

LOCATION: 711 1st Street  
Napa, California 94559

LOCATION #: 93709

DATE: June 27, 2025

**IHG FRANCHISING, LLC**

**KIMPTON® HOTELS & RESTAURANTS**

**NEW DEVELOPMENT**

**LICENSE AGREEMENT**

**WITH**

**PACIFIC HOTEL OXBOW, LLC**

**LICENSEE**

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**IHG Franchising, LLC**  
**Three Ravinia Drive, Atlanta, Georgia 30346**

**Kimpton® Hotels & Restaurants**  
**License Agreement**

This License Agreement (this "License"), dated as of June 27, 2025 (the "Effective Date"), is between **IHG FRANCHISING, LLC**, a Delaware limited liability company ("IHG"), and **PACIFIC HOTEL OXBOW, LLC**, a Delaware limited liability company ("Licensee"), whose address is 17 Corporate Plaza Drive, Suite 200, Newport Beach, CA 92660.

**RECITALS**

A. IHG owns and licenses the "Brand System" (as defined in paragraph 1.B. below). Licensee is the owner of the Hotel and has requested a license to use the Brand System to operate the Hotel as a Brand System Hotel (as defined in paragraph 1.B. below).

B. IHG shall grant to Licensee a non-exclusive license to operate the Hotel as a Brand System Hotel, subject to the terms of this License.

C. Guarantor(s) will provide the Guaranty.

D. In granting this non-exclusive license, IHG has relied upon the business skill, financial capacity, and character of Licensee and the Guaranty to be provided by the Guarantor(s).

NOW, THEREFORE, in consideration of the promises and covenants in this License, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IHG and Licensee agree as follows:

**1. The License:**

The Brand System is designed to provide a distinctive, high quality hotel service to the public under the name Kimpton® Hotels & Restaurants. High standards established by IHG are the essence of the Brand System. Future investments may be required of Licensee under this License. Licensee desires to enter into this License in order to obtain a license to use the Brand System in the operation of a hotel located at the "Location" identified on Attachment "A" and defined in paragraph 2.A. below (the "Hotel").

**A. The Hotel.**

The Hotel comprises all structures, facilities, appurtenances, furniture, fixtures, equipment, entry and exit rights, parking, pools, landscaping and other areas from time to time located on the land identified by Licensee to IHG in anticipation of this License, or located on any land from time to time approved by IHG for additions, signs or other facilities. The Hotel must include the facilities listed on Attachment "A" hereto. No change in the number of approved guest rooms or suites and no other significant change in the Hotel or in the manner in which the Hotel rooms and services are offered to the public (including timesharing and condominium hotel projects and other projects not involving short term stays by transient guests) may be made without IHG's written approval. Licensee represents that it is entitled to possession of the Hotel during the entire License Term without restrictions that would interfere with anything contemplated in this License. Throughout this License, the words "room" and "guest room" are intended to include the word "suites" unless otherwise indicated.

**B. The Brand System.**

The Brand System includes all elements which are designed to identify "Kimpton® Hotels & Restaurants" hotels to the public or are designed to be associated with those hotels or to contribute to such identification or association and all elements which identify or reflect the quality standards and business practices of such hotels, all as specified in this License or as designated from time to time by IHG. The Brand System at present includes, but is not limited to:

(1) the principal trade and/or service mark “Kimpton® Hotels & Restaurants”, the service marks “IHG One Rewards” and “IHG Concerto™” and the other Marks (as defined in paragraph 6.B. (below) and intellectual property rights made available to licensees of the Brand System by reason of a license;

(2) standards, specifications and policies for construction, furnishings, operation, appearance and service of the Hotel, standards and specifications for interior and exterior design and décor, and other requirements as stated or referred to in this License and from time to time in IHG’s brand standards for Brand System hotels (the “Standards”) or in other communications to Licensee;

(3) registered and unregistered intellectual property, including without limitation copyrights, trademarks, service marks, logos, designs, know-how, confidential or proprietary information standards, specifications and policies for construction, furnishing, operation, appearance and service of hotels operating as Brand System hotels, and similar property rights;

(4) all rights to the domain names and other identifications or elements used in electronic commerce as may be designated from time to time by IHG in accordance with IHG’s specifications to be part of the Brand System;

(5) access through IHG to the technology systems, loyalty programs, sales and catering system and other related systems operated in accordance with specifications established by IHG;

(6) access through IHG to multiple call centres and central reservations offices around the world handling reservations;

(7) access through IHG to brand marketing services and distribution marketing services including global advertising and publicity and other marketing programs and materials;

(8) training programs and materials;

(9) a worldwide hotel distribution of Brand System hotels;

(10) a guest loyalty program (currently named IHG® One Rewards);

(11) a recognized presence on the internet;

(12) an e-commerce team and presence for the given IHG brand and other IHG brands on the internet;

(13) a global sales team;

(14) global market coverage; and

(15) programs for inspecting the Hotel, measuring and assessing service and consumer opinion.

The Standards and all changes to the Standards may be presented in any format, including but not limited to print, electronic or other media. IHG has the right to periodically change the Brand System by adding, modifying, altering and/or deleting elements of the Brand System. “Brand System Hotel(s)” means the hotel(s) operated by IHG, an Affiliate of IHG, or a licensee or franchisee of IHG under the Brand System in any of the fifty (50) states of the United States of America, the District of Columbia, or Canada, and does not include any other hotel operated under a different brand or any other business operation of IHG. An “Affiliate” means, as to any Entity, any division, subsidiary, parent or other Entity that, directly or indirectly, Controls, is Controlled by or is under common Control with such Entity.

## **2. Grant of License:**

IHG hereby grants to Licensee a limited, non-exclusive license to use the Brand System only at the Hotel, but only in accordance with this License and only during the “License Term” beginning with the Effective Date and terminating as provided under paragraph 11 hereof, and Licensee accepts the right and

obligation to operate the Hotel pursuant to the terms of this License. This License applies to the location of the Hotel specified in Attachment "A" hereof (the "Location") and to no other location. Licensee acknowledges that IHG and its Affiliates are and may in the future be engaged in other business activities, including, without limitation, activities involving transient lodging and related activities, and that Licensee is acquiring no rights hereunder other than the right to use the Brand System as specifically defined herein in accordance with the terms of this License.

This License does not limit IHG's right, or the rights of any Affiliate of IHG, to use or license the Brand System or any part or element thereof or to engage in or license any business activity at any other location, including, without limitation, the licensing, franchising, ownership, operation and/or management of lodging facilities and related activities under the names and Marks associated with the Brand System and/or any other names and marks. Licensee acknowledges that IHG's rights to use and/or license the Brand System, referenced immediately above, pre-date this License and are not limited or changed by the terms of this License. Licensee agrees that by acknowledging those rights, the parties do not intend to make IHG's exercise of such rights subject to rules applicable to contractual performance or the exercise of contractual discretion under this License.

### **3. Licensee's Responsibilities:**

#### **A. Operational and Other Requirements.**

Throughout the entire License Term, Licensee will at its sole cost and expense:

- (1) maintain a high moral and ethical standard and atmosphere at the Hotel;
- (2) maintain the Hotel in a clean, safe and orderly manner and in first class condition;
- (3) provide efficient, courteous and high-quality service to the public in a clean, safe and orderly manner, including, without limitation, maintaining minimum product and service quality standards and scores for quality assurance and guest survey programs established and maintained by IHG, as such programs may be modified by IHG from time to time;
- (4) operate the Hotel 24 hours a day every day in accordance with the Standards, except as otherwise permitted by IHG in writing based on special circumstances;
- (5) strictly comply in all respects with the Standards (as they may from time to time be modified or revised by IHG) and with all other policies, procedures and requirements of IHG which may be from time to time communicated to Licensee (which communication, at IHG's option, may be in hard paper copy or digital, electronic or computerized form, and Licensee must pay any costs to retrieve, review, use or access such digital, electronic or computerized communication);
- (6) strictly comply with all of IHG's standards and specifications for goods and services used in the operation of the Hotel and other reasonable requirements to protect the Brand System and the Hotel from unreliable sources of supply;
- (7) strictly comply with IHG's requirements as to the:
  - (a) type of services and products that may be used, promoted or offered at the Hotel;
  - (b) type and quality of services and products that, to supplement services listed on Attachment "A", must be used, promoted or offered at the Hotel;
  - (c) use, display, style and type of signage and of all other forms of identification at or pertaining to the Hotel, including but not limited to any use of the Kimpton® Hotels & Restaurants name or any other of IHG's service marks, trademarks or copyrights (in all formats, including but not limited to print, electronic or other media) which are seen by members of the consuming public or used to identify the Hotel to actual or prospective consumers;

- (d) directory and reservation service listings of the Hotel;
  - (e) training of Persons to be involved in the operation of the Hotel;
  - (f) participation in all marketing, reservation service, advertising, training and operating programs designated by IHG as Brand System-wide (or area-wide) programs in the best interests of hotels using the Brand System including, without limitation, all guest frequency or loyalty programs related to the Brand System;
  - (g) maintenance, repair, appearance and condition of, and customer service at, the Hotel, including, without limitation, participation in all guest complaint programs and quality assurance programs established and maintained by IHG, as such programs may be modified by IHG from time to time;
  - (h) quality and types of services offered to customers at the Hotel; and
  - (i) maintenance of a capital reserve and adherence to capital reinvestment and renovation cycles (as further specified in paragraph 13.O. hereof and as IHG may supplement from time to time by the Standards);
- (8) use all technology services required by IHG;
- (9) adopt all improvements or changes to the Brand System as may be designated by IHG from time to time;
- (10) with respect to all aspects of this License and the Hotel and its ownership, development and operation, strictly comply with all applicable laws, rules, regulations, requirements, codes, orders, ordinances and standards of all governmental jurisdictions in which the Hotel is located or that are otherwise applicable to Licensee or the Hotel, pay timely all taxes and other governmental fees, assessments and impositions, and timely obtain and maintain throughout the License Term all governmental licenses, authorizations and permits necessary to own (or lease, as may be applicable) and operate the Hotel in accordance with the Brand System;
- (11) strictly comply with IHG's requirements as to guest satisfaction and guest complaint programs, as such programs may be modified by IHG from time to time;
- (12) participate in IHG's quality evaluation system, as such system may be modified by IHG from time to time (the "Quality System"). The Quality System may include, but shall not be limited to, online questionnaires for the Hotel to complete and/or inspections of the Hotel by IHG's representatives;
- (13) permit inspection of the Hotel by IHG's representatives at any time and give them free lodging for such time as may be reasonably required to complete their inspections; and take all such steps as are necessary to incorporate into the Hotel operations any corrections and modifications IHG requires to maintain the Standards, as quickly as is reasonably possible;
- (14) promote the Hotel on a local or regional basis subject to IHG's requirements as to form, content and prior approvals;
- (15) ensure that no part of the Hotel or the Brand System is used to further, promote, or divert business to a competing business or other lodging facility (including, without limitation, hotels, vacation or timeshare facilities or any similar product sold on a periodic basis), except as IHG may approve for businesses or lodging facilities owned, licensed, operated or otherwise approved by IHG or its Affiliates;
- (16) use every reasonable means to encourage use of Brand System facilities everywhere by the public;
- (17) in all respects use Licensee's best efforts to reflect credit upon and create favorable public response to the name "Kimpton® Hotels & Restaurants";

(18) promptly pay to IHG all amounts due to IHG and its Affiliates as royalties or charges, whether or not arising out of this License, or for goods or services purchased by Licensee for use at the Hotel; and

(19) strictly comply with IHG's requirements concerning confidentiality of information; and, in particular, Licensee shall not disclose, without IHG's written permission, (i) information pertaining to IHG's marketing, reservations, quality assurance, guest loyalty and satisfaction, technology or other systems or programs that has not been intentionally disclosed to the public by IHG, (ii) any of the Standards, or (iii) any of the commercial terms or provisions of this License.

## **B. Fees.**

For each month (or part of a month) during the License Term, Licensee will pay the fees set forth in this paragraph 3.B. to IHG, which shall be due to IHG by the "Due Date" (except as otherwise noted below including, without limitation, the Technology Services Fee which is payable monthly in advance. The term "Due Date" means the fifteenth (15<sup>th</sup>) day of the following month; but if the 15<sup>th</sup> day of the month falls on a weekend or bank holiday, then the Due Date shall be the next business day.

- (1) Application Fee. Licensee has paid IHG the nonrefundable Application Fee as set forth in Item 3 of Attachment "A".
- (2) Rooms Addition Fee. A standard application fee for additional guest rooms or suites, as set forth in IHG's then current franchise disclosure document for Brand System hotels, will be charged upon application for any guest rooms or suites to be added to the Hotel.
- (3) Royalty Fee. A monthly Royalty Fee in the amount set forth in Item 4 of Attachment "A". Licensee agrees and acknowledges that additional royalties may be charged on revenues from any activity if it is added at the Hotel by mutual agreement and it is not now offered at Brand System Hotels generally or it is designed or developed by or for IHG or its Affiliates. The Royalty Fee is solely in consideration of our granting Licensee the franchise conferred by this License and is not in exchange for any goods, services or assistance which may be furnished by IHG.
- (4) IHG System Fund Contribution. "IHG System Fund Contribution" means the assessments paid by Licensee, comprised of the Services Contribution and the Loyalty Program Contribution, for the IHG System Fund Activities (as defined in paragraph 4.G) to be provided by IHG and its Affiliates.
  - a. Services Contribution. A monthly Services Contribution in the amount set forth in Item 5 of Attachment "A". The Services Contribution will typically be invested by IHG in activities that, in IHG's sole business judgment as to the long-term interests of the Brand System, strengthen the brand such as awareness advertising, marketing, sales, guest services, reservations, standards, training programs, research, and the development of new or improved services, associated products and platforms, but may also include tactical marketing initiatives more focused on short term revenue enhancement and seasonal marketing programs. The Service Contribution cannot be used to cover the cost of maintenance, repair, modernization, renovation, or upgrading of the Hotel. The Services Contribution does not include costs that Licensee incurs in the acquisition, installation or maintenance of reservations services, equipment or training, or in Licensee's own marketing activities. IHG and its Affiliates are not responsible for any of these costs.

The Services Contribution is subject to change by IHG from time to time. IHG may, on 30 days advance notice, at any time during the term of this License, and from time to time, increase the Services Contribution by up to 1% of Gross Rooms Revenue (as such term is defined on Attachment "A"). If IHG increases the Services Contribution in this way, then IHG cannot make another discretionary increase again for 24 months after the start of a prior increase. IHG may increase



the Services Contribution by a maximum of 2% of Gross Rooms Revenue over the term of this License.

- b. Loyalty Program Contribution. An Initial Loyalty Marketing Contribution and a monthly Loyalty Program Contribution, currently known as the “IHG One Rewards Fee” (or other guest loyalty and frequency program fee as it may be re-characterized from time to time) at the prevailing rate on qualifying room rates and other eligible hotel charges for each night of a hotel stay on which IHG One Rewards points or frequency miles (related to an airline frequency alliance program) are required to be awarded by the terms of the IHG One Rewards program. The current prevailing rate is set forth in Item 5 of Attachment “A”. IHG may modify the amounts or the terms and conditions of the Initial Loyalty Marketing Contribution and the Loyalty Program Contribution from time to time in its sole discretion.
- (5) Technology Services Fee. A monthly Technology Services Fee as set forth in Item 6 of Attachment “A” and any other fees as set out in the Master Technology Services Schedule in Attachment “D” hereto. The Technology Services Fee will be used by IHG to cover costs and investments that, in IHG’s sole discretion, support the development and maintenance of IHG’s technology systems. The Technology Services Fee may be increased in IHG’s reasonable discretion, but in no case shall any such increase in any calendar year exceed 10% of the fee in effect at the beginning of that year. The Technology Services Fee does not include the cost, installation, maintenance or repair of any technology equipment at the Hotel.
- (6) Travel Agent Commissions, Reimbursement and Additional Marketing Programs. All fees due for travel agent commission programs, including Electronic Commission Services and any Field Marketing Co-op programs attributable to the Hotel, and all fees due in connection with mandatory marketing, technology, guest satisfaction, quality assurance, training, new hotel opening and other systems and programs established by IHG or its Affiliates relating to the Brand System; and an amount equal to any sales, trademark license, gross receipts or similar tax imposed on IHG and calculated solely on payments required hereunder, unless the tax is an optional alternative to an income tax otherwise payable by IHG.

Local and regional marketing programs and related activities may be conducted by Licensee, but only at Licensee’s expense and subject to IHG’s requirements and the Standards. Reasonable charges may be made for optional advertising materials ordered or supplied by IHG to Licensee for such programs and activities.

### **C. Additional Payment Terms.**

IHG may, at its election at any time during the License Term, require Licensee to pay all outstanding fees by electronic funds transfer, direct account debit, ACH or other similar technology designed to accomplish the same purpose as may be designated by IHG. If IHG requires Licensee to make payments by any of the foregoing methods, Licensee agrees to make its payment in compliance with those requirements and also to deposit and maintain at all times sufficient funds to cover all fees and payments that Licensee owes to IHG and its Affiliates in a segregated bank account that Licensee establishes and maintains for the Hotel.

Licensee will operate the Hotel so as to maximize Gross Rooms Revenue of the Hotel consistent with sound marketing and industry practice and will not engage in any conduct that reduces Gross Rooms Revenue of the Hotel in order to further other business activities. Charges may be made for optional products or services accepted by Licensee from IHG, either in accordance with current practice or as developed in the future.

Each payment under paragraph 3.B., except the Rooms Addition Fee or other fees not determined from Gross Rooms Revenue, shall be accompanied by the monthly statement referred to in

paragraph 7.A. IHG may apply any amounts received under this License to any amounts due under this License. If any amounts under this License are not paid when due, such non-payment shall constitute a breach of this License and, in addition, such unpaid amounts will accrue interest beginning on the first day of the month following the due date at 1½% per month or the maximum interest permitted by applicable law, whichever is less.

IHG has the right, in its sole judgment, to require Licensee to tender all or any part of the payments due to IHG under this License to IHG or one or more of IHG's Affiliates or other designees.

#### **4. IHG's Responsibilities:**

##### **A. Training.**

During the License Term, IHG will continue to specify and provide required and optional training services and programs at various locations and in various formats. A fee may be charged for certain required and optional training services. Travel, lodging and other expenses of Licensee and its employees will be borne by Licensee. Reasonable charges may also be assessed for training materials.

##### **B. Reservation Services.**

During the License Term, so long as Licensee is in full compliance with its obligations hereunder, IHG will afford Licensee access to reservation service for the Hotel under the terms of the Master Technology Services Schedule set forth in Attachment "D" hereto. However, IHG has no obligation to afford Licensee access to reservation service for the Hotel regarding reservations for any date after the expiration date of this License or for any date after the termination date established by IHG, following any applicable notice period or any applicable opportunity to cure.

##### **C. Consultation on Operations, Facilities and Marketing.**

During the License Term, IHG shall have the right (but not the obligation) to make available to Licensee consultation and advice in connection with operations, facilities and marketing. IHG may from time to time furnish to Licensee names of suppliers or recommend to Licensee suppliers of goods and services required or useful in the operation of the Hotel; however, IHG is not obligated to furnish any such names or to continue doing so, and Licensee is under no obligation to use any such supplier, unless expressly required to do so by the terms of this License, the Standards or otherwise. In identifying or recommending suppliers, IHG exercises its business judgment based on its information as of that date and its sense of the long-term interests of the Brand System. IHG's identification or recommendation of a supplier is not a warranty of the financial condition or performance of any supplier or of any other factor. Licensee's use of an identified or recommended supplier that sells products or services meeting IHG's standards and specifications may facilitate compliance with those standards and specifications, but it is not a substitute for Licensee's compliance obligations.

##### **D. Maintenance of Standards.**

IHG will seek to maintain high standards of quality, cleanliness, appearance, design and service at all hotels using the Brand System so as to promote, protect and enhance the public image and reputation of the Kimpton® Hotels & Restaurants name and to increase the demand for services offered by the Brand System. IHG's judgment in such matters shall be controlling in all respects, and it shall have wide latitude in making such judgments.

##### **E. Application of Standards.**

The Hotel and all other hotels operated under the Brand System will be subject to the Standards, as they may from time to time be modified or revised by IHG, including limited exceptions from compliance which may be made based on local conditions, type of hotel or special circumstances. The Standards and any modifications to them can be delivered by IHG to Licensee in hard paper copy or, at IHG's option, be made available to Licensee in digital, electronic or other computerized form. If communicated in digital, electronic or other computerized form, Licensee must pay any costs to retrieve, review, use or access the Standards. The Standards are confidential and remain the property of IHG.

#### **F. Other Arrangements for Marketing, Etc.**

IHG may enter into arrangements for development, reservation services, marketing, operations, administrative, training, technical and support functions, facilities, programs, services and/or personnel with any other entity, and may use any facilities, programs, services or personnel used in connection with the Brand System, in connection with any business activities of its Affiliates.

#### **G. Use of Services Contribution.**

IHG will make available and use Services Contribution funds (as may be computed on the basis generally applicable to licensees of the Brand System) for various activities, including IHG System Fund Activities. IHG is not obligated to expend funds for marketing, reservations or related services in excess of the amounts received from licensees using the Brand System and those funds made available by IHG as set forth above. Services Contribution funds are not intended to benefit any specific market or hotel. IHG and its Affiliates have no obligations to spend from Services Contribution funds, or otherwise, any amount fixed or proportionate to the amount of Services Contributions Licensee pays, nor do IHG or its Affiliates have any obligation to ensure that Licensee benefits directly or proportionately from Services Contributions paid or expenditures made from collected Services Contributions. Local and regional marketing programs and related activities may be conducted by Licensee but only at Licensee's expense and subject to IHG's requirements. Reasonable charges may be made for optional advertising materials ordered or used by Licensee for such programs and activities.

"IHG System Fund Activities" means various activities and arrangements organized and operated by IHG and its Affiliates (as they deem appropriate, in their sole discretion) for the provision of loyalty marketing services, distribution marketing services, brand marketing services and other such marketing and related programs and services for Brand System Hotels and the IHG Portfolio Brand Hotels (as hereinafter defined). These activities may be conducted on a local, regional, national, continental or international basis for all, or a group of, IHG Portfolio Brand hotels. IHG and its Affiliates may modify, in their absolute discretion, the IHG System Fund Activities from time to time. IHG System Fund Activities may include (within IHG's and its Affiliates sole discretion) any purposes that benefit or include Brand System Hotels, as a whole, groups of Brand System Hotels, or other IHG Portfolio Brand Hotels. IHG and its Affiliates have no obligation to ensure that any particular IHG Portfolio Brand Hotel, or particular group of Brand System Hotels, including the Hotel, benefits from the IHG System Fund Activities on a pro-rata or other basis or that the Hotel will benefit from the IHG System Fund Activities proportionate to the contributions paid by Licensee. "IHG Portfolio Brand Hotel(s)" means any hotel, other lodging facility, chain, brand or hotel system, however named, that is constructed, converted to or operated under any brands owned, controlled or under the direction of IHG and its Affiliates, as they may be added to, deleted from or changed from time to time.

#### **H. Performance of IHG's Obligations.**

Licensee understands and agrees that IHG shall have the right to perform any or all of its obligations under this License directly or through IHG's Affiliates or other designees.

### **5. Changes In The Standards::**

Each change in the Standards shall be communicated in writing to Licensee at least 30 days before it goes into effect (which communication may be in hard paper copy or, at IHG's option, in digital, electronic or other computerized form, and if such communication is in digital, electronic or other computerized form, Licensee must pay any costs to retrieve, review, use or access same). IHG's designated internal franchise committee or subcommittee, must approve any such change and must determine, in the exercise of its business judgment, that the change was adopted in good faith and is consistent with the long-term overall interests of the Brand System .

## **6. Proprietary Rights:**

### **A. Ownership of the Brand System.**

Licensee acknowledges and agrees: (a) not to contest, either directly or indirectly, IHG's and its Affiliates' unrestricted and exclusive ownership of and right to use the Brand System and any element(s) or component(s) thereof; (b) that IHG or any of its Affiliates has the sole and exclusive right to grant licenses to use all or any element(s) or component(s) of the Brand System; and (c) that it will not take any action in derogation of such ownership and rights of IHG and any of its Affiliates. Licensee specifically agrees and acknowledges that IHG owns or is licensed to use the name and mark "Kimpton® Hotels & Restaurants" and all other Marks, as defined in paragraph 6.B. below, and other elements associated with the Brand System or derived therefrom (including but not limited to domain names or other identifications or elements used in electronic commerce), together with the goodwill symbolized thereby, and that Licensee will not contest, directly or indirectly, the validity or ownership of the Marks or take any other action in derogation of such validity or ownership either during the term of this License or after its termination. All improvements, modifications and additions whenever made to or associated with the Brand System by the parties hereto or anyone else, and all service marks, trademarks, copyrights, and service mark, trademark, domain name or similar registrations at any time used, applied for or granted in connection with the Brand System, and all goodwill arising from Licensee's use of IHG's Marks and other intellectual property, including (without limitation) local goodwill, shall inure to the benefit of and become the property of IHG. Upon expiration or termination of this License, no monetary amount shall be assigned as attributable to any goodwill associated with Licensee's use of the Brand System or any element(s) or component(s) of the Brand System including any trademarks or service marks licensed hereunder.

### **B. Trademark Disputes.**

The "Marks" means the name and mark "Kimpton® Hotels & Restaurants", IHG One Rewards and IHG Concerto and their distinguishing characteristics and the other service marks, trademarks, trade names, slogans, commercial symbols, logos, trade dress, copyrighted material and intellectual property associated with the Brand System, including, without limitation, those which IHG may designate in the future for use and those which IHG does not designate as withdrawn from use. Licensee shall notify IHG immediately of (i) an infringement, or a challenge to Licensee's use of any of the Marks; (ii) any objections, demands, controversies, allegations or actions asserted or taken by third parties involving any of the Marks or any part of the Brand System of which Licensee becomes aware; and, (iii) any potentially infringing or unauthorized uses of any of the Marks or any part of the Brand System of which Licensee becomes aware. IHG or its Affiliates will have the sole and exclusive right to handle disputes with third parties concerning use of all or any part of the Marks or Brand System, and Licensee will, at its reasonable expense, extend its full cooperation to IHG in all such matters. All recoveries made as a result of disputes with third parties regarding use of the Marks or Brand System or any part thereof shall be for the account of IHG. IHG need not initiate suit against alleged imitators or infringers, and may settle any dispute by grant of a license or otherwise. Licensee will not initiate any suit or proceeding against alleged imitators or infringers, or any other suit or proceeding to enforce or protect the Marks or Brand System.

### **C. Protection and Use of Name and the Marks.**

Both parties will make every effort consistent with the foregoing to protect and maintain the Marks. Licensee agrees to execute any documents deemed necessary by IHG or its counsel to obtain or maintain protection for the Marks or any part of the Brand System or to maintain their continued validity and enforceability. Licensee agrees to use the Marks associated with the Brand System (i) only in connection with the operation of the Hotel during the License Term following the opening of the Hotel in the Brand System or at such earlier time as is expressly and specifically authorized by IHG, (ii) only in the manner expressly authorized by IHG and (iii) in no way that would tend to allow the Marks to become generic, lose their distinctiveness, become liable to mislead the public or be detrimental to or inconsistent with the good name, goodwill or favorable reputation and image of the Marks or IHG. Licensee acknowledges that any unauthorized, unpermitted or prohibited use of any of the Marks shall constitute infringement of IHG's rights. The restrictions and requirements that limit Licensee's use of the Marks and identifications apply to all formats (including print, electronic and other media) and include domain names, URL, and other identifications or elements used in electronic commerce. Licensee shall not, directly or indirectly, use, register, obtain or maintain a registration for any trademark that contains any Mark or any other of IHG's

service marks or trademarks that is, in IHG's sole opinion confusingly similar, to any of the Marks or any other of IHG's service marks or trademarks (including misspellings, abbreviations and initials).

**D. Modification or Discontinuation of the Marks.**

If IHG modifies or discontinues use of any of the Marks licensed under this License as a result of any proceeding or settlement or for any other reason, then Licensee agrees to comply with IHG's instructions in order to implement such modification or discontinuation. Licensee further agrees that it will have no right to any compensation or other remedies from IHG or any of its Affiliates as a consequence of any such modification or discontinuation.

**E. Architectural Modifications.**

If Licensee engages a third party, in compliance with the terms of this License to prepare modifications, additions, and/or improvements to any architectural drawings or architectural works which may be licensed to Licensee as part of the Brand System ("Architectural Modifications"), Licensee shall cause such third party (and all persons that work for or that provided services to that third party) to assign all copyrights in such Architectural Modifications to IHG in such form and manner as IHG may specify from time to time.

**F. Digital Marketing.**

IHG shall have the right (but not the obligation) to establish and operate websites, social media accounts, applications, keyword or ad word purchasing programs, or other means of digital advertising on the internet, any electronic communications network, and/or in any other digital format (collectively, "Digital Marketing"). IHG will have the right to control all aspects of any Digital Marketing, including those related to the Hotel. Licensee must engage a search engine optimization firm and search engine marketing firm as required by the Standards. IHG will operate and maintain a website for IHG Portfolio Brand Hotels, which will include basic information related to the Hotel. Licensee further acknowledges that the www.ihg.com domain name is the sole property of IHG, and is one of the landing pages for other IHG Portfolio Brand Hotels. Licensee shall not, directly or indirectly, use, register, obtain or maintain a registration for any Internet domain name, address, social media or social network name or address, digital platform name, and/or any other designation that contains any Mark or any other mark that is, in IHG's sole opinion confusingly similar, to any of the Marks (including misspellings, abbreviations and initials). Upon IHG's request, Licensee must promptly take all steps to cancel or transfer to IHG or IHG's designee any such domain name, address, or other designation under its direct or indirect control, without payment of any compensation to Licensee. If IHG does permit Licensee to conduct any Digital Marketing, Licensee must comply with any policies, standards, guidelines, or content requirements established by IHG periodically and must immediately modify or delete any Digital Marketing that IHG determines, in its sole discretion, is not compliant with such policies, standards, guidelines, or requirements. IHG may withdraw its approval of any Digital Marketing at any time.

**7. Data, Records and Audits:**

**A. Data.**

As used in this paragraph 7.A., the following terms shall have the meanings set forth respectively after each:

"Excluded Personal Data" means any sensitive Personal Data (as defined by applicable Data Privacy Laws), government-assigned identifiers, health and/or medical data, and vehicle/parking data.

"Guest Data" means Personal Data of Hotel guests and other Hotel customers, including their reservations, purchases, preferences, and related information. Guest Data may be IHG Personal Data, Licensee Personal Data, or both.

"IHG Marketing Data" means Personal Data in respect of any member of IHG's or its Affiliates' marketing or loyalty rewards program.

"IHG Personal Data" means IHG Marketing Data and any Personal Data, including Guest Data, collected by IHG or transmitted to IHG from Licensee, including (i) any Personal Data collected through any reservation channels operated by or at the direction of IHG or its Affiliates, and (ii) any data that Licensee transfers to IHG's guest reservations system or other centrally managed IHG systems. For the avoidance of doubt, certain data may be both IHG Personal Data and Licensee Personal Data.

"Licensee Personal Data" means any Personal Data (excluding any IHG Marketing Data) that is held and processed locally at the Hotel by Licensee for which Licensee is an independent controller, Licensee employee Personal Data for which Licensee is the sole controller, and Excluded Personal Data for which Licensee is the sole controller, including (i) data contained in the Hotel's property management system and (ii) Personal Data relating to Hotel employees. For the avoidance of any doubt, Licensee Personal Data does not include IHG Marketing Data.

(1) *Use of Personal Data.* "Personal Data" means that data, as defined by the Data Privacy Laws (as hereinafter defined), that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a natural living person or household. The term Personal Data also includes "*Personal Information*" as defined in applicable Data Privacy Laws. Personal Data is being disclosed only for the limited and specific purposes set forth in this License. Each party shall comply with its obligations and will provide the same level of privacy protection as required by the Data Privacy Laws and shall notify the other party if it makes a determination that it can no longer meet its obligations under the Data Privacy Laws with respect to its use of the other party's Personal Data. Each party shall have the right to take reasonable and appropriate steps to help ensure that any Personal Data that is licensed by either party to the other is used in a manner that is consistent with each party's respective obligations under the Data Privacy Laws and, upon written notice, may take reasonable and appropriate steps to stop and remediate unauthorized use of such licensed data. "Data Privacy Laws" means, to the extent applicable, the privacy and data protection laws and regulations applicable to the Personal Data about data subjects in the United States.

(2) *Use of Licensee Personal Data.* To the extent Licensee transfers Licensee Personal Data or Guest Data to IHG or its Affiliates, such data forms part of the IHG Personal Data and IHG may use such data as permitted by applicable law. Licensee hereby grants to IHG and its Affiliates a non-exclusive, worldwide, perpetual and royalty-free license to use (including the right to sublicense) the Licensee Personal Data (except for the Excluded Personal Data) free of charge, for the purposes of IHG's performance of its obligations under this License, including, without limitation, the right to transfer Licensee Personal Data across national borders and to transfer Licensee Personal Data to third parties. IHG may retain a copy of Licensee Personal Data upon the termination or expiration of this License. Licensee represents, warrants, and covenants that any Licensee Personal Data transferred to IHG or its Affiliates for the purposes of this License has been collected, retained, used, and transmitted in compliance with applicable Data Privacy Laws.

(3) *Use of IHG Personal Data.* Subject to the provisions of any applicable Data Privacy Laws, as between Licensee and IHG, all IHG Personal Data is the property of IHG, and IHG shall have the right to use and transfer such data on a worldwide basis during and after the License Term. During and after the License Term, Licensee shall have a non-exclusive, royalty-free license to use any Guest Data stored in the Hotel's property management system only for purposes of operating the Hotel; provided, that: (i) Licensee shall have no right to use the IHG Marketing Data except for the purpose of operating the Loyalty Program during the License Term, and Licensee must remove, or IHG and its Affiliates shall have the right, at Licensee's cost, to remove all IHG Marketing Data from the Hotel's property management system and other Hotel records upon expiration or termination of this License; (ii) Licensee shall retain, use and transmit (and procure that any agent or representative of Licensee that manages the Hotel after the termination of this License retain, use and transmit) such Guest Data only (a) in accordance with all Data Privacy Laws, and (b) to the extent permitted pursuant to any consents obtained from the relevant guests, employees or other individuals (the parties acknowledging that IHG provides no warranty or guaranty regarding any such consents); (iii) Licensee shall not sell or transfer the IHG Personal Data including, but not limited, to any Affiliate or other hotel of Licensee and will not combine IHG Personal Data with the Personal Data of any other hotel brand, company or operator; and (iv) Licensee may not use IHG Personal Data for any marketing purpose. With respect to IHG Marketing Data, Licensee will act as IHG's processor

and is prohibited from (x) "selling" or "sharing" it (as defined by Data Privacy Laws), (y) processing it for any purposes other than as expressly permitted by IHG, including any commercial purposes, or outside of Licensee's direct business relationship with IHG, or (z) combining it with Personal Data Licensee receives from others or that it collects from its own interactions with consumers. Licensee may not engage any subprocessors to process IHG Marketing Data.

(4) *Operating Data and Guest Data.* "Operating Data" includes all information concerning Gross Rooms Revenue and Gross Revenue, other revenues generated at the Hotel, occupancy rates, reservation data and other information required by IHG that may be useful (in IHG's sole business judgment) in connection with marketing, reservations, guest loyalty and satisfaction and other functions, purposes or requirements of IHG and its Affiliates. Operating Data and Guest Data may be used by IHG for its reasonable purposes, including without limitation for company and industry reporting purposes. Licensee agrees that any Operating Data and any Guest Data provided by it pursuant to this License, as well as any other reports, data, information or material provided to IHG pursuant to or in connection with this License, shall be true and correct and not misleading and shall comply with all Standards, policies and requirements of IHG with respect to privacy and security of Operating Data and Guest Data of the Hotel. Licensee acknowledges and agrees that IHG may retrieve Operating Data, Guest Data, and Licensee Personal Data directly through the reservations system, via electronic transmission or automatic capture.

(5) *Data Privacy Laws.* Licensee will: (i) comply with all applicable Data Privacy Laws; (ii) comply with all of IHG's requirements regarding data protection contained in the Standards or otherwise; (iii) refrain from any action or inaction that could cause IHG or its Affiliates to breach any of the Data Protection Laws; (iv) do and execute, or arrange to be done and executed, each act, document and thing necessary or desirable to keep IHG in compliance with any of the Data Protection Laws; (v) reimburse IHG for any and all costs incurred in connection with the breach by Licensee of such Data Privacy Laws or Brand Standards; (vi) immediately report to IHG the theft or loss of Personal Data or Guest Data; and (vii) permit IHG and its Affiliates to use any data or other information each of them gathers concerning Licensee, its Affiliates and/or the Hotel in connection with the establishment and operation of Brand System Hotels by IHG and its Affiliates. Licensee will implement commercially reasonable physical, administrative, and technical security controls for its processing of IHG Personal Data that are appropriate to the context and the risk of the Personal Data being processed.

#### **B. Preparation and Maintenance of Records.**

Licensee will, in a manner and form satisfactory to IHG and utilizing accounting and reporting standards as reasonably required by IHG, prepare on a current basis (and preserve for no less than four years or IHG's record retention requirements, whichever is longer), complete and accurate records concerning Gross Rooms Revenue and all financial, operating, marketing and other aspects of the Hotel. Licensee will maintain an accounting system which fully and accurately reflects all financial aspects of the Hotel and its business. Such records shall include but not be limited to books of account, tax returns, governmental reports, register tapes, daily reports, and complete quarterly and annual financial statements (profit and loss statements, balance sheets and cash flow statements). The requirement to preserve records as set forth herein shall continue beyond the expiration or sooner termination of the License Term.

#### **C. Audit.**

IHG may require Licensee to have the Hotel's Gross Rooms Revenue and/or monies due hereunder computed and certified as accurate. During the License Term and for two years afterward, IHG and its authorized agents will have the right to verify information required under this License by requesting, receiving, inspecting and auditing, at all reasonable times, any and all records referred to above wherever they may be located (or elsewhere if reasonably requested by IHG). If any such inspection or audit discloses a deficiency in any payments due hereunder, and the deficiency in any payment is not offset by overpayment, Licensee shall immediately pay to IHG the deficiency and interest thereon as provided in paragraph 3.C. along with an audit fee of \$3,000, as such amount may be increased by IHG. No acceptance by IHG of any audit fee or deficiency payment shall be deemed to waive any right of IHG to pursue a default under this License by reason of such underpayment. If the audit does not result in a deficiency being assessed, then no audit fee will be assessed. If the audit discloses an overpayment, IHG will credit this overpayment, without interest, against future payments due from Licensee under this License or if this License has terminated promptly refund it, without interest to Licensee.

#### **D. Annual Financial Statements.**

If requested by IHG, Licensee will submit to IHG as soon as available but not later than 90 days after such request, and in a format as reasonably required by IHG, complete financial statements for the prior year. Licensee will certify them to be true and correct and to have been prepared in accordance with generally accepted accounting principles and the Uniform System, consistently applied, and any false certification will be a breach of this License.

#### **8. Indemnity and Insurance:**

##### **A. Indemnity.**

Licensee will indemnify IHG, its Affiliates and each of their respective officers, directors, employees, agents, successors and assigns (collectively, the "Indemnitees") against, hold them harmless from, and promptly reimburse them for all payments of money (fines, damages, legal fees, expenses, settlement amounts, judgments, etc.) by reason of any claim, demand, tax, penalty, or judicial or administrative investigation, arbitration action or proceeding whenever asserted or filed (even where negligence of any of the Indemnitees is alleged), regardless of whether any of the foregoing is reduced to judgment, arising from any claimed occurrence at or related to the Hotel or any act, error, neglect, omission or obligation of Licensee or anyone associated or affiliated with Licensee or the Hotel. Licensee agrees to give IHG written notice of any such judicial or administrative investigation or proceeding or any other event that could be the basis for a claim for indemnification by any Indemnitee within three days of Licensee's knowledge of it. At the election of IHG, Licensee will also defend IHG and/or the other Indemnitees against the indemnified matters. In any event, IHG will have the right, through counsel of its choice, to control any matter to the extent it could directly or indirectly affect IHG and/or any of the other Indemnitees. IHG will have the right, at any time it considers appropriate, to offer, order, consent or agree to settlements or take any other remedial or corrective actions it considers expedient with respect to any action, suit, proceeding, claim, demand, inquiry or investigation if, in IHG's sole judgment, there are reasonable grounds to do so. Under no circumstance will IHG or any of the other Indemnitees be required to seek recovery from third parties or otherwise mitigate its or their losses to maintain a claim against Licensee. Licensee agrees that any failure to pursue recovery from third parties or mitigate loss will in no way reduce the amounts recoverable by IHG or any of the other Indemnitees from Licensee. Licensee agrees to pay IHG all expenses, including attorneys' fees and court costs, incurred by IHG or any of the other Indemnitees, and their successors and assigns, to remedy any defaults of or enforce or defend itself or any rights under this License (including without limitation any claim, cross-claim or counter-claim brought by Licensee), to effect termination of this License or collect any amounts due under this License.

##### **B. Insurance.**

During the License Term, Licensee will comply with all insurance requirements of any lease or mortgage covering the Hotel, and **prior to the Opening Date and beyond, with IHG's specifications** for insurance as to the amount and type of coverage as may be reasonably specified by IHG from time to time in writing, and will in any event maintain on the Hotel as a minimum, the following insurance underwritten by a reputable insurer approved by IHG:

- (1) employer's liability with minimum limits of \$1,000,000 per occurrence;
- (2) worker's compensation insurance;
- (3) employment practices liability insurance (including coverage for harassment, discrimination and wrongful termination and covering defense and indemnity costs) with a limit of \$1,000,000 in the aggregate;
- (4) the holder of the liquor license will maintain liquor liability insurance with single limit coverage for personal and bodily injury and property damage of at least **\$25,000,000** per occurrence naming IHG and its Affiliates (and Licensee if applicable) as additional insureds; and



(5) commercial general liability insurance (including coverage for product liability, completed operations, contractual liability, host liquor liability and fire legal liability) and business automobile liability insurance (including hired and non-owned liability) with single-limit coverage for personal and bodily injury and property damage of at least **\$25,000,000** per occurrence, naming IHG and its Affiliates as additional insureds. In connection with all construction at the Hotel during the License Term, Licensee will cause the general contractor to maintain commercial general liability insurance (including coverage for product liability, completed operations and contractual liability) and business automobile liability insurance (including hired and non-owned liability) with limits of at least **\$25,000,000** per occurrence for personal and bodily injury and property damage underwritten with insurers approved by IHG. IHG and its Affiliates will be named as additional insureds.

(6) If multiple locations are insured on policies containing an aggregate limit, then the aggregate limit must apply on a per location aggregate basis.

(7) Licensee will ensure the royalties, Services Contributions and any other sums payable to IHG are insured within the Licensee's business interruption insurance policy. The policy should insure against 'all risks' of physical loss or damage, and be endorsed to provide for payments to be made directly to IHG.

(8) All policies must be written on a fully insured basis. Deductibles or self-insured retentions are subject to IHG's approval on an individual basis.

(9) **The required insurance coverage limits may be provided through a combination of primary, excess and umbrella policies.**

**C. Evidence of Insurance.**

At all times during the License Term, Licensee will furnish to IHG certificates of insurance evidencing the term and limits of coverage in force, names of applicable insurers and persons insured. Revised certificates of insurance shall be forwarded to IHG each time a change in coverage or insurance carrier is made by Licensee, and/or upon renewal of expired coverages. At IHG's option, Licensee may be required to provide certified insurance policy copies. If Licensee fails to procure or maintain the insurance coverages and limits set forth in paragraph 8.B., IHG will have the right and authority (but not the obligation) to procure such insurance at Licensee's cost, including any costs incurred by IHG for procurement and maintenance of such insurance.

**9. Transfer:**

**A. Transfer by IHG.**

IHG shall have the right to transfer or assign this License or any or all of IHG's rights, duties or obligations hereunder, in whole or in part, to any Person without requirement of prior notice to, or consent of, Licensee.

**B. Transfers by Licensee.**

Licensee represents, warrants and agrees (on behalf of itself and its owners, members, partners or stockholders of Licensee, if Licensee is a partnership, limited liability company, corporation or other legal entity (an "Entity")) that the ownership of Licensee set forth on Attachment "A" is current, complete and accurate. Without limiting IHG's rights or Licensee's obligations under this paragraph, upon the reasonable request of IHG, Licensee will submit to IHG evidence, in form and substance satisfactory to IHG, confirming the ownership information set forth on Attachment "A". Upon any Transfer under this Paragraph 9 or otherwise permitted by IHG, Licensee will provide a list of the names and addresses of any new owners, members, partners or stockholders of Licensee and update Attachment "A".

Licensee understands and acknowledges that the rights and duties set forth in this License are personal to Licensee, and that IHG has granted this License in reliance on the business skill, financial capacity, and personal character of Licensee (if Licensee is a natural person), and upon the owners, members, partners or stockholders of Licensee (if Licensee is an Entity). Accordingly, neither Licensee

nor any immediate or remote successor to any part of Licensee's interest in this License, nor any Person which directly or indirectly owns an Equity Interest (as that term is defined below) in Licensee or this License, may sell, assign, transfer, convey, exchange, pledge, mortgage, encumber, lease or give away (each of the foregoing shall describe a "Transfer"), any direct or indirect interest in this License or Equity Interest in Licensee, except as expressly provided in this License. Any purported Transfer, by operation of law or otherwise, of any interest, collaterally or otherwise, in this License or any Equity Interest in Licensee not in accordance with the provisions of this License, shall be null and void and shall constitute a material breach of this License, for which IHG may terminate this License without opportunity to cure pursuant to paragraph 11. C of this License.

(1) The term "Equity Interest" means all forms of ownership, including, without limitation, membership, stock, partnership or any other form of equity interests in an Entity or property, both legal and beneficial, voting and non-voting, including stock interests, partnership interests, limited liability company interests, joint tenancy interests, leasehold interests, proprietorship interests, trust beneficiary interests, proxy interests, power-of-attorney interests, and all options, warrants, and any other forms of interest evidencing ownership or Control. References in this License to "publicly traded Equity Interests" shall mean any Equity Interests which are traded on any securities exchange or are quoted in any publication or electronic reporting service maintained by the National Association of Securities Dealers, Inc. or any of its successors.

(2) The term "Person" means an individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any national, provincial, state, county, tribal or municipal government or any bureau, office, department or agency thereof and any fiduciary acting in an agency capacity on behalf of any of the foregoing.

(3) The term "Control" (and any form thereof, such as "controlling" or "controlled") means, with respect to any Person, the possession, directly or indirectly, of the power or ability to direct or cause the direction of the management or policies of such Person.

(4) If Licensee is an Entity, Licensee represents that the Equity Interests in Licensee are directly and (if applicable) indirectly owned, as shown in Attachment "A".

(5) In computing changes of Equity Interests pursuant to this paragraph 9, limited partners will not be distinguished from general partners, and IHG's judgment will be final if there is any question as to the definition of Equity Interests or as to the computation of relative Equity Interests, including transfers of Equity Interests, the principal considerations being:

- (a) direct and indirect power to exercise control over the **day-to-day affairs** of Licensee **(which shall expressly exclude the right to exercise control over so-called "major decisions" of Licensee so long as such decisions do not in any way affect the obligations of the Licensee under this License);**
- (b) direct and indirect right to share in Licensee's profits; and
- (c) amounts directly or indirectly exposed at risk in Licensee's business.

#### **C. Non-Control Transfers.**

If Licensee is in compliance with this License then, Licensee and/or any of its owners, members, partners or stockholders may consummate any Transfer of a direct or indirect non-Controlling Equity Interest in Licensee, or effect a transaction that does not result in a direct or indirect change of Control in Licensee, without IHG's consent, if: (a) Licensee notifies IHG in writing at least twenty (20) days before the Transfer's effective date; (b) Licensee provides IHG with the identity of the proposed transferee and its owners, together with all other related information reasonably requested by IHG and the proposed transferee and its owners meet IHG's then-current ownership criteria (including not being a Prohibited Person or a competitor of IHG); (c) such Transfer does not, whether in one transaction or a series of related transactions, result in the transfer or creation of a Controlling Equity Interest in Licensee; (d) such Transfer does not, whether in one transaction or a series of related transactions, result in the Transfer of all of Guarantor's Equity Interests in Licensee; and (e) Licensee and its owners, members, partners or stockholders sign those agreements that IHG shall have the right to require in order to implement this paragraph. In addition, at IHG's request, Licensee and any such transferees shall execute (or re-execute)

(x) a general release of any and all claims against IHG and its Affiliates, and their respective officers, directors, agents and employees and (y) an amendment to this License that updates the ownership information in Attachment "A".

**D. Transfers for Estate Planning; Upon Death or Mental Incapacity.**

**Any Person holding an Equity Interest in Licensee** may, for estate planning, Transfer an Equity Interest in Licensee to a member of Licensee's immediate family (i.e., a spouse, parent, sibling, son, daughter, niece or nephew), or to a trust for the benefit of such immediate family member, or to a Person in which Licensee owns and controls a majority of the Equity Interests and voting power; provided, however, that prior to such transfer the following requirements are met: (a) adequate provision acceptable to IHG is made for the management of the Hotel; (b) the obligations of Licensee under this License are satisfied pending the Transfer; (c) the transferee executes IHG's then-current form of license agreement used to license Brand System Hotels for at least the unexpired portion of the License Term (as determined by IHG), except that the fees charged thereunder shall be the same as those contained in this License (including any adjustments to such fees as may have been implemented from time to time in accordance with the terms of this License); (d) Licensee executes a termination agreement of this License on IHG's then-current form (which shall contain a general release of any and all claims of Licensee (and any of Licensee's Affiliates) against IHG and its Affiliates, and their respective officers, directors, managers, members, shareholders, agents and employees); and (e) each Guarantor acknowledges the Transfer and reaffirms its obligations under the Guaranty and, if required by IHG, Licensee provides additional guarantees, on IHG's then-current form (which shall contain a general release of any and all claims against IHG and its Affiliates (including, IHG), and their respective officers, directors, agents and employees), the performance of the new licensee's obligations under the newly executed license agreement.

Upon the death or mental incompetency of Licensee or any natural person with a Controlling Equity Interest in Licensee, such interest may be transferred in accordance with and subject to the terms of paragraph 9.F., provided that: (i) any such Transfer will be made within six (6) months of the date of death or mental incompetency, (ii) the obligations of Licensee under this License are satisfied pending the Transfer, and (iii) the Hotel will be continuously operated by Licensee or a management company approved by IHG.

**E. Registration of a Proposed Transfer of Equity Interests.**

Any public offering, private placement or other sale of securities in or by Licensee or the Hotel ("Securities") requires IHG's consent. All materials for the offer or sale of those Securities disseminated to any prospective purchaser thereof, filed with any governmental or quasigovernmental entity or intended for distribution to any form of media must be submitted to IHG for its review at least sixty (60) days before the date Licensee disseminates or distributes those materials or files them with any governmental agency, including any materials to be used in any offering exempt from registration under any securities laws. Licensee must submit to IHG a non-refundable Twenty-Five Thousand Dollar (\$25,000) processing fee with the offering materials and pay any additional costs IHG may incur in reviewing such materials, including reasonable attorneys' fees. Except as legally required to describe the Hotel in the offering materials, Licensee may not use any of the Marks or otherwise imply IHG's participation or that of its Affiliates, or any of their respective officers, directors, members, managers and employees in such offering or its/their endorsement of any Securities or any Securities offering. IHG will have the right to approve any description of this License or Licensee's relationship with IHG, or any use of the Marks, contained in any prospectus, offering memorandum or other communications or materials used by Licensee in the sale or offer of any Securities. IHG's review of these documents will not in any way be considered IHG's agreement with any statements contained in those documents, including any projections, or IHG's acknowledgment or agreement that the documents comply with any applicable laws.

Licensee may not offer and/or sell any Securities unless Licensee clearly discloses to all purchasers and offerees in any and all Securities offer and/or sale materials that: (i) neither IHG, nor any of its Affiliates, nor any of their respective officers, directors, managers, agents or employees, will in any way be deemed an issuer or underwriter of the Securities, as those terms are defined in applicable securities laws; (ii) neither IHG, its Affiliates nor any of their respective officers, directors, managers, agents and employees will have any liability or responsibility for any financial statements, projections or other financial information contained in any prospectus, offering and solicitation material or similar written or oral

communication; plays (or will play) any role in the offer or sale of Licensee's securities; has any responsibility for the creation or contents of any offering and/or solicitation materials (including any prospectus); in no fashion controls (or will control) Licensee's day-to-day business operations or any element or instrumentality thereof; that any individual or entity purchasing Securities must understand that its sole recourse for any alleged or actual impropriety relating to the offer and sale of such Securities and/or Licensee's operation of its business will be against Licensee (and/or, as may be applicable, the seller of such Securities); and, that in no event may such purchaser seek to impose liability arising from or related to such activity, directly or indirectly, upon any of IHG, its Affiliates or any of their respective officers, directors, managers, agents or employees.

Licensee agrees that its obligations to indemnify and hold harmless IHG and the other indemnitees under paragraphs 8.A. and 13.K. of this License extends to and embraces liabilities arising from or relating to, directly or indirectly, any and every element of Licensee's offer and/or sale of Securities which Licensee may propose to or does engage in, including (without limitation) any statements, representations or warranties that Licensee and/or its Affiliates may give to or receive from any proposed or actual purchaser of such Securities and/or any claim that Licensee, its Affiliates and/or the officers, directors, managers, members, agents and employees of each of the foregoing, or Licensee's assignee, engaged in fraud, deceit, violation of securities laws or other illegality in connection with Licensee's proposed or actual offer and/or sale of Securities. As with all other indemnification obligations set forth in this License, this specific indemnification obligation will survive the termination or expiration of this License.

#### **F. Control Transfers.**

Notwithstanding any other term or provision of this License to the contrary, neither this License nor any right or interest herein is assignable or transferable by Licensee.

If Licensee (i) receives an offer to purchase or lease the Hotel or any portion thereof **which Licensee desires to accept**, (ii) desires to sell or lease the Hotel or any portion thereof, or (iii) wishes to convey the Hotel, Hotel site, or any interest in the Hotel or Licensee, Licensee shall give prompt written notice thereof to IHG, stating the identity of the prospective transferee, purchaser or lessee and the terms and conditions of the conveyance, including a copy of any proposed agreement and all other information with respect thereto, that IHG may reasonably require.

Any (i) transfer of Equity Interests in an Entity (other than a transfer expressly permitted hereunder) or (ii) transfer of all or a material part of the Hotel or Hotel site (if the Hotel or Hotel site is owned directly or indirectly by Licensee or by a natural person or Entity that owns any Equity Interest in Licensee), to a new owner shall constitute a change of ownership requiring submittal of an application for a new license.

- (1) IHG shall process such change of ownership application in accordance with IHG's then current procedures, criteria and requirements regarding fees, upgrading of the Hotel, financial capacity and guaranty requirements, curing of outstanding defaults, operational abilities and capabilities, prior business dealings, market feasibility and other factors deemed relevant by IHG. If such change of ownership application is approved by IHG, the new owner and IHG shall, upon termination of this License by IHG, enter into a new license agreement on IHG's then current form. The new license agreement shall contain IHG's then current terms (except for duration, which shall not be less than the remaining License Term but may be longer to reflect the new term agreed by IHG as part of the approval of the change in ownership of the Hotel), and if required by IHG, shall contain specified upgrading of the Hotel and other requirements.
- (2) Licensee must satisfy all of its accrued monetary obligations to IHG and its Affiliates, including an amount equal to a reasonable estimate of the costs and fees not yet accumulated and/or invoiced, and will execute (on Licensee's behalf and on behalf of its Affiliates), in a form prescribed by IHG, a general release of any and all claims against IHG and its Affiliates, and their respective officers, directors, agents and employees.
- (3) If a change of ownership application for the proposed new owner is either (a) not submitted or (b) not approved by IHG, and the conveyance of the Hotel, Hotel site, or any Equity Interest in

the Hotel or Equity Interest in Licensee to the proposed new owner occurs, then such transfer shall be considered an unauthorized transfer (an "Unauthorized Transfer"). If an Unauthorized Transfer occurs, it shall constitute a material breach of this License and an abandonment by Licensee of the franchise, and IHG shall be entitled to exercise all of its remedies under this License and applicable law, including, without limitation, its right to terminate this License pursuant to paragraph 11.C hereof.

#### **G. Transfer of Real Estate.**

If (i) the real property used in the operation of the Hotel is owned directly or indirectly by Licensee or by a natural person or an Entity that owns any Equity Interest in Licensee and (ii) Licensee or that natural person or Entity proposes to transfer all or a substantial part of such property to a third party, such transfer shall constitute a transfer under the provisions of this License requiring an application for a new license agreement, unless Licensee receives IHG's prior written consent for the transaction. Licensee may however, without IHG's consent, mortgage or otherwise grant a security interest in the real estate or other tangible assets of the Hotel (but specifically excluding this License or any right or interest herein) in connection with commercially reasonable financing for the Hotel with a third party bank or other commercial lending institution which is not a competitor of IHG or any of its Affiliates. The selling, offering for sale, or establishment or registration of any condominium, cooperative, flat, timeshare, fractional interest, or interval ownership or regime or any similar type of ownership or regime relating to all or any part of the Hotel is prohibited.

#### **H. Management and Name of the Hotel.**

Licensee must at all times retain and exercise direct management control over the Hotel's business. Licensee shall not enter into any lease, management agreement, or other similar arrangement for the operation of the Hotel or any part thereof (including, without limitation, retail, food and/or beverage service facilities) with any natural person or entity without the prior written consent of IHG in each instance. The approval by IHG of any such lease, management agreement or other similar arrangement for operation of the Hotel or any part thereof shall in no way relieve, reduce, mitigate or waive any of the responsibilities of Licensee under this License, it being understood that all such responsibilities shall at all times remain the obligation of Licensee. Licensee must provide IHG with all information requested by IHG from time to time regarding ownership, control and management of the Hotel and of Licensee.

Licensee must provide food and beverage service in the Hotel as required by the Standards. If Licensee, one of its Affiliates or a third party, operates a branded restaurant adjacent to or inside the Hotel to serve as the restaurant for the Hotel, in addition to all other requirements of this License, Licensee must ensure, regardless of any conflict between this License and the restaurant's brand standards or other obligations, that such Affiliate or third party: (i) will operate the restaurant, with respect to guest life and safety standards, in compliance with the restaurant's brands standards, if any, and with all life and safety standards required by law or, if higher, by this License; (ii) will keep the restaurant open for meals during the hours required by IHG, (iii) will provide to Hotel guests all programs required by IHG, (iv) will allow Hotel guests eating in the restaurant or receiving room service from the restaurant to charge restaurant bills to their Hotel guest folio, (v) will not use or advertise any of the restaurant names, brands or trademarks together with the Marks unless specifically approved by IHG in writing, (vi) will honor at the restaurant all credit cards specified in the Standards and (vii) will include the restaurant in all guest satisfaction surveys and quality inspections and will allow IHG's inspection of the restaurant in accordance with this License and the Standards.

IHG has the exclusive right to name the Hotel, including, without limitation, the right to own and develop any trade name which would specifically and exclusively be used at the Hotel (a "Trade Name"). Licensee shall not change the name of the Hotel or the Trade Name (which names shall be determined by IHG in its sole discretion) without the express written consent of IHG and shall effectuate any change in the naming of the Hotel as may be required by IHG. IHG shall conduct search and clearance and maintain the trademark registration for the Trade Name and Licensee shall pay for all brand agency fees, search and clearance fees and maintenance costs and fees in connection with selecting, trademarking and creating a logo and identity for the Trade Name (the "Trade Name IP Costs"). The name of the Hotel may not be changed unless IHG determines, at its election, to do so.

## **I. Employees of the Hotel.**

Licensee must ensure suitable, qualified individuals are employed at the Hotel in such number as is sufficient to staff all positions at the Hotel in accordance with the Standards. None of Licensee's employees will be considered to be IHG's employees. Licensee acknowledges and agrees that Licensee, or its management company engaged to operate the Hotel, as may be applicable, is the sole employer of the employees working at the Hotel and that IHG does not directly or indirectly control employment policies, discipline, recruitment or termination and that Licensee is solely responsible for all employment decisions, regardless of whether Licensee has received guidance with respect to such matters from IHG. Neither Licensee nor any of Licensee's employees whose compensation Licensee pays may in any way, directly or indirectly, expressly or by implication, be construed to be IHG's employee for any purpose, including but not limited to with respect to any mandated or other insurance coverage, tax or contributions, or requirements pertaining to withholdings, levied or fixed by any city, state or federal governmental agency. IHG will not have the power to hire or fire Licensee's employees. Licensee expressly agrees, and will never contend otherwise, that IHG's authority under this License to approve certain of Licensee's employees for qualification to perform certain functions for the Hotel does not directly or indirectly vest in IHG the power to hire, fire or control any such employee. Licensee further agrees that any such minimum requirements established by IHG are solely for the purpose of ensuring that the Hotel is at all times operated in accordance with the Standards and with the attributes of the Brand known to, and desired by, the consuming public and associated with the Marks. Moreover, Licensee agrees that any training provided by IHG for Licensee's employees is intended to impart to those employees, under Licensee's ultimate authority, the various procedures, protocols, systems and operations of the Hotel and in no fashion reflects any employment relationship between IHG and such employees. Finally, should it ever be asserted that IHG is the employer, joint employer or co-employer of any of Licensee's employees in any private or government investigation, action, proceeding, arbitration or other setting, Licensee irrevocably agrees to assist IHG in defending said allegation, including, if necessary, appearing at any venue requested by IHG to testify on IHG's behalf and, as may be necessary, submitting itself to depositions, other appearances and/or preparing affidavits dismissive of any allegation that IHG is the employer, joint employer or co-employer of any of Licensee's employees.

## **10. Condemnation And Casualty:**

### **A. Condemnation.**

Licensee shall, at the earliest possible time, give IHG full notice of any proposed taking of all or any part of the Hotel by eminent domain. In the event that the Hotel or a substantial part thereof is to be taken, such that continued operation of the Hotel in accordance with the Standards is no longer possible, IHG will give due and prompt consideration, without any obligation by either party, to changing the site of the Hotel to a nearby location selected by Licensee, and approved by IHG, as promptly as reasonably possible and in any event within four months of the taking; provided, that Licensee has promptly filed an application to change the Location of the Hotel. Such application would not require payment to IHG of any additional franchise application fee. If the condemnation of all or any material part of the Hotel building occurs in the last two years of the License Term, this License shall automatically terminate effective upon the date of the taking. If the new location and Licensee's application are approved by IHG, Licensee shall promptly execute an addendum to this License substituting the new location, and Licensee shall open a new hotel at the new location in accordance with IHG's specifications within two years of the closing of the Hotel if the new hotel is a new development or within one year of the closing of the Hotel if the new hotel is a conversion of an existing building and the new hotel will thenceforth be deemed to be the Hotel licensed under this License. If a condemnation takes place and a new hotel is not, for whatever reason, going to become the Hotel under this License (or if it is reasonably evident to IHG that such will be the case), this License will terminate forthwith upon notice thereof by IHG to Licensee and Licensee shall have no liability for the liquidated damages set forth in paragraph 11.E. of this License.

### **B. Casualty.**

If the Hotel is damaged by fire or other casualty, Licensee will immediately notify IHG and expeditiously repair the damage; provided, however, if all or virtually all of the Hotel is destroyed by such

fire or other casualty, either IHG or (unless caused by the intentional act of Licensee or its agent) Licensee may terminate this License by fifteen days prior notice to the other delivered within sixty days of the date of the fire or other casualty. If Licensee terminates this License in accordance with this provision, Licensee shall have no liability for the liquidated damages set forth in paragraph 11.E. of this License so long as neither Licensee nor any of its Affiliates, either directly or through another person or entity, develops, leases or operates the site as a hotel or other lodging or residential facility of any kind or sort for at least five years following the date of termination (or the originally scheduled termination date of this License, if earlier) other than pursuant to another license with IHG.

Unless this License is terminated properly pursuant to the foregoing provision, Licensee will close the Hotel if required by the extent of the damage or if otherwise required by IHG; will repair or rebuild the Hotel in accordance with IHG's Standards; will commence reconstruction within six months after the fire or other casualty; will expeditiously continue on an uninterrupted basis with such reconstruction; and will, if the Hotel was closed, reopen the Hotel for continuous business operations as soon as practicable (but in any event within twenty-four months after the fire or other casualty), giving IHG at least forty-five days advance notice of the date of reopening if the Hotel was closed. If the Hotel was closed, Licensee may not reopen the Hotel or promote or otherwise hold the Hotel out as a hotel in the Brand System unless and until IHG determines that the reconstruction is completed in accordance with IHG's then current Standards. If the Hotel is not required to be closed, all work to repair damage shall be conducted so as to minimize interference with the Hotel's operation and guests. If the damage is not repaired in accordance with this paragraph, this License will forthwith terminate upon notice thereof by IHG to Licensee and Licensee shall be responsible for full liquidated damages under paragraph 11.E. of this License. Notwithstanding anything else herein to the contrary, during the time the Hotel is closed, Licensee shall pay IHG a monthly royalty of 2% of Gross Rooms Revenue based on the average monthly Gross Rooms Revenue for the preceding twelve months prior to the date of the fire or other casualty or, if the Hotel has not been in the Brand System for twelve months, based on the average monthly Gross Rooms Revenue for the period during which the Hotel has been in operation in the Brand System. Said payment shall be in lieu of all other Brand System fees under paragraph 3.B. of this License.

**C. No Extensions of Term.**

Nothing in this paragraph 10 will or is intended to extend the License Term.

**11. Termination:**

**A. License Term.**

The License Term is stated in Item 2 of Attachment "A". This License is not renewable, and Licensee acknowledges and agrees that this License confers upon Licensee absolutely no rights of license renewal following the expiration of the License Term. The parties recognize the difficulty of ascertaining damages to IHG resulting from premature termination of this License, and have provided for liquidated damages which represent their best estimate as to the damages arising from the circumstances in which they are provided. Before or on the expiration or earlier termination of this License, IHG may give notice that the Hotel is leaving the Brand System and take any other action related to guests, travel agents, suppliers and all other persons affected by such expiration or termination.

**B. Termination by IHG on Advance Notice.**

(1) In accordance with notice from IHG to Licensee, this License will terminate (without any further notice unless required by law), provided that:

- (a) the notice is mailed at least 30 days (or longer, if required by law) in advance of the termination date;
- (b) the notice reasonably identifies one or more breaches of Licensee's obligations; and
- (c) the breach(es) are not fully remedied within the time period specified in the notice.

(2) If Licensee shall have engaged in a violation of this License, for which a notice of termination was given and termination failed to take effect because the default was remedied during the then preceding 12 months, the period given to remedy defaults will, if and to the extent permitted by applicable law, thereafter be 10 days instead of 30 (provided, however, if there have been two or more violations of this License in the preceding twelve months for which notices of termination were given, upon the next violation, if and to the extent permitted by applicable law, this License may be terminated by IHG immediately upon notice).

(3) In any judicial proceeding in which the validity of termination is at issue, IHG will not be limited to the reasons set forth in any notice sent under this paragraph.

(4) If Licensee fails to cure its breach of its obligations timely and in the manner required by IHG, IHG may in its sole discretion suspend the Hotel from access to the Brand System. IHG may also in its sole discretion remove the Hotel's listing from any website services and divert reservations previously made for the Hotel to other Brand System Hotels or IHG Portfolio Brand Hotels. Licensee must pay all costs arising from suspension from the Brand System. IHG's election to suspend the Hotel from said access rather than terminate this License will not: (i) constitute a waiver of any breach by Licensee or of any rights IHG otherwise has to terminate this License; (ii) constitute actual or constructive termination of this License; (iii) constitute an abandonment by IHG of this License; or (iv) entitle Licensee to any compensation of any kind for any alleged losses Licensee might incur as a result of said suspension.

(5) IHG's notice of termination or suspension of services shall not relieve Licensee of its obligations under this License.

#### **C. Immediate Termination by IHG.**

This License may be terminated by IHG immediately (or at the earliest time permitted by applicable law) if:

- (1)
  - (a) Licensee or any Guarantor shall generally not pay its debts as they become due, or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors;
  - (b) Licensee or any Guarantor shall commence any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property;
  - (c) Licensee or any Guarantor shall take any corporate or other action to authorize any of the actions set forth above in paragraphs (a) or (b);
  - (d) any case, proceeding or other action against Licensee or any Guarantor shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and such case, proceeding or other action: (i) results in the entry of any order for relief against it which is not fully stayed within seven business days after the entry thereof or (ii) remains undismissed for a period of 45 days;
  - (e) an attachment remains on all or a substantial part of the Hotel or of Licensee's or any Guarantor's assets for 30 days; or
  - (f) Licensee or any Guarantor fails, within 60 days of the date of entry of a final judgment or tax lien against Licensee or a Guarantor of this License in any amount exceeding \$50,000, to discharge, vacate or reverse the judgment or tax lien or to stay execution of



it, or if appealed, to discharge the judgment within 30 days after a final decision in the appeal is rendered; or

- (2) (a) Licensee voluntarily or involuntarily loses possession or the right to possession of all or a significant part of the Hotel, except as otherwise provided in paragraph 9;
- (b) an Unauthorized Transfer, as that term is defined in paragraph 9.H.(6), occurs; or
- (c) Licensee otherwise conducts itself in a manner than evidences an intent to abandon the franchise; or

(3) Licensee, or any entity or individual having a direct or indirect ownership interest in it, contests in any court or proceeding IHG's ownership of the Brand System or any part of it, or the validity of any of the Marks or other trademarks, service marks or other intellectual property associated with any of IHG's businesses; or

(4) A breach of paragraph 8 or paragraph 9 occurs; or

(5) Licensee fails to continue to identify the Hotel to the public as a Brand System hotel, engages in any action that violates IHG's proprietary rights under paragraph 6 or ceases to operate the Hotel as a Brand System hotel; or

(6) Any action is taken toward dissolving or liquidating Licensee or any Guarantor hereunder, if it is an Entity, except for any such actions resulting from the death of a partner; or

(7) Licensee (or any principal stockholder, owner, member or partner of Licensee as the case may be) is, or is discovered to have been, convicted of a felony (or any other offense if it is likely to adversely reflect upon or affect the Hotel, the Brand System or IHG in any way); or

(8) Licensee maintains false books and records of account or submits false reports or information to IHG; or

(9) Licensee knowingly fails to comply with the requirements of this License and/or the Standards on safety, security, or privacy for its guests at the Hotel or on the reputation of the management, employees or operation of the Hotel, and such failure may significantly adversely reflect upon or affect the Hotel, the Brand System, IHG, and/or its Affiliates in any way; or

(10) A breach of paragraph 13.N. occurs; or

(11) Licensee uses any of the Marks before being authorized to do so by IHG; or

(12) Licensee uses any of the Marks in any manner prohibited, or not expressly authorized or permitted by this License; or

(13) Licensee refuses to allow, or to cooperate with, IHG's inspection or audit of the Hotel following a reasonable attempt by IHG to schedule during normal business hours.

**(14) Any "Event of Default" by Licensee or any guarantor of Licensee's obligations occurs under that certain "Loan Agreement" between Licensee and IHG's affiliate, Six Continents Hotels, Inc. or under any of the "Loan Documents" (as defined in the Loan Agreement).**

#### **D. De-Identification of Hotel Upon Termination.**

Upon expiration or other termination of this License, all rights granted under this License will immediately terminate and Licensee will take whatever action is necessary to assure that no use is made of any part of the Brand System at or in connection with the Hotel after the License Term ends. This will involve, among other things, returning to IHG the Standards and all other materials proprietary to IHG, ceasing the use of the Marks and any other of IHG's trademarks or service marks, physical changes of distinctive Brand System features of the Hotel, including, but not limited to, removal of the primary

freestanding sign down to the structural steel, as well as removal of any brand-mandated artwork, signage, graphics, and paint schemes (whether on walls, ceilings or floors) and all other actions required to preclude any possibility of confusion on the part of the public and to ensure that the Hotel is no longer using all or any part of the Brand System or otherwise holding itself out to the public as a Brand System hotel. In addition, Licensee must cancel any fictitious, trade, or assumed name or equivalent registration that contains any Marks or any variations thereof, and Licensee must furnish IHG with evidence satisfactory to IHG of compliance with this obligation within thirty (30) days after termination or expiration of this License. Anything in this paragraph which is not done by Licensee within 30 days after expiration or termination of this License may be done at Licensee's expense by IHG or its agents who may enter upon the premises of the Hotel for that purpose.

#### **E. Payment of Liquidated Damages.**

The parties recognize the difficulty of ascertaining damages to IHG resulting from premature termination of this License, and have provided for liquidated damages, which liquidated damages represent the parties' best estimate as to the damages arising from the circumstances in which they are provided and which are only damages for the premature termination of this License, and not as a penalty or as damages for breaching this License or in lieu of any other payment. If the License is terminated pursuant to paragraphs 11.B. or 11.C. above, Licensee will promptly pay IHG, as liquidated damages, a lump sum equal to the total amounts required under paragraphs 3.B.(3) through 3.B.(6) during the 60 calendar months of operation preceding the termination, or such shorter period as equals the unexpired License Term at the time of termination, or, if the Hotel has not been in operation in the Brand System for 60 months, the greater of:

- (1) 60 times the monthly average of such amounts for the period during which the Hotel has been in operation in the Brand System, or
- (2) 60 times such amounts as are due for the one month preceding such termination.

IHG and Licensee acknowledge and agree that it would be difficult to determine the injury caused to IHG by termination of this License. IHG and Licensee therefore intend and agree the above liquidated damages calculation to be a reasonable estimate of IHG's probable loss and not a penalty or in lieu of any other payment.

#### **12. Relationship Of Parties:**

##### **A. No Agency Relationship.**

Licensee is an independent contractor. Neither party is the legal representative nor agent of, or has the power to obligate (or has the right to direct or supervise the daily affairs of) the other for any purpose whatsoever. IHG and Licensee expressly acknowledge that the relationship intended by them is a business relationship based entirely on and circumscribed by the express provisions of this License and that no partnership, joint venture, agency, fiduciary or employment relationship is intended or created by reason of this License. Licensee acknowledges and agrees, and will never contend otherwise, that Licensee alone will exercise day-to-day control over all operations, activities and elements of Licensee and the Hotel and that under no circumstance shall IHG do so or be deemed to do so. Licensee further acknowledges and agrees, and will never contend otherwise, that the various requirements, restrictions, prohibitions, specifications and procedures of the Brand System which Licensee is required to comply with under this License, whether set forth in the Standards or otherwise, do not directly or indirectly constitute, suggest, infer or imply that IHG controls any aspect or element of the day-to-day operations of Licensee or the Hotel, which Licensee alone controls, but only constitute standards Licensee must adhere to when exercising its control of the day-to-day operations of Licensee and the Hotel.

##### **B. Licensee's Notices to Public Concerning Independent Status.**

Licensee will take such steps as are necessary and such steps as IHG may from time to time reasonably request to minimize the chance of a claim being made against IHG for anything that occurs at the Hotel or for acts, omissions or obligations of Licensee or anyone associated or affiliated with Licensee or the Hotel. Such steps may, for example, include giving notice in guest rooms, public rooms and advertisements and on business forms and stationery, etc., making clear to the public that IHG is not the

owner or operator of the Hotel and is not accountable for what happens at the Hotel. Unless required by law, Licensee will not use IHG's name, the Marks or any other trademarks, service marks or other intellectual property owned or licensed by IHG or any of its Affiliates or any similar words in its corporate, partnership, entity or trade name, nor authorize or permit such use by anyone else. Licensee will not use IHG's name, the Marks or any other trademarks, service marks or other intellectual property owned or licensed by IHG or any of its Affiliates to incur any obligation or indebtedness on behalf of IHG.

Licensee shall not register IHG's name, the Marks or any other trademarks, service marks or other intellectual property owned or licensed by IHG or any of its Affiliates as part of any internet domain name or Uniform Resource Locator (URL), and may not display or use any of the Marks or other intellectual property rights related to the Brand System in connection with any web site. Licensee shall not promote, maintain, implement or be responsible for any web site in connection with the licensed Hotel without the prior written approval of IHG, and if approved by IHG, any such web site shall comply with all of IHG's web site requirements as set forth in the Standards or otherwise.

**13. Miscellaneous:**

**A. Non-Exclusive Remedies; Severability and Interpretation.**

The remedies provided in this License are not exclusive. In the event that all or any part of a term or provision of this License is held to be unenforceable, void or voidable as being contrary to the law or public policy of the United States or any other jurisdiction entitled to exercise authority hereunder, the affected term or provision of this License will be curtailed and limited only to the extent necessary to bring it within the requirement of Applicable Law; the court may declare a reasonable modification of this License (but not any of its payment provisions) and the parties agree to be bound by and perform this License as so modified; and all remaining terms and provisions shall nevertheless continue in full force and effect, unless deletion of the subject term(s) or provision(s) is deemed unenforceable, void or voidable, impairs the consideration for this License in a manner which frustrates the purpose of the parties or makes performance commercially impracticable. In the event any term or provision of this License requires interpretation, such interpretation shall be based on the reasonable intention of the parties in the context of this transaction without interpreting any term or provision in favor of, or against, any party hereto by reason of the draftsmanship of the party or its position relative to the other party. Any action or proceeding to resolve a dispute shall be conducted on an individual basis, and not as part of a consolidated, common, representative, group, joint or class action.

**B. 1. Binding Effect, Consent to Jurisdiction and Forum Selection, Choice of Law.**

This License shall become valid when executed and accepted by IHG in Atlanta, Georgia. It shall be deemed made and entered into in the State of Georgia. This License, all relations between the parties and, any and all disputes between the parties (and any of their respective Affiliates, and/or owners, members, officers, directors or managers of each of the foregoing), whether based on contract, tort, statute or any other basis, shall be governed and construed under, and in accordance with, the laws and decisions (except any conflicts of law provisions) of the State of Georgia. In entering into this License, Licensee acknowledges that it has sought, voluntarily accepted and become associated with IHG, which is headquartered in Atlanta, Georgia. Licensee hereby expressly and irrevocably submits itself to the non-exclusive jurisdiction of the U.S. District Court for the Northern District of Georgia, Atlanta Division and the State and Superior Courts of DeKalb County, Georgia for the purpose of any and all disputes. Should Licensee initiate litigation against IHG or one of its Affiliates (a "Licensee Action"), Licensee must bring such Licensee Action in the U.S. District Court for the Northern District of Georgia, Atlanta Division or the State and Superior Courts of DeKalb County, Georgia, which shall be the sole and exclusive forums for any Licensee Action whether based on contract, tort, statute or any other basis; provided, however, the foregoing will not constitute a waiver of any of Licensee's rights under any applicable franchise law of the state in which the Hotel is located. Notwithstanding the foregoing, IHG shall be entitled to seek injunctive relief in the federal or state courts either of Georgia or of the state of the Hotel's Location or of IHG's principal place of business.

## **2. No Jury Trials.**

TO THE EXTENT EITHER IHG OR LICENSEE INITIATES LITIGATION RELATING TO THIS LICENSE OR ANY MATTER RELATING TO THEIR RELATIONSHIP, IHG AND LICENSEE IRREVOCABLY AND UNCONDITIONALLY WAIVE THEIR RIGHTS TO A TRIAL BY JURY. THIS WAIVER WILL APPLY TO ALL CAUSES OF ACTION THAT ARE OR MIGHT BE INCLUDED IN SUCH ACTION, INCLUDING CLAIMS RELATED TO THE ENFORCEMENT OR INTERPRETATION OF THIS LICENSE, ALLEGATIONS OF STATE OR FEDERAL STATUTORY VIOLATIONS, FRAUD, MISREPRESENTATION, OR SIMILAR CAUSES OF ACTION, AND IN CONNECTION WITH ANY LEGAL ACTION INITIATED FOR THE RECOVERY OF DAMAGES BY EITHER PARTY.

## **3. No Punitive Damages.**

IHG AND LICENSEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES IN ANY LITIGATION, ACTION, CLAIM, SUIT, ARBITRATION, MEDIATION OR PROCEEDING, AT LAW OR EQUITY, ARISING OUT OF, PERTAINING TO OR IN ANY WAY ASSOCIATED WITH THIS LICENSE (INCLUDING, WITHOUT LIMITATION, THE MASTER TECHNOLOGY SCHEDULE), OR ANY OTHER DOCUMENTS ENTERED INTO IN CONNECTION WITH THIS LICENSE, AND THE PARTIES COVENANT NEVER TO ADVANCE OR PURSUE ANY SUCH CLAIM FOR PUNITIVE DAMAGES AND AGREE THAT, IN THE EVENT OF A DISPUTE, ONLY ACTUAL DAMAGES SHALL BE SOUGHT AS RELIEF TO THE EXCLUSION OF ALL OTHERS.

## **4. IHG's Right to Injunctive Relief.**

Licensee explicitly affirms and recognizes the unique value and secondary meaning attached to the Brand System and the Marks. Accordingly, Licensee agrees that any noncompliance by it with the terms of this License, or any unauthorized or improper use of the Brand System or the Marks by Licensee, will cause irreparable damage to IHG. Licensee therefore agrees that if Licensee engages in this non-compliance, or unauthorized and/or improper use of the Brand System or Marks, during or after the period of this License, IHG will be entitled to both temporary and permanent injunctive relief against Licensee from any court of competent jurisdiction, in addition to all other remedies which IHG may have at law. Licensee consents to the entry of these temporary and permanent injunctions, without IHG being required to prove the inadequacy of money damages as a remedy, without being required to post a bond and without waiving any other rights or remedies at law or in equity.

## **5. Licensee's Procurement of Consents.**

Licensee represents and warrants that it has secured from each of its Affiliates and the owners, members, partners, officers, directors or managers of Licensee and its Affiliates who do not execute this License, his/her/its express consent and irrevocable confirmation of the provisions under this License, including, without limitation, this paragraph 13.B.

## **C. Exclusive Benefit.**

This License is exclusively for the benefit of the parties hereto, and it may not give rise to liability to a third party. No agreement between IHG and anyone else is for the benefit of Licensee.

## **D. Entire Agreement.**

**This License and all exhibits to this License, together with the "Loan Documents" (as defined in the Loan Agreement), constitute the entire agreement** between the parties pertaining to the licensing of the Hotel and supersedes all previous negotiations and agreements between the parties pertaining to the licensing of the Hotel as a System hotel. Nothing in the preceding sentence is intended, however, to disclaim any representations IHG made in the franchise disclosure document that IHG provided

to Licensee. No change in this License will be valid unless in writing signed by both parties. No failure to require strict performance or to exercise any right or remedy hereunder will preclude requiring strict performance or exercising any right or remedy in the future.

**E. IHG Withholding Consent.**

- (1) In no event may Licensee make any claim for money damages based on any claim or assertion that IHG has unreasonably withheld, delayed and/or denied any consent or approval under this License. Licensee waives any such claim for damages. Licensee may not claim any such damages by way of setoff, counterclaim or defense. Licensee's sole remedy for such a claim will be an action or proceeding to enforce the subject License provision(s) for specific performance or for declaratory judgment.
- (2) IHG's consent, whenever required, may be withheld if any breach by Licensee exists under this License, without regard for any other basis for withholding such consent. Approvals and consents by IHG will not be effective unless evidenced by a writing duly executed on behalf of IHG.

**F. Guarantor(s).**

IHG shall require certain individuals or other entities (the "Guarantors") to guarantee all of Licensee's duties, requirements and obligations under this License, both financial and nonfinancial, by executing a guarantee substantially in the form attached hereto (the "Guaranty"). In the event of the death or bankruptcy of any Guarantor, IHG may require replacement guarantees sufficient in IHG's reasonable discretion to provide IHG with the same protection as IHG had originally bargained for. If Licensee is in breach or default under this License, IHG may proceed directly against each such individual and/or business entity Guarantor without first proceeding against Licensee and without proceeding against or naming in the action or proceeding any other such Guarantor. Licensee's obligations and those of each such Guarantor will be joint and several. Notice to or demand upon one such Guarantor will be considered notice to or demand upon Licensee and all such Guarantors. No notice or demand need be made to or upon all such Guarantors. The cessation of or release from liability of Licensee or any such Guarantor will not relieve Licensee or any other Guarantor, as applicable, from liability under this License, except to the extent that the breach or default has been remedied or money owed has been paid.

**G. Notices.**

Notices will be effective hereunder when and only when they are in writing and delivered personally or mailed by Federal Express or comparable overnight or express delivery service or by certified mail to the appropriate party at its address (in the case of IHG, to the address stated in Item 7 of Attachment "A"; and in the case of Licensee, to the address stated in Item 8 of Attachment "A") or to such person and at such address as may subsequently be designated by Licensee or IHG to the other. IHG may provide Licensee with electronic delivery of routine information, invoices, Brand Standards and other Brand System requirements and programs. IHG and Licensee will cooperate with each other to adapt to new technologies that may be available for the transmission of such information.

**H. Authority.**

Licensee represents and warrants to IHG that the entities and persons signing this License on behalf of Licensee are duly authorized to do so and to bind Licensee to enter into and perform this License. Licensee further represents and warrants to IHG that Licensee and the entities and persons signing this License on behalf of Licensee have obtained all necessary approvals and that their execution, delivery and performance of this License will not violate, create a default under or breach any charter, bylaws, agreement or other contract, license, permit, order or decree to which they are a party or to which they are subject or to which the Hotel is subject. If Licensee has not already done so prior to the execution of this License, Licensee agrees to submit to IHG by the date specified by IHG all of the documents and information that IHG required or requested in the license application and in connection with the licensing process. Licensee acknowledges that its breach of the representations and warranties in this paragraph; its failure to comply with IHG's requirements for the submission of information and documents; or any omission or misrepresentation of any material fact in the information or documents submitted to IHG in

connection with the license application and/or the licensing process will constitute a material breach of Licensee's obligations under this License.

**I. General Release and Covenant Not to Sue.**

Licensee and its respective heirs, representatives, successors and assigns, hereby release, remise and forever discharge IHG and its Affiliates and each of their directors, employees, agents, successors and assigns from any and all claims, whether known or unknown, of any kind or nature, absolute or contingent, if any there be, at law or in equity, from the beginning of time to, and including, the date of IHG's execution of this License, and Licensee and its respective heirs, representatives, successors and assigns do hereby covenant and agree that they will not institute any suit or action at law or otherwise against IHG, directly or indirectly relating to any claim released hereby by Licensee; provided, however, that nothing contained in this release is intended to disclaim or require Licensee to waive reliance on any representation that IHG made in the Franchise Disclosure Document that it provided to Licensee. This release and covenant not to sue shall survive the termination of this License. Licensee shall take whatever steps are necessary or appropriate to carry out the terms of this release and covenant not to sue upon IHG's request.

**J. Performance of the Work; Termination Prior to Authorization to Use Brand System.**

Licensee agrees to perform the construction, upgrading and renovation work, including, without limitation, the purchase of furniture, fixtures and equipment set forth on Attachment "B" attached hereto and incorporated herein by reference (the "Work"). Licensee acknowledges that its agreement to perform the Work is an essential element of the consideration relied upon by IHG in entering into this License and agrees that Licensee may be authorized, in IHG's sole judgment, to use the Brand System at the Hotel prior to completion of the Work, but only during such time as Licensee is actively meeting its performance obligations in full compliance with the requirements of Attachment "B" of this License. Licensee shall not commence its operation of the Brand System, or any part thereof, at the Hotel unless and until it receives IHG's written authorization to do so. Licensee's failure to perform the Work in accordance with IHG's requirements and specifications (including the progress, milestone, completion and other dates specified in Attachments "A" and "B" of this License) shall constitute a material breach of Licensee's obligations under this License.

In order to complete the Work and as needed for any periodic renovations throughout the Term, Licensee will retain a qualified architect and interior designers and, based on the nature of the project, IHG may require that Licensee retain other specialty consultants. Licensee must obtain IHG's prior written consent before retaining or engaging any architect, interior designer for the Hotel, interior designer for any food and beverage outlet at the Hotel, and the project manager or general contractor, which consent shall not be unreasonably withheld. Such consultants shall be qualified to provide the services required for the Hotel project and maintain appropriate insurance coverages. IHG is not liable for the unsatisfactory performance of any such consultants or other persons retained by Licensee.

Licensee and IHG must mutually agree upon a brand agency to support the process for development the Hotel's positioning and concept, which serves as the foundation for the identity and operation of the Hotel in the market. Licensee will pay IHG a Brand Design and Concept Fee as outlined on Attachment "A". Licensee and IHG must also mutually agree upon a brand agency to support the Restaurant + Bar concept development process. In the event Licensee retains IHG's design and brand team to develop the Restaurant + Bar concept, Licensee will pay the Restaurant + Bar Concept Development Fee as outlined on Attachment "A".

In the event IHG terminates this License due to Licensee's breach of any of its obligations under the License prior to the time that Licensee is authorized to use the Brand System at the Hotel, Licensee shall pay to IHG, as liquidated damages, a lump sum equal to the monthly average of all amounts that would have been payable to IHG under paragraphs 3.B.(3) through 3.B.(6) of this License assuming the Hotel had collected Gross Rooms Revenue based on the average daily revenue per available room for all "mature hotels" in the Brand System, in the United States for the previous twelve (12) months, as determined by IHG, multiplied by the greater of (a) six (6) or (b) the number of full and partial months from the Effective Date to the termination date of this License. For purposes of this paragraph, "mature hotels" means hotels which were open for two full years or longer; were franchised or, alternatively, owned and/or

managed by IHG or one of its affiliates; and, were not in financial or quality default of their applicable franchise or management agreement obligations as of the applicable date.

IHG and Licensee acknowledge and agree that it would be difficult to determine the injury caused to IHG by termination of this License. IHG and Licensee therefore intend and agree the above liquidated damages calculations to be a reasonable pre-estimate of IHG's probable loss and not as a penalty or in lieu of any other payment.

**K. Reimbursement of Expenses.**

Licensee agrees to pay IHG all expenses, including reasonable attorneys' fees and court costs, incurred by IHG, its Affiliates, and their successors and assigns to remedy any defaults of or enforce or defend itself or any rights under this License (including without limitation any claim, cross-claim or counter-claim brought by Licensee), effect termination of this License or collect any amounts due under this License.

**L. Business Judgment.**

IHG and Licensee recognize and agree, and any mediator or judge is affirmatively advised, that certain provisions of this License describe the right of IHG to take (or refrain from taking) certain actions in the exercise of its business judgment as to the long-term overall interests of the Brand System, and/or upon its determination that the change was adopted in good faith and is consistent with the long-term overall interests of the Brand System. Where such judgment has been exercised by IHG, neither a mediator, nor a judge, nor any trier of fact, shall substitute his, her or their judgment for the judgment so exercised by IHG.

**M. Descriptive Headings.**

The descriptive headings in this License are for convenience only and shall not control or affect the meaning or construction of any provision in this License. The parties agree that when the terms "include" or "includes" are used in this License, those terms shall be understood to mean "including, but not limited to" in each instance.

**N. Anti-Terrorism, Anti-Bribery and Trade Sanctions Compliance.**

(1) Licensee represents, warrants and covenants that neither it nor any Entity or individual having a direct or indirect ownership interest in it, nor any Guarantor, nor any of Licensee's Affiliates nor any officer, director, employee, member, partner or shareholder of any of the foregoing, has been or is now:

- (a) directly or indirectly owned or controlled by the government of any nation subject to trade sanctions or embargoes imposed by any of the Sanctioning Bodies (as defined below in sub-paragraph (4));
- (b) acting on behalf of any government of any nation subject to the trade sanctions or embargoes imposed by any of the Sanctioning Bodies;
- (c) identified by any of the Sanctioning Bodies as a Prohibited Person; and
- (d) in violation of any applicable law relating to anti-money laundering, anti-terrorism, anti-bribery, trade sanctions or embargoes, narcotics, illegal immigration or human trafficking, including without limitation, the UK Bribery Act 2010, the US Foreign Corrupt Practices Act, the US Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (US Patriot Act) and related regulations and executive orders related to the foregoing laws (the "Relevant Laws").

(2) Licensee further warrants and represents and covenants that:

- (a) Licensee, any Guarantor and any Person having a direct or indirect ownership interest in Licensee will comply with the Relevant Laws; and
- (b) all individuals authorized to represent Licensee in carrying out its obligations under this License are eligible under applicable United States immigration laws to travel to the

United States for training or any other purpose in carrying out Licensee's obligations under this License.

(3) For the purposes of this paragraph 13.N., "Person" means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any national, provincial, state, county or municipal government or any bureau, office, department or agency thereof and any fiduciary acting in an agency capacity on behalf of any of the foregoing. "Prohibited Person" means any person identified by Her Majesty's Treasury of the United Kingdom ("UK"), by the Office of Foreign Assets Control of the Department of the Treasury of the United States ("US") as a "specially designated national" or otherwise subject to sanction by the European Union ("EU") and/or the United Nations ("UN"), (collectively, "Sanctioning Bodies"), or any other Person with whom IHG, or any of its Affiliates, is otherwise prohibited from transacting business.

**O. Capital Reserve; Capital Reinvestment and Renovation Cycles.**

(1) IHG may require Licensee to establish a capital reserve ("Capital Reserve") in an amount not in excess of **1.5% of Gross Rooms Revenue ("GRR") annually during the first year of operation following the Opening Date (as hereinafter defined); 2% of GRR annually during the second through fifth year of operation following the Opening Date; 3.5% of GRR annually during the sixth through tenth year of operation following the Opening Date; and 4% of GRR annually beginning on the eleventh (11<sup>th</sup>) anniversary of the Opening Date through the Expiration Date (as hereinafter defined).** The Capital Reserve will be used for capital expenditures and the upgrading of the Hotel, including the renovation of public areas, guest rooms, guest room corridors, and the replacement of FF&E. IHG shall give Licensee no less than ninety (90) days' notice of imposing such requirement to establish a Capital Reserve, as the same may be established or changed by IHG from time to time. In such event, Licensee must establish a Capital Reserve account funded monthly in a bank selected by Licensee. Licensee shall make expenditures from such account for the purposes hereinbefore specified in accordance with IHG's requirements. Licensee acknowledges that the Capital Reserve may not be sufficient to maintain the Hotel as a first-class facility in accordance with the Standards, and Licensee shall promptly provide any necessary additional funds to meet IHG's product quality and consumer quality requirements; as well as Licensee's renovation obligations specified herein.

(2) Throughout the License Term, regardless of whether IHG has required Licensee to establish a Capital Reserve, Licensee must complete significant renovations of the Hotel, including, but not limited to, the public areas, guest rooms, and guest room corridors in order to maintain the Hotel as a first-class facility. These mandatory renovations include: (a) replacing Soft Goods at least every seven (7) years after such Soft Goods were installed and (b) replacing Case Goods at least every fourteen (14) years after such Case Goods were installed; and, if necessary replacing such Soft Goods and Case Goods more frequently in order to (i) maintain compliance with the Standards or IHG's quality and guest satisfaction programs; (ii) remove risk of injury to persons or property; or (iii) ensure compliance with all applicable laws.

(3) Licensee must fund all ordinary and extraordinary maintenance and repair, capital improvements and renovations of the Hotel.

(4) For purposes of this paragraph 13.O. the following definitions apply:

- (a) "Gross Revenue" means all revenues and income of any nature derived directly or indirectly from the Hotel or from the use or operation thereof, including without limitation room sales; food and beverage sales; telephone, fax and internet revenues; rental or other payments from lessees, subleases, concessionaires and others occupying or using space or rendering services at the Hotel (but not the gross receipts of such lessees, subleases or concessionaires); and the actual cash proceeds of business interruption, use, occupancy or similar insurance.
- (b) "Soft Goods" means textile, fabric, vinyl and similar products used in finishing and decorating the Hotel, including its public areas, guest rooms, and guest room corridors, such as wall and floor coverings, window treatments, cornice or valance coverings, carpeting, bedspreads, lamps, lamp shades, artwork, decorative items,



pictures, wall decorations, upholstery and all other unspecified items of the same class.

- (c) "Case Goods" means furniture and fixtures used in the Hotel, including its public areas, guest rooms, and guest room corridors, such as cabinets, shelves, chests, armoires, chairs, beds, headboards, desks, tables, mirrors, lighting fixtures and all other unspecified items of the same class.
- (d) "FF&E" means Case Goods, Soft Goods, signage, including exterior signage, and equipment (including telephone systems, printers, televisions, vending machines and computer hardware) as well as other improvements and personal property used in the operation of the Hotel except for those items which are generally classified as "operating supplies" or "operating equipment".

(5) Licensee shall inform IHG of the dates of installation of Soft Goods and Case Goods in the Hotel, which dates IHG shall be entitled to verify.

(6) Licensee must submit its renovation plans for the Hotel to IHG for IHG's review and approval prior to starting any renovations. Licensee shall not start any renovations until IHG has approved the scope of the plans and the plans' compliance with the Standards.

(7) IHG shall have the right to require Licensee to make renovations to the Hotel to conform the Hotel's FF&E to the then-current Standards and brand design criteria.

**P. Counterparts.**

This License may be executed in any number of counterparts, each of which will be deemed an original and all of which constitute one and the same instrument. IHG and Licensee hereby acknowledge and agree that electronic signatures, facsimile signatures or signatures transmitted by electronic mail in "pdf" format shall be legal and binding and shall have the same full force and effect as delivery of an original signed counterpart.

**Q. Right of First Refusal.**

Notwithstanding anything else to the contrary in this License, if Licensee receives an offer for, and wishes to sell the Hotel (including all or a portion of the Hotel, or the right, in any form other than a bona fide debt instrument, to receive income from the Hotel), Licensee shall give IHG written notice along with a complete copy of the offer ('ROFR Notice') within ten (10) days of its receipt and shall offer to sell the Hotel to IHG on the same terms and conditions as the offer; provided however, that if any portion of the consideration contemplated by the offer is in a form other than cash, Licensee shall agree to accept a cash payment of equivalent value, based on the market value of the non-cash consideration in Licensee's hands, in lieu of any non-cash consideration. IHG shall notify Licensee, within 30 days of its actual receipt of such notice, if it intends to accept Licensee's offer. Any acceptance of the offer by IHG shall be subject to compliance with any applicable laws and regulations which are a pre-condition to consummation of the transaction. IHG's acceptance may provide for preparation of a definitive agreement consistent with the offer and acceptance; however, such definitive agreement shall not be a condition precedent to an effective agreement between IHG and Licensee. If IHG has not given notice to Licensee that it intends to accept the offer, Licensee may proceed to sell the Hotel on the same terms and conditions contained in the offer notified to IHG without regard to this Right of First Refusal, but only if such sale is consummated within 150 days from the date of Licensee's notice to IHG. If such sale is not consummated within such 150-day period or if the terms of such sale differ materially from the terms and conditions presented in the ROFR Notice, then Licensee shall be required to deliver another ROFR Notice and again follow the process set forth above. In the event that IHG waives this Right of First Refusal in accordance with the terms set forth herein, then the sale of the Hotel to a purchaser other than IHG shall be subject to paragraph 9.H.

**R. Management Company Requirement.**

Notwithstanding Paragraph 9.H. of this License, the Hotel shall at all times be operated by a management company acceptable to IHG. IHG shall have the right to approve any proposed management

company and to approve any contract with respect to the operation of the Hotel, and such management company's policies and procedures must comply with the Standards and the requirements of this License. The management of the Hotel by an acceptable management company must be continuous and uninterrupted during the term of the License. Licensee shall be in default under this paragraph if any of the preceding conditions are not met. Notwithstanding that the management company must be acceptable to IHG, Licensee acknowledges and agrees that it is solely responsible for the selection, conduct and performance of the management of the Hotel and IHG has no responsibility or obligation in connection with such selection, conduct or performance. The management contract between Licensee and the management company must be acceptable to IHG and executed at least 180 days prior to the opening of the Hotel in the Brand System. If any approved management company stops operating the Hotel for the Licensee for any reason, Licensee must notify IHG immediately. **For the avoidance of any doubt, Remington Hospitality has been approved by IHG as the Management Company for the Hotel.**

If there is a change in control of the management company or if the management company becomes a competitor of IHG (or an affiliate of a competitor) or a Prohibited Person (or an affiliate of a Prohibited Person), or if the management company becomes the principal operator for a competitor or if there is a material adverse change to the financial condition or operational capacity of the management company, Licensee will promptly notify IHG of any such event together with such additional information that IHG may reasonably request. Based on these changed circumstances, IHG may require Licensee to terminate its agreement with such management company and retain a replacement management company that will be subject to IHG's consent. After IHG receives such notice and any such additional information IHG reasonably requests, IHG will respond to Licensee within thirty (30) days. Furthermore, if Licensee's management company becomes unsuitable or unqualified to operate the Hotel as determined by IHG, in our sole discretion, or if the Hotel is not operated in compliance with IHG's guest satisfaction program, you may be required to retain a new Management Company that is acceptable to us within ninety (90) days.

#### **14. SPECIAL STIPULATIONS:**

##### **A. Site Control:**

Licensee expressly understands and agrees that control of the Location by Licensee is a requirement of this License. Unless Licensee delivers, and IHG receives, a copy of the recorded deed or other documentary evidence satisfactory to IHG that Licensee has fee simple title to the Location or an executed lease of the Location for the License Term prior to the Opening Date. IHG shall have the right to terminate the License by written notice to Licensee and seek damages under Paragraph 11 of this License. Such right shall expire upon IHG's receipt and acceptance of a copy of the fully executed lease or recorded deed showing such leasehold interest or fee simple title.

##### **B. Licensee Performance Termination Right:**

If Licensee is not in default under the License, Licensee shall have the one-time right to terminate this License during the ninety (90) day period following the seventh (7<sup>th</sup>) anniversary of the Opening Date (as hereinafter defined) (the "Termination Right Window"), provided that the following condition is met:

- (i) For each of the two consecutive years beginning on the fourth (4<sup>th</sup>) anniversary of the Opening Date and ending on the sixth (6<sup>th</sup>) anniversary of the Opening Date (i.e., the fifth and sixth full years of Hotel operations being the "Test Period"), the Hotel's "Annual Average Weighted Brand Enterprise Contribution" is less than forty-five percent (45%) of Gross Rooms Revenue at the Hotel during such period (the "Performance Test").

Licensee may only exercise this Performance Termination Right if:

- (i) Licensee delivers an irrevocable notice of termination to IHG within the Termination Window.
- (ii) The notice includes:

- (a) all necessary data supporting Licensee's calculation of the Annual Average Weighted Brand Enterprise Contribution for the Test Period;
  - (b) a specified termination date not less than sixty (60) days and not more than one hundred eighty (180) days after notice is given.
- (iii) The Performant Test failure is not otherwise excused by the terms set forth herein.

This License shall terminate on the later to occur of: (i) the specified termination date in the notice; and (ii) the date Licensee pays to IHG all amounts due under the License (including but not limited to, any unamortized portion of the Loan), unless IHG elected to cure the Performance Test failure as described below.

If this License is terminated properly in accordance with this Paragraph 14.B., then Licensee shall not be liable for any Liquidated Damages related with the Performance Test Termination.

Licensee waives the right to terminate under this Paragraph 14.B. if it fails to comply with any of the above timing or procedural conditions.

Licensee may not exercise this Performance Termination Right if:

- (i) The Work has not been completed prior to the beginning of the Test Period; or
- (ii) Licensee has not maintained at least ninety percent (90%) rate parity across all distribution channels during the Test Period. IHG may conduct regular audits to verify compliance.

In addition, the Performance Termination Right is only available if:

- (i) The Hotel is not in failure under the then-current guest satisfaction tracking program (currently known as "Guest Love") during the Test Period.
- (ii) Licensee is not in failure of IHG's then-current quality inspection program during the Test Period.
- (iii) Licensee is in material compliance with all capital reinvestment and renovation obligations that may be required under this License, and IHG has not issued a notice of non-compliance.

If Licensee properly gives notice of termination hereunder, IHG shall have the right (but not the obligation), within forty-five (45) days of receiving the notice, to cure the Performance Test failure by:

- (i) Reducing the Royalty Fee to zero percent (0%) for the next calendar year (Note: all other Fees, including the Services Contribution Fee, remain payable during this period).

If IHG elects to cure the Performance Test failure in this manner then the termination notice from Licensee will be considered withdrawn; and Licensee shall not have the right to issue another termination notice under this Paragraph 14.B.

"Annual Average Weighted Brand Enterprise Contribution" shall be defined as Gross Rooms Revenue received from the following channels and sources which combined make up the "Brand Contribution" for the Hotel based on:

- (i) IHG.com, including all international iterations of the site and IHG's mobile apps ("Web");
- (ii) IHG's worldwide toll-free reservations phone numbers and hotel call-divert programs ("IHG Voice");
- (iii) Global distribution systems that permit traditional travel agencies, as well as many third-party online travel websites, to reserve guestrooms ("GDS");
- (iv) Global Sales Office business that books directly at the Hotel ("GSO");
- (v) IHG One Rewards members that book directly at the Hotel, but expressly excluding Redemption Reward room nights ("Loyalty Direct"); and
- (vi) Distribution partners directly connected to IHG's Reservation System that are not included in the previous sources ("Direct Connect" and "Direct Connect-Leisure"), including, without limitation, wholesale distributors (group and transient) and other delivery channels which may be developed, modified or added by IHG over the Term.


*Note: Bookings from Online Travel Agencies ("OTAs") are excluded from this calculation.*

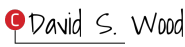
[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this License, as of the date first stated above.

**LICENSEE:**

**PACIFIC HOTEL OXBOW, LLC**


By:   
Andrew G. Wood  
Manager

By:   
David S. Wood  
Manager

**IHG:**

**IHG FRANCHISING, LLC**

By: Six Continents Hotels, Inc.,  
its sole managing member

By:   
Jenny Tidwell  
Vice President, Franchise Licensing and Compliance

**Electronic Signature Acknowledgement:**

This License may, at IHG's option, be executed via electronic signature. In such event, Licensee acknowledges that conducting this transaction using electronic means is optional and is not a condition to executing this License. By electronically signing this paragraph, Licensee agrees to conduct this transaction using electronic means, which includes the transmittal of electronic communications and the execution of the agreement using an electronic signature. Licensee further agrees that the parties' electronic signatures are valid and create a binding and enforceable agreement. If Licensee does not agree to conduct the transaction electronically and does not agree to execute the agreement using an electronic signature, Licensee must promptly notify IHG and IHG will provide Licensee with a non-electronic License.

**Licensee Signature (or Initials):**  

## ATTACHMENT "A"

1. <u>Location</u> :	711 1st Street, Napa, California, 94559
Fee Owner:	Pacific Hotel Oxbow, LLC 17 Corporate Plaza Drive, Suite 200 Newport Beach, California, 92660
Leases (parties, terms, etc.) if any:	Not applicable
Number of Guest Rooms (including Suites)	123
Hotel Facilities and Services:	<p>Restaurants and lounges (number, seating capacity, names and description): Ground floor 3-meal restaurant, rooftop bar and lounge.</p> <p>Gift shop: N/A</p> <p>Other concessions and shops: N/A</p> <p>Parking facilities (number of spaces, description): 158 spaces of below grade parking – serviced by valet</p> <p>Swimming pool: N/A</p> <p>Other facilities and services: Fitness Center, men's and women's infrared saunas and cold plunge rooms, and outdoor garden patio hot tub.</p> <p>Meeting Space: 4,000ft<sup>2</sup></p>
2. <u>License Term</u> :	The License Term begins on the Effective Date and will expire without notice 30 years from the date of opening of the entire Hotel in the Brand System (the "Opening Date"), subject to earlier termination as set forth in this License.
3. <u>Application Fee</u> :	N/A
4. <u>Royalty Fee</u> :	<p><b>5% of Gross Rooms Revenue</b></p> <p>"Gross Rooms Revenue" or GRR means the gross revenue and receipts of every kind attributable to or payable for rental of guest rooms at the Hotel including, but not limited to, no-show revenue, early departure or late check-out fees, attrition or cancellation fees, any mandatory fee or surcharge charged to all or substantially all guests renting a room (including, but not limited to, resort fees, although inclusion of such</p>

	<p>fees or surcharges does not constitute approval by IHG of such fees and surcharges, which may be limited or prohibited) any awards, judgments or settlements representing payment for loss of room sales and any other revenues allocable to rooms revenue under the Uniform System of Accounting for the Lodging Industry, Eleventh Revised Edition, 2014, as published by the American Hotel &amp; Lodging Association Educational Institute, or any later edition, revision, or replacement that may be designated by IHG (the "Uniform System"). No deductions shall be allowed for charge backs, credit card service charges, commissions, uncollectible amounts or similar items. <b>Permitted deductions for the items set forth in the preceding sentence will be adjusted by IHG following the receipt of appropriate evidence regarding such amounts.</b> Charges for any item, including, but not limited to, telephone charges, entertainment, the cost of any food and beverage items, room service or other items provided or made available to a guest as an incident of a guest rooms rental shall not be considered a deduction from Gross Rooms Revenue. <b>For the avoidance of any doubt, revenue from the operation of the food and beverage facilities will not be included in Gross Rooms Revenue.</b> Gross Rooms Revenue excludes sales tax, value added tax, or similar taxes on such revenues and receipts; and</p> <p><b>1% of Gross Food and Beverage Sales</b></p> <p>"Gross Food and Beverage Sales" means all revenues and receipts of every kind that accrue from the sale of food and beverages associated with the Hotel, whether inside or outside the Hotel. Gross Food and Beverage Sales includes: (i) revenues from restaurants, bars, lounges, snack shops, and other food outlets (including within any health club, spa or golf course), room service, honor bar, or other food and beverage services provided in guestrooms, banquets, meetings, conventions or other catered events; (ii) revenues and commissions derived from supplying audiovisual equipment and services (whether the equipment is owned or rented by Licensee), rentals of public meeting rooms, cover charges, service charges and other sales or rentals of services, products, and equipment allocable to food and beverage revenues under the Uniform System, and supplying equipment and services (whether the equipment is owned or rented by Licensee) for connecting public meeting rooms to the internet; (iii) attrition or cancellation fees collected from unfulfilled reservations for food, beverage, and other services; (iv) the amount of all lost sales due to the non-availability of food, beverage, and other services, whether or not Licensee receives business interruption insurance proceeds; and (v) any awards, judgments or settlements representing payment for loss of food and beverage sales. No deductions shall be allowed for charge backs, credit card service charges, commissions, uncollectible amounts or similar items. Gross Food and Beverage Sales excludes sales tax,</p>
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	value added tax, or similar taxes on such food, beverage and other services.
5. <u>IHG System Fund Contributions:</u>  Services Contribution:	3% of Gross Rooms Revenue
Initial Loyalty Program Marketing Contribution:  Loyalty Program Contribution:	A one-time Initial Loyalty Program Marketing Contribution of \$10.00 per room payable at the same time as the first royalty payment.  4.55% of qualifying IHG One Rewards full folio revenue and 1.365% of IHG Business Rewards meeting and/or room revenue.
6. <u>Technology Services Fee:</u>	17.40 for each guest room at the Hotel
7. <u>IHG Notice Address:</u>	Holiday Hospitality Franchising, LLC Three Ravinia Drive, Suite 100 Atlanta, Georgia 30346 Attn: Vice President, Franchise Licensing and Compliance
8. <u>Licensee Notice Address:</u>	Pacific Hotel Oxbow, LLC c/o Andrew Wood 17 Corporate Plaza Drive, Suite 200 Newport Beach, California 92660
9. <u>Construction Milestone Dates:</u>	Preliminary Plans Due Date: September 1, 2025  Final Plans Due Date: December 1, 2025  Ground Break Due Date: June 1, 2026  Opening Deadline: March 31, 2028
10. <u>Kimpton Design &amp; Concept Fee:</u>	\$125,000; 25% is due upon execution of this License with the remainder payable in 12 equal monthly installments
11. <u>Kimpton Openings and Renovations Program Fee:</u>	\$25,000 plus trainer expenses. Payment is due 60 days prior to the Opening Date.



**Ownership of Licensee**

**PACIFIC HOTEL OXBOW, LLC**

David S. Wood, member  
Andrew G. Wood, member

50%  
50%

**100%**

## **ATTACHMENT "B"**

### **THE WORK**

#### **A. BEFORE CONSTRUCTION BEGINS.**

Before starting construction of the Hotel (including any restaurants, bars or other components thereof), Licensee must (at Licensee's sole expense):

1. Submit to IHG evidence of insurance as required under this License.
2. Submit to IHG evidence that Licensee is entitled to possession of the premises on which the Hotel will be located, which documents shall be subject to IHG's approval.
3. Obtain any and all approvals, permits or licenses required for construction to begin. Submit a copy of the general building permit to IHG when acquired.
4. Submit to IHG the proposed construction schedule. The schedule should include critical path milestones and trade subdivisions in standard industry format.
5. Submit "Preliminary Plans" to IHG, for IHG's review and approval, before starting construction and in no event later than the Preliminary Plans Due Date set forth in Attachment A or such other date as IHG may agree with Licensee in writing. "Preliminary Plans" means site plans, building floor plans (all floor levels), enlarged guest room plans for all room types and exterior elevations with a color rendering as prepared by a qualified, licensed architect with knowledge of commercial building design and construction, including spatial relationships, and general quality of building systems, elements, products and materials, as is necessary to describe adequately the design of the Hotel. Licensee must also submit, for IHG's review and approval, the Pre-Design Requirements and Schematic Architectural Design and Programming pursuant to the Kimpton Review and Approval Policy.
6. Submit "Final Plans" to IHG, for IHG's review and approval, before final submittal to Licensee's local building authority and in no event later than the Final Plans Due Date or such other date as IHG may agree with Licensee in writing. "Final Plans" is also referred to as 100% Construction Documents and means final versions of construction documents used for permitting and associated specifications including architectural, civil, structural, mechanical, electrical, plumbing, fire protection, landscape, site plans with parking, all floorplans, exterior and interior elevations, enlarged plans, building sections, millwork detail and other specialty consultant design documents with such detail and containing such additional details and information as IHG may request. The Final Plans as submitted to IHG shall conform to then prevailing Standards, including the construction standards set forth in the Standards and address all revisions required by IHG's review and approval of the Preliminary Plans.
7. Submit to IHG a pre-construction disability compliance certification signed by an architect with professional experience applying the requirements of the Americans with Disabilities Act ("ADA") and the ADA Standards, in the form of Attachment "C" (the "ADA Certificate"). Such certification must confirm the qualifications of the architect and that the Final Plans, as designed, comply with Title III of the ADA and any other applicable accessibility laws, ordinances or requirements.
8. Submit Preliminary Plans and Final Plans to IHG in Adobe Acrobat PDF format, in accordance with IHG's electronic submittal guidelines, as outlined on [www.ihgdesignconnect.com](http://www.ihgdesignconnect.com), along with hard copy samples for all finishes and fabrics. The Preliminary Plans, Final Plans and all other submittals required by IHG, including, without

limitation schematics and a model room, must be completed in accordance with the Kimpton Review and Approval Policy. Any branding agencies engaged by Licensee for the design or conceptualizing of the Hotel and/or restaurants or bars to be located at the Hotel must be approved by Kimpton in advance of any such engagement.

9. Preliminary Plans and Final Plans must be written in English.

Licensee must use architects and interior design firms with demonstrated luxury hospitality experience with a minimum of 3 to 5 completed projects in the past 5 years, and approved by IHG to design Brand System Hotels. Licensee's design and construction team must attend a Design Immersion Session for training on the Brand System hallmarks, design philosophy and PIP/Plan Review process, before your architect and/or designer begins detailed construction and design plans. Licensee must pay all travel, lodging and other miscellaneous expenses for these programs. Before your architect begins detailed construction plans, Licensee must meet with IHG's Openings Regional Director and submit preliminary plans to IHG for Plan Review comment. Licensee, and Licensee's architect and general contractor must also attend a kick-off meeting in Atlanta, Georgia, or other locations that IHG may designate. There are no fees for the kick-off meeting; however Licensee must pay for all travel, lodging and miscellaneous expenses.

B. CONSTRUCTION.

1. Construction shall not begin unless and until IHG has approved the Final Plans and IHG has received the properly executed pre-construction ADA Certificate from Licensee. Thereafter, no change shall be made to the Final Plans without the prior written consent of IHG. Notwithstanding the foregoing, after the Final Plans have been approved, if in the course of actual construction any change in the Final Plans occurs, Licensee shall notify IHG promptly, and in no event later than ten (10) days after Licensee becomes aware of or should have been aware of any such change.
2. Licensee must notify IHG when their contractor has mobilized on site and proceeded with site work.
3. Licensee must complete "Ground Break" of the Hotel by the Ground Break Due Date set forth in Attachment A and continuously construct and furnish the Hotel in accordance with the Final Plans and the Standards so that the Hotel opens in the Brand System by the Opening Deadline set forth in section B.9. below. "Ground Break" means the completion of the Hotel building foundation through ground-level or the completion of the finished ground floor slab. Licensee must provide photo documentation of Ground Break to IHG within one day thereafter.
4. Licensee must submit for IHG's review and approval any and all signage, shop drawings, guest room FF&E and Public Area FF&E plans and associated specifications as outlined in the submittal guidelines ("FF&E Specs") to IHG, as designed and prepared by a licensed or accredited design professional with commercial building design background, no later than thirty (30) days after Ground Break. Thereafter, no change shall be made to the FF&E Specs without the prior written consent of IHG. Notwithstanding the foregoing, after the FF&E Specs have been approved, if in the course of actual construction any change in the FF&E Specs occurs, Licensee shall notify IHG and submit changes, within ten (10) days of any such change, for IHG's review and approval.
5. Licensee must submit for IHG's review and approval any and all Life Safety shop drawings as outlined in the submittal guidelines (Fire Alarm and Sprinkler plans), as designed and prepared by a professional sub-contractor with AHJ approval, no later than thirty (30) days after Ground Break. Thereafter, no change shall be made to the fire alarm and sprinkler systems without the prior written consent of IHG. Notwithstanding the foregoing, after the Life Safety system drawings have been approved by IHG, if in the course of actual construction any change in the system design that occurs, Licensee shall, within ten (10) days of any such change, submit such changes for IHG's review and approval.

6. Licensee must submit shop drawings, color boards and specifications to IHG for its review and approval before purchasing and installing any FF&E Specs, including without limitation, any signage. Licensee shall submit the FF&E Specs to IHG, per the electronic submittal guidelines as outlined on [www.ihgdesignconnect.com](http://www.ihgdesignconnect.com).
7. Licensee must notify IHG if it elects to use any product, design, or FF&E package which has not been pre-approved by IHG. Use of such non-preapproved products, design or FF&E package may require additional time and fees incurred by Licensee.
8. Once the construction has commenced, it shall continue without interruption (except for interruption by reason of events constituting force majeure) until construction is completed. Licensee must provide IHG monthly reports of construction progress in an approved format.
9. Notwithstanding the occurrence of any events constituting force majeure, or any other cause, construction shall be completed and the Hotel shall be furnished, equipped and shall otherwise be made ready to open for business in accordance with the License not later than the Opening Deadline set forth in Attachment A (or such other date as IHG and Licensee may agree in writing).
10. Licensee shall cause the Hotel to be constructed according to the Final Plans and the FF&E Specs approved by IHG, and IHG shall determine at its election whether construction has been completed in accordance with the Final Plans and the FF&E Specs. Licensee must correct or replace any changes from the approved design as noted during construction.
11. Extension requests to the starting date of construction of a new development may be considered on a basis of monthly increments of at least a six (6) month period for any one extension. Requests for extensions greater than six (6) months, but less than or equal to twelve (12) months must be accompanied by an extension fee equal to \$10,000. Requests for more than a twelve (12) month extension must be accompanied by a sum equal to one half (1/2) of the then current standard minimum application fee for the proposed number of rooms for the Hotel. IHG's approval of extension requests must be delivered in writing and such approval is not automatic. Licensee will be responsible for any and all expenses that may be incurred by IHG in the processing of an extension request. Extensions beyond 12 months may require resubmittal of final plans, per IHG request.

**C. OPENING OF THE HOTEL.**

1. The Hotel shall not be opened for business under the Brand System unless and until:

- (a) IHG has approved and accepted, in advance, in writing:
  - (i) the construction of the Hotel in accordance with the Final Plans, the Standards, Life Safety systems, the FF&E Specs, the Kimpton Review & Approval Policy and IHG's requirements; IHG may require Licensee to deliver an architect's certification that the Hotel has been completed in accordance with the Final Plans and a copy of the certificate of occupancy for the Hotel; and,
  - (ii) the installation of all items of equipment, furniture, signs, computer terminals and related supplies and other items for opening the Hotel as a Brand System Hotel, and all is in working order; and
  - (iii) the staffing and training of such staff necessary to operate the Hotel in accordance with IHG's requirements;
- (b) no accounts of Licensee are past due to IHG, its parents, subsidiaries or affiliated companies;
- (c) Licensee is in full compliance with all of the terms of this License;
- (d) Licensee has submitted to IHG all certificates of insurance (and copies of insurance policies if requested by IHG) as required under the License;

(e) Licensee has obtained all necessary governmental approvals, licenses and permits to possess, occupy and operate all areas of the Hotel, according to IHG's requirements, including specifically without limitation, a permanent certificate of occupancy; and

(f) Licensee has submitted to IHG a post-construction disability compliance certification signed by Licensee and an architect with professional experience applying the requirements of the ADA and the ADA Standards, in the form of Attachment "C" – ADA Certificate. Such certification must confirm the qualifications of the architect, the architect has inspected the as-built conditions of the Hotel and building site and that the Hotel and building site have been built in compliance with Title III of the ADA and any other applicable accessibility laws, ordinances or requirements;

(g) Licensee has either (i) delivered a certification that verifies the Hotel complies with IHG's fire protection and life safety Standards and the fire protection and life safety systems of the Hotel are operational, or (ii) retained IHG and paid IHG the then-current testing and inspection fee to test and inspect the fire protection and life safety systems of the Hotel, and such testing and inspection verifies the Hotel complies with IHG's fire protection and life safety Standards and the fire protection and life safety systems of the Hotel are operational. Any such certification in (i) above must be issued by a third party licensed fire protection engineer, engineer, or recognized expert consultant on fire and life safety requirements that has been approved by IHG. IHG may require that such certification be issued by a party that has not participated in the design of the fire protection and life safety systems of the Hotel;

(h) Licensee has notified IHG in writing that all requirements for construction, furnishing and opening the Hotel have been completed and the Hotel is ready to open as a Brand System Hotel;

(i) Licensee has employed a general manager and department managers and they have successfully completed IHG's training programs; and

(j) IHG has granted written approval to open and operate the Hotel as a Brand System Hotel and established the Opening Date. If IHG establishes an Opening Date but the letter agreement provides for additional construction, upgrading, renovation, or training (the "Additional Work"), Licensee will be authorized to use the Brand System and identify the Hotel as a Brand System Hotel only for such time as Licensee is diligently completing the Additional Work. Failure to timely complete the Additional Work is a default under this License. IHG may review any Additional Work, and Licensee must ensure that the Hotel complies with all requirements of IHG following such review. Licensee, its contractors and subcontractors must cooperate fully with any inspections conducted by IHG. If any site visits and inspections are necessary to ensure the Hotel complies with the Additional Work requirements, IHG may charge its then-current fee for the additional time spent inspecting the Hotel plus travel costs. If IHG determines an additional test and inspection of the fire protection systems or life safety components of the Hotel is necessary, IHG may charge Licensee its then-current fee for such site visits and inspections.

2. Notwithstanding anything else herein to the contrary, IHG may, in its sole judgment, authorize Licensee to open and operate the Hotel as a Brand System Hotel, even though Licensee has not fully complied with the terms of this License, provided that Licensee agrees to fulfill all remaining terms of this License on or before the dates established by IHG as a condition to allowing opening of the Hotel when less than all of the required work has been completed.
3. Licensee acknowledges and agrees that: (a) IHG's review of Preliminary Plans, Final Plans, FF&E Specs, Life Safety systems or other materials, documents or items submitted to IHG for review and approval pursuant to this License (collectively "Licensee's Plans") is exclusively for determination of compliance with the Standards, the requirements of the System and the terms of this License and not for compliance with all applicable law or adequacy or suitability for the purpose intended, (b) no approval of Licensee's Plans by IHG shall constitute, be deemed or

construed in any way as, IHG's consent, approval, acknowledgment or recognition that Licensee's Plans comply with applicable law or are adequate or suitable for the purpose intended, (c) Licensee shall have the sole responsibility for compliance with applicable law and for the adequacy and suitability for the purpose intended and (d) nothing in this License, and no review and approval (or opportunity for review) by IHG of Licensee's Plans shall be deemed to create a duty on the part of IHG that could give rise to any cause of action by Licensee or any of its affiliated entities or persons, or any other person or entity against IHG or any of its parents, subsidiaries or affiliated entities nor their respective officers, directors or employees, based on any alleged deficiency in the adequacy, suitability or legality of Licensee's Plans.

4. IHG may provide an opening team to assist in the opening of the Hotel as a Brand System Hotel and to perform cultural training the Hotel employees in accordance with the Standards. The team members will remain at the Hotel for such time as IHG deems appropriate to open the Hotel as a Brand System Hotel. Licensee will pay IHG's costs associated with providing such assistance, including the Openings and Renovations Fee and travel costs.
5. Licensee will conduct an opening advertising and marketing campaign that complies with the Brand Standards.

**ATTACHMENT "C"**

**ACCESSIBILITY CERTIFICATION**



**Hotel Location Code:**

**Location #:** 93709

**Hotel Name** (as it appears in the IHG Website): Kimpton Napa - Oxbow

**Hotel Address:** 711 1st Street, Napa, California - 94559

**Licensee:** Pacific Hotel Oxbow, LLC

This certification is intended to comply with the accessibility standards and/or the Travelers with Disabilities Section of the relevant brand standards as well as the InterContinental Hotels Group Design & Construction standards, all of which require compliance with Title III of the Americans with Disabilities Act (ADA), including the 1991 and/or 2010 ADA Standards for Accessible Design (ADA Standards), and all other applicable accessibility requirements. These standards require as follows:

- a. For newly constructed hotels: (1) a pre-construction certification of the final plans for the building and building site submitted prior to the commencement of construction by an architect with professional experience applying the requirements of the ADA and the ADA Standards; and (2) a post-construction certification submitted after an inspection of as-built conditions signed by Licensee.
- b. For renovations required for relicensing, conversions, brand changes or changes of ownership: a post-renovation certification submitted after an inspection of as-built conditions signed by Licensee.
- c. For voluntary renovations: a post-renovation certification submitted after an inspection of as-built conditions signed by Licensee.

Please select the option for which this Certification is submitted:

- .. **Newly Constructed Hotel** (Must submit Certification Options A & B below)
- .. **Renovation Required for Relicensing, Conversion, Brand Change or Change of Ownership** (Must submit Certification Option B below)
- .. **Voluntary Renovation** (Must submit Certification Option B below)

Please select the Option(s) for which Licensee is submitting this Certification.

“ **Option A: Newly Constructed Hotel - Pre-Construction Certification**

The undersigned certifies that (1) he/she is an architect with professional experience applying the requirements of the ADA and the ADA Standards; and (2) the final plans for construction of this building and building site are in compliance with Title III of the ADA and any other applicable accessibility laws, ordinances or requirements, to the best of his/her knowledge, information, and belief.

Name of Architect: \_\_\_\_\_

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

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

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

“ **Option B: Licensee Post-Construction or Post-Renovation Certification**

The undersigned Licensee, to the best of his/her knowledge, information, and belief, certifies that this building and building site have been built, renovated or altered in compliance with Title III of the ADA and any other applicable accessibility laws, ordinances or requirements, including, but not limited to, any accessibility laws or requirements regarding the following:

- The appropriate number and distribution of accessible guest rooms
- Features in accessible guest rooms
- Parking and exterior accessible routes
- Public entrances and interior accessible routes
- Service counters
- Public and common restrooms
- Meeting rooms
- Food and beverage establishments
- Swimming pools, spas, and fitness centers

Name of Licensee Principal Correspondent: \_\_\_\_\_

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

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

**Electronic Signature Acknowledgement:**

This Certification may, at IHG's option, be executed via electronic signature. In such event, Licensee acknowledges that conducting this transaction using electronic means is optional and is not a condition to executing this License. By electronically signing this paragraph, Licensee agrees to conduct this transaction using electronic means, which includes the transmittal of electronic communications and the execution of the agreement using an electronic signature. Licensee further agrees that the parties' electronic signatures are valid and create a binding and enforceable agreement. If Licensee does not agree to conduct the transaction electronically and does not agree to execute the agreement using an electronic signature, Licensee must promptly notify IHG and IHG will provide Licensee with a non-electronic Certification.

Licensee Signature (or Initials): \_\_\_\_\_

*By receiving or accepting this Certification, IHG is not confirming that Licensee and/or Licensee's property are in compliance with all applicable federal, state, and local accessibility requirements. Per the relevant license agreement, Licensee is solely responsible for compliance with all applicable accessibility requirements, including the ADA and the 1991 and/or 2010 ADA Standards for Accessible Design.*



## **ATTACHMENT "D"**

### **MASTER TECHNOLOGY SERVICES SCHEDULE**

#### **1. Services.**

1.1 IHG or an Affiliate thereof has entered into agreements with certain external service providers not Affiliated with IHG (each, a "**Service Provider**") for the provision of Hardware, Software, and Services (each, an "**Enabling Agreement**").

1.2 IHG or an Affiliate thereof will facilitate Licensee's access to Service Providers' Hardware, Software, and Services, and Licensee will pay for, receive, and use such Hardware, Software, and Services in accordance with the terms set forth in the License, including this Attachment "D" (the "**Master Technology Schedule**"), the Enabling Agreements, and any applicable Participation Agreement or Order Form.

1.3 Capitalized terms used in this Master Technology Schedule shall have the meanings ascribed to them in the License unless otherwise defined in **Schedule 1 (Definitions)** attached hereto.

#### **2. Legal Structure.**

2.1 The provisions of this Master Technology Schedule will be deemed to incorporate (a) the attachments, exhibits and schedules attached hereto, and (b) all of the terms, covenants, and conditions contained in the License, as specified in the following sentence with such modifications as are necessary to make them applicable to this Master Technology Schedule as if fully set out herein. Such incorporated provisions include the provisions of the License regarding term; proprietary intellectual property rights; notices; indemnification; insurance; compliance with laws; and dispute resolution.

2.2 In the event of a conflict between:

2.2.1 a provision in this Master Technology Schedule and a provision in an Order Form, the provision in the Order Form shall prevail;

2.2.2 a provision in this Master Technology Schedule and a provision in the Participation Agreement, the provision in this Master Technology Schedule shall control.

2.3 The foregoing order of priority shall be applied only after construing the applicable provisions to avoid any such conflict and/or to minimize the extent of such conflict.

#### **3. Service Framework.**

3.1 **Core Services.** IHG or an Affiliate of IHG has entered into Enabling Agreements with Service Providers to provide certain Hardware, Software, and Services. IHG will make available to Licensee the Hardware, Software, and Services for the core technology solutions set forth in **Schedule 2 (Core Services)** attached hereto (the "**Core Services**"). These Core Services are provided by IHG, an Affiliate of IHG, or Service Providers and are required to operate the Hotel in the Brand System. IHG and/or its Service Provider may modify or cause to be modified the features and functionality of the Core Services in the ordinary course of technology development, and IHG will notify Licensee of any such material modification. In addition, IHG reserves the right to add or remove Core Services or to replace any of the Core Services.

3.2 **Additional Required Services.** IHG or an Affiliate of IHG has entered into Enabling Agreements with Service Providers approved by IHG to provide certain Hardware, Software, and Services that are mandatory components of Licensee's technology configuration required to operate the Hotel in the Brand System ("**Additional Required Services**"). IHG will make available to Licensee the Additional Required Services as set forth in **Schedule 3 (Additional Required Services)** attached hereto, pursuant to an Order Form and/or a Participation Agreement. Licensee is obligated to purchase each of the Additional Required

Services. IHG and/or its Service Provider may modify or cause to be modified the features and functionality of the Additional Required Services in the ordinary course of technology development, and IHG will notify Licensee of any such material modification. IHG reserves the right (i) to change the Service Provider for any Additional Required Service, and (ii) to add or remove Core Services or to replace any of the Additional Required Services.

3.3 Optional Services. From time to time, IHG or an Affiliate of IHG may enter into an Enabling Agreement with a Service Provider to provide optional Hardware, Software, and Services that are not included in the Core Services or the Additional Required Services ("**Optional Services**"). As determined by IHG, Licensee may receive the benefits of the negotiated terms, conditions, and pricing for the Optional Services obtained by IHG in the Enabling Agreements with Service Providers, and may obtain the Optional Services, by entering into an Order Form and/or a Participation Agreement.

3.4 Supplemental Terms. The Core Services, Additional Required Services, and any Optional Services are provided subject to and in accordance with the supplemental terms set forth in **Schedule 4 (Supplemental Terms)** attached hereto (the "**Supplemental Terms**"). IHG may unilaterally modify or add to any component of the Supplemental Terms upon ten (10) days written notice to Licensee. Licensee acknowledges that the Supplemental Terms are based in part upon the terms and conditions contained in the Enabling Agreements.

3.5 Curated Solutions. The Core Services, Additional Required Services, and such Optional Services as Licensee may contract to receive, as such services may be in effect from time to time, are together referred to as the "**Curated Solutions**".

3.6 New Technologies. From time to time by mutual agreement, IHG will enable Licensee's access to new or enhanced technologies for use at the Hotel under a test, evaluation, pilot, proof of concept, or other temporary use arrangement ("**Proof of Concept Projects**"). Licensee acknowledges that such Proof of Concept Projects will entail the deployment of new technologies still under development, that such technologies are expected to contain bugs, imperfectly functioning features, and other defects inherent in the early stage of Software development, and that tolerating such defects is the cost of adopting and testing new and unproven technologies. Licensee will provide feedback to IHG on such Proof of Concept Projects so that the technologies may be further developed, refined, and enhanced to better serve Licensee and the IHG Portfolio Brands. IHG may terminate any such Proof of Concept Projects upon reasonable notice to Licensee. IHG HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, FOR THE PROOF OF CONCEPT PROJECTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE. THE PROOF OF CONCEPT PROJECTS ARE PROVIDED "AS IS" AND "WHERE IS".

#### 4. Service Terms.

4.1 Right to Use. Licensee will have the non-exclusive right to access and use the Curated Solutions in accordance with and subject to this Master Technology Schedule, the Supplemental Terms, and the Participation Agreements or Order Forms (as applicable).

4.2 Restrictions on Use of Curated Solutions. Licensee will use the Curated Solutions solely for Licensee's internal business purposes at the Hotel and only as permitted by this Master Technology Schedule. Licensee will not:

- 4.2.1 transmit Curated Solutions to any third party or third party network, or permit any third party to access or use the Curated Solutions;
- 4.2.2 use the Curated Solutions, or any data derived from the Curated Solutions, in a service bureau, time-sharing, multiple CPU, or multiple user arrangement;
- 4.2.3 copy, reproduce, store, sell, assign, pledge, sublicense, convey, transfer, redistribute, transmit, grant other rights in, or permit any unauthorized use of the Curated Solutions;
- 4.2.4 prepare derivative works or incorporate the Curated Solutions, in whole or part, into any other system or work;

- 4.2.5 reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Curated Solutions, in whole or in part;
- 4.2.6 bypass or breach any security device or protection used by the Curated Solutions or access or use the Curated Solutions other than by an authorized user through the use of their own then valid access credentials;
- 4.2.7 input, upload, transmit, or otherwise provide to or through the Curated Solutions, any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code;
- 4.2.8 remove, delete, alter, or obscure any trademarks warranties or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Curated Solution, including any copy thereof;
- 4.2.9 access or use the Curated Solutions in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party, or that violates any applicable law; or
- 4.2.10 otherwise access or use the Curated Solutions beyond the scope of the authorization granted under this Master Technology Schedule, the Supplemental Terms, and the Participation Agreements or Order Forms (as applicable).

Each of the terms and conditions of this Section will apply to the Curated Solutions jointly as well as to each Curated Solution individually.

4.3 Minimum Configuration. IHG will provide a list of Hardware, Software, and network connectivity and configurations required for Licensee's use of the Curated Solutions (the "**Minimum Configuration**"). IHG may update the Minimum Configuration upon notice to Licensee via IHG's online portal, currently branded as "IHG Marketplace" (as such form or portal may be changed by IHG) from time to time as required by evolving technology and security needs. Licensee is solely responsible for ensuring its Hardware, Software, and network environment meet the requirements of the Minimum Configuration at Licensee's cost.

4.4 Noncompliance with Minimum Configuration. Licensee will be solely responsible for any installation and support of any Hardware and/or Software not listed as approved on the Minimum Configuration. All such Hardware and/or Software cannot be installed on the IHG's network and must be installed only on the Hotel's operations network. If IHG determines that such Hardware and/or Software is adversely affecting the performance of the IHG's infrastructure, IHG in its discretion may require such Hardware and/or Software to be removed or disconnected. IHG will have no liability related to lost or damaged data of any kind arising from Licensee's installation and use of such Hardware and/or Software or with respect to any removal or disconnection required by IHG.

## **5. Fees, Invoicing, and Payments.**

5.1 For Core Services. Each month, IHG or an Affiliate of IHG will invoice Licensee for the fees associated with the Core Services provided to Licensee in the preceding month in accordance with the License. Licensee will pay the Core Fees in accordance with the payment terms set forth in the License.

5.2 For Additional Required Services. The Service Provider will invoice Licensee for the fees associated with the Additional Required Services in accordance with the Participation Agreement, or if the Additional Required Service has been contracted through an Order Form, IHG or an Affiliate of IHG will invoice Licensee for the fees associated with such Additional Required Service in accordance with the Order Form. Licensee will timely pay the fees due to Service Providers and IHG (or its Affiliates) for the Additional Required Services in accordance with the payment terms set forth in the applicable Participation Agreement or the Order Form.

5.3 For Optional Services. The Service Provider, IHG, or an Affiliate of IHG (as applicable) will invoice Licensee for the fees associated with the Optional Services provided to Licensee in accordance with the Order Form or Participation Agreement. Licensee will timely pay the fees due to Service Providers and

IHG (or its Affiliates) for Optional Services as provided in the applicable Order Form or Participation Agreement.

5.4 Optional Fees and Fee Increases. Licensee acknowledges that the pricing for Curated Solutions is based on license, maintenance, and other fees and charges for the Curated Solutions, and that fees may change (including increase) based on factors, including: (a) the amount of use or number of users of the Curated Solutions; (b) changes to the fees charged by a Service Provider; and (c) restrictions or other limitations set forth in an Enabling Agreement. Notwithstanding anything to the contrary in this Master Technology Schedule, the fees paid to IHG or an Affiliate of IHG for Additional Required Services and Optional Services are subject to revision by IHG upon thirty (30) days' notice to Licensee.

5.5 Taxes. All Taxes resulting from the provision of the Curated Solutions under this Master Technology Schedule (except for taxes based solely on the net income of IHG and its Affiliates) shall be the responsibility of Licensee. If IHG is required to pay any such Taxes or penalties or interest relating thereto, IHG will provide an invoice for such amounts and Licensee will pay such amounts within thirty (30) days of the date of the invoice.

5.6 Withholding Taxes. If any of the Curated Solutions, or any component thereof, is subject to withholding Tax, Licensee will withhold and deduct from payments due to IHG hereunder as required under any local Tax jurisdiction and/or applicable double Tax treaty, and Licensee shall remit such withholding to the appropriate Tax authority and provide IHG with an appropriate Tax certificate/invoice evidencing payment within thirty (30) days of payment. IHG and Licensee shall reasonably cooperate to claim withholding benefits or exemptions available under any applicable double Tax treaty.

## **6. Confidential Information.**

6.1 Confidential Information. From time to time, IHG or one of its Affiliates may disclose or make available to Licensee, whether orally, electronically or in physical form, confidential or proprietary information of or in the possession of IHG or its Affiliate (including confidential or proprietary information of a third party that is in IHG's or its Affiliate's possession) in connection with the Curated Solutions or this Master Technology Schedule. The term "**Confidential Information**" shall include all information and data which at the time of disclosure either:

- 6.1.1. is marked as "Confidential" or "Proprietary";
- 6.1.2. is otherwise reasonably identifiable as the confidential or proprietary information of IHG or its Affiliate; or
- 6.1.3. should reasonably be understood to be confidential or proprietary information of IHG or its Affiliate given the nature of the information and the circumstances surrounding its disclosure.

Licensee shall not disclose any such Confidential Information to any third party without the prior written consent of IHG and shall only access and use the Confidential Information as required for the limited purpose of performing its obligations under this Master Technology Schedule; provided that Licensee may disclose Confidential Information to its employees, contractors and professional advisors who need to know such information in order to perform their obligations related to this Master Technology Schedule and who are contractually bound by confidentiality obligations that are at least as protective as those in this Master Technology Schedule. Licensee shall use commercially reasonable care and discretion to avoid unauthorized use, disclosure, publication, or dissemination of Confidential Information (which shall be no less than the standard of care used by Licensee to protect its Confidential Information of a similar nature). For Confidential Information that does not constitute a "trade secret" under applicable law, these confidentiality obligations will expire three (3) years after the termination or expiration of the License. For Confidential Information that constitutes a "trade secret" under applicable law, these confidentiality obligations will continue until such information ceases to constitute a "trade secret" under such applicable law. Licensee will be responsible for any breach of this Section by its Agents, Affiliates and any third party to whom it or they disclose Confidential Information in accordance with this Section ("**Recipients**"). Upon the request of IHG, Licensee shall deliver to IHG or destroy all copies of Confidential Information. Licensee agrees to certify in writing to IHG that it and each of its Affiliates, Agents, and Recipients have performed the foregoing.

6.2 **Exclusions.** Excluding Personal Data, which shall always be deemed to be Confidential Information, the term Confidential Information will not include any information that Licensee can establish by convincing written evidence:

6.2.1 (a) was independently and lawfully developed by Licensee without use of or reference to any Confidential Information belonging to or received from IHG or one of its Affiliates;

6.2.2. (b) was lawfully acquired by Licensee from a third party having the legal, unconditional right to furnish same to Licensee; or

6.2.3. (c) was at the time in question (whether at disclosure or thereafter) generally known by or available to the public (through no fault of Licensee).

6.3 **Required Disclosures.** These confidentiality obligations will not restrict any disclosure required by applicable law, provided that Licensee gives prompt notice to IHG of any such legal requirement and reasonably cooperates with IHG at IHG request and expense to resist such legal requirement or to obtain a protective order.

## **7. Security Practices.**

7.1 Licensee understands that IHG and its Affiliates will have access to certain reports and information relating to the Hotel and generated through the use of the Curated Solutions, including information relating to revenues, room occupancy, and availability, as well as Personal Data. Licensee and the Hotel shall, and Licensee shall cause its Agents to, comply with:

7.1.1 all applicable laws, including the Data Privacy Laws and contractual obligations, and any requirements of the credit card processing industry, including PCI DSS and any successor standard,

7.1.2. all Standards, and

7.1.3 all IHG policies, requirements, and requests concerning access to any Curated Solution, network connectivity, and transmission of data and reports to IHG and its Affiliates.

7.2 Licensee shall be responsible for ensuring adequate security and backup procedures to avoid unauthorized access to, use of, or inadvertent loss of data and shall, in its discretion, determine appropriate security, which shall be no less than the standard of care in the industry. Without limiting Licensee's obligations set forth in subparts 7.1.1, 7.1.2 and 7.1.3 above, Licensee will comply with any additional security and data protection practice requirements that IHG will provide to Licensee in writing, which may be updated from time to time (the "**Security Practices**"). IHG may, in its sole discretion, amend the Security Practices at any time without prior notice (each, a "**Security Practices Update**"). A Security Practices Update may include additional terms and conditions, including the additional obligations of Licensee. Licensee will comply with any Security Practices Update within thirty (30) days following the date of the Security Practices Update and will comply with any changes to applicable laws, contractual obligations, and industry requirements (including PCI DSS and any successor standard) within the time period provided by such law or industry requirement.

## **8. PRIVACY AND DATA PROTECTION.**

8.1 **Core Services and Optional Services.** Unless otherwise stated in the Supplemental Terms, Participation Agreement, or Order Form, the privacy and data protection terms set out in Paragraph 7 of the License will apply to the Core Services and the Optional Services.

8.2 **Additional Required Services.** Privacy and data protection terms for Additional Required Services are stated in the applicable Participation Agreement, Order Form, or Supplemental Terms.

## **9. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

9.1 **By Licensee.**

- 9.1.1 Access and Use of Curated Solutions. Licensee will access and use each Curated Solution only in accordance with the License, the Supplemental Terms, and if applicable, the Participation Agreement or Order Form.
- 9.1.2 Compliance with laws. Licensee will comply with (i) all laws applicable to Licensee and the Curated Solutions, and (ii) the policies, requirements, and procedures of IHG that are made available to Licensee from time to time.
- 9.1.3 Licensee Responsibilities. Licensee will, and will cause its Agents to:
- 9.1.3.a, test the Curated Solutions in Licensee's environment before use;
  - 9.1.3.b, ensure that Licensee's personnel are using the Curated Solutions correctly;
  - 9.1.3.c, enter information into the Curated Solutions accurately and completely;
  - 9.1.3.d, present information displayed by the Curated Solutions accurately; and
  - 9.1.3.e, report any actual or suspected Software errors or Service failures discovered in the course of using any Curated Solution to IHG and the applicable Service Provider.

9.2 By IHG.

Disclaimer. IHG is not the licensor or provider of any of the Curated Solutions made available to Licensee hereunder and offers no warranties on any Services. In agreeing to the Supplemental Terms or Participation Agreement (as applicable), Licensee is relying solely on the Service Provider's warranties, if any, expressly passed through to Licensee under such Supplemental Terms or Participation Agreement. IHG HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, FOR THE SERVICES, NETWORK CONNECTIVITY, AVAILABILITY, SOFTWARE, HARDWARE, OR SYSTEMS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR ANY PASS-THROUGH WARRANTY MADE BY A SERVICE PROVIDER OF SERVICES, ALL SERVICES, AND ALL SUPPORT MATERIALS AND OTHER DATA, SOFTWARE OR OTHER ITEMS MADE AVAILABLE BY A SERVICE PROVIDER OF SERVICES, ARE PROVIDED "AS IS" AND "WHERE IS".

**10. TERMINATION.**

10.1 Termination for Convenience. IHG may terminate and/or replace this Master Technology Schedule, in whole or part, upon ninety (90) days' prior written notice to Licensee, without any liability to Licensee.

10.2 Termination of a Participation Agreement. The termination of any Participation Agreement pursuant to its terms will not alone cause, or be interpreted as causing, termination of this Master Technology Schedule.

10.3 Other Remedies. If Licensee is in default pursuant to paragraphs 11.B. or 11.C. under the License or in default of any of its obligations to IHG with respect to any Curated Solution, IHG may, in addition to or in lieu of exercising its termination or other, legal, equitable, or contractual rights, limit, reduce, suspend, or terminate Licensee's use of or access to any or all of the Curated Solutions.

**11. DAMAGES.**

11.1 IN NO EVENT SHALL IHG BE LIABLE FOR THE FOLLOWING, REGARDLESS OF CAUSATION: INDIRECT, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING LOST BUSINESS, LOST PROFITS, INTEREST, PENALTIES OR ASSESSMENTS IMPOSED UNDER APPLICABLE LAW OR OTHERWISE, THIRD PARTY CLAIMS BY AFFILIATES, PARTNERS OR CUSTOMERS OF LICENSEE OR OTHERWISE, OR DAMAGES WITH RESPECT TO WHICH LICENSEE CONTRIBUTED

OR ACTED AS AN INTERVENING CAUSE, WHETHER FORESEEABLE OR NOT, EVEN IF IHG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 IHG shall not be liable for any loss, cost, expense (including attorney fees), liability, damage, or claim (including strict liability in tort) (a) related to or arising from the Curated Solutions; or (b) for the selection, quality, condition, merchantability, suitability, fitness, operation, installation, repair, adjustment, or performance of the Curated Solutions or the adequacy, quality, delay or suitability of the maintenance or support services provided by a third party pursuant to this Master Technology Schedule or for any interruption or loss of service or use of network connectivity or the Software. Such liability, if and to the extent it may exist, rests solely with the applicable Service Provider of the Curated Solution to IHG and the Hotel.

## **12. AUDITS.**

12.1 During the License Term and for a period of two years following any expiration or termination of the License, IHG or its designated representative may enter upon the premises of the Hotel during regular business hours upon no less than twenty-four (24) hours' notice to audit and review Licensee's (i) use of the Curated Solutions; (ii) verify compliance with the License and the Enabling Agreements; and (iii) ensure compliance with applicable laws and Security Practices. Licensee will cooperate with any such audit at Licensee's expense. Any fees or amounts determined to be due, or any remedial action to be undertaken, as a result of Licensee's audited use of the Curated Solutions or Security Practices not in compliance with this Master Technology Schedule shall be the sole responsibility of Licensee. Nothing in this Section shall be deemed to limit IHG's rights to perform monitoring of the Curated Solutions at any time.

## **13. MISCELLANEOUS PROVISIONS.**

13.1.1 Survival. Section 11 (Damages) and, to the extent necessary, Schedule 1 (Definitions) of this Master Technology Schedule shall survive the expiration or termination of the License.

13.1.2 Licensee Agents. Licensee will cause each of its Agents to comply with the terms and conditions of the License including, without limitation, this Master Technology Schedule. Licensee will be responsible for the acts and omissions of each of its Agents, including any failure by any such Agent to comply with the terms set forth herein.

13.1.3. Force Majeure. IHG is not liable for failing to fulfil any of its obligations under this Master Technology Schedule due to acts of God, acts of war, epidemic, failure of utility or communications infrastructure beyond that which would be avoided by reasonable use of back-up electricity supplies, or other causes beyond IHG's reasonable control.

\* \* \* \*

**Schedule 1 to Attachment "D"**  
**Definitions**

The following capitalized terms used in this Master Technology Schedule shall have the respective meanings specified below:

**"Agents"** means the employees, contractors, suppliers, subcontractors, and representatives of Licensee.

**"Hardware"** means computers, input and output devices, expansion cards, storage devices (including hard drives and installed and removable flash memory), portable computer and communications devices, other telecommunications devices, cables, wireless interfaces, and other computer peripherals.

**"Order Form"** means a binding contract created through an IHG-approved order form submitted to IHG or an order through IHG's online portal, currently branded as "IHG Marketplace", as such form or portal may be changed by IHG from time to time, for Services and/or Hardware to be governed by this Master Technology Schedule. The submitted order form or order placed through the portal, once accepted by IHG, forms the binding contract and becomes part of this Master Technology Schedule.

**"Participation Agreement"** means a joinder, subscription, or participation agreement executed between Licensee and a Service Provider to establish terms governing Hardware, Software, or Services provided by the Service Provider to Licensee in connection with an Enabling Agreement.

**"Services"** means any services enabled under this Master Technology Schedule, including the Core Services, Additional Required Services, and Optional Services.

**"Software"** means utilities, operating systems, scripts, applications, system updates, add-ons, or other materials that can be installed on or used in connection with Hardware, whether in binary machine code or human-readable source code form.

**"Tax"** means any federal, national, state, local, or non-U.S. income, gross receipts, franchise, sales, use, transfer, value-added, excise, customs, duties, property, withholding or any other tax, charge, or fee, including any interest, penalties, or other additions to tax, imposed by a governmental authority.



## **Schedule 2 to Attachment “D”**

### **Core Services**

**IHG Concerto™.** IHG Concerto is an IHG-proprietary, cloud-based computerized solution that provides key features needed to manage and operate a Hotel, including:

- Reservations system;
- Revenue management system;
- Content management system;
- Guest relations; and
- Hotel operations insights.

As part of the Core Services, IHG provides network connectivity, system integration, and system interfaces between the Hotel, IHG Concerto, and other services comprising the IHG/Hotel ecosystem.

**Support Services.** Support services include remote support and on-site maintenance for approved Hardware and Software specified in the Minimum Configuration and required as part of Licensee’s use of the Core Services and the Additional Required Services.

**Hotel Opening Consultation Services.** *(required only for Hotels new to an IHG Portfolio Brand).* Guidance and consulting on technology-related requirements for opening and operating an IHG Portfolio Brand Hotel, including use of property management system.

**Schedule 3 to Attachment “D”**  
**Additional Required Services**

**Property Management System.** The property management system (“PMS”) is a comprehensive Software application used to coordinate the Hotel operational functions, e.g., front office, sales and planning, accounting, and reporting. The PMS may be integrated or interface with the Core Services or other solutions, including reservations systems, revenue management systems, guest in-room entertainment, housekeeping optimization, and payment card authorization.

**NextGen Payments.** NextGen Payments (“NGP”) is a computerized payment card processing program. It contains a data security process designed to remove certain credit card information from IT systems administered by IHG or its Affiliates. Using PCI-certified payment terminals, credit card data is encrypted and converted to tokens before entering the PMS. Participation Agreements for tokenization services and for installation services are required. In addition, Licensee will be required to enter into a merchant processing application and agreement with the IHG-approved merchant service provider.

**Deployment, Installation, and Support.** A Service Provider will provide deployment, integration, and other support services for the Hotel PMS and NGP. A joinder or similar agreement is required in order to obtain these PMS/NGP Hardware, Software, and deployment services.

**FastConnect SD-WAN.** FastConnect SD-WAN is a service providing an approved virtual private networking and security platform for the Hotel’s LAN/network connectivity. FastConnect SD-WAN is the only approved network transport and security solution. A Participation Agreement is required.

**IHG Connect.** The IHG Connect program provides guest internet access and personalized guest internet experience, consisting of:

- IHG Connect Bandwidth – providing internet connectivity to the Hotel per the Standards; and
- IHG Connect WiFi – IHG-approved wifi solution, including required Hardware and Software infrastructure that enables the Hotel to take control of its guest wireless solutions;

IHG Connect is supported by IHG-certified technology service partners that provision internet, perform wifi integration, and provide ongoing support services. A Participation Agreement with both the internet service provider and the wifi systems integrator is required. Bandwidth is currently provided through an Order Form via IHG Marketplace.

**Employee Safety Devices.** This alert system enables employees to notify hotel management of an emergency with the push of a button. Employee Safety Devices must be procured and installed by one of several approved Service Providers and meet defined requirements. A Participation Agreement with Licensee’s selected Service Provider is required.

**Public Access Computers.** Public Access Computers (or Business Center Computers) are designated workstations with a multi-function printer, providing complementary internet access to Hotel guests. Public Access Computers must utilize IHG-approved protection Software and includes enrollment in a 24x7 support program offered by an approved Service Provider. A Participation Agreement with an approved Service Provider is required.

**In Room Entertainment and Media Solutions.** In Room Entertainment and Media Solutions is a digital guest experience platform that delivers guest services with advanced and connected technology to allow guests to access an interactive and personalized entertainment experience, through an in-room TV or mobile device, and access to a set of unique in-room guest services and brand content. In Room Entertainment and Media Solutions is supported by IHG-certified technology service partners that provision the platform and provide ongoing support services. Media/entertainment content is secured through Service Providers engaged by IHG or its Affiliate. A Participation Agreement with both the content Service Provider and the systems integrator is required.

**Schedule 4 to Attachment “D”**  
**Supplemental Terms**

This Schedule contains the following Attachments:

Attachment 4-1    IHG Concerto Supplemental Terms

Attachment 4-2    Support Services Supplemental Terms

Attachment 4-3    Hotel Opening Consultation Services Supplemental Terms

## **Attachment 4-1 to Schedule 4**

### **IHG Concerto Supplemental Terms**

1. **Implementation.** IHG will use commercially reasonable efforts to assist Licensee with the installation, implementation, and maintenance of IHG Concerto.
2. **Training.** IHG or a Service Provider will provide training services for Licensee's employees in the use of IHG Concerto at implementation and as new releases are available. Licensee shall cause the staff who will use IHG Concerto to participate in and comply with the training. Instructor-led training (on-site or remote) is conducted prior to operations of IHG Concerto. As new releases are available IHG will provide self-paced training to Hotel. Licensee's hotel staff is required to attend and to demonstrate proficiency with IHG Concerto. Licensee will provide adequate space for training during normal business hours.
3. **Denial of Access.** Licensee acknowledges and agrees that IHG may, at the sole discretion and election of IHG and without prior notice to Licensee, immediately disable, disconnect, or otherwise deny access to IHG's infrastructure with respect to (i) any Hardware or Software specified as prohibited in the Minimum Configuration, and (ii) any Hardware containing prohibited Software. In addition, IHG may immediately and without notice disconnect, disable, or otherwise prevent the use of Hardware and Software with IHG's infrastructure if IHG reasonably believes that a security incident related to such Hardware or Software, including an unauthorized disclosure of Guest Data, could occur, has occurred, or is occurring.
4. **Modifications to Licensee Environment.** Licensee will not operate its Hardware or Software, including making any modifications to its Hardware and Software, in any manner that may have a detrimental effect on Licensee's or IHG's operations. Such detrimental effects include rendering such Hardware or Software, or any IHG Hardware or Software, inoperable or unresponsive, as determined by IHG. In such cases, if Licensee requests support from IHG in trouble shooting or repairing these effects, Licensee will be solely responsible for all related service, repair, or replacement costs, including all costs of IHG or its Service Providers, which will be billed on a time-and-materials basis.
5. **Updates to the Minimum Configuration.** Within 90 days (or a shorter or longer period specified by IHG in writing (email sufficient)) following any update to the Minimum Configuration by IHG, Licensee will (i) purchase and install then-current approved Software and approved Hardware described in the Minimum Configuration, and (ii) decommission any Hardware and Software that is no longer approved, as applicable, in each case at Licensee's expense.
6. **WAN Hardware.** IHG may install or cause to be installed a wide area network (**WAN**) and WAN Hardware for Hotel's use in communicating with IHG's systems. IHG shall have the right to determine the optimal method of access based upon the Software and Hardware located at the Hotel and the telecommunications and other services available to Licensee. Licensee acknowledges that Licensee will not acquire any ownership interest in the Hardware related to or installed in connection with the WAN. Licensee hereby irrevocably authorizes IHG or its agents, or the agents of any WAN Hardware lessor or supplier, to enter upon the Hotel property for the purpose of installing, inspecting, maintaining, and removing the WAN Hardware. IHG requires that Licensee, at Licensee's cost, purchase broadband Internet access at the Hotel in order to establish the primary WAN link. IHG's WAN link will be used as a backup if the primary WAN link fails.
7. **WAN Hardware Installation.** Licensee agrees that only WAN Hardware that meets IHG's specifications and configurations will be installed or connected in any way to the reservation system. IHG will have the right to cause the installations of the WAN Hardware at the Hotel by a date specified by IHG. Licensee will, at Licensee's expense and prior to the scheduled installation of the WAN Hardware, make available to IHG and its vendors a suitable, readily accessible location for installation of the WAN Hardware. Licensee will furnish the required electrical connections and any necessary cable installation and shall perform all work, including alterations, IHG deems necessary to prepare the site for installation and operation of the WAN Hardware. Once installed, Licensee shall not move, service, alter, or damage the WAN Hardware. Licensee will procure that all WAN at the Hotel will (i) be installed in the Hotel's information technology room in a cabinet customarily used for such purposes and otherwise satisfying IHG's reasonable requirements, (ii) be clearly labeled, and (iii) be connected to an uninterruptible power supply. Upon

expiration of, termination of, or event of default under the License, the WAN Hardware may be required to be de-installed from the Hotel by a Service Provider reasonably acceptable to IHG and at Licensee's sole expense.

**Attachment 4-2 to Schedule 4**  
**Support Services Supplemental Terms**

1. Description. Support for the Core Services will include the following:
  - Remote support service, includes technical support or break-fix services for approved Software, remote trouble-shooting, general assistance, and incident management. The service is provided 7 days a week, 24 hours/day via call center support calls, online, or other automated methods. Service problems identified or attributed to a Service Provider will be referred to the Service Provider.
  - Onsite maintenance service: break-fix services, including repair and exchange, for approved Hardware, with the following availability:
    - 7 days a week, 24 hours/day for critical Hardware, with a service level target of four hour response time on server equipment and network switch equipment.
    - Business days (Monday to Friday), with a service level target of next business day during business hours coverage, for workstations, UPS, monitors, and printers.
2. Conditions. IHG will provide support services for so long as the following conditions are satisfied:
  - Licensee maintains, or cause to be maintained, Hardware and Software in accordance with the Minimum Configuration and manufacturer specifications and under warranty;
  - Licensee maintains virus protection and other data protection standards required by IHG; and
  - Licensee performs routine maintenance on the Hardware/Software, including completing upgrades and enhancements required by IHG, verifying that no warning lights are displayed, and maintaining the Hardware in appropriate environmental conditions.
3. Preventive Maintenance. Licensee will regularly perform preventive maintenance on its Hardware, including the following:
  - Licensee will verify all workstations have adequate and up to date virus protection.
  - Licensee will ensure regular night backups are initiated and successful.
  - Licensee will maintain, or caused to be maintained, its Hardware and Software in accordance with current manufacturer requirements stated in the manufacturer's manual.
  - Licensee will perform a power down and reboot of the PMS server and workstations a minimum of once per week.
4. Support Services Related to Non-Approved Software and Hardware. IHG will have no obligation to provide, or cause to be provided, support services with regard to any non-approved Software or non-approved Hardware, or for any failure related to, directly or indirectly, non-approved Software or non-approved Hardware, and Licensee will be solely responsible for all costs related to the foregoing, including the cost of Support Services of approved Hardware or approved Software incurred because of non-approved Hardware or non-approved Software.

**Attachment 4-3 to Schedule 4**  
**Hotel Opening Consultation Services Supplemental Terms**

1. Completion of Technology Purchases. At least 120 days before the Hotel opening date, Licensee will acquire the Hardware, Software, and communications capabilities specified in the Minimum Configuration. In addition, at least 120 days before the Hotel opening date, Licensee will enter into the Participation Agreements for the Additional Required Services.

2. Site Preparation. Licensee will make available prior to the scheduled installation date, at its own expense, a site for installation and operation of the Hardware in accordance with specifications, which, without waiving or modifying Licensee's obligations hereunder, must be readily accessible to installation personnel. Licensee will furnish the required electrical connections, power, outlets, air conditioning, patch panel, and local area network cable installation required by each manufacturer's installation instructions or other documentation, and shall perform all work, including alterations, that IHG, in its sole discretion, deems necessary to prepare the site for installation and operation of the Hardware. In the event site preparation has not been completed to the reasonable satisfaction of IHG in a timely manner, Licensee will pay upon invoice from IHG the amount of \$2,600 (as such charge may be modified by IHG from time to time). Proper site preparation is essential to the performance of the Hardware and no Hardware will be installed unless and until site preparation has been completed to the reasonable satisfaction of IHG.

3. Installation. IHG will notify Licensee of the projected Hardware installation date and will schedule it to be installed at the Hotel. Any Software or Hardware installation delay caused by Licensee will not affect Licensee's obligation to pay any fees or amounts due hereunder. Licensee will be responsible for the time and expenses of its employees, if any, required to assist in the installation of the Software or Hardware and additional expenses incurred by IHG or Service Providers resulting from delays in installation caused by Licensee or its Agents. Licensee will pay the travel and related expenses of, and shall provide lodging and meals to, IHG's and/or the Service Provider's personnel (or a reasonable per diem meal allowance). Licensee will be responsible for the costs of any site preparation work that must be performed by IHG or Service Providers, as well as the costs associated with the installation of any Hardware or Software not part of the Minimum Configuration. Licensee will obtain, coordinate, and notify IHG of the services of any external parties whose products or services Licensee desires to connect to or interface with the reservation system or property management system, such as telephone switches, point-of-sale devices, and in-room movie or entertainment services. Delay by any communications company or any Hardware supplier in performing its obligations to IHG will, for the duration of the delay, excuse any delay by IHG with respect to these installation obligations.

4. Minimum Hardware Quantities. IHG reserves the right in its sole discretion to identify the number of each of the Hardware items required for operations at the Hotel.

5. WAN Installation Fee. Licensee will pay the fee for the wide area network (WAN) installation according to IHG's or a Service Provider's standard rates. Such fee will be payable upon the WAN installation.

6. PMS Training. IHG or a Service Provider will provide training services for Licensee's employees in the use of the PMS. Licensee shall cause the staff who will use the PMS to participate in and comply with the required training. Instructor-led training (on-site or remote) is conducted prior to operations of the PMS. The Hotel staff is required to attend and to demonstrate proficiency with the PMS, with class attendance of 80% or more and a passing score of 90% or greater on the final exam. Licensee will provide adequate space for training during normal business hours.

7. PMS Training Fees. Licensee will pay the fee for the PMS training according to IHG's or a Service Provider's standard rates, as further specified on an Order Form. Such fee will be payable in advance upon completion of such Order Form. Training fees do not include the cost of travel, lodging, transportation, meals, or any other expenses of Licensee's employees attending training, or IHG employee or agent expenses relating to on-site support. Licensee will also pay reasonable travel and related expenses, including lodging and meals for the training and implementation personnel, as well as such expenses for the employees of Licensee participating in any training or other instruction.

8. Customization. If Licensee requires any custom services for its particular location, IHG reserves the right to decline to perform such services or to charge a fee related to the additional services required.



## GUARANTY

As consideration of and as an inducement to Holiday Hospitality Franchising, LLC ('IHG') to execute the License dated June 27, 2025 (the 'Effective Date') between IHG and Pacific Hotel Oxbow, LLC ('Licensee') for the Kimpton® Hotels & Restaurants hotel located at 711 1st Street, Napa, California 94559 (including any amendments thereto whenever made, the 'License'), the undersigned (jointly, severally, individually and collectively, the 'Guarantor'), hereby unconditionally and irrevocably (i) warrants to IHG and its successors and assigns that all of Licensee's representations in the License and the application submitted by Licensee to obtain the License are true and (ii) guarantees that all of Licensee's obligations under the License will be punctually paid and performed. As used in this Guaranty, the singular includes the plural and vice versa, if the context so requires. Each Guarantor agrees to be jointly and severally liable for the obligations and liabilities arising under this Guaranty, meaning that each Guarantor is individually responsible for the entire amount, as well as jointly with any other Guarantors. Any capitalized terms not otherwise defined in this Guaranty shall have the same meaning as in the License.

Upon default by the Licensee and notice from IHG, Guarantor will immediately make each payment and perform each obligation required of Licensee under the License. Without affecting the obligations of Guarantor under this Guaranty, IHG may, without notice to any Guarantor, extend, modify or release any indebtedness or obligation of Licensee or any Guarantor, or settle, adjust or compromise any claims against Licensee or any Guarantor. Guarantor waives notice of amendment of the License and/or notice of demand for payment or performance by Licensee.

This Guaranty shall in all respects be a continuing and absolute guaranty, remaining in full force and effect until all of the obligations have been satisfied in full. No notice of discontinuance or revocation shall affect any of the obligations of Guarantor hereunder. Guarantor's obligations under this Guaranty are independent of Licensee's obligations, and a separate action may be brought against Guarantor to enforce this Guaranty whether or not Licensee is joined in such action. Upon the death of any individual Guarantor, the estate of such Guarantor will be bound by this Guaranty but only for defaults and obligations hereunder existing at the time of death, and the obligations of any other Guarantors will continue in full force and effect.

The Guaranty constitutes a guaranty of payment and performance and not of collection, and each Guarantor specifically waives any obligation of IHG to proceed against Licensee or any money or property held by Licensee or by any other person or entity as collateral security, by way of set off or otherwise. Each Guarantor further agrees that (i) this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment of any of the guaranteed obligations is rescinded or must otherwise be restored or returned by IHG upon the insolvency, bankruptcy or reorganization of Licensee or any of the undersigned, all as though such payment had not been made and (ii) the guaranteed obligations shall not be reduced, limited, terminated, discharged or otherwise affected by any such insolvency, bankruptcy, reorganization or similar proceedings affecting Licensee or its assets or the release or discharge of Licensee from any of its obligations under the License.

Each Guarantor hereby covenants, represents and warrants to IHG as follows: (a) Guarantor has had the opportunity to review, with the benefit of its legal counsel, each of the terms and conditions of this Guaranty and the License and waives any objection it may have to its failure to review such documents; (b) Guarantor shall at all times be informed on all such matters covered under this Guaranty; (c) Guarantor has legal capacity to execute and deliver this Guaranty and such execution has been duly authorized by all necessary action; (d) each obligation under this Guaranty is legal, valid, binding and enforceable against Guarantor in accordance with all of its terms and conditions, subject to general principles of equity and the effect of bankruptcy and other laws affecting the rights of creditors generally; (e) Guarantor is not a Prohibited Person; (f) this Guaranty does not contain any untrue statement of fact or omit to state any fact material to this Guaranty and (g) the financial statements provided by Guarantor are true and correct in all material respects, have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial condition of Guarantor as of such date.

This Guaranty shall become valid as of the Effective Date. It shall be deemed made and entered into in the State of Georgia, and the undersigned agree that this Guaranty and the obligations provided for hereunder shall be governed and construed in all respects by the internal laws and decisions (except any conflicts of law provisions) of the State of Georgia, including all matters of construction, validity, enforceability and performance.





To the extent permitted by law, each Guarantor (i) consents and submits, at IHG's election and without limiting IHG's rights to commence an action in any other jurisdiction, to the personal jurisdiction and venue of any courts (federal, superior or state) situated in the County of DeKalb, State of Georgia; (ii) waives any claim, defense or objection in any such proceeding based on lack of personal jurisdiction, improper venue, forum non conveniens or any similar basis; and (iii) expressly waives personal service of process and consents to service by certified mail, postage prepaid, directed to the last known address of the undersigned, which service shall be deemed completed within ten (10) days after the date of mailing thereof.

Guarantor agrees to pay IHG all expenses, including reasonable attorneys' fees and court costs, incurred by IHG, its Affiliates, and their successors and assigns, to remedy any defaults of or enforce any rights under this Guaranty or the License, effect termination of this Guaranty or the License, or collect any amounts due under this Guaranty or the License.

(signatures begin on following page)


### **Electronic Signature Acknowledgement:**

This Guaranty may, at IHG's option, be executed via electronic signature. In such event, Guarantor acknowledges that conducting this transaction using electronic means is optional and is not a condition to executing this Guaranty. By electronically signing this paragraph, Guarantor agrees to conduct this transaction using electronic means, which includes the transmittal of electronic communications and the execution of the agreement using an electronic signature. Guarantor further agrees that the parties' electronic signatures are valid and create a binding and enforceable agreement. If Guarantor does not agree to conduct the transaction electronically and does not agree to execute the agreement using an electronic signature, Guarantor must promptly notify IHG and IHG will provide Guarantor with a non-electronic Guaranty.


Signature (or Initials):  *AW*  *MA*  *DW*  *AM*

**IN WITNESS WHEREOF**, each of the undersigned has signed this Guaranty under Seal, as of  
6/27/2025\_\_\_\_\_.


Guarantors:

By:  *Andrew G. Wood*  
Andrew G. Wood  
706 Malabar Drive  
Corona Del Mar, CA 92625


Email: [awood@stratusdev.com](mailto:awood@stratusdev.com)

By:  *Monica A. Wood*  
Monica A. Wood  
706 Malabar Drive  
Corona Del Mar, CA 92625

Email: [monjohnson@gmail.com](mailto:monjohnson@gmail.com)

By:  *David S. Wood*  
David S. Wood  
2535 Vista Drive  
Newport Beach, CA 92663

Email: [dwood@stratusdev.com](mailto:dwood@stratusdev.com)

By:  *Allison K. Wood*  
Allison K. Wood  
2535 Vista Drive  
Newport Beach, CA 92663

Email: [allison@davidswood.com](mailto:allison@davidswood.com)

**Amendment To  
IHG Franchising, LLC  
Kimpton Hotels & Restaurants License Agreement Pursuant To  
The California Department of Financial Protection and Business Oversight**


Notwithstanding anything to the contrary set forth in the above License Agreement ("License"), the following provisions shall supersede and apply to each License for a Kimpton Hotels & Restaurant issued in the State of California:

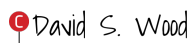
1. In accordance with the provisions under the U.S. Bankruptcy Code (11 U.S.C.A. Sec. 101 et seq.), paragraphs 11.C(1)(b) and (d) of the License shall be amended to include the following language: "Enforceability of this provision is a matter governed by the US Bankruptcy Code and enforceability or nonenforceability is subject to that law and rulings of a court of competent jurisdiction."
2. California Business and Professions Code Sections 20000 through 20043 provide rights to the Licensee concerning termination or non-renewal of a License. If the License contains a provision that is inconsistent with the law, the law will control.
3. The License contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable,
4. The License and Guaranty require application of the laws of Georgia. In accordance with 5050.23 Sec. 310.114.1(c)(5)(B)(v), this provision may not be enforceable under California law.
5. With respect to franchises sold in California, a franchisor is prohibited from modifying a franchise agreement, or requiring a general release, in exchange for any assistance related to a declared state or federal emergency.
6. This Amendment may be executed in counterparts, which together shall constitute one and the same instrument. Signatures via Conga Sign, DocuSign, .PDF file, facsimile, or other electronic format have the same force and effect as originals.

Date: June 27, 2025

**Licensee:**

**PACIFIC HOTEL OXBOW, LLC**

By:   
Andrew G. Wood  
Manager

By:   
David S. Wood  
Manager

(Signatures continue on following page)

**California Amendment**

**IHG:**

**IHG FRANCHISING, LLC**

By: Six Continents Hotels, Inc., its managing member

By:   
\_\_\_\_\_  
Jenny Tidwell  
Vice President  
Franchise Licensing and Compliance

**California Amendment**