

HOTEL PROJECT MANAGEMENT AGREEMENT

between



as Owner

- and -

EASTON'S GROUP OF HOTELS INC.

as Manager

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HOTEL PROJECT MANAGEMENT AGREEMENT

THIS AGREEMENT is made as of the 27th day of July, 2007.

B E T W E E N:



(the “Owner”)

- and -

EASTON'S GROUP OF HOTELS INC., a corporation
incorporated under the laws of the Province of Ontario,

(the “Manager”)

RECITALS:

WHEREAS the Owner  and intends to construct the Hotel on the Project Lands;

AND WHEREAS the Owner has agreed to engage the Manager to manage the development and construction of the Hotel in accordance with the terms and conditions of this Agreement;

NOW THEREFORE in consideration of the mutual covenants, agreements and conditions herein contained, the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

All capitalized terms used in this Agreement shall have the following meanings:

“**Affiliate**” means with respect to the Manager, any corporation, trust, limited or general partnership of which Steve Gupta directly or indirectly owns or controls at least 51% of the voting securities or partnership interests or otherwise has the right to direct the business and affairs of such entity.

“**Agreement**” means this Agreement entitled “Hotel Project Management Agreement” and all schedules attached hereto as amended from time to time;

“**approved by the Owner**” or “**approval of the Owner**” means approval in writing by an authorized representative of the Owner;

“**Article**”, “**Section**”, “**Schedule**”, and “**Paragraph**” means and refers to the specified Article, Section, Schedule or Paragraph of this Agreement;

“**Budget**” means the budget described in Section 4.3 which shall be refined and updated by the Manager from time to time subject to the approval of the Owner, the initial Budget being attached hereto as Schedule “A”;

“**Business Day**” means a day that is not a Saturday, Sunday or statutory holiday in the Province of Ontario;

“**Construction Manager**” means a construction manager to be retained by the Owner under the direction and recommendation and supervision of the Manager;

“**Contractors**” means such contractors, subcontractors and labourers as shall be retained by the Owner on the recommendation of the Manager and the Construction Manager or labourers retained by the Manager for construction of the Improvements;

“**Development Fee**” means the fee payable by the Owner to the Manager in accordance with Section 5.1;

“**Development Fee Costs**” means the costs and expenses incurred by the Owner in connection with the development and construction of the Project and in accordance with the Budget, which costs and expenses shall be used for the purpose of calculating the Development Fee which shall consist of the following:

- (a) the cost of all contracts entered into with Contractors; and
- (b) all fees and disbursements paid to planners and consultants engaged by the Owner for the Project.

Development Fee Costs shall not include the following amounts:

- (c) depreciation;
- (d) fees paid to the Hotel Manager;
- (e) interest costs for financing of the Project;
- (f) development charges, imposts and levies and all permit fees;
- (g) costs of liability, builders’ risk, professional errors and omissions and other insurance premiums for the Project;
- (h) costs of utilities supplied to the Project Lands during construction of the Improvements;
- (i) general head office overhead and general administrative expenses incurred by the Manager in fulfilling its obligations under this Agreement; and
- (j) the acquisition cost of the Project Lands, including rent.

“**FF&E**” means furniture, fixtures and equipment required for the operation of the Hotel;

“FF&E Procurement Fee” means the Manager’s compensation for procurement of FF&E as described in Section 5.2 hereof;

“Force Majeure” means any cause beyond the reasonable control of a party (excluding financial inability) which prevents the performance by such party of any obligations hereunder which is not caused by its default or act of commission or omission and is not avoidable by the exercise of reasonable effort or foresight by such party, including, without limitation, strikes or other labour or industrial disturbances, civil disturbance, acts, orders, legislation, regulations or directives of any governmental or other public authorities, act of a public enemy, war, riot, sabotage, blockade, embargo, shortage of materials and supplies, shortage of labour, lightning, earthquake, fire, storm, hurricane, flood and explosion;

“Hotel” means a  room hotel;

“Hotel Manager” means Easton’s Group of Hotels Inc.;

“Improvements” means the improvements to be constructed on the Project Lands consisting of the Hotel and related improvements described in Schedule “D” and all services required for the operation of the Hotel and related improvements;

“Person” means a natural person, firm, trust, partnership, association, corporation, government or governmental board, agency or instrumentality;

“Project” means the Project Lands, the Improvements and all other property, whether real or personal, now or hereafter acquired in connection with the Project;

“Project Approvals” has the meaning set out in Section 3.2;

“Project Completion” means total completion of the construction of the Improvements, procurement of the FF&E and the opening of the Hotel for business;

“Project Costs” means the total costs associated with the development, construction and ownership of the Project;

“Project Lands” means the property legally described in Schedule “B” attached hereto;

“Project Schedule” means the document showing the sequence of the basic activities and decisions required for the implementation of the Project from inception to completion, which document is to be prepared by the Manager and regularly refined, updated and approved by the Owner, the initial draft of which is annexed hereto as Schedule “C”;

“Services” has the meaning set out in Section 3.1.

1.2 Schedules

The following schedules are incorporated into and form part of this Agreement:

Schedule “A”: Budget
Schedule “B”: Legal Description of Project Lands

Schedule "C":	Project Schedule
Schedule "D":	Description of Improvements
Schedule "E":	Manager Personnel Rates

1.3 Gender and Number

Words importing the singular include the plural and vice versa, and words importing gender include all genders.

1.4 Captions

The captions contained in this Agreement are for convenience of reference only and in no way define, limit or describe the scope, construction, interpretation or intent of this Agreement or in any way affect this Agreement.

1.5 Table of Contents

The table of contents preceding this Agreement is for purposes of convenience and reference only and is not to be deemed or construed in any way a part of this Agreement, nor as supplemental thereto or amendatory thereof.

1.6 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties hereto agree to attorn to the courts of the Province of Ontario for all matters relating to enforcement of this Agreement.

1.7 Invalidity of Provisions

If any covenant, obligation or agreement of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation or agreement of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

1.8 Entire Agreement

This Agreement and any agreements herein contemplated to be entered into between, by or with the parties hereto, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties hereto and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

1.9 Currency

All amounts stated herein are in Canadian currency.

ARTICLE 2 APPOINTMENT

2.1 Representation and Warranty

The Manager represents and warrants to the Owner that (i) it has the necessary planning, construction and development management expertise to co-ordinate the design, management and completion of the Project; (ii) it has and shall continue to have the facilities, personnel and expertise to provide to the Owner the services herein set forth in a competent and efficient manner; and (iii) it shall perform the services provided herein using the degree of reasonable care and skill appropriate for a project of this nature and consistent with standards of the industry.

2.2 Appointment of Manager

Relying on the foregoing representation and warranty, the Owner hereby appoints and retains the Manager as development manager of the Project to perform the services set out in this Agreement. The Manager agrees to perform its obligations under this Agreement with the due diligence and care of a professional development manager, and with the necessary design, construction, cost control and management expertise and experience on projects of similar magnitude and complexity and as would a prudent owner, all in accordance with the terms of this Agreement and any lines of authority developed by the Owner. The Owner acknowledges and agrees that, without in any way diminishing the responsibilities of the Manager hereunder, any of the duties to be carried out by the Manager under this Agreement may be carried out by any person engaged by the Manager as the Manager reasonably considers appropriate, with the Owner's approval.

The Owner's primary contact at the Manager will be Steve Gupta who will retain overall responsibility for implementing the terms of this Agreement.

2.3 Exclusivity

The Owner confirms that the appointment of the Manager hereunder is exclusive and no other person or persons shall be appointed to perform such function except in accordance with the provisions of this Agreement.

2.4 Owner's Representative

The Owner shall designate a primary contact who will be responsible to advise and direct the Manager and execute agreements on behalf of the Owner negotiated by the Manager in accordance with the terms of this Agreement. Initially, the Manager's primary contact at the Owner will be  or such other person as the Owner may designate in writing from time to time.

**ARTICLE 3
DUTIES OF THE MANAGER**

3.1 Scope of Services

Subject at all times to the overall control and direction of the Owner, upon and subject to the terms contained in this Agreement the Manager shall carry out all necessary services for and on behalf of the Owner to arrange for, coordinate and expedite, planning and design, the obtaining of all necessary governmental approvals and permits, and the management, administration and the construction of, the Project in accordance with the Project Schedule and the Budget through to Project Completion, including, without limitation, those services set out in this Article 3 (hereinafter, collectively referred to as the "Services").

3.2 Duties Relating to Project Approvals

Without limiting the generality of, and subject to, Section 3.1, the Manager covenants and agrees to obtain, or arrange the obtaining of, all necessary governmental or statutory permits, licences, authorisations, approvals and consents as are necessary from all other applicable government authorities to permit the development of the Project Lands and construction of the Improvements including, without limitation, (i) zoning approval and permission of the Project Lands; (ii) any necessary environmental approvals (iii) site plan approval; and (iv) all excavation and building permits and related approvals for the development and construction of the Project on the Project Lands (the "Project Approvals").

3.3 Duties Relating to Planning and Design

Without limiting the generality of, and subject to, Section 3.1 hereof, the Manager covenants and agrees to supervise the completion of all matters relating to the planning and design of the Project and, in such regard the Manager covenants and agrees to perform the following Services:

- (a) prepare a list of prospective consultants, make recommendations and, upon approval by the Owner, retain and direct appropriate consultants for all areas of professional service necessary to complete the Project in accordance with the Schedule and the Budget, including planning and design professionals for the Project. Within the defined parameters of the Budget, the Owner will provide some latitude for the Manager to determine which consultants to retain and on what terms, so as to optimise the Project and to achieve the most timely and effective results;
- (b) direct and manage all consultants to ensure timely and cost effective preparation of design concept drawings, drawings and other materials required for Project Approvals;
- (c) arrange for architects, engineers and other consultants to prepare all necessary working drawings and construction specifications for the Project; and
- (d) with the assistance of such consultants, apply for and obtain Project Approvals.

3.4 Duties Relating to Construction

The Owner shall retain the Construction Manager on terms approved by the Owner to manage day to day construction of the Project with the Owner entering into direct contracts with the Contractors for each component of the Project work. The Construction Manager shall maintain a site office, enforce all contracts with the Contractors and provide Project accounting. The Manager shall perform the following Services:

- (a) subject to the approval of the Owner, prepare and implement contract award procedures; settle the terms and conditions of all contracts; direct and manage the contracting process for the Project with the advice of the Construction Manager; review all bids and/or proposals and make recommendations to the Owner with respect to acceptance of bids or proposals;
- (b) arrange for the provision of utilities and other services to the Project;
- (c) if requested by the Owner and subject to the approval of the Owner, negotiate and settle the terms of the construction contracts with the Contractors;
- (d) negotiate and complete the purchase contracts for acquisition and installation of FF&E for the Project;
- (e) administer and supervise contracts with all Contractors, including, without limitation:
 - (i) subject to the approval of the Owner, prepare, negotiate and issue all change orders and change directives;
 - (ii) advise the Owner in respect of any contract disputes which may arise and act on behalf of the Owner with respect thereto;
 - (iii) monitor performance of construction in accordance with the Project Schedule and advise the Owner with respect thereto;
 - (iv) ensure that the Construction Manager arranges for the identification and correction of all construction defects, deficiencies and punch-list items;
 - (v) ensure that the Construction Manager arranges for certification of all progress and final payments; and
 - (vi) ensure that the Construction Manager arranges for certification of Project Completion.
- (f) upon the direction of the Owner and at the sole cost and expense of the Owner, cause any and all construction liens for labour, services or materials in respect of the Project or any part thereof, as the case may be, which may be registered against or otherwise affect the Project Lands, to be discharged or vacated from the title to the Project Lands, as the Manager may advise and as the Owner shall decide, including, without limitation, either by payment directly to the claimant or by filing with or payment into the court of competent jurisdiction of a lien bond, letter of credit or any

amount sufficient to obtain an order from such Court vacating the construction lien from title to the Project Lands;

- (g) within 30 days after the date of Project Completion, deliver to the Owner:
 - (i) a certificate of the Project architect stating that Project Completion has been achieved and stating the date thereof; and
 - (ii) a certificate of the Project quantity surveyor stating that all Project Costs to that date incurred in connection with the construction and development of the Project have been paid or provision for payment thereof has been made.

Subject to *Force Majeure*, the Manager shall commence construction of the Project by [REDACTED], and complete construction of the Project fit for occupancy by [REDACTED].

3.5 Administrative Duties

Without limiting the generality of, and subject to, Section 3.1 hereof, in connection with its duties under this Agreement, the Manager shall carry out all necessary administrative duties, including, without limitation, the following Services:

- (a) negotiate the terms of all construction loans and all documentation required in connection therewith and implement and process all requests for advances of funds thereunder;
- (b) prepare for the approval of the Owner, the Budget and the Project Schedule and revise the same from time to time during the course of completion of the Project;
- (c) establish and implement Project cost control and accounting procedures, including all bookkeeping functions, checking invoices for payment, bank reconciliations and cash flow control in accordance with generally accepted accounting principles consistently applied;
- (d) arrange for a review engagement or other independent review of the books and records maintained on behalf of the Owner in connection with the Project, annually or more frequently as the Owner may require at the Owner's expense; and assist in the conduct of any spot or internal audit or review that the Owner requests to be performed from time to time;
- (e) handle all banking necessary for the due performance of the Owner's accounting and administrative functions under this Agreement and for the receipt and disbursement of all monies of the Owner pertaining to the operations of the Project required to be attended to by the Manager under this Agreement;
- (f) submit monthly written reports to the Owner on the status of the Project, expenditures against the Budget, estimated costs to complete, progress against the Project Schedule and any amendments to the Budget or the Project Schedule, if required;

- (g) arrange for the provision of estimating and cost accounting in a form satisfactory to the Project lenders and provide reports to the Project lenders, as required, on a timely basis to ensure regular advances of funds under Project loans;
- (h) provide reasonable prior notice of and keep the Owner fully informed of significant upcoming meetings to be held by the Manager with consultants, Contractors, municipal officials and others connected with the Project, with a representative of the Owner having the right to attend all such meetings at its option; providing the Owner with minutes of such meetings not more than five (5) business days after such meeting; alert the Owner to possible problems with the Project;
- (i) provide clerical and administrative services as are reasonably required to carry out its duties; and
- (j) advise on insurance coverage and surety bond requirements, including negotiation and obtaining on behalf of the Owner of such policies of insurance as the Owner considers necessary or desirable on the advice of the Manager to protect the Owner and the Project from liability, damage or loss resulting from the development and construction of the Project, including builder's risk insurance, liability insurance and professional's errors and omissions liability insurance; and

3.6 Hotel Franchise Agreement

Upon the approval and direction of the Owner, the Manager shall negotiate and settle the terms of a franchise agreement entitling the Hotel to the benefit of the franchise services of a major hotel company as selected by the Owner.

ARTICLE 4 RECORDS, BUDGETS AND ACCOUNTS

4.1 Records

The Manager shall keep full and adequate books of account and other records reflecting all financial transactions relating to the Project in accordance with generally accepted accounting principles consistently applied and in sufficient detail to facilitate adequate review thereof. The Manager, at any and all times during normal business hours, shall permit the Owner to examine all books of account, records, reports and other documents of the Manager relating to the services performed by the Manager under this Agreement and to make copies thereof and to make extracts therefrom at the expense of the Owner.

4.2 Furnish Information

The Manager shall make available to the Owner, to the Owner's auditors and to any appraiser of the Project such information and material as and when the same may be reasonably requested and otherwise give such cooperation as may be necessary for such auditors and appraisers to carry out their duties on behalf of the Owner or any partner of the Owner.

4.3 Budget and Project Schedule

- (a) The parties acknowledge that the initial draft Budget for the Project is annexed hereto as Schedule "A". The Manager shall regularly review and update the Budget and submit all proposed revisions to the Owner for its approval. The Budget and all revisions thereto shall contain the Manager's best professional estimate of all of the hard and soft costs necessary to achieve Project Completion, including an estimate of Development Fee Costs and the Development Fee payable in connection therewith.
- (b) Following completion of final contract documents for the Project, the Manager shall prepare a final version of the Budget and shall submit same to the Owner for approval.
- (c) The parties acknowledge that the initial draft Schedule for the Project is annexed hereto as Schedule "C". The Manager shall regularly revise and update the Schedule and submit all proposed revisions to the Owner for its approval. The Project Schedule shall contain the Manager's best professional estimate of all of the time frames, implementation dates and major Project milestones required to achieve Project Completion. The Manager shall update the Project Schedule at regular intervals throughout the completion of the Project not more frequently than monthly.
- (d) Following receipt of the draft or final Budget, the Owner will review and provide its approval or comments as soon as possible. In the event that the Owner objects to or questions any budgeted amount it shall inform the Manager and the parties shall use commercially reasonable efforts to resolve any differences of opinion.
- (e) The preparation and submission of the Budget and the Project Schedule and any other schedule, budget or report prepared and submitted by the Manager shall not be construed as a guarantee by the Manager of the final, actual cost of the work and services required to be performed or obtained in connection with the completion of the Project or any part thereof. The Owner acknowledges that, notwithstanding the experience and expertise of the Manager, the projections contained in the Budget are subject to and may be affected by changes in financial, economic and other conditions and circumstances beyond the Manager's control. Without limiting the generality of the foregoing, the Manager shall not be liable for any expenditures approved in accordance with this Agreement.

4.4 Accounting

The Manager covenants and agrees to prepare and submit to the Owner monthly internal financial statements reporting Project Costs incurred on a cumulative basis, together with a comparison of Project Costs incurred to the Budget.

4.5 Payment of Project Invoices

The Owner shall advance or arrange for the advancement by the Owner's lender of all funds to the Manager which are properly payable to the Construction Manager, the Contractors and the Manager shall maintain a separate Project account from which it will make all payments to the Contractors on behalf of the Owner from such funds advanced to it by the Owner. Such Project account shall constitute trust funds held by the Manager for the Owner and shall not be co-mingled with any other funds over which the Manager has control.

The Owner shall be responsible for the payment of all Project Costs incurred in connection with the completion of the Project and pursuant to the Budget previously approved by the Owner. The Owner will make available to the Manager on a timely basis all funds necessary to meet the Owner's obligations with respect to the Project Costs. The Manager's obligations to perform its services under this Agreement are specifically subject to the obligation of the Owner to provide the Manager with adequate funds to enable it to complete such services and pay such Project Costs.

ARTICLE 5 FEES AND EXPENSES

5.1 Development Fee

The Owner shall pay to the Manager a fee (the "Development Fee") equal to four per cent (4%) of the Development Fee Costs.

5.2 FF&E Procurement Fee

The Manager's compensation for the services described in Section 3.4(c) relating to the procurement and installation of FF&E shall be ~~4~~ per cent (~~4~~%) of the cost of the FF&E (the "FF&E Procurement Fee").

5.3 Financing Fee

In the event that the Manager, at the Owner's request, arranges financing for the Project without the involvement or retention of a broker to which fees are paid by the Owner, the Developer shall be entitled to an additional fee of one-quarter of one percent (1/4%) of the principal amount of the financing so arranged (the "Financing Fee").

5.4 Disbursements

In addition to the Development Fee and FF&E Procurement Fee, the Manager shall be reimbursed for its reasonable disbursements for photocopying expenses, telecopier expenses, courier expenses, travel and accommodation expenses as necessary to perform the Services provided for under this Agreement, provided such disbursements are in accordance with the Budget. The Manager shall in addition be reimbursed for its use of personnel at the rates outlined in Schedule "E".

5.5 Payment Schedule for Fees

The Development Fee and the FF&E Procurement Fee shall be earned by the Developer and payable by the Owner to the Developer monthly in the proportion that the Development Fee Costs and the FF&E costs incurred in such month bear to the total costs allocated to such items under the Project Budget. The Financing Fee shall be deemed to be earned and shall be payable under the first advance of funds under such financing.

5.6 Goods and Services Tax

The Owner shall pay to the Manager all applicable good and services taxes exigible on the Development Fee, FF&E Procurement Fee and Financing Fee, including all disbursements to be paid by the Owner pursuant to Section 5.4.

ARTICLE 6 RELATIONSHIP OF THE PARTIES

6.1 Independent Contractor

Nothing contained in this Agreement shall be construed so as to constitute the Manager a partner or a joint venturer of the Owner. The duties and services to be performed, obligations assumed and expenses incurred by the Manager as development manager of the Project under this Agreement shall be performed, assumed and incurred by it as an independent contractor and limited agent of the Owner in accordance with the terms of this Agreement.

6.2 Authority of Manager

The Manager shall have the authority as limited agent on behalf of the Owner to make day-to-day decisions with respect to matters within the scope of the Manager's duties and obligations provided the cost of any such obligations is within the scope of the Budget. Without limiting the generality of the foregoing, the Manager shall have the authority to make day-to-day decisions respecting coordination and administration of design and construction issues.

6.3 Lines of Authority

The Owner may from time to time develop lines of authority which provide the Manager with greater authority in providing the services than is otherwise provided in this Agreement. Such lines of authority shall be set out in writing to the Manager.

6.4 Contractual Obligations

The parties hereto acknowledge and agree that except as otherwise may be expressly provided in the Agreement, it is understood and agreed that the Manager has no authority to bind the Owner to any contractual obligations to a third party, all of which shall be signed by the Owner through its authorized representative.

6.5 Specific Approvals

Except as otherwise set out in this Agreement, the following actions to be taken by the Manager shall require the prior written approval by the Owner:

- (a) any matter specifically requiring approval by the Owner pursuant to this Agreement, including without limitation, the Budget, and any material modification thereof and material modifications to the Schedule;
- (b) any action to institute, prosecute and defend legal actions affecting the Project including taking appropriate action to deal with liens encumbering the Project Lands;
- (c) all matters involving governmental and quasi-governmental legal actions relating to the Project including, without limitation, appeals of property tax assessments, real property taxes, other taxes and other significant governmental matters affecting the Project;
- (d) any and all policies of insurance respecting casualty, liability or other insurance coverage or significant amendments or significant changes to that coverage;
- (e) entering into any contracts for the Project which are binding upon the Owner or which will be the financial responsibility of the Owner;
- (f) settling any claim in respect of the Project where the amount involved is greater than \$10,000.00 (except where the same was specifically authorized in the Budget);
- (g) the initial and final design, and any significant change to the design of the Project;
- (h) change orders to the scope, specifications or design of the Project resulting in a change in the cost of construction of the Project in excess of \$25,000; and
- (i) any other matter material to the cost, Schedule or quality of the Project.

The Owner shall promptly respond to any request by the Manager for approval for any matter requiring approval of the Owner under this Agreement. All such requests for approval shall be in writing and submitted to the Owner's designated representative with all appropriate back-up. The approval of the Owner shall be deemed to have been given if no response is received by the Manager from the Owner within the following time periods:

- (j) a request for approval of a change order - seven (7) Business Days; and
- (k) a request for approval of the Owner of any other matter requiring the Owner's approval hereunder - seven (7) Business Days.

**ARTICLE 7
TERM, DEFAULT AND TERMINATION**

7.1 Term

The Manager's appointment under this Agreement shall commence upon the date of this Agreement and shall continue until the later of Project Completion or total completion of the Services and other duties of the Project as described in this Agreement, unless terminated earlier in accordance with the provisions of this Article.

7.2 Owner's Right to Terminate for Cause

The Owner may, at its election, terminate this Agreement or terminate the Manager's right to continue to perform the Services if and whenever:

- (a) the Manager defaults in the performance of any of its covenants, obligations or agreements herein contained and such default continues for a period of thirty (30) days after written notice from the Owner specifying the nature of such default has been given to the Manager or, if the Manager has disputed such default and referred the matter to arbitration pursuant to Article 8 hereof, the arbitrator so appointed has determined that the Manager is in default in such performance;
- (b) the Manager makes an assignment for the benefit of its creditors or makes a proposal or takes the benefit of any legislation in force for bankrupt or insolvent debtors or has a receiving order made against it or has a receiver appointed for all or substantially all of its business or assets or has any action taken with a view to the winding up or dissolution or liquidation of its corporate existence; or
- (c) a court having jurisdiction in the premises shall have entered a decree or order adjudging the Manager a bankrupt or an insolvent, or approving as properly filed a petition seeking reorganisation, readjustment, arrangement, composition or similar relief for the Manager under any bankruptcy law, or any other similar applicable law, and such decree or order shall have continued undischarged or uncontested for a period of thirty (30) days, or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of the Manager or for the winding-up or liquidation of its affairs, shall have been entered and such decree or order shall have remained in force undischarged or uncontested for a period of thirty (30) days or more.

7.3 Manager's Right to Terminate for Cause

The Manager may, at its election, terminate this Agreement if and whenever:

- (a) the Owner fails to pay to the Manager when due the amounts required to be paid to the Manager under the terms of this Agreement and such default continues for a period of ten (10) days after written notice from the Manager specifying such default has been given to the Owner;

- (b) the Owner breaches any terms of this Agreement other than those referred to in subparagraph (a) above and such default continues for a period of thirty (30) days after written notice from the Manager specifying such default has been given to the Owner or, if the Owner has disputed such default and referred the matter to arbitration pursuant to Article 8 hereof, the arbitrator so appointed has determined that the Owner is in default;
- (c) the Owner makes an assignment for the benefit of its creditors or makes a proposal or takes the benefit of any legislation in force for bankrupt or insolvent debtors or has a receiving order made against it or has a receiver appointed for all or substantially all of its business or assets or has any action taken with a view to the winding up, dissolution or liquidation of its corporate existence; or
- (d) a court having jurisdiction in the premises shall have entered a decree or order adjudging the Owner a bankrupt or an insolvent, or approving as properly filed a petition seeking reorganisation, readjustment, arrangement, composition or similar relief for the Owner under any bankruptcy law, or any other similar applicable law, and such decree or order shall have continued undischarged or uncontested for a period of thirty (30) days, or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of the Owner or for the winding-up or liquidation of its affairs, shall have been entered and such decree or order shall have remained in force undischarged or uncontested for a period of thirty (30) days or more.

7.4 Termination Upon Change of Ownership

This Agreement shall terminate on the date that is thirty (30) days following the date that Easton's Co. or an affiliate of Easton's Co ceases to have an ownership interest (whether freehold or leasehold) in the Project Lands.

7.5 Duties Upon Termination

Upon termination of this Agreement under Section 7.3, the Owner shall pay to the Manager all fees and disbursements owing to the Manager to the date of termination. Upon termination of this Agreement for any reason, the Manager shall deliver to the Owner all reports, studies, documents, records, materials and supplies and all other property and information relating to the Project which is in the possession of the Manager and shall co-operate with any successor manager to ensure a smooth turnover of the Project to such successor manager.

ARTICLE 8 ARBITRATION

8.1 Arbitration

- (a) All disputes between the parties to this Agreement pursuant to Sections 7.2 or 7.3 shall be submitted to arbitration in accordance with the provisions of this Section and the parties waive their right to seek redress through the courts in connection with any such disputes.

- (b) In the event of any arbitration proceedings taking place as specifically contemplated in this Agreement:
- (i) The arbitration shall be carried out by  or, failing his availability, .
 - (ii) A party (the "Initiating Party") wishing to have arbitration of an issue pursuant to this Section 8.1 shall give written notice to the other (the "Responding Party") specifying particulars of the matter or matters in dispute and shall send the Responding Party and the arbitrator a statement of claim (the "Statement of Claim") setting out in sufficient detail the facts and any contentions of law upon which it relies and the relief that it claims;
 - (iii) Within ten (10) days of the receipt of the Statement of Claim the Responding Party shall send the Initiating Party and the arbitrator a statement of defence (the "Statement of Defence") stating in sufficient detail which of the facts and contentions of law in the Statement of Claim it admits or denies, on what grounds, and on what other facts and contentions of law it relies;
 - (iv) Within ten (10) days of receipt of the Statement of Defence, the Initiating Party may send to the Responding Party and the arbitrator a statement of reply (the "Statement of Reply");
 - (v) The arbitrator shall, after submission of the Statement of Claim, the Statement of Defence, the Statement of Reply, or failing submission of same, after the time period within which the last of such statements may be submitted, shall thereupon proceed to hear the submissions of the parties and may at any time fix the date, time and place of meetings and hearings in the arbitration and shall give all parties adequate notice of these, provided that the first meeting or hearing shall be held no later than ten (10) days after all statements have been submitted or the time period within which the same may be submitted, and subsequent meetings or hearings shall be held on successive Business Days until concluded. Any party may be represented at any meetings or hearings by legal counsel, by consultants or other advisers. The arbitrator may seek advice of counsel from its own separate counsel, consultants or advisers. The arbitrator shall have authority and jurisdiction to receive and take into account such written or oral evidence as it may determine to be relevant, whether or not strictly admissible at law.
- (c) All Statements of Claim, Statements of Defence and Statements of Reply shall be accompanied by copies (or, if they are especially voluminous), lists of all essential documents upon which the party concerned relies.
- (d) Meetings and hearings of the arbitration shall take place in the City of Toronto, or such other place as the party may agree upon in writing. All meetings and hearings will be in private unless the parties otherwise agree.
- (e) The arbitrator will make his decision in writing and will set forth his or her reasons in the decision. The decision shall be sent to the parties as soon as practical after

conclusion of the final hearing. The decision shall be final and binding on the parties and shall not be subject to any appeal or review procedure provided that the arbitrator has followed the rules provided herein, in good faith. If the arbitrator fails to award costs, each party shall bear its own costs and one-half of the costs of the arbitration.

- (f) By submitting to arbitration under the foregoing rules, the parties shall be taken to have conferred on the arbitrator the following jurisdiction and powers, to be exercised by him so far as the relevant law allows, and in his absolute and unfettered discretion, if he shall judge it to be expedient for the purpose of ensuring the just, expeditious, economical and final determination of the dispute referred to him. The arbitrator shall have jurisdiction to:
- (i) determine any question as to his own jurisdiction;
 - (ii) order any party to furnish such further details of the party's case in fact or in law, as he may require;
 - (iii) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these rules or with his orders or directions or to attend any meeting or hearing but only after giving that party written notice that he intends to do so;
 - (iv) order the parties to produce to him and to each other for inspection and supply copies of any documents or classes of documents in their possession or power which he determines to be relevant;
 - (v) award costs to any party, including determination of payment for the costs of arbitration; and
 - (vi) in the case of frivolous or vexatious applications for arbitration where a party has not proceeded in good faith, award costs on a substantial indemnity basis and damages compensating a party for its employees' time and fees and disbursements paid to consultants and advisers retained by such party.

In addition, the arbitrator shall have such further jurisdiction and powers as may be granted to him or her by the laws of the Province of Ontario, the provisions of this Agreement or the submission for reference to arbitration.

- (g) Notwithstanding the intention of the parties that the arbitrator shall be able to act free of court proceedings, the parties consent to the decision of the arbitrator being entered in any court having jurisdiction for the purposes of enforcement. In addition, any party may apply to an appropriate court for such relief and it is expressly agreed that the making of any such application or the grant of such relief by a court shall not be deemed to be in derogation of the intention of the parties that the dispute be subject to the final and binding arbitration set forth herein.

**ARTICLE 9
NOTICE**

9.1 Notice to Owner

Any notice, report, direction, request or other document required or permitted to be given to the Owner hereunder shall be in writing and shall be given to the Owner by personal service or telecopier transmission to be addressed to the Owner at the following addresses:



Attention:
Facsimile:



Attention:
Facsimile:



with a copy to:



Attention:
Facsimile:



9.2 Notice to Manager

Any notice, report, direction, request or other document required or permitted to be given to the Manager hereunder shall be in writing and shall be given by personal service or telecopier transmission to be addressed to the Manager at the following address:

Easton's Group of Hotels Inc.
Suite 601, Gateway Centre
3100 Steeles Avenue East
Markham, Ontario
L3R 8T3

Attention: Steve Gupta, President & CEO

Facsimile: 905-940-9412

9.3 Receipt of Notice

Any notice, report, direction, request or other document delivered personally or by telecopier in accordance with Sections 9.1 or 9.2 shall be deemed to have been received by and given to the addressee on the day of delivery or transmission.

ARTICLE 10 ASSIGNMENT

10.1 Restriction on Assignment by Manager

This Agreement shall not be assignable by the Manager and the Manager shall not delegate or subcontract the performance of the Services or any of its obligations, responsibilities and rights hereunder, save and except to the Construction Manager as contemplated herein, without the prior written consent of the Owner. The Owner may assign this Agreement without the consent of the Manager.

ARTICLE 11 GENERAL CONTRACT PROVISIONS

11.1 Indemnity by Manager

The Manager shall indemnify and save the Owner completely harmless in respect of any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever at law or in equity arising by way of any breach during the term of this Agreement by the Manager, its employees, servants, agents, subcontractors or persons for whom it is responsible in law of any of the provisions of this Agreement or by reason of any action taken by the Manager outside the scope of its authority set forth in this Agreement or by reason of any negligence or wrongful or unlawful act or omission of the Manager, its officers, directors, employees, servants, agents, subcontractors or persons for whom it is in law responsible, but the indemnity provided herein shall not extend to any wrongful or unlawful act or omission or negligence of the Owner or any of its officers, directors, employees, servants, agents or persons for whom it is in law responsible, nor shall it extend to any debt, cost, expense, claim or demand to the extent that insurance proceeds have been recovered by the Owner. This indemnity shall survive any termination of this Agreement.

11.2 Indemnity by Owner

The Owner shall indemnify and save the Manager completely harmless from any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever at law or in equity in connection with the performance by the Manager of any and all of its obligations under this Agreement or any part or parts hereof, including, without limitation, any damage or injury whatsoever to any employee or other person or property arising out of the use, administration or control of the Project or other assets of the Owner during the term of this Agreement, but the indemnity provided herein shall not extend to any wrongful or unlawful act or omission or negligence of, or breach of, this Agreement by the Manager or any of its officers, directors, employees, servants, agents, subcontractors or persons for whom it is in law responsible and shall not extend to any action taken by the Manager outside the scope of its authority set forth in this Agreement or any debt, cost, expense, claims or demand to the extent that insurance proceeds have been recovered by the Manager. This indemnity shall survive any termination of this Agreement.

11.3 Rights and Remedies

The expiration or termination of this Agreement for any reason shall be without prejudice to the rights or remedies of either party hereto against the other party hereto and shall not relieve either party hereto of any of its obligations hereunder which accrued prior to the expiration or termination of this Agreement.

11.4 Waiver

No waiver or termination of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any such waiver constitute a continuing waiver. Failure on the part of a party to complain of any act or failure to act of another party or to declare another party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned party of its rights hereunder.

11.5 Force Majeure

In the event the Manager or the Owner is prevented from performance of its obligations under this Agreement on a given date by an event of *Force Majeure*, the date for performance shall be delayed by a reasonable period of time as the Owner and the Manager may agree. The party affected by the event of *Force Majeure* will notify the other party as soon as practicable, but in no event later than five (5) Business Days, after becoming aware of an event of *Force Majeure* and will, from time to time, notify the other party of the expected duration of the period during which a *Force Majeure* event shall continue.

11.6 Accounting Principles

All calculations made or referred to herein shall be made in accordance with generally accepted accounting principles as consistently applied in the real estate development or construction industry in Canada, except where otherwise expressly provided herein.

11.7 Amendment

This Agreement shall be amended only by an instrument in writing executed by each of the parties hereto.

11.8 Confidentiality

The parties agree that they shall not divulge, or permit their employees to divulge, any information communicated to or acquired by them in the course of carrying out the terms of this Agreement without the prior written approval of the other party, except as required to carry out its duties under such agreements. This covenant shall survive the termination or discharge of this Agreement for a period of five years.

11.9 Further Assurances

Each party will execute and deliver as promptly as possible any assurances or other instruments as may be reasonably required to accomplish the purpose and intent of this Agreement.

11.10 Personal Taxes

The parties hereto shall be solely responsible for any and all taxes personal to them including, without limitation, all income and property taxes.

11.11 Time of the Essence

Time shall be of the essence of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.



By: _____
Name:
Title:

I have authority to bind the Corporation

EASTON'S GROUP OF HOTELS INC.

By: _____
Name: Steve Gupta
Title: President

I have authority to bind the Corporation

**SCHEDULE A
BUDGET**

**SCHEDULE B
PROJECT LANDS**

**SCHEDULE C
PROJECT SCHEDULE**

**SCHEDULE D
DESCRIPTION OF IMPROVEMENTS**

The hotel will comprise approximately guest suites providing the usual and customary amenities as directed by the franchisor. The number of suites will ultimately be determined from the results of the feasibility study. The hotel will be built furnished and outfitted to or above the usual and customary standards of the franchisor. The hotel will be a limited service property of quality equal to a Hilton Garden Inn or Marriott Springhill Suites standard.

**SCHEDULE E
MANAGER PERSONNEL RATES**

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