials and programs that Hyatt makes available; (b) remove the Hotel from Hyatt's advertising publications and programs and the National Directory and/or remove the Hotel's webpage from the Hotel System Website; (c) suspend or terminate any temporary or other fee reductions to which Hyatt might have agreed in this Agreement or any amendment(s) to this Agreement; and/or (d) refuse to provide any operational support that this Agreement otherwise requires, including other information technology and network services. If Hyatt suspends Franchisee from the CRS, Hyatt has the right to divert reservations previously made for the Hotel to other Hyatt Place Hotels or Hyatt-Affiliated Hotels. Hyatt will exercise its right under this Section 15.3 only after Franchisee's cure period (if any) under the written notice of default has expired. Hyatt's exercise of this right will not constitute an actual or constructive termination of this Agreement nor be Hyatt's sole and exclusive remedy for Franchisee's default or failure to comply with this Agreement. If Hyatt exercises its right not to terminate this Agreement but to implement any remedies in this Section 15.3, Hyatt may at any time after the appropriate cure period under the written notice has lapsed (if any) terminate this Agreement without giving Franchisee any additional corrective or cure period. During any suspension period, Franchisee must continue to pay all fees and other amounts due under, and otherwise comply with, this Agreement and all related agreements. Hyatt's exercise of its rights under this Section 15.3 will not be a waiver by Hyatt of any breach of this Agreement. If Hyatt rescinds any suspension of Franchisee's rights, Franchisee will not be entitled to any compensation, including repayment, reimbursement, refunds, or offsets, for any fees, charges, expenses, or losses Franchisee might have incurred due to Hyatt's exercise of any suspension right provided in this Section 15.3.

15.4. **General Provisions Concerning Default and Termination.** In any arbitration or other proceeding in which the validity of any termination of this Agreement or Hyatt's refusal to enter into a successor franchise agreement is contested, each party may cite to and rely upon all defaults or violations of this Agreement, not only the defaults or violations referenced in any written notice. No notice of termination or refusal to enter into a successor franchise agreement will relieve either Hyatt or Franchisee of its obligations that survive termination of this Agreement, including its de-identification, indemnification, and liquidated damages payment obligations. Franchisee agrees that Hyatt has the right and authority (but not the obligation) to notify Franchisee's Lender and any or all of Franchisee's Owners, creditors and/or suppliers if Franchisee is in default under, or Hyatt has terminated, this Agreement.

## **ARTICLE XVI**

### **RIGHTS AND OBLIGATIONS UPON EXPIRATION OR TERMINATION**

16.1. **De-Identification.** Beginning on the date upon which this Agreement terminates or expires, Franchisee must immediately cease using the Hotel System and begin to de-identify the Hotel by taking whatever action Hyatt deems necessary to ensure that the Hotel no longer is identified as a Hyatt Place Hotel. Franchisee agrees to take the following steps, among other actions that Hyatt then specifies, to de-identify the Hotel:

(a) return to Hyatt the Manual, all other Copyrighted Materials, and all materials containing Confidential Information (other than Guest Information stored in the Hotel's property management system database) or bearing any of the Proprietary Marks, and cease using all such items;

(b) remove all structures and items identifying the Hotel System, including all elements of the trade dress (for example, the edge design on the Hotel's roof line) and other distinctive features, devices, and/or items associated with the Hotel System, such as (for example) FF&E that is uniquely identified with a Hyatt Place Hotel and/or other Hyatt-Affiliated Hotels, interior signage, lobby signage, door identifier signage, directional signage, phone face plates, memo pads, pens, cups, glasses, signage on the back of guest room doors, and all other signage bearing one or more of the Proprietary Marks. With respect to the Hotel's exterior signage, Franchisee must (i) immediately schedule the permanent removal of all exterior signage bearing any of the Proprietary Marks and give Hyatt written evidence of that schedule, (ii) immediately cover all exterior signage in a professional manner, and (iii) permanently remove all exterior signage within thirty (30) days after this Agreement expires or terminates. In addition, Franchisee must make at its expense such specific additional changes that Hyatt reasonably requests to de-identify the Hotel;

(c) change the Hotel's telephone listing and immediately stop answering the telephone in any way that would lead a current or prospective customer, vendor, or other person to believe that the Hotel still is associated with the Hyatt Place Hotel network or Hyatt;

(d) stop all uses of the Proprietary Marks on any Franchisee Organization Website and require all third party websites to remove any references that directly or indirectly associate the Hotel with the Proprietary Marks;

(e) cancel all fictitious, assumed, or other business name registrations relating to Franchisee's use of the Proprietary Marks; and

(f) permit Hyatt's representatives to enter the Hotel on no less than twenty-four (24) hours' prior notice to conduct inspections on a periodic basis until de-identification is completed to Hyatt's satisfaction.

Beginning on the date upon which this Agreement terminates or expires and continuing until de-identification is completed to Hyatt's satisfaction, Franchisee must maintain a conspicuous sign at the registration desk in a form that Hyatt specifies stating that the Hotel no longer is associated with the Hyatt Place Hotel network. Franchisee and its Affiliates may not, without Hyatt's permission, represent to Hotel customers, prospective customers or the public that the Hotel is or was a Hyatt Place Hotel, or otherwise hold itself out to the public as a former franchisee of Hyatt's or as the former operator of a Hyatt Place Hotel, except in the limited case of informing investors, prospective investors, or lenders that Franchisee has general experience in operating a Hyatt Place Hotel. Franchisee acknowledges that the de-identification process is intended to alert the public immediately that the Hotel is not affiliated with the Hyatt Place Hotel network. Subject to the terms of Subsection (b) above with respect to exterior signage, Franchisee shall complete all de-identification obligations under this Section 16.1 to Hyatt's satisfaction, and provide a written certification to Hyatt indicating such completion, on or before the date which is fifteen (15) days after this Agreement terminates or expires.

If Franchisee fails to comply strictly with all of the de-identification provisions in this Section 16.1, Franchisee agrees to: (i) pay Hyatt a royalty fee of Five Thousand Dollars (\$5,000) per day until de-identification is completed to Hyatt's satisfaction; and (ii) permit Hyatt's representatives to enter the Hotel to complete the de-identification process at Franchisee's expense. Franchisee agrees to pay all of Hyatt's costs and expenses of enforcing these de-identification provisions, including all attorneys' fees and costs. Nothing in this Section 16.1 or this Agreement limits Hyatt's rights or remedies at law or in equity if Franchisee does not complete the de-identification procedures as provided above, including Hyatt's right to seek and obtain an injunction to remove or cause to be removed, at Franchisee's sole cost and expense, all signage from the Hotel.

16.2. **Pay Amounts Owed.** Unless otherwise provided in this Agreement, within five (5) days after the termination or expiration of this Agreement, Franchisee must pay all amounts owed to Hyatt and its Affiliates under this Agreement or any other agreement.

16.3. **Contacting Customers.** Upon this Agreement's termination or expiration for any reason, Hyatt has the right to contact those individuals or entities who have reserved rooms with Franchisee through the CRS, and any other Hotel customers, and inform them that Franchisee's lodging facility no longer is part of the Hyatt Place Hotel network. Hyatt also has the right to inform those individuals, entities and customers of other Hyatt Place Hotels and Hyatt-Affiliated Hotels that are proximately located to Franchisee's lodging facility in case they prefer to change

their reservations so that they can stay at a Hyatt-Affiliated Hotel. Hyatt's exercise of these rights will not constitute an interference with Franchisee's contractual or business relationships. Franchisee acknowledges that the individuals and entities that made reservations with Franchisee's lodging facility when it was a Hyatt Place Hotel under this Agreement constitute Hyatt's customers.

16.4. **Survival.** The following provisions of this Agreement shall survive termination or expiration of this Agreement regardless of the circumstances: Sections 6.5, 7.4, 8.1, 8.3, 8.4, 10.1.2 (last three (3) sentences), 10.1.3, 10.2 (last paragraph), 11.1, 11.5, 11.6, 11.7 and 15.4 and Articles IX, XIV, XVI, XVII and XVIII. Additionally, all of Hyatt's and Franchisee's covenants, obligations, and agreements that by their terms or by implication are to be performed after the termination or expiration of the Term shall survive such termination or expiration.

16.5. **Liquidated Damages.** Franchisee acknowledges and confirms that Hyatt will suffer substantial damages as a result of the termination of this Agreement before the Term expires. Some of those damages include lost Royalty Fees, lost Contributions, lost market penetration and goodwill, loss of Hotel System representation in the Hotel's market area, confusion of national accounts and individual customers, disadvantage in competing for national accounts and other types of bookings for Hyatt Place Hotels, lost opportunity costs, and expenses that Hyatt will incur in developing or finding another franchisee to develop another Hyatt Place Hotel in the Hotel's market area (collectively, "Brand Damages"). Hyatt and Franchisee acknowledge that Brand Damages are difficult to estimate accurately and proof of Brand Damages would be burdensome and costly, although such damages are real and meaningful to Hyatt. Therefore, upon termination of this Agreement before the Term expires for any reason (subject to Article X), Franchisee agrees to pay Hyatt, within fifteen (15) days after the date of such termination, liquidated damages in a lump sum as calculated below.

If the Hotel had opened for business before the effective date of termination, the liquidated damages payable under this Section 16.5 shall be equal to the greater of:

(a) Four Thousand Dollars (\$4,000) multiplied by the number of approved guest rooms at the Hotel; or

(b) the product of either thirty-six (36) or the number of months then remaining in the Term as of the effective date of termination, whichever is shorter, multiplied by the average monthly Royalty Fees and Contributions that Franchisee owed Hyatt during the twelve (12)-month period before the month of termination (or for such lesser period that the Hotel has been open, if less than twelve (12) months).

If the Hotel (or a Relocated Hotel under Section 10.1) had not yet opened for business as of the effective date of termination, then the liquidated damages payable under this Section 16.5 shall be equal to Four Thousand Dollars (\$4,000) multiplied by the number of approved guest rooms at the Hotel.

Notwithstanding any temporary fee reductions to which Hyatt might have agreed in this Agreement or an amendment to this Agreement, all liquidated damages calculations based on monthly fees shall be calculated on the full (and not the discounted) monthly Royalty Fees and

giving Hyatt thirty (30) days' prior notice by any of the means specified in subparagraphs (a) through (e) above.

Contributions required under this Agreement as of the Effective Date. Franchisee agrees that the liquidated damages calculated under this Section 16.5 represent the best estimate of Hyatt's Brand Damages arising from any termination of this Agreement before the Term expires. Franchisee's payment of the liquidated damages to Hyatt will not be considered a penalty but, rather, a reasonable estimate of fair compensation to Hyatt for the Brand Damages Hyatt will incur because this Agreement did not continue for the Term's full length.

Franchisee acknowledges that Franchisee's payment of liquidated damages is full compensation to Hyatt only for the Brand Damages resulting from the early termination of this Agreement and is in addition to, and not in lieu of, Franchisee's obligations to pay other amounts due to Hyatt under this Agreement as of the date of termination and to comply strictly with the de-identification procedures of Section 16.1 and Franchisee's other post-termination obligations.

If any valid law or regulation governing this Agreement limits Franchisee's obligation to pay, and/or Hyatt's right to receive, the liquidated damages for which Franchisee is obligated under this Section 16.5, then Franchisee shall be liable to Hyatt for any and all Brand Damages Hyatt incurs, now or in the future, as a result of Franchisee's breach of this Agreement.

## ARTICLE XVII

### NOTICES

All written notices, reports, and payments permitted or required to be delivered by this Agreement or the Manual will be deemed to be delivered: (a) at the time delivered by hand; (b) at the time delivered via computer transmission if the sender has confirmation of a successful transmission, and, in the case of the Royalty Fees, Contributions, and other amounts due, at the time Hyatt actually receives payment via EFT; (c) one (1) business day after transmission by facsimile or other electronic system if the sender has confirmation of successful transmission; (d) one (1) business day after being placed in the hands of a nationally recognized commercial courier service for next business day delivery; or (e) three (3) business days after placement in the United States Mail by Certified Mail, Return Receipt Requested, postage prepaid. Any notice to Hyatt must be sent to the address specified below, although Hyatt may change this address for notice by giving Franchisee thirty (30) days' prior notice by any of the means specified in subparagraphs (a) through (e) above. Any notice that Hyatt sends Franchisee may be sent to the one (1) person identified below, even if Franchisee has multiple Owners, at the address specified below. Franchisee may change the person and/or address for notice only by giving Hyatt thirty (30) days' prior notice by any means specified in subparagraphs (a) through (e) above.

Notices to	Hyatt Place Franchising, L.L.C.	Notices to	ENTITYNAMECAPS
Hyatt:	71 South Wacker Drive, 12th Floor	Franchisee:	PCADDRESS1
	Chicago, Illinois 60606		PCADDRESS2
	Attention: General Counsel		Attention: PCNAME

Any required payment or report that Hyatt does not actually receive during regular business hours on the date due will be deemed delinquent. Notices delivered via the means

specified above will be deemed delivered as of the times specified above whether or not Hyatt or Franchisee accepts delivery.

## ARTICLE XVIII

### GENERAL

18.1. **The Exercise of Hyatt's Judgment.** Hyatt has the right from time to time to develop, operate, and change the Hotel System and System Standards in any manner not specifically prohibited by this Agreement. Whenever Hyatt has reserved in this Agreement a right to take or to withhold an action, or to grant or decline to grant Franchisee the right to take or omit an action, Hyatt may, except as otherwise specifically provided in this Agreement, make its decision or exercise its rights based on information readily available to it and its judgment of what is in the best interests of Hyatt and its Affiliates, the Hyatt Place Hotel network generally, or the Hotel System at the time its decision is made, without regard to whether Hyatt could have made other reasonable or even arguably preferable alternative decisions or whether its decision promotes Hyatt's (or its Affiliates') financial or other individual interest.

18.2. **Severability and Interpretation.** Except as expressly provided to the contrary in this Agreement (including in Section 14.1), each section, subsection, paragraph, term, and provision of this Agreement is severable, and if, for any reason, any part is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency, or tribunal with competent jurisdiction, that ruling will not impair the operation of, or otherwise affect, any other portions of this Agreement, which will continue to have full force and effect and bind the parties. If any applicable and binding law or rule of any jurisdiction requires more notice than this Agreement requires of this Agreement's termination or of Hyatt's refusal to offer Franchisee the Successor Franchise Right, or some other action that this Agreement does not require, or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any System Standard is invalid, unenforceable, or unlawful, the notice and/or other action required by the law or rule will be substituted for the comparable provisions of this Agreement, and Hyatt may modify the invalid or unenforceable provision or System Standard to the extent required to be valid and enforceable or delete the unlawful provision in its entirety. Franchisee agrees to be bound by any promise or covenant imposing the maximum duty the law permits that is subsumed within any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement.

18.3. **Waiver of Obligations and Force Majeure.** Hyatt and Franchisee may unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement only by a signed written instrument, effective upon delivery of written notice to the other or another effective date stated in the notice of waiver. Any waiver granted will be without prejudice to any other rights Hyatt or Franchisee have, will be subject to continuing review, and may be revoked at any time and for any reason effective upon delivery of ten (10) days' prior written notice.

Hyatt and Franchisee will not waive or impair any right, power, or option this Agreement reserves (including Hyatt's right to demand compliance with every term, condition, and covenant

or to declare any breach to be a default and to terminate this Agreement before the Term expires) because of any custom or practice that varies from this Agreement's terms; Hyatt's or Franchisee's failure, refusal, or neglect to exercise any right under this Agreement or to insist upon the other's compliance with this Agreement, including any System Standard; Hyatt's waiver of or failure to exercise any right, power, or option, whether of the same, similar, or different nature, with other Hyatt Place Hotels; the existence of franchise agreements for other Hyatt Place Hotels that contain provisions differing from those contained in this Agreement; or Hyatt's acceptance of any payments due from Franchisee after any breach of this Agreement. No special or restrictive legend or endorsement on any check or similar item given to either party will be a waiver, compromise, settlement, or accord and satisfaction. The receiving party is authorized to remove any legend or endorsement, and it will have no effect.

Neither Hyatt nor Franchisee will be liable for loss or damage or be in breach of this Agreement, including Franchisee's obligations to develop and open the Hotel under Article II, if Hyatt's or Franchisee's failure to perform its obligations results from Force Majeure. Any delay resulting from Force Majeure will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that Force Majeure will not excuse payments of amounts owed at the time of the occurrence or payment of Royalty Fees, Contributions or other payments due afterward.

18.4. **Binding Effect.** This Agreement is valid when signed by Franchisee and signed and accepted by Hyatt at its office in Chicago, Illinois. This Agreement may be executed in one or more counterparts, which, when taken as a whole, shall constitute a single agreement.

18.5. **Entire Agreement and Construction.** This Agreement is binding upon Hyatt and Franchisee and their respective permitted assigns and successors in interest. Subject to Hyatt's right to modify the Manual, the Hotel System and System Standards, this Agreement may not be modified except by a written agreement signed by both Hyatt's and Franchisee's duly-authorized officers. The Preliminary Statement and Exhibits, the attached PIP (if applicable), any Rider to this Agreement signed by Hyatt and Franchisee at the same time as this Agreement, and the Franchise Application that Franchisee (or its Owner or Affiliate) submitted to Hyatt relating to the Hotel, are a part of this Agreement, which constitutes Hyatt's and Franchisee's entire agreement, and there are no other oral or written understandings or agreements between Hyatt and Franchisee, and no oral or written representations by Hyatt, relating to the subject matter of this Agreement, the franchise relationship, or the Hotel (any understandings or agreements reached, or any representations made, before this Agreement are superseded by this Agreement). Franchisee may not rely on any alleged oral or written understandings, agreements, or representations not contained in this Agreement. Notwithstanding the foregoing, nothing in this Agreement or any related agreement shall disclaim or require Franchisee to waive reliance on any representation that Hyatt made in the most recent franchise disclosure document (including its exhibits and amendments) that Hyatt delivered to Franchisee or its representative.

Any policies that Hyatt adopts and implements from time to time to guide Hyatt in its decision-making are subject to change, are not a part of this Agreement, and are not binding on Hyatt. Except as expressly provided in this Agreement, nothing in this Agreement is intended or

deemed to confer any rights or remedies upon any person or legal entity not a party to this Agreement.

References in this Agreement to “Hyatt” with respect to all of Hyatt’s rights and all of Franchisee’s obligations to Hyatt under this Agreement include any of Hyatt’s Affiliates, and its and their successors and assigns, with whom Franchisee deals. The headings in this Agreement are for convenience only and will not control or affect the meaning or construction of any provision. Time is of the essence in this Agreement, and all provisions of this Agreement shall be so interpreted.

18.6. **Hyatt’s Withholding of Consent.** Except where this Agreement expressly obligates Hyatt reasonably to approve or not unreasonably to withhold its approval of any of Franchisee’s actions or requests, Hyatt has the absolute right to refuse any request Franchisee makes or to withhold its approval of any of Franchisee’s proposed, initiated, or completed actions that require its approval. However, Hyatt may withhold its consent, whenever and wherever otherwise required, if Franchisee is in default under this Agreement.

18.7. **Cumulative Remedies.** Hyatt’s and Franchisee’s rights under this Agreement are cumulative, and their exercise or enforcement of any right or remedy under this Agreement will not preclude their exercise or enforcement of any other right or remedy that they are entitled by law to enforce.

## **ARTICLE XIX**

### **ACKNOWLEDGEMENTS**

To induce Hyatt to sign this Agreement and grant Franchisee the rights under this Agreement, Franchisee represents, warrants and acknowledges that:

- (a) Franchisee has independently investigated and evaluated the opportunity of investing in the hotel industry generally and specifically the Hyatt Place Hotel franchise opportunity, including the current and potential market conditions and competitive factors and risks, and recognizes that, like any other business, the nature of a Hyatt Place Hotel’s business will evolve and change over time.
- (b) Hyatt’s approval of the Site is not a guarantee or warranty, express or implied, of the success or profitability of a Hyatt Place Hotel operated at that location.
- (c) an investment in a Hyatt Place Hotel involves business risks that could result in the loss of a significant portion or all of Franchisee’s investment.
- (d) Franchisee’s business abilities and efforts are vital to its success.
- (e) retaining customers for the Hotel will require a high level of customer service and strict adherence to the Hotel System and the System Standards, and that Franchisee is committed to maintaining the System Standards.

(f) except as expressly set forth in the franchise disclosure document that Hyatt delivered to Franchisee or its representative, Franchisee has not received from Hyatt, and is not relying upon, and that Hyatt expressly disclaims making, any representation, warranty or guaranty, express or implied, as to the actual or potential volume, sales, income or profits of the Hotel or any other Hyatt Place Hotel.

(g) any information Franchisee has acquired from other Hyatt Place Hotel owners, including information regarding their sales, profits or cash flows, is not information obtained from Hyatt, and Hyatt makes no representation about that information's accuracy.

(h) Franchisee has no knowledge of any representations made about the Hyatt Place Hotel franchise opportunity by Hyatt, its Affiliates or any of their respective officers, directors, owners or agents that are contrary to the statements made in Hyatt's franchise disclosure document or to the terms and conditions of this Agreement.

(i) in all of their dealings with Franchisee, Hyatt's officers, directors, employees and agents act only in a representative, and not in an individual, capacity and that business dealings between Franchisee and them as a result of this Agreement are only between Franchisee and Hyatt.

(j) it is relying solely on Hyatt, and not on any Affiliate of Hyatt, with regard to Hyatt's financial and other obligations under this Agreement, and no employee or other person speaking on behalf of, or otherwise representing, Hyatt has made any statement or promise to the effect that Hyatt's Affiliates guarantee Hyatt's performance or financially back Hyatt.

(k) all statements Franchisee has made and all materials (including ownership information and descriptions of Franchisee's and/or its Affiliates' ownership structure(s)) it has given Hyatt in acquiring the rights under this Agreement are accurate and complete and that Franchisee has made no misrepresentations or material omissions in obtaining those rights.

(l) Franchisee has read this Agreement and Hyatt's franchise disclosure document and understands and accepts that the terms and covenants in this Agreement are reasonable and necessary for Hyatt to maintain its high standards of quality and service, and to protect and preserve the goodwill of the Proprietary Marks.

(m) Franchisee has been afforded an opportunity to ask any questions it has and to review any appropriate materials of interest to Franchisee concerning the Hyatt Place Hotel franchise opportunity.

(n) Franchisee has been afforded an opportunity, and Hyatt has encouraged Franchisee, to have this Agreement and all other agreements and materials that Hyatt has given or made available to Franchisee reviewed by an attorney and has either done so or intentionally chosen not to do so.

(o) Franchisee has a net worth that is sufficient to make the investment in the Hyatt Place Hotel franchise opportunity represented by this Agreement, and Franchisee will have sufficient funds to meet all of Franchisee's obligations under this Agreement.

(p) any statements, oral or written, by Hyatt or its agents before the execution of this Agreement were for informational purposes only and do not constitute any representation or warranty by Hyatt, and Hyatt's only representations, warranties, and obligations are those specifically set forth in this Agreement or in the most recent franchise disclosure document (including its exhibits and amendments) that Hyatt delivered to Franchisee or its representative. Franchisee must not rely on, and the parties do not intend to be bound by, any statement or representation from Hyatt not contained in this Agreement or such disclosure document.

(q) Franchisee, or its parent or any of its Affiliates, is an entity that has been in business for at least five (5) years and has a net worth of at least \$5,424,500.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties have signed this Agreement as of the dates set forth by their signatures, to be effective as of the Effective Date (regardless of the dates of the parties' signatures).

**FRANCHISEE:**

**ENTITYNAMECAPS**

By: \_\_\_\_\_  
SIGNEE NAME  
SIGNEE TITLE

Date: \_\_\_\_\_

**FRANCHISOR:**

**HYATT PLACE FRANCHISING, L.L.C.**

By: \_\_\_\_\_  
Senior Vice President

Date: \_\_\_\_\_

## EXHIBIT A

to the

### HYATT PLACE HOTEL FRANCHISE AGREEMENT

#### DEFINED TERMS

In addition to any other terms defined in this Agreement, the following terms shall have the respective meanings as indicated below.

“**ADS**” means the online travel agencies and other alternative distribution systems that Hyatt may periodically authorize or require for Franchisee’s Hotel and other similarly situated Hyatt Place Hotels (subject to Reasonable Deviations).

“**Affiliate**” means, with respect to a party, any person or entity directly or indirectly owned or controlled by, under common control with, or owning or controlling, such party. For purposes of this definition, “**control**” means the power to direct or cause the direction of management and policies.

“**AOP Term**” means the time period described in Exhibit B.

“**Anti-Terrorism Laws**” mean Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other present and future federal, state, and local laws, ordinances, regulations, policies, lists, and other requirements of any governmental authority addressing or in any way relating to terrorist acts or acts of war.

“**Area of Protection**” means the geographic area described in Exhibit B.

“**Brand Owner**” means any entity that (a) is either a franchisor or owner of a Competing Brand (defined below), (b) manages or otherwise operates hotels exclusively for the franchisor or owner of a Competing Brand, or (c) is an Affiliate of any entity described in (a) or (b) above. A “**Competing Brand**” is a hotel concept that has at least five (5) hotels operating under that concept’s trade name anywhere in the world and that, in Hyatt’s reasonable opinion, competes with Hyatt Place Hotels. For the avoidance of doubt, Franchisee shall not be deemed a Brand Owner under this Agreement merely because Franchisee’s Affiliates operate (as franchisees and/or managers) hotels of multiple Competing Brands.

“**Confidential Information**” means (a) site selection criteria; (b) the substance, design, and construction of Hyatt Place Hotels and the Design Standards; (c) training and operations materials and manuals, including the Manual; (d) methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, knowledge, and experience used in developing and operating Hyatt Place Hotels; (e) marketing, advertising and promotional programs for Hyatt Place Hotels; (f) Guest Information and any information and data relating to guests and customers of other Hyatt Place Hotels and/or other Hyatt-Affiliated Hotels; (g) knowledge of specifications for and suppliers of FF&E and other products and supplies that are uniquely identified with Hyatt Place Hotels and/or other Hyatt-Affiliated Hotels; (h) any computer software or other technology that is proprietary to Hyatt, its Affiliates or the Hotel

System, including digital passwords and identifications and any source code of, and data, reports, and other printed materials generated by, the software or other technology; (i) knowledge of the operating results and financial performance of Hyatt Place Hotels other than the Hotel; and (j) graphic designs and related intellectual property.

**“Contribution”** means a contribution to the Marketing, Central Reservations and Technology Fund paid to Hyatt according to the terms of Sections 4.1 and 6.3(b) of this Agreement.

**“Control Transfer”** means any transfer (as defined in Section 12.2) of (a) this Agreement (or any interest in this Agreement), (b) the Hotel or all or substantially all of its assets, (c) a Controlling Ownership Interest in Franchisee, whether in one transaction or a series of related transactions (regardless of the time period over which these transactions take place), or (d) a Controlling Ownership Interest in any Controlling Owner (if such Owner is a legal entity), whether in one transaction or a series of related transactions (regardless of the time period over which these transactions take place).

**“Controlling Owner”** means an individual or legal entity holding a direct or indirect Controlling Ownership Interest in Franchisee.

**“Controlling Ownership Interest”** in a legal entity means, whether directly or indirectly, either (a) the record or beneficial ownership of, or right to control, fifty percent (50%) or more of the investment capital, equity, rights to receive profits or losses, or other rights to participate in the results of the entity, or (b) the effective control of the power to direct or cause the direction of that entity’s management and policies, including a general partnership interest (with respect to an entity that is a partnership) and a manager or managing member interest (with respect to an entity that is a limited liability company), or the power to appoint or remove any such party. In the case of (a) or (b), the determination of whether a “Controlling Ownership Interest” exists is made both immediately before and immediately after a proposed transfer.

**“Copyrighted Materials”** means all copyrightable materials that Hyatt or its Affiliate periodically develops and Hyatt periodically designates for use in connection with the Hotel System, including the Manual, videotapes, CDs/DVDs, marketing materials (including advertising, marketing, promotional, and public relations materials), architectural drawings (including the Design Standards and all architectural plans, designs, and layouts such as, without limitation, site, floor, plumbing, lobby, electrical, and landscape plans), building designs, and business and marketing plans, whether or not registered with the U.S. Copyright Office.

**“Core Management”** means the general manager, assistant general manager (if applicable), and sales director for the Hotel.

**“CRS”** means the central reservations system and related services for Hyatt Place Hotels, as Hyatt may periodically modify it.

**“Design Standards”** means the standards that Hyatt periodically prescribes detailing certain design criteria to be incorporated into the design and layout of the Hotel, as Hyatt determines them.

**“Effective Date”** means the date listed on page one of this Agreement, regardless of the date upon which Hyatt and Franchisee sign this Agreement.

**“First Year”** means the calendar twelve (12)-month period beginning on the first (1st) day of the calendar month during which the Opening Date occurs.

**“FF&E”** means all fixtures; equipment; furnishings; furniture; telephone systems; communications systems; facsimile machines; copiers; signs; property management, revenue management, in-room entertainment, and other computer and technology systems; and other similar items that Hyatt periodically specifies for the Hotel.

**“Force Majeure”** means (a) compliance with the orders, requests, or recommendations of any federal, state, or municipal government, unless such order, request or recommendation arises because of Hyatt’s or Franchisee’s failure to comply with any applicable law, regulation or ordinance; (b) fire, flood, accident, hurricane or other calamity or act of God; (c) strikes, embargoes, war, civil disturbance, acts of terrorism or similar events; or (d) any other similar event or cause.

**“Fund”** means the Marketing, Central Reservations and Technology Fund for the Hotel System to which franchisees make Contributions.

**“GDS”** means the global distribution systems that Hyatt periodically authorizes or requires for Franchisee’s Hotel and other similarly situated Hyatt Place Hotels (subject to Reasonable Deviations).

**“Gross Rooms Revenue”** means all gross revenues attributable to or payable for the rental of guest rooms, including guaranteed no-show revenue and cancellation fees and all cash, check, barter, credit, debit, and other transactions, whether or not collected, at the actual rates charged, reduced by guest room rebates and overcharges (but only if originally included in Gross Rooms Revenue) and excluding any sales or room taxes Franchisee collects and transmits to the appropriate taxing authority. If Franchisee receives any proceeds from any business interruption insurance applicable to loss of revenue due to the non-availability of guest rooms, there shall be added to Gross Rooms Revenue an amount equal to the imputed gross revenue that the insurer used to calculate those proceeds. Gross Rooms Revenue shall be accounted for in accordance with the Uniform System of Accounts.

**“Ground Lessor”** means any person or entity (including any Affiliate of Franchisee) that, directly or through one or more other people or entities, leases or subleases all or any part of the Hotel’s real property or improvements to Franchisee or that otherwise has any fee simple ownership or leasehold interest in the Site or the Hotel.

**“Guarantor”** means each individual or entity who from time to time guarantees Franchisee’s obligations under this Agreement.

**“Guarantor Net Worth Threshold”** means the minimum amount of total assets less total liabilities, each as calculated in accordance with U.S. generally accepted accounting principles, that at least one Guarantor (whether an individual or an entity) must maintain at all times during the Term. The amount of the Guarantor Net Worth Threshold as of the Effective Date is listed in Exhibit B.

**“Guest Information”** means information and data relating to or derived from the Hotel’s guests and other customers during the Term, whether obtained from the guest or customer or from any other source, including names, preferences, and other information about the guests’ or customers’ experiences and/or purchases, and including information stored in or provided to the CRS or the Hotel’s property management system.

**“Hotel”** means the Hyatt Place Hotel located at the Site that Franchisee will operate pursuant to this Agreement. The Hotel includes all structures, facilities, appurtenances, FF&E, entrances, exits, and parking areas located on the Site or any other real property that Hyatt approves for Hotel expansion, signage, or other facilities.

**“Hotel System”** means the concept and system associated with the establishment and operation of Hyatt Place Hotels, as Hyatt periodically modifies it. The Hotel System now includes: (a) the Proprietary Marks; (b) all Copyrighted Materials; (c) all Confidential Information; (d) the Design Standards; (e) the CRS; (f) the required or authorized GDS and ADS; (g) the National Directory; (h) management, personnel, and operational training programs, materials, and procedures; (i) System Standards described in the Manual or in other written or electronic communications; and (j) marketing, advertising, and promotional programs.

**“Hotel System Website”** means a website that Hyatt develops, maintains and/or authorizes for all or substantially all of the Hyatt Place Hotel network (and, at Hyatt’s option, other Hyatt-Affiliated Hotels). The National Directory may be part of the Hotel System Website.

**“Hyatt Place Hotel”** means a hotel operating under the Hotel System and the Proprietary Marks.

**“Hyatt-Affiliated Hotels”** means the Hyatt Place Hotels and other hotels and resorts that from time to time are owned and/or operated by Hyatt, its Affiliates, or its or their franchisees or licensees under the name “Hyatt” or another brand owned by any of Hyatt’s Affiliates, including Andaz hotels, Hyatt hotels, Hyatt Regency Hotels, Grand Hyatt hotels, Park Hyatt hotels, Hyatt House hotels, Hyatt Ziva resorts and Hyatt Zilara resorts.

**“Include”** and **“including,”** whenever used in this Agreement, whether capitalized or not, will mean “including, by way of example, but without limitation.”

**“Lender”** means each financial institution or other party (including an Affiliate of Franchisee), if any, that provided or provides any financing for Franchisee’s acquisition, development, and/or operation of the Hotel, including any mortgagee or trustee under any deed

of trust and any mezzanine lender or other party that takes a pledge of Franchisee's or any Controlling Owner's ownership interests as security for the repayment of any such financing.

**"Losses"** means any and all losses, expenses, obligations, diminutions in value, liabilities, damages (actual, consequential, or otherwise), and reasonable defense costs that an indemnified party incurs. For purposes of this definition, defense costs include accountants', arbitrators', attorneys', and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation, arbitration, or alternative dispute resolution, regardless of whether litigation, arbitration, or alternative dispute resolution is commenced.

**"Management Arrangement"** means any lease, management agreement, or other similar arrangement with any entity for all or a part of the Hotel's operation.

**"Management Company"** means any entity (including any Affiliate of Franchisee) that Hyatt approves as the Hotel's manager pursuant to an approved Management Arrangement.

**"Manual"** means Hyatt's confidential manuals, as amended from time to time.

**"National Directory"** means the national directory of Hyatt Place Hotels, which, at Hyatt's option, also may be associated with any other hotel brand or other business that Hyatt or its Affiliates own, operate, franchise, license or manage, and may (at Hyatt's option) be in written, electronic and/or another form that Hyatt periodically specifies.

**"Non-Controlling Owner"** means any Owner which is not a Controlling Owner.

**"Non-Control Transfer"** means any transfer (as defined in Section 12.2) of (a) a non-Controlling Ownership Interest in Franchisee, (b) a non-Controlling Ownership Interest in any Controlling Owner (if such Owner is a legal entity), or (c) a Controlling Ownership Interest or non-Controlling Ownership Interest in any Non-Controlling Owner (if such Owner is a legal entity).

**"Opening Date"** means the date upon which Franchisee first opens the Hotel for business under the "Hyatt Place®" name.

**"Owner"** means any person or entity holding a direct or indirect ownership interest (whether of record, beneficially, or otherwise) or voting rights in Franchisee, including any person or entity who has a direct or indirect interest in Franchisee, this Agreement, the franchise, or the Hotel and any person or entity who has any other legal or equitable interest, or the power to vest in himself or herself any legal or equitable interest, in their revenue, profits, rights, or assets or any capital appreciation relating thereto.

**"PIP"** means Property Improvement Plan.

**"Proceeding"** means any claim asserted or inquiry made (whether formally or informally), and any legal action, investigation or other proceeding (including any arbitration proceeding) brought, by any governmental agency or other person or entity.

**“Proprietary Marks”** means the trade names, trademarks, and service marks “Hyatt Place” and such other trade names, trademarks, service marks, logos, slogans, trade dress, domain names, and other designations of source and origin (including all derivatives of the foregoing) that Hyatt or its Affiliate periodically develops and Hyatt periodically designates for use in connection with the Hotel System.

**“Providers”** means providers of products or services for the Hotel, including the then current CRS operator (if applicable), then current GDS and ADS operators (if applicable), and other suppliers to the Hotel, which may include Hyatt and/or its Affiliates.

**“Reasonable Business Judgment”** means that Hyatt’s action or inaction has a business basis that is intended to benefit the Hyatt Place Hotel network or the profitability of the network, including Hyatt and its Affiliates, regardless of whether some individual hotels may be unfavorably affected; or to increase the value of the Proprietary Marks; or to increase or enhance overall hotel guest or franchisee or owner satisfaction; or to minimize possible brand inconsistencies or customer confusion.

**“Reasonable Deviations”** means that, if the market area or circumstances of a Hyatt Place Hotel warrant, then, in Hyatt’s Reasonable Business Judgment, Hyatt may apply an aspect of the Hotel System, System Standard, requirement, fee or other term or condition to the Hotel in a manner which differs from the manner in which that aspect of the Hotel System, requirement, fee or other term or condition applies to one or more other similarly situated Hyatt Place Hotels.

**“Second Year”** means the calendar twelve (12)-month period beginning on the first (1st) anniversary of the first (1st) day of the calendar month during which the Opening Date occurs.

**“System Standards”** means standards, specifications, procedures, and rules for operations, marketing, construction, equipment, furnishings, and quality assurance that Hyatt implements and may periodically modify for Hyatt Place Hotels.

**“Termination Agreement”** means Hyatt’s then current form of agreement that would terminate (or confirm the termination of) this Agreement and include a general release, in a form satisfactory to Hyatt, of any and all claims against Hyatt and its Affiliates, and its and their respective owners, officers, directors, employees, agents, representatives, successors and assigns. If the Termination Agreement is required pursuant to the terms of this Agreement, it must be signed by Hyatt, Franchisee and each then current Guarantor, and, if neither Franchisee nor any then current Guarantor then maintains the Guarantor Net Worth Threshold, Franchisee must require an Owner or other entity that maintains the Guarantor Net Worth Threshold to assume and agree to be bound by Franchisee’s obligations under the Termination Agreement.

**“Uniform System of Accounts”** means the Uniform System of Accounts for the Lodging Industry, Tenth Edition, as published by the Educational Institute of the American Hotel and Motel Association, 2006, or a later edition that Hyatt approves.

**EXHIBIT B**  
**to the**  
**HYATT PLACE HOTEL FRANCHISE AGREEMENT**  
**BASIC TERMS**

Site: A Hyatt Place hotel located at:

HOTELADDRESS S1  
HOTELADDRESS S2

Number of Approved Guest Rooms: Rooms

Pursuant to Section 4.2.1, Hyatt hereby approves Franchisee's initial Management Arrangement with \_\_\_\_\_ as the initial Management Company.

\_\_\_\_\_ Franchisee paid an Application Fee of \$ \_\_\_\_\_ before signing this Agreement.

The "**Guarantor Net Worth Threshold**" as of the Effective Date is \$\_\_\_\_\_.

The "**AOP Term**" means the period beginning on the Effective Date and ending \_\_\_\_\_ ( ) years after the Opening Date, during which time the rights in the Area of Protection apply according to the terms and conditions of Section 1.3 of the Agreement.

The "Area of Protection" is defined as \_\_\_\_\_  
The Area of Protection is depicted on the map attached below. However, if there is an inconsistency between the language in this Exhibit B and the attached map, the language in this Exhibit B shall control.

**[Insert map here]**

FRANCHISEE:

ENTITYNAMECAPS

By: \_\_\_\_\_  
SIGNEENAME SIGNEETITLE

Date: \_\_\_\_\_

FRANCHISOR:

HYATT PLACE FRANCHISING, L.L.C.

By: \_\_\_\_\_  
Senior Vice President

Date: \_\_\_\_\_

**EXHIBIT C**  
**to the**  
**HYATT PLACE HOTEL FRANCHISE AGREEMENT**  
**RIGHT OF FIRST OFFER FOR STRATEGIC MARKETS**

By signing this Exhibit C, Hyatt and Franchisee acknowledge that Hyatt's right of first offer reflected in this Exhibit C applies to this Agreement. If Hyatt and Franchisee do not sign this Exhibit C, then it does not apply to this Agreement. Hyatt has the unrestricted right to assign its right of first offer to an Affiliate or other third party, who then will have Hyatt's rights and obligations described in this Exhibit C.

If Franchisee (or any of its Owners) at any time during the Term determine to sell or transfer for consideration this Agreement, the Hotel or all or substantially all of its assets, or a Controlling Ownership Interest in Franchisee or its Controlling Owner (except to or among Franchisee's then current Owners, which is not subject to this Exhibit C), then Franchisee must first give Hyatt the opportunity to acquire those rights (the "**Offered Rights**") by delivering written notice to Hyatt. Franchisee's notice must contain the specific terms and conditions of the proposed sale or transfer, including the proposed consideration and the terms of any financing Franchisee or its Affiliate will provide for the proposed purchase price (the "**Offer Terms**"). The Offer Terms must relate exclusively to the Offered Rights and not to any other assets or rights.

Hyatt will then have thirty (30) days after receiving the Offer Terms to notify Franchisee whether Hyatt elects to acquire the Offered Rights on the Offer Terms, provided that (1) Hyatt may substitute cash, a cash equivalent, or marketable securities for any form of payment proposed in the Offer Terms (such as ownership interests in an entity) and may elect to pay the net present value of any payments to be made over time; and (2) Hyatt must receive, and Franchisee and its Owners agree to make, all customary representations, warranties, and indemnities in Hyatt's purchase, including representations and warranties as to ownership and condition of and title to assets; liens and encumbrances on assets; validity of contracts and agreements; liabilities affecting the assets, contingent or otherwise; and indemnities for all actions, events, and conditions that existed or occurred in connection with the Hotel or Franchisee's business before the closing.

If Hyatt exercises the right of first offer, the closing will take place at a location and on a date (within thirty (30) days after Hyatt delivers its notice of exercise to Franchisee) that Hyatt chooses. Hyatt and Franchisee will sign documents, including deeds, affidavits, transfers and assignments, and any other documents necessary or appropriate for the sale or transfer of the Offered Rights. Franchisee must satisfy all liens, mortgages, and/or encumbrances on the Hotel. Hyatt and Franchisee will share equally any closing costs.

If Hyatt notifies Franchisee in writing that Hyatt does not intend to exercise its right of first offer with respect to any Offer Terms, or fails to notify Franchisee of Hyatt's decision within the thirty (30)-day period described above, then Franchisee thereafter may offer the Offered Rights to any third party on terms no more favorable to that party than the Offer Terms. However, Franchisee or its Owners may sell or transfer the Offered Rights only if Hyatt otherwise approves the transfer in accordance with, and Franchisee (and its Owners) and the

transferee comply with the conditions in, Article XII of this Agreement. This means that, even if Hyatt does not exercise Hyatt's right of first offer, if the proposed transfer otherwise would not be allowed under Article XII, Franchisee (or its Owners) may not move forward with the transfer at all.

Later, Franchisee may determine to offer the Offered Rights on terms which are more favorable to the buyer than the Offer Terms, or Franchisee may determine to change the Offered Rights. If Franchisee does, then Franchisee must first offer those new terms to Hyatt according to the procedures described above.

By signing below, Hyatt and Franchisee acknowledge and agree that the terms of this Exhibit C will apply to this Agreement.

FRANCHISEE:

ENTITYNAMECAPS

By: \_\_\_\_\_

SIGNEE NAME

SIGNEE TITLE

Date:

FRANCHISOR:

\_\_\_\_\_  
HYATT PLACE FRANCHISING, L.L.C.

By: \_\_\_\_\_

Senior Vice President

Date:

\_\_\_\_\_

**EXHIBIT D**  
**to the**  
**HYATT PLACE HOTEL FRANCHISE AGREEMENT**

**PROPERTY IMPROVEMENT PLAN (“PIP”)**  
**(if applicable)**

**EXHIBIT E**

**to the**

**HYATT PLACE HOTEL (FRANCHISE AGREEMENT**

**FRANCHISEE'S OWNERSHIP**

**FRANCHISEE:**

**ENTITYNAMECAPS**

By: \_\_\_\_\_  
SIGNEE NAME  
SIGNEE TITLE

Date: \_\_\_\_\_

**FRANCHISOR:**

**HYATT PLACE FRANCHISING, L.L.C.**

By: \_\_\_\_\_  
Senior Vice President

Date: \_\_\_\_\_

**EXHIBIT F**  
**to the**

**HYATT PLACE HOTEL FRANCHISE AGREEMENT**  
**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS (“Guaranty”) is given this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ , by \_\_\_\_\_.

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement (the “**Agreement**”) on this date by HYATT PLACE FRANCHISING, L.L.C. (“Hyatt”), each of the undersigned personally and unconditionally (a) guarantees to Hyatt and its successors and assigns, for the term of the Agreement (including extensions) and afterwards provided in the Agreement, that \_\_\_\_\_ (“**Franchisee**”) will punctually pay and perform each and every undertaking, agreement, and covenant set forth in the Agreement (including, without limitation, any amendments or modifications of the Agreement) and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement (including any amendments or modifications of the Agreement), including, without limitation: (i) monetary obligations; (ii) obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including, without limitation, the confidentiality and transfer requirements and the prohibitions with respect to Brand Owners (as defined in the Agreement); and (iii) the arbitration requirements and other enforcement provisions in Articles XIV and XVIII of the Agreement.

Each of the undersigned acknowledges that he, she or it is either an owner (whether direct or indirect) of Franchisee or otherwise has a direct or indirect relationship with Franchisee or its affiliates, that he, she or it will benefit significantly from Hyatt’s entering into the Agreement with Franchisee, and that Hyatt will not enter into the Agreement unless the each of the undersigned agrees to sign and comply with the terms of this Guaranty.

Each of the undersigned represents and agrees that, at the time of signing this Guaranty and at all times during the term of the Agreement, at least one of the undersigned or another then current guarantor of Franchisee’s obligations under the Agreement satisfies the Guarantor Net Worth Threshold (defined below). The “Guarantor Net Worth Threshold” means the amount of total assets less total liabilities, each as calculated in accordance with U.S. generally accepted accounting principles, equal to or exceeding \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The undersigned agree to provide Hyatt on an annual basis financial statements or other documents that Hyatt reasonably specifies, certified by Franchisee or the undersigned in the manner that Hyatt specifies, demonstrating that at least one of the undersigned satisfies the Guarantor Net Worth Threshold. Upon reasonable advance notice, but no more than twice during any calendar year during the Agreement’s term, Hyatt may examine the undersigned’s business, bookkeeping, accounting and tax records to ascertain compliance with the Guarantor Net Worth Threshold. In addition to and without limiting Hyatt’s other rights and remedies under the Agreement, this Guaranty or applicable law, the undersigned acknowledge that Hyatt may terminate the Agreement (subject to the applicable notice and cure period in the Agreement) if at

least one of the undersigned or another guarantor of Franchisee's obligations under the Agreement does not satisfy the Guarantor Net Worth Threshold at all times during the Agreement's term. The undersigned also acknowledge that Hyatt may periodically modify the amount of the Guarantor Net Worth Threshold pursuant to, and in accordance with, the Agreement. If any one of the undersigned at any time represent to Hyatt that it satisfies a modified Guarantor Net Worth Threshold, then such modified Guarantor Net Worth Threshold shall thereafter be substituted for the Guarantor Net Worth Threshold listed above (as modified).

Each of the undersigned consents and agrees that: (1) his, her or its direct and immediate liability under this Guaranty will be joint and several, both with Franchisee and among other guarantors; (2) he, she or it will render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (3) this liability will not be contingent or conditioned upon Hyatt's pursuit of any remedies against Franchisee or any other person or entity; (4) this liability will not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence that Hyatt may from time to time grant to Franchisee or any other person or entity, including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims (including the release of other guarantors), none of which will in any way modify or amend this Guaranty, which will be continuing and irrevocable during and after the term of the Agreement (including extensions) for so long as any performance is or might be owed under the Agreement by Franchisee or any of its guarantors and for so long as Hyatt has any cause of action against Franchisee or any of its guarantors; and (5) this Guaranty will continue in full force and effect for (and as to) any extension or modification of the Agreement and despite the transfer of any direct or indirect interest in the Agreement or Franchisee, and each of the undersigned waives notice of any and all renewals, extensions, modifications, amendments, or transfers.

Each of the undersigned waives: (i) all rights to payments and claims for reimbursement or subrogation that any of the undersigned may have against Franchisee arising as a result of the undersigned's execution of and performance under this Guaranty, for the express purpose that none of the undersigned shall be deemed a "creditor" of Franchisee under any applicable bankruptcy law with respect to Franchisee's obligations to Hyatt; (ii) all rights to require Hyatt to proceed against Franchisee for any payment required under the Agreement, proceed against or exhaust any security from Franchisee, take any action to assist any of the undersigned in seeking reimbursement or subrogation in connection with this Guaranty or pursue, enforce or exhaust any remedy, including any legal or equitable relief, against Franchisee; (iii) any benefit of, any right to participate in, any security now or hereafter held by Hyatt; and (iv) acceptance and notice of acceptance by Hyatt of his, her or its undertakings under this Guaranty, all presentments, demands and notices of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed, protest, notices of dishonor, notices of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed, and any other notices and legal or equitable defenses to which he, she or it may be entitled. Hyatt shall have no present or future duty or obligation to the undersigned under this Guaranty, and each of the undersigned waives any right to claim or assert any such duty or obligation, to discover or disclose to the undersigned any information, financial or otherwise, concerning Franchisee, any other guarantor, or any collateral securing any obligations of Franchisee to Hyatt. Without affecting the obligations of the undersigned under this Guaranty, Hyatt may, without notice to the undersigned, extend, modify, supplement, waive strict compliance with, or release all or any

provisions of the Agreement or any indebtedness or obligation of Franchisee, or settle, adjust, release, or compromise any claims against Franchisee or any other guarantor, make advances for the purpose of performing any obligations of Franchisee under the Agreement, assign the Agreement or the right to receive any sum payable under the Agreement, and the undersigned each hereby jointly and severally waive notice of same. The undersigned expressly acknowledge that the obligations hereunder survive the expiration or termination of the Agreement.

In addition, the undersigned each waive any defense arising by reason of any of the following: (a) any disability or any counterclaim or right of set-off or other defense of Franchisee, (b) any lack of authority of Franchisee with respect to the Agreement, (c) the cessation from any cause whatsoever of the liability of Franchisee, (d) any circumstance whereby the Agreement shall be void or voidable as against Franchisee or any of Franchisee's creditors, including a trustee in bankruptcy of Franchisee, by reason of any fact or circumstance, (e) any event or circumstance that might otherwise constitute a legal or equitable discharge of the undersigned's obligations hereunder, except that the undersigned do not waive any defense arising from the due performance by Franchisee of the terms and conditions of the Agreement, (f) any right or claim of right to cause a marshaling of the assets of Franchisee or any other guarantor, and (g) any act or omission of Franchisee.

If Hyatt is required to enforce this Guaranty in a judicial or arbitration proceeding and prevails in such proceeding, Hyatt shall be entitled to reimbursement of Hyatt's costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorneys' assistants', arbitrators', and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses, whether incurred prior to, in preparation for, or in contemplation of the filing of any such proceeding. If Hyatt is required to engage legal counsel in connection with any failure by the undersigned to comply with this Guaranty, the undersigned shall reimburse Hyatt for any of the above-listed costs and expenses Hyatt incurs even if Hyatt does not commence a judicial or arbitration proceeding.

**IN WITNESS WHEREOF**, each of the undersigned has affixed his, her or its signature on the same day and year as the Agreement was executed.

**PERCENTAGE OF OWNERSHIP**

**GUARANTOR(S)**

**IN FRANCHISEE**

**ENTITYNAMECAPS**

\_\_\_\_\_ %

By: \_\_\_\_\_

SIGNEE NAME

SIGNEE TITLE

\_\_\_\_\_

\_\_\_\_\_ %

**LETTER TO LENDER**

[Date]

«Lender Name»  
«lender\_street»  
«lender\_city», «lender\_state» «lenderZipCode»  
Attn: «LenderContact»

Re: «brand»  
«address»  
«city», «state» «zip» (the “Hotel”)

Dear Lender:

«Franchisor\_Licensor» (“Franchisor”) has entered into a Franchise Agreement (the “Franchise Agreement”) dated «exe\_date» with «Franchise\_Name» (“Franchisee”). The Franchise Agreement permits Franchisee to operate the Hotel as **la or an]** «brand» hotel. **[INCORPORATE OWNER IF AN OWNER AGREEMENT HAS BEEN ENTERED INTO IN CONNECTION WITH THE FRANCHISE AGREEMENT.]** As of this date and to the best of our knowledge and belief, the Franchise Agreement is in full force and effect and Franchisor has issued no notice pursuant to which Franchisee is currently in default under the Franchise Agreement (the “No-Defaults Representation”). Unless otherwise defined in this comfort letter, capitalized terms will have the meanings given to them in the Franchise Agreement. **[IF ANY OF THE CAPITALIZED TERMS “Affiliate” or “Control” or “Controlling” or “Ownership Interest” or “Person” USED HEREIN ARE NOT DEFINED IN THE FRANCHISE AGREEMENT, THEN EITHER (I) ADD DEFINITIONS FOR SUCH TERMS IN THIS COMFORT LETTER, OR (II) CHANGE “Person” TO “person or entity” AND CHANGE “Affiliate” or “Control” or “Controlling” or “Ownership Interest” TO LOWER CASE TERMS THROUGHOUT THIS COMFORT LETTER.]**

«Lender Name» (“Lender”) and Franchisee have informed Franchisor that Lender has issued a commitment to loan funds or has loaned funds that will be used for the direct benefit of the Hotel and will be secured by the Hotel (the “Loan”). **[CONFIRM DESCRIPTION IS CORRECT.]** Lender and Franchisee have requested that Franchisor enter into this comfort letter. Franchisee will pay the current lender comfort letter processing fee applicable to such request. The undersigned parties agree as follows:

1. Franchisee Default: Franchisor will copy Lender on any notice of default or termination issued to Franchisee under the Franchise Agreement. Lender will have the right, but not the obligation, upon notice to Franchisor to cure such default on behalf of Franchisee during the time period for cure established in the default notice. Franchisor may extend Lender’s right to cure for such reasonable period of time beyond the cure period established in the default notice if: (i) the default is not related to health or safety; (ii) the default is susceptible to cure by Lender; (iii) Lender notifies Franchisor of Lender’s agreement to cure the default as soon as reasonably possible, but by no later than two (2) days prior to expiration of the cure period established in the default notice; (iv) all royalties, fees, charges, and other amounts due to Franchisor or any of its Affiliates under the Franchise Agreement or in connection with the Hotel are kept current; (v)

Lender diligently pursues cure of the default; and (vi) the Hotel is at all times operated in accordance with the Franchise Agreement, except for the specific default described in the default notice.

2. Lender Foreclosure:

If Lender acquires the Hotel through foreclosure, a deed in lieu of foreclosure, or through any other exercise of its rights as a secured lender, and Lender desires the Hotel to continue to be operated as [a or an] «brand» hotel, Lender may by notice and payment to Franchisor of a non-refundable \$5,000 application fee within ten (10) days of Lender's acquisition elect to do either of the following, subject, in either case, to compliance with Paragraph 2.B.:

within thirty (30) days of Lender's acquisition of the Hotel, enter into a management agreement for Franchisor (or Franchisor's designated Affiliate) to manage the Hotel on Lender's behalf on mutually agreeable terms; or request Franchisor to approve substitute qualified management for the Hotel pursuant to Paragraph 4. If Franchisor approves substitute management, Lender and Franchisor will execute a new «brand» franchise agreement within thirty (30) days of Lender's acquisition of the Hotel. Such new franchise agreement will be dated as of the date that Lender acquired the Hotel and will be for a term equal to Franchisee's then remaining term and will be substantially identical to Franchisor's then-current form of agreement (as same is described in Franchisor's then-current franchise disclosure document), except that Franchisor will not charge Lender any initial fee or require Lender to implement a new property improvement plan in connection with the execution of a new franchise agreement for the Hotel. Lender, however, will be: (a) required to comply with any renovation or upgrading requirements that are set forth in the Franchise Agreement, (b) required to cure any quality, service or other deficiency in Franchisee's prior performance of obligations under the Franchise Agreement, (c) required to pay Franchisor's outside counsel costs in connection with negotiating a new agreement, and (d) subject to any renovation or upgrading requirements that are set forth in Franchisor's then-current form of agreement or are required of other «brand» franchisees.

B. Franchisor's obligations under Paragraph 2.A. are subject to receipt by Franchisor of evidence, in form and substance satisfactory to Franchisor, that any party with whom Franchisor enters into a management agreement or franchise agreement pursuant to Paragraph 2.A. (including, without limitation, any and all of its directors and officers) and any of its Affiliates and funding sources for any of the foregoing is not: (i) a Competitor or an Affiliate of a Competitor; (ii) a Specially Designated National or Blocked Person; or (iii) directly or indirectly owned or Controlled by the government of any country that is subject to an embargo by the United States government or acting on behalf of a government of any country that is subject to such an embargo.

**[IF THE FRANCHISE AGREEMENT DOES NOT CONTAIN COMPETITOR LANGUAGE, ADD "(as defined below)" AFTER "Competitor" AND USE ONE OF THE OPTIONS BELOW, AS APPLICABLE:**

**(i) FOR CFRST HOTELS, ADD THE FOLLOWING: For purposes of this comfort letter, a "Competitor" is any Person that owns or has an interest in a hotel brand, trade name, trademark, system, or chain (a "Brand") or any Person that has, directly or**

indirectly, an Ownership Interest in, or is an Affiliate, principal, director, officer, or other individual with management responsibility of, a Person that owns or has an interest in a Brand that is comprised of at least (i) twenty (20) full-service hotels, or (ii) fifty (50) limited-service hotels. For the purposes of defining "Competitor," "full-service" hotels are hotels that typically offer three (3) meals per day and have an average of three thousand (3,000) square feet or more of meeting space per hotel, and "limited-service" hotels are hotels that are not "full-service" hotels. No Person will be deemed to be a Competitor if such Person has an interest in a Brand merely as a franchisee or as a mere passive investor that has no Control or influence over the business decisions concerning the Brand at issue, such as limited partners in a partnership or as a mere non-Controlling stockholder in a corporation.

(ii) **FOR FULL-SERVICE HOTELS, ADD THE FOLLOWING:** For purposes of this comfort letter, a "Competitor" is any Person that owns or has an interest in a hotel brand, trade name, trademark, system, or chain (a "Brand") or any Person that has, directly or indirectly, an Ownership Interest in, or is an Affiliate, principal, director, officer, or other individual with management responsibility of, a Person that owns or has an interest in a Brand that is comprised of at least (i) ten (10) luxury hotels, (ii) twenty (20) full-service hotels, or (iii) fifty (50) limited-service hotels. For the purposes of defining "Competitor," "luxury hotels" are hotels that have a system average daily rate in excess of One Hundred Eighty Dollars (\$180) and an average number of rooms per location in excess of 100, "full-service" hotels are hotels that typically offer three (3) meals per day and have an average of three thousand (3,000) square feet or more of meeting space per hotel, and "limited-service" hotels are hotels that are neither "luxury hotels" nor "full-service" hotels. No Person will be deemed to be a Competitor if such Person has an interest in a Brand merely as a franchisee or as a mere passive investor that has no Control or influence over the business decisions concerning the Brand at issue, such as limited partners in a partnership or as a mere non-Controlling stockholder in a corporation.]

[IF THE FRANCHISE AGREEMENT DOES NOT CONTAIN SPECIALLY DESIGNATED NATIONAL OR BLOCKED PERSON LANGUAGE, ADD "(as defined below)" AFTER "Specially Designated National or Blocked Person" AND ALSO ADD THE FOLLOWING: For purposes of this comfort letter, a "Specially Designated National or Blocked Person" means (i) a Person designated by the U.S. Department of Treasury's Office of Foreign Assets Control from time to time as a "specially designated national or blocked person" or similar status; (ii) a Person described in Section 1 of U.S. Executive Order 13224, issued on September 23, 2001; or (iii) a Person otherwise identified by government or legal authority as a Person with whom Franchisor, or any of its Affiliates, are prohibited from transacting business.]

C. If Lender acquires the Hotel through foreclosure, a deed in lieu thereof, or through any other exercise of its rights as a secured lender, and Lender no longer desires that the Hotel be operated as [a or an] «brand» hotel, Lender will notify Franchisor within ten (10) days of Lender's acquisition of same, cooperate with Franchisor in the removal of the Hotel from the «brand» hotel system, and promptly comply with Paragraph 13.

D. Lender may designate a wholly-owned subsidiary of Lender (a "Lender Entity") to acquire the Hotel and enter into the management agreement or franchise agreement referred to in Paragraph 2.A. provided that such Lender Entity is not a Competitor or Affiliate of a Competitor. If a Lender Entity enters into such franchise or management agreement, Franchisor may condition its obligations under this Paragraph 2 on posting of a performance bond for the Lender Entity's obligations to Franchisor, on terms and conditions acceptable to Franchisor, or on receipt of Lender's guaranty (or a guaranty from an entity acceptable to Franchisor, in its sole discretion) of such Lender Entity's obligations under any agreement with Franchisor.

3. Receivership. If Lender has a receiver appointed for the Hotel during a foreclosure proceeding or through any exercise of its rights as a secured lender, Lender will have the right to have the Hotel operated by Franchisor or a management company approved by Franchisor pursuant to Paragraph 4 if, with respect to the Hotel: (i) Franchisor and Lender have reached agreement concerning the cure of any deficiencies in Franchisee's prior performance obligations under the Franchise Agreement, including any deficiencies under any other agreements with Franchisor and its Affiliates relating to the Hotel; (ii) Lender or the receiver enters into a management agreement with Franchisor or a franchise agreement with Franchisor on terms acceptable to Franchisor; and (iii) the receiver is specifically authorized by order of the court appointing such receiver to enter into a franchise agreement or management agreement as described herein, such order further requires the Hotel to be operated in accordance with state, local and federal laws, and such order includes other language as may be requested by Franchisor with respect to the operation of the Hotel or the agreement. If the receiver is the party contracting with Franchisor, Franchisor may condition its obligations under this Paragraph 3 on posting of a performance bond for the receiver's obligations to Franchisor, on terms and conditions acceptable to Franchisor, or on receipt of Lender's guaranty of such receiver's obligations under any agreement with Franchisor.

4. Substitute Manager. Lender's right to propose a substitute manager for the Hotel under this comfort letter will be on the terms and conditions of this Paragraph 4. Upon Lender's request, Franchisor will provide Lender a list of management companies that Franchisor would approve for operation of the Hotel and, if possible, such list will contain at least three (3) management companies. Franchisor reserves the right to approve only those management companies to operate the Hotel that, in Franchisor's sole judgment, are experienced and qualified in operating «brand» hotels and are otherwise able to adhere fully to the obligations and requirements of the franchise agreement. Notwithstanding anything to the contrary in this comfort letter, if the Hotel is operated by a management company not approved by Franchisor, Franchisor will have the right immediately upon notice and without further action to terminate the Franchise Agreement, this comfort letter and the Hotel's relationship with the «brand» system of hotels. Notwithstanding anything to the contrary contained in this comfort letter, Franchisor will not be obligated to manage the Hotel if, in Franchisor's reasonable business judgment, such management would violate any contractual or other legal obligation of Franchisor or its Affiliates.

5. Notification of Franchisor. Lender agrees to notify Franchisor ten (10) days in advance of any action to: (i) commence foreclosure proceedings regarding the Hotel; (ii) petition for appointment of a receiver, obtain the entry of an order for relief, or take any action under federal or state bankruptcy laws or similar laws with regard to the Hotel; (iii) accept a deed for the Hotel in lieu of foreclosure; or (iv) take ownership, possession or control of the Hotel, directly or

indirectly, in any manner. Such notice will identify the court in which any such action referred to in subsection (i) or subsection (ii) is or will be filed. Lender will notify Franchisor in writing of the commencement by another party of foreclosure proceedings or the filing of an action for the appointment of a receiver or petition for relief under state or federal bankruptcy laws within thirty (30) days after Lender receives notice of commencement of such proceedings. Lender also agrees to notify Franchisor within ten (10) days after any termination or release of Lender's mortgage, security deed or interest in the Hotel. Lender's obligations under the immediately preceding sentence of this Paragraph 5 will survive termination of this comfort letter.

6. No Consent to Assignment of Franchise Agreement. Lender and Franchisee acknowledge and agree that any collateral assignment, pledge, grant of a security interest or other transfer to Lender or its Affiliates of any interest in the Franchise Agreement: (i) has not been consented to by Franchisor; (ii) will not affect Franchisor's rights under the Franchise Agreement; (iii) will not (and will not be deemed to) directly or indirectly grant, Lender or any Person gaining ownership or possession of the Hotel any rights under the Franchise Agreement or with respect to the license granted thereunder, including, without limitation, the right to operate the Hotel as [a or an] «brand» hotel; and (iv) will be limited by and will be subject to the terms and conditions of this comfort letter. Franchisee represents warrants and covenants to Franchisor that the granting of the Loan will not cause Franchisee to violate any financial covenants contained in the Franchise Agreement. If the Hotel is acquired by anyone other than Lender (or a Lender Entity complying with Paragraph 2.D.), neither Lender nor Franchisee will have the right or authority to sell, convey, assign or in any manner transfer any rights under this comfort letter (which is non-assignable) or under the Franchise Agreement without the prior written consent of Franchisor. Lenders only rights with respect to the Franchise Agreement and the license granted thereunder, including, without limitation, the right to operate the Hotel as [a or an] «brand» hotel, are set forth in this comfort letter.

7. Transition of Control of the Hotel. Lender, Franchisor and Franchisee will cooperate so that any change in control of the Hotel pursuant to this comfort letter will be conducted efficiently without inconvenience to the guests and employees of the Hotel and in accordance with applicable law, including, but not limited to, the WARN Act (29 U.S.C. §§ 2101et seq.).

8. No Claims. Franchisor may discuss with Lender or its designee the status of the Hotel, the Franchise Agreement, or the terms of any agreement contemplated by this comfort letter or any of the matters to which Lender is entitled to notice. Franchisee hereby agrees that Franchisor and its owners, Affiliates, agents, employees, officers, directors, successors, assigns and representatives ("Released Persons") will not be liable to any Person for taking any action or providing any information required or contemplated by this comfort letter ("Comfort Letter Acts"). Franchisee, on behalf of itself and its owners, Affiliates, agents, officers, directors, employees, representatives, successors and assigns, hereby releases the Released Persons of and from any and all actions, causes of action, suits, claims, demands, contingencies, debts, accounts and judgments whatsoever, at law or in equity, for any Comfort Letter Acts. Franchisee also represents as of this date and to the best of its knowledge that there is no existing default by either Franchisee or Franchisor under the Franchise Agreement and no event has occurred which, with the giving of notice or passage of time, or both, would constitute a default by either Franchisee or Franchisor under the Franchise Agreement, and Franchisee has no claims against Franchisor.

9. Notices. All notices required under this comfort letter will be in writing, sent by certified mail, return receipt requested, or by Federal Express or other national express delivery service and addressed, if to Lender, to:

«Lender\_Name» «lender  
street»  
«lender\_city», «lender\_state» «lenderZipCode»  
Attn: «LenderContact»

With a copy to:

If to Franchisor, to:

«Franchisor\_Licenser»  
10400 Fernwood Road  
Department 52/923.27  
Bethesda, Maryland 20817  
Attention: Lodging Attorney

Any notice sent pursuant to this comfort letter will be deemed to be given three (3) days after mailing or on the next business day after such notice is deposited with a national express delivery service.

10. No Representations or Warranties; No Third Party Beneficiary. In no event will this comfort letter or any other circumstances surrounding the provision of financing by Lender be construed to involve: (i) any representation by Franchisor that it endorses, approves, recommends or otherwise concurs in the financing; (ii) any guarantee or assurance by Franchisor that Franchisee or any other party to the Loan will be able to repay the Loan in accordance with its terms; (iii) any endorsement, approval, recommendation or concurrence in any financial projections submitted to Lender in connection with the Loan; or (iv) any endorsement, approval or recommendation of Franchisee's character or reputation. Because the No-Defaults Representation only covers the status of the Franchise Agreement as of the date of this comfort letter, Lender will not rely on the No-Defaults representation as to the status of the Franchise Agreement after the date hereof. In addition, Lender will not rely on its belief, whether or not correct, that Franchisor has not given any notice under this comfort letter when Lender is making any decision or representation or warranty in connection with any material modification, securitization, or sale of the Loan. Instead, upon the written request of Lender in connection with any material modification, securitization, or sale of the Loan, Franchisor will represent to Lender whether, as of that date, Franchisor has issued a notice pursuant to which the Franchisee is then currently in default under the Franchise Agreement. This comfort letter is solely for the benefit of the addressee named on page 1 of this comfort letter and is not intended to create any third party beneficiary.

11. Replacement Comfort Letter. Franchisor will issue a replacement comfort letter, in the form attached to its then-current Franchise Disclosure Document, if Lender (A) securitizes the Loan, appoints a third-party loan servicing agent to service the Loan, or transfers the Loan to a successor mortgagee that (i) is a financial institution in the business of routinely financing real estate transactions, (ii) is in good financial condition, (iii) is not a Competitor or an Affiliate of a Competitor, and (iv) is not an Affiliate of Franchisee (each, a "Replacement Event"), and (B)

provides a written request to Franchisor, no later than ninety (90) days after the Replacement Event, to issue a replacement comfort letter, and such request states the name and address of the entity to which the replacement comfort letter is requested to be issued and the name, address, telephone number and email address for the contact person for such entity, and the date of the Replacement Event. Franchisee will pay the then-current lender comfort letter processing fee applicable to any such requests. Franchisor reserves the right to require representations and warranties or certifications that the conditions in this Paragraph 11 are satisfied prior to issuing any replacement comfort letter. Any such replacement comfort letter will supersede this comfort letter.

12. Lender not Liable for Liquidated Damages. Franchisor specifically acknowledges and agrees that Lender will not be liable for payment of any liquidated damages not paid by Franchisee, but Franchisor does not waive any liquidated damages claims that may arise from the operation of the Hotel following Lender's election under Paragraph 2.A. or by a receiver under Paragraph 3.

13. Possession of the Hotel. If Lender owns, controls or possesses the Hotel after termination of the Franchise Agreement for any reason, Lender will (i) upon Franchisor's request immediately perform the requirements of the Franchise Agreement with respect to de-identifying the Hotel as [a or an] «brand» hotel and (ii) indemnify, defend and hold harmless Franchisor and its Affiliates from and against any loss, claim or other liability of any kind arising from or in connection with the operation of the Hotel as [a or an] «brand» hotel during such ownership, control or possession. Lender's obligations under this Paragraph 13 will survive termination of this comfort letter, and nothing in the comfort letter will limit Franchisor's rights, if any, to seek legal redress for any unauthorized use of Franchisor's trademarks, service marks, or systems.

14. Termination. This comfort letter will terminate and Lender will have no rights hereunder if:

- (i) Lender has been taken over in any manner by any state or federal agency or is in a receivership, conservatorship, reorganization, or liquidation, or Lender or any of its officers or directors has entered into or is subject to a cease and desist order or any other formal or informal written agreement with a federal or state regulatory agency;
- (ii) Lender no longer holds a valid first mortgage or security deed with respect to the Hotel (except as a result of Lender's acquisition of the Hotel by foreclosure, deed in lieu thereof or otherwise in accordance with Paragraph 2.A., in which case clause (iii) below will apply); provided that if this comfort letter is terminated under this clause (ii), Lender will retain its right to request a substitute comfort letter pursuant to Paragraph 11 for the time period set forth therein;
- (iii) the Franchise Agreement has expired or terminated, unless such occurrence is the result of the timely exercise of Lender's rights pursuant to Paragraphs 2, 3 or 4, in which case this comfort letter will terminate upon the exercise or expiration of such rights, which in any event will expire no more than forty-five (45) days after the expiration or termination of the Franchise Agreement; or

(iv) lender breaches this comfort letter.

15. Effectiveness. Franchisor will have no obligations under this comfort letter unless Lender and Franchisee have evidenced their agreement with the provisions above by the execution of a copy of this comfort letter, which may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes and all of which will constitute, collectively, one and the same comfort letter. Delivery of an executed signature page to this comfort letter by electronic transmission will be effective as delivery of a manually signed counterpart of this comfort letter.

Very truly yours,

<<FRANCHISOR\_LICENSOR>>

By: \_\_\_\_\_  
Name:  
Title:

<<Franchise\_Name>>

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

<<Lender\_Name>>

By: \_\_\_\_\_

Its: \_\_\_\_\_

Cc: