

**REQUEST FOR PROPOSAL**  
**FOR THE**  
**MANAGEMENT & OPERATION**  
**OF A**  
**LIMITED-SERVICE HOTEL**  
**LOCATED IN MIDDLETOWN, OHIO**  
**ISSUED BY:**



**THE WARREN COUNTY PORT AUTHORITY,**  
**THE OWNER OF THE PROPOSED HOTEL**

**DATE OF ISSUANCE: SEPTEMBER 28, 2023**

**PROPOSAL SUBMISSION DEADLINE: OCTOBER 13, 2023**

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## **REQUEST FOR PROPOSALS**

The Warren County Port Authority ("WCPA") is soliciting proposals from qualified firms for the operation and management of an approximately 120 room, Limited-Service Hotel ("Hotel") to be located in the City of Middletown, Warren County, Ohio. This Request For Proposal ("RFP") is intended to outline the basis for submission of Proposals to provide management and operation of the Hotel. This RFP contains general terms and conditions for the procurement process, the scope of services requested, contract requirements, instructions for submission of a Proposal ("Proposal"), and submission forms that must be included in the Proposal. This RFP includes matters of qualification and should be read in its entirety before preparing the Proposal. All materials submitted pursuant to this RFP shall become the property of the WCPA.

### **1. OVERVIEW**

#### **1.1 GENERAL CONDITIONS**

To the extent permitted by law, all Proposals submitted by any responder (each an "Proposer") in response to this RFP shall be kept confidential until the Proposal evaluation process is complete and the intent to award is announced. Submitted Proposals shall be released during the evaluation process to the members of the Evaluation Committee established by the WCPA, WCPA's Developer, CCP of Ohio, LLC and other appropriate designated WCPA staff. All information provided shall be considered by the Evaluation Committee in making a recommendation to enter into the final OPERATING AGREEMENT (defined below) with the selected Proposer.

Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFP by the Proposer shall be made in accordance with the requirements listed in Section 4.5 - Initial Questions Submission, Final Questions Submission. The WCPA is not responsible for oral interpretations given by any WCPA employee, representative, or others. The issuance of written addenda is the only official method whereby interpretation, clarification, or additional information can be given. Any questions or concerns not submitted by the stated time and date set forth in Section [4.3] herein will be deemed waived and may be disregarded.

If any addenda are issued to this RFP, the WCPA will deliver such addenda by electronic mail to the address provided by each potential Proposer. Failure of any Proposer to provide WCPA with a valid email address and to receive such addendum or interpretation shall not relieve such Proposer from any obligation under its Proposal as submitted. All addenda so issued shall become part of the Contract Documents.

The WCPA reserves the right to: (a) accept or reject any and/or all submissions of Proposals; (b) to waive irregularities, informalities, and technicalities in any submitted Proposal; and (c) to accept any alternative submission of Proposals presented which, in its opinion, would best serve the interests of the WCPA. The WCPA shall be the sole judge of the Proposals, and the resulting negotiated agreement that is in its best interest, and its decision shall be final. The WCPA also reserves the right to make such investigation as it deems necessary to determine the ability of any submitting entity to perform the work or service requested. Information the WCPA deems necessary to make this determination shall be provided by the submitting entity. Such information may include, but is not limited to, current financial statements by an independent CPA, verification of availability of equipment and personnel, and past performance records.

## **1.2 OBJECTIVE**

The WCPA desires to enter into an operating agreement with a qualified and experienced hotel management company to oversee the daily operations and programming of the Hotel.

## **2. SCOPE OF SERVICES**

### **2.1 STATEMENT OF WORK AND SCOPE**

The WCPA owns or will own the Hotel to be constructed at the south east corner of Union Road and SR-122 in Middletown, Ohio. The Hotel is contemplated to be a part of a Sports and Event Arena consisting of multiple arenas ("Arena") to be constructed and owned by the WCPA.

The successful Proposer will be required to enter into an operating agreement with the WCPA ("Operating Agreement"). The Operating Agreement will encompass daily operations, sales, management, maintenance and related activities of the Hotel. In addition, WCPA currently anticipates that the successful Proposer will be required to enter into a franchise agreement ("Franchise Agreement") directly with Hilton Franchise Holding LLC for its Home2Suites branded hotel (the "Franchisor"). The successful Proposer will be expected to cooperate with WCPA and Franchisor is negotiating and finalizing the Franchise Agreement and its related transaction documents, including, but not limited to acknowledgement of receipt of the Franchisor's disclosure document(s), and the form of agreement between the successful Proposer, WCPA and Franchisor as to WCPA's obligations as owner of the Hotel and assignment and assumption remedies in the event of a default by the successful Proposer under the Franchise Agreement.

It is anticipated that many of the Hotel's guests may also enjoy the Arena for recreational use, Ice Sports, Hockey and other Community events and entertainment activities. If the WCPA issues tax-exempt bonds to finance all or any part of the Hotel, the Operating Agreement will contain terms and conditions to qualify the agreement as a qualified management agreement under Rev. Proc. 2017-12 and related federal laws, rules and regulations (a "QMA"). The Operating Agreement will require close cooperation with the Arena operator to accommodate Arena uses; such as tournaments, concerts and events and the reservation by the Proposer of committable rooms at levels adequate to support the Arena operations. The WCPA seeks to provide housing and food and beverage for citizens of all ages, by providing hotel services that include (but are not limited to):

- Temporary Transient Housing for Guests of all ages
- Food and Beverage Services
- Meeting and Business Needs

The Proposer selected will be responsible for staffing and working with the appropriate parties within the WCPA to ensure maintenance issues at the Hotel or on its grounds are resolved in an expedient and timely manner.

The Proposer shall ensure that the Proposer, the Hotel and its operations and events are in full compliance with all applicable federal, state and local laws, regulations, rules, WCPA policies and directives, and the terms and conditions of the Operating Agreement.

## 2.2 TRAINING AND IMPLEMENTATION

The Proposer selected shall recruit, hire and train its staff members to ensure that all guests have a positive experience.

## 2.3 INSURANCE REQUIREMENTS

Insurance requirements for this project are listed at the end of the form of Operating Agreement, attached as Exhibit 5.

If the Proposer is unable to provide the required insurance referenced above, questions concerning a change to the requirements should be addressed during the question and answer phase and will not be considered after the deadline in Section 4.3.

## 2.4 DURATION

The period of performance for the Operating Agreement is three (3) years from the date of execution with two (2) mutual one (1) year renewal options (subject to IRS guidelines for QMAs, if applicable and annual appropriation by WCPA). The WCPA is in the process of consummating a transaction with the city of Middletown ("City") and issuing taxable and/or tax-exempt special obligation revenue bonds in order to cause the construction of the Arena, the Hotel, and related facilities and amenities, and negotiation by the successful Proposer, WCPA and Franchisor of the Franchise Agreement and related franchise documents (collectively, the "Transactions"). The award and execution of the Operating Agreement is contingent upon the consummation of the Transactions.

## 2.5 REQUIREMENTS

The Proposer shall explicitly state whether they can meet the requirements set forth in this RFP. If the Proposer does not meet a particular requirement, please state either the status of the requirement and/or future developments to meet the requirement.

**General Requirements:** The successful Proposer will demonstrate ability to perform all obligations set out in the form of Operating Agreement attached in order to provide the highest quality service. The successful Proposer will be expected to make every effort possible to maximize the Hotel's and Arena's economic impact on the community while seeking to generate sufficient revenues and minimize expenses. The successful Proposer must be prepared to manage all aspects of the Hotel operations in a professional manner and according to the standards of the Franchisor and major headquarter hotels associated with U.S. arena and event centers. The WCPA, without limitation, expects such obligations to include the following:

### Business Operations

- Properly established and registered to do business in the State of Ohio.
- Aggressively market and promote the Hotel in a manner that will maximize the Hotel's and the Arena's economic impact to the community.
- Develop annual budget for approval by WCPA.
- Recruit, perform background checks, hire, and train all labor for hotel services and event related activities.
- Ensure staff are certified with proper credentials to perform services when applicable.

- Ensure that all vendors and subcontractors have background checks and proper credentials to provide applicable services.
- Produce and abide by a Standard Operating Procedures Manual, following the Franchisor's Brand standards.
- Observe obligations under the Franchise Agreement.
- Maintain online reservation and payment system, as well as over the phone or in-person reservation options.
- Create and maintain professional website (or ability to establish) with relevant and up to date information.
- Maintain compliance with WCPA marketing standards.
- Be responsible for all personnel matters including employment, training, and terminations.
- Produce monthly and annual fiscal operating statements.
- Provide standard uniforms for all personnel including any safety equipment (shoes, goggles, gloves etc.) that will be required.
- Ensure personnel maintain a professional appearance in their uniforms always as well as maintain professional attitudes and are polite and courteous to all customers whether internal and external.

#### **General Requirements: Programming**

- Operation of a hotel property of approximately 130 guest rooms and a limited food and beverage and recreational elements.
- Provide supplies and equipment necessary for all hotel activities.
- Provide operating hours that meet WCPA minimum standards.
- Develop, publish and enforce rules and regulations.
- Annual plan for outreach in conjunction with WCPA key performance goals.

#### **General Requirements: Maintenance and Cleanliness**

- Keep all facilities to include guest rooms and lobby bathrooms, hotel grounds and parking areas clean and clear of trash and debris.
- Routine inspection and maintenance of the hotel, buildings, parking lot and grounds.
- Repair and replacement of hotel assets as required by WCPA, or the Hotel Franchisor as approved.
- Grounds/building maintenance (see list below):
  - Daily Room maid service
  - Daily food and beverage service
  - Daily janitorial service
  - Daily cleaning of hotel grounds and parking areas

#### **General Requirements: Impact Reporting**

- Provide quarterly reporting of financial information and relevant key performance measures and goals.

## General Requirements: Minority Participation and Hiring

- The Proposer selected will use its best efforts to ensure that staffing and discretionary spending are reflective of WCPA population and demographics (See Exhibit 6).

### 3. PROPOSAL REQUIREMENTS

This Section describes the required contents of the Proposal and provides an outline of how the Proposer should organize it.

The Proposal shall include each of the sections referenced in the table below. The requirements for each of these Proposal sections are described in more detail in this Section.

**ANY PROPOSAL MAY BE DISQUALIFIED FROM THIS RFP PROCESS IF THE PROPOSER FAILS TO CONFORM TO THE PROPOSAL INSTRUCTIONS IN THIS SECTION.**

Sections and Topics
Section 1 – Cover Letter
Section 2 – Non-Collusion Affidavit
Section 3 – Criminal and Civil Proceedings Disclosure
Section 4 – Pricing
Section 5 – Relevant Experience
Section 6 – Equal Business Opportunity (EBO) Program

#### 3.1 COVER LETTER

Proposer's Proposal shall contain a cover letter acknowledging Proposer's understanding of the RFP process and requirements set forth in this RFP, including its commitment to its Proposal. The cover letter shall be signed by an authorized representative of Proposer's company.

Provide the Proposer's name, address, web address, telephone and e-mail address. Please include the name, title and e-mail address of the individual who will serve as the Proposer's primary contact.

Describe Proposer's ownership. Please include a statement confirming that the representative executing the Proposal is authorized to legally bind the Proposer.

#### 3.2 NON-COLLUSION AFFIDAVIT

Please use the form provided in Exhibit 1.



### **3.3 CRIMINAL AND CIVIL PROCEEDINGS DISCLOSURE**

Please use the form provided in Exhibit 2.

### **3.4 PRICING**

Proposer shall use the form included in Exhibit 3 for this section. The pricing structure(s) proposed must comply with applicable federal laws, regulations and Internal Revenue Service guidance, relating to qualified management agreements for preservation of the tax-exempt status of special obligation revenue bonds to be issued by WCPA in connection with the Hotel in the event the Hotel is financed with tax-exempt obligations.

### **3.5 RELEVANT EXPERIENCE**

Describe the Proposer's relevant experience as it relates to the operation of hotels of this type.

### **3.6 EQUAL BUSINESS OPPORTUNITY (EBO) PROGRAM**

Proposers are encouraged to use its best efforts with regard to EBO participation.

## **4. INSTRUCTIONS ON RFP PROCESS**

### **4.1 USE OF INFORMATION**

All correspondence about this RFP and the Initiative should be limited to the Principal Contact listed in Section 4.2 or other designated WCPA personnel or agents.

### **4.2 PRINCIPAL CONTACT AND INFORMATION REQUESTS**

Matthew Schnipke, Deputy Director with WCPA is the single point of contact (the "Principal Contact") for all matters relating to this RFP. Proposer should direct all inquiries to the Principal Contact at: Matthew Schnipke (matthew.schnipke@co.warren.oh.us) with a copy to Candace Miller (Candace.Miller@co.warren.oh.us). Proposer should not, under any circumstances, contact any WCPA personnel (including senior WCPA management or WCPA employees with whom Proposer has an existing business or personal relationship) to discuss this RFP without the Principal Contact's prior written consent. The utmost discretion is expected of Proposer and all other RFP recipients. Any recipient attempting to circumvent this process will risk elimination from further participation in the selection process.

### **4.3 SCHEDULE OF ACTIVITIES**

- In order to accelerate the selection and implementation, the WCPA has developed an estimated timeline for this submittal and selection process. The WCPA will move as quickly and efficiently as possible to determine the feasibility of each Proposal and to move forward with negotiations and ultimately conclude an agreement accordingly.
- As a result, the WCPA requests that Proposer make a dedicated team available to participate in the Proposal development and evaluation processes as necessary and to participate in the activities to meet the deadlines provided in the table below.
- It is the WCPA's option to conduct interviews with finalists. However, in no way is the WCPA obligated to interview finalists.

- The WCPA reserves the right to modify or update this schedule at any point in time. In no event shall the deadline for submission of the Proposal be changed except by written modification by the WCPA Purchasing Department.

<b>Activity</b>	<b>Date</b>
Publish RFP	September 28, 2023
Proposer Questions Deadline	October 6, 2023
WCPA Response to Questions	October 9 – October 11, 2023
Proposal Submission Deadline	October 13, 2023
Finalist Selections – Optional	October 23, 2023
Finalist Presentations – Optional (WCPA’s Discretion)	TBD
Negotiations	November 3, 2023
Agreement Finalization	November 17, 2023

Several of the activities identified in the above table are described in more detail in the remainder of this Section 4.

#### **4.4 PRE-SUBMITTAL CONFERENCE**

No Pre-Submittal Conference is scheduled for this RFP.

#### **4.5 INITIAL QUESTIONS SUBMISSION, FINAL QUESTIONS SUBMISSION**

Proposer may submit an initial set of questions based on its review of this RFP, by adhering to the format template provided in Exhibit 4 and submitted as an attached WORD document or as part of the body of the email (no pdf documents) and sending it via email by 5:00 pm on the date listed in Section 4.3 Schedule of Activities. Questions received after this time and date will not be answered. This email should be sent to the individual(s) listed in Section 4.2 Principal Contacts and Information Requests, with the subject heading: “Your company’s name – RFP for Middletown Hotel Management Services – Questions”. The WCPA will deliver responses to the questions via electronic mail on or before the date listed in Section 4.3 Schedule of Activities. To ensure the fair and consistent distribution of information, no individual answers will be given. Any questions or concerns not submitted by the stated time and date will be deemed waived and may be disregarded.

#### 4.6 PROPOSAL SUBMISSIONS

Proposer shall ELECTRONICALLY submit an original response to this RFP on or before the date specified in Section 4.3 Schedule of Activities **at 12:00 noon EST**, to the addressee provided below:

Mr. Matthew Schnipke, Deputy Director, Warren County Port Authority  
E-Mail address: Matthew.Schnipke@co.warren.oh.us

With Copy to: Candace Miller  
E-Mail address: Candace.Miller@co.warren.oh.us

**PROPOSALS SUBMITTED AFTER THE DEADLINE SET FORTH IN SECTION 4.3 ABOVE, OR WHICH STATE THAT INFORMATION WILL BE PROVIDED 'AT A LATER DATE', OR WHICH ARE OTHERWISE INCOMPLETE OR FAIL TO COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS RFP WILL BE DISQUALIFIED FROM PARTICIPATION IN THIS RFP PROCESS.**

Proposals may not be amended after the submission deadline.

Notwithstanding any legends on the Proposal or any other statements to the contrary, all materials submitted in connection with Proposer's response to this RFP will become the property of the WCPA and may be returned only at the WCPA's option; provided, the WCPA shall be entitled to retain copies of any materials which the WCPA deems a record subject to Ohio public records laws, as they may be amended from time to time

**THE WCPA RESERVES THE RIGHT TO EXTEND THE SUBMISSION DEADLINE IF SUCH ACTION IS CONSIDERED NECESSARY BY THE WCPA.**

**Proposal Format.** The WCPA expects the Proposal to be a compilation of various documents, including but not limited to the RFP response templates as set forth in the Exhibits in this RFP. Proposer shall use Microsoft Office file formats in preparing its Proposal to the maximum extent possible. All pages should be formatted to print on 8 ½" x 11" paper, unless another format is provided by the response template. Proposer responses should be specific, factual, brief and to the point.

**Proposal Expiration Date.** Proposals in response to this RFP shall remain valid for three (3) months from the Proposal due date. The WCPA may request an extension of time if needed.

**Proposer Data.** The confidentiality of information and data contained in the Proposer's Proposal shall be subject to and governed by the Ohio Public Records Act and any other Public Records laws, as they may be amended from time to time, and with which the WCPA is legally obligated to comply (including a Freedom of Information Act Request under "FOIA"). All materials submitted in response to this RFP may become public record, subject to inspection after the RFP evaluation and award process has concluded. The Proposer may request that materials submitted as part of the Proposer's Proposal be treated as proprietary or confidential (provided, the WCPA in no way guarantees that such proprietary or confidential designation will ultimately exempt any material from disclosure as a public record). Any material which the Proposer requests be treated as proprietary or confidential must be clearly identified as such and easily separable from the rest of the Proposal. Cost and/or pricing information shall not be considered proprietary or confidential. Nor will the Proposer's Proposal in its entirety be deemed proprietary or confidential.

**Deadline Extension.** The WCPA reserves the right to extend the submission deadline (or any other deadline in the RFP process), if such action is considered necessary by the WCPA.

**Ambiguity, Conflict, or other Errors in the RFP.** If a Proposer discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify, in writing pursuant to Section 4.5, the WCPA of such error and request modification or clarification of the document. The Proposer shall include the name of this RFP, page number and the applicable paragraph title. The WCPA will then issue/post any revisions to the RFP. The Proposer is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the RFP prior to submitting the Proposal or any ambiguity, conflict, discrepancy, etc. shall be waived.

**Withdrawing or Amending a Proposal.** At any time prior to the scheduled deadline for receipt of Proposals, the Proposer may withdraw or amend its Proposal by submitting a written request from the authorized representative whose name and signature appears on the Proposal. A written request to withdraw or amend the Proposal must be submitted to the individual and address to whom/which the Proposal was submitted in accordance with the section above titled "PROPOSAL SUBMISSION AND DUE DATE."

**Acceptance/Rejection of Proposals.** The WCPA reserves the right to accept or reject, in whole or in part, any or all Proposals submitted, to cancel or postpone this RFP or awards made pursuant to it. The WCPA shall reject the Proposal of any Proposer that is determined to be non-responsive.

**Informalities/Irregularities.** The WCPA reserves the right to waive irregularities, informalities or variances in a Proposer's Proposal when the WCPA determines that it will be in WCPA's best interest to do so. Any such waiver shall not modify any remaining RFP specifications or excuse the Proposer from full compliance with the RFP specifications and other contract requirements if the Proposer is awarded the Operating Agreement.

**Proposer indebted to the WCPA.** No Operating Agreement will be knowingly awarded to any organization which, in the WCPA's sole discretion, is in arrears to the WCPA upon any debt or contract, or which is a defaulter as surety or otherwise under any obligations to the WCPA, or which has failed to perform faithfully on any previous contract with the WCPA.

**Tax Payments.** The WCPA is exempt from federal excise, state and local taxes on all purchases and will issue tax exemption certificates, upon request.

#### **4.7 FINALIST SELECTIONS & PRESENTATIONS (OPTIONAL)**

The WCPA may select a number of the RFP Proposer-finalists who will be asked to give an oral presentation of its Proposal to the WCPA. However, the WCPA is not obligated to interview any finalist. If interviews are conducted, these Proposers will be selected based on an evaluation of their Proposals against the criteria described in Section 5 of this RFP. Proposers that are not selected to progress to the oral presentations likely will be excluded from further consideration. For this reason, Proposers are strongly encouraged to make as complete and compelling a Proposal as possible. The Proposer who fails to comply risks being dropped from further consideration without having an opportunity to improve its offer.

Details pertaining to any oral presentations will be confirmed after Proposal submission, however the presentations are tentatively scheduled to begin on the date listed in Section 4.3 herein.

If Proposer is one of the RFP finalists asked to give an oral presentation, Proposer should prepare a comprehensive presentation that concentrates on the business and technical aspects of the Proposal. **PROPOSER'S PROPOSAL WILL NOT BE ALTERED OR ENHANCED DURING THE ORAL PRESENTATION.**

Appropriate visual and written materials are expected, but the format will be left to the discretion of the Proposer. A soft copy of all presentation materials must be delivered to the Principal Contact at least one business day before the beginning of the presentation. The Proposer should also bring a sufficient number of printed copies of the materials for the WCPA attendees at the presentation.

The WCPA may provide a last-minute agenda or other direction for the Proposer's presentation based on the WCPA's initial review of the Proposals.

#### **4.8 CONTRACT AWARD**

The award of Operating Agreement will be made on the basis of the best Proposal, as solely determined by the WCPA, and which meets the requirements and criteria set forth in the solicitation, and is in the best interests of the WCPA, as determined by the WCPA in its sole discretion. The Operating Agreement will be contingent on consummation of the Transactions, among other contingencies to be agreed upon by the parties. The WCPA will only accept Proposals for the services requested. The Proposal submitted in response to this solicitation is not a legally binding document; however, the Operating Agreement, which will be based on information provided in the Proposal, becomes legally binding once all parties have signed it. Any Operating Agreement resulting from this RFP shall be subject to the WCPA General Terms and Conditions set forth in this solicitation and any additional terms imposed by WCPA. The successful Proposer shall be required to execute the Operating Agreement originated by the WCPA and satisfy all contract requirements as specified by the WCPA. One or more Operating Agreements may be awarded under this RFP, and any contract awards and amounts are subject to the availability and appropriation of funds.

#### **4.9 MODIFICATION OR TERMINATION OF RFP PROCESS**

Subject to the rules, regulations and policies governing the WCPA's procurement processes, including with respect to providing notification and, where applicable, providing the opportunity to revise Proposals, the WCPA reserves the right to, in its sole discretion, discontinue, amend, supplement, or otherwise change this RFP, the process used for evaluation, and the expected timeline at any time and for any reason, and makes no commitments, implied or otherwise, that this process will result in a business transaction with any provider. In the event the WCPA discontinues, amends, supplements, or otherwise changes the RFP, the process used for evaluation, and/or the expected timeline, addenda will be provided to all Proposers who timely responded to the original RFP.

#### **4.10 SUPPLEMENTAL INFORMATION**

If, after issuance of this RFP, additional relevant material is produced by or becomes available to the WCPA, such material will (where appropriate) be transmitted to all RFP Proposers for their consideration. The WCPA will make modifications by issuing a written addendum, which will be delivered via electronic mail. Any revisions to the solicitation will be made only by an addendum issued by the WCPA. It is the responsibility of the Proposer to provide WCPA with valid electronic

mail addresses for delivery of possible addenda and should consider such information in its Proposal. The WCPA will assume that all changes or additional requirements transmitted have been taken into account in Proposer's Proposal (including with respect to pricing), unless otherwise specified.

#### **4.11 NO REPRESENTATIONS OR WARRANTIES**

The WCPA makes no representations or warranties regarding the accuracy or completeness of the information contained in this RFP or otherwise provided by the WCPA through the RFP process. Proposer is responsible for making its own evaluation of information and data contained in this RFP or otherwise provided by the WCPA, and for preparing and submitting responses to the RFP. The WCPA has attempted to validate the information provided in this RFP, but it is possible that Proposer may detect inconsistencies or potential errors. While Proposer should identify these potential issues in its questions or in an appendix to its Proposal, Proposer should use the information provided on an "as-is" basis for its initial Proposal. Information regarding the WCPA and the Initiative may be revised or updated and republished for inclusion in a final response.

#### **4.12 PROPOSAL PREPARATION COSTS**

The Proposer will be responsible for all costs it incurs in connection with this RFP process (including but not limited to Proposal preparation, personnel time, travel-related costs, and other expenses) and any subsequent agreement negotiations.

### **5. EVALUATION MODEL**

#### **5.1 QUALIFYING PROPOSALS**

WCPA will review each submitted Proposal to determine whether it is a Qualifying Proposal. A Qualifying Proposal is one that meets all of the criteria set forth below. All Proposals that ARE NOT a Qualifying Proposal may be disqualified from this RFP process in the WCPA's sole discretion. A Qualifying Proposal is a Proposal that:

- Was submitted (in the form and format required) by the due date as specified in Section 4.3.
- Conforms to the requirements of this RFP.
- Submitted on the provided form(s) with no changes, additions or deletions to the terms and conditions. Proposals containing terms and conditions other than those contained herein may be considered nonconforming.
- Signed by an authorized representative of your organization. Unsigned Proposals will be considered nonconforming.
- Illustrates the Proposer's expertise and ability to comply with all requirements and obligations set forth in the sample Operating Agreement attached as Exhibit 5 to this RFP.

#### **5.2 EVALUATION OF QUALIFYING PROPOSALS**

An evaluation team composed of representatives of the WCPA and its consultants will evaluate Proposals on a variety of quantitative and qualitative criteria. The criteria, and their associated weights, upon which the evaluation of the Proposals will be based, are as follows:

<b>Evaluation Category</b>	<b>Questions/Areas of Evaluation within Categories</b>	<b>Total Possible Points per Question</b>	<b>Total Possible Points</b>
<b>Company Reviews and References</b>			10
	Two (2) customer references for similar work (1 points per positive reference)	2	
	Two (2) examples of local experience for similar work (1 points per example)	2	
	List of verifiable clients or references that have engaged the vendor in similar work (1 point for each, with a maximum of six (6))	6	
<b>Business Operations Requirements</b>			16
	Registered to do business in State of Ohio	4	
	Standard Operating Procedure Manual attached	4	
	Professional website	4	
	Ability to take online reservations	4	
<b>Programming</b>			20
	Plan for hosting special interest groups, private groups, hockey clubs and/or school interests to assure the best for the community.	10	
	Plans for Hotel staffing/programming/marketing.	10	

<b>Maintenance</b>			10
	Detailed plan outlining how the partner will: <ul style="list-style-type: none"> <li>• Keep facilities clear of trash and debris.</li> <li>• Maintenance reporting through WCPA work order systems.</li> <li>• Routine inspection and maintenance of buildings, parking lot and grounds.</li> <li>• Repair and replacement of furniture and fixtures repair and maintenance as required.</li> </ul>	8	
	Plan to work with WCPA to handle other repairs.	2	
<b>Reporting</b>			10
	Detailed plan to report meaningful impacts to WCPA on a quarterly basis. What metrics will be measured? How will you measure progress?	10	
<b>Pricing and Negotiated Terms and Conditions</b>	Upon completion of the above assessment, WCPA will enter into contract negotiations with one or more qualifying firms regarding pricing and other negotiated terms and conditions, as applicable.	50	50

**5.3 EQUAL OPPORTUNITY EMPLOYER; NONDISCRIMINATION**

The WCPA is an Equal Opportunity Employer and does not discriminate on the basis of race, color, national origin, sex, religion, age, or handicap status in employment or in the provision of services. Nor shall the successful Proposer discriminate on the basis of race, color, national origin, sex, religion, age, or handicap status in employment or in the provision of services pursuant to the final Operating Agreement.

**5.4 GOVERNING LAW**

Any Operating Agreement resulting from the Proposals received in response to this solicitation shall be construed in accordance with and governed by the laws of the State of Ohio. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Ohio, located in Warren County, Ohio without regard to conflicts of laws principles.

**5.5 NON-APPROPRIATION**

The WCPA’s obligations under the final awarded Operating Agreement shall be subject to annual appropriation by the WCPA, and shall terminate immediately as of the first day of any fiscal year



in which the WCPA does not, for any reason, appropriate funds in an amount sufficient to meet its obligations under the Operating Agreement.

## **INSTRUCTIONS TO PROPOSERS**

Proposers shall submit their signed Proposal Electronically, via e-mail, INDICATING ON THE SUBJECT LINE THE REQUEST FOR PROPOSAL NUMBER.

Proposers must comply with all applicable licensing requirements. Upon award notification and prior to the Port Authority entering into an Operating Agreement with the selected Proposer, the successful Proposer, will be required to submit, along with the required insurance and other required documentation, a copy of its current County Business Tax Receipt/License or an application for such.

Issuance of this RFP does not obligate WCPA to enter into an Operating Agreement, in whole or in part, for services specified herein. The WCPA reserves the right to cancel this solicitation, in whole or in part, or to reject, in whole or in part, any and all Proposals. Proposers will be notified of any cancellation, and cancellation of this RFP by e-mail.

To request additional information concerning this solicitation, please see Section 4.5: Initial Questions Submission, Final Questions Submission.

All materials submitted pursuant to this RFP shall become the property of the WCPA.

To the extent permitted by law, all Proposals submitted in response to this RFP shall be kept confidential until the Proposal evaluation process is complete, and the intent to award is announced. Until the intent to award is announced, no information regarding any Proposal will be released to anyone, except members of the Evaluation Committee, who are responsible for evaluating the Proposals, the WCPA, WCPA's Developer, CCP of Ohio, LLC and other appropriate WCPA staff. All information provided by the Proposer shall be considered by the Evaluation Committee in evaluating the Proposal and making an award recommendation to the WCPA.

The Director of the WCPA is the only individual who can legally sign Operating Agreements on behalf of the WCPA. Costs chargeable to the proposed Operating Agreement shall not be incurred before receipt of a fully executed Operating Agreement.

The WCPA shall not be liable for any cost incurred by the Proposer in responding to this RFP.

**EXHIBIT 1 – NON-COLLUSION AFFIDAVIT**

The Proposer, by its officers and its agents or representatives present at the time of filing this Proposal, being duly sworn on their oaths say, that neither they nor any of them have in any way, directly or indirectly, entered into any arrangement or agreement with any other Proposer, or with any officer of the WCPA or any of its representative whereby such affiant or affiants or either of them has paid or is to pay such other Proposer or officer any sum of money, or has given or is to give to such other Proposer or officer anything of value whatever, or such affiant or affiants or either of them has not directly or indirectly, entered into any arrangement or agreement with any other proposer or person into the letting of the Operating Agreement sought for by the attached prices that no inducement of any form or character other than that which appears on the face of the Proposal will be suggested, offered, paid or delivered to any person whomsoever to influence the acceptance of the Proposal or awarding of the Operating Agreement, nor has this Proposer any agreement or understanding of any kind whatsoever, with any person whomsoever to pay, deliver to, or share with any other person in any way or manner, any of the proceeds of the Proposer sought by this Proposal.

**Submitted By:**

**Firm Name:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

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

**SIGNATURES**

**If PROPOSER is: An Individual**

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

**(Individual's Name)**

**Doing business as:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**If PROPOSER is: A Partnership**

**By:** \_\_\_\_\_  
(Authorized Signature's Name)

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

**Firm Name:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**If PROPOSER is: A Corporation or Limited Liability Company**

**By:** \_\_\_\_\_  
(Authorized Signature's Name)

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

**Attest:** \_\_\_\_\_

**Firm Name:** \_\_\_\_\_

**State of Incorporation or Organization:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**If PROPOSER is: A Joint Venture**

**By:** \_\_\_\_\_  
(Authorized Signature's Name)

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

**By:** \_\_\_\_\_  
(Authorized Signature's Name)

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

**Attest:** \_\_\_\_\_

**Firm Name:** \_\_\_\_\_

**State of Incorporation:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**\*Each joint venture member must sign. The manner of signing for each individual partnership and corporation that is party to joint venture should be in the manner indicated above.**

**EXHIBIT 2 – CRIMINAL AND CIVIL PROCEEDINGS DISCLOSURE**

**PROPOSING FIRM'S DISCLOSURE OF CRIMINAL AND CIVIL PROCEEDINGS**

Describe any and all ongoing and past civil and criminal proceedings within the last 10 years. Indicate the status of current proceedings and the outcome of closed or completed actions. Also, describe, if any, how the outcome of actions impacted company business operations. Attach additional pages if necessary.

Note: If there are no civil and criminal proceedings within the last 10 years, indicate "none" here and return this attachment with your Proposal.

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**EXHIBIT 3 – PRICE FORM**

**Indicate the fees and costs associated with the operation and maintenance of the proposed Operating Agreement.**

**EXHIBIT 4 – PROPOSER QUESTIONS TEMPLATE**

<b>RFP Section</b>	<b>Question</b>



**EXHIBIT 5 – FORM OF HOTEL OPERATING AGREEMENT**

## HOTEL OPERATING AGREEMENT

This Hotel Operating Agreement (this “Agreement”) is entered into as of \_\_\_\_\_, 2023 (“Effective Date”), by and between the Warren County Port Authority, a port authority and body corporate and politic duly created, organized, and existing under the Constitution and laws of the State of Ohio (the “Port Authority”), and \_\_\_\_\_ a \_\_\_\_\_ with principal place of business at \_\_\_\_\_ (the “Hotel Operator”), (each a “Party” and collectively referred to as the “Parties”).

### RECITALS

WHEREAS, the Port Authority, through itself or one or more agents, is acquiring, developing, constructing, furnishing, equipping and providing for the operation of an [130]-room limited service hotel known or to be known as the “\_\_\_\_\_ Hotel” (the “Hotel” or the “Project”) to be located at the intersection of the south east corner of Union Road and SR-122 in the City of Middletown, Ohio on the property more fully described on Exhibit A attached; and

WHEREAS, the Hotel is being acquired and developed in conjunction with (and will be attached to) a sports and event arena as a venue for ice sports, entertainment and events (the “Arena”); and

WHEREAS, the Port Authority will issue tax-exempt special obligation revenue bonds and taxable special obligation revenue bonds in the aggregate principal amount of \$[\_\_\_\_\_] (collectively, the “Bonds”), a portion of the proceeds of which will be used to pay the costs of the construction of the Hotel; and

WHEREAS, the Bonds will be issued under and pursuant to the terms of a Trust Indenture (the “Indenture”), between the Port Authority and US Bank, as trustee (the “Trustee”); and

WHEREAS, the Hotel Operator is engaged in the business of managing and operating hotels and resorts and the Hotel Operator is experienced in the various components of operating and managing hotels and resorts, and

WHEREAS, the Port Authority desires to engage the Hotel Operator to undertake and be responsible for the day-to-day operation and management of the Hotel and all revenue generating activities associated with the Hotel, including but not limited to, entering into a Franchise Agreement (collectively together with all disclosures, guarantees and ancillary agreements, the “Franchise Agreement”) with Hilton Franchise Holding LLC (“Franchisor”) for a Home2Suites branded hotel.

NOW THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, the parties agree as follows:

### **1. DEFINED TERMS**

Except as defined elsewhere in this Agreement, all capitalized terms used herein where the rules of grammar would not otherwise so require shall have the meanings ascribed to them in the Master Glossary of Terms attached hereto as Exhibit B and incorporated herein by reference.

**2. ENGAGEMENT OF HOTEL OPERATOR AND COMMENCEMENT OF MANAGEMENT OF HOTEL**

A. Engagement of Hotel Operator to Manage Hotel. Subject to the satisfaction of the Contingencies listed on Exhibit C attached, the Port Authority hereby engages the Hotel Operator as the Port Authority's independent contractor, subject to the terms of this Agreement, to exclusively supervise, direct, promote, operate and manage the Hotel and the Hotel, and the Hotel Operator undertakes and agrees to perform, as an independent contractor of and for the account of the Port Authority, all the Services and to comply with all of the provisions of this Agreement.

B. Management Commencement Date and Takeover Activities.

1. The Hotel Operator will assume management and operation of the Hotel at 12:00:01 AM on the Management Commencement Date.

2. Commencing on the Effective Date and continuing until the Management Commencement Date, the Hotel Operator will undertake the following activities (collectively, the "Takeover Activities"): (i) cooperate with the Port Authority in satisfying the Contingencies, including but not limited to finalizing the Franchise Agreement; (ii) recruiting, relocating, training, and employing certain management staff required for the Hotel; (iii) assisting the Port Authority (as requested) in applying for and procuring (in the Hotel Operator's name and/or the Port Authority's name as required by local authorities) all licenses and permits required for the operation of the Hotel, including, but not limited to, all licenses for the sale of alcoholic beverages (if applicable); and (iv) any other activities customarily required in order to assume management and operational responsibilities of a newly constructed hotel, including but not limited verifying the inventories.

**3. SCOPE OF SERVICES; OPERATION OF HOTEL AFTER MANAGEMENT COMMENCEMENT DATE**

A. Authority, Duties and Obligations of Hotel Operator. On and after the Management Commencement Date, the Hotel Operator shall have the exclusive authority and duty to direct, supervise, manage, promote and operate the Hotel in an efficient and economical manner, to recommend to the Port Authority the programs and policies to be followed in connection with the use and promotion of the Hotel, and to protect and preserve the assets that comprise the Hotel, all in accordance with the provisions of: (i) Applicable Law; (ii) Industry Practices; (iii) this Agreement; (iv) the Franchise Agreement; (v) the Annual Business Plan and Approved Budgets; and (vi) the Indenture Obligations set forth in Section 3.D of this Agreement (collectively, the "Hotel Operator Standards"). Subject to the provisions of this Agreement and provided that the Hotel Operator is in compliance with the Hotel Operator Standards, the Hotel Operator shall have the discretion and control in all matters relating to the management and operation of the Hotel. Without limiting the generality of the foregoing, the Hotel Operator shall have the authority and duty, as long as it is consistent with the terms of this Agreement and the Hotel Operator Standards, to perform and provide the following services (collectively, the "Services"):

1) Enter into, maintain and comply with the Franchise Agreement and related disclosure and other documents associated with the Franchise Agreement.

2) Recruit, employ, relocate, pay, train, supervise, and discharge all employees and personnel necessary for the operation of the Hotel in a manner consistent with the Hotel Operator's

practices at other comparable hotels managed and operated by the Hotel Operator or its Affiliates (taking into account locational differences). Included in the foregoing shall be the determination of all personnel policies, which shall be in writing. Hotel Operator shall use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons, and the Hotel Operator shall have authority to hire, terminate, and discipline, any and all personnel working at the Hotel. Hotel Operator shall perform and furnish such management services and systems as are appropriate or necessary to operate, manage, and promote the Hotel in a manner consistent with Hotel Operator's policies and procedures, and the operations of other similar facilities. Hotel Operator shall assign to the Hotel a competent, full-time general manager. Prior to the Hotel Operator's appointment of such general manager, Hotel Operator shall consult with the Port Authority with respect to the qualifications of the proposed general manager. Notwithstanding anything to the contrary in this Agreement, if at any time, the general manager of the Hotel (i) performs in a manner inconsistent with the Hotel Operator's policies and procedures; (ii) makes management decisions against the best interest of the operation of the Hotel; or (iii) violates any applicable laws or regulations; then the Port Authority may by written request to the Hotel Operator effectuate the removal and replacement of the general manager of the Hotel. A request for removal and replacement of the general manager of the Hotel by the Port Authority shall not unreasonably be denied or delayed by the Hotel Operator.

3) Subject to the approval of the Port Authority, not less frequently than annually, establish all prices, price schedules, rates and rate schedules, rents, lease charges, and, in connection with the same, and in accordance with the Cash Management Agreement, supervise, direct and control of the collection, receipt and giving of receipts for all services or income of any nature from the Hotel and its operations.

4) Work collaboratively with the Port Authority and the operator of the Arena to ensure that the Hotel maintains adequate numbers of committable rooms and other services to support the events and activities at the Arena.

5) Supervise and maintain complete books and records, including but not limited to the books of accounts and accounting procedures of the Hotel, the original or an accurate and current copy of which shall at all times be kept at the Hotel.

6) Administer leases, license and concession agreements for all public space at the Hotel, including all stores, office space and lobby space. The Hotel Operator shall not, without first obtaining the Owner's prior written consent, enter into any space leases. All such leases shall be in the Owner's or its designee's name.

7) Keep the Project and the Furniture, Fixtures and Equipment in good order, repair and condition, including, but not limited to, making necessary replacements, improvements, additions and substitutions to the Hotel, subject to the approved Annual Business Plan and in conformity with Applicable Law and in accordance with the Franchisor's standards for the operation of the Hotel.

8) Negotiate and enter into, on behalf of the Port Authority and in the name of the Port Authority, service contracts and licenses required in the ordinary course of business in operating the Hotel, including, but not limited to, contracts for life/safety systems maintenance, electricity, gas, telephone, cleaning, elevator and boiler maintenance, air conditioning maintenance, master

television service, master Internet service, laundry and dry cleaning, and other Services which the Hotel Operator deems advisable; provided, however, any contract for a term in excess of one year or an annual payment in excess of \$50,000 (a “Service Contract”) shall (i) be approved by the Port Authority prior to its execution (which approval, if applicable, shall include a determination by the Port Authority that the contract does not jeopardize the tax-exempt status of any bonds issued by the Port Authority to finance or refinance the acquisition, construction, repair, renovation, expansion, equipping or furnishing of the Hotel), and (ii) expect with respect to utility contracts, satisfy the requirements of a Service Contract set forth below.

9) Negotiate and enter into, on behalf of the Port authority, agreements for banquet facilities and guest rooms and agreements to provide entertainment for the Hotel, and licenses for copyright music and videos, on such terms, if applicable, as will not adversely affect the tax-exempt status of any bonds issued by the Port Authority to finance or refinance the acquisition, construction, repair, renovation, expansion, equipping or furnishing of the Hotel.

10) Supervise and purchase or arrange for the purchase in the most economical manner of all inventories, provisions, and Operating Supplies, which, in the normal course of business, are necessary and proper to maintain and operate the Hotel in accordance with the Annual Business Plan (defined herein below).

11) Timely prepare and submit to the Port Authority the Annual Business Plan as described below in Section 9.

12) Perform such other tasks as are customary and usual in the operation of a hotel of a class and standing consistent with the Hotel's facilities.

13) Provide risk management services in accordance with the terms of this Agreement and otherwise assist the Port Authority in ensuring the acquisition and maintenance of insurance consistent with the Master Insurance Schedule attached hereto as Exhibit D (the “Master Insurance Schedule”).

14) Operate the Hotel in accordance with the standards and specifications set forth in the Franchise Agreement so long as the Port Authority requisitions and provides, to the extent there are Available Moneys for such purpose, sufficient amounts to enable the Hotel Operator to operate the Hotel in good standing under the Franchise Agreement.

15) Use commercially reasonable efforts to advertise, promote, and market the Hotel.

16) Subject to Section 17, administer and remit all real estate, personal property taxes, and ad valorem property taxes, assessments and similar charges on or relating to the Hotel during the Term (as defined below in Section 12) of this Agreement.

17) Monitor and ensure the Hotel's compliance in all material respects with Applicable Law, including without limitation obtaining and maintaining in its own name all permits necessary for the Hotel Operator to fulfill its obligations hereunder and all permits necessary for the Hotel to continuously operate.

18) Promptly investigate and provide a written report to the Port Authority, the Designated Agent and applicable insurance carrier(s) as to all alleged accidents and/or alleged

claims for damages, of which the Hotel Operator becomes directly aware in the course of its operation of the Hotel, related to the Hotel, and its use, ownership, operation, management and maintenance (including any personal injury or property damage occurring to or claimed by any tenant or third party on or with respect to the Hotel). Such written report shall include the estimated cost of repair, if applicable. The Hotel Operator shall acquaint itself with all terms and conditions of all insurance policies applicable to ownership, operation, management and maintenance of the Hotel and reasonably cooperate with all insurance carriers. The Hotel Operator shall promptly forward to the Port Authority and any insurance carrier any summons, subpoena or other similar legal documents served upon the Hotel Operator with copies to the Port Authority and the Designated Agent.

19) Promptly notify the Port Authority and the Designated Agent of any dumping, use or leakage of any Hazardous Substances in or near the Hotel of which the Hotel Operator has actual knowledge or becomes aware.

20) Cause an inventory to be taken at least annually of all FF&E, major office equipment, materials, supplies, maintenance tools and any other major equipment or material used by the Hotel Operator in connection with the operation and management of the Hotel and deliver such inventory to the Port Authority. The Hotel Operator shall not sell, lease or otherwise dispose of any such FF&E or major property without the prior consent of the Port Authority.

21) Provide recommendations to the Port Authority with respect to the FFE requirements of the Hotel, and, to the extent approved as part of any Approved Hotel Capital Budget, or to the extent otherwise agreed in writing by the Port Authority with respect to costs which are likely to exceed the Approved Hotel Capital Budget, manage the specification and procurement of the FFE for the Hotel.

22) Take all commercially reasonable and prudent steps necessary or desirable to protect the intellectual property of the Hotel and its trademarks, trade names, service marks, service names, patents, trademarks or copyrights or other intellectual property, including registration of the same in the name of the Port Authority.

23) As applicable, enter into, maintain or comply with any other agreements or arrangements as the Port Authority or the Hotel Operator deems necessary or appropriate to facilitate the availability of amenities to Hotel guests other than and in addition to the amenities available as part of the Hotel, provided that such agreements comply with the requirements of a Service Contract.

24) Notify the Port Authority in a timely manner of any occurrence, event, condition or circumstance of which the Hotel Operator has knowledge that could reasonably be expected to have a material adverse effect on the business or operations of the Hotel.

25) Hotel Operator hereby acknowledges and accepts the right of Port Authority to retain final decision-making authority and accountability for scheduling decisions with respect to banquet and conference use of the Hotel.

B. Negative Covenants of Hotel Operator. Notwithstanding anything in this Agreement to the contrary and unless consented to in writing by the Port Authority, the Hotel Operator shall not have

the authority to (1) modify, amend or assign the Franchise Agreement; (2) commence, institute, defend, litigate, or settle any legal proceeding to which the Port Authority (or any of its Affiliates), or the Trustee is a party (except with respect to the Hotel Operator's own private interests); (3) take any other action that is inconsistent with the scope of its duties and obligations hereunder; (4) permit the presence, use, storage, handling or disposal of any Hazardous Substances on the Hotel premises or in violation of Applicable Law and, regardless of whether or not a given Hazardous Substance is permitted on the Hotel premises under Applicable Law, the Hotel Operator shall not bring on the premises any Hazardous Substances other than as approved and needed in the normal course of business of the Hotel; or (5) represent or hold itself out as having the authority to do any of the foregoing.

C. Compliance with Hotel Operator Standards. In the Hotel Operator's performance of its obligations hereunder and any other contract entered into with respect to the Hotel, the Hotel Operator shall, and shall cause its employees, agents and contractors to comply in all material respects with the Hotel Operator Standards.

D. Indenture. The Hotel Operator acknowledges and agrees that the management and operation of the Hotel and the Port Authority's obligations under this Agreement are subject to certain terms and conditions set forth in the Indenture, a true and accurate copy of which is attached hereto as Exhibit E. Consistent with the Port Authority's obligations pursuant to the Indenture, the Hotel Operator agrees to cooperate with the Port Authority in compliance with the obligations of the Port Authority and the maintenance and operation of the Hotel as set forth in the Indenture (collectively, the "Indenture Obligations"):

E. Service Contracts. Each Specific Contract must meet the following requirements:

1) The Service Contract shall incorporate the terms of this Agreement to the extent applicable to the Services to be performed by the contractor and shall (i) require that such portion of the Services be performed in accordance with the requirements of this Agreement; (ii) include a waiver of all rights the contracting parties may have against one another or that the contractor may have against the Port Authority or any Port Authority Indemnified Person for any bodily injury, death or loss or damage to property; (iii) contain an indemnification provision and limitation on liability provision in favor of the Port Authority acceptable to the Port Authority; (iv) require the contractor to carry and maintain insurance in accordance with the requirements of this Agreement; and (v) shall not contain any provision that is inconsistent with this Agreement.

2) With respect to a Service Contract that gives rise to Gross Operating Revenues, the Hotel Operator shall, pursuant to one or more Collateral Control Agreements satisfactory to Trustee, the Port Authority, and the Collateral Agent, (i) agree to irrevocably direct payments that include amounts that are Gross Operating Revenues to the Collections Account, (ii) pledge to the Collateral Agent, for the benefit of the Port Authority's and the further benefit of the Trustee and the holders of the Bonds as assignees of the Port Authority, Hotel Operator's interest in all accounts, chattel paper, general intangibles, instruments or receivables and proceeds thereof to secure the payment obligations due to the Port Authority pursuant to such the Service Contract; and (iii) acknowledge in the Collateral Control Agreements that (I) the Hotel Operator is acting as an independent contractor of the Port Authority, (II) payment of obligations due to the contractor under the Service Contract shall be made solely out of amounts Operating Revenues or amounts disbursed by the Trustee for the payment of Operating Expenses; (III) the Port Authority shall not have any pecuniary liability out of its separate assets (other than amounts and assets held under

the Indenture) for the obligation or expenditure evidenced by such Service Contract; and (IV) the contractor will not take action against any person for payment of amounts due under such Service Contract except to request amounts and assets of the Hotel and amounts reserved for the payment of Operating Expenses, in each case, in accordance with the limitations set forth in the Collateral Control Agreement or the Indenture.

3) A Service Contract involving the provision of services by an agent or contractor shall further provide that:

(i) each respective agent or contractor shall have sole responsibility for all other obligations to or for its employees arising from or connected with employment, including but not limited to, paying any and all salary, wages, commissions, fringe benefits and other remuneration, for paying any and all Social Security taxes, state and federal unemployment taxes, employment taxes and all other taxes and governmental assessments, and for paying all workers' compensation insurance and benefits;

(ii) each respective agent or contractor providing services at the Hotel shall assume the responsibility for timely compliance with Hotel Operator Standards regarding its services and employees;

(iii) the Port Authority shall not have any legal or financial responsibilities, with respect to any agent or contractor, or any of their respective employees; and

(iv) language in substantially the following form will be included: "PERSONS EMPLOYED, RETAINED OR ENGAGED BY [NAME OF AGENT OR CONTRACTOR OR ANY PERMITTED SUBCONTRACTOR OF SUCH AGENT OR CONTRACTOR] TO CONDUCT SERVICES AT THE HOTEL SHALL IN EVERY INSTANCE BE EMPLOYEES OF [NAME OF CONTRACTOR OR ANY PERMITTED SUBCONTRACTOR OF SUCH CONTRACTOR] AND UNDER NO CIRCUMSTANCES SHALL ANY INDIVIDUAL EMPLOYED AT ANY TIME OR IN ANY CAPACITY IN RESPECT OF THE HOTEL, THE CONDUCT OF BUSINESS AND OPERATIONS OF THE HOTEL, OR ANY CONSTRUCTION, MAINTENANCE OR OPERATION THEREOF BE CONSIDERED EMPLOYEES OF THE PORT AUTHORITY, THE DESIGNATED AGENT, THE COLLATERAL AGENT, OR THE TRUSTEE FOR ANY PURPOSE WHATSOEVER."

F. Employees. Subject to compliance with the Annual Business Plan, the Hotel Operator shall have authority over pay scales and all benefit plans for Employees as long as the pay scales and benefits plans are reasonable and competitive in the market, consistent with those at comparable hotels managed by the Hotel Operator or its Affiliates and in the aggregate do not result in Employee cost overruns under the Annual Business Plan. Except for its payment of expenses included as part of the Annual Business Plan paid solely from the sources provided therefore under the Indenture, the Port Authority shall not have any legal or financial responsibilities with respect to any Employees or any of Hotel Operator's agents and contractors, or their respective who provide services to the Hotel Operator in connection with the Hotel; rather, the Hotel Operator shall have sole responsibility for all obligations to or for its Employees arising from or connected with employment, including but not limited to, paying any and all salary, wages, commissions, fringe benefits and other remuneration, for paying any and all Social Security taxes, state and federal unemployment taxes, employment taxes and all other taxes and governmental assessment, and



for paying all worker's compensation insurance and benefits and shall assume the responsibility for timely compliance with all Applicable Law regarding its Employees. PERSONS EMPLOYED, RETAINED OR ENGAGED BY THE HOTEL OPERATOR IN CONNECTION WITH PERFORMANCE OF THE AGREEMENT SHALL IN EVERY INSTANCE BE THE EMPLOYEES OF THE HOTEL OPERATOR AND UNDER NO CIRCUMSTANCES SHALL ANY INDIVIDUAL EMPLOYED AT ANY TIME OR IN ANY CAPACITY IN RESPECT OF THE HOTEL, THE CONDUCT OF BUSINESS AND OPERATIONS OR THE HOTEL OR ANY MAINTENANCE OR OPERATION THEREOF BE CONSIDERED EMPLOYEES OF THE PORT AUTHORITY, THE DESIGNATED AGENT, THE TRUSTEE, OR THE COLLATERAL AGENT FOR ANY PURPOSE WHATSOEVER.

G. Certain Independent Contractors. Subject to compliance with Section 3.E above, the Hotel Operator may hire independent contractors to provide such professional services as the Hotel Operator deems necessary or appropriate in the ordinary course of business in connection with the operation of the Hotel and at an expense approved by the Port Authority and itemized in the Annual Business Plan; provided, however, that any independent contractors so engaged shall be subject to approval by the Port Authority (which approvals shall not be unreasonably withheld or delayed).

H. Hotel Access. Representatives of the Port Authority, the Designated Agent, the Trustee, and their respective agents, attorneys, accountants, employees, invitees, or licensees (collectively, "Representatives") shall have at all times during the Term (i) full and complete access to the Hotel, including all non-public sections of the Hotel subject to reasonable limitations as to the number of persons that may be permitted to be given access and the timing of such access (including at least 24 hours prior written notice); (ii) the right to tour any portion of the Hotel to observe and to permit others to observe the various Services performed by the Hotel Operator, provided only that such tours shall be conducted in compliance with the Hotel Operator's safety standards and Applicable Law and shall not unreasonably interfere with the Hotel Operator's ability to perform its obligations hereunder; (iii) the right to conduct inspections of all or part of the Hotel at reasonable intervals during normal business hours; and (iv) the right to inspect and copy any and all books and records of the Hotel Operator pertaining to the operation of the Hotel and to discuss the operation of the Hotel with appropriate Representatives of the Hotel Operator or any contractor. The Hotel Operator shall cooperate with the Port Authority, the Designated Agent, the Trustee, Project Consultant and their respective Representatives in such inspections and the Port Authority, the Designated Agent, the Trustee, Project Consultant and their respective Representatives shall conduct such inspections or cause such inspections to be conducted so as not to unreasonably interfere with the Hotel Operator's performance of its obligations hereunder. The Hotel Operator shall and shall cause each subcontractor to provide any of the Port Authority, the Designated Agent, the Trustee or Project Consultant, at any time upon reasonable request with any information so requested.

I. Cash Management Agreement. Notwithstanding anything to the contrary contained herein, the Hotel Operator and the Port Authority agree that each is bound by the Cash Management Agreement, which Cash Management Agreement shall set forth the Hotel Operator's rights and obligations with respect to and the manner of any disbursement or withdrawal of amounts, in the various amounts and accounts (including the Hotel Collections Account and the Hotel Operating Account as provided therein), and is in substantially the form as attached hereto as Exhibit F. In the event of any inconsistencies between the Cash Management Agreement and this Agreement, the provisions of this Agreement shall control.

#### **4. OPERATING EXPENSES PAID BY HOTEL OPERATOR**

A. Operating Expenses Incurred by Hotel Operator on Behalf of the Port Authority. The Services provided by the Hotel Operator in the performance of its obligations, and Operating Expenses incurred, under this Agreement shall be for the benefit of the Port Authority and for its account, except the Services referred to in Section 5 of this Agreement which shall be rendered and performed by the Hotel Operator or its Affiliates at their expense and not separately charged to the Port Authority, except as otherwise provided in Section 5.

B. Hotel Operator Not Obligated to Advance Own Funds. Except with respect to any liability of Hotel Operator described in Section 18, neither the Hotel Operator nor any of its Affiliates shall be obligated to advance any of its own amounts to or for the account of the Port Authority, nor to incur any costs unless the Port Authority shall have furnished the Hotel Operator with amounts necessary for the discharge of such liability prior to incurring the liability. If the Hotel Operator shall have advanced any amounts in payment of an expense in the maintenance and operation of the Hotel, the Hotel Operator shall promptly provide the Port Authority with written notice upon making the Port Authority such advances and the Port Authority shall reimburse the Hotel Operator for such advances no later than five (5) business days after receipt of such notice. Notwithstanding the foregoing, the Hotel Operator shall pay from its own amounts the expenses described in Section 4.A. of this Agreement.

#### **5. SUPPORT SERVICES PAID BY PORT AUTHORITY'S AFFILIATES**

After the Management Commencement Date, the normal consulting services of the corporate officers and employees of the Hotel Operator's Affiliates, including its corporate executives for operations, room operations, food and beverage, sales and marketing, finance and administration, real estate, and accounting, to be rendered from time-to-time to the Hotel Operator in connection with the management and operation of the Hotel, shall be provided by the Hotel Operator's Affiliates to the Hotel Operator at the Hotel Operator's sole cost and expense and not charged to the Port Authority.

#### **6. COMPLIANCE WITH APPLICABLE LAW**

A. Compliance by Hotel Operator. The Hotel Operator will comply with Applicable Law, including but not limited to all laws, rules, regulations, requirements, orders, notices, determinations and ordinances of any governing authority, including, but not limited to, the state and local liquor authorities, and the requirements of any insurance companies covering any of the risks against which the Hotel is insured. In addition, the Hotel Operator will be responsible to ensure that the operation of the Hotel is at all times in compliance with Applicable Law, and the costs associated with such compliance shall be included as Operating Expenses unless any noncompliance is determined to have been caused by the gross negligence or willful misconduct of the Hotel Operator, in which event the Hotel Operator will pay such costs directly or will reimburse the Port Authority for such costs and will indemnify the Port Authority pursuant to Section 18 of this Agreement for any such costs. If the cost of compliance exceeds \$1,000 in any instance, the Hotel Operator shall promptly notify the Port Authority, and the Port Authority shall promptly approve payment of such costs from operating amounts.

B. The Port Authority's Right to Contest or Postpone Compliance. With respect to a violation of any Applicable Law, the Port Authority shall have the right to contest Hotel Operator's method or cost of compliance, and to postpone compliance pending the determination of such contest.

C. Hotel Operator's Right to Terminate Agreement. Notwithstanding anything in this Agreement to the contrary and subject to Section 12.D., if within five (5) business days of receiving the Hotel Operator's written request, the Port Authority fails to approve the changes, repairs, alterations, improvements, renewals or replacements to the Hotel which the Hotel Operator determines in its reasonable judgment are necessary to (i) protect the Hotel, the Hotel Operator from innkeeper liability exposure; (ii) ensure material compliance with any applicable code requirements pertaining to life safety systems requirements; or (iii) ensure material compliance with Applicable Law, including, but not limited to, all state, local, or federal employment law, including but not limited to the Americans with Disabilities Act, then the Hotel Operator, may terminate this Agreement by providing written notice to the Port Authority and to the Trustee ("Notice of Termination Due to Non-Compliance with Laws"). Such termination shall be effective as of the date set forth in the Notice of Termination Due to Non-Compliance with Laws, provided such termination date shall not be sooner than ten (10) business days after delivery of the Notice of Termination Due to Non-Compliance to the Port Authority and Trustee, and provided further, that such Notice of Termination Due to Non-Compliance may be revoked by mutual written agreement of the Hotel Operator and the Port Authority or Trustee in the event that non-compliance is cured to the Hotel Operator's reasonable satisfaction.

## **7. OPERATING ACCOUNT AND OPERATING FUNDS**

A. Collection of Gross Operating Revenues. The Hotel Operator will collect when due all rents, fees, charges and other amounts that constitute Gross Operating Revenues received or receivable on the Port Authority's or the Trustee's account in connection with the management and operation of the Hotel and deposit such amounts (or cause such amounts to be deposited) in the Hotel Collections Account established pursuant to and in accordance with the Cash Management Agreement, and Collateral Control Agreement, as applicable. Except as set forth in the Cash Management Agreement or Collateral Control Agreement, as applicable, the Hotel Operator shall have no check writing, drafting or withdrawal authority with respect to the Hotel Collections Account and shall otherwise exert no control over any amounts deposited in the Hotel Collections Account.

B. Payment of Operating Expenses. The Hotel Operator shall pay Operating Expenses and certain other costs when and as the same become due from the Hotel Operating Account established pursuant to the Cash Management Agreement and in accordance with the provisions thereof.

C. Remittance of Funds. Gross Operating Revenues collected by the Hotel Operator remaining after payment of Operating Expenses and not otherwise applied to the Hotel Collections Account or a Reserve Fund in accordance with the Cash Management Agreement shall be remitted to the Trustee in the amounts and at the times specified pursuant to the Cash Management Agreement.

## **8. BOOKS, RECORDS AND FINANCIAL STATEMENTS**

A. Accounting System. The Hotel Operator shall keep full and adequate books of account and other records reflecting the results of operation of the Hotel on an accrual basis, all substantially in accordance with FASB and applicable Accounting Standards. The books of account and all other records relating to, or reflecting the operation of, the Hotel shall be kept at the Hotel or stored by suitable electronic means and shall be available to the Port Authority and its Representatives at all reasonable times for examination, audit, inspection and transcription. All of such books and records, including, but not limited to, books of accounts, guest records and front office records, at all times shall be the property of the Port Authority and shall remain accessible to the Port Authority. Upon termination of this Agreement, all the

books and records shall be turned over to the Port Authority to ensure the orderly continuation of the operation of the Hotel, but after such termination the books and records shall be available to the Hotel Operator at all reasonable times for inspection, audit, examination and transcription.

B. Financial Statements. The Hotel Operator shall deliver to the Port Authority within fifteen (15) calendar days after the end of each month (the “Accounting Period”) a profit and loss statement showing the results of the operation of the Hotel for such Accounting Period and the Fiscal Year to date and a balance sheet as of the close of such month. The Hotel Operator shall deliver to the Port Authority within forty-five (45) calendar days after the end of each Fiscal Year a profit and loss statement showing the results of operation of the Hotel during such Fiscal Year and Net Operating Income, for such Fiscal Year and a balance sheet for the Hotel as of the close of such Fiscal Year. If the Port Authority elects to conduct an audit, the Hotel Operator shall cooperate with the Independent Auditor so as to allow the Independent Auditor to deliver audited financial statements to the Port Authority within ninety (90) calendar days after the end of each Fiscal Year. Any disputes as to the contents of any such statements, or as to any accounting matter under this Agreement, shall be determined by an independent auditor mutually agreed upon by the Port Authority and the Hotel Operator (the “Independent Auditor”), whose decision shall be final and conclusive on the Hotel Operator and the Port Authority, the expense for which shall be an Hotel Operating Expense.

## **9. ANNUAL BUSINESS PLAN**

A. Preparation of Annual Business Plan. As soon as reasonably possible following the Management Commencement Date, the Hotel Operator shall submit to the Port Authority as soon as reasonably practicable after the Management Commencement Date, a forecast of performance for the balance of the year in which the Management Commencement Date occurs. Subsequently, at least ninety (90) calendar days prior to the end of each Fiscal Year, the Hotel Operator shall submit an annual business plan for the succeeding Fiscal Year (the “Annual Business Plan”). At a minimum, the Annual Business Plan shall include: (i) an operating budget showing estimated Hotel Gross Operating Revenues department profits, Hotel Operating Expenses and Hotel Net Operating Income (Hotel Gross Operating Revenues less Hotel Operating Expenses) for the forthcoming Fiscal Year for the Hotel; (ii) a marketing plan; and (iii) an annual capital budget. All such items such be in reasonable detail and, where appropriate, with the basis for all assumptions expressly set forth. The Port Authority shall review the Annual Business Plan and either approve or notify the Hotel Operator of any objections to the Annual Business Plan in writing within fifteen (15) calendar days of the Port Authority’s receipt of the Annual Business Plan. The parties will attempt to resolve in good faith any objections by the Port Authority within thirty (30) calendar days following the Hotel Operator's receipt of the Port Authority’s disapproval. The Annual Business Plan, however, is always subject to the Port Authority’s approval. Once approved by the Port Authority the operating budget and capital budget, as so approved, shall be the Approved Annual Operating Budget and Approved Hotel Capital Budget, respectively, for the applicable Fiscal Year.

B. Annual Business Plan Disputes. If the Hotel Operator and the Port Authority are unable to agree upon an Annual Business Plan or any details of such plan, then the final Annual Business Plan shall be determined by the Port Authority, whose determination shall be conclusive and binding upon the parties.

C. Deviations. The Hotel Operator shall diligently pursue all feasible measures to enable the Hotel to adhere to the Annual Business Plan; provided, however, the Port Authority acknowledges and agrees that the Hotel Operator will not be responsible for the payment of any variances from the Annual

Business Plan if the variance is instructed solely by the Port Authority. If the Hotel Operator determines that circumstances require that there be material changes in the Annual Business Plan, the Hotel Operator shall so notify the Port Authority as soon as practically possible after the need for such changes becomes apparent. Such determination is made when the annual amount in a specified department described below is forecasted to exceed the budgeted amount set forth in the Annual Business Plan as reflected in the monthly forecast. For purposes of this Section 9.C.: (i) a variation of more than ten percent (10%) below or in excess of the amount set forth in the Annual Business Plan for either the sales and marketing department or the repairs and maintenance department, or (ii) a variation of more than five percent (5%) in excess of the amount set forth in the Annual Business Plan for any other major deduction category in calculating Hotel Operating Profit (e.g., a department such as general and administrative), shall be considered to be a material deviation. Any such material change shall be subject to the Port Authority's approval; provided, however, the Port Authority's approval shall not be required to the extent such material deviation consists of: (a) expenses otherwise contemplated under this Agreement which are deducted from Hotel Operating Profit; (b) expenses which are nondiscretionary by virtue of being determined by a third party or governmental entity, such as minimum wages under collective bargaining agreements, utility costs, franchise fee increases, changes in franchise standards and sales taxes; (c) the amount of increased expenses resulting directly from increases in volume, provided that departmental profit margins and Hotel Operating Profit margins are not diminished or otherwise negatively affected; or (d) expenditures as may be required if the Hotel Operator reasonably believes such expenditure to be required by any emergency situation imminently threatening life, health or safety (provided that the Hotel Operator shall notify the Port Authority of such emergency and the need for such expenditure in advance or if not possible in advance then as soon as practicable). Notwithstanding anything in this Agreement to the contrary, the Hotel Operator is not warranting or guaranteeing in any respect results of any Annual Business Plan in the operation of the Hotel.

## **10. FEES AND REIMBURSEMENTS**

A. Management Fee. In consideration of the Services the Hotel Operator is to render under this Agreement, the Hotel Operator will be paid the Hotel Operator's Management Fee in the amounts provided in Subsection B.

B. Technical, Procurement or Other Services. Service fees for technical or procurement services for the Hotel shall be paid to the Hotel Operator or its Affiliates if and only if the Port Authority requests such services of the Hotel Operator, or any other services beyond the scope of Services to be provided pursuant to this Agreement ("Extra Services"). The amount of fees shall be agreed to in writing by the Port Authority and the Hotel Operator prior to commencing such Extra Services. Technical services include renovation coordination, design review, construction management and related services. Procurement services relate to purchase and installation of furniture, fixtures, equipment, and operating equipment of the Hotel. Other services may include such services as revenue management, IT support, human resource-related support and so forth.

## **11. INSURANCE**

A. NOTWITHSTANDING ANY PROVISION OF THIS SECTION 11 TO THE CONTRARY, IN THE EVENT OF A DISCREPANCY BETWEEN THE REQUIREMENTS OF THIS SECTION 11 AND THE REQUIREMENTS SET FORTH IN THE MASTER INSURANCE SCHEDULE, THE PROVISIONS OF THE MASTER INSURANCE SCHEDULE AS AMENDED FROM TIME TO TIME SHALL CONTROL. THE MASTER INSURANCE SCHEDULE SHALL BE

DEEMED TO BE AMENDED WHENEVER THE INSURANCE CONSULTANT MAKES A FINAL RECOMMENDATION AS TO ANY CHANGES THEREIN AND AGREED TO BY BOTH PARTIES.

B. Insurance Coverage. The Hotel Operator shall procure and maintain from and after the occurrences or dates set forth in the Master Insurance Schedule the insurance policies in accordance with and as provided in the Master Insurance Schedule. These insurance policies will be in the names of, and name as additional insureds, the parties set forth in in the Master Insurance Schedule, including the Hotel Operator, the Port Authority and the Trustee. The Hotel Operator shall be responsible for obtaining the insurance coverages identified in the Master Insurance Schedule. Any insurance required to be provided by the Hotel Operator under this Section 11.B. may be provided under the blanket insurance policy of the Hotel Operator, which policy covers other hotel properties managed by the Hotel Operator. All premiums, costs and expenses shall be allocated among the properties participating under such program in accordance with generally accepted underwriting standards. The Port Authority assumes no responsibility for, or interest in, additional premiums or proceeds (other than standard audit adjustments) generated by the blanket insurance policy of the Hotel Operator. The Port Authority shall be provided certificates evidencing the insurance coverages required pursuant to this Section 11.B. or the Master Insurance Schedule on or before ten (10) business days after the Management Commencement Date, and upon any and all subsequent renewals of such insurance policies. The Port Authority shall have the right at any time for any reasonable period of time to place property and casualty insurance coverage, and with the consent of the Hotel Operator (which shall not be unreasonably withheld or delayed) any other required coverage under this Section 11.B. If the Port Authority notifies the Hotel Operator that the Port Authority shall place the insurance coverage, the Hotel Operator shall cooperate with the Port Authority and shall terminate, with advance notice to the Port Authority, any overlapping insurance coverage.

C. Forms of Insurance. All insurance policies and renewals thereof that are required to be carried hereunder shall comply with the Master Insurance Schedule.

D. Waiver of Subrogation. Neither the Hotel Operator nor the Port Authority shall assert against the other, and do now waive with respect to each other, or against any other entity or person named as additional insureds on any policies carried under this Section 11, any claims for any losses, damages, liability or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property arising out of the operation or maintenance of the Hotel, to the extent that the same are covered by the insurance required under this Section 11. Each policy of insurance shall contain a specific waiver of subrogation reflecting the provisions of this Section 11.B., and a provision to the effect that the existence of the preceding waiver shall not affect the validity of any such policy or the obligation of the insurer to pay the full amount of any loss sustained. The Port Authority and the Hotel Operator acknowledge that they have agreed on the adequacy of the amounts of any insurance coverage provided under this Agreement as detailed in Exhibit D.

## 12. TERM

A. Term. This Agreement shall be for a period commencing on the Management Commencement Date, and unless sooner terminated as provided below, shall expire three (3) year[s] after the Management Commencement Date (the "Initial Term").

B. Renewal Terms; Early Termination. This Agreement shall automatically renew for successive periods of one (1) year each (individually a "Renewal Term" and collectively "Renewal Terms"), unless terminated by the provisions of this Agreement or upon not less than \_\_\_\_\_ (\_\_) days

written notice of termination by either Party prior to the end of the current Term. Any reference in this Agreement to “Term” shall be deemed to be a reference to the Initial Term and any Renewal Term. Notwithstanding anything herein to the contrary, the obligations of the Port Authority hereunder are subject to annual appropriation by the Port Authority, and this Agreement shall be subject to non-renewal or earlier termination, as applicable, based upon any failure or refusal of the Port Authority to appropriate funds necessary to meet its obligations hereunder.

C. Early Termination. The Port Authority and the Hotel Operator acknowledge that, but for the Term of this Agreement and the parties’ commitment to the contemplated relationship for the Term of this Agreement, the Hotel Operator would not have made the significant investments of money and time necessary to commence and conduct services under this Agreement and foregone other opportunities. If this Agreement is terminated by Port Authority prior to the expiration of the Initial Term for any reason other than the Hotel Operator Default (as defined below), then the Port Authority shall pay to the Hotel Operator the Termination Fee (as defined below). The Port Authority and the Hotel Operator further acknowledge and agree that the Hotel Operator's damages in the event of a termination of this Agreement would be difficult to determine, therefore the Termination Fee is a fair estimate of those damages which has been agreed to in an effort to cause the amount of such damages to be certain. In addition, in the event of any early termination, the following terms shall apply:

- 1) The Hotel Operator shall continue to operate the Hotel in good faith in accordance with the terms of this Agreement until the effective date of such termination.
- 2) On the effective date of any early termination, the Hotel Operator shall cease all activities at the Hotel and shall have no further obligations under this Agreement and shall peacefully vacate and surrender the Hotel to the Port Authority on the effective date of such termination.
- 3) After the notice of termination is given, and prior to the date the Hotel Operator ceases activities at the Hotel, the Hotel Operator shall be paid any and all fees or expenses due it pursuant to this Agreement, and the Hotel Operator shall cooperate with the Port Authority in the orderly transfer of management to the Port Authority or the Port Authority’s designee.
- 4) Regardless of the reason for termination of this Agreement, the Hotel Operator shall assign and transfer to the Port Authority:
  - (i) any interest which the Hotel Operator may have or claim in and to all of the Port Authority’s books and records, plans and specifications, architectural or engineering drawings, contracts, leases and other documents respecting the Hotel that are not the Hotel Operator's proprietary information and are in the custody and control of the Hotel Operator;
  - (ii) all of the Hotel Operator's right, title and interest in and to the Franchise Agreement, and all liquor, restaurant and any other licenses and permits, if any, held by the Hotel Operator in connection with the operation of the Hotel, but only to the extent such assignment or transfer is permitted under the law of the state in which the Hotel is located; and
  - (iii) all contracts relating to the Hotel Operator's services not otherwise in the Port Authority’s name.

D. Non-Solicitation of Employees. During the Term and for a period ending twelve (12) months from the termination or expiration of this Agreement: (1) the Port Authority shall not, directly, hire or solicit for hire (whether as an employee, consultant or otherwise) any Key Employees of the Hotel Operator without the prior written consent of the Hotel Operator; and (2) the Hotel Operator shall not, directly or indirectly, hire or solicit for hire (whether as an employee, consultant or otherwise) any Key Employees of the Port Authority without the prior written consent of the Hotel Operator. For the purposes of this Section 12.D., “solicit for hire” shall not include a general advertisement for employment not directed at Employees of the Hotel Operator;

E. Termination Fee. The “Termination Fee” shall be the sum of the Hotel Operator’s Management Fee estimated to be received for the Fiscal Year in which the termination occurs. No Termination Fee shall be due in a situation of uncured Hotel Operator Default.

### **13. DEFAULT AND REMEDIES**

A. Hotel Operator Default. The happening and continuance of the following events constitute a default by Hotel Operator under this Agreement (an “Hotel Operator Default”): (a) Hotel Operator fails to observe and perform its obligations under any Cash Management Agreement; (b) Hotel Operator fails to observe or perform its obligations under any other covenants or conditions contained in this Agreement, and such failure continues for a period of thirty (30) calendar days after receipt of the Hotel Operator of a written notice of default from the Port Authority; (c) operation of the Hotel by Hotel Operator in such a manner as to cause the Franchisor to require the removal of Hotel Operator as the Operator of the Hotel or give notice to the Hotel Operator and/or Owner of intent to terminate the Franchise Agreement; (d) the Hotel Operator (1) files a petition for bankruptcy or a petition to take advantage of any insolvency act, (2) makes an assignment for the benefit of creditors, or (3) consents to the appoint of a receiver or trustee appointed for it or for the whole or any substantial part of its property; (e) the Hotel Operator dissolves, ceases to exist or voluntarily abandons, deserts, vacates or discontinues providing Services and performing under this Agreement for a period of thirty (30) calendar days. Upon the occurrence of an Hotel Operator Default, the Port Authority shall have the following rights and remedies:

- 1) This Agreement and the engagement of the Hotel Operator may be terminated by the Port Authority, at its option, by delivery of written notice of termination;
- 2) Without prejudice to any other rights or remedies, suspend Hotel Operator’s rights and obligations to complete its performance under this Agreement until such time as the Hotel Operator is able to demonstrate to the Port Authority’s reasonable satisfaction that it can meet its obligations under this Agreement;
- 3) Provide and/or engage a replacement to provide any or all of the delayed or unsatisfactory Services and hold Hotel Operator responsible for the costs of such performance;
- 4) Assign one or more of the Hotel Operator’s Representatives to supervise and work with the Hotel operator to correct and mitigate the effects of Hotel Operator Default.
- 5) Withhold payment of any amounts otherwise due to the Hotel Operator in a sufficient amount to set off against any damages caused to the Port Authority as a consequence of Hotel Operator Default;



6) Sue for (a) the collection of amounts for which the Hotel Operator may be in default or for damages for its failure to perform; (b) sue for specific performance of the obligations of Hotel Operator; (c) have access to, inspect, examine and make copies of the books, records, and financial data of the Hotel Operator pertaining to the Hotel; and/or (d) seek any other available relief at law or in equity; and/or

7) Following any breach or default by Hotel Operator resulting in termination of this Agreement by the Port Authority pursuant to the terms of this Agreement, Hotel Operator shall refund to the Port Authority any pre-paid Managements Fees on a prorated basis.

Except as otherwise provided for in this Agreement, the exercise of one or more of the rights and remedies under this Agreement by the Port Authority shall not preclude the exercise of any other right or remedy at law or in equity.

B. Port Authority's Default. This Agreement may be terminated by the Hotel Operator, at its option, upon the happening of any of the following events (a "Port Authority Default"): (1) failure of the Port Authority to pay or reimburse the Hotel Operator as stipulated in this Agreement; (2) material breach, default, or noncompliance by the Port Authority with any other covenants contained in this Agreement; (3) the making by the Port Authority of a general assignment for the benefit of creditors; (4) a petition or application by either party to any tribunal for the appointment of a trustee, custodian, receiver or liquidator of all or substantially all of its business, estate or assets; or (5) the commencement by the Port Authority of any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment or debt, dissolution or liquidation law of any jurisdiction, whether now or later in effect. Hotel Operator's sole and exclusive remedy for an event of Port Authority Default shall be to terminate this Agreement.

C. Right to Cure.

1) Notwithstanding the Hotel Operator's rights to terminate this Agreement upon a Port Authority Default and prior to the Hotel Operator terminating this Agreement, the Hotel Operator agrees to provide the Trustee and the Port Authority with written notice of Port Authority Default, and, in the event of a Port Authority Default under Sections 13.B.1. or 13.B.2. the Hotel Operator agrees to provide the Trustee and the Port Authority with a period of thirty (30) calendar days after the date that the Hotel Operator delivers such notice to the Port Authority and Trustee to permit the Port Authority or Trustee to cure or diligently pursue the cure of any such Port Authority Default under this Agreement. However, in the event of a Port Authority Default under Section 13.B.2., and in the case of such breach that cannot with due diligence be corrected within such thirty (30) calendar day period but can be wholly corrected within a period of time not materially detrimental to the rights of the Hotel Operator, it shall not constitute a Port Authority Default if corrective action is instituted by the Port Authority or the Trustee within the applicable period and diligently pursued until the failure is corrected, provided that the failure to cure same within ninety (90) calendar days after origination shall constitute a Port Authority Default. In no event shall the Trustee be required to remedy any such Port Authority Default. The Hotel Operator hereby consents to the replacement of the Port Authority by Trustee and the continuation of this Agreement.

2) Notwithstanding the Port Authority's rights to terminate this Agreement upon Hotel Operator Default and prior to the Port Authority terminating this Agreement, the Port Authority agrees to provide the Hotel Operator with written notice of Hotel Operator Default, and, in the

event of Hotel Operator Default under Section 13.A.(1), the Port Authority agrees to provide the Hotel Operator with a period of thirty (30) calendar days after the date that the Port Authority delivers such notice to the Hotel Operator to permit the Hotel Operator to cure or diligently pursue the cure of any such Hotel Operator Default under this Agreement. However, in the case of such breach that cannot with due diligence be corrected within such thirty (30) calendar day period but can be wholly corrected within a period of time not materially detrimental to the rights of the Port Authority, it shall not constitute Hotel Operator Default if corrective action is instituted by the Hotel Operator within the applicable period and diligently pursued until the failure is corrected, provided that the failure to cure same within ninety (90) calendar days after origination shall constitute Hotel Operator Default; and further provided that this subsection shall be inapplicable to payment defaults.

#### **14. DAMAGE TO OR DESTRUCTION OF HOTEL**

A. Casualty. Subject to the requirements of Section \_\_\_\_ of the Indenture, if the Hotel shall be substantially destroyed during the Term of the Agreement, by fire or other casualty through no fault of the Hotel Operator, and the Port Authority shall elect, for any reason, not to rebuild the Hotel, then the terms of this Agreement shall cease and terminate as of the date of such destruction and no Termination Fee shall be applicable. If the Hotel shall be partially destroyed during the Term of this Agreement, by fire or other casualty, and the Port Authority shall elect to temporarily close all or a portion of the Hotel for repair and restoration, then the Hotel Operator shall continue to manage the Hotel and shall be entitled to all fees described in Section 10, including a monthly management fee during the period of reconstruction. The proceeds of any business interruption insurance shall be included in Gross Operating Revenues for the period for which such proceeds are payable. Upon completion of the reconstruction, the Hotel Operator shall return to its normal management fee as set forth in Section 10. Notwithstanding the foregoing, in the event that Hotel Operator damages or otherwise destroys the Hotel, Hotel Operator shall at its own expense repair, restore, or replace the damaged or destroyed Hotel with due diligence to the condition substantially the same as prior to such damage or destruction, subject to the satisfaction of the Port Authority.

B. Condemnation. Subject to the requirements of Section \_\_\_\_ of the Indenture, if the whole or a substantial portion of the Hotel shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition or like proceeding by any competent authority for any public or quasi-public use or purpose, or if such a portion of the Hotel, shall be taken or condemned as to make it imprudent or unreasonable, in either party's reasonable opinion, to use the remaining portion as an Hotel of the type and class immediately preceding such taking or condemnation, then, in either of such events, the terms of this Agreement shall cease and terminate as of the date of such taking or condemnation and no Termination Fee shall be applicable. Any condemnation award or similar compensation shall be the property of the Port Authority, provided that the Hotel Operator shall have the right to bring a separate proceeding against the condemning authority for any damages and expenses specifically incurred by the Hotel Operator as a result of such condemnation.

#### **15. RESERVED**

#### **16. ASSIGNMENT**

Except as provided in Section 19.A. of this Agreement, neither party shall assign or transfer or permit the assignment or transfer of this Agreement without the prior written consent of the other.

**17. TAXES**

All real estate and ad valorem property taxes, assessments and similar charges on or relating to the operation of the Hotel during the Term of this Agreement shall be paid by the Hotel Operator on behalf of the Port Authority as an Operating Expense before any fine, penalty or interest is added to the same or lien placed upon the Hotel or this Agreement, unless payment of such taxes, assessments or charges is, in good faith, being contested and enforcement of the same is stayed. The Hotel Operator shall, within the earlier of thirty (30) calendar days of payment or ten (10) business days following written demand by the Port Authority, furnish the Port Authority with copies of official tax bills, assessments and evidence of payment or contest of the same.

**18. INDEMNIFICATION AND LIMITATION OF LIABILITY**

A. Indemnification of the Port Authority by Hotel Operator. The Hotel Operator shall hold harmless, indemnify and defend the Port Authority and its Affiliates and their respective agents, employees, officers, directors and shareholders (individually, an “Port Authority Indemnified Person” and collectively, the “Port Authority Indemnified Persons”), the Trustee and its officers, directors, agents, attorneys and employees (each a “Trustee Indemnified Person”), and the Collateral Agent and its officers, directors, agents, attorneys and employees (each a “Collateral Agent Indemnified Person” and, together with the Port Authority Indemnified Persons and the Trustee Indemnified Persons, each an “Indemnified Person” and collectively “Indemnified Persons”), from and against any Liabilities, brought or asserted by any third person, at law or in equity, against or incurred by the Indemnified Person, arising by reason of any Hotel Operator-Indemnified Liability (defined below). The Hotel Operator may apply the proceeds of any available insurance to the payment of any claim under the indemnity set forth in this Section 18. The provisions of this Section 18 shall survive the expiration or termination of this Agreement and shall be binding upon the Hotel Operator’s successors and assigns.

B. Exclusion. Notwithstanding anything in this Section 18 to the contrary, Hotel Operator shall not be obligated to indemnify any Indemnified Person to the extent that the Hotel Operator-Indemnified Liability is determined by a court of competent jurisdiction by final and non-appealable judgment to have directly resulted from the willful misconduct, gross negligence, or fraud of such Indemnified Person.

C. Procedure for Indemnification. In the event that any action or proceeding is brought against any Indemnified Person with respect to which indemnity may be sought hereunder, the Hotel Operator, upon written notice from the Indemnified Person, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Person, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same; provided that the Indemnified Person shall have the right to review and approve or disapprove prior to any such compromise or settlement. Each Indemnified Person shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof. The Hotel Operator shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Person may only employ separate counsel at the expense of the Hotel Operator if in the judgment of such Indemnified Person a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

D. Use and Benefit of Funds held under the Indenture. Except as may be derived from insurance proceeds as set forth in subsection (E), below, the Hotel Operator acknowledges and agrees that

its obligation to defend, indemnify and hold the Indemnified Persons harmless from and against Hotel Operator-Indemnified Liabilities shall not be funded from amounts or Funds held under the Indenture or diminished in any respect by the availability of such Funds or the use or application by the Port Authority of such Funds to satisfy any Liabilities (including Hotel Operator-Indemnified Liabilities) hereunder and that such use or application by the Port Authority or the Trustee of Funds under the Indenture for such purpose in accordance with the provisions of the Indenture shall not affect in any manner the Hotel Operator's obligation to pay or reimburse the Port Authority therefor. This paragraph shall apply regardless of whether Funds held under the Indenture at any time include any money provided by the Hotel Operator.

E. Sources of Funds. It is the Port Authority's and the Hotel Operator's intent to look first to the insurance coverage required pursuant hereto for both legal defense and payment of any Liabilities, subject to the provisions of this Section. Notwithstanding any indemnity language to the contrary, in the event that any Liability arises which is covered by the insurance required pursuant to the Indenture or this Agreement, the Hotel Operator shall cause such insurance coverages to be paid in accordance with such policies, and to the extent of such payment, the procedures related to indemnity above shall not apply; provided that the foregoing shall not have any effect whatsoever on an Indemnified Person's underlying right to indemnity. As to any Liabilities paid by insurance, the Parties agree to waive all rights of subrogation, regardless of whether the negligence or fault of the other party or other party's agents, officers, or employees causes or is alleged to have caused such claim, liability, loss or damage. For avoidance of doubt, the Port Authority shall be required to look to the Extraordinary Expense Fund, if ever, only if and to the extent (i) the Hotel Operator is not required to indemnify the Port Authority or any Indemnified Person for any Liability pursuant to this Section and (ii) such Liability is not fully paid by applicable insurance.

F. Defined Terms. The following definitions shall apply for purposes of this Agreement:

1) "Hotel Operator-Indemnified Liability" (singular) or "Hotel Operator-Indemnified Liabilities" (plural) means Liabilities arising from: (a) the acts or omissions of the Hotel Operator, any Key Employees, or Hotel Operator's Employees, agents, representatives or contractors, or the employees of such agents, representatives or contractors, which results in any claim including those for bodily injury, death or property damage occurring on, in or in conjunction with the business of the Hotel, to the extent not covered by insurance; (b) the Hotel Operator's acts or omissions in the selection, hiring, training discharge or supervision of any employees, agent, representatives or contractors; (c) any action taken by the Hotel Operator, its employee or agent, which is beyond the scope of the Hotel Operator's authority under this Agreement; or (d) the happening of any event of Hotel Operator Default; (e) Employment-Related Liabilities (defined below); (f) a violation of any Applicable Law; or (g) any losses suffered as a result of theft, embezzlement, fraud or other dishonesty by the Hotel Operator, its agents, representatives, contractors or Employees.

2) "Employment-Related Liabilities" means all Liabilities arising out of the Hotel Operator's or any other person's (including, without limitation, any Revenue Contractor's, contractors, or subcontractor's) labor and employment-related activities (such as, by way of illustration, screening, testing, investigating, interviewing, hiring, training, supervising, discharging, and paying all personnel necessary to maintain and operate the Hotel, employment discrimination, wage & hour disputes, civil rights, unfair labor practices, OSHA and ADA compliance. For avoidance of doubt, Employment-Related Liabilities shall constitute Hotel

Operator-Indemnified Liabilities without regard to any fault, negligence, misconduct, action or inaction on the part of the Hotel Operator.

G. Survival. The rights of any Indemnified Person to indemnity hereunder shall survive termination of this Agreement and in the case of any Indemnified Person such person's dissolution, merger or death.

H. Third-Party Beneficiaries. To the extent of their rights hereunder to indemnification and exculpation from pecuniary liability, each Indemnified Person (other than a Party) is a third-party beneficiary of this Agreement entitled to enforce such rights in his, her, it's or their own name.

## **19. THE PORT AUTHORITY AND THE TRUSTEE.**

A. Consent to Assignment "Step-in Rights". The Hotel Operator acknowledges and consents to the collateral assignment of this Agreement by the Port Authority to the Trustee to secure performance by the Port Authority of its obligations under the Indenture and other Bond Documents (the "Collateral Assignment") and agrees to execute and deliver such documents as the Trustee may reasonably require to evidence the Collateral Assignment and the rights of the Trustee with respect to this Agreement (including notice and extended cure rights and the right of the Trustee to assume this Agreement). The Hotel Operator recognizes the Trustee as a secured party under the Collateral Assignment entitled to exercise or enforce such rights (including consent rights), and upon exercise by the Trustee under the Collateral Assignment. Nothing herein shall be construed, however, to require the Trustee to perform any obligations of the Port Authority or the Hotel Operator under this Agreement. Provided that the actual Hotel Operator's Management Fees are paid to the Hotel Operator as provided in this Agreement, to the extent the Hotel Operator is entitled thereto, the Hotel Operator agrees to perform all obligations of this Agreement for or for the benefit of any one or more of the permitted assignees. Port Authority or the Hotel Operator recognize the Trustee, and its Collateral Agent as third party beneficiaries of this Agreement for the avoidance of doubt by reason of such Collateral Assignment or transfer have full right, power and authority to enforce the provisions of this Agreement, each in their own name or in the name of the Port Authority and to exercise all rights and remedies of the Port Authority hereunder. In no event shall the Trustee have any obligations hereunder by virtue of such assignment. The Trustee shall have the same rights, protections, immunities and indemnities hereunder as accorded to it under the other Bond Documents.

B. Limitations. THE HOTEL OPERATOR ACKNOWLEDGES AND AGREES THAT THE TRUSTEE IS NOT LIABLE OR OBLIGATED IN ANY MANNER TO PAY OR CAUSE TO BE PAID TO THE HOTEL OPERATOR ANY FEES (INCLUDING, BUT NOT LIMITED TO HOTEL OPERATOR'S MANAGEMENT FEES UNDER THIS AGREEMENT), COSTS, PENALTIES, DAMAGES, LIQUIDATED DAMAGES, EXPENSES INDEMNITIES, OR REIMBURSEMENTS OR TO MAKE ANY OTHER PAYMENTS OR ADVANCE AMOUNTS UNDER THIS AGREEMENT AT THE HOTEL OPERATOR'S DIRECTION, REQUEST, OR OTHERWISE BY THE TERMS THEREOF, OR INCUR OR CAUSE TO BE INCURRED ANY EXPENSE IN PURSUING ANY COURSE OF ACTION, IN CONNECTION WITH THE HOTEL OR ANY OTHER MATTER WITHIN THE SCOPE OF OR CONTEMPLATED BY THIS AGREEMENT EXCEPT ONLY TO THE EXTENT THAT MONIES ARE HELD BY THE TRUSTEE AND AVAILABLE FOR SUCH PURPOSE AS EXPRESSLY SET FORTH IN THE INDENTURE AND THEN ONLY TO THE EXTENT THAT AMOUNTS ARE AVAILABLE EXPRESSLY FOR SUCH PURPOSE UNDER THE PRIORITY OF PAYMENTS SET FORTH IN THE INDENTURE ("AVAILABLE MONEYS"). TO THE EXTENT

THAT AMOUNTS OR PROPERTY ARE HELD BY THE TRUSTEE BUT NOT AVAILABLE OR SUFFICIENT FOR SUCH PURPOSE, THE HOTEL OPERATOR WILL BE UNABLE TO RECOVER ANY SUCH COST, EXPENSE, LOSS OR DAMAGE FROM THE PORT AUTHORITY AND MAY BE UNABLE TO RECOVER ANY SUCH COST, EXPENSE, LOSS OR DAMAGE FROM ANY OTHER PERSON.

C. Notice. The Hotel Operator agrees that any notice required to be provided to the Port Authority or the Trustee under this Agreement shall be given to the Port Authority and Trustee by the method specified in this Agreement to the following addresses:

IF TO THE PORT AUTHORITY:

IF TO THE TRUSTEE:

Warren County Port Authority  
Attn: Executive Director  
406 Justice Drive  
Lebanon, Ohio 45036

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_

D. Third-Party Beneficiaries. The Hotel Operator and the Port Authority acknowledge and agree that the Port Authority, the Port Authority Indemnified Persons, and the Trustee and its officers, directors, employees, and agents are intended third-party beneficiaries of all rights and privileges of the Port Authority set forth in this Agreement and shall have the right to seek enforcement of the same directly against the Hotel Operator in the same manner as if the Port Authority or the Trustee were each a party hereto. From and after such time as the Hotel Operator has been notified by the Port Authority or the Trustee in writing in accordance with this Agreement, the Port Authority or the Trustee, as the case may be, shall be deemed and treated as “the Port Authority” under this Agreement and shall have all of the rights, entitlements, and privileges, and, subject to Section 19.B., all of the duties, and obligations, of the Port Authority hereunder; provided, however, that the Trustee, as the case may be, shall not be accountable for or deemed to have made any of the representations or warranties of the Port Authority under this Agreement nor liable for any action or omission of the Port Authority occurring prior to delivery of the aforesaid notice that has not been specifically identified in a then-current notice from the Hotel Operator to the Trustee. This Section 19.D. shall not be construed as giving rise to separate duplicate claims, complaints and causes of action on the part of the Port Authority and the Trustee for the same alleged breach of this Agreement by the Hotel Operator, and the Port Authority and Trustee agree that they will not bring separate duplicate claims, complaints or causes of action against the Hotel Operator arising out of the same alleged breach of this Agreement by the Hotel Operator.

E. Public Records Law. Notwithstanding any term of this Agreement to the contrary, the Port Authority and the Hotel Operator acknowledge that the Port Authority is an “authority” for purposes of the Ohio Public Records Law (“OPRL”) and that this Agreement, and confidential information received from the Hotel Operator that is covered by this Agreement will be considered public records and will be subject to disclosure under the OPRL, except for information falling within one of the exemptions therefrom. The Port Authority is required to and shall comply with all Applicable Laws including, without limitation, the OPRL in relation to any records, documents and information related to the Port Authority’s dealings and relationship with the Hotel Operator. Nothing in this Agreement shall be deemed or construed as a limitation on the Port Authority’s discretion relating to compliance with the OPRL or other Applicable Law. Nevertheless, the Port Authority will use reasonable efforts to provide notice to the Hotel Operator of any request under the OPRL but shall have no liability arising out of its failure to do so in a timely manner or at all.

**20. SECURITY**

A. Grant of Security Interest. The Hotel Operator hereby grants to the Collateral Agent, for the benefit of Port Authority and the further benefit of the Trustee and the Bondholders as assignees of the Port Authority, a lien on and security interest in all right, title and interest of the Hotel Operator, whether now owned or existing or hereafter created, acquired or arising, in and to the Hotel Operating Account and Collections Account for the Hotel created for or in the name of the Hotel Operator, accounts, chattel paper, instruments (including promissory notes), documents, general intangibles, health care insurance receivables, letter of credit rights, supporting obligations, supporting evidence and documents relating to any of the above described property, including without limitation, computer programs, disks, tapes and related electronic data processing media, and all rights of the Hotel Operator to retrieve the same from third parties, written applications, credit information, account cards, payment records, correspondence, delivery and installation certificates, invoice copies, delivery receipts, notes, and other evidences of indebtedness, insurance certificates and the like, together with all books of account, ledgers, and cabinets in which the same are reflected or maintained; accessions and additions to, and substitutions and replacements of, any and all of the foregoing; and proceeds and products of the foregoing, and all insurance of the foregoing and proceeds thereof, in each case giving rise to or evidencing Hotel Gross Operating Revenues directly related to the Hotel Operating Account and Collections Account for the Hotel, to secure the Secured Obligations (collectively, the “Hotel Operator Collateral”).

B. Obligations Hereby Secured. The lien and security interest herein granted and provided for is made and given to secure, and shall secure, the payment and performance of (a) any and all indebtedness, obligations, and liabilities of whatsoever kind and nature of the Hotel Operator to each and all Indemnified Persons (each a “Secured Party” and collectively, the “Secured Parties”) under this Agreement (whether arising before or after the filing of a petition in bankruptcy), whether direct or indirect, absolute or contingent, due or to become due, and whether now existing or hereafter arising and howsoever held, evidenced, or acquired, and whether several, joint, or joint and several, and (b) any and all expenses and charges, legal or otherwise, suffered or incurred by any Secured Party in collecting or enforcing any of such indebtedness, obligations, or liabilities or in realizing on or protecting or preserving any security therefor, including, without limitation, the lien and security interest granted hereby.

C. Hotel Operator Covenants; Section 20.C. Default. The Hotel Operator hereby covenants and agrees with, and represents and warrants to, the Secured Parties that:

1) The Hotel Operator has full right, power, and authority to enter into this Agreement and to perform each and all of the matters and things herein provided for.

2) The Hotel Operator's chief executive office and principal place of business in the United States is at, and the Hotel Operator keeps and shall keep all of its books and records relating to Hotel Operator Collateral only at [\_\_\_\_\_].

3) The Hotel Operator shall not change its legal name, change its jurisdiction of organization, move its chief executive office or maintain a place of business at a location other than those specified in Subsection 2., above, without first providing to the Collateral Agent a written notice thereof at least thirty (30) calendar days prior to making such change or move; provided, that the Hotel Operator shall at all times maintain its chief executive office in the United States of America and, with respect to any other such change, the Hotel Operator shall have taken all action necessary or reasonably requested by the Collateral Agent to maintain the lien and

security interest of the Collateral Agent in the Hotel Operator Collateral at all times fully perfected and in full force and effect.

4) The Hotel Operator agrees to execute and deliver to the Collateral Agent such further agreements, assignments, instruments, and documents and to do all such other things as the Collateral Agent may request as necessary or appropriate to assure the Collateral Agent its lien and security interest in the Hotel Operator Collateral including, without limitation, (i) such financing statements, and amendments thereof or supplements thereto, and such other instruments and documents as may be necessary or appropriate to perfect its security interest and comply with the Uniform Commercial Code of the State of Ohio (as amended from time to time, the "UCC") and any other Applicable Law, (ii) such agreements with respect to patents, trademarks, copyrights, and similar intellectual property rights as the Collateral Agent may request to comply with the filing requirements of the United States Patent and Trademark Office and the United States Copyright Office, and (iii) such Collateral Control Agreements with respect to all "Deposit Accounts," "Investment Property," "Letter-of-Credit-Rights," and "Electronic Chattel Paper," (as each such capitalized term is defined in the UCC) and use reasonable commercial efforts to cause the relevant depository institutions, financial intermediaries, and issuers to execute and deliver such Collateral Control Agreements, as the Collateral Agent may request. The Hotel Operator hereby authorizes the Collateral Agent to file any and all financing statements covering the Hotel Operator Collateral or any part thereof as the Collateral Agent may require, including financing statements describing the Hotel Operator Collateral. The Collateral Agent may order lien searches from time to time against the Hotel Operator and the Hotel Operator Collateral, and the Hotel Operator shall promptly reimburse the Collateral Agent for all reasonable costs and expenses incurred in connection with such lien searches. In the event for any reason the law of any jurisdiction other than the Hotel Operator's current jurisdiction of organization or the jurisdiction identified in the schedules attached hereto as of the date hereof becomes or is applicable to the Hotel Operator Collateral or any part thereof, or to any of the Secured Obligations, the Hotel Operator agrees to execute and deliver all such instruments and documents and to do all such other things as the Collateral Agent may request as necessary or appropriate to preserve, protect, and enforce the lien and security interest of the Collateral Agent under the law of such other jurisdiction. The Hotel Operator agrees to mark its books and records to reflect the lien and security interest of the Collateral Agent in the Hotel Operator Collateral.

5) In addition to any other powers of attorney contained herein, and effective upon the occurrence and during the continuance of any Section 20.C. Default (as defined below), the Hotel Operator hereby appoints the Collateral Agent, its nominee, and any other Person whom the Collateral Agent may designate, as the Hotel Operator's attorney in fact, with full power and authority to sign the Hotel Operator's name on verifications of receivables and other Hotel Operator Collateral; to send requests for verification of Hotel Operator Collateral to the Hotel Operator's customers, account debtors, and other obligors; to endorse the Hotel Operator's name on any checks, notes, acceptances, money orders, drafts, and any other forms of payment or security that may come into the Collateral Agent's possession or on any assignments, or other instruments of transfer relating to the Hotel Operator Collateral or any part thereof; to sign the Hotel Operator's name on any invoice or bill of lading relating to any Hotel Operator Collateral, on claims to enforce collection of any Hotel Operator Collateral, on notices to and drafts against customers and account debtors and other obligors, on schedules and assignments of Hotel Operator Collateral, on notices of assignment and on public records; to notify the post office authorities to change the address for delivery of the Hotel Operator's mail to an address designated by the



Collateral Agent; to receive, open and dispose of all mail addressed to the Hotel Operator; and to do all things necessary to carry out this Agreement; provided nothing herein shall obligate the Collateral Agent or any Secured Party to take any such action. Collateral Agent agrees not to exercise such power except during a Section 20.C. Default which is continuing. The Hotel Operator hereby ratifies and approves all acts of any such attorney and agrees that neither the Collateral Agent nor any such attorney will be liable for any acts or omissions nor for any error of judgment or mistake of fact or law other than such person's gross negligence, willful misconduct or fraud. The Collateral Agent may file one or more financing statements disclosing its security interest in any or all of Hotel Operator Collateral without the Hotel Operator's signature appearing thereon. The Hotel Operator also hereby grants the Collateral Agent a power of attorney to execute any such financing statements, or amendments and supplements to financing statements, on behalf of the Hotel Operator without notice thereof to the Hotel Operator. The foregoing powers of attorney, being coupled with an interest, are irrevocable until the Secured Obligations have been fully paid and performed in full and satisfied and this Agreement has terminated.

6) Unless waived by the Controlling Party, the Hotel Operator shall be in default under this Agreement giving rise to the remedies described in this Section 20.C. upon the occurrence of a Hotel Operator Default (a "Section 20.C. Default" hereunder).

7) Upon the occurrence and during the continuation of any Section 20.C. Default, the Collateral Agent shall have, in addition to all other rights provided herein or by law, the rights and remedies of a Collateral Agent under the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights or remedies are asserted and regardless of whether the UCC applies to the affected Hotel Operator Collateral), and further the Collateral Agent may, without demand and without advertisement, notice, hearing, or process of law, all of which the Hotel Operator hereby waives, at any time or times, sell and deliver all or any part of Hotel Operator Collateral (and any other property of the Hotel Operator attached thereto or found therein) held by or for it at public or private sale, for cash, upon credit, or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion. In addition to all other sums due the Collateral Agent hereunder, the Hotel Operator shall pay the Collateral Agent all reasonable and documented costs and expenses incurred by the Collateral Agent, including reasonable and documented legal fees and court costs, incurred in connection with liquidating or enforcing payment of Hotel Operator Collateral or the Secured Obligations or in the prosecution or defense of any action or proceeding by or against the Collateral Agent or the Hotel Operator concerning any matter arising out of or connected with this Agreement or Hotel Operator Collateral or the Secured Obligations, including, without limitation, any of the foregoing arising in, arising under or related to a case under the United States Bankruptcy Code (or any successor statute). Any requirement of reasonable notice shall be met if such notice is personally served on or mailed, postage prepaid, to the Hotel Operator in accordance with Section 21.L. at least ten (10) days before the time of sale or other event giving rise to the requirement of such notice; provided, that no notification need be given to the Hotel Operator if the Hotel Operator has signed, after a Section 20.C. Default has occurred, a statement renouncing any right to notification of sale or other intended disposition. The Collateral Agent shall not be obligated to make any sale or other disposition of Hotel Operator Collateral regardless of notice having been given. The Collateral Agent or any Secured Party may be the purchaser at any such sale. To the extent permitted by Applicable Law, the Hotel Operator hereby waives all of its rights of redemption from any such sale. The Collateral Agent may postpone or cause the postponement of the sale of all or any portion of Hotel Operator Collateral by announcement at the time and place of such sale, and such sale

may, without further notice, be made at the time and place to which the sale was postponed or the Collateral Agent may further postpone such sale by announcement made at such time and place. The Collateral Agent has no obligation to prepare Hotel Operator Collateral for sale. The Collateral Agent may sell or otherwise dispose of Hotel Operator Collateral without giving any warranties as to Hotel Operator Collateral or any part thereof, including disclaimers of any warranties of title or the like, and the Hotel Operator acknowledges and agrees that the absence of such warranties shall not render the disposition commercially unreasonable.

8) Without in any way limiting the foregoing, upon the occurrence and during the continuation of any Section 20.C. Default, and to the extent permitted by Applicable Law, the Collateral Agent shall have the right, in addition to all other rights provided herein or by law, to take physical possession of any and all of Hotel Operator Collateral and anything found therein, the right for that purpose to enter without legal process any premises where Hotel Operator Collateral may be found (provided such entry be done lawfully), and the right to maintain such possession on the Hotel Operator's premises or to remove Hotel Operator Collateral or any part thereof to such other places as the Collateral Agent may desire. Upon the occurrence and during the continuation of any Section 20.C. Default, and to the extent permitted by Applicable Law, the Collateral Agent shall have the right to exercise any and all rights with respect to all Deposit Accounts of the Hotel Operator, including, without limitation, the right to direct the disposition of the amounts in each Deposit Account and to collect, withdraw, and receive all amounts due or to become due or payable under each such Deposit Account. Upon the occurrence and during the continuation of any Section 20.C. Default, and to the extent permitted by Applicable Law, the Hotel Operator shall, upon the Collateral Agent's demand, promptly assemble Hotel Operator Collateral and make it available to the Collateral Agent at a place designated by the Collateral Agent. If the Collateral Agent exercises its right to take possession of Hotel Operator Collateral, the Hotel Operator shall also at its expense perform any and all other steps requested by the Collateral Agent to preserve and protect the security interest hereby granted in Hotel Operator Collateral, such as placing and maintaining signs indicating the security interest of the Collateral Agent, appointing overseers for Hotel Operator Collateral, and maintaining Hotel Operator Collateral records.

D. Collateral Agent. The Collateral Agent shall be the Collateral Agent under this Agreement and the Hotel Operator acknowledges and consents to the appointment of the Collateral Agent as "Collateral Agent" and authorizes the Collateral Agent to act as the agent of the Hotel Operator, and acknowledges that the Collateral Agent has been appointed by the Port Authority and by the Trustee under the Indenture, for purposes of acquiring, holding and enforcing any and all liens or security interests on collateral granted by the Hotel Operator, any Revenue Contractor or any Person to secure any of their respective obligations under the Bond Documents together with such powers as are reasonably incidental thereto. In this connection, the Collateral Agent, pursuant to the Indenture, or any Bond Document for purposes of holding or enforcing any lien or security interest on any collateral (or any portion thereof) under any of the foregoing, or for exercising any rights and remedies thereunder at the direction of the Controlling Party, shall be entitled to the benefits and protections of all provisions of the Indenture (including, without limitation, any and all rights to indemnity prior to taking action) as if set forth in full herein, mutatis mutandis, with respect thereto. It is further agreed:

1) The powers conferred upon the Collateral Agent hereunder are solely to protect its interest in Hotel Operator Collateral on behalf of the Secured Parties and shall not impose on it or any Secured Party any duty to exercise such powers. To the extent that at any time that the

Collateral Agent is deemed to take possession of Hotel Operator Collateral, the Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Hotel Operator Collateral in its possession or control if such Hotel Operator Collateral is accorded treatment substantially equivalent to that which the Collateral Agent accords its own property, consisting of similar type assets, it being understood, however, that the Collateral Agent shall have no responsibility for ascertaining or taking any action with respect to calls, conversions, exchanges, maturities, tenders, or other matters relating to any such Hotel Operator Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters. The grant of the security interest in Hotel Operator Collateral hereunder constitutes an assignment of rights only and not an assignment of any duties or obligations of the Hotel Operator in any way related to Hotel Operator Collateral, and the Collateral Agent shall have no duty or obligation to discharge any such duty or obligation. The Collateral Agent shall have no responsibility for taking any necessary steps to preserve rights against any parties with respect to any Hotel Operator Collateral or initiating any action to protect Hotel Operator Collateral against the possibility of a decline in market value. Neither the Collateral Agent nor any party acting as attorney for the Collateral Agent shall be liable for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct.

2) Failure by the Collateral Agent to exercise any right, remedy, or option under this Agreement or any other agreement between the Hotel Operator and the Collateral Agent or any other Secured Party or provided by law, or delay by the Collateral Agent in exercising the same, shall not operate as a waiver; and no waiver by the Collateral Agent shall be effective unless it is in writing and then only to the extent specifically stated. The rights and remedies of the Collateral Agent under this Agreement shall be cumulative and not exclusive of any other right or remedy which the Collateral Agent may have.

3) With respect to any request permitted to be made by the Collateral Agent pursuant to Section 20.C.4. through Section 20.C.8., each of the Port Authority and the Hotel Operator acknowledge and agree that the Collateral Agent is not responsible or required to make any such request or demand or to take action to maintain or perfect any security interest provided for hereunder, except upon instruction of the Hotel Operator, the Port Authority, or the Controlling Party under the Indenture. In the case of conflicting instructions, instructions of the Trustee shall control over instructions made by the Hotel Operator or Port Authority, and instructions by the Controlling Party shall control over instructions made by either the Trustee, the Port Authority or the Hotel Operator.

E. Application of Proceeds. The proceeds and avails of Hotel Operator Collateral at any time received by the Collateral Agent after the occurrence and during the continuation of any Section 20.C Default shall, when received by the Collateral Agent in cash or its equivalent, be applied by the Collateral Agent as follows:

1) FIRST, to the payment and satisfaction of all sums paid and costs and expenses incurred by the Collateral Agent hereunder or otherwise in connection herewith, including such monies paid or incurred in connection with protecting, preserving or realizing upon Hotel Operator Collateral or enforcing any of the terms hereof, including attorneys' fees and court costs, together with any interest thereon (but without preference or priority of principal over interest or of interest over principal), to the extent the Collateral Agent is not reimbursed therefor by the Hotel Operator; and

2) SECOND, to the transfer of amounts as provided that such transfers shall be made by the Collateral Agent solely in accordance with the Agreement; and

3) THIRD, to the payment and satisfaction of the remaining Secured Obligations, whether or not then due (for further application in accordance with the requirements of the Indenture and the Bond Documents) in each case as may be directed by the Controlling Party; and

4) FOURTH, any surplus remaining after the full payment and satisfaction of the foregoing shall be returned to the Port Authority or to whomsoever the Collateral Agent, acting solely at the written direction of the Controlling Party, determines is lawfully entitled thereto.

The Hotel Operator shall remain liable to the Collateral Agent and the Secured Parties for any deficiency.

## 21. MISCELLANEOUS

A. Severability. If any portion of this Agreement shall be declared invalid by order, decree or judgment of a court, this Agreement shall be construed as if such portion had not been inserted in this Agreement except when such construction would operate as an undue hardship to the Hotel Operator or the Port Authority or Trustee or constitute a substantial deviation from the general intent and purpose of the parties as reflected in this Agreement.

B. Performance. The failure of either Party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either Party of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by such Party.

C. Relationship. The relationship of the Port Authority and the Hotel Operator shall be that of an independent contractor. Nothing contained in this Agreement shall be construed to create an agency, partnership or joint venture between them or their successors in interest. Neither Party shall borrow money in the name of, or pledge the credit of, the other.

D. Meetings. The Port Authority shall meet with representatives of the Hotel Operator, from time-to-time, so that the Hotel Operator and the Port Authority may discuss the status of operations and future plans, recommendations and projections. The meetings will be held at mutually convenient dates and locations.

E. Consents. Except as otherwise provided in this Agreement, whenever in this Agreement the consent or approval of the Port Authority or the Hotel Operator is required, such consent or approval shall not be unreasonably withheld or delayed. Such consent or approval shall be in writing only and shall be duly executed by an authorized officer or agent of the party granting such consent or approval.

F. Mediation and Arbitration. THIS SECTION 21.F. IS RESERVED SOLELY FOR THE RESOLUTION OF DISPUTES ARISING UNDER THIS AGREEMENT BETWEEN THE PORT AUTHORITY AND THE HOTEL OPERATOR AND UNDER NO CIRCUMSTANCES SHALL IT BE DEEMED OR CONSTRUED AS REQUIRING PORT AUTHORITY OR ANY PORT AUTHORITY INDEMNIFIED PERSON TO SUBMIT TO ARBITRATION OF ANY DISPUTE DIRECTLY OR INDIRECTLY INVOLVING ANY OF THEM BUT THE PORT AUTHORITY MAY ELECT TO DO

SO IN ITS SOLE DISCRETION. Any controversy, dispute or claim arising out of or relating to this Agreement or the performance, enforcement, breach, termination or validity of this Agreement, including the determination of the scope of this agreement to arbitrate, shall first be submitted to nonbinding mediation. The venue for mediation shall be in the City of Middletown, Ohio. The mediation process shall be administered by a mutually acceptable mediator selected consistent with (but not under the jurisdiction of) the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (the "AAA") unless otherwise mutually agreed to by the Parties. If any dispute remains unresolved between the parties after the mediation process has been completed, either Party may then pursue all remedies available at law or in equity.

G. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Port Authority and shall be binding and inure to the benefit of the Hotel Operator and its permitted assigns.

H. Headings. Headings of sections of this Agreement are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular sections to which they refer.

I. Incorporation of Recitals. The recitals set forth in the preamble of this Agreement are by this reference incorporated in this Agreement as if fully set forth in this Agreement.

J. Force Majeure. Any one or more of the following events or circumstances that, alone or in combination, adversely affects the operation of the Project, shall be considered a "Force Majeure" event: fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions; war, acts of terrorism, rebellion, riots or other civil unrest; or any other event beyond the Hotel Operator's or the Port Authority's, as the case maybe, reasonable control. A party shall be excused from performance of any provision of this Agreement to the extent that such party's ability to comply with such provision is materially impacted by such a Force Majeure event.

K. Notices. Notices, statements and other communications to be given under the terms of this Agreement shall be in writing and delivered by hand against receipt or sent by certified or registered mail, return receipt requested, or by Federal Express or other similar overnight delivery service, addressed as follows, or at such other address as from time-to-time designated by the party receiving the notice:

If to the Port Authority:

Warren County Port Authority

\_\_\_\_\_  
\_\_\_\_\_

Attn.: [\_\_\_\_\_]

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

If to the Hotel Operator:

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: [\_\_\_\_\_]

L. Entire Agreement. This Agreement, together with other writings signed by the parties expressly stated to be supplementing to this Agreement and together with any instruments to be executed and delivered pursuant to this Agreement, constitutes the entire agreement between the parties and supersedes all prior understandings and writings, and may be changed only by a writing signed by the parties to this Agreement.

M. Hotel Operator's Authority Limited. The Hotel Operator's authority shall be derived wholly from this Agreement, and the Hotel Operator has no authority to act for or represent the Port Authority except as specified in this Agreement.

N. Exclusive Compensation. The payments to be made to the Hotel Operator under this Agreement shall be in lieu of all other or further compensation or commissions of any nature for the services described in this Agreement, and this Agreement shall be considered as a special agreement between the parties covering the appointment and compensation of the Hotel Operator to the exclusion of any other method of compensation unless otherwise agreed to in writing.

O. Time of the Essence. Time is of the essence with respect to this Agreement.

P. Attorneys' Fees. In the event of any litigation arising out of this Agreement, the prevailing Party shall be entitled to reasonable costs and expenses, including but not limited to attorneys' fees.

**22. QUALIFIED MANAGEMENT AGREEMENT**

In the event that tax-exempt obligations are issued by the Port Authority at any time in order to finance the acquisition, construction, expansion, renovation, equipping or furnishing the Hotel ( Tax-Exempt Bonds”), then the terms of this Agreement is intended to be and shall constitute a services contract not resulting in private business use of the Hotel within the meaning of Section 141(b)(6) of the Code and Section 1.141-3(b)(4) of the Income Tax Regulations and shall be interpreted in accordance with the requirements thereof. In order to maintain the tax-exempt status of any Tax-Exempt Bonds, notwithstanding any other provision of this Agreement to the contrary, the Hotel Operator agrees as follows:

A. The Port Authority will at all times exercise a significant degree of control over the Hotel by retaining the right to approve the Annual Business Plan, including the Approved Operating Budget and Approved Hotel Capital Budget, including Capital Expenditures with respect to the Hotel, each disposition of property that is part of the Hotel, rental rates charged by the Hotel, Service Contracts, and the general nature and type of the Hotel.

B. The Port Authority shall bear the risk of loss upon Force Majeure damage or destruction of the Hotel.

C. This Agreement shall not in any way be construed to be a lease but is merely a recitation of contract provisions. Moreover, the Hotel Operator agrees that during the Term and following termination of this Agreement for any reason, it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the Port Authority with respect to the Hotel. Accordingly, by way of example and not limitation, the Hotel Operator agrees that it is not entitled to and will not take any depreciation or amortization, investment tax credit, or deduction for any payment as rent with respect to the Hotel. This provision will survive termination of the Agreement.

D. Absent approval of the Port Authority, except as expressly contemplated, hereby the Hotel Operator will not subcontract any part of the services to be provided by it hereunder.

E. Notwithstanding Section 21.M., if the Port Authority notifies the Hotel Operator that, based upon written advice from Bond Counsel, it is necessary that the Hotel Operator cease an activity at the Hotel, otherwise take affirmative action at the Hotel or agree to amend this Hotel Operating Agreement in order to preserve the excludability of the interest on the Tax-Exempt Bonds from gross income for federal income tax purposes, then the Hotel Operator shall agree to the amendments to this Agreement necessary to comply with the federal tax requirements, and/or cease such activity or otherwise take such action as necessary to comply with the federal tax requirements.

F. Hotel Operator represents, warrants and covenant that as of the Effective Date and throughout the Term, none of its directors and officers serve or will serve on the Board of the Port Authority.

**23. EFFECTIVENESS.**

The effectiveness of this Agreement is contingent upon the issuance of the Bonds by the Port Authority and the purchase and sale of the Hotel and the Land by the Port Authority on or about [\_\_\_\_\_], 2023. If the issuance of the Bonds by the Port Authority and the purchase and sale of the Hotel and the Land by the Port Authority does not occur by [\_\_\_\_\_], 2023, this Agreement shall automatically terminate without any further action by the Parties hereto and shall be of no further force or effect.

IN WITNESS WHEREOF, the parties have executed this Hotel Operating Agreement as of the day and year first set forth above.

**WARREN COUNTY PORT AUTHORITY**

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

**HOTEL OPERATOR**

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



**EXHIBIT A**  
**PROPERTY DESCRIPTION**

[TO BE PROVIDED]

## EXHIBIT

### EXHIBIT B

#### MASTER GLOSSARY OF TERMS

1. “Accounting Period” has the meaning set forth in Section 8.B of the Agreement.
2. “Affiliates” (or “Affiliate”) shall mean any parent, subsidiary, affiliated or related corporation or other entity under the control of, or under common control with, the Hotel Operator, or any officer, director, employee or member of the Hotel Operator; provided, however, that for the purposes of any person to whom this Agreement may be assigned under Section 16 of this Agreement, officers, directors, employees and members shall not be deemed to be Affiliates. For purposes of this definition, the term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power: (i) to vote more than 50% of the voting equity securities of any such entity; or (ii) to direct or cause the direction of the management and policies of any such entity, whether through the ownership of voting equity securities, by contract or otherwise.
3. “Annual Business Plan” is defined in Section 9 of the Agreement.
4. “Applicable Accounting Standards” means either generally accepted accounting principles or, when required by Applicable Law, government accounting standards, in each case consistently applied.
5. “Applicable Law” means all laws, statutes, acts, rules, regulations, permits, licenses, authorizations, directives, orders and requirements of all governmental authorities, that now or hereafter may be applicable to the Port Authority, the Hotel, or Hotel Operator and the acquisition, maintenance, use and operation thereof, including those relating to employees, zoning, building, health, safety, Hazardous Substances, natural resources, and environmental matters, and accessibility of public facilities.
6. “Approved Hotel Capital Budget” shall mean the capital budget approved by the Port Authority as part of the Annual Business Plan pursuant to Section 9.A, and covering the estimated Capital Renewals (as defined below) for the subsequent Operating Year which indicates in reasonable detail the replacements of, or additions to, FFE (as defined below), and the nature of the special projects covered by the applicable Approved Hotel Capital Budget.
7. “Approved Annual Operating Budget” shall mean the a operating budget approved by the Port Authority as part of the Annual Business Plan pursuant to Section 9.A, and covering the anticipated operating expenses and revenues of the Hotel for the applicable period, maintenance of any reserve amounts required by the Indenture or the Port Authority from time to time, including, as an example, the Extraordinary Expense Fund.

8. “Approved Budgets” mean collectively the Approved Hotel Capital Budget and the Approved Annual Operating Budget.

9. “Available Moneys” has the meaning set forth in Section 19.B of the Agreement.

10. “Beneficial Owner” or “Beneficial Owners” means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

11. “Bond Documents” has the meaning set forth in the Indenture.

12. “Bonds” or “Bond” means the Port Authority issued tax-exempt revenue bonds and taxable revenue bonds as contemplated under the Agreement.

13. “Capital Renewals” shall mean a collective term for (a) normal capital replacements of, or additions to, FFE, and (b) special projects designed to maintain the Hotel in a first-class condition in accordance with the Hotel Operator Standards contemplated by this Agreement, which projects will generally comprise replacements of, or additions to, FFE, but may include revisions and alterations to the Hotel; most of the expenditures for such special projects will be capitalized, but a portion of such projects may be currently expended, such as the purchase of smaller items of FFE, or expenditures which are ancillary to the surfaces and which are ancillary to the overall Approved Hotel Capital Budget.

14. “Cash Management Agreement” means the Cash Management Agreement dated [\_\_\_\_\_], 2023, among the Trustee, the Port Authority and the Hotel Operator, a true and correct copy of which is attached to the Agreement as Exhibit F.

15. “Collateral Agent” means the collateral agent defined in Section 20 of the Agreement.

16. “Collateral Assignment” has the meaning set forth in Section 19 of the Agreement.

17. “Collateral Control Agreement” or “Collateral Control Agreements” mean any agreement entered into between Trustee and Port Authority and Hotel Operator as security for the Bonds, relating to the collection and distribution of revenues and other assets associated with the Hotel.

18. “Collections Account” means an account designated as a collections account under any Collateral Control Agreement.

19. “Contingencies” are those conditions precedent listed on Exhibit C attached.

20. “Contingency Satisfaction Date” means the date when all of the contingencies set out on Exhibit C attached hereto are fully satisfied to the satisfaction of the Port Authority in the Port Authority’s sole discretion.

21. “Controlling Party” means the Beneficial Owners of a majority in aggregate principal amount of the Senior Bonds then Outstanding.

22. “Designated Agent” means [\_\_\_\_\_], the Port Authority’s representative and its successors. Empowered to give or withhold any consents or approvals required by Port Authority or to impose conditions upon any consent or approval but cannot take any action expressly reserved for Port Authority under the Indenture.

23. “Employees” has the meaning set forth in Section 3.G of the Agreement.

24. “Employment-Related Liabilities” has the meaning set forth in Section 18.F of the Agreement.

25. “Extra Services” has the meaning set forth in Section 10.C of the Agreement.

26. “Extraordinary Expense Fund” means the Extraordinary Expense Fund established by Section \_\_\_\_\_ of the Indenture.

27. “Fiscal Year” means \_\_\_\_\_.

28. “Force Majeure” or “Force Majeure Event” has the meaning set forth in Section 20.J of the Agreement.

29. “Franchise Agreement” shall mean that certain Franchise Agreement to be entered into prior to the Management Commencement Date among [Hotel Operator] and Franchisor.

30. “Franchisor shall mean [Hilton Franchise Holding LLC].

31. “Funds” means any one or more, as the case may be, of the separate special funds established by the Indenture or by any Supplemental Indenture.

32. “Furniture, Fixtures, and Equipment” or “FFE” shall mean all furniture, furnishings, light fixtures, outfitting’s, apparatus, equipment and all other items of personal property customarily installed in, held in storage for use in, used in or required for use in connection with the operation of the Hotel.

33. “Gross Operating Revenues” means all revenue and income of any kind derived directly or indirectly from operations at the Project, properly attributable to the period under consideration, determined in accordance with Generally Accepted Accounting Principles and a uniform system of accounts (except that in determining the amount deposited into the Revenue Fund, such determination shall be made on a cash basis and except that revenues paid

with respect to use of any part of the Project with respect to particular months or other period will be considered properly attributable to those months or other period even if received by the Trustee before or after), except that the following shall not be included in determining Gross Operating Revenues:

- a. receipts from the financing, sale or other disposition of capital assets and other items not in the ordinary course of the Project's operations and income derived from securities and other property acquired and held for investment;
- b. receipts from awards or sales in connection with any Taking, from other transfers in lieu of and under the threat of any Taking, and other receipts in connection with any Taking, but only to the extent that such amounts are specifically identified as compensation for alterations or physical damage to the Project;
- c. proceeds of any insurance, including the proceeds of any Business Interruption Insurance;
- d. proceeds of any financing; and
- e. interest earned on amounts held in any Fund or Account.

34. "Hazardous Substances" means any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), asbestos-containing materials (ACMs), lead-containing or lead-based paint (LBP), radon, mold, bio-hazardous materials and any chemicals, pollutants, materials or substances defined as or included in the definition of "hazardous substances" as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, "regulated substances" within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Regulations..

35. "Hotel Collections Account" means [ ].

36. "Hotel" means that certain approximately \_\_\_\_\_ square foot, \_\_\_\_\_ story hotel building containing \_\_\_\_\_ hotel rooms, \_\_\_\_\_ square feet of banquet/conference space, \_\_\_\_\_, fitness room and other hotel amenities, and sidewalks and other improvements.

37. "Hotel Operator-Indemnified Liability" has the meaning set forth in Section 18.F of the Agreement.

38. "Hotel Operator's Management Fee" means the fee described in 10.B. of the Agreement.

39. “Hotel Operator Collateral” has the meaning set forth in Section 20 of the Agreement.

40. “Hotel Operator Default” has the meaning set forth in Section 13.A of the Agreement.

41. “Hotel Operator-Indemnified Liabilities” has the meaning set forth in Section 18.F.1 of the Agreement.

42. “Hotel Operator Secured Obligations” has the meaning set forth in Section 20 of the Agreement.

43. “Indenture” means the trust Indenture, dated as of [\_\_\_\_\_], 2023, by and between the Port Authority and the Trustee, as originally executed and as the same may be from time to time amended, restated, modified and supplemented in accordance with the terms thereof.

44. “Indenture Obligations” has the meaning set forth in Section 3.D of the Agreement, and means the obligations of the Port Authority or its agents, including Hotel Operator, arising under the Indenture relating to the use and operation of the Project and Gross Operating Revenue derived therefrom.

45. “Independent Auditor” has the meaning set forth in Section 8.B of the Agreement.

46. “Industry Practices” means those practices, methods, and actions consistent with the highest industry standards and in the same manner as is customary and usual in the operation and management of comparable sports and event arena facilities with comparable financial resources and budgetary parameters and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use. In addition, if applicable, Industry Practices shall include those written operating policies and practices adopted from time to time by the Hotel Operator and provided in writing to the Port Authority prior to the effective date of any such policies and practices.

47. “Initial Term” has the meaning set forth in Section 12.A of the Agreement.

48. “Key Employees” means (to the extent such positions exist): (a) at the Hotel level, any salaried manager, and (b) at the corporate level, positions at or above the manager.

49. “Liabilities” means any and all fees, costs and charges, losses, damages, claims, actions, liabilities and expenses of any conceivable nature, kind or character (including, without limitation, reasonable fees and expenses of attorneys, accountants, consultants and other experts, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) in any way related to the Hotel to which the Port Authority Indemnified

Persons, or any of them, may become subject under any statutory law or regulation (including federal or state securities laws and regulations and federal tax laws or regulations) or at common law or otherwise.

50. “Management Commencement Date” shall be on the date that is the earlier of [ ] or the Contingency Satisfaction Date.

51. “Master Insurance Schedule” means Exhibit D of the Agreement.

52. “Net Operating Income” shall mean the Gross Operating Revenue less Operating Expenses.

53. “Notice of Termination Due to Non-Compliance with Laws” has the meaning set forth in Section 6.C of the Agreement.

54. “Operating Expenses” shall mean [NTD – DEFINITION TO BE NEGOTIATED: (a) expenses paid or incurred by Hotel Operator in connection with the performance of its obligations under this Agreement, including, but not limited to: (i) all expenses incurred by Hotel Operator in the operation of the Hotel at any time during the Term; (ii) all Hotel personnel costs incurred by Hotel Operator or any of its Affiliates; (iii) all costs of Hotel Operator corporate personnel to the extent engaged solely in activities solely for the benefit of the Hotel; (iv) the reasonable and equitable per diem charge for personnel of Hotel Operator or any of its Affiliates assigned to special projects for the Hotel; (v) all costs incurred by Hotel Operator or any of its Affiliates in performing its services under this Agreement, including without limitation air and ground transportation, meals, lodging, taxis, gratuities, document reproduction, printing, promotional materials, stationery, postage, long distance telephone calls and facsimiles; (vi) payments made or incurred by Hotel Operator or any of its Affiliates, or their respective employees to any third party for goods and services in the ordinary course of business in the operation of the Hotel; (vii) insurance premiums and insurance broker fees, insurance retentions/deductibles, insurance adjusting fees and related expenses, and the costs of procuring, administering and maintaining the insurance referred to in the Agreement; (viii) the cost of compliance with laws and regulations, and legal and accounting expenses (including, without limitation, audits) and attorneys’ fees and costs (including insurance retentions/deductibles) and (ix) all taxes imposed by any Governmental Authority against any reimbursements payable to Hotel Operator under this Agreement for expenses incurred for Port Authority’s account, including the other Operating Expenses listed in this definition. . In addition, Operating Expenses shall include the following: (A) all real estate and ad valorem property taxes, assessments and similar charges on or relating to the Hotel; (B) the cost of any capital equipment and capital improvements; (C) any reserve for (x) the replacement of furniture, fixtures and equipment or (y) any future capital expenditures; (D) principal, interest or any other amounts payable by Port Authority in connection with any financing secured by or in connection with the Hotel; (E) depreciation and amortization expenses (determined in accordance with Applicable Accounting Standards); (F) emergency repairs, as set forth in the Agreement; (G) pre-existing obligations, including legal liabilities, pending or future liabilities that arose from claims occurring prior to the Effective Date; (H)

costs and expenses incurred by Port Authority in the ownership, management and supervision of the Hotel, including overhead for staff, and for legal, accounting and consulting services in the ordinary course of business; (I) costs and expenses associated with any improvement, alteration, addition or change to the Hotel; and (J) any other costs and expenses of Port Authority that are not directly related to Hotel Operator's operation of the Hotel. Notwithstanding anything herein to the contrary, to the extent that Hotel Operator centrally or through an Affiliate provides certain corporate overhead-type services, including without limitation services related to IT, finance, legal, payroll or human resources, Hotel Operator shall be permitted to include within the definition of "Operating Expenses" an expense equal to the reasonable cost of such expenses incurred by Hotel Operator or its Affiliates in their respective reasonable discretion. Except to the extent contrary to the express terms of such definition, Operating Expenses shall be determined in accordance with Applicable Accounting Standards. "Operating Profit" shall mean the excess, during each Fiscal Year (and proportionately for any period less than a Fiscal Year), of Gross Operating Revenues over expenses and deductions incurred in the operation of the Hotel by the Hotel Operator in fulfilling its duties under this Agreement during such period.]

55. "Operating Supplies" shall mean all supplies not included in the FFE list and other similar items necessary to the operation of the Hotel.

56. "Party" or the "Parties" means the Port Authority and the Hotel Operator.

57. "Port Authority Indemnified Person" and "Port Authority Indemnified Persons" has the meaning ascribed to that term in Section 18 hereof

58. "Project" means the Hotel.

59. "Project Consultant" means any person unaffiliated with either the manager of the Hotel having the experience and qualifications necessary to review and make recommendations regarding the operation, management, marketing, improvement, condition or use of the Project, which Person shall be experienced, have a favorable reputation in the matters for which such Person is so employed, be independent of the Port Authority and be approved by the Controlling Party

60. "Renewal Term" has the meaning set forth in Section 12.B of the Agreement.

61. "Representatives" has the meaning set forth in Section 3.I of the Agreement.

62. "Revenue Fund" means the Revenue Fund established by Section [ \_\_\_\_ ] of the Indenture.

63. "Reserve Fund" refers to one or more reserve amounts established pursuant to the Indenture or from time to time as part of any Annual Business Plan for purposes of establishing debt service reserves, operating reserves, capital expenses and the like.



64. “Revenue Contractor” means any Person that from time to time, in accordance with the requirements of the Indenture Agreement and the Bond Documents, may be authorized by contract to conduct operations generating Gross Operating Revenues.

65. “Services” has the meaning set forth in Section 3.A of the Agreement. “Service Contract” has the meaning set forth in Section 3.A.4 of the Agreement.

66. “Tax-Exempt Bonds” has the meaning set forth in Section 22 of the Agreement.

67. “Takeover Activities” has the meaning set forth in Section 2.B.1 of the Agreement.

68. “Termination Fee” has the meaning set forth in section 12.E of the Agreement.

**EXHIBIT C**  
**CONTINGENCIES**

[TBD]

**EXHIBIT D**

**MASTER INSURANCE SCHEDULE**

[TO BE PROVIDED]

**EXHIBIT E**  
**INDENTURE**

[INSERT]

**EXHIBIT F**

**CASH MANAGEMENT AGREEMENT**

[TO BE ATTACHED]

**EXHIBIT G**  
**FRANCHISE AGREEMENT**  
[TO BE ATTACHED]

**EXHIBIT 6 – MWBE PARTICIPATION**

The Proposer, by its officers and its agents or representatives present at the time of filing this Proposal, being duly sworn on their oaths say, that they agree – if selected – that they are committed to using minority and women owned businesses as subcontractors whenever possible.

**Submitted By:**

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

Authorized Signature: \_\_\_\_\_

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