

**SECOND AMENDMENT TO HOTEL MANAGEMENT AGREEMENT
(THE WESTIN DENVER INTERNATIONAL AIRPORT)**

THIS SECOND AMENDMENT TO HOTEL MANAGEMENT AGREEMENT is made and entered into by and between **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation (“Owner”), and **WESTIN DIA OPERATOR, LLC**, a Delaware limited liability Company (“Operator”).

RECITALS

A. Owner and Operator entered into a Hotel Management Agreement dated April 11, 2011, as amended on January 14, 2014 (the “Operating Agreement” or “Agreement”) for services to be provided by Operator in connection with the operation of a hotel owned by Owner located in Denver, Colorado to be known as “The Westin Denver International Airport”.

B. Owner and Operator hereby desire to amend solely those parts of the Operating Agreement referenced below.

C. Capitalized terms that are used but not defined in this Amendment shall have the meaning given in the Operating Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Amendment and other valuable consideration, receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. Any reference in the Operating Agreement to the Owner’s Manager of Aviation or the Manager of Aviation are hereby replaced with the Chief Executive Officer of the Department of Aviation.

2. Any reference in the Operating Agreement to the Deputy Manager shall be deleted and revised to and read the Executive Vice President – Chief Revenue Officer.

3. Section 3.11(a), “Funding of Taxes and Insurance Costs” hereby deleted and amended to read as follows:

The Owner shall, within five (5) Business Days after written request therefor from Hotel Manager, disburse to Hotel Manager funds from the Revenue Fund, to the extent of Available Revenues in the Revenue Fund or Cumulative Excess Revenues available for allocation for such purposes, to pay Taxes (to the extent an invoice or other demand for payment has been delivered to Hotel Manager for such Taxes) and Insurance Costs then due and payable with respect to the ownership and operation of the Hotel. Hotel Manager shall be entitled to make payment of Taxes and Insurance Costs without any further approval of

the Owner to the extent Hotel Manager has an invoice or other evidence of demand for payment for such Taxes and Insurance Costs. Such Taxes and Insurance Costs shall be paid as a Hotel O&M Expense. In the event that Sufficient Funds do not exist as described above for payment of any Taxes and Insurance Costs, such Taxes and Insurance Costs shall be paid by the Owner using amounts in the Revenue Fund in excess of the Available Revenues and any Cumulative Excess Revenues which can be allocated for such purposes and amounts so advanced by the Owner shall constitute Reimbursable Owner Advances.

4. The following provisions of Article 5, Insurance, are hereby deleted and replaced with the following.

(A) Section 5.01(e) Insurance.

(e) **Insurance.** The Parties acknowledge that (i) the Owner shall obtain and maintain the coverage set forth in Section 5 of **Exhibit O** (Property and Business Interruption Insurance), including boiler and machinery coverages and (ii) Hotel Manager shall obtain and maintain the coverage set forth in Sections 1, 2, 3, 4, 6, 7, 8 and 9 of **Exhibit O**, in each case in accordance with the applicable provisions of this Agreement and such **Exhibit O**.

(B) Section 5.02(c) Waiver of Subrogation Requirements.

Where appropriate and obtainable (including insurance provided for in Exhibit O), all Hotel Manager policies shall waive subrogation rights against the Owner. The workers' compensation policy shall waive all rights of subrogation against the Owner.

(C) Section 5.06(a) Duties of Hotel Manager. Hotel Manager shall promptly:

(a) Cause to be investigated all accidents and claims for damage relating to the operation and maintenance of the Hotel, as they become known to Hotel Manager, shall report to the Owner any such incident that is material (Material Incidents includes any environmental claim, claims involving more than one claimant, any claim involving minors, any claim involving an assault or fatality, any claim over \$50,000 dollars, and any claim that a reasonable person would attach importance to its existence or nonexistence.) and shall provide the Owner a report quarterly setting forth all accidents and claims for damage relating to the Hotel in the form prepared by Hotel Manager for other Westin Hotels.

5. Section 2.02(c)(xxi) **Common Use Maintenance Responsibilities**, is hereby added to the Operating Agreement.

(A) The Parties recognize that some portions of the Hotel and Airport may be used from time to time by both Owner and Hotel Manager. In order to ensure proper maintenance of the common use areas, the Parties agree that they will negotiate a Common Use Maintenance Agreement which shall outline the duties and responsibilities of the Parties relating to the common use. The Parties further agree that although such Common Use Maintenance Agreement might supplement the terms of this Agreement it shall not be deemed to be an amendment to this Agreement. The Parties further agree to meet at least quarterly (unless the parties otherwise mutually agree to a different schedule) to discuss Common Use Maintenance Responsibilities.

6. The first sentence of Section 2.2.21 (g) (ii) is hereby deleted and replaced with the following:

By March 1 of Each Operating Year, Hotel Manager shall deliver to Owner a schedule of Bonuses it intends to pay to Senior Executive Personnel, it being understood that each such schedule shall set forth the names of each of the Senior Executive Personnel to whom Hotel Manager intends to pay a bonus for the preceding Operating Year and the amount of the bonus payable to and the amount for each of the Senior Executive Personnel (the “**Schedule of Bonuses**”)

7. Section 2.36 **Plaza Use and Maintenance Responsibilities**, is hereby added to the Operating Agreement.

The Plaza at Denver International Airport connects the Jeppesen Terminal to the Hotel and Transit Center. The Parties acknowledge that both the Airport and Hotel will benefit from the booking, promotion and use of the Plaza as part of its portfolio of available space. In order to ensure coordination on booking, use and maintenance of the Plaza, the Parties agree to negotiate a Plaza Use Agreement which shall detail the dates of usage by Owner or Hotel Manager as well as outline the duties and responsibilities of the Parties relating to the Plaza use and maintenance. The Parties further agree that although such Plaza Use Agreement might supplement the terms of this Agreement it shall not be deemed to be an amendment to this Agreement. The Parties agree to meet at least quarterly (unless the parties otherwise mutually agree to a different schedule) to discuss Plaza use and maintenance responsibilities.

8. Notwithstanding the foregoing, the Parties agree that nothing in this amendment is intended to grant (i) Owner any right to use any portion of the Hotel without the consent of Hotel Operator (except as already expressly set forth in this Operating Agreement) which may be withheld in its sole discretion and (ii) Hotel Operator the right to use any portion of the Airport without the consent of Owner (except as already expressly set forth in this Operating Agreement) which may be withheld in its sole discretion.

9. The definition of “Hotel O&M Expenses” set forth in Exhibit A – Master Glossary of Defined Terms attached to the Operating Agreement is hereby deleted in its entirety and replaced with the following:

"Hotel O&M Expenses" means, with respect to any period, (a) Hotel Operating Expenses, (b) Taxes and Insurance Costs, (c) the Hotel Management Fee, and (d) any other items, costs or expenses which, under the express provisions of the Hotel Management Agreement or the Cash Management Agreement, are required to be treated as Hotel O&M Expenses payable out of the Hotel Operating Account.”

10. The following new definition of “Interest Payment Date” shall be added to Exhibit A - Master Glossary of Defined Terms of the Operating Agreement as indicted herein:

"Interest Payment Date" is May 15 and November 15 of each calendar year.

11. Exhibit B, Debt Service, which is to be added to this Agreement, shall be added to this Agreement once the Debt Service calculation is completed. The addition of Exhibit B shall be completed without the requirement of a formal amendment to this Agreement.

12. Exhibit G, Cash Management Agreement, which was attached to Operating Agreement is hereby deleted and replaced with the Exhibit G attached to this Amendment. Through the mutual consent of the Parties, Exhibit G may be modified from time to time without the requirement of a formal amendment to this Agreement.

13. Exhibit O, List of Insurance and Insurance Requirements, which was attached to Operating Agreement is hereby deleted and replaced with the Exhibit O attached to this Amendment.

14. Owner and Operator agree that all terms and provisions of the Operating Agreement shall be and remain in full force and effect as therein written, except as otherwise expressly provided herein.

Signatures appear on following page

Contract Control Number: PLANE-CE0A072-02

Contractor Name: WESTIN DIA OPERATOR LLC
By: STARWOOD HOTELS & RESORTS WORLDWIDE, INC.

By: _____

Name: Marshall J. Dorat
(please print)

Title: Assistant Secretary
(please print)

ATTEST: [if required]

By: _____

Name: CLARA ROSABELLA
(please print)

Title: LEGAL ADMIN
(please print)



Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Exhibit G

CASH MANAGEMENT AGREEMENT

by and among

CITY AND COUNTY OF DENVER, COLORADO
for and on behalf of its Department of Aviation

and

WESTIN DIA OPERATOR, LLC

relating to

DENVER INTERNATIONAL AIRPORT HOTEL PROJECT

Dated as of October 6, 2015

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CASH MANAGEMENT AGREEMENT

THIS CASH MANAGEMENT AGREEMENT (this "**Agreement**"), dated as of on the signature page, by and among the CITY AND COUNTY OF DENVER, COLORADO, for and on behalf of its Department of Aviation, a Colorado municipal corporation (the "**City**"), and WESTIN DIA OPERATOR, LLC, a Delaware limited liability company authorized to do business in the State of Colorado ("**Hotel Manager**").

W I T N E S S E T H :

WHEREAS, the City has issued its Bonds for the purpose of financing the acquisition, construction, equipping, financing and operation of the Project, pursuant to the provisions of a Supplemental Ordinance; and

WHEREAS, the City has pledged, under the terms of the General Bond Ordinance, the Gross Revenues (as defined in the General Bond Ordinance and including the Gross Operating Revenues) as security for the payment of the bonds issued under the General Bond Ordinance (including the Bonds) and performance by the City of its other obligations under the General Bond Ordinance and has agreed, pursuant to the Supplemental Ordinance, to establish the Hotel Operating Account with the Depository Bank and to cause such Gross Operating Revenues (less the Petty Cash Amount) to be deposited therein and has further pledged the Hotel Operating Account for the benefit of the bondholders under the terms of the General Bond Ordinance; and

WHEREAS, in connection with the operation of the Hotel, the Hotel Manager will collect certain Excluded Taxes and Other Charges and Pass Through Costs on behalf of other entities and, pursuant to the Hotel Management Agreement, the Bond Ordinance and this Agreement, the Hotel Manager is required to account for such Excluded Taxes and Other Charges and Pass Through Costs and remit such amounts to the appropriate entities; and

WHEREAS, the City has entered into the Hotel Management Agreement with Hotel Manager, pursuant to which Hotel Manager has agreed to manage and operate the Project, subject to the terms and conditions hereof and thereof; and

WHEREAS, the parties hereto desire to establish and maintain the Hotel Operating Account, Hotel Operating Reserve Fund, the Excluded Taxes and Pass Through Costs Fund and the Clearing Bank Account as required by the Hotel Management Agreement.

NOW THEREFORE, in consideration of the mutual premises recited above and contained herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Defined Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Hotel Management Agreement dated as of April 11, 2011. Capitalized terms defined herein have the meanings assigned to such terms herein.

Section 2. Establishment of the Hotel Operating Account and Hotel Operating Reserve Fund.

(a) The City and Hotel Manager shall cause the depository bank to establish and maintain, on a date which is at least seven days prior to the Opening Date, two deposit accounts (which shall be an interest bearing account to the extent reasonably available), which shall be entitled "Denver International Airport Hotel Operating Account" (the "**Hotel Operating Account**") and the "Denver International Hotel Operating Reserve Fund" (the "Hotel Operating Reserve Fund").

(b) The Hotel Operating Account and Hotel Operating Reserve Fund shall be assigned the federal tax identification number of the City which number is 84-6000580. So long as the Hotel Management Agreement has not been terminated, the City shall cooperate with Hotel Manager to designate certain personnel of Hotel Manager as authorized signatories for the Hotel Operating Account.

(c) Pursuant to Section 3.06 of the Hotel Management Agreement on a date which is no later than the Opening Date, the City is required to transfer \$700,000 into the Hotel Operating Account, and \$1,500,000 into the Hotel Operating Reserve Fund. Pursuant to the Pre-Opening Services Agreement, Hotel Manager shall transfer to the City all reservation deposits received prior to the Opening Date, and, no later than the Opening Date, the City is required to transfer such amounts into the Hotel Operating Account and Hotel Operating Reserve Fund. Amounts held in the Hotel Operating Account shall be subject to disbursement and withdrawal for the purposes and in the manner set forth in the General Bond Ordinance, the Hotel Management Agreement and herein. The Amount held in the Hotel Operating Reserve Fund shall equal the Minimum Operating Reserve Requirement as set forth in the General Bond Ordinance, the Hotel Management Agreement and herein.

(d) The parties acknowledge and agree that the Hotel Operating Account shall be deemed to be an account within the Revenue Fund established under the General Bond Ordinance, that amounts on deposit in the Hotel Operating Account shall constitute "Gross Revenues" as defined in the General Bond Ordinance and, subject to the terms of this Agreement and the Hotel Management Agreement, such amounts shall be applied in accordance with the provisions of the General Bond Ordinance.

Section 3. Establishment of Clearing Bank Accounts and Provisions for Hotel Manager's Retention of Petty Cash.

(a) As part of the process of depositing all Gross Operating Revenues, Excluded Taxes and Other Charges and Pass Through Costs into the Hotel Operating Account and withdrawing such amounts for the payment of Hotel Operating Expenses, Excluded Taxes and Other Charges and Pass Through Costs, Hotel Manager and the City shall establish one or more segregated bank accounts (collectively, the "**Clearing Bank Accounts**") in order to obtain for the Hotel favorable terms for settling electronic transactions effected with bank and non-bank credit cards or for other purposes customary in the upscale hotel industry (which services may be provided by a National Vendor); provided, however, that all Clearing Bank Accounts shall be "zero balance" accounts such that, at the end of each Business Day, all amounts contained therein (except for de minimis amounts and amounts for which withdrawals from such accounts have not yet cleared) shall be automatically withdrawn and transferred to the Hotel Operating Account and, other than as provided in the following sentence or herein, no other withdrawals from the Clearing Bank

Accounts shall be permitted. Costs of maintaining such Clearing Bank Accounts shall be paid or credited as a Hotel Operating Expense.

(b) The City acknowledges and agrees that (i) Hotel Manager shall have the right to maintain customary and reasonable petty cash accounts at the Hotel and to fund those accounts in an amount or amounts aggregating not more than the Petty Cash Amount, and (ii) credit card processors will require the ability to access, debit for charge back purposes and offset the Clearing Bank Accounts set up for the purpose of handling credit card payments.

Section 4. Establishment of Excluded Taxes and Pass Through Costs Fund.

(a) The City and Hotel Manager shall cause the depository bank to establish and maintain, on a date which is at least seven days prior to the Opening Date, a deposit account (which shall be an interest bearing account to the extent reasonably available), which shall be entitled "Denver International Airport Hotel Excluded Taxes and Pass Through Costs Fund" (the "**Excluded Taxes and Pass Through Costs Fund**"). Any interest earnings on the Excluded Taxes and Pass Through Costs Fund shall be deposited to the Hotel Operating Account.

(b) The Excluded Taxes and Pass Through Costs Fund shall be assigned the federal tax identification number of the City. So long as the Hotel Management Agreement has not been terminated, the City shall cooperate with Hotel Manager to designate certain personnel of Hotel Manager as authorized signatories for the Excluded Taxes and Pass Through Costs Fund in accordance with Section 3.07(a) of the Hotel Management Agreement.

(c) Pursuant to Section 7(b) hereof, Hotel Manager is authorized to direct the depository bank to transfer an amount equal to the Excluded Taxes and Other Charges and Pass Through Costs collected during the prior calendar month (to the extent not previously paid out of the Hotel Operating Account pursuant to Section 7(a) hereof) to the Excluded Taxes and Pass Through Costs Fund. Amounts held in the Excluded Taxes and Pass Through Costs Fund shall be subject to disbursement and withdrawal by Hotel Manager for the purposes and in the manner set forth in the Hotel Management Agreement and herein. Amounts on deposit in the Excluded Taxes and Pass Through Costs Fund shall not constitute "Gross Revenues" as defined in the General Bond Ordinance.

Section 5. Transfers From Hotel Operating Account to Revenue Fund; Cumulative Excess Revenues.

This Section shall be applicable until such time as there is an Ownership Transfer Event as defined in the Hotel Management Agreement. On the first Business Day of each month and as otherwise provided in this Cash Management Agreement, the Hotel Manager shall transfer from the Hotel Operating Account all Available Revenues to the Revenue Fund held under the General Bond Ordinance. The Owner shall utilize the Available Revenues in the Revenue Fund, and shall use other amounts in the Revenue Fund to the extent of any Cumulative Excess Revenues available for allocation for the deposits, transfers or payments indicated below, in the order of priority and in the amounts set forth below, it being agreed that the

requirements of each priority are to be fully satisfied, leaving no deficiencies, prior to any deposit, transfer or payment later in priority:

(a) to the Owner, the Administrative Expenses (as due and accrued);

(b) to the Owner, all Debt Service for the Bonds due for such period according to Exhibit B of the Hotel Management Agreement and all other amounts then due and payable on such Bonds or as required by the Bond Ordinance;

(c) to the Owner, the Reimbursable Owner Advances, plus Interest;

(d) to the Senior Hotel FF&E Reserve Fund, the Senior FF&E Set Aside Amount for the preceding month and any Senior FF&E Set Aside Amount for any other prior period that has not been previously funded;

(e) to the Senior Hotel CapEx Reserve Fund, the Senior CapEx Set Aside Amount for the preceding month and any Senior CapEx Set Aside Amount for any other prior period that has not been previously funded;

(f) to the Hotel Operating Reserve Fund, the amount, if any, necessary to cause the current balance therein to equal the Minimum Operating Reserve Requirement;

(g) to the Hotel Manager, the amount equal to the Hotel Manager Subordinate Management Fee then due and payable;

(h) to the Subordinate Hotel CapEx Reserve Fund, the Subordinate CapEx Set Aside Amount for the preceding month and any Subordinate CapEx Set Aside Amount for any other prior period that has not been previously funded;

(i) to the Hotel Manager, the Hotel Manager Subordinate Management Fee due and payable during any prior period that has not been previously funded;

(j) to the Hotel Manager, the amount equal to the sum of any amounts previously loaned by the Hotel Manager to the Owner pursuant to Section 4.05(b)(i) of the Hotel Management Agreement (together with interest, the amount of which shall be determined in accordance with Section 4.05(b)(i) of the Hotel Management Agreement);

(k) to the Hotel Operating Reserve Fund, the amount, if any, necessary to cause the current balance therein to equal the Operating Reserve Requirement; and

(l) all remaining amounts will be available to the Owner for any purpose.

Section 6. Deposit of Gross Operating Revenues, Excluded Taxes and Other Charges and Pass Through Costs to the Hotel Operating Account.

(a) Hotel Manager shall immediately instruct in writing each bank, corporation, processor or other entity with which Hotel Manager has entered into a merchant's or other agreement with respect to the processing of charge card, debit card or comparable forms of payment that all receipts payable with respect to the Hotel (each a "**Credit Card Company**"), in accordance with such merchant's or other agreement or otherwise, shall be transferred when due by wire transfer or the ACH System for deposit in a Clearing Bank

Account or the Hotel Operating Account, notwithstanding contrary terms of any such merchant's or other agreement.

(b) Hotel Manager shall immediately instruct in writing all Persons that now or hereafter maintain open accounts with Hotel Manager, or from whom Hotel Manager receives or will receive payment on an "accounts receivable" basis, the payments on which open accounts or accounts receivable constitute or will constitute Gross Operating Revenues, Excluded Taxes and Other Charges and Pass Through Costs, to deliver all such payments when due under such accounts to Hotel Manager for deposit in a Clearing Bank Account or the Hotel Operating Account whether in the form of checks, drafts, cash, money orders or any other type of payment whatsoever.

(c) The City and Hotel Manager each agrees to deposit promptly in the Hotel Operating Account or a Clearing Bank Account any Gross Operating Revenues, Excluded Taxes and Other Charges and Pass Through Costs it may receive directly or from any third party; provided, however, that Hotel Manager may retain the Petty Cash Amount on the Hotel premises.

(d) Without the prior written consent of the City, Hotel Manager shall not (i) terminate, amend, revoke, modify or contradict any instruction letter delivered hereunder in any manner, or (ii) cause any tenant, debtor or Credit Card Company to pay any amount of Gross Operating Revenues, Excluded Taxes and Other Charges or Pass Through Costs in any manner other than as provided specifically herein.

Section 7. Disbursements From the Hotel Operating Account and the Excluded Taxes and Pass Through Costs Fund.

(a) ***Disbursements to Hotel Manager by Depository Bank after Opening Date.*** Unless the Hotel Management Agreement has been terminated, on and after the Opening Date, the depository bank is instructed to periodically disburse amounts deposited in the Hotel Operating Account to Hotel Manager as periodically requested by Hotel Manager, pursuant to either written instructions provided by Hotel Manager specifying the amount to be transferred by the depository bank to Hotel Manager or by check or draft drawn by Hotel Manager directly against the Hotel Operating Account. Hotel Manager shall use all such funds for the payment of any Hotel O&M Expenses in accordance with the Hotel Management Agreement including, without limitation, any Hotel Management Fee then due and owing, the Eligible Employee Bonus Pool and Taxes and Insurance Costs. Unless the Hotel Management Agreement has been terminated, on or after the Opening Date, the depository bank is instructed to periodically disburse amounts deposited in the Excluded Taxes and Pass Through Costs Fund to Hotel Manager as periodically requested by Hotel Manager, pursuant to either written instructions provided by Hotel Manager specifying the amount to be transferred by the depository bank to the Hotel Manager or by check or draft drawn by the Hotel Manager directly against the Excluded Taxes and Pass Through Costs Fund. Hotel Manager shall use all such funds for the payment of amounts then due and owing for Excluded Taxes and Other Charges and Pass Through Costs. Hotel Manager may pay to itself from the funds so requested from the Depository Account any Hotel Management Fee then due and owing pursuant to the Hotel Management Agreement on the first Business Day of each month. The City directs the depository bank to disburse amounts held in the Hotel Operating Account and the Excluded Taxes and Pass Through

Costs Funds upon Hotel Manager's request therefore in accordance with this Section 7, and in no event will the depository bank have the duty or obligation to verify or confirm Hotel Manager's use of such funds, it being understood that Hotel Manager must at all times comply with the Hotel Management Agreement and this Agreement with respect to the use of such funds.

(b) ***Transfers to the Excluded Taxes and Pass Through Costs Fund and Disbursements to the City by the Depository Bank.*** After the Opening Date, Hotel Manager shall direct the depository bank on the first Business Day of each month to transfer the amount determined by the Hotel Manager to be the Excluded Taxes and Other Charges and Pass Through Costs on deposit in the Hotel Operating Account which have not been previously paid from the Hotel Operating Account to the Excluded Taxes and Pass Through Costs Fund.

Section 8. Other Funds Held by City and Hotel Manager's Rights to Disbursements.

Pursuant to the Supplemental Ordinance and the Hotel Management Agreement, the City has established or will establish certain Funds and Accounts into which the City will deposit certain amounts to the extent of (a) the Available Revenues received by the City from the depository bank as directed by Hotel Manager in accordance with Section 7(b) hereof and (b) any other funds constituting Available Revenues received from Hotel Manager or any other Person. Such Available Revenues distributed to the City shall be utilized by the City in accordance with Section 3.10 of the Hotel Management Agreement. Hotel Manager has requested that the City enter into this Agreement for the purpose of paying Hotel O&M Expenses (including but not limited to any Hotel Management Fee when due and payable and Taxes and Insurance Costs), and other expenses for which Sufficient Funds are required to be provided under the Hotel Management Agreement. The Hotel Manager's right to seek disbursements from the City, the City's obligations to make such disbursements and the terms and conditions under which such disbursements are to be made at the time and as otherwise set forth in the Supplemental Ordinance and the Hotel Management Agreement. The City shall provide the Hotel Manager with a monthly statement of the amounts available in the Funds and Accounts.

Section 9. Fees. The City agrees to pay the fees of the depository bank in accordance with the customary fees charged by the depository bank for the services described herein, as such fees are established from time to time.

Section 10. Replacement of Depository Bank. The City may replace the depository bank with a new depository bank reasonably acceptable to Hotel Manager upon 30 days' notice to the other parties to this Agreement. The parties hereto each agree that it shall take all reasonable action necessary to facilitate the transfer of the respective obligations, duties and rights of the depository bank being replaced to the successor depository bank. In the event of replacement of the depository bank, the parties agree to establish a new Hotel Operating Account, a new Excluded Taxes and Pass Through Costs Fund and new Clearing Bank Accounts (if such Clearing Bank Accounts are maintained with the depository bank) with a new depository bank, and amend this Agreement to the extent necessary. As necessary, sufficient funds shall remain in the existing accounts to satisfy all checks written against such accounts prior to transfer to the new accounts in connection with such replacement.

Section 11. RESERVED.

Section 12. Covenants of Hotel Manager and the Depository Bank.

(a) Hotel Manager hereby covenants (i) to withdraw amounts from the Hotel Operating Account in accordance with the Hotel Management Agreement for the sole purpose of paying Hotel O&M Expenses (including, without limitation any Hotel Management Fee when due and payable, Taxes and Insurance Costs and the Eligible Employee Bonus Pool) and Excluded Taxes and Other Charges and Pass Through Costs (but only to the extent provided in subsections (a) and (b) of Section 7 hereof) and (ii) to withdraw amounts from the Excluded Taxes and Pass Through Costs Fund for the sole purpose of paying Excluded Taxes and Other Charges and Pass Through Costs (to the extent not already paid pursuant to Section 7(a) hereof).

(b) The depository bank hereby expressly acknowledges and agrees that Hotel Manager shall be authorized to pay any Hotel Management Fee directly to the Hotel Manager each month when due and payable and to pay Taxes and Insurance Costs and the Eligible Employee Bonus Pool directly to the Hotel Manager in accordance with the terms of the Hotel Management Agreement and as provided in Section 7(a) hereto.

(c) The monies, including all deposits held within the Hotel Operating Account shall be subject to the requirements under Colorado law relating to the Public Depository Protection Act (PDPA). The parties agree to work together to ensure the Hotel Operating Account is covered by the PDPA.

Section 13. Remedies of City. After an Event of Default under the General Bond Ordinance, the parties agree to cause the depository bank to transfer the Hotel Operating Account to the name and credit of the City upon demand thereof, as provided in and permitted by the General Bond Ordinance.

Section 14. Successors and Assigns, Assignments.

(a) This Agreement shall bind and inure to the benefit of and be enforceable by the depository bank, the City and, so long as the Hotel Management Agreement or any successor agreement with the Hotel Manager is in effect, the Hotel Manager and their respective successors and assigns.

(b) Upon termination of the Hotel Management Agreement, Hotel Manager shall assign its rights and delegate its obligations hereunder to any successor manager of the Hotel which the City has caused, in writing, to assume such rights and obligations and may assign its rights and delegate its obligations hereunder to any other person.

Section 15. Termination of Hotel Manager's Rights under this Agreement. Notwithstanding any other provision of this Agreement, Hotel Manager's rights and obligations under this Agreement shall terminate upon termination of the Hotel Management Agreement and any successor agreement with Hotel Manager with respect to the management of the Hotel; provided that Hotel Manager shall be entitled to all amounts then due and owing to it under the Hotel Management Agreement in the manner and to the extent described in the Hotel Management Agreement.

Section 16. Amendments. This Agreement may be amended from time to time upon the written agreement of the parties hereto without the requirement of a formal Amendment to the HMA.

Section 17. Notices. Notices to the City and Hotel Manager shall be deemed given if sent in accordance with the Bond Ordinance or the Hotel Management Agreement, as applicable. Notices shall also be sent to current acting Manager of Finance for the City and County of Denver at:

Manager of Finance
Attn: Cash Management, Dept. 1010
201 W. Colfax Ave.
Denver, CO 80202

Section 18. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State without regard to the conflict of laws rules of the State. Any action regarding this Agreement shall be brought in the City and County of Denver, Colorado.

Section 19. Conditions Precedents. The depository bank's and the City's compliance with the provisions of this Agreement permitting Hotel Manager to access funds as set forth herein is a condition precedent to the obligations of Hotel Manager under the Hotel Management Agreement.

Section 20. Inconsistencies with Hotel Management Agreement and GBO. The City, Hotel Manager and the depository bank hereby agree that any inconsistencies between this Agreement and the Hotel Management Agreement or General Bond Ordinance shall be governed and controlled by the General Bond Ordinance. To the extent this Agreement is determined to be inconsistent with the General Bond Ordinance, the parties hereto shall amend this Agreement in order to make such inconsistent provisions conform to the terms of the General Bond Ordinance.

Section 21. Disputes; Dispute Resolution. Any disputes among the Parties under this Agreement shall be resolved as provided in Article 10 of the Hotel Management Agreement

Section 22. Other Agreements. The Parties agree that the terms and conditions of this Agreement and the Hotel Management Agreement are intended to be referenced and construed cooperatively.

EXHIBIT A

MASTER GLOSSARY OF TERMS from the Hotel Management Agreement

Incorporated Herein by Reference

EXHIBIT O

LIST OF INSURANCE AND INSURANCE REQUIREMENTS

Operational Insurance Coverages:

1. **Commercial General Liability Insurance** – Minimum \$2 million per occurrence, \$4 million annual aggregate, including the following coverages: (a) Liquor Liability, (b) Innkeepers Liability, (c) Bodily Injury and Property Damage, (d) Product and Completed Operations Liability, (e) Personal Injury and Advertising Injury Liability, (f) fire Legal Liability, (g) Terrorism, (h) liability assumed under any contract or agreement, and (i) pollution carve-backs for building heating, cooling and dehumidifying equipment, hostile fire, pesticides, herbicides, and pool chemicals.
2. **Commercial Automobile Liability Insurance** – Minimum \$2 million per accident resulting from the use, operation or maintenance of any Automobiles, and minimum \$1 million for uninsured/underinsured motorist. If the Owner/Hotel Manager does not have Automobiles, the Commercial General Liability policy must be endorsed to cover Non Owned Automobile Liability.
3. **Workers' Compensation Insurance and Employers Liability Insurance** – Hotel Manager to maintain Workers' Compensation coverage as required by Applicable Law in the applicable jurisdiction, and Employers Liability Insurance with a minimum limits of \$2,000,000 each accident. An Alternate Employer Endorsement in favor of the Owner shall apply.
4. **Umbrella/Excess Liability Insurance** – Minimum \$100 million per occurrence and annual aggregate limit applying excess over all of the primary Commercial General, Automobile and Employers Liability policies (including Terrorism). Coverage shall also extend to Legionella, Bodily Injury as required by Owner.
5. **Property and Business Interruption Insurance** – provided by Owner
 - a. Property Insurance – written on an “all risk” or “special risk” form including flood, earthquake, windstorm and terrorism, and cover all real and personal property on a full (100%) replacement cost basis.
 - b. Business Interruption/Extra Expense – written on an “Actual Loss Sustained” basis in an amount equal to at least 12 months expected net income before income tax (calculated per GAAP), and including continuing normal operating expenses) that necessarily continue, notwithstanding the business interruption. Insurance must include Extended Period of Indemnity/Liability coverage for loss until normal operation resume, for a period not less than 12 months after business operation have resumed. Owner shall also cover Hotel Manager's Business Interruption/Extra Expense coverage as required. Hotel Manager shall be named as a Loss Payee as respects the Business Interruption/Extra Expense coverages only.
 - c. Earthquake, Flood Perils – with limits of \$250,000,000 annual aggregate for Flood and \$250,000,000 annual aggregate for Earth Movement inclusive of Property Damage and Business Interruption loss. However, if such insurance and/or limits of coverage cannot be obtained at commercially reasonable terms and/or rates given then current market conditions, then the Parties shall agree as to the type and extent of coverage to be provided.
6. **Employee Fidelity/Crime Insurance** – Minimum \$5 million each loss or such higher amounts as may be required by the Bond Ordinance, and covering Senior Executive Personnel and each

employee handling cash or receipts of the Hotel or having access to funds in any hotel accounts in the Cash Management Agreement. Owner shall be added as a Loss Payee as their interest may appear.

7. **Employment Practices Liability Insurance** – Minimum \$30 million each insured event/annual aggregate coverage to extend to third parties to include but not be limited to customers and vendors. Owner shall be named as an Additional Insured (not as a co-defendant).
8. **Network Security and Privacy Liability** – Minimum Limits of \$5,000,000 per Claim/Loss, \$5,000,000 in the Aggregate. Hotel Manager’s policy will include Owner in the definition of “Insured”.
9. **Pollution Legal Liability** - Hotel Manager’s policy shall provide Owner third party bodily injury arising out of legionella and mold contracted at the hotel contingent upon Owner participating in Hotel Manager’s general liability program.

Terms and Conditions:

All insurers must have a minimum: A.M. Best rating of A-XII.

All policies must provide a 60 day written notice of cancellation or material change to the Owner and Hotel Manager.

All liability (#1, 2, and 4 above under Operation Insurance Coverages) must name the Owner and its Affiliates as an “Additional Named Insured” on all such policies

The Commercial General Liability and Excess/Umbrella policies must be written on an “Occurrence” form.

Any policy that provides coverage for more than one location must contain a “per location” general aggregate (including liquor liability). The excess liability shall provide products/completed operation on a per location basis up to \$100 million.

All policies must contain an express waiver of subrogation against the Owner and its Affiliates.

All policies required of the Owner above shall be primary and non –contributory.

All liability policies must provide coverage and defense for claims filed anywhere in the world, including the United States of America, its territories and possessions, Puerto Rico or Canada.

Definitions: All capitalized terms used in this **Exhibit O**, but not defined in the Agreement, shall have the meaning as commonly used in the insurance industry.