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AVOIDING CONTROVERSY AND DISPUTES IN HOTEL MANAGEMENT AGREEMENTS

Lessons Learned from Recent Cases and Developments

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SPECIMEN MANAGEMENT AGREEMENT

between

HOTELCO INC.

("MANAGER")

and

HOTEL OWNER, LLC

("OWNER")

Dated as of February 6, 2007

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (“Agreement”) is executed as of the sixth day of February, 2007 (“Effective Date”), between **Hotel Developer, LLC** (“Owner”) and **HotelCo, Inc.** (the “Manager”).

ARTICLE I

DEFINITIONS

Gross Revenues

Operating Costs

ARTICLE II

MANAGEMENT OF THE HOTELS

2.01 Engagement

Nature of Relationship

Standards of Engagement

Fiscal Standards

Physical Standards

Brand Standards

2.02 Construction of the Hotel Improvements

Pre-Commencement Agreement

PIP

Future Construction

2.03 Name of Hotel

- 2.04 Employees
 - Executive Committee
 - Non-Solicitation
- 2.05 Home Office Services
 - Cost Allocation
- 2.06 Chain Services
- 2.07 Related Party Transactions
- 2.08 Programs
- 2.09 Procurement Rebates and Fees
- 2.10 Adjoining Properties/Shared Services
 - Condos
 - Spa
 - Retail
 - Restaurant
 - Parking
 - Office Product
 - Golf
 - Marina
 - Exercise Facility
 - Future Development

2.11 Key Money

2.12 Limitations on Manager's Authority

2.13 Indemnification

ARTICLE III

TERM

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3.02 Termination Rights

For Cause

Performance

Return

Financial Covenants

Competitive Set

Budget/Pro Forma

Cure Rights

Chain Reservations

Reputation

Repositioning

Growth

Structure

Upon Sale

Disruptive Economic Change

Out-Sourcing of Key Components

Casualty

Condemnation

3.03 Limitation on Termination by Owner

Multiple Year Test

Dual Prong Test

ARTICLE IV

ECONOMICS

4.01 Fee Compensation

Base

Reservation Fees

Marketing Fees

Local

Discretion

Incentive

Percentage of NOI, GOP, AHP

Owner's Priority

Asset Management Fees

Fixed Amount/Formula

Maximum Aggregate Cap

ARTICLE V

BUDGETING, ACCOUNTING AND REPORTING

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Operating

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Annual Budget

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Detail

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Overall

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Revenue Carve Outs

Uncontrollable Expenses

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5.03 Working Capital

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REPAIRS, MAINTENANCE AND REPLACEMENTS

- 6.01 Repair and Maintenance Costs Which Are Expensed
- 6.02 FF&E Reserve
- 6.03 Capital Expenditures
- 6.04 Ownership of Replacements
- 6.05 Management of Hotel Renovation and Construction Projects

ARTICLE VII

RISK ALLOCATION

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- 7.02 Operational Insurance
- 7.03 Indemnities
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- 7.05 Limitations on Damages

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9.02 Mortgages

Cash Management

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Lender Required Amendments

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ARTICLE X

DEFAULTS

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10.02 Remedies

ARTICLE XI
ASSIGNMENT AND SALE

11.01 Assignment

Approval Rights and Pre-Approval

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Rights of Refusal/First Offer

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12.02 Applicable Law

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12.05 Actions to be Taken Upon Termination

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12.07 Trade Area Restriction and Competing Facilities

AoP Geography

Positioning

Acquisitions

Term of Restrictions

12.08 Dispute Resolution

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5th Annual Hospitality Law Conference
Presents

Management Contract Litigation Survey

Presented by:
David Moseley &
Nir Margalit



**David
Moseley**

- Practices in the area of corporate/business law representing local and national business entities
- He serves as general counsel for many of these businesses, including a national hotel management company
- David handles a wide range of corporate and business issues including corporate structure and acquisitions, dispositions and acquisitions of assets, implementation of employer policies and procedures, real estate transactions, and insurance matters
- He is a member of the Dallas Bar Association where he is a former section chair and is a former chair of the Finance Committee of the Board of Trustees of Dallas Baptist University.

Nir Margalit

- Executive V.P. & General Counsel for Kimpton Hotel & Restaurant Group
- Nir is responsible for the overall legal function of the company and its subsidiaries, including operations, development, investment, intellectual property/brand identity and corporate administration
- Mr. Margalit earned his B.S. degree from the Cornell University School of Hotel Administration and his juris doctor from Georgetown University Law Center.