

**MANAGEMENT AGREEMENT**  
**for**  
**THE PENN SQUARE HOTEL AND CONVENTION CENTER, A CONDOMINIUM**  
**between**  
**THE PENN SQUARE CONDOMINIUM ASSOCIATION**  
**Association**  
**and**  
**INTERSTATE HOTELS COMPANY**  
**Manager**

**As of June 19, 2009**

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## MANAGEMENT AGREEMENT

(The Penn Square Hotel and Convention Center, a Condominium)

This Management Agreement (this "MA") is made as of the 19<sup>th</sup> day of June 2009, between **THE PENN SQUARE CONDOMINIUM ASSOCIATION**, an unincorporated Pennsylvania association, as the Association, and **INTERSTATE HOTELS COMPANY**, a Delaware corporation, as Manager.

### WITNESSETH:

WHEREAS, the Association was created pursuant to that certain Declaration of Condominium of The Penn Square Hotel and Convention Center, a Condominium, dated March 28, 2007 (the "Declaration"), by Lancaster County Convention Center Authority, a body politic and corporate existing under the laws of the Commonwealth of Pennsylvania (the "CC Authority") and Redevelopment Authority of the City of Lancaster, a body politic and corporate existing under the laws of the Commonwealth of Pennsylvania (the "Redevelopment Authority") (collectively, the "Declarant").

WHEREAS, the Declarant is the owner of certain land located in the City of Lancaster, Pennsylvania (the "Land") described in Exhibit A attached hereto, upon which Declarant created a condominium, known as the Penn Square Hotel and Convention Center, a Condominium (the "Condominium");

WHEREAS, the Association is the Unit Owners' Association of the Condominium, as defined in the Declaration and the Association has adopted Bylaws which may be amended from time to time pursuant to the terms and conditions of the Declaration and the Bylaws;

WHEREAS, Manager is experienced in the management and operation of hotels and convention facilities, directly or through affiliated entities;

WHEREAS, the Redevelopment Authority has leased the Hotel Unit (as defined in the Declaration) to Penn Square Partners (the "Hotel Lessee") and has designated Hotel Lessee as its representative with all authority to act on behalf of the Redevelopment Authority;

WHEREAS, Manager and Hotel Lessee have entered into a Management Agreement, dated January 5, 2001 (as has been and may be amended from time to time, the "Hotel Management Agreement"), pursuant to which Manager will manage and operate an approximately 294-room hotel as part of the Hotel Unit adjacent to the Convention Center (the "Hotel");

WHEREAS, Manager and CC Authority have entered into a Qualified Convention Center Management Agreement, dated January 23, 2002 (as has been and may be amended from time to time, the "Convention Center QMA"), pursuant to which Manager will manage and operate a Convention Center as part of the Convention Center Unit (as defined in the Declaration) adjacent to the Hotel (the "Convention Center");

WHEREAS, although the Hotel and the Convention Center will be operated as separate business enterprises (Manager operating the Convention Center on behalf of the CC Authority and Manager operating the Hotel on behalf of the Hotel Lessee), they have been constructed in a manner such that they are physically joined, with reciprocal easements between them, with rights granted and obligations imposed on the Common Areas in accordance with the Declaration and with certain shared systems, equipment and facilities, so that both facilities may be efficiently and effectively operated;

WHEREAS, the Declaration governs the creation of the Condominium and the management of the Common Elements (as defined therein);

WHEREAS, the Association desires to have the Common Elements managed and operated by Manager for the Association in accordance with the terms and conditions and subject to the limitations contained in this MA and the other documents set forth in the MA which govern the relationship between the CC Authority, the Hotel Lessee and the Redevelopment Authority.

NOW, THEREFORE, the Association and Manager, intending to be legally bound, covenant and agree as follows:

**ARTICLE 1**  
**DEFINITIONS, TERMS AND REFERENCES**

1.1 Definitions. In this Agreement and any exhibits, addenda or riders hereto, the following terms shall have the following meanings; any terms used herein but not defined shall have the meaning as set forth in the Declaration:

Accounting Period shall mean each of twelve (12) accounting periods of one (1) calendar month occurring each Fiscal Year.

Affiliate shall mean any parent, subsidiary, affiliated or related corporation or other entity of Manager or the Association, or any officer, director, employee or stockholder of Manager or the Association or of any said parent, subsidiary, affiliated or related corporation or other entity, except a stockholder owning less than ten percent (10%) of the issued and outstanding stock of Manager or the Association or of such parent, subsidiary, affiliated or related corporation or other entity.

Agency Account shall mean a special account or accounts, bearing the name of the Association, established by Manager in a bank or trust company selected by Manager and Approved by the Association.

Annual Operating Projection shall mean schedules containing the Annual Operating Projections for the Common Elements and certain other matters prepared and submitted by Manager to the Association pursuant to Section 5.1.

Approval or Approved shall mean prior written approval which, except as herein otherwise provided, shall not be unreasonably withheld or delayed.

Association shall mean the Penn Square Condominium Association.

Capital Expenditures shall mean expenditures for non-routine repairs, alterations, maintenance, and refurbishment to the Common Elements that are normally capitalized under generally accepted accounting principles, including by way of example but not limited to exterior and interior repainting, mechanical systems, elevators, floors and roofs.

Commencement Date shall mean June 19, 2009.

Common Assessments shall have the meaning as set forth in the Declaration.

Common Elements shall have the meaning as set forth in the Declaration.

Common Expenses shall have the meaning as set forth in the Declaration.

Convention Center means the planned meeting space complex that has been developed on the Land which shall include, without limitation, approximately 160,000 to 180,000 gross square feet of space, including a grand ballroom, a junior ballroom, exhibit space, meeting rooms, support pre-function and circulation areas and supporting back-of-house areas and related furniture, fixtures, operating supplies and equipment excluding any of the foregoing which are part of the Common Elements developed with the Hotel as an integrated facility.

Consumer Price Index or CPI shall mean the Consumer Price Index-All Urban Consumers (CPI-U)/All Items, Not Seasonably Adjusted, 1982-84=100, for the Northeast Region, as published by the United States Department of Labor Statistics, for the applicable comparison period. If the CPI shall cease to use 1982-84 as the base year, the CPI shall be converted in accordance with the conversion factor, if any, published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the term of this Agreement, such other governmental index or computation, if any, with which it is replaced shall be used. If no conversion factor is supplied by the United States Department of Labor, Bureau of Statistics, either for a new base year or a new index, the parties shall agree upon a conversion factor for the CPI to be used.

Event of Default shall mean any of the events described in Article 12.

FF&E shall mean furniture, furnishings, light fixtures, equipment, food service equipment and all other items of personal property customarily installed in or used in connection with the operation of the Common Elements.

Fiscal Year shall mean a calendar Fiscal Year starting on January 1 and ending on December 31 or portion thereof depending upon the Commencement Date (as defined above) and the date of termination (as determined in accordance with Article 4 hereof).

Group Services shall mean certain services best provided to the Association and Manager's Affiliates on a group rather than on an individual basis, the cost of which Group Services shall be without mark-up or profit and shall be allocated on a fair and equitable basis among the Association and Manager's Affiliates benefiting therefrom in the manner described in the Annual Operating Projection. The Group Services may include: (a) payroll processing

through ADP or a successor processor engaged by Manager, (b) MIS or IT support services; recruiting and relocation in accordance with Manager's Affiliates' Relocation Plan; training; and (c) such other services as Manager may propose in writing, and subject to, the Association's Approval Group Services shall be allocated in a manner consistent with the Hotel Management Agreement and the Convention Center QMA.

Hotel shall mean the full-service hotel, having approximately two hundred and ninety-four (294) rooms, that has been developed by Hotel Lessee with the Convention Center as an integrated facility.

Independent Auditor shall mean a reputable firm of independent certified public accountants having appropriate experience and Approved by the Association.

Inventories shall mean "inventories of merchandise" and "inventories of supplies" as defined in the Uniform System (as defined herein), such as food and beverage inventories, paper products, menus, expendable office and kitchen supplies, fuel, cleaning supplies, reserve stocks and similar items all necessary to the operation of the Common Elements.

Joint Development Agreement shall mean that certain agreement, dated November 9, 2005, as has been and shall be amended from time to time, entered into between the CC Authority and the Hotel Lessee pertaining to the joint development, construction and management of the Convention Center and the Hotel.

Land shall mean the tracts or parcels of land upon which the Common Elements will be located, as described in the Declaration attached hereto, together with all rights, privileges, members licenses and easements appurtenant to such tracts or parcels.

Leased Space and FF&E shall mean that certain portion of the Convention Center and the related furniture, fixtures and equipment that is leased by the CC Authority to the Hotel Lessee pursuant to that certain Amended and Restate Lease Agreement between the CC Authority and the Hotel Lessee dated March 2007.

MA shall mean this Management Agreement, as it may be amended, modified or supplemented from time to time.

Management Term shall mean the term of this MA as established under Section 4.1.

Manager shall mean Interstate Hotels Company, a Delaware corporation.

Operating Expenses shall mean those expenditures reasonably made or liabilities reasonably incurred by or on behalf of Manager in connection with the Common Elements and pursuant to the Declaration.

Operating Supplies shall mean all operating utensils, tools, uniforms and other similar items necessary to the operation of the Common Elements.

Operations Manual shall mean (i) that series of documents describing the services, rental rates, activities, policies, rules and regulations for use and operation of the Convention Center,

for the CC Authority in accordance with the Convention Center QMA, (ii) the policies adopted and set forth by the Hotel Lessee and the Manager as Hotel Manager, and (iii) the Marriott Quality Standard in effect from time to time as recognized by the Hotel Lessee and Manager as Hotel Manager and as set forth in the Hotel Management Agreement.

Quality Standards shall have the meaning ascribed to such term in Section 2.6.

Shared Employees shall mean those salaried or hourly employees of the Hotel or Convention Center providing services to the Common Elements on a permanent or temporary basis pursuant to the Declaration or as agreed to by the Association, CC Authority, Hotel Lessee and Manager.

Special Assessments shall have the meaning as set forth in the Declaration.

Substantial Part of the Common Elements means ten percent (10%) or more of the gross square footage of the Common Elements or any portion of the Common Elements or the land on which it is situated necessary for reasonable access to the Common Elements.

Uniform System shall mean the Uniform System of Accounts for the Lodging Industry (9th Revised Edition, 1996) as published by the American Hotel/Motel Association, as the same may hereafter be revised and as modified by the applicable provisions of this MA or as otherwise agreed to by the Association and Manager in order to reflect the operations of the Common Elements.

1.2 Terminology. All personal pronouns used in this MA, whether used in the masculine, feminine or neuter gender, shall include all genders; the singular shall include the plural, and the plural shall include the singular. The Table of Contents, and titles of Articles, Sections, Subsections and Paragraphs in this MA are for convenience only and neither limit nor amplify the provisions of this MA, and all references in this MA to Articles, Sections, Subsections, paragraphs, clauses, subclasses, exhibits, addenda or riders shall refer to the corresponding Article, Section, Subsection, paragraph, clause or subclause of, or exhibit, addendum or order attached to this MA, unless specific reference is made to the articles, sections or other subdivisions of, or exhibits, addenda or riders to, another document or instrument.

1.3 Exhibits, Addenda and Riders. All exhibits, addenda and riders attached hereto are by reference made a part hereof.

## **ARTICLE 2 ENGAGEMENT OF MANAGER**

2.1 Operation of Common Elements. The Association hereby authorizes and engages Manager as its exclusive agent to act as the operator and manager of the Common Elements during the Management Term, with exclusive responsibility and complete and full control and discretion in the operation, direction, management and supervision of the Common Elements, subject only to the limitations expressed herein, and Manager hereby accepts such engagement subject to the terms and conditions expressed in this MA. The authority of Manager shall include the use of the Common Elements for public purposes, and without limiting the generality of the foregoing, Manager is hereby authorized, and shall be obligated, to:



(a) Subject to the Association providing to Manager copies thereof, administer and cause compliance with the obligations of the Common Elements under the following agreements, all as shall have been and may be amended from time to time:

- (i) Declaration;
- (ii) Bylaws of the Association
- (iii) Hotel Facilities Lease for the Leased Space and FF&E;
- (iv) Joint Development Agreement;
- (v) the Convention Center QMA (solely to the extent such agreement affects or addresses the Common Elements);
- (vi) the Hotel Management Agreement (solely to the extent such agreement affects or addresses the Common Elements);
- (vii) Food and Beverage Agreement and Concession Agreement between CC Authority and Hotel Lessee
- (viii) Booking Policy Agreement and Room Block Agreement between CC Authority and Hotel Lessee; and
- (ix) any other agreement entered into between the CC Authority and Hotel Lessee, or by and among the Association, the CC Authority and the Hotel Lessee, or any of them and the Redevelopment Authority so long as a copy of such agreement is provided to Manager.

(b) Administer, assure compliance with, and direct the performance of all agreements pertaining to the use of the Common Elements, and services provided by and for the Common Elements, including the collection of all sums due from users and the general public for the rental and use of and admissions to the Common Elements.

(c) Subject to Section 2.5 hereof and the Approved Annual Operating Projection, arrange for utility, telephone, extermination, security, trash removal and other services for the operation of the Common Elements.

(d) Subject to Section 2.5 hereof and the Approved Annual Operating Projection, purchase all Inventories and all necessary additions to and replacements of Operating Supplies, FF&E and such other services and merchandise as are necessary for the proper operation of the Common Elements.

(e) Subject to the Approved Annual Operating Projection, hire such persons or organizations as Manager may deem necessary to provide advice with respect to Manager's operation of the Common Elements, including attorneys, accountants and other professionals and specialists; provided, however, the Association's Approval shall be required to engage attorneys, subject to the following exceptions: (i) such Approval shall not be required for attorneys engaged by insurers in accordance with applicable insurance policies and (ii) the Association hereby acknowledges that Manager currently engages the attorneys or law firms listed on Exhibit B attached hereto with respect to various operational matters (including, but not limited to, liquor licensing matters and employment matters) and that, so long as engagement of such attorneys and/or law firms is in accordance with the Approved Annual Operating Projection, the Association's Approval shall not be required (notwithstanding the foregoing, Manager acknowledges that the Association's approval shall be required to engage attorneys with respect to matters relating to the operation of the Association itself, as opposed to matters relating to the operation of the Common Elements);

(f) Subject to the Association providing sufficient funds therefor cause all needed repairs and maintenance to be made to the Common Elements and cause all such other things to be done in or about the Common Elements as shall be necessary to comply with all requirements of governmental authority, boards of fire underwriters and other bodies exercising similar functions.

(g) Subject to the Association providing sufficient funds therefor, and in conjunction with the liquor licenses for the Hotel and the Convention Center and the holder's thereof, use commercially reasonable efforts to maintain the liquor licenses necessary for the operation of the Common Elements.

(h) Coordinate with operations of the Hotel and Convention Center in order to take advantage of cost efficiencies.

## 2.2 Employees of the Common Elements.

- A. Manager shall have the sole right to select, appoint, train and supervise the personnel necessary for the proper operation, maintenance and security of the Common Elements, it being understood that the Manager shall not employ any personnel dedicated exclusively to the Common Elements without the Association's approval.
- B. Manager shall use reasonable efforts to recruit as many employees as possible that are full-time residents of the City of Lancaster or Lancaster County.

- C. All personnel utilized in connection with the Common Elements shall be employees of Manager or an Affiliate and the terms of their employment and all hiring and firing thereof shall be at the sole discretion of Manager.
- D. Manager acknowledges that the CC Authority and the Hotel Lessee have agreed in the Declaration that, in the event that the Convention Center and the Hotel require a single general manager, director of sales and marketing or person of similar position, then such person shall be subject to the Approval of both the Hotel Lessee and the CC Authority. Such joint Approval shall be as provided in the Hotel Management Agreement and the Declaration. Manager acknowledges that the person designated as the lead employee of Manager for the purposes of this Agreement shall be the single general manager of the Convention Center and Hotel to the there is such a single manager.
- E. Without the Approval of the Association, Manager shall not enter into any employment contract with employees who are not Shared Employees that provide for a guarantee of employment or a severance payment beyond three (3) months of compensation. The Association shall have five (5) business days from the time the contract requiring Approval is submitted to the Association to either approve or disapprove the contract. If the Association fails to respond within such time period, the contract shall be deemed Approved.
- F. In establishing compensation levels for employees, Manager agrees to perform wage and compensation surveys on at least an annual basis, which surveys shall include comparable local and regional convention and conference centers and comparable hotels of similar quality and size. Such surveys shall be made available to the Association upon request.

2.3 Operation at the Association's Expense. All expenses incurred by Manager in performing its duties hereunder shall be borne by the Association. Manager shall in no event be required to advance any of its own funds for the operation of the Common Elements, nor to incur any liability in connection therewith unless the Association shall have furnished Manager with funds necessary for the discharge thereof. If Manager shall at its sole option at any time advance any funds in payment of Operating Expenses or any other expenditure, which Manager shall have the right but not the obligation to do, the Association shall repay Manager promptly the amount thereof on demand. Any amounts thus advanced and expended by Manager shall be Operating Expenses, but the amounts paid by the Association in reimbursement to Manager shall not.

2.4 Quality Standard. Unless otherwise Approved by Manager and the Association, the Common Elements shall be maintained in accordance with the Quality Standard as defined in the Declaration and any quality standard set forth in any of the documents listed in Section 2.1 (a) hereof. The Association acknowledges that Manager's obligation to maintain such standard on behalf of the Association is subject to the Association providing sufficient funds therefor.

2.5 Contracts. In carrying out its responsibilities under this MA, Manager will, in the ordinary course of business, negotiate and enter into contracts, subcontracts and vendor agreements (in the name of Manager as agent for the Association) pertaining to the use and occupancy of the Common Elements, as well as relating to Common Elements' operations. Manager shall maintain a current list of all approved vendors providing services at the Common Elements for the Association's review.

2.5.1 All vendors of services to be performed at the Common Elements, whether subcontracted by Manager or contracted directly between a user and a vendor Approved by Manager (e.g., decorators, etc.) must conform to the requirements of this MA and any other requirements established from time to time by the Association and Manager.

2.5.2 Manager shall not, without the Association's Approval:

- (a) Enter into any service contract or vendor agreement which extends beyond the term of this MA, unless cancelable on thirty (30) days notice without penalty; or
- (b) Enter into any lease, license or concession agreement for any space within the Common Elements without the prior written approval of the Association; or
- (c) Purchase goods, supplies and services from itself or an Affiliate unless the prices and terms thereof are competitive with those obtainable from unrelated vendors or are the subject of competitive bidding; or
- (d) Enter into any contract that contemplates, entails or relates to any rebate, discount, bonus or other remuneration not accruing to the Association's account (in obtaining the Association's Approval, Manager agrees to disclose to the Association in writing such affiliations, interests and rebate or national vendor programs and comparative costs to the Association and quality factors).

2.5.3 Manager shall select vendors based upon the best combination of cost to the Association and quality of goods and services available to the Common Elements.

2.5.4 Manager shall require that all vendors carry insurance in the minimum amount set forth in the Operations Manual, the Declaration or any document specified in Section 2.1. (a), whichever limit provides greater coverage in that proper Certificates of insurance evidencing general liability, automobile, bodily injury, property damage, death and workers compensation coverage shall be furnished, with copies to the Association, and require that all policies be kept enforced during the term of the Agreement, by all vendors, concessionaires, subcontractors and service providers in the minimum amounts set forth in the Operations Manual, the Declaration or any document specified in Section 2.1. (a),

whichever limit provides greater coverage. All such policies shall name the Association, the Commonwealth of Pennsylvania, the Manager, the CC Authority, the Redevelopment Authority, the Hotel Lessee and Marriott International, Inc. (the "Hotel Franchisor") as additional insureds as their respective interests may appear.

2.5.5 Manager shall not enter into any contract related to construction within the Common Elements that exceeds Ten Thousand Dollars (\$10,000.00), nor shall Manager purchase any supplies and materials costing Ten Thousand Dollars (\$10,000.00) or more unless notice of such contract or purchase is published, at least ten (10) days before the award of the contract or purchase, in a newspaper of general circulation published in the county, provided that notice may be waived where Manager determines an emergency exists and supplies and materials must be immediately purchased by Manager. Manager shall accept the lowest bid or bids from a responsible bidder, kind, quality and material being equal, but Manager shall have the right to reject any or all bids or select a single item from a bid. These provisions as to bidding shall not apply to the purchase of unique supplies and materials or supplies and materials which cannot be obtained on the open market.

2.5.6. In addition to the requirements in Section 2.5.5 herein, Manager shall not enter into any contract related to construction within the Common Elements that exceeds Ten Thousand Dollars (\$10,000.00) unless the following two requirements are met:

(a) The contractor shall provide sufficient surety or sureties approved by Manager and in an amount fixed by Manager for the performance of the contract; and

(b) The contract shall provide that the person or corporation entering into the contract with the Condominium Association will pay for all materials furnished and services rendered for the performance of the contract and that a person or corporation furnishing materials or rendering services may maintain an action to recover for the same against the obligor in the undertaking as though the person or corporation was named therein provided the action is brought within one year after the time the cause of action accrued.

2.5.7 Joint Contract Services. The Association and Manager acknowledge that certain service contracts or vendor agreements may be entered into on a combined basis with those of the Hotel and Convention Center in order to consolidate purchasing, maximize utilization, and create efficiency of such operations in the Hotel, Convention Center and Common Elements. Such service contracts or vendor agreements which are entered into on a joint basis with the Convention Center Authority shall also be subject to Section 2.5.5 hereof.

2.5.8 Modification of Practices Hereunder. The practices set forth in Paragraph 2.5.5 and 2.5.6 are subject to change by consent of both unit owners and Manager. If there is a lack of consent between the Association and the Manager, the practices are subject to change by proceeding in accordance with the dispute resolution set forth herein. If there is a lack of consent between the Unit Owners or any Unit Owner desires to modify the provisions of Paragraph 2.5.5 or 2.5.6 and the Unit Owners cannot agree to the modifications, the dispute between the Unit Owners shall be resolved in accordance with the dispute resolution provisions set forth in the Declaration of Condominium and the By-Laws of the Condominium Association.

### **ARTICLE 3 COMPLIANCE WITH LAWS**

3.1 Compliance by Manager and the Association After Commencement Date. Manager shall make all reasonable efforts, at expense of the Association, to comply with all laws, rules, regulations, requirements, orders, notices, determinations and ordinances of any governing authority, including, without limitation, the state and local liquor authorities, the Board of Fire Underwriters and the requirements of any insurance companies covering any of the risks against which the Common Elements is insured ("Legal Requirements"). If the cost of compliance exceeds Two Thousand Five Hundred Dollars (\$2,500) in any instance, Manager shall promptly notify the Association, and the Association shall act in a manner consistent with prudent business judgment with respect to providing adequate funds to comply with applicable Legal Requirements subject to Section 3.2 hereof.

3.2 Association's Right to Contest or Postpone Compliance. With respect to a violation of any Legal Requirements, the Association shall have the right to contest the alleged violation in accordance with the terms of the Declaration and the Bylaws and postpone compliance pending the determination of such contest, if so permitted by law and not detrimental to the operation of the Common Elements, but in such event, the Association shall indemnify and hold harmless Manager from any loss, cost, damage or expense incurred by Manager, as a result thereof, not directly caused by Manager or Manager's Affiliates, and Manager shall indemnify and hold harmless the Association from any loss, cost, damage or expense in connection therewith directly caused by Manager or Manager's Affiliates.

3.3 Manager's Right to Terminate Agreement. Notwithstanding anything in this MA to the contrary, if within thirty (30) days of receiving Manager's written request and all information necessary for proper evaluation of the matter, the Association fails to approve plans for reasonable accommodation of changes, repairs, alterations, improvements, renewals or replacements to the Common Elements which Manager determines in its reasonable judgment as explained in the written materials submitted to the Association are necessary to (i) protect the Common Elements, the Association and/or Manager from innkeeper liability exposure; or (ii) ensure material compliance with any applicable Legal Requirements pertaining to life safety systems requirements; then Manager may, notwithstanding the provisions of Article 4, terminate this MA any time after such thirty (30) day period upon twenty (20) days' written notice, provided if the Association is exercising its right to contest as provided in Section 3.2 above,

Manager shall have no right to terminate as long as such contest postpones the need for compliance.

#### **ARTICLE 4 MANAGEMENT TERM; EXTENSION; TERMINATION**

4.1 Management Term. The Management Term shall commence on the Commencement Date and shall continue thereafter until the date on which the tenth (10th) annual anniversary of the Commencement Date occurs, subject to early termination as provided in Section 4.2 hereof (the "Initial Term"). Thereafter, this MA may be renewed if the parties agree to such renewal for one (1) renewal period of five (5) years (a "Renewal Term"), but shall not renew, unless Manager and the Association mutually agree in writing to renew. For the purposes of this MA, the "Management Term" of this MA shall mean the Initial Term and any applicable Renewal Term.

4.2 Termination. This MA may be terminated prior to the expiration of the then effective Management Term upon the occurrence of one or more of the following events:

(a) Upon any Event of Default, at the option of the non-defaulting party exercised by written notice to the defaulting party and following the expiration of all applicable cure periods.

(b) Upon at least thirty (30) days prior written notice to the other party, if (i) the Common Elements is damaged or destroyed by fire or another casualty and the Association is relieved of its obligation to repair, restore, replace or rebuild the Common Elements per the terms of Article VIII of the Declaration, (ii) all or a Substantial Part of the Common Elements is taken in a condemnation or eminent domain proceeding; or (iii) the Association advises Manager in writing prior to the Commencement Date that the Association has abandoned the development of the Common Elements.

(c) Upon at least thirty (30) days prior written notice if either party shall: apply for or consent to the appointment of a receiver, trustee or liquidator of it or of all or a substantial part of its assets; file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due; make a general assignment for the benefit of creditors; file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceedings; or if an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating it a bankrupt or insolvent or approving a petition seeking reorganization of it or appointing a receiver, trustee or liquidator of it or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.

(d) At the option of the Association, if the Hotel Management Agreement or Convention Center QMA is terminated by the Hotel Lessee or CC Authority, as applicable, for breach by Manager, exercised by at least thirty (30) days prior written notice to Manager.

(e) At the option of the Association in accordance with the terms of Article XII of the Declaration, if the CC Authority terminates the Convention Center QMA pursuant to Section 4.2(e) thereof.

(f) At the option of the Association in accordance with the terms of Article XII of the Declaration, if the CC Authority terminates the Convention Center QMA pursuant to Section 4.2(f) thereof.

(g) At the option of the Association in accordance with the terms of Article XII of the Declaration, if the CC Authority terminates the Convention Center QMA pursuant to Section 4.2(g) thereof.

(h) At the option of the Association in accordance with the terms of Article XII of the Declaration, if the CC Authority terminates the Convention Center QMA pursuant to Section 4.2(h) thereof.

4.3 Transition Procedures. Upon the expiration or termination of the Management Term, for whatever reason, the Association and Manager shall do the following (and the provisions of this Section 4.3 shall survive the expiration or termination of this MA until they have been fully performed):

4.3.1. Manager shall peacefully vacate and surrender the Common Elements to the Association, on the effective date of termination. Manager shall leave the premises in a clean and orderly condition.

4.3.2. Within fifteen (15) days after delivery of such information as may be required by the Association to confirm the accuracy and validity of amounts requested by Manager, the Association shall pay Manager all amounts, if any, owing under the applicable provisions of this MA (including, but not limited to, Article 8).

4.3.3. Manager shall turn over, assign and transfer to the Association without compensation:

- (a) All Common Elements assets. Such assets shall include (i) all cash in Manager's custody and control, whether segregated or commingled with the monies of Manager and/or other parties, which has been generated in connection with or arising from operations of the Common Elements or otherwise which belongs to the Common Elements and (ii) any contracts, leases or concession agreements then in Manager's, rather than the Association's name.



- (b) All coupons, instruments for the payment of money, certificates of deposit, accounts receivable or other contract rights or intangible personal property arising in connection with the operation of the Common Elements or otherwise which belongs to the Common Elements.
- (c) All equipment, supplies, keys, locks, safe combinations, computer passwords, telephone and fax numbers associated with the Common Elements, alarm access codes, and key cards.
- (d) All of the Association's books and records, including all electronic records, respecting the Common Elements and all contracts, leases, and other documents respecting the Common Elements and which are in the custody or control of Manager (and the Association or the successor manager shall assume all contracts made in accordance with this MA).
- (e) Where legally permissible all of Manager's right, title, and interest in and to all licenses and permits (excluding liquor), if any, used by Manager in the operation of the Common Elements. Manager recognizes that all licenses held for the operation of the Common Elements are held for the benefit of the Association and Manager has no ownership therein, except in order to fulfill its obligations hereunder.
- (f) Manager shall provide reasonable assistance to the Association in facilitating the orderly transfer of the Association's records and data. Manager shall cooperate with the Association to the extent possible in order to avoid disruption in the operation of the Common Elements in connection with the transition.
- (h) Manager shall not delete, alter, change, modify and/or optimize any electronic records or data relating to the operation of the Common Elements, whether contained in the computers located at the Common Elements or elsewhere, without prior notice to and the written consent of the Association, which consent may be withheld in the sole and absolute discretion of the Association.
- (i) Manager and the Association shall cooperate with each other to effect an orderly transition of management functions from Manager to the Association, any transferee of the Association or to any managing agent designated by the Association or any transferee of the Association.

4.3.4 If Manager or its Affiliate (the "Licensee") holds a liquor license for the Common Elements' and the successor manager is unable to secure a replacement license on or before the date of termination, then, to the extent legally permissible, the Licensee agrees to enter

into a written agreement, in form and substance approved by the Licensee and such successor manager, allowing the successor manager to temporarily operate under the Licensee's license for no more than ninety (90) days. Manager requires that such agreement shall contain, at a minimum, the following provisions:

- (a) The Licensee shall have the option to maintain one employee at the Common Elements to supervise the alcoholic beverage operations at the Common Elements and, if the Licensee does so elect, the successor Manager shall reimburse the Licensee for all costs of employing such employee (including wages and benefits);
- (b) The successor Manager shall provide to the Licensee customary indemnification against liability; and
- (c) The successor Manager shall maintain insurance with respect to alcoholic beverage operations at the Common Elements, Approved by the Licensee and naming the Licensee as and additional insured thereon.

## **ARTICLE 5 BUDGETARY, PLANNING AND REPORTING**

5.1 Annual Operating Projection. Manager shall submit to the Association prior to the Commencement Date an Annual Operating Projection for the first partial Fiscal Year. Thereafter, Manager shall submit to the Association an Annual Operating Projection for the succeeding Fiscal Year within the time periods specified in the Bylaws; provided that, in no event, shall Manager be required to submit an Annual Operating Projection prior to sixty (60) days prior to the end of each Fiscal Year. The Annual Operating Projection shall deal with Reserves (as defined in the Declaration) in accordance with the Declaration unless the Approved Annual Operating Projection requires a different reserve or methodology in which case the Approved Annual Operating Projection shall control. The Annual Operating Projection shall include: a detailed operating budget showing on a monthly basis estimated working capital account balances, Operating Expenses (including Common Expenses), operating expenses of the Association (based on information provided from the Association to Manager) and Common Assessments. Additionally, the Annual Operating Projection for the forthcoming Fiscal Year for the Common Elements shall include: a staffing plan; a cash flow forecast; a budget of expenditures for replacing FF&E; a detailed one (1) year and summary five (5) year capital budget for making capital improvements to the Common Elements; and the basis of allocation of the Group Services, all in reasonable detail and, where appropriate, with the basis for all assumptions expressly set forth, along with such other matters which may be reasonably required of Manager in order for the Association to comply with the Bylaws. The Association shall review the Annual Operating Projection and either Approve or notify Manager of any objections to the Annual Operating Projection in writing within thirty (30) days of its receipt thereof. The Association's Approval of the Annual Operating Projection shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Annual Operating Projection shall reflect the allocation of expenses as set forth in Section 4.1 of, and Exhibit F to, the Declaration.

5.2 Annual Operating Projection Disputes. If Manager and the Association are unable to agree upon an Annual Operating Projection or any details thereof, the final Annual Operating Projection shall be determined by arbitration in accordance with the provisions of Section 14.17 hereof, it being understood that only those details, line items or portions of the Annual Operating Projection which are in dispute shall be the subject of such arbitration. It is also understood that the Association may not dispute any expenses in the Annual Operating Projection which are determined in accordance with the terms of the Declaration or which have otherwise been agreed to by the Association, the CC Authority, Hotel Owner and Manager. Until such arbitration is completed and a decision has been issued by the arbiter overseeing such arbitration, the temporary Annual Operating Projection for all purposes under this MA shall be the Annual Operating Projection for the prior Fiscal Year, modified by increasing the Common Elements' expenses by: (i) the greater of three percent (3%) per annum or the percentage change in the CPI in effect as of the first day of the applicable Fiscal Year as compared to the CPI in effect on the first day of the prior Fiscal Year for which the Association Approved such line item in the Annual Operating Projection, plus (ii) the effects of changes in law or regulation plus (iii) to the extent such line item varies directly with a change in revenue, an amount equal to the previous year's expense ratio multiplied by the change in the corresponding revenue amount over the previous year. Once such arbitration has been completed and a ruling has been issued by said arbiter, the temporary Annual Operating Projection shall be fully cancelled and replaced with the originally-proposed Annual Operating Projection for the given Fiscal Year as modified by such arbitration. The Association and Manager agree that arbitration shall be the sole procedure for resolving any dispute regarding the Annual Operating Projection.

5.3 Deviations from Annual Operating Projection. Manager shall diligently pursue all feasible measures to enable the operation and maintenance of the Common Elements to adhere to the Annual Operating Projection. Notwithstanding anything herein to the contrary, Manager is not warranting or guaranteeing in any respect that the actual operating results of the Common Elements during the period covered by the Annual Operating Projection will not materially vary from the projections described in the Annual Operating Projection.

5.4 Books and Records. Manager shall keep full and adequate books of account and other records reflecting the results of operation of the Common Elements on an accrual basis, all substantially in accordance with the Uniform System. Such books of account and other records shall reflect separate balance sheets and income and expense statements for the Convention Center, Common Elements and the Hotel. The books of account and all other records relating to or reflecting the operation of the Common Elements shall be kept either at the Convention Center or at the Hotel, and shall be available to the Association and its representatives and its auditors or accountants, at all reasonable times for examination, audit, inspection and transcription. All of such books and records pertaining to the Common Elements at all times shall be the property of the Association and shall not be removed from the Convention Center or the Hotel by Manager without the Association's Approval.

The CC Authority and the Hotel Lessee have agreed with one another on a division of expenses with regard to the Common Areas and, therefore, assessments based on the nature and identity of the expenditure to be made by Association. The Manager shall keep separate records of the receipts, expenditures and cash on hand from and attributable to each of the Hotel Lessee and the CC Authority in order to accurately reflect the requirements of the

various documents which specify how expenses are to be divided between the Units.

5.5 Financial Statements. Manager shall deliver to the Association within twenty (20) days after the end of each Accounting Period a monthly profit and loss statement showing the results of the operation of the Common Elements for such Accounting Period and for the Fiscal Year to date (including a comparison of results for those periods for such Fiscal Year to such periods in the Annual Operating Projection and for the prior Fiscal Year). Such monthly profit and loss statement and the annual financial statement referred to below shall: (i) be taken from the books and records maintained by Manager for the Common Elements in the manner described herein above, (ii) follow the general form set forth in the Uniform System, allowing for deviations which are necessary in order to comply with this MA; (iii) separately state the amounts payable or expenses reimbursable to Manager or its Affiliates; (iv) identify the Common Expenses and other expenses shared between the Hotel and the Convention Center and the allocation thereof; (v) identify Common Assessments and Special Assessments made; (vi) contain a cash flow forecast for the next succeeding 90 days; (vii) include a balance sheet as of the close of such Accounting Period; and (viii) be accompanied by an executive summary. Notwithstanding the foregoing, the annual financial statements shall reflect the allocation of expenses as set forth in Section 4.1 of, and Exhibit F to, the Declaration.

Within ninety (90) days after the end of each Fiscal Year, Manager shall deliver to the Association an annual financial statement, audited and certified by the Independent Auditor (if such audit is requested by the Association prior to the end of such Fiscal Year), showing the results of operation of the Common Elements during such Fiscal Year, the Common Expenses, Operating Expenses, Common Assessments and Special Assessments, and any other information necessary to make the computations required hereby or which may be requested by the Association, all for such Fiscal Year. The cost and expense of such audited statements shall be borne exclusively by the Association.

## **ARTICLE 6 REVENUES AND EXPENSES; RESERVES**

6.1 Agency Account. All monies received by Manager in the operation of the Common Elements, including the Operating Funds (as defined in Section 6.2) furnished by the Association, shall be deposited in a special account or accounts, such as operating, credit card, payroll and box office accounts (collectively called the "Agency Account") in Manager's name, as agent of the Association (excluding any payroll account, which shall be in Manager's name only), in the bank or trust company recommended by Manager and Approved by the Association. Such monies shall not be mingled with Manager's other funds. Out of the Agency Account, Manager shall pay all Operating Expenses, operating expenses of the Association, and any fees or compensation of any kind due it pursuant to this MA in accordance with the provisions of this MA. In addition, if repairs to the Common Elements are of an emergency nature, Manager shall make such repairs with funds in the Agency Account. An emergency repair is defined herein as the repair of a condition, which if not performed immediately, (a) creates an imminent danger to persons or property and/or (b) an unsafe condition at the Common Elements threatening persons or property, or (c) with the prior Approval of the Association, that if left unrepaired would materially interfere with the operation of the Common Elements. Withdrawals from accounts established pursuant to this Section 6.1 shall be signed by representatives of the Manager only,

provided such representatives are bonded or otherwise insured, and Manager shall supply the Association with bonds or other insurance upon the Association's request unless said bond or other insurance shall have been placed by the Association and delivered directly by the bonding or insurance company to the Association.

6.2 Operating Funds. On or before the Commencement Date, the Association shall deposit cash in the Agency Account in an amount equal to three (3) months of the Operating Expenses in the Approved Annual Operating Projection for the first Fiscal Year. If at any time during the Management Term, the amount in the Agency Account ("Operating Funds") falls below one sixth (1/6) of the projected Operating Expenses set forth in the Approved Annual Operating Projection for the then current Fiscal Year (the "Minimum Balance"), the Association shall, within ten (10) days after Manager's written notice to the Association, deposit in the Agency Account additional funds in an amount equal to the difference between the Operating Funds then on hand and the Minimum Balance. Further, if at any time Manager reasonably foresees a need for funds in excess of the Minimum Balance, the Association shall, as soon as reasonably possible, but in any event no later than thirty (30) days after Manager's written notice to the Association, deposit in the Agency Account additional funds in an amount equal to the difference between the required amount and the Minimum Balance.

6.3 Intentionally Deleted.

6.4 FF&E and Capital Expenditure Reserves. The Association shall establish the Shared Equipment Reserve and the FF&E and Capital Expenditure Reserve as defined and required under Section 3.4(a) of the Declaration, in order to fund replacements of FF&E and Capital Expenditures.

## **ARTICLE 7 MANAGER'S FEES**

The Association and Manager agree that the management fee shall be the expense reimbursement provided for in the MA and there shall be no fee payable based on the revenues derived by the Condominium Association.

## **ARTICLE 8 INSURANCE**

8.1 Insurance Coverage. The Association, or Manager at the direction of the Association, shall provide and maintain, at the Association's cost and expense, insurance sufficient to furnish to the Association and Manager reasonable and adequate protection in the management and operation of the Common Elements. Such insurance shall provide coverage for comprehensive general liability, automobile, garage keepers liability, excess/umbrella liability, property insurance and boiler & machinery, all as required by Article VII of the Declaration and Section 2.1 (a) of the MA. All insurance shall be in the name of the Association, and Manager as the named insureds and the CC Authority, the Redevelopment Authority, the Hotel Lessee, lenders providing financing to the CC Authority, the Redevelopment Authority, the Hotel Lessee, and Hotel Franchisor as additional insureds and shall contain riders and endorsements adequately protecting the interests of Manager as it may appear including, without limitation, provisions for at least twenty (20) days' notice to Manager of cancellation or of any material

change therein. Prior to the Commencement Date and the commencement of each Fiscal Year thereafter, the party providing insurance shall furnish the other party with certificates evidencing the insurance coverages required pursuant to Article VII of the Declaration and with evidence of the payment of premiums therefor. The Association agrees that it will utilize Manager's insurance program to satisfy the requirements of this Section 8.1 unless the Association utilizes its own Affiliate's insurance program or can obtain comparable coverages at an equal price and on more advantageous terms. It shall be the Manager's obligation as the employer, at the Association's expense, to obtain Workers Compensation, Crime/Fidelity Bond, and Employment Practices coverages as required by Article VII of the Declaration. If the Association becomes the employer, this obligation shall become the responsibility of the Association, at its own expense.

8.2 Waiver of Subrogation. The Association shall have all policies of insurance provide that the insurance company will have no right of subrogation against either party hereto, their agents or employees and the CC Authority, the Redevelopment Authority and the Hotel Lessee.

8.3 Review of Insurance. All insurance policy limits provided pursuant to this Article 8 shall be reviewed by the parties every year following the Commencement Date, to determine the suitability of such insurance limits in view of exposures reasonably anticipated over the ensuing three (3) years. The Association and Manager hereby acknowledge that changing practices in this insurance industry and changes in Legal Requirements and custom may necessitate changes or additions to types or amounts of coverage during the term of this Agreement.

## **ARTICLE 9 TAXES AND UTILITIES**

9.1 Taxes. To the extent funds are available from Common Assessments and/or Special Assessments or otherwise from the Association, Manager shall pay on behalf of the Association and as an "Operating Expense," prior to delinquency, , all taxes and all betterment assessments, if any, levied against the Common Elements or any of its component parts. Manager shall promptly deliver to the Association all notices of assessments, valuations and similar documents to be filed by Manager or the Association or which are received from taxing authorities by Manager. Notwithstanding the foregoing obligations of Manager, Manager may, at the Association's sole expense, contest the validity or the amount of any such tax or assessment, provide that such contest does not materially jeopardize Manager's or the Association's rights under this MA. The Association agrees to cooperate with Manager and execute any documents or pleadings required for such purpose, but the Association shall reimburse Manager any such out-of-pocket costs incurred by Manager in so doing.

## **ARTICLE 10 EVENTS OF DEFAULT; REMEDIES**

The occurrence of any of the following events shall constitute an event of default ("Event of Default") hereunder on the part of the party with respect to whom such event occurs:

10.1 Manager Event of Default.

(a) Manager fails to pay any sum of money due to the Association within ten (10) days after receipt of written notice that the same is due, provided however that such written notice shall not be required more than twice in any twelve (12) month period after which the failure to pay any sum of money within ten (10) days after the same is due shall be an immediate Event of Default; or

(b) Manager or an Affiliate shall during the Management Term of this MA own, operate, license or otherwise engage in any sexually-oriented businesses or any unlawful business, and such activity shall continue for a period of thirty (30) days after written notice thereof by the Association to Manager, unless it is impossible for such non-compliance to be remedied or corrected within such time due to no fault of Manager, in which event Manager shall remedy or correct such non-compliance as soon as reasonably possible but in any event no later than ninety (90) days after such written notice; or

(c) Manager shall fail to keep, observe or perform any other material covenant, agreement, term or provision of this MA to be kept, observed or performed by Manager, and such default shall continue for a period of thirty (30) days after written notice thereof by the Association to Manager, unless it is impossible for such breach or non-compliance to be remedied or corrected within such time due to no fault of Manager, in which event Manager shall remedy or correct such breach or non-compliance as soon as reasonably possible but in any event no later than ninety (90) days after such written notice unless the cure or remedy for such breach or non-compliance requires construction, in which event Manager shall proceed with such construction as expeditiously as possible and shall have a reasonable period of time to complete such work.

#### 10.2 Association Event of Default.

(a) the Association fails to pay any sum of money due to Manager or Manager's Affiliate within ten (10) days after receipt of written notice that the same is due; or

(b) the Association fails to furnish required Operating Funds in accordance with the provisions of Article 6 hereof; or

(c) the Association fails to provide and maintain the insurance policies called for in Article 9 hereof; or

(d) the Association shall fail to keep, observe or perform any other material covenant, agreement, term or provision of this MA to be kept, performed or observed by the Association, and such default shall continue for a period of thirty (30) days after written notice thereof by Manager to the Association, unless it is impossible for such breach or non-

compliance to be remedied or corrected within such time due to no fault of the Association, in which event, the Association shall remedy or correct such breach or noncompliance as soon as reasonably possible but in any event no later than ninety (90) days after such written notice unless the cure or remedy for such breach or noncompliance required construction, in which event, the Association shall proceed with such construction as expeditiously as possible and shall have a reasonable period of time to complete such work.

10.3 Hotel Lessee's and CC Authority's Right to Cure.

(a) Manager hereby agrees that, so long as Manager is also managing the Hotel and Convention Center, in the event Manager gives notice to the Association of an Association Event of Default as described in Section 12.2 above, Manager shall simultaneously give notice to the Hotel Lessee and CC Authority, of such Association Event of Default and agrees that the cure of such Association Event of Default by the Hotel Lessee or CC Authority shall be deemed a cure by the Association; provided, however, that Hotel Lessee and CC Authority shall have an additional seven (7) business days to commence to cure such default.

(b) The Association hereby agrees that, so long as Manager is also managing the Hotel and Convention Center, in the event the Association gives notice to Manager of a Manager Event of Default as described in Section 12.1 above, the Association shall simultaneously give notice to the Hotel Lessee and CC Authority, of such Manager Event of Default and agrees that the cure of such Manager Event of Default by the Hotel Lessee or CC Authority shall be deemed a cure by Manager; provided, however, that Hotel Lessee and CC Authority shall have an additional seven (7) business days to commence to cure such default.

10.4 Remedies. Notwithstanding the other provisions of this Article 12, the party asserting an Event of Default hereunder may, without prejudicing its rights to terminate this MA pursuant to Section 4.2, seek arbitration in accordance with the provisions of Section 16.17 hereof; provided, that either party may pursue equitable remedies outside of arbitration if such party is seeking a form of equitable relief that is not available under the rules of the American Arbitration Association or the timeliness required for obtaining such relief would not be satisfied by submission to arbitration.

**ARTICLE 11**  
**TRANSFER RESTRICTIONS**

11.1 Assignment by Manager. Manager shall not assign, pledge, encumber or otherwise transfer this MA without the prior written consent of the Association, which consent the Association may withhold in its sole discretion; provided, however, that, subject to Section 4.2(e) of this MA, Manager shall have the right, without such consent, to assign its



interest in this MA to (i) any of its Affiliates, (ii) any successor by merger or consolidation with Manager, or (iii) any party succeeding to substantially all of the assets of the Manager so long as such assignee has as its principal business the management of hotels and/or conference centers which are comparable to the Hotel and the Convention Center. In the event of consent by the Association to an assignment of this MA by Manager, no further assignment shall be made without the express consent in writing of the Association, unless such assignment may otherwise be made without such consent pursuant to the terms of this MA. An assignment by Manager of its interest in this MA shall not relieve Manager from its obligations hereunder and any assignee must assume and agree to be bound by the provisions of this MA.

11.2 Assignment by the Association. The Association shall have the right to transfer its interest in this MA to any Mortgagee, to the CC Authority and/or the Redevelopment Authority, to any Affiliate of the Association or any City of Lancaster or Lancaster County governmental entity, which Affiliate or entity acquires ownership of the Common Elements and assumes all obligations of the Association under this MA, without the consent of Manager. Upon any such assignment by the Association, the Association shall be relieved of all liabilities and obligations under this MA accruing after the effective date of such assignment.

## **ARTICLE 12 INDEMNIFICATION AND LIMITATION OF LIABILITY**

12.1 Indemnification and Limitation of Liability. The Association shall hold harmless, indemnify and defend Manager and its Affiliates and their respective agents, employees, officers, directors and shareholders from and against all claims (administrative or judicial), damages, losses and expenses (including, but not limited to, reasonable attorneys' fees for pre-trial, trial and appellate proceedings, accounting fees, appraisal fees and consulting and expert witness fees) arising out of or resulting from Manager's operation and management of the Common Elements pursuant to this Agreement; provided, however, the foregoing indemnity shall not extend to (A) any liability, loss, damage, cost or expense arising from, relating to, or in connection with, the negligence, gross negligence, fraud, intentional or willful misconduct of the General Manager of the Hotel or the Director of Sales and Marketing of the Hotel (collectively, the "Senior Managers") Manager, Manager's Affiliates, and their officers, directors, employees, agents or assigns, (B) any liability, loss, damage, cost or expense arising from any acts beyond the scope of employment, on the part of the Senior Managers or Manager, Manager's Affiliates and their officers, directors, employees, agents or assigns, (C) any liability, loss, damage, cost or expense arising from a material breach or default by Manager of its obligations pursuant to this Agreement, (D) any material violation of Legal Requirements for which Manager is responsible under this Agreement or otherwise, including, those relating to the hiring and discharge of employees and the Senior Managers, (E) any liability, loss, damage, cost or expense arising from any sexual harassment claims or employee discrimination claims as to which the Senior Managers, Manager, Manager's Affiliates or their officers, directors, employees, agents or assigns are found liable by a court or jury pursuant to a final non-appealable order or judgment, or as to which the Manager, Manager's Affiliates or their officers, directors, employees, agents or assigns agree to settle after having failed to obtain the written authorization of the Association for such settlement unless such settlement is required by an insurer of such claim, and (F) any liability, loss, damage, cost or expense arising from any action of Manager, Manager's Affiliates, the Senior Managers, or the employees of the Manager and their officers, directors, employees,

agents or assigns which arise prior to the date of this Agreement or after the expiration or earlier termination of this Agreement. Any indemnification shall apply regardless of whether or not said claim, damage, loss or expense is covered by insurance as herein provided. This indemnification provisions shall survive the termination of this Agreement.

12.2 Manager's Indemnification. Manager shall hold harmless, indemnify and defend the Association and its Affiliates, and their respective agents, employees, officers, directors and shareholders, from and against all claims (administrative or judicial), damages, losses and expenses (including, but not limited to, reasonable attorneys' fees for pre-trial, trial and appellate proceedings, accounting fees, appraisal fees and consulting and expert witness fees) arising out of or resulting from (A) any liability, loss, damage, cost or expense arising from, relating to, or in connection with, the negligence, gross negligence, fraud, intentional or willful misconduct of the Senior Managers, Manager, Manager's Affiliates, and their officers, directors, employees, agents or assigns, (B) any liability, loss, damage, cost or expense arising from any acts beyond the scope of employment, on the part of the Senior Managers or Manager, Manager's Affiliates and their officers, directors, employees, agents or assigns, (C) any liability, loss, damage, cost or expense arising from a material breach or default by Manager of its obligations pursuant to this Agreement, (D) any material violation of Legal Requirements for which Manager is responsible under this Agreement or otherwise, including, those relating to the hiring and discharge of employees of the Manager and the Senior Managers, (E) any liability, loss, damage, cost or expense arising from any sexual harassment claims or employee discrimination claims as to which the Senior Managers, the Manager, Manager's Affiliates or their officers, directors, employees, agents or assigns are found liable by a court or jury pursuant to a final non-appealable order or judgment, or as to which the Senior Managers, Manager, Manager's Affiliates or their officers, directors, employees, agents or assigns agree to settle after having failed to obtain the written authorization of the Association for such settlement unless such settlement is required by an insurer of such claim, and (F) any liability, loss, damage, cost of expense arising from any action of Manager, Manager's Affiliates, the Senior Managers, or the employees of the Manager and their officers, directors, employees, agents or assigns which arise prior to the date of this Agreement or after the expiration or earlier termination of this Agreement. This indemnification provisions shall survive the termination of this Agreement.

12.3 Indemnification Procedure. Upon the occurrence of an event giving rise to indemnification, the party seeking indemnification shall notify the other party hereto and provide the other party hereto with copies of any documents reflecting the claim, damage, loss or expense. The party seeking indemnification is entitled to engage such attorneys and other persons to defend against the claim, damage, loss or expense, as it may choose. The party providing indemnification shall pay the reasonable charges and expenses of such attorneys and other persons on a current basis within twenty (20) days of submission of invoices or bills. If any claim, lawsuit or action (administrative or judicial) is maintained against Manager, the Association, the Condominium and/or the Common Elements due to allegations or actions arising prior to the Management Term, the Association shall bear full and complete responsibility for the defense of the Condominium, the Common Elements, the Association, and the Manager, specifically including all legal fees and necessary and attendant expenses for the vigorous defense and representation of the interests of the Manager (for pre-trial, trial and appellate proceedings), the Condominium, the Common Elements and the Association. The

Association shall support and pay for all legal fees and representations necessary to remove Manager from any claim, action (administrative or judicial), or lawsuit covered by this provision.

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES**

13.1 Representations and Warranties of the Association. In order to induce Manager to enter into this MA, the Association does hereby make the following representations and warranties:

(a) the execution of this MA is permitted by the Articles of Incorporation and By-Laws of the Association and this MA has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of the Association enforceable in accordance with the terms hereof;

(b) there is no claim, litigation, proceeding or governmental investigation pending, or as far as is known to the Association, threatened, against or relating to the Association, the properties or business of the Association or the transactions contemplated by this MA which does, or may reasonably be expected to, materially and adversely affect the ability of the Association to enter into this MA or to carry out its obligations hereunder, and there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Manager; and

(c) neither the consummation of the actions completed by this MA on the part of the Association to be performed, nor the fulfillment of the terms, conditions and provisions of this MA, conflicts with or will result in the breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement, indenture, instrument or undertaking to which the Association is a party or by which it is bound.

13.2 Representations and Warranties of Manager. In order to induce the Association to enter into this MA, Manager does hereby make the following representations and warranties:

(a) the execution of this MA is permitted by the Articles of Incorporation and By-Laws of Manager and this MA has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Manager enforceable in accordance with the terms hereof:

(b) there is no claim, litigation, proceedings or governmental investigation pending, or as far as is known to Manager, threatened, against or relating to Manager, the properties or business of Manager or the transactions contemplated by this MA which does, or may reasonably be expected to, materially and adversely affect the ability of

Manager to enter into this MA or to carry out its obligations hereunder, and there is no basis for any such claim, litigation, proceeding or governmental investigation, except as has been fully disclosed in writing to the Association;

(c) neither the consummation of the actions completed by this MA on the part of Manager to be performed, nor the fulfillment of the terms, conditions and provisions of this MA, conflicts with or will result in the breach of any of the terms, conditions of provisions of, or constitute a default under, any agreement, indenture, instrument or undertaking to which Manager is a party or by which it is bound; and

(d) Manager or its Affiliates, does not currently own, operate, license or otherwise engage in any sexually-oriented businesses or any unlawful business.

#### **ARTICLE 14 MISCELLANEOUS**

14.1 Further Assurances. The Association and Manager shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this MA fully and legally effective, binding and enforceable as between them and as against third parties.

14.2 Waiver. The waiver of any of the terms and conditions of this MA on any occasion or occasions shall not be deemed a waiver of such terms and conditions on any future occasions.

14.3 Successors and Assigns. This MA shall be binding upon and inure to the benefit of the Association, its successors and permitted assigns, and shall be binding upon and inure to the benefit of Manager, its successors and permitted assigns.

14.4 Governing Law. This MA shall be governed by the laws of the Commonwealth of Pennsylvania.

14.5 Amendments. This MA may not be modified, amended, surrendered or changed, except by a written instrument executed by the Association and Manager.

14.6 Estoppel Certificates. The Association and Manager agree, at any time and from time to time, as requested by the other party upon not less than ten (10) days prior written notice, to execute and deliver to the other a statement certifying that this MA is unmodified and in full force and effect (or if there have been modifications, that this MA is in full force and effect as modified and stating the modifications), certifying the dates to which required payments have been paid, and stating whether or not, to the best knowledge of the signer, the party is in default in performance of any of its obligations under this MA, and if so, specifying each such default of which the signer may have knowledge, if being intended that any such statement delivered pursuant hereto may be relied upon by others with whom the party requesting such certificate may be dealing.

14.7 Inspection Rights. The Association shall have the right examine the books and records of Manager pertaining to the Common Elements at all reasonable times during the Management Term upon reasonable notice to Manager, and the Association shall have access and the books and records pertaining thereto at all times during the Management Term, all to the extent consistent with applicable law and regulations and the rights of guests, tenants and concessionaires of the Common Elements.

14.8 Partial Invalidity. In the event that any one or more of the phrases, sentences, clauses or paragraphs contained in this MA shall be declared invalid by the final and unappealable order, decree or judgment or any court, this MA shall be construed as if such phrases, sentences, clauses or paragraphs had not been inserted, unless such construction would substantially destroy the benefit of the bargain of this MA to either of the parties hereto.

14.9 No Representation. In entering into this MA, Manager and the Association acknowledge that neither the Association nor Manager have made any representation to the other regarding projected earnings, the possibility of future success or any other similar matter respecting the Common Elements, and that Manager and the Association understand that no guarantee is made to the other as to any specific amount of income to be received by Manager or the Association or as to the future financial success of the Common Elements.

14.10 Relationship. The relationship of the Association and Manager shall be that of principal and agent. Neither this MA nor any agreements, documents or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making Manager a partner or joint venturer with the Association or as creating any similar relationship or entity, any the Association agrees that it will not make any contrary assertion, contention, claim or counterclaim in any action, suit or other legal proceeding involving Manager and the Association.

14.11 Entire Agreement. This MA constitutes the entire agreement between the parties relating to the subject matter hereof, superseding all prior agreements or undertakings, oral or written.

14.12 Force Majeure. In the event of a Force Majeure Event (as defined below), then Manager or the Association, as applicable, shall be deemed to be excused from performance of those obligations hereunder which such Force Majeure Event has adversely affected the ability of such party to perform and any termination rights associated therewith shall not be activated by the failure to perform.

A "Force Majeure Event" means any of the following which may have a Material Adverse Effect (as defined below) on the Common Elements or the market in which the Common Elements operates (i) an act of God, (ii) acts of war, (iii) acts of terrorism, (iv) civil disturbance, (v) labor disputes among Common Elements employees or providers of services, material or equipment, (vi) reasonably unforeseeable weather conditions, (vii) reasonably unforeseeable unavailability of materials, supplies or equipment and delays in transportation, (viii) governmental action (including revocation of any license or permit necessary for the development, construction and/or operation of the Common Elements not caused by the act or omission of the Association), or (ix) any other causes, other than downturns in the local or

national economy (unless such downturns results from any of the causes listed in items (i) through (ix)), that are beyond the control of either party.

"Material Adverse Effect" means any circumstance or event which individually or in the aggregate could have a material adverse effect on the Common Elements, or their use, occupancy or operation.

14.13 Interpretation. No provisions of this MA shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision.

14.14 Counterparts. This MA may be executed in any number of counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the parties hereto and all of which shall constitute one and the same agreement.

14.15 Notices. Any notice, consent, approval, or other communication which is provided for or required by this MA must be in writing and may be delivered in person to any party or may be sent by a facsimile transmission, telegram or telex, courier or registered or certified U.S. mail, with postage prepaid, return receipt requested. Any such notice or other written communications shall be deemed received by the party to whom it is sent (i) in the case of personal delivery, on the date of delivery to the party to whom such notice is addressed as evidenced by a written receipt signed on behalf of such party, (ii) in the case of facsimile transmission or telegram, two (2) business days after the date of transmission, (iii) in the case of courier delivery, the date receipt is acknowledge by the party to whom such notice is addressed as evidenced by a written receipt signed on behalf of such party, or (iv) in the case of registered or certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice or five (5) business days after the date of posting by the United States Post Office. For purposes of notice, the addresses of the parties hereto shall be as follows, which addresses may be changed at any time by written notice given in accordance with the provision:

To the Association:

The Penn Square Condominium Association  
c/o Lancaster County Convention Center Authority  
8 North Queen Street, Suite 1102  
Lancaster, PA 17603  
Attention: Kevin R. Molloy, Executive Director

and

The Penn Square Condominium Association  
c/o Penn Square General Corporation,  
General Partner of Penn Square Partners  
1853 William Penn Way  
P.O. Box 10008  
Lancaster, PA 17605-4488  
Attention: Mark C. Fitzgerald, Executive Vice President and COO  
Attention: General Counsel and Treasurer

with copies to:

Russell, Krafft and Gruber, LLP  
Hempfield Center, Suite 300  
930 Red Rose Court  
Lancaster, PA 17601  
Attention: Christina L. Hausner, Esquire

and

Ballard Spahr Andrews & Ingersoll, LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
Attention: Richard R. Goldberg, Esquire

To Manager:

Interstate Hotels Company  
4501 N. Fairfax Drive, Suite 500  
Arlington, VA 22203  
Attention: President  
Facsimile No.: (703) 574-0965

with copy to:

Interstate Hotels Company  
4501 N. Fairfax Drive, Suite 500  
Arlington, VA 22203  
Attention: General Counsel  
Facsimile No.: (703) 574-0965

Failure of, or delay in delivery of any copy of a notice or other written communication shall not impair the effectiveness of such notice or written communication shall not impair the effectiveness of such notice or written communication given to any party to this MA as specified herein. The parties agree that upon giving any notice or other written communication in accordance with the foregoing procedure they shall each then use their reasonable best efforts to advise the other party by telephone that a written communication has been sent under this MA; such telephonic advice shall not impair the effectiveness of any written communication otherwise given in accordance with this Section.

14.16 Meetings with the Association. Manager shall meet with representatives of the Association (or its designee), from time to time, so that Manager and the Association may discuss the status of operations and future plans, recommendations and projections. The meetings will be held at mutually convenient dates and locations, on at least a quarterly basis.

14.17 Arbitration. In the event a dispute should arise concerning the interpretation or application of any of the provisions of this MA, the parties agree the dispute shall be submitted to arbitration of the American Arbitration Association, except as modified by this Section 14.17; provided, that either party may pursue equitable remedies outside of arbitration if such party is seeking a form of equitable relief that is not available under the rules of the American Arbitration Association or the timeliness required for obtaining such relief would not be satisfied by submission to arbitration. The Arbitration Tribunal shall be formed of three (3) Arbitrators each of which shall have at least five (5) years' experience in convention center, conference center, sports arenas, stadium, or hotel operation, management or ownership, one (1) to be appointed by each party and the third (3rd) to be appointed by the American Arbitration Association. The arbitration shall take place in Lancaster, Pennsylvania and shall be conducted in the English language. The arbitration award shall be final and binding upon the parties hereto and subject to no appeal, and shall deal with the question of costs of arbitration and all matters related thereto. Such arbitration expenses shall not be an expense in determining Net Operating Profit. Judgment upon the award rendered may be entered into any court having jurisdiction, or applications may be made to such court for an order of enforcement. Notwithstanding the foregoing, the parties hereto acknowledge and agree that nothing in this Agreement confers any rights to impose the provisions of this Section 14.17 on disputes between or among the CC Authority, the Redevelopment Authority or the Hotel Lessee.

14.18 Exclusive Compensation. The payments to be made to Manager hereunder shall be in lieu of all other or further compensation or commissions of any nature whatsoever for the services described herein and this MA shall be considered as a special agreement between the parties hereto covering the appointment and compensation of Manager to the exclusion of any other method of compensation unless otherwise agreed to in writing.

[Signatures Appear on Following Page]



IN WITNESS WHEREOF, Manager and the Association, acting by and through their proper and duly authorized officers or representatives, have each duly executed this MA under seal the day and year first above written.

**ASSOCIATION:**

THE PENN SQUARE CONDOMINIUM ASSOCIATION, an unincorporated Pennsylvania association

By: [Signature]  
Name: Kevin F. Fry  
Title: Its President

**JOINDER:**

The Unit Owners and Hotel Lessee hereby join as third party beneficiaries with all the rights of the Association.

LANCASTER COUNTY CONVENTION CENTER AUTHORITY

By: [Signature]  
Name: Kevin F. Fry  
Title: Chairman

REDEVELOPMENT AUTHORITY OF THE CITY OF LANCASTER

By: [Signature]  
Name: Charles H. Simmons, Jr  
Title: Chairman <sup>vice</sup>

PENN SQUARE PARTNERS

By: Penn Square General Corporation,  
its General Partner

By: [Signature]  
Name: Mark C. Fitzgerald  
Title: Executive Vice President and Chief Operating Officer

**MANAGER:**

INTERSTATE HOTELS COMPANY

By: [Signature]  
Name: Erica H. Hageman  
Title: Senior Corporate Counsel

**EXHIBIT A**

**The Land**

As described in Exhibit A and Exhibit A-1 of the Declaration

LCCCA.com

**EXHIBIT B**

**Pre-Approved Attorneys**

Eckert Seamans Cherin & Mellott, LLC  
Holland & Knight LLP  
Littler Mendelson  
Seyfarth Shaw LLP  
Edward Taraskus, Esq.

LCCCA.com