

“Accounts” means the set of accounts in respect of the operation of the Hotel to be prepared and submitted by the OPERATOR to OWNER in accordance with the provisions of Clause 10, consisting of:-

- (a) the Balance Sheet;
- (b) the Profit and Loss Statement; and
- (c) the Cash Flow Statements;

showing the results of the operation of the Hotel for the preceding financial year, and in particular, the computation of the Gross Operating Profit for such period.

“Agreement” means this agreement and attached Schedules and Annexures.

“Amenity Areas” means the passageways, pavements, common parts, halls, landings, staircase, roofs, walls, balconies, gardens, swimming pool, gymnasium, garage, parking areas, storage and refuse disposal areas and other areas in the Hotel, other than guests rooms and commercial space hired or let out to third parties.

“Annual Budget” A draft annual budget or revised draft annual budget which is deemed approved under clause 11.2(c) or otherwise agreed in writing by the parties for the current Financial Year.

- “Bank Account”** All sums received from the operation of the Hotel will be paid into, and all sums paid by the OPERATOR by virtue of OPERATOR's operation of the Hotel will be paid out of the Bank Account.
- “Base Management Fee”** means the fee calculated in the manner specified in ***Schedule 2.***
- “Budget Review”** means a meeting hold by the parties to review and discuss the draft Annual Budget.
- “Brand”** means [brand name provided by operator according to star rating]
- “Capital Replacements”** means the furniture, fittings, equipment and other ordinary capital improvements and replacement items which is capital in nature and as may be agreed in the relevant Annual Budget and expenditure otherwise required in the OPERATOR's reasonable judgement to operate the Hotel in accordance with the requirements of this Agreement to ensure that the Hotel is regularly renovated and modernised and complies with the Standard and requirements of the relevant authorities
- “Central Reservation Office”** means the office located at ### providing reservation services which are provided in Clause 8.
- “Commencement Date”** means the date of operation of the Hotel by the OPERATOR which is expected to be on ### or such other later date as may be mutually agreed by way of exchange of letters duly signed by the authorised representatives of the parties

“Financial Year”

shall have the meaning assign thereto in Clause 9.

“Force Majeure Event”

means events beyond the reasonable control of a party and includes but is not limited to:-

- (a) an act of war, terrorist attack, threat of terrorist attack; or
- (b) health epidemic declared by the World Health Organisation occurring in or outside _____ which has a substantial impact on the tourist and hotel industry in the geographical market in which the Hotel operates;
- (c) strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, natural catastrophes, civil disturbance or other emergency.

“Furniture, Fixtures & Equipment”

means -

- (a) all furniture, fittings and furnishings for guest room modules, food and beverage facilities offices, public areas and staff facilities; and
- (b) hotel equipment, including all equipment required for the operation of the guest rooms, function rooms, restaurants, kitchens, bars, laundries and dry cleaning facilities, office equipment including computers, material handling equipment, cleaning and engineering equipment and vehicles but excluding Operating Equipment.

“GAAP”	means generally accepted accounting principles.
“Gross Operating Profit”	means the amount, if any, by which the Gross Operating Revenues for any month exceed the Operating Costs for such month.
“Gross Operating Revenues”	means all revenues and income of any nature derived directly or indirectly from the business of the Hotel or from the use or operation thereof, including, but not limited to:- <ul style="list-style-type: none">(a) total room sales;(b) food and beverage sales;(c) laundry charges;(d) telephone and other communications revenues; and(e) proceeds of business interruption insurance.
“Gross Operating Margin”	$\text{Gross Operating Profit} / \text{Gross Operating Revenue} \times 100\% = \text{Gross Operating Margin.}$
“Guests”	means any guest of the Hotel.
“Hotel”	means the “ ### ” operated as a hotel under the Brand located on the Land and all additions and alterations thereto and/or where the context so admits, the business or businesses incidental to the operation of a Hotel which are conducted or managed thereon by the OPERATOR on behalf of OWNER pursuant to this Agreement.

- “Incentive Management Fees”** Means the fee calculated in the manner specified in **Schedule 2**.
- “Initial Term”** means TEN (10) years effectively from the Commencement Date of the operation of the Hotel.
- “Land”** shall have the meaning assigned thereto in Recital C.
- “Marks”** means [###] and all related names, trademarks, service marks, copyrights and logos whether using part of or the whole name or logo.
- “Management Fees”** means collectively the Base Management Fee and the Incentive Management Fee.
- “Monthly Management Accounts”** means collectively:
- (a) a Balance Sheet;
 - (b) a Profit and Loss Statement showing the operating results of the Hotel during such immediately preceding calendar month and for the period commencing from the first day of that Financial Year and ending on the last day of such immediately preceding calendar month; and
 - (c) a cashflow statement for the immediately preceding calendar month.
- “Operating Costs”** means all costs reasonably incurred in managing the Hotel which are normally not treated as Ownership Costs under GAAP, and includes (without limiting the generality of the above):

- (a) the Management Fees and all reimbursable expenses due to the OPERATOR;
 - (b) the operating supplies and cost of wages, salaries, employee fringe benefits, compensation, advertising and promotional expenses, the cost of personnel training programmes, utility and energy costs, in-house marketing, operating licenses and permits, grounds and landscaping maintenance costs;
 - (c) all expenditure made for maintenance and repairs to keep the Hotel in good condition and repair (including costs in respect of the provision of technical services);
 - (d) insurance premiums for insurance coverage set out in the **Schedule 3A Section II** as being an Operating Cost and in **Schedule 3B**;
 - (e) all costs of any audits undertaken in relation to the Hotel, whether relating to financial matters or internal operating procedures and systems,
 - (f) rental of photocopy machines,
 - (g) cost of replacement of Operating Equipments,
- and do not include Ownership Costs.

“Operating Equipment”

means all small items required for the operation of the Hotel including but not limited to:-

- (a) linen, china, glassware, silverware and the like; and
- (b) tools, utensils, uniforms; but excluding any items of a capital nature

“Operating Manuals”

means a set of operating manuals for the Hotel proposed by the OPERATOR including but not limited to the Policies and Procedures and Recruitment Policy.

“Ownership Costs”

means:

- (a) depreciation of the Hotel, its furnishings, fixtures and equipment that are considered capital expenses;
- (b) costs or charges relating to loans, debts taken out by OWNER in respect of the Hotel as referred to in Clause 2.2;
- (c) property tax and other taxes and the assessment rates payable by OWNER in relation to the Hotel in accordance with the laws of _____;
- (d) expenditures for Capital Replacements;
- (e) legal and other professional or special fees relating to the ownership of the Hotel;
- (f) the insurance premiums set out in **Schedule 3A Section I** and specified as being an Ownership Cost;

- (g) any lease payments made by OWNER in relation to the Hotel;
- (h) any financing costs;
- (i) such additional costs or expenses which are normally not treated as Operating Costs under local accounting regulations.

“Plant”	means the generators, air conditioning systems, fire escape and fire extinguishers and any other plant and equipment installed in the Hotel.
“Policies and Procedures”	Means the policies and procedures on the utilisation and management of the Hotel in respect of all matters including but not limited to issuance of the Operational Manuals and Recruitment Policy.
“Recruitment Policy”	means the recruitment policy in respect of the employment of the personnel in the Hotel proposed by the OPERATOR.
“Related Corporations”	shall have the meaning assigned thereto in section 6 of the Companies Act 1965.
“Renewal Term”	means the renewal term of [###] years commencing from the expiry of the Initial Term.
“Standard”	means the standard of “a 5 star hotel” or equivalent or such standard as determined by the Ministry of Tourism to be complied with at all times by the OPERATOR for the Hotel throughout the Term.
“Term”	means the Initial Term, the Renewal Term and other subsequent extension periods of this Agreement.

“Unbudgeted Capital Replacements”

means the Capital Replacements not provided for in the Annual Budget.

1.2. In this Agreement, unless there is something in the subject or context inconsistent with such construction or unless it is otherwise expressly provided -

- (a) words denoting one gender include all other genders and words denoting the singular include the plural and vice versa;
- (a) words denoting persons include corporations, and vice versa and also include their respective heirs, personal representatives, successors in title or permitted assigns, as the case may be;
- (b) words and phrases, definitions of which are given in the Companies Act 1965 and the National Land Code, shall be construed as having the meaning thereby attributed to them, but excluding any statutory modification thereof not in force at the date of this Agreement;
- (c) where a word or phrase is given a defined meaning in this Agreement any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (d) where a word or phrase indicates an exception to any of the provisions of this Agreement, and a wider construction is possible, such word or phrase is not to be construed ejusdem generis with any foregoing words or phrases and where a word or phrase serves only to illustrate or emphasize any of the provisions of this Agreement such word or phrase is not to be construed, or to take effect, as limiting the generality of such provision;

- (e) any reference to a recital, sub-paragraph, paragraph, Sub-Clause, clause, schedule, annex or party is to the relevant recital, sub-paragraph, paragraph, Sub-Clause, clause, schedule, annex or party of, or to, this Agreement and any reference to this Agreement or any of the provisions hereof includes all amendments and modifications made to this Agreement from time to time in force;
- (f) any reference to a statutory provision includes any modification, consolidation or re-enactment thereof for the time being in force, and all statutory instruments or orders made pursuant thereto;
- (g) any reference to "pay", or cognate expressions, includes payments made in cash or by way of bank drafts (drawn on a bank licensed to carry on banking business under the provisions of the Banking and Financial Institutions Act 1989) or effected through inter-bank transfers to the account of the payee, giving the payee access to immediately available, freely transferable, cleared funds in the lawful currency of _____;
- (h) any reference to "writing", or cognate expressions, includes any communication effected by telex, cable, facsimile transmission or other comparable means;
- (i) any reference to a "business day" is to a day (not being a Saturday or Sunday) on which banks, licensed to carry on banking business under the provisions of the Banking and Financial Institutions Act 1989, are open for business in _____ and any reference to a "day", "week", "month" or "year" is to that day, week, month or year in accordance with the Gregorian calendar; and
- (j) if any period of time is specified from a given day, or the day of a given act or event, it is to be calculated exclusive of that day and if any period of time falls on a day, which is not a business day, then that period is to be deemed to only expire on the next business day.

1.3. The Recitals and Schedules of, and to, this Agreement shall have effect and be construed as an integral part of this Agreement.

- 1.4. The table of contents, headings and sub-headings in this Agreement are inserted merely for convenience of reference and shall be ignored in the interpretation and construction of any of the provision herein contained.

2. SCOPE OF AGREEMENT AND HOTEL

2.1 Purpose of Agreement

This Agreement defines the terms and conditions under which OPERATOR, on OWNER's behalf, will manage the Hotel.

2.2 OWNER's interest

Except as specifically provided in this Agreement OWNER shall during the Term provide OPEATOR with uninterrupted and unrestrained access to and control over the Hotel including all furnishings, fixtures, equipment, operating supplies and other property utilised in the operation of the Hotel.

2.3 OWNER's security arrangements over the Hotel

OWNER shall be entitled to enter into any mortgage, charge or lien in relation to the Hotel without need for any prior consent or consultation with OPERATOR, provided that OWNER shall ensure as part of the entry into any such arrangements, that OPERATOR's interest in terms of this Agreement is notified to the prospective charge holder, security taker or lien-holder, and that person acknowledges the arrangements set out in this Agreement.

3. TERM

3.1 Term

The OPERATOR shall operate and manage the Hotel from the Commencement Date and throughout the Term of this Agreement unless otherwise terminated by the parties in accordance with this Agreement.

3.2 Renewal Term

The Term shall renew for an additional period of [5+5] **years** (hereinafter referred to as the “**Renewal Term**”). The Renewal Term will commence automatically upon expiration of the Term. In the event the OWNER does not wish to renew the Agreement OWNER will provide OPERATOR with a written notice a minimum of six (6) months prior to the expiration of the Term.

4. OPERATION OF THE HOTEL

4.1 OPERATOR to provide services

The OPERATOR, as an agent of OWNER, shall on a sole and exclusive basis during the Term, supervise, direct and control the management, marketing and operation of the Hotel and render or supervise and control the performance of all services and do or cause to be done all things necessary for the efficient and proper operation of the Hotel in accordance with the provisions of this Agreement.

4.2 OPERATOR’s Right to Control Operations of Hotel

- (a) Except as specifically provided in this Agreement OWNER shall during the Term provide OPERATOR with uninterrupted and unrestrained access to and control over the Hotel. With permission of the OPERATOR, OWNER and its duly authorised person in gaining access to the Hotel, must minimise all interruption which may be caused to the operation of the Hotel.

- (b) OWNER authorises the OPERATOR to act on its behalf at OWNER’s expenses -
 - (i) to perform any act and do anything in respect of the OPERATOR’s obligations as set out in this Agreement; and

 - (ii) generally to do, execute and perform any other reasonable act or thing not specified in this Agreement which OWNER could do itself incidental to the operation and management of the Hotel.

4.3 Scope of Authority of OPERATOR

In carrying out the duties and functions under Clause 4.1, the OPERATOR shall take all necessary actions and exercise its discretion and control in the operation of the Hotel, including, but not limited to, the following:

- (a) Personnel: supervision of all personnel matters including recruitment, ongoing management and termination of all Hotel employees (subject to the Recruitment Policy which has been approved by OWNER);
- (b) Furniture, Fittings and Equipment: purchasing of Furniture, Fittings and Equipment and performance of maintenance and overseeing the works relating to any Hotel refurbishments, renovations and Furniture, Fittings and Equipment, provided OPERATOR shall not write off or dispose of any fixed assets of the Hotel without OWNER's prior approval;
- (c) Selection of Supplier: selection of suppliers and purchasing of all food, beverage and other operating supplies and other items used in the operation of the Hotel;
- (d) Budgeting: budgeting and accounting for the Hotel;
- (e) Marketing and Promotional Services: advertising and promotion of the Hotel in co-ordination with the sales and marketing programmes of other hotels under the Brand;
- (f) Laws: assisting OWNER to take all such actions as shall be necessary or appropriate to comply with all applicable laws relating to the Hotel or the maintenance, safety or operation thereof, including without limitation, obtaining in the name of OWNER all licenses and permits, including hotel and liquor licenses, required for the operation of the Hotel (and the maintenance thereof in full force and effect throughout the Term);

- (g) Payment of Taxes, duties and assessment: manage the payment of any taxes, duties and assessment of any type which imposed by the relevant authorities on the operation of Hotel;
- (h) Maintenance: maintenance of Hotel;
- (i) Recruitment: the institution and maintenance of continuous programmes for the recruitment and training of Hotel personnel including executive staff;
- (j) Plant and Amenity Areas: secure such agreements with such cleaning and security services, contractors or other specialist firms as shall be necessary for the provision of services and facilities to the Hotel, including the maintenance and renewal of the Plant and the maintenance of the Amenity Areas;
- (k) Use of Hotel: Use of Hotel for all customary purposes;
- (l) Room charges: The charges to be made for and the terms of admittance to the Hotel for rooms; and
- (m) Food and beverages: Food and beverages prices and the conduct of catering operation outside the Hotel.

4.4 Policies and Processes

In carrying out its obligations under Clauses 4.1, 4.2 and 4.3, the parties will meet and determine the Operating Manuals, policies and procedures related to the efficient operation of the Hotel. The OPERATOR shall have the right to propose and determine with the advice of OWNER the Policies and Procedures. Notwithstanding to the generality of the foregoing, subject to the Annual Budget, the OPERATOR shall have the right to determine the policies and procedures in respect of all matters including but not limited to the following:-

- (a) room rates and food and beverages prices and the conduct of catering operation outside the Hotel;

- (b) use of rooms for commercial purposes and complimentary rooms policy;
- (c) marketing and sales policies; and
- (d) personnel policies (including the hiring and discharge of all the Hotel personnel), work rules (including compliance with applicable union workplace agreements) and regulations, wage rates and benefits and employee management and training systems which shall not be contrary to the laws of _____ and wages and compensation. OPERATOR shall consult OWNER in relation to matters relating to proposed voluntary separation schemes, employee bonuses, increments and OPERATOR's incentive plans in respect of department heads and above.

4.5 OPERATOR to meet with OWNER

The OPERATOR shall, at OWNER's request, hold meetings with OWNER to review and discuss the general concerns of the Hotel. Except as otherwise agreed by the parties hereto, all such meetings will be held in _____ on a regular monthly basis, or with any other frequency as OWNER may reasonably request and with prior reasonable notice given to the OPERATOR.

5. FEES

5.1 Management Fees

During the Term and in consideration of the services rendered by the OPERATOR for the operation and management of the Hotel, OWNER shall pay to the OPERATOR in respect of each financial month during the Term of this Agreement the Management Fees.

5.2 Payment of Management Fee

- (a) The Management Fees will be paid within seven (7) days of receipt by OWNER of the Monthly Management Accounts for the month in which the Management Fees were earned and shall be paid from the Bank Account.

- (b) In the event that the Operating Costs exceeds the Gross Operating Revenue for the relevant month, OWNER shall within fourteen (14) days of written notice from the OPERATOR make the payment to the OPERATOR based upon the amount deemed necessary by the OPERATOR to provide sufficient funds for the operation of the Hotel for the current month and such amount to be sufficient to cover the shortfall for the following month's budgeted operational costs and expenses.

5.3 Overpayment or underpayment of Management Fees

If in any month, on an accrual basis, the Monthly Management Accounts of the Hotel indicate an overpayment of any of the Management Fees; the OPERATOR shall repay the amount of the overpayment to the Bank Account within 30 days of receiving the Monthly Management Accounts. If the OPERATOR has been underpaid based on the accounts, the OPERATOR shall deduct the amount of such underpayment within 30 days of receipt of the Monthly Management Accounts. PROVIDED ALWAYS that final annual adjustments shall be made within fourteen (14) days of receipt of the audited financial statements of Hotel.

5.4 Priority of payments

All Gross Revenues will be deposited in the Bank Account. Each month the OPERATOR shall disburse or accrue, on behalf of OWNER, funds from the Bank Account in the following order of priority:

- (a) first, all Operating Costs (either incurred or accrued);
- (b) secondly, the Management Fees; and
- (c) finally, the available cash surplus to OWNER after allowing a reasonable amount to fund anticipated cash flow requirements for future Operating Costs and Capital Replacement items which have been approved in the Annual Budget and, if applicable, taxes, public dues and assessments and lease payments.

5.5 Basis of Fees

The fees payable under this Agreement are based on the present costs of operating and providing these services. If there is any increase in these costs in future due to any increases in any third party costs or new or additional taxes or levies of any nature, these fees will be suitably revised.

5.6 Payment of taxes

Other than service tax or any other tax required by law to be withheld in respect of the Management Fees, all payments to the OPERATOR and all other reimbursement of costs shall be paid free and clear of any deduction or withholding on account of any tax. All other payments made by each party pursuant to this Agreement payable to the OPERATOR shall be net of all charges, taxes (including Goods Services Tax (“**GST**”) or value added taxes), levies and other costs and where any party is required to make any such payments it shall gross up that payment to other party in order to enable that party to receive the full amount specified in this Agreement. The OPERATOR shall be responsible for and bear the payment of any taxes or any other levy of like nature which may be imposed on the OPERATOR by the relevant authorities in relation to the provision of its services hereunder.

5.7 Incentive Fees

The OPERATOR would be entitled to a percentage of GROSS operating Profit based on the table annexed under schedule 2.

Gross operating margin is to be calculated as follows:

$$\begin{aligned} & \text{Gross Operating Profit / Gross Operating Revenue} \times 100\% \\ & = \text{Gross Operating Margin.} \end{aligned}$$

6. PERSONNEL

6.1 Employment matters

- (a) It is expressly understood and agreed that all staff (including part time workers, if any) of the Hotel are in the employment or payroll of OWNER.

- (b) The OPERATOR shall provide an appropriately qualified person to act as the General Manager and Resident Manager of the Hotel under the employment of OWNER.
- (c) The OPERATOR as an agent of OWNER shall have at all times the power to hire, supervise, direct the work of, suspend, discharge and determine the other benefits of all the staff and personnel working in the Hotel.
- (d) All compensation, wages, salaries, benefits, bonuses and other expenses, liabilities, costs and claims relating to the Hotel personnel will be Operating Costs.
- (e) The OPERATOR shall in not be liable to the employees for their wages, compensation or employment benefits and whatsoever claims that the employees may seek from the employment and OWNER shall compensate in full and indemnify and keep indemnify the OPERATOR from and against such claims.
- (f) The OPERATOR shall deduct monthly from the Gross Operating Revenue, cost and expenses in connection with all the wages other employment benefits and other incidentals relating to the employees.
- (g) OWNER shall be solely responsible for any disputes, settlement, legal actions and others arising directly or indirectly from the employment. The OPERATOR will endeavour to assist OWNER to provide information and or documents for the disputes, settlement, and legal actions.

6.2 Recruitment and Training

- (a) Subject to the Recruitment Policy, the OPERATOR shall, on behalf of OWNER, recruit and train the staff of the Hotel through such training programme within or outside the country, including hotel schools, if any, and other training techniques as it shall deem advisable provided that such expenditures in any financial year shall not exceed the Annual Budget.

- (b) The OPERATOR shall deduct monthly from the Gross Operating Revenue the costs and expenses for the recruitment and training of the staff of the Hotel, the amount of which is to be determined in the Annual Budget.

7. MARKETING AND PROMOTIONAL SERVICES

7.1 The OPERATOR shall, use its best efforts to advertise and promote the business of the Hotel in such a manner as it considers appropriate in such newspaper, magazine, radio, television, directories, pamphlets and other media as it considers appropriate provided that such expenditures in any Financial Year shall not exceed the Annual Budget.

7.2 All the costs and expenses for marketing and promotional services of the business of the Hotel pursuant to this clause shall be considered as Operating Costs and shall be paid within seven (7) days of receipt by OWNER of the Monthly Management Accounts for the month in which they were earned. The OPERATOR shall deduct monthly from the Gross Operating Revenue the costs and expenses for marketing and promotional services of the business of the Hotel and shall effect the payment to itself or such party providing the marketing and promotional services of the Hotel from the Bank Account.

7.3 Subject to the Annual Budget, the OPERATOR shall:

- (a) promote the Hotel with the public, travel agents, tour wholesalers, incentive houses, associations, airlines, corporate entities and other sources of business by means of personal visits, telephone calls and mail;
- (b) represent the Hotel at major national and international travel industry trade shows and conferences;
- (c) co-ordinate the Hotel's marketing strategies;
- (d) advance marketing suggestions relative to the market place;

- (e) influence tour wholesales and airlines to feature the Hotel in their tour programmes;
- (f) follow up on sales leads provided by the Hotel;
- (g) gather marketing intelligence as feed back to the Hotel;
- (h) solicit and develop individual, group and series bookings;
- (i) distribute promotional literature of the Hotel during sales calls and trade shows;
- (j) provide up-to-date and comprehensive information on the Hotel's rates, facilities and services to the public and potential sources of business;
- (k) provide assistance to visiting Hotel personnel on sales trips;
- (l) report periodically on the activities undertaken for the benefit of the Hotel;
- (m) implement such "Loyalty and Customer Recognition Programme" (conducted under such programme name as may be prescribed by the OPERATOR) in accordance with the procedures and guidelines set out in the "Loyalty and Customer Recognition Programme" to the Hotel guests including distribution of promotion material, brochures and the like in relation to the "Loyalty and Customer Recognition Programme";
- (n) include the hotel in its group-wide "Frequent Flyers Award Programme" as agreed in writing between OPERATOR and the participating airlines; and
- (o) other marketing services as may be determined by OPERATOR and related to the operation of the Hotel.

7.4 The OPERATOR shall co-ordinate the Hotel's communications programmes with its corporate communications plan; include the Hotel in its corporate identity programme;

include the Hotel in its international advertising programmes as appropriate; and feature the Hotel in its corporate hotel directory.

- 7.5** OWNER acknowledges that the Hotel's communications plan shall be in accordance with the OPERATOR's sales, advertising and public relations philosophies and must adhere to the OPERATOR's corporate identity requirements. OWNER agrees to adopt and follow the advertising style and format adopted by the OPERATOR from time to time.
- 7.6** The parties agree that to supplement its sales network and to assist in the promotion of the Hotel along with other hotels managed by the OPERATOR, in areas where the OPERATOR does not maintain a corporate sales office, the OPERATOR may appoint general sales agents. The remuneration to all such general sales agents (including those appointed by the OPERATOR) shall be for the account of the Hotel.
- 7.7** It is understood that the OPERATOR's marketing services are rendered on a group basis to the participating hotels and that the OPERATOR may at any time and at its sole discretion undertake to represent additional hotels.
- 7.8** Save and except where services under this Clause are rendered by the OPERATOR on a group basis, OWNER shall be responsible for the costs incurred by the OPERATOR for services provided to the Hotel that do not benefit the group of hotels as a whole. OWNER shall reimburse the OPERATOR for all direct costs and expenses incurred by the OPERATOR on behalf of the Hotel for services rendered outside the scope of this Agreement for the sole benefit of the Hotel provided that such expenditures shall not exceed the Annual Budget. The OPERATOR shall also be reimbursed such costs and expenses incurred in special promotional campaigns aimed to benefit this Hotel as a part of a group of hotels in the region or generally, provided the basis of cost apportionment adopted is fair and equitable and as mutually agreed between OWNER and the OPERATOR and within the Annual Budget.
- 7.9** Subject to the Annual Budget, without limit the generality of Clause 7.8, the reimbursable expenses would include both within and outside _____ the following:-

- (a) all long distance telephone calls made for the purpose of securing business;
- (b) direct mail expenses;
- (c) custom duties and clearance charges for the Hotel's promotional materials;
- (d) expenses connected with tradeshows including registration, travel and booth display costs;
- (e) special advertising campaigns; and
- (f) other expenses relating to the promoting and marketing the Hotel.

8. CENTRAL RESERVATION

- 8.1** The OPERATOR shall provide the Hotel direct access to its Central Reservation Office for its sales and marketing, customer relations and reservation services.
- 8.2** The OPERATOR shall during the Term endeavour to put in place its customer relations and reservation system to administer the Hotel and group wide marketing programme and reservation. The reservation system is designed to provide system management of database, on-line reservation, significant data on availability of rooms at any time as well as booking preferences and requirements of current, regular or potential customers, whether on an individual or tour group basis.
- 8.3** The OPERATOR shall secure, process and transmit the bookings through the reservation system at the Central Reservation Office to the Hotel in accordance with the established reservation procedures.
- 8.4** Additional management system may be introduced and existing programmes may be varied or terminated at the discretion of the OPERATOR, such discretion will be exercised primarily for the benefit of the Hotel. OWNER shall give all such assistance to the OPERATOR and execute and do and procure all other necessary person or companies, if any, to execute and do all such further acts, deeds, assurance and things

as may be required so that full effect may be given for the improvement of the said system.

9. FINANCIAL YEARS AND FINANCIAL MONTH

9.1 For the purposes of this Agreement, a financial year shall commence on the 1st January and ends on the 31st December of every year subsequent to the 1st financial year during the Term, except the first financial year of the Term which shall be the period commencing on the Commencement Date and ending on the 31st December of the same year

9.2 For the purposes of this Agreement, a financial month shall mean the period of one (1) calendar month commencing on the 1st January, each successive period of one (1) calendar month thereafter and any shorter period commencing on the day following the end of a financial month and ending on the expiration of the Term or early termination of this Agreement for whatever reasons except the first financial month for this Agreement shall commence on the Commencement Date and ending on the day before the commencement of the next financial month.

10. BOOKS, RECORDS AND ACCOUNTING MATTERS

10.1 The books and records of the Hotel shall be kept by the OPERATOR on behalf of OWNER in accordance with local laws and regulations and to applicable standard accounting principles and practices complying with the local accounting regulations.

10.2 The Accounts shall be kept in all material respects in accordance with the then latest edition of the "Uniform System of Accounts for Hotels" as adopted for the American Hotel and Motel Association, except as otherwise specified in this Agreement.

10.3 All the books of account and all other records relating to the operation of the Hotel shall be made available to OWNER and the OPERATOR and their respective representatives' at all reasonable times and with prior appointment for examination, audit, inspection and transcription. Upon expiration or termination of this Agreement, all such books and

records forthwith shall be returned to OWNER but shall be available to the OPERATOR at all reasonable times for inspection, audit, examination and transcription for a period of seven (7) years.

- 10.4** OWNER shall ensure that any inspection and review under Clause 10.3 shall be done with as little disturbance to the operation of the Hotel as possible.
- 10.5** The OPERATOR shall deliver to OWNER, within fourteen (14) days after the end of each month in the Financial Year, the Monthly Management Accounts.
- 10.6** OWNER shall ensure a certified audit of the Hotel operations be performed annually by an independent reputable accounting firm appointed by OWNER and reasonably approved by the OPERATOR. OWNER shall supply a copy of the certified audit to the OPERATOR within seven (7) days of receipt of the signed audit certificate. The costs of each such audit including internal audit shall be Operating Costs.

11. ANNUAL BUDGET

11.1 Composition of Budget

The OPERATOR shall not less than sixty (60) days before the commencement of each Financial Year, prepare and submit for approval of OWNER, a set of draft annual budgets and forecasts particulars of which shall include but not limited to as specified in **Schedule 1** setting out in reasonable details the anticipated revenue and expenses of the Hotel for that Financial Year.

11.2 Budget Review and Revisions

- (a) Not later than thirty (30) days after receipt by OWNER of the draft annual budget from the OPERATOR, the parties shall have a Budget Review.
- (b) Within fourteen (14) days of the Budget Review, the OPERATOR will prepare and submit to OWNER for approval, a revised draft annual budget taking into account all matters discussed and agreed by the parties at the Budget Review.

- (c) If OWNER objects to the revised draft annual budget, OWNER shall provide in writing its detailed objections with reference to the individual line items, cost or other matters objected to. If OWNER fails to approve or submit its objections to the revised draft annual budget within thirty (30) days of the date of submission by the OPERATOR to OWNER, OWNER shall be deemed to have approved of the revised draft annual budget.
- (d) A draft annual budget or revised draft annual budget, as the case may be, for any Financial Year once deemed approved under Clause 11.2(c) or otherwise agreed in writing by the parties shall constitute the Annual Budget for the current Financial Year.
- (e) The Annual Budget shall form the basis of operation for the management of the Hotel by the OPERATOR for the current Financial Year to which it relates and any departure therefrom shall be subject to the mutual approval in writing of the parties.
- (f) The OPERATOR shall, upon request from OWNER, provide reasonable opportunities for consultations, at mutually convenient times, for explanation of any deviations from the Annual Budget as shown in the statements of actual results in the Accounts.
- (g) All costs and expenses incurred by the OPERATOR from the basis of the Annual Budget shall be borne by OWNER.

12. CAPITAL REPLACEMENTS

12.1 Capital Replacements

- (a) At the end of each calendar month after the Commencement Date and throughout the Term, the OPERATOR shall accrue and record as OWNER's cost, the amount calculated at three percent (3%) of Gross Operating Revenue. Such accruals shall establish a Furniture, Fixtures & Equipment replacement fund (hereinafter referred to as the "**Replacement Fund**"). The notional balance of the Replacement Fund

shall be reduced by any expenditure made on replacements. The Replacement Fund shall be used to pay for Capital Replacements.

- (b) OWNER shall supply all funds necessary for Capital Replacements. OWNER shall supply all funds necessary to cover Capital Replacements approved in the Annual Budget within thirty (30) days of its having been served with written notice by OPERATOR to do so whether or not such amount exceeds the notional balance of Replacement Fund.

12.2 Capital Replacements to require OWNER's approval

The Unbudgeted Capital Replacements shall require the written approval of OWNER before the OPERATOR incurs purchase or lease obligations. If there is a disagreement with regard to the need to make Capital Replacements, whether in the context of matters provided for in the Annual Budget or in respect of the need for the Unbudgeted Capital Replacements, the parties shall meet and acting reasonably and endeavour in good faith to resolve any difference of opinion with both parties acknowledging that the Hotel requires periodic refurbishment to remain safe, competitive and in compliance with the Standard and requirements of this Agreement. The Developer shall supply all funds necessary to cover approved Unbudgeted Capital Replacements within thirty (30) days of the date of OWNER's written approval.

13. REPAIRS AND CHANGES

13.1 Repairs and Maintenance

The OPERATOR shall have the right to make, from time to time, such repairs and maintenance in or to the Hotel which are customarily made in the operation of the Hotel of that Standard and to maintain the Hotel in good repair and condition. The costs and expenses of any such repair and maintenance shall be considered as Operating Costs.

13.2 Alterations

- (a) The OPERATOR may, with the consultation of the Bank, make from time to time, such alterations, additions or improvement in or to the Hotel which are customarily

made in the operation of the Hotel of that Standard. The cost of such customary alterations, additions or improvements shall be considered as Operating Costs.

- (b) If alterations, additions or improvements shall involve a fundamental change in the character of the Hotel or of any part thereof or would in accordance with the preceding paragraph be capitalized, the OPERATOR shall submit the proposed alterations, additions or improvements for prior written approval of OWNER. The cost of such alterations, additions or improvements shall not be considered as Operating Costs and shall be borne by OWNER.

13.3 Compliance with Statutory Authorities

If at any time during the Term, structural repairs to or additions, changes or corrections in the Hotel of any nature shall be required by reason of any laws, ordinances, rules or regulations now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority or officer, such structural repairs, additions, changes or corrections shall be made and paid for by OWNER. Such work shall be accomplished with as little hindrance as possible to the operation of the Hotel.

13.4 Emergency Repairs

- (a) The OPERATOR will have the right to carry out emergency repairs which may include structural repairs where those are necessary to:
 - (i) protect guests or employees or to preserve and protect the Hotel; or
 - (ii) protect the structure, plant and equipment or otherwise assure the continued operation of the Hotel; or
 - (iii) maintain the insurance coverage of the Hotel or right to permits and licenses;(Together collectively referred to as the “**Conditions**”).

- (b) The OPERATOR, on behalf of and at the expense of OWNER, is hereby authorized to take all steps and to make all expenditures necessary to repair and correct any such Conditions of the Hotel, regardless of whether provisions have been made in the applicable Capital Replacement budget for any such expenditures.

- (c) Upon the occurrence of such Conditions, the OPERATOR shall communicate to OWNER all available information regarding such event or condition as soon as reasonably possible and (if at all possible prior to expending such sums), shall take reasonable steps to obtain OWNER's approval before incurring such expenses. Expenditures under this clause shall not be paid from the Capital Replacement unless the expenditure relates to an item which should properly be considered a Capital Replacement item and shall be borne by OWNER.

14. OPERATING EQUIPMENT

- 14.1** The OPERATOR shall deduct monthly from the Gross Operating Revenue, the costs and expenses for the replacement of and addition to the Operating Equipment, the amount of which is to be determined in the Annual Budget for each Financial Year.
- 14.2** The OPERATOR shall make all replacements of the Operating Equipment, which the OPERATOR deems necessary or desirable, provided that such expenditures in any Financial Year shall not exceed the Annual Budget for the relevant Financial Year.
- 14.3** The OPERATOR shall seek OWNER's prior written approval in respect of any expenditure on Operating Equipment that in OPERATOR's reasonable judgement, is likely to cause total actual expenditure on Operating Equipment in the relevant Financial Year to exceed 110% of the budgeted expenditure on Operating Equipment in that year, as described in the Annual Budget.

15. COVENANTS OF OWNER

OWNER covenants with the OPERATOR throughout the Term as follows:

15.1 Reimbursement of expenses

OWNER shall reimburse the OPERATOR all costs and expenses reasonably incurred in and or incidental to the management and operation of the Hotel charged by the OPERATOR as the Operating Costs.

15.2 Payment

OWNER shall make all payments, including, without limitation, the Management Fees, due to the OPERATOR in the manner and at the times stipulated herein this Agreement.

15.3 Indemnity

OWNER shall keep the OPERATOR fully and effectually indemnified and hold the OPERATOR free and harmless from and against:

- (a) any liability for injury to persons or damage to property by reason of any cause whatsoever, either in or about the Hotel;
- (b) any and all losses, damages or liabilities, suffered or incurred by the OPERATOR in the course of conducting the management and operation of the Hotel and resulting from:-
 - (i) any act or neglect or default of OWNER or its agents, employees, licensees or invitees; or
 - (ii) any claim by any third party against the OPERATOR in respect of any matter arising or incidental from the management of the Hotel;

Provided always that such claim(s) are not the result of the wilful misconduct or gross negligence by the OPERATOR in carrying out the terms and conditions of this Agreement.

15.4 Peaceful and quiet management

The OPERATOR shall and may peaceably and quietly manage and operate the Hotel during the entire Term without any interruption from -

- (a) OWNER;
- (b) any person through whom OWNER shall derive its title to or right to occupy and use the Hotel; or

- (c) any other person or persons claiming by, through or under OWNER.

15.5 Discharge of ground rent and other payments

OWNER shall pay and discharge promptly any ground rent and other rental payments, concessions and charges and any other charges payable by OWNER in respect of the Hotel, and, at its own costs and expenses, undertake and prosecute all appropriate actions, judicial or otherwise, relating to the day to day operation of the Hotel necessary to ensure quiet and peaceable possession by the OPERATOR.

15.6 Taxes and assessment

OWNER shall pay all taxes and assessments which may become a lien on the Hotel and which may be due and payable throughout the Term, unless the payment is in good faith being contested by OWNER and the enforcement of the payment is stayed.

15.7 Assignment

- (a) OWNER may assign, novate or otherwise transfer any of its rights or obligations under this Agreement to its subsidiaries or any third party provided always that notice of such assignment, novation or transfer is furnished to the OPERATOR as soon as practicable after its occurrence.
- (b) OWNER shall procure that the purchaser or the person to whom the Hotel is to be conveyed or transferred pursuant to Sub-Clause clause 15.7(a) undertakes to be bound by this Agreement.
- (c) Notwithstanding the assignment referred to in this Sub-Clause 15.7, OWNER shall remain liable under this Agreement for anything arising out of this Agreement prior to the assignment pursuant to this Sub-Clause 15.7.

15.8 Compliance

- (a) OWNER shall ensure the compliance of the terms and conditions of any lease, tenancy, charge or any other form of encumbrances where the Hotel is subject to the same.

- (b) OWNER shall ensure the compliance with any condition of use, express or implied, impose by the relevant authority under the National Land Code, 1965.

15.9 Funds for operation of the Hotel

OWNER shall provide and maintain as from the date of this Agreement sufficient funds to cover the budgeted operational costs and expenses for the establishment, management, operation and marketing of the Hotel.

15.10 Reimbursement

OWNER shall reimburse the OPERATOR in full upon demand for any payment which the OPERATOR is required to make for any reason in connection with the Hotel, including payments of any type made in connection with claims for which the OPERATOR is indemnified under Clause 15.3, other than taxes, duties or assessments the OPERATOR is required to pay in relation to the OPERATOR's payments received under this Agreement.

15.11 Legal claims

The OPERATOR in consultation with OWNER may defend any claim or legal action brought against the OPERATOR or OWNER jointly or severally in connection with the operation of the Hotel and the costs incurred will be Operating Costs.

16. COVENANTS OF OPERATOR

The OPERATOR covenants with OWNER throughout the Term as follows:

16.1 Management and operation of the Hotel

The OPERATOR shall use the Hotel solely for the operation of a hotel of the Standard and for all activities in connection therewith which are customary and usual to such an operation of hotels of the Standard.

16.2 Diligence

The OPERATOR hereby declares and undertakes that it shall carry out the management and operation of the Hotel with a high and acceptable standard of care and diligence that is comparative, usual and expected in respect of the operations of hotels of the Standard in order to promote and safeguard OWNER's interests and of the Hotel.

16.3 No profit

Save and except for the contracts made with the consent of OWNER, the OPERATOR shall not make any profit or commission out of the management of the Hotel other than those stated in this Agreement including but not limited to the Management Fees.

16.4 Loyalty

The OPERATOR shall in all matters act loyally and faithfully towards OWNER, but shall be entitled to manage other hotels or similar establishments for any person anywhere in the world.

16.5 Compliance with legislations

The OPERATOR shall ensure that all relevant provisions of statutory and local government legislation, regulations and bye-laws made thereunder, and any license, permission and consent, which are applicable to the management of the Hotel, are duly complied with.

16.6 General duties

The OPERATOR shall-

- (a) advise OWNER on town planning matters, including compulsory acquisition of the Hotel or any part thereof and to conduct negotiations with the relevant statutory or local authorities whenever deemed necessary by the OPERATOR; and
- (b) prepare, or have prepared, specifications and plans and to supervise any work in connection with any repairs, renewals, improvements, alterations or other building operations in or to the Hotel deemed necessary by the OPERATOR, including the Plant and the Amenity Areas.

16.7 No assignment or delegation

- (a) The OPERATOR shall not assign, charge or otherwise deal with this Agreement without prior written consent of OWNER.
- (b) The OPERATOR shall not delegate any duty or obligation arising under this Agreement otherwise than may be expressly permitted under this Agreement or with OWNER's prior written consent.

16.8 No pledge or credit

The OPERATOR covenants that it will not and nothing herein contained shall be deemed to authorise the OPERATOR to execute any notes, guarantees, loan agreements or other evidence of indebtedness or to borrow any money on behalf of OWNER. The OPERATOR further undertakes that it has no power or authority to enter into any mortgage, deed of trust, security arrangement or any other instrument (other than as specifically authorised herein) encumbering all or any part of the Hotel or any accounts or any other personal property arising from the Hotel or its operation.

16.9 Right of inspection and review

The OPERATOR shall accord to the duly authorised officers, accountants, employees, agents, attorneys and auditors of OWNER the right to enter upon any part of the Hotel at all reasonable times during the Term, upon prior reasonable notice given to the OPERATOR, for the purpose of examining or inspecting the Hotel or for any other purpose which OWNER in its discretion deem necessary or advisable and causing as little disturbance to the operation of the Hotel as possible.

17. INSURANCE

17.1 OWNER to maintain certain insurances

- (a) OWNER agrees at all times during the Term, as the case may be, to procure and maintain, as an Ownership Cost, the insurance coverage described in **Schedule 3 Part A Section I** in the name of OWNER. OWNER by itself or through its appointed insurance broker shall ensure that all such insurances are renewed

annually and OWNER shall ensure that the premium and other sums due are paid promptly within the period specified in such insurances.

- (b) OWNER agrees at all times during the Term to procure (by itself or through its appointed insurance broker) and maintain as an Operating Cost, the insurance coverage described in **Schedule 3 Part A Section II** in the name of OWNER with the OPERATOR named on the policies as “Additional Insured Parties”.

17.2 OPERATOR to maintain certain insurances

The OPERATOR agrees at all times during the Term, to procure and maintain, as an Operating Cost, the insurance coverage described in **Schedule 3 Part B** in the name of OWNER, with the OPERATOR named on the policies as “Additional Insured Parties” with such insurance companies of good reputation and standing. The OPERATOR shall ensure that all such insurances paid are renewed annually, and OWNER and the OPERATOR shall ensure that the premiums and other sums due are paid promptly within the period specified in such insurances.

17.3 Restriction on claims

Neither OWNER nor the OPERATOR may assert or pursue against the other, or against any person named as Additional Insured Parties on any policy carried under this clause (or any directors, employees or agents thereof), any claims for any losses, damages, liability or expenses (including legal fees) incurred or sustained by any of them on account of injury to persons or damage to property arising out of the ownership, operation and maintenance of the Hotel, except to the extent that the same are not covered by the insurance required and effected under this section or as provided under any indemnity provision in this Agreement.

17.4 Compliance of insurance

OWNER and the OPERATOR shall comply with, fulfil and perform all rules, orders, ordinances, regulations and requirements, imposed by, or in connection with or affecting the premiums for, policies of insurance maintained by them in respect of the Hotel.

17.5 Evidence of insurance taken

Each party shall upon request produce to the other satisfactory evidence of all such insurance maintained by it.

17.6 Insurance claims

Each party covenants and undertakes to inform the other of its intention to submit for any claims of insurance taken out by it. Each party shall expeditiously make claims under the insurance taken out and maintained by it should such need arise or upon reasonable request by the other party. The parties shall co-operate to expedite the payment of such claims.

18. TERMINATION

18.1 Material breach by either party

If either party commits a material breach of this Agreement and:-

- (a) fails to take appropriate steps to remedy such breach (if capable of remedy) within thirty (30) days after being given notice so to do by the other party; or
- (b) fails to discontinue such breach (if the same be a continuing breach) within thirty (30) days after being given notice to do so by the other party; or
- (c) goes into liquidation, whether compulsory or voluntary (except for the purposes of a bona fide reconstruction or amalgamation with the consent of the other party which consent not to be unreasonably withheld or delayed); or
- (d) has an administrator or receiver and OPERATOR appointed over any part of its assets or undertaking; or
- (e) becomes insolvent or is unable to pay its debts or admits in writing its inability to pay its debts as they fall due or enters into any composition or arrangement with its creditors or makes a general assignment for the benefit of its creditors; or

- (f) ceases or threatens to cease to carry on the whole or any substantial part of its business other than in the course of reconstruction or amalgamation;

then the other party shall be entitled to terminate this Agreement by serving a termination notice.

18.2 Consequences of Termination

On expiration of the Term or early termination of this Agreement for whatsoever reason, provided all outstanding monies invoiced by and owing to the OPERATOR have been paid to the OPERATOR, the OPERATOR undertakes to -

- (a) hand over the Hotel and return to OWNER all original and copies of documents relating to OWNER and the Hotel which have come into the OPERATOR's possession during the course of management of the Hotel in accordance with the provisions of this Agreement, including –
 - (i) all books and accounts of the Hotel;
 - (ii) insurance policies taken out in respect of the Hotel or Plant or Amenity Areas; and
 - (iii) service contracts made with any third party for the provision of services to the Hotel; and
 - (iv) forthwith cease carrying on the management and operation of the Hotel.

18.3 Entitlement of Management Fees Due To Early Termination

On early termination of the Term of this Agreement for whatsoever reason, the OPERATOR shall be entitled to Twenty Four (12) months of Management Fees prorated from the previous six months total management fees for termination of less than 5 years. For early termination of above 5 years the OPERATOR shall be entitled to Twenty Four (24) months of Management Fees prorated from the previous six months total management fees.

19. FORCE MAJEURE EVENT

- (a) Neither party shall be liable for any failure or delay in complying with any obligation imposed on such party under this Agreement to the extent such failure or delay arises directly or indirectly from a Force Majeure Event. Such party shall give written notice thereof to the other party specifying the matters constituting the Force Majeure Event enclosing such evidence as reasonably practicable and the period for which it is estimated that such Force Majeure Event will continue, then the party in question shall be excused the performance or the punctual performance, as the case may be, of the obligations affected by such Force Majeure Event as from the date of such notice and for so long as such Force Majeure Event continues.

- (b) Nothing in this clause shall excuse a party from any obligation to make a payment when due under this Agreement.

20. DAMAGE TO AND DESTRUCTION OF HOTEL

- 20.1** If the Hotel or any portion thereof shall be damaged or destroyed at any time or times during the Term by fire, casualty or other cause, OWNER shall at its own cost and expense and with due diligence, repair, rebuild or replace the same so that after such repairing, rebuilding or replacing, the Hotel shall be substantially the same as prior to such damage or destruction.

- 20.2** Nothing in this clause shall excuse a party from any obligation to make a payment when due under this Agreement.

21. RIGHT TO PERFORM COVENANTS AND REIMBURSEMENT

- 21.1** If the OPERATOR shall at any time without reasonable cause fail, within the time limit and after due notice, to make any payment or to perform any act to be performed by it pursuant to this Agreement, OWNER may upon notification to the OPERATOR, but shall not be obligated to, without notice to or demand upon the OPERATOR and without waiving or releasing the OPERATOR from this Agreement, make such payment or perform such acts

unless such payment is in good faith being contested by the OPERATOR and the enforcement of the payment is stayed .

- 21.2** All sums so paid by OWNER and all necessary or incidental costs and expenses in connection with the performance of any such act by OWNER pursuant to Sub-Clause 21.1, together with interest thereon at the rate specified in Clause 22 from the date of OWNER making such expenditures, shall be payable by the OPERATOR to OWNER upon demand, or, at the option of OWNER, may be added to any sums due or thereafter becoming due under this Agreement.

22. INTEREST

Without prejudice to the rights of the parties under this Agreement, all sums due from either of the parties to the other which are not paid on the due date shall bear interest at the rate of eight percent (8%) per annum or at such other rates to be mutually agreed between parties.

23. CONFIDENTIAL INFORMATION

- (a) Each party acknowledges that all information relating to a party's present or contemplated products, services, marketing and pricing strategies, customers, financial or contractual arrangements (including the terms of this Agreement) and affairs and business operations is commercially sensitive and confidential to that party (hereinafter referred to as the "**Confidential Information**"). The proprietary information identified in clause 23 will be the confidential information of the OPERATOR.
- (b) Each party will, and will use its best endeavours to ensure that its employees and agents will, keep the Confidential Information confidential and not use or disclose the confidential information to any person other than:
- (i) in confidence to that party's professional advisers to obtain professional advice;

- (ii) as may be properly required for the purpose of the provision of the services and the performance of any obligations under this Agreement;
- (iii) with the prior written consent of the other party, but subject to the terms of such consent;
- (iv) as may be required by any Law, rule, regulation or requirement of or any court of competent jurisdiction or stock exchange listing rules; or
- (v) to the extent that any part of the Confidential Information is in the public domain otherwise than through the breach by a party of its obligations under this clause,

provided that OWNER or the OPERATOR may disclose a summary of this Agreement and the Hotel's financial performance prepared for the purposes of OWNER or the OPERATOR or their Related Corporations in accordance with this Agreement on a confidential basis to any potential purchaser or assignee (as the case may be).

- (c) At the expiration of the Term, or at any time upon reasonable request, each party must return to the other party, at the cost and expense of the requesting party, any Confidential Information in the first-mentioned party's possession or control.

24. PROPRIETARY RIGHTS

24.1 Ownership of Marks and Customer Data

OWNER acknowledges that the Marks are the exclusive property of the OPERATOR. OWNER agrees not to use such Marks in any way without the prior written consent of OPERATOR. OWNER shall not challenge ownership of the Marks or any intellectual property that is now or may in future be owned by OPERATOR. OWNER agrees to extend

its full co-operation to the OPERATOR upon the request of OPERATOR in order to prevent third parties from using the Marks without authorization.

24.2 Customer Data

OWNER acknowledges that the OPERATOR may use customer data sourced from OWNER's property management system for the purposes of this Agreement and other frequent marketing programme data bases. Notwithstanding the termination of this Agreement, both parties will be able to continue using such data free of charge, as part of their respective databases.

24.3 OWNER not to use Marks

OWNER shall not use the name or initials of the Marks or any combination or variation thereof in the name of any partnership, corporation or other business entity.

24.4 OWNER not to refer to Marks in certain circumstances

OWNER shall not make reference to the Brand or any other of the Marks or any combination or variation thereof directly or indirectly in connection with a public sale of securities or other comparable means of financing without the prior written consent of OPERATOR.

24.5 Dispute concerning Marks

OPERATOR will have the sole right and responsibility to institute and handle all disputes with third parties concerning the use of the Marks at OPERATOR's own cost. OWNER agrees to extend its full co-operation to OPERATOR or its designee in all such disputes.

24.6 Rights of OPERATOR

In the event of termination or expiration of this Agreement, whether as a result of a default by OPERATOR or otherwise, OWNER shall not operate the Hotel under the Brand, nor, subject to Clause 24.6, shall OWNER use any variation of the Marks in designating or referring to the Hotel at any time, and OPERATOR or its designee may enter the Hotel

and may remove all signs, furnishings, printed material, emblems, slogans or other distinguishing characteristics connected with the Marks.

25. NOTICES

25.1 Any notice or other document to be given under this Agreement and all other communications between the parties with respect to this Agreement shall be in writing and may be given or sent by any of the following manner (save and except for any notice of termination which shall be by registered post)

- (a) by hand;
- (b) by registered post, first class post or express or air mail or other fast postal service; or
- (c) by facsimile or other electronic media,

to the other party at the addresses or facsimile transmission number set out or such other address or facsimile transmission number as either party may give notice of to the other.

All such notices and documents shall be in the English or _____ language.

25.2 Any notice or other document shall be deemed to have been duly served upon and received by the addressee -

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by registered post, first class post or express or air mail or other fast postal service, within THREE (3) days of despatch; and
- (c) if transmitted by way of telex or facsimile transmission or other electronic media, at the time of transmission.

26. COSTS AND EXPENSES

Save for the stamp duty payable on this Agreement to be borne by OWNER, each party hereof shall bear its respective costs and expenses, including solicitors' costs, arising out of and in connection with this Agreement.

27. GENERAL PROVISIONS

27.1 Entire Agreement

- (a) This Agreement constitutes the entire agreement and understanding between the parties with respect to the matters dealt with in this Agreement;
- (b) This Agreement supersedes any other agreement, letter, correspondence (oral or written or expressed or implied) entered into prior to this Agreement in respect of the matters dealt with in this Agreement.
- (c) This Agreement is not entered into by the parties in reliance of any agreement, understanding, warranty or representation of any party not expressly contained or referred to in this Agreement.

27.2 Effective date

This Agreement shall come into force on, and take effect from, the date first herein above mentioned, irrespective of the diverse dates upon which the respective parties may have executed this Agreement.

27.3 Power to contract

Each of the parties warrants its power to enter into this Agreement and that it has obtained all necessary approvals to do so.

27.4 Good faith

Each party has entered in to this Agreement in good faith and shall give all such assistance and information to the other party and execute and do and procure all other necessary person or companies, if any, to execute and do all such further acts, deeds,

assurance and things as may be reasonably required so that full effect may be given to the terms and conditions of this Agreement.

27.5 No partnership

The OPERATOR and OWNER will not be construed as joint venturers or partners and no party neither will have the power to obligate any the other except as set out in this Agreement.

27.6 Successors and Assigns

This Agreement shall be binding upon the respective permitted assigns and successors in title of the parties hereto.

27.7 Counterparts

This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original, but such counterparts or duplicates shall together constitute but one and the same agreement.

27.8 Time

Time wherever mentioned shall be of the essence of this Agreement.

27.9 Invalidity & Severability

If any provision of this Agreement is or may become under any written law, or is found by any court or administrative body or competent jurisdiction to be, illegal, void, invalid, prohibited or unenforceable then -

- (a) such provision shall be ineffective to the extent of such illegality, voidness, invalidity, prohibition or unenforceability;
- (b) the remaining provisions of this Agreement shall remain in full force and effect; and
- (c) the parties shall use their respective best endeavours to negotiate and agree a substitute provision which is valid and enforceable and achieves to the greatest extent possible the economic, legal and commercial objectives of such illegal, void,

invalid, prohibited or unenforceable term, condition, stipulation, provision, covenant or undertaking.

27.10 Knowledge & Acquiescence

Knowledge or acquiescence by any party of or in any breach of any of the terms conditions or covenants herein contained shall not operate as or be deemed to be waiver of such terms, conditions or covenants or any of them and notwithstanding such knowledge or acquiescence, each party shall be entitled to exercise its respective rights under this Agreement and to require strict performance by the other of the terms, conditions and covenants herein.

27.11 Amendments & Additions

No amendment of, or addition to, the provisions of this Agreement shall be binding or effective unless it is in writing and signed by duly authorised persons of the parties.

27.12 Rights & Remedies

The rights and remedies provided in this Agreement are cumulative, and are not exclusive of any rights or remedies of the parties provided at law, and no failure or delay in the exercise or the partial exercise of any such right or remedy or the exercise of any other right or remedy shall affect or impair any such right or remedy.

27.13 Publications

The parties shall not make or permit or authorize the making of any press release or other public statement or disclosure concerning this Agreement or its contents or any of the transactions contemplated in it without the prior written consent of the other party, other than as required by law or an order of a court of competent jurisdiction.

27.14 Law & Jurisdiction

This Agreement shall be governed by, and construed in accordance with, the laws of _____ and the parties irrevocably submit to the exclusive jurisdictions of the Courts of _____.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands the day and year above written.

Signed by)

For and on behalf of)

XXXXXXXXX)

(Company No: xxxxx)

in the presence of:)

.....

Name:

Designation:

Signed by)

For and on behalf of)

XXXXXXXXXXXX)

in the presence of:)

.....

Name:

Designation:

SCHEDULE 1
(Clause 11)
Annual Budget

A. Detailed Budget

1. Rooms
2. Food
3. Beverage
4. Food & Beverage combined
5. Telephone
6. Guest Laundry
7. Minor Operating Departments & Others
8. Administrative and General
9. Sales and Marketing
10. Energy Costs
11. Property Operation and Maintenance
12. Payroll Taxes and Employee Benefits
13. House Laundry
14. Group Service & Benefits
15. Capital Expenditure and Special Projects

B. Capital Expenditure and Operating Equipment Budget ##

[to be provided by the OPERATOR]

SCHEDULE 2
Management Fees

Base Management Fee (“BMF”)

BASE MANAGEMENT FEE
3% OF GROSS OPERATING REVENUE

Incentive Management Fee (“IMF”)

INCENTIVE MANAGEMENT FEE
10% OF GROSS OPERATING PROFIT

SCHEDULE 3

PART A

Insurance to be maintained by OWNER

Section I – Insurance maintained by OWNER as an Ownership Cost

OWNER agrees, as an Ownership Cost, to procure and maintain the following insurance coverage, as reasonably adjusted from time to time, throughout the term of this Agreement:

Coverage

Amounts of Insurance

Builders Risk

All risk for term of the initial and any subsequent Hotel construction and renovation. Completed value of the property

Building(s) – Blanket Coverage

Replacement Cost - Perils of Fire, Lightning, Extended coverage, Additional Perils and Boiler Explosion Value of the Hotel as periodically adjusted during the Term of this Agreement

Building Contents - Blanket Coverage

Actual Cash Value (i.e. replacement cost) – Perils of Fire, Lightning, Extended coverage, Additional Perils and Boiler Explosion. Value of the property as periodically adjusted during the Term of this Agreement

All insurance required herein will be effected by policies issued by insurance companies of good reputation and of sound financial responsibility.

All such policies of insurance will be endorsed specifically to the effect that such policies will not be cancelled or materially changed without at least 30 days prior written notice to OWNER and the OPERATOR.

Section II – Insurance maintained by OWNER as an Operating Cost

OWNER agrees, as an Operating Cost, to procure and maintain the following insurance coverage, as reasonably adjusted from time to time, throughout the term of this Agreement.

Coverage

Amounts of Insurance

Business Interruption

Blanket Coverage for the perils insured against under Building(s) above. This coverage must specifically cover OPERATOR's loss of Management Fees. The business interruption insurance must be for a minimum indemnity period of twenty-four (24) months.

Calculated yearly based on estimated Hotel revenues

Public Liability

Including: Financial Loss, Products, Libel/Slander

Basic/primary **##to be provided by OWNER]** per occurrence

Automobile Liability

Owned Vehicles and Non-Owned Vehicles used in connection with the business.

##TO BE PROVIDED BY OWNER or as required by law

Automobile Physical Damage (Optional)

(To value if insured)

All insurance required herein will be effected by policies issued by insurance companies of good reputation and of sound financial responsibility.

All such policies of insurance will be endorsed specifically to the effect that such policies will not be cancelled or materially changed without at least 30 days prior written notice to OWNER and the OPERATOR.

SCHEDULE 3 PART

B

Insurance to be maintained by OPERATOR

The OPERATOR agrees, as an Operating Cost, to procure and maintain the following insurance coverage, as reasonably adjusted from time to time, throughout the term of this contract:

Coverage	Amounts of Insurance
Workmen's compensation ("Accident Compensation")	Statutory
Employer's Indemnity to be determined by the OPERATOR	### to be provided by OPERATOR per occurrence (or such sum as required by law)
Fidelity (Employee Dishonesty)	As determined by the OPERATOR
Money and Securities	As determined by OPERATOR
All Risks	
Electronic Equipment	
Plate Glass	
Group Hospitalisation	
Group Personal Accident	
Group Term Life	

All insurance required herein must be effected by policies issued by insurance companies of good reputation and of sound financial responsibility.

All such policies of insurance must be endorsed specifically to the effect that such policies will not be cancelled or materially changed without at least 30 days prior written notice to OWNER and the OPERATOR.



DATED THIS

DAY OF

20__

BETWEEN

XXXXXXXX

(Company No:)

("OWNER")

AND

XXXXXXXXXXXXXXXXXX

(Company No.XXXXXX)

("OPERATOR")

MANAGEMENT AGREEMENT

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