

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

**THIS FIRST 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 (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. Section 4.09(a), “Failure of Opening Date to Occur” is amended to read in its entirety as follows:

**“(a) *Failure of Opening Date to Occur.*** If the Opening Date has not occurred by January 1, 2016 (subject to extension day for day for up to nine (9) months for delays caused by a Force Majeure Event), (i) Hotel Manager may terminate this Agreement by notice given to the Owner not earlier than twenty (20) days following the applicable date (and in any event prior to the Opening Date) and (ii) the Owner may terminate this Agreement by notice given to Hotel Manager not earlier than twenty (20) days following the applicable date (and in any event prior to the Opening Date) only if the Owner determines that Hotel Manager's failure to provide its services under the Pre-Opening Services Agreement has significantly contributed a delay that resulted in the failure of the Opening Date to occur within such time frame. This Agreement shall be deemed terminated upon non-terminating Party's receipt of such notice. If the Parties agree to a revised Opening Date, Hotel Manager and the Owner shall again have the right to terminate this Agreement upon notice to either Party if

the conditions precedent to the Opening Date have not occurred by the revised Opening Date. As often as the Parties agree to a new revised Opening Date, Hotel Manager and the Owner shall retain the right of Termination granted under this provision.”

2. Section 4.09(e), “Failure to Issue Bonds” is amended to read in its entirety as follows:

“(e) **Failure to Issue Bonds.** If for any reason the Bonds are not issued by the Owner by June 30, 2013, then either Hotel Manager or the Owner may terminate this Agreement by delivering thirty (30) days' written notice to the other Party prior to the issuance of the Bonds.”

3. Section 4.09(f), “Construction Commencement” is amended to read in its entirety as follows:

“(f) **Construction Commencement.** Hotel Manager or the Owner may terminate this Agreement on at least sixty (60) days' notice to the other Party if construction of the Project has not commenced by June 30, 2013”.

4. Section 12.25, “Restrictive Covenant”, is amended to read in its entirety as follows:

“**Section 12.25 Restrictive Covenant** Until the later of the expiration or prior Termination of this Agreement or 12 months after the Termination of this Agreement due to an Event of Default by the Hotel Manager with the intention of causing this Agreement to terminate in order to prevent the enforcement of this Section 12.25, and as a material inducement to the Owner entering into this Agreement, Hotel Manager and its Affiliates shall not, without the prior written consent of the Owner, own, lease, operate, manage, license, franchise, merge with or join through a joint marketing or other similar arrangement, in whole or in part, directly or indirectly, a Restricted Hotel within the Restricted Area. A “Restricted Hotel” shall mean a hotel under the Westin Brand, as defined in Exhibit A. The foregoing restriction shall not apply to (a) any other hotels now existing or hereinafter created or acquired by Starwood in the Restricted Area which are not marketed or operated under the Westin Brand, including but not limited to Aloft<sup>®</sup>, Element<sup>SM</sup>, Four Points<sup>®</sup>, Le Méridien<sup>®</sup>, Sheraton<sup>®</sup>, St. Regis<sup>®</sup>, The Luxury Collection<sup>®</sup>, and W Hotels<sup>®</sup>, in the Restricted Area, (b) timeshare, fractional, vacation club, or any other form of interest in any vacation or interval ownership program marketed or operated under the Westin Brand or any other Starwood brand located within the Restricted Area, provided that to the extent such programs are operated under the Westin Brand, the same cannot be used primarily for transient accommodations, or (c) residences marketed or operated under the Westin Brand or any other Starwood brand located

within the Restricted Area, provided that to the extent the residences are operated under the Westin Brand the same are not used primarily for transient accommodations. Any ownership, operation or licensing of hotels or other properties under the Westin Brand (or any other now existing or hereinafter created or acquired Starwood brand hotels) located outside the Restricted Area would be completely unrestricted. The Owner agrees that nothing set forth in this provision prohibits Hotel Manager or its Affiliates from executing contracts or entering into binding arrangements to own, lease, operate, manage or license Westin Brand hotels within the Restricted Area (A) to the extent that a Restricted Hotel does not open for business to the general public (due to construction or for any other reason) during the Operating Term, and (B) so long as neither Hotel Manager nor any Affiliate or agent or person performing services for Hotel Manager or any Affiliate undertakes or causes the performance of pre-opening marketing or sales activities with respect to a Restricted Hotel in any way during the Operating Term.”

5. 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:**

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 \_\_\_\_\_



**Contract Contro**

PLANE-CE0A072-01

**Contractor Name:**

WESTIN DIA OPERATOR LLC

By: STARWOOD HOTELS & RESORTS WORLDWIDE, INC.

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



Name: Marshall J. Donat  
(please print)

Title: Assistant Secretary  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

