

**WYNDHAM HOTEL  
FRANCHISE AGREEMENT**

THIS AGREEMENT is dated 3/31, 2016 by and between Wyndham Hotels and Resorts, LLC, a Delaware limited liability company ("Franchisor"), and JWM Ventures, LLC, a \_\_\_\_\_ ("Franchisee" or "you"). Certain terms used in this Agreement are defined in Attachment E.

Recitals.

1. Franchisor licenses the "Wyndham System" for the establishment and operation of upscale and luxury full-service and select service hotels under the trade name and service mark "Wyndham" and other designated Proprietary Marks.
2. Franchisee owns the hotel identified in Attachment A to this Agreement ("Hotel") and desires to obtain a license to use the Proprietary Marks and the System to develop or convert, complete, furnish, decorate, equip, staff and operate the Hotel as a Wyndham Hotel.
3. Franchisee understands and acknowledges the importance of establishing and operating the Hotel in conformity with the System in order to enhance public acceptance of, and demand for, all Wyndham Hotels.
4. Franchisor is relying upon information submitted by Franchisee about the Hotel, the business skill, financial capacity and character of Franchisee and its Principals, and upon the guaranty of Franchisee's obligations under this Agreement by its Controlling Principals, each of whom has executed a Guaranty in the form of Attachment C to this Agreement, to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties intend to be legally bound and agree as follows:

**1. GRANT OF FRANCHISE**

A. Grant. As of the Opening Date, Franchisor grants to Franchisee the nonexclusive right and license (the "Franchise"), and Franchisee undertakes the obligation, to maintain and operate the Hotel as a Wyndham Hotel in a manner compliant with this Agreement, only at the location specified in Attachment A ("Approved Location") and to use, solely for the operation of the Hotel at the Approved Location, the Proprietary Marks and System as modified by Franchisor during the Term. The Franchise is granted only for the number of guest rooms specified in Attachment A. Franchisor is relying on Franchisee's undertaking to operate the number of guest rooms so specified continuously during the Term to enter into this Agreement. Franchisee shall not change the number of guest rooms at the Hotel without the prior written consent of Franchisor.

B. Reserved Rights. Franchisee acknowledges that (i) the Franchise relates solely to the Approved Location; and (ii) unless otherwise set forth herein, this Agreement does not entitle Franchisee to any protected territory, territorial rights or exclusive area. Franchisee further acknowledges that the Wyndham Companies have and retain the right to own, develop and operate, and to license others to develop and operate, hotels and lodging facilities (including, without limitation, upscale, luxury, select service, resort and garden hotels and extended stay facilities), timeshare or vacation ownership resort properties, restaurants or other business operations of any type whatsoever, under the Wyndham name and mark or under other trade names, trademarks and service marks, at any location except the Approved Location, including locations adjacent, adjoining or proximate to the Approved Location, and that these business operations may compete directly with and adversely affect the operation of the Hotel. Franchisee agrees that the Wyndham Companies may exercise these rights from time to time without notice to Franchisee, and Franchisee covenants that it shall take no action, including any action in a court of law or equity, which may interfere with the exercise of such rights by any of the Wyndham Companies.

C. Obligations Commencing on Opening Date. Franchisee shall not open the Hotel for business as a Wyndham Hotel until the Opening Date, and except as expressly provided in Section 4 of the Conversion or Section

6 of the New Construction Addendum, Franchisee has no rights to operate the Hotel under the Franchise or to use the System or the Proprietary Marks until the Opening Date. If Franchisee fails to comply with its construction, renovation, decorating, furnishing and other pre-opening obligations specified in the Conversion or New Construction Addendum (as applicable), then Franchisor is not obligated to authorize the opening and operation of the Hotel as a Wyndham Hotel, and this Agreement may be terminated under and subject to Section 17B.

D. Integration Services. Franchisor will provide the following "Integration Services" to assist Franchisee in opening the Hotel. Franchisor will provide training through various on-line courses on subjects such as Quality Assurance, housekeeping, preventative maintenance, customer service, and the RFP process. A member of Franchisor's field team may also visit the Hotel to provide on-site training in various operational issues including, but not limited to, the System Standards, using the Chain's intranet site, and revenue management principles. Franchisor will arrange to have digital photographs taken of the Hotel in accordance with System Standards which will be suitable for posting on the Chain Website and third party travel websites and will be owned by Franchisor.

## 2. TERM

Except as otherwise provided in this Agreement, the term of this Agreement (the "Term") shall begin on the Effective Date and shall expire on the date set forth in Attachment A. NEITHER PARTY HAS ANY RENEWAL RIGHTS OR OPTIONS. However, if applicable law requires us to offer renewal rights, and you desire to renew this Agreement, then you will apply for a renewal franchise agreement at least six months, but not more than nine months, prior to the expiration date, and subject to such applicable law, you will have to meet our then-current requirements for applicants seeking a franchise, which may include you (i) executing our then-current form of franchise and other agreements, which franchise and other agreements may contain materially different terms and provisions (such as operating standards and fees) from those contained in this Agreement, (ii) executing a general release of us and our affiliates, in form and substance satisfactory to us, (iii) completing a property improvement plan, and (iv) paying a standard renewal fee; if then applicable.

## 3. FEES

### A. Initial Franchise Fee; Expansion Fee.

1. Franchisee shall pay to Franchisor the initial franchise fee, less the amount of the application fee paid by Franchisee (all as set forth in Attachment A), which shall be credited against the initial franchise fee. The initial franchise fee is in consideration for the administrative and other expenses incurred by Franchisor and is due and payable when Franchisee signs and delivers this Agreement. The initial franchise fee is non-refundable.

2. Franchisee shall not expand the number of guest rooms at the Hotel without Franchisor's prior written consent and payment of an expansion fee in an amount equal to Franchisor's then-current initial franchise fee per guest room for each additional guest room proposed to be added. Franchisee shall pay the expansion fee to Franchisor with its application for approval of the proposed expansion, which approval will be at the sole discretion of Franchisor. If Franchisor approves Franchisee's application for expansion, the expansion fee shall be non-refundable. If Franchisor disapproves Franchisee's application for expansion, Franchisor will refund the expansion fee, less Franchisor's application processing charge and out of pocket expenses incurred to evaluate the application.

B. Royalty. As a condition to Franchisee's continuing use of the Proprietary Marks and the System, Franchisee shall pay to Franchisor a continuing monthly royalty fee (the "Royalty") accruing from and after the Opening Date and continuing during the Term in an amount equal to five percent (5%) of the Gross Room Revenues of the Hotel.

C. Marketing and Global Sales Fees. Franchisee shall pay to Franchisor on a monthly basis an amount equal to three percent (3%) of the Gross Room Revenues of the Hotel (the "Marketing and Global Sales Fee") accruing from and after the Opening Date as a contribution to the Central Marketing Fund (defined in Section 9B), which shall be maintained and administered by Franchisor as provided in Section 9B hereof. Each Wyndham

Hotel owned or managed by Franchisor or its Affiliates shall make contributions to the Central Marketing Fund at generally the same rate required of franchisees. Franchisor may increase the Marketing and Global Sales Fee periodically to an amount consistent with the Central Marketing Fund allocation for all Wyndham Hotels, including hotels owned or managed by Franchisor or its Affiliates.

D. Reservation System Fees. Franchisee shall pay to Franchisor or its designee, accruing from and after the Opening Date, reservation system fees in an amount equal to the allocated reservation center cost per reservation generally charged to all Wyndham Hotels participating in the reservation system that are owned, franchised, licensed or operated by Franchisor. The current reservations system fees are set forth in Attachment B. Franchisor reserves the right to modify or change the reservation system fees and the basis for computing reservation system fees, provided the fees are computed on substantially the same basis for all Wyndham Hotels in the same tier as the Hotel.

E. Other Fees and Charges. Franchisee shall pay other fees and charges for "Mandated Central Services," for any "Optional Central Services" offered by Franchisor that Franchisee elects to receive and for other mandatory purposes. The current Mandated Central Services, Optional Central Services and all fees and charges are set forth in Attachment B. Franchisee acknowledges that the Mandated Central Services are an integral part of the System and are essential in order to maintain consistent quality and guest experience at Wyndham Hotels. Accordingly, Franchisor shall have the right from time to time as it deems advisable, upon 30 days' notice to Franchisee, to: (a) modify the services provided in respect of any Mandated Central Services as well as the Optional Central Services and (b) add new or discontinue existing Mandated Central Services or Optional Central Services. Franchisor shall have the right to change the fees and charges in Attachment B upon thirty (30) days' notice to Franchisee provided that they are computed on substantially the same basis for all Wyndham Hotels in the same tier as the Hotel.

F. Due Dates & Interest on Overdue Payments. All payments required in Sections 3B, 3C, and 3D shall be paid to Franchisor by the third (3<sup>rd</sup>) day of each month with respect to the Gross Room Revenues accrued for the preceding month, and shall be submitted to Franchisor together with any reports required under Section 13 of this Agreement. All fees set forth in Attachment B shall be paid by the dates specified therein. All other invoices forwarded by Franchisor or its Affiliates to Franchisee, shall be paid as provided in the invoice or, if the invoice does not specify a date for payment, within thirty (30) days after Franchisor issues the invoice. Any payment or report not actually received by Franchisor on or before the date due shall be deemed overdue. If any payment is overdue, Franchisee shall pay to Franchisor, in addition to the overdue amount and as a late charge, interest on such amount from the date it was due until paid, at one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less. The late charge imposition shall be in addition to any other remedies Franchisor may have. If Franchisor is ever deemed to have contracted for, charged, or received interest in an amount that exceeds the amount permitted under applicable law, then the excess amount shall be deemed to be, and shall be treated as, a payment of outstanding fees or other amounts due under this Agreement and, if no such amounts remain outstanding, any remaining excess shall be paid to Franchisee, as applicable. Franchisee will report and pay to Franchisor all fees and charges on-line via Franchisor's self-service Electronic Invoice Presentment and Payment tool ("WynPay") accessible through the System intranet. In the WynPay on-line environment, payments can be made either through the electronic check payment channel or the credit card payment channel. Franchisor reserve the right to change, from time to time, the technologies or other means for reporting and paying fees to Franchisor by amending the Manual.

G. Integration Services Fee. You will pay a non-refundable "Integration Services Fee" of \$7,900 for Wyndham Garden Hotel on or before the Opening Date.

#### 4. THE WYNDHAM ASSOCIATION

During the Term, Franchisor may, but is not obligated to, establish, or authorize the establishment of, an association ("Association") sanctioned by Franchisor to serve as an advisory council to Franchisor with respect to advertising, marketing, reservations or other appropriate matters relating to Wyndham Hotels. If an Association is established, then all franchisees of the System, including Franchisee, and Franchisor shall be members of the Association.

#### 5. MANAGEMENT, STAFFING AND TRAINING

A. Hotel Management. Franchisee will at all times retain and exercise management control over the Hotel. Any lease, management agreement or other arrangement for operating the Hotel or any part thereof (including, without limitation, food and beverage service facilities) shall be subject to Franchisor's prior written consent, which may be withheld in its sole discretion. Franchisor may by written notice to Franchisee require the retention of a competent hotel management company if Franchisee is not experienced in the operation of upscale hotels.

1. Franchisee shall apply to Franchisor for consent if Franchisee wishes to engage a management company to manage the Hotel. To be approved by Franchisor, a proposed management company must demonstrate to Franchisor, in its reasonable judgment, the capability to manage the Hotel under this Agreement and the System. Franchisor may refuse to approve any proposed management company which, in Franchisor's reasonable judgment, (i) is not financially capable or responsible, (ii) is inexperienced or unqualified in managerial skills or operational capacity or capability, or is otherwise unable to adhere fully to the obligations and requirements of this agreement, (iii) does not provide Franchisor with all information that Franchisor may reasonably request to evaluate the proposed management company, or (iv) because Confidential Information and competitively sensitive information is imparted to System franchisees and managers, the management company is a franchisor or owner, or is affiliated with a franchisor or owner, of a hotel trade name which is competitive with Franchisor or its Affiliates, regardless of the number of hotels operating under such trade name. Franchisor reserves the right, at its option and upon reasonable notice, to revoke its approval of any management company that fails to remain qualified to manage the Hotel in Franchisor's reasonable judgment.

2. The management agreement between Franchisee and the management company for the Hotel shall be subject and subordinate to this Agreement and in the event of any conflict between the management agreement and this Agreement, the controlling contract shall be this Agreement.

3. The management company shall execute a separate rider to this Agreement (in substantially the form of Attachment D hereto), agreeing to comply with this Agreement in the management and operation of the Hotel and by Franchisee's covenants of confidentiality. Franchisor may require the management company to cause its key employees that Franchisor may identify to execute similar covenants of confidentiality, in a form reasonably acceptable to Franchisor.

4. If Franchisee or any transferee permitted under Section 15 below (in either case, "Owner") terminates an approved management agreement for the operation of the Hotel, and Franchisor requires the Hotel to be operated by a competent hotel management company, then Franchisee shall, within ninety (90) days after following the date of such termination, enter into a replacement management agreement with a replacement manager approved by Franchisor, as described below. During such ninety (90) day period, Owner shall, with Franchisor's consent, immediately employ an "interim manager" to manage the Hotel under this Agreement pending the execution of a new management agreement with a replacement manager. Franchisor must approve the interim manager and the interim management agreement, which approval will not be unreasonably withheld, provided that such interim manager is experienced in the operation of upscale hotels, and the interim management agreement expires no later than ninety (90) after it commences. Owner shall diligently seek to obtain a replacement manager for the Hotel while the Hotel is operated by any such interim manager. Any replacement manager and replacement management agreement shall be submitted to Franchisor for its written approval, which approval shall not be unreasonably withheld, but which may be conditioned on meeting the requirements in Section 5A above.

B. Staffing; Training. Franchisee or its approved management company shall employ qualified personnel sufficient to staff all positions at the Hotel, and in accord with competent management practices recognized in the hotel industry for upscale hotels.

1. **Orientation Training.** We will offer at our corporate offices or at another location we designate an orientation training program. The program will not exceed two weeks in duration and will cover such topics as operating a System Hotel, marketing and sales, financial management, guest services and people management. We may administer certain diagnostic tests via the Internet to measure the skill set of your general manager and, based in part of his/her score, offer certain Internet-based training as a supplement to the classroom training experience. Your

initial general manager (or other representative who exercises day to day operational authority) for the Hotel must complete this program to our satisfaction no later than 90 days after the Opening Date. Any replacement general manager must complete orientation to our satisfaction within 90 days after he/she assumes the position. If we do not offer a place in orientation within the above time frame, your replacement general manager must attend the next program held at which we offer a place. Your general manager for the Hotel must complete orientation even if you employ managers at other Chain Facilities who have already received this training. If this is your first System franchise, or you have not attended orientation within the last two (2) years, in addition to your general manager, you (or a person with executive authority if you are an entity) must attend orientation by the Opening Date. Financial institutions and real estate mortgage investment conduits are exempt from the obligation to attend orientation, but may choose to do so at their option. We charge you tuition for orientation for your general manager which is payable as part of the Integration Services Fee set forth in Section 3G. If he/she does not attend orientation within 90 days after the Opening Date, and for any replacement general manager, you must pay a separate tuition at the rate then in effect for the program when your manager attends the program. If you are required to attend orientation, we will charge you tuition of \$825 which is payable by the scheduled date for the program. We may charge you full or discounted tuition for "refresher" orientation for your general manager or for additional staff members who attend orientation with your general manager. We will charge the then in effect discounted tuition for any additional staff members who attend orientation with your general manager. We may charge you "No-Show Fees" or "Cancellation Fees" if you, your general manager or any other member of your staff (i) fails to register for and/or attend orientation by the required deadline, (ii) registers, but is a "no show", for orientation, or (iii) fails to notify us at least seven (7) days in advance that he/she will be unable to attend a scheduled program. This is in addition to the tuition you must pay us for your general manager at the then current rate when he/she attends orientation. See Section 5.B.5. You must also pay for your, your general manager and/or additional staff member's travel, lodging, meals, incidental expenses, compensation and benefits.

2. **Remedial Training.** We may require you, your general manager and/or your staff to participate in remedial training if the Hotel receives a D or F (or equivalent score) on a quality assurance inspection, a D or F score on quality assurance electronic guest survey (or equivalent evaluation system), or experiences significant complaints to our customer care department or posted on third-party travel websites, distribution channels, blogs, social networks and other forums, as determined by us in our sole discretion. This training may be offered at our corporate offices, at a regional location, on-line or at the Hotel. The training may be in the form of one or more classes held at different times and locations as we may require. You must pay the tuition in effect for this program when it is offered to you. If the training is provided at the Hotel, you must provide lodging for our trainers. In addition, if at the time of your initial post-opening quality assurance inspection, you receive (i) a failure rating on guest room cleanliness and (ii) an average quality assurance score of F on cleanliness of guestroom category or cleanliness of bathroom category (based on a minimum of 10 electronic quality assurance guest surveys), then we may require you to take a one day, on-site remedial class on housekeeping within 60 days after the inspection. The tuition for an on-line class is currently \$250, but is subject to increase in the future. The fee for an on-site customer experience assessment or training class is currently \$1,300, but is subject to increase in the future.

3. **Supplemental Training.** You must subscribe to our e-learning modules and other educational resources, accessible by you and your staff via the Internet, and pay us the annual fee for this service. All general managers must complete recertification training at such intervals as we may establish in the Manual. You must pay us the tuition then in effect for the program. We may offer other mandatory or optional training programs for reasonable tuition or without charge. The above training could be offered in our corporate offices or other locations or held in conjunction with a Chain lodging conference. You will pay for your representative's travel, lodging, meals, incidental expenses, compensation and benefits and any tuition charge we establish for this training. We may offer, rent or sell to you video tapes, computer discs or other on-site training aids and materials, or require you to buy them at reasonable prices. We may also offer Internet-based training via the Chain's intranet website.

4. **No Show and Cancellation Fees.** If you or your general manager, or any other member of your staff you designate, registers for a training program but fails to attend such program within the required time period, or fails to attend a training program as scheduled without notifying us in advance, we may charge you a No-Show Fee of 50% of the tuition for the program. If you, your general manager or any other member of your staff does not register for and attend any required training within the time period set forth in this Section 4.1 or in the Manual, we may charge you a fee of 100% of the tuition for the program. If you or any other member of your staff cancels participation in any training program less than seven (7) days before it is scheduled to be held, we may charge you a

Cancellation Fee of 25% of the tuition for the program. No-Show and Cancellation Fees are in addition to the tuition you will have to pay at the then offered rate when you or your general manager attends the program. We may assess you additional No-Show or Cancellation Fees for continued failures by you under Section 5.B.

5. Franchisee shall cause all employees, while working at the Hotel, to wear uniforms as specified in the Manual, to present a neat and clean appearance, and to render competent and courteous service to guests of the Hotel.

6. Under no circumstances shall Franchisor or any affiliate be considered the employer or a joint employer of any employee of Franchisee or the Hotel. Franchisor shall not "borrow" or control Franchisee's employees during any aspect of training, even on the job training provided at any hotel operated by Franchisor or an affiliate. Franchisee shall control its own employees and provide worker's compensation coverage and benefits as required by law. Franchisee shall be solely responsible for compliance with any collective bargaining agreement for its employees.

## 6. HOTEL OPERATIONS

A. Adherence to System Standards. Franchisee understands and acknowledges that compliance with each and every standard, specification, policy and procedure of the System is essential to maintain the consistency of high quality and guest service of Wyndham Hotels and to enhance public acceptance of, and demand for, Wyndham Hotels. Franchisee shall operate and maintain the Hotel in strict conformity with the standards, specifications, policies and procedures set forth in the Manual or otherwise in writing (the "System Standards"). You acknowledge that the System Standards and the Manual are designed to protect the System and the Marks, and not to control the day-to-day operation of your business. Franchisor shall use commercially reasonable efforts to apply System Standards and policies consistently to all franchised Wyndham Hotels in the same tier as the Hotel. Franchisor may allow deviations from such System Standards in its sole discretion, if local conditions or other circumstances warrant a deviation. Failure to comply with System Standards after notice and opportunity to cure shall be deemed a material default.

B. Restricted Use of Hotel Premises. Franchisee shall use the Hotel premises solely for the operation of a Wyndham Hotel and shall refrain from using, or allowing others to use, the premises for any other purpose or activity at any time, without obtaining the prior written consent of Franchisor, which may be withheld in Franchisor's sole discretion. Franchisee shall not provide, or allow others to provide, any guest service or offer any product at the Hotel except as prescribed in the Manual or otherwise in writing. Franchisee shall not permit any part of the Hotel premises to be used for gaming purposes without the prior written consent of Franchisor. Franchisee shall not permit any activity at the Hotel which would negatively impact the good will of Franchisor or the System, either expressly or by failure to take prompt corrective action after Franchisee knows about or should know about such activity.

C. Promotion of Other Businesses. Without the prior written consent of Franchisor, which may be withheld in Franchisor's sole discretion, Franchisee and Franchisee's manager shall ensure that no part of the Hotel or the System is used to further or promote a different or competing business, including without limitation, advertising or promotion for hotels other than those franchised by Franchisor or its Affiliates and marketing, advertising or promoting any timeshare or vacation ownership resort not affiliated with Franchisor and its Affiliates. In addition, except as expressly permitted in the Manual or otherwise consented to by Franchisor in writing, no part of the Hotel shall be used to further or promote any other business at the Hotel. Franchisee shall use every reasonable means to encourage the use of Wyndham Hotels everywhere by the traveling public; provided, however, that nothing herein shall prohibit, and Franchisee agrees to participate in, any program specified by Franchisor for referring prospective customers to other hotels when the customers cannot be accommodated by Franchisee's Hotel or any other Wyndham Hotel. Without limiting the foregoing, Franchisee shall not develop or operate a timeshare or vacation ownership resort which is integrated or shares amenities with the Hotel without Franchisor's prior written consent. Except as expressly provided herein, nothing herein shall prohibit Franchisee or an Affiliate of Franchisee from developing, operating or promoting other hotels or lodging facilities so long as Franchisee complies with this Agreement.

D. Food and Beverage Standards. Franchisee shall provide food and beverage service in the Hotel in conformity with the standards and specifications prescribed in the Manual and sound foodservice management practices to insure the highest level of safety, quality and service. Franchisee agrees:

1. To use and operate the restaurants and lounges solely for the benefit of the Hotel, to keep any restaurant and lounge open and in normal operation for such minimum hours and days as Franchisor may prescribe; and to refrain from using or allowing others to use the restaurant and lounge premises for any other purpose or activity at any time without first obtaining the written consent of Franchisor;

2. To maintain in sufficient supply, and use at all times, food and beverage products and ingredients, supplies, paper goods, dinnerware and furnishings that conform to Franchisor's standards and specifications, and to refrain from deviating without Franchisor's prior written consent;

3. To sell or offer for sale only those menu items and beverages that comply with Franchisor's standards and specifications and all applicable legal requirements (including, without limitation, all licensing and other requirements for the sale of alcoholic beverages); to sell or offer for sale all required menu and beverage items as prescribed in the Manual or otherwise in writing by Franchisor; to prepare and serve all menu items and beverages offered under and subject to Franchisor's standards and specifications and all applicable legal requirements; and to discontinue selling and offering for sale any items which Franchisor may, in its discretion, disapprove in writing at any time, or as emergent circumstances and sound foodservice practice may dictate; and

4. To use only menus, signs, promotional displays and other materials that comply with the style, pattern and design prescribed in the Manual or otherwise approved in writing by Franchisor.

E. Guest Services & Programs. Franchisee shall honor at the Hotel all credit cards specified in the Manual. Franchisee will follow standard industry practices for safeguarding cardholder information (which, without limitation, shall include complying with the Payment Card Industry Security Standard or its then-current replacement), and will comply with all applicable laws and regulations, and such other requirements as Franchisor may include in the Manual or as Franchisor may otherwise communicate from time to time for such purpose. Franchisee also agrees to participate in and shall provide all information requested by Franchisor for the purpose of all customer surveys and guest satisfaction audits conducted by Franchisor. Franchisee shall offer and faithfully execute all guest services and all programs that Franchisor may determine to be in the best interest of or may reasonably establish for the System, including, without limitation, guest-accessible high speed Internet service, guest recognition programs such as Wyndham Rewards, in room, pay per view movies (subject to Franchisor's right to direct the type of adult movies which are offered and the time and manner in which such movies are offered), travel agent programs, marketing incentive programs, complaint resolution programs and programs for the provision of complimentary rooms or refunds to guests, including complimentary services that Franchisor may prescribe for Wyndham Hotels, programs and services for senior citizens, children and frequent guests.

F. Quality Assurance Program; Inspections. Franchisor shall administer a quality assurance program to ensure compliance with System Standards and this Agreement which may include conducting periodic inspections of the Hotel, mystery shopping and guest satisfaction audits and surveys. Franchisee grants to Franchisor and its representatives the right to enter upon the premises of the Hotel at all reasonable times, with or without prior notice, for the purpose of conducting inspections. Franchisee shall pay a fee for each inspection, if any, assessed; provide lodging, if available, without charge to Franchisor's representatives during such time as may reasonably be necessary to complete the inspections; cooperate fully with Franchisor's representatives during the inspections; and take all steps reasonably necessary to correct any deficiencies detected within the time specified by Franchisor. Franchisee's failure to correct such deficiencies in a timely manner shall be deemed a material breach of this Agreement.

## 7. FURNISHING AND MAINTAINING THE HOTEL

A. Hotel Facilities, Equipment and Furnishings.

1. Before the Opening Date, Franchisee shall develop, construct, convert, renovate, equip and furnish the Hotel under this Agreement (including, as applicable, the New Construction Addendum or the Conversion Addendum attached to this Agreement) and the Manuals.

2. Franchisee shall, at its expense, purchase or lease and install at the Hotel all facilities, appurtenances, furnishings, fixtures, equipment, furniture, vending machines, electronic and video games, computer hardware and software, networks, and related equipment (including, without limitation, the property management and reservation systems specified by Franchisor), telephone and other communications systems, entertainment systems, facsimile machines and copiers, signs and other items (collectively, "FF&E") specified by Franchisor for the System in the Manual or otherwise in writing. Franchisee shall refrain from installing or permitting to be installed at the Hotel, without Franchisor's prior written consent, any FF&E or any other items not previously approved by Franchisor.

3. The size, form, color scheme, content and location of all signs, advertisements and graphic materials displayed in any public area or guest rooms at the Hotel shall be as prescribed in the Manual or otherwise approved in writing by Franchisor.

B. Sourcing. All food products, supplies, and FF&E (excluding computer hardware, software, and related equipment for the property management and reservation systems, and/or that interface therewith) used at or in the Hotel may be purchased from any source, provided such products meet the specifications provided for in the Manual. Computer hardware, software and related equipment for the property management and reservations systems, and/or that interface therewith, shall be purchased only from sources designated or approved by Franchisor. Notwithstanding the above, Franchisee acknowledges that Franchisor may specify a particular model or brand of FF&E or other items for Wyndham Hotels that may be available from only one manufacturer or supplier. Franchisor may at any time, in its discretion, specify that certain food and beverage products, FF&E, and supplies be purchased only from designated or approved sources which have demonstrated, to the reasonable satisfaction of Franchisor or an Affiliate, the ability to meet Franchisor's standards and specifications for those items. Franchisee shall submit to Franchisor a written request for approval of a supplier not been previously approved by Franchisor, or shall request the source itself to do so, prior to purchasing or leasing any item if Franchisor has designated or approved suppliers for the item. Franchisor may require, as a condition of its approval, at Franchisor's option and at no cost to Franchisor (i) that the source present satisfactory evidence of liability insurance protecting Franchisor and its franchisees against any and all claims arising from the use of such item by System franchisees, and (ii) that samples of the item be delivered by the source to Franchisor or its designee for inspection and retention. A charge not to exceed the cost of such inspection shall be paid to Franchisor by Franchisee or by the source seeking approval, and Franchisor shall not be liable for use, damage to or destruction of any sample. Franchisor reserves the right, at its option, to revoke its approval as to future purchases if a source or its item fails to Franchisor's standards.

C. Hotel Maintenance. Franchisee shall maintain the Hotel and all related facilities and appurtenances used by or visible to guests and patrons in first-class condition. Franchisee shall effect, at its expense, all additions, alterations, repairs and replacements of the building, its components and systems, and its FF&E as Franchisor may reasonably direct to maintain the Hotel to this standard. Franchisee shall not alter the Hotel materially without obtaining the prior written consent of Franchisor.

D. Remodeling & Renovation. Franchisor shall have the right to require that Franchisee upgrade, improve, reequip, remodel, renovate, redecorate and modify the Hotel at Franchisee's expense to conform to the building décor, amenities, trade dress and FF&E required under Franchisor's then-current System Standards, which shall be applied consistently to all Wyndham Hotels of similar age and within the same tier as the Hotel, as Franchisor may deem reasonably necessary in its discretion for the Hotel and the System to remain competitive in the upscale hotel marketplace. Franchisee shall complete the work required by Franchisor pursuant to this Section 7D within the time reasonably specified by Franchisor. Franchisee acknowledges that its failure to complete the work in a timely manner shall, except for delays caused by the occurrence of events constituting Force Majeure, constitute a material default for which this Agreement may be terminated as provided in Section 17A.

E. Purchasing Services. Franchisor or an Affiliate may, at Franchisor's option, provide purchasing services to Franchisee for acquisition from third parties of some or all of the FF&E, food products, supplies and



other items required in the operation of the Hotel and may offer such purchasing services to Franchisee for a reasonable fee.

## 8. RESERVATION AND PROPERTY MANAGEMENT SYSTEMS

A. Participation in Central Reservation System. Unless Franchisor has issued a notice of default or termination to Franchisee under this Agreement for a material default that remains uncured after the expiration of the applicable cure period, if any, specified in this Agreement, Franchisor shall make available to the Hotel access to the central reservation system provided by Franchisor for all Wyndham Hotels (sometimes referred to as the "Reservation System"), which system may be modified, changed or replaced from time to time by Franchisor. Franchisee acknowledges that offering the public a single, efficient reservation service is essential to the goodwill, reputation and success of the System. During the Term, Franchisee shall participate in the Reservation System on an exclusive basis and shall not participate in any other electronic central reservation system except through Franchisor's Reservation System, shall enter into all agreements required by Franchisor as a condition of participation, and shall observe all rules, terms and conditions of participation determined by Franchisor. Franchisee shall honor and give first priority on available rooms to all confirmed reservations referred to the Hotel through the Reservation System. Franchisee shall book and communicate outgoing reservations referred by and from the Hotel to other hotels only by means of the Reservation System. Franchisee shall be solely responsible for notifying the reservation center of any changes in Franchisee's room rates. Franchisee shall not charge any guest a rate higher than the rate specified to the guest by the reservation center at the time the guest's reservation was made. Such rate shall be the rate most recently provided to the reservation center by Franchisee prior to the time the reservation was made, according to the records of such center. Franchisee acknowledges and agrees that once a termination or expiration date for this Agreement has been established in accordance with the provisions of this Agreement, Franchisor may stop accepting reservations through the Reservation System for any person(s) seeking to make a reservation for a stay on any date on or after the termination or expiration of this Agreement. In addition, when this Agreement terminates or expires for any reason, Franchisor has the right to contact those individuals or entities who have reserved rooms with the Hotel through the Reservation System to inform them that the Hotel is no longer part of the System. Franchisor further has the right to inform those guests of other facilities within the System that are near the Hotel in the event that the guests prefer to change their reservations. Franchisee agrees that the exercise of Franchisor's rights under this Section will not constitute an interference with Franchisee's contractual or business relationship.

B. Network Installation and Maintenance. Franchisee, at its expense, shall install and maintain at the Hotel all computer hardware, software and related equipment necessary for participation in the central reservation and property management systems required by Franchisor, including any future enhancements, additions, substitutions or other modifications specified by Franchisor. Franchisee shall cause such systems to be configured to Franchisor's specifications and in accordance with all applicable legal, regulatory and industry requirements, and shall pay all applicable installation, configuration, support and maintenance fees as and when due. Franchisee shall also be responsible for telephone line and data circuit charges for connecting Franchisee's network to the Reservation System, for the cost of supplies used in the operation of the equipment and for all other related expenses.

C. Software Licenses. Franchisee shall enter into all software license agreements with Franchisor or its designee necessary to obtain and maintain the software and related documentation for the property management and the Reservation System (if any), as required by Franchisor under this Agreement (the "Software"). The Software shall at all times remain the sole property of Franchisor or such designee. Franchisee shall treat the Software, its related documentation and all upgrades, enhancements and modifications thereto as confidential. Franchisee shall not at any time, without Franchisor's prior written consent, copy, duplicate, modify, reverse engineer, or otherwise duplicate the foregoing materials, in whole or in part, or otherwise make the same available to any unauthorized person.

D. Suspension from Reservation System. If Franchisee fails to pay any fees when due, fails to maintain System Standards, or is otherwise in default under this Agreement or any other agreement with Franchisor, Franchisor may, after giving notice of non-performance, non-payment or notice of any other default, suspend the Hotel from the reservation system, discontinue reservation system and other referrals to the Hotel for the duration of such suspension, and may divert previously made reservations to other System Hotels. Franchisor may also omit the

Hotel from the Wyndham Hotel Directory. All Reservation System Fees and other fees related to the use of the reservation system, Royalties, Marketing and Global Sales Fees, and Service Fees shall continue to accrue during the suspension period. Service to the reservation system will be restored after Franchisee has fully cured any and all defaults and failures to pay and perform during the time allowed for cure. Franchisor may charge Franchisee, and Franchisee must pay as a condition precedent to restoration of reservation service, a Reconnection Fee as specified on Attachment B to reimburse Franchisor for its costs associated with service suspension and restoration. Franchisee waives all claims against Franchisor arising from the Hotel's suspension from the reservation system pursuant to this Section 8D. Franchisor's right to suspend the Hotel from the reservation system under this Section 8D shall be in addition to any other rights and remedies available to Franchisor under the circumstances.

## 9. ADVERTISING AND MARKETING

A. Advertising Approvals. All advertising by Franchisee in any medium shall be conducted in a dignified manner and shall conform to such standards and requirements as Franchisor may specify in the Manual. Franchisee shall submit to Franchisor (by mail, return receipt requested), for its prior approval, samples of all advertising, promotional plans and materials and public relations programs that Franchisee wishes to use which deviate from the standards and requirements set forth in the Manual and which have not been either provided or previously approved by Franchisor. Any advertising, marketing, or sales concepts programs or materials proposed or developed by Franchisee for the Hotel and approved by Franchisor may be copied and used by other Wyndham Hotels without compensation to Franchisee. Franchisor reserves the right to disapprove upon written notice to Franchisee any advertising materials previously provided to Franchisee by Franchisor or previously approved by Franchisor.

B. Central Marketing Fund. Recognizing the value of marketing and advertising to all Wyndham Hotels, Franchisee agrees that Franchisor or its designee shall administer a central marketing fund ("Central Marketing Fund") as follows:

1. To the extent provided generally by the Franchisor for the benefit of the Hotel and other Wyndham Hotels, Franchisor will provide for the Hotel during the Term marketing services consisting of chain-wide and/or tier level marketing programs, marketing collateral, research services, advertising, and public relations efforts.

2. On or before the third (3rd) day of each calendar month during the Term, beginning with the month following the Opening Date, Franchisee shall contribute to the Central Marketing Fund the Marketing and Global Sales Fee, as defined in Section 3C. The Marketing and Global Sales Fee will be collected and applied to pay only the actual costs incurred and allocated by Franchisor in the provision of the marketing services as further described below. The Marketing and Global Sales Fee shall not be used to pay, and Franchisee shall pay separately, the costs of any central reservation and any other Central Services (as provided in Sections 3D and Attachment B), as well as the costs (which may include, without limitation, direct operating costs paid to marketing partners) of any third party marketing partner programs in which the Hotel participates that are direct-billed to participating Wyndham Hotels. Franchisee agrees that the Central Marketing Fund and Marketing and Global Sales Fees contributed for the Fund may pay any and all direct and indirect costs (including compensation and employee benefits and other overhead costs) of (i) maintaining, administering, directing, preparing, and producing advertising and other marketing and promotional services including, without limitation, the cost of preparing and producing television, radio, magazine and newspaper advertising campaigns; website development and maintenance; direct mail and outdoor billboard advertising; public relations activities; employing advertising agencies; and other internally prepared or directed marketing activities as we deem appropriate; and (ii) maintaining and administering our National Sales Office, which solicits reservations at Wyndham Hotels in the same tier as the Hotel, for national and regional conventions, trade shows, groups, corporations and similar industry segments.

3. Franchisor will expend the Marketing and Global Sales Fees contributed at the time and in the manner as it reasonably deems appropriate to provide the marketing and National Sales Office services. Franchisee acknowledges that the Central Marketing Fund is intended to maximize general public recognition, acceptance and use of Wyndham Hotels and that Franchisor and its designees undertake no obligation in administering the Central Marketing Fund to make expenditures which are equivalent or proportionate to

Franchisee's Marketing and Global Sales Fees, or to ensure that any particular franchisee benefits directly or pro rata from expenditures by the Central Marketing Fund. Marketing and Global Sales Fees may be held or maintained in one or more accounts, any of which also may include funds other than Marketing and Global Sales Fees.

4. Franchisee shall participate in any and all national account programs designated as mandatory by the National Sales Office, provided that Franchisee shall (i) set its own reference price against which discounted rate programs are measured, and (ii) determine whether or not to participate in programs set at specific rates or specifically authorize Franchisor to set rates for particular national accounts.

C. Initial Opening Campaign. For the initial opening of the Hotel for business as a Wyndham Hotel, Franchisee shall comply with the advertising and marketing campaign requirements as prescribed by Franchisor in the Manual or as otherwise agreed upon by Franchisee and Franchisor.

D. Wyndham Hotel Directory. Franchisor shall list the Hotel in the Wyndham Hotel Directory with such information as Franchisee may provide for that purpose. Franchisee covenants to (i) provide accurate information for the Directory, (ii) honor the offers and commitments that Franchisee causes to be published in the Directory, and (iii) comply with such other requirements with respect to the Directory as may be specified in the Manual. Franchisee acknowledges that Franchisor assumes no liability for, nor shall it be deemed liable to Franchisee or any other party by reason of, any failure by Franchisee or other Wyndham Hotel franchisees to honor any Directory offers and commitments published in the Directory.

E. Additional Marketing Programs. Franchisor may establish and coordinate advertising, marketing and sales programs, customer satisfaction programs and other activities among System hotels and other lodging brands of Franchisor and its Affiliates on a System-wide or local or regional basis and provide for participation therein by Franchisee. Franchisee shall participate in such programs and activities on the same basis as other participating System hotels (including hotels owned or managed by Franchisor or its Affiliates) in the same tier or region as the Hotel, and such programs and activities will be paid for outside the Central Marketing Fund.

F. Internet Website. Franchisee shall not establish or use any Website or other listing on the Internet that contains the Proprietary Marks except as provided herein.

1. Franchisor has established and maintains, or may establish and maintain an Internet Website that provides information about the Wyndham Hotel System and the accommodations and services that Wyndham Hotels provide. Franchisor will have sole discretion and control over the Website (including timing, design, contents and continuation). Franchisor may use the Central Marketing Fund to pay or reimburse the costs associated with the development, maintenance and update of the Website.

2. At Franchisee's request, Franchisor may (but is not required to) include at the Website an interior page containing information about Franchisee's Hotel. If Franchisor includes such information on the Website, Franchisor may require Franchisee to prepare all or a portion of the content for the page, at Franchisee's expense, using a template that Franchisor provides. All such information will be subject to Franchisor's approval prior to posting.

## 10. PROPRIETARY MARKS

A. License to Use. Franchisor grants Franchisee a non-exclusive license to use the Proprietary Marks during the Term under this Agreement and subject to the System and related standards and specifications in the Manual.

B. Franchisee's Acknowledgments. Franchisee understands and acknowledges the following:

1. Due to the substantial and continuous use of the "Wyndham" name for hotel services in many areas of the United States beginning in 1982, Franchisor or its Affiliates have acquired substantial common law rights in and to the "Wyndham" service mark for use for hotel services. Franchisor or its Affiliates own several state registrations and a federal registration of the "Wyndham" mark.

2. Franchisor or its Affiliates are the owners of all right, title and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them.

3. Franchisee's use of the Proprietary Marks pursuant to this Agreement shall not give the Franchisee any right, title, or interest in or to any of the Proprietary Marks or any of Franchisor's or its Affiliates' service marks, trademarks, trade names, trade dress, logos, patents, copyrights or proprietary materials, except the non-exclusive license to use the Proprietary Marks under and subject to the terms and conditions of this Agreement for the operation of the Hotel at the Approved Location. Franchisee shall not have any right to, and Franchisee shall not, under any circumstances, use or display the Proprietary Marks except as approved by Franchisor.

4. Any and all goodwill arising from Franchisee's use of the Proprietary Marks shall inure solely and exclusively to the benefit of Franchisor or its Affiliates and upon expiration or termination of this Agreement and the license herein granted, no monetary amount shall be assigned as attributable to any goodwill associated with Franchisee's use of the Proprietary Marks.

5. Franchisee shall not contest the validity of Franchisor's or its Affiliates' interest in the Proprietary Marks or assist others to contest the validity of such interest. Franchisee shall take no action that would prejudice or interfere with the validity of Franchisor's or its Affiliates' rights with respect to the Proprietary Marks.

6. Franchisee acknowledges that any unauthorized use of the Proprietary Marks by Franchisee, and any other person or persons under its control, shall constitute an infringement of Franchisor's or its Affiliates' rights in the Proprietary Marks and a material event of default hereunder. Franchisee agrees that it shall provide to Franchisor (at no cost to Franchisee unless such action is necessitated by the wrongful acts of Franchisee or any person or persons under its control) all assignments, affidavits, documents, information and assistance Franchisor reasonably requests to fully vest in Franchisor or its Affiliates all right, title and interest in and to the Proprietary Marks, including all such items as are reasonably requested by Franchisor to register, maintain and enforce such rights in the Proprietary Marks.

7. Franchisor reserves the right to substitute different proprietary marks for use in identifying the System if the current Proprietary Marks no longer can be used, or if Franchisor, in its sole discretion, determines that substitution of different Proprietary Marks will be beneficial to the System. Further, in the event of a sale or any other transfer or assignment of Franchisor's rights under this Agreement, Franchisor also reserves the right to require any purchaser, assignee or transferee to cease using the Proprietary Marks and substitute different names, marks, logos, insignia, slogans, emblems, designs or other identifying commercial symbols for the continued operation of the business. In any such event, Franchisor may require Franchisee, at Franchisee's expense, to discontinue or modify Franchisee's use of any of the Proprietary Marks or to use one or more additional or substitute names, marks, logos, insignia, slogans, emblems, designs or other identifying commercial symbols. In that event, Franchisee shall, at its expense, discontinue or modify Franchisee's use of any of the Proprietary Marks and use such additional or substitute names, marks, logos, insignia, slogans, emblems, designs or other identifying commercial symbols as Franchisor or the purchaser, transferee or assignee may require. Notwithstanding the foregoing provisions of this Section 10.B.7, however, if the proposed schedule for the discontinuation, substitution or modification of the Proprietary Marks referred to herein creates undue economic hardship for Franchisee, Franchisor and Franchisee (and, if applicable, any purchaser, transferee or assignee referred to herein) may by mutual agreement extend for a reasonable period the time for compliance with the requirements hereof.

8. Franchisee acknowledges that Franchisor is the lawful, rightful and sole owner of the Internet domain name "www.wyndham.com," and "www.womenbusinesstravelers.com" and any other Internet domain names registered by Franchisor, and unconditionally disclaims any ownership interest in those or any colorably similar Internet domain name. Franchisee agrees not to register any Internet domain name in any class or category that contains words used in or similar to any brand name owned by Franchisor or its Affiliates or any abbreviation, acronym, phonetic variation or visual variation of those words.

C. Use of Proprietary Marks. With respect to Franchisee's licensed use of the Proprietary Marks pursuant to this Agreement, Franchisee further agrees that:

1. Unless otherwise authorized or required by Franchisor, Franchisee shall operate and advertise the Hotel only using the Proprietary Mark and tier set forth in Attachment A. Franchisee shall not use the Proprietary Marks as part of its corporate or other legal name or for any other business activity or venture.

2. During the Term, Franchisee shall identify itself as the owner of the franchised business in conjunction with any use of the Proprietary Marks including, but not limited to, uses on invoices, order forms, receipts and contracts, as well as the display of a notice in such content and form and at such conspicuous locations on the premises of the Hotel or any motor vehicle associated with the Hotel as Franchisor may designate in the Manual or otherwise in writing.

3. Franchisee shall not use the Proprietary Marks to incur any obligation or indebtedness on behalf of Franchisor or its Affiliates.

4. Franchisee shall comply with Franchisor's instructions in filing and maintaining the requisite trade name or fictitious name registrations, and shall execute any documents deemed necessary by Franchisor or its counsel to obtain protection of the Proprietary Marks or to maintain their continued validity and enforceability.

5. Franchisee shall not use the Proprietary Marks or any abbreviation or other name associated with Franchisor or the System as part of any e-mail address, domain name, or other identification of Franchisee in any electronic medium. Franchisee agrees not to transmit or cause any other party to transmit advertisements or solicitations by e-mail or other electronic media without first obtaining Franchisor's written consent as to the content of such e-mail advertisements or solicitations as well as Franchisee's plan for transmitting such advertisements. In addition, Franchisee shall be solely responsible for compliance with all relevant laws and regulations pertaining to sending e-mails and other electronic communications, in all applicable jurisdictions, which in the United States of America includes without limitation the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the "CAN-SPAM Act of 2003").

D. Infringement. Franchisee shall notify Franchisor immediately of any apparent infringement of or challenge to Franchisee's use of any Proprietary Mark and of any claim by any person of any rights in any Proprietary Mark. Franchisee shall not communicate with any person other than Franchisor or any designated Affiliate of Franchisor, their counsel and Franchisee's counsel for any such apparent infringement, challenge or claim. Franchisor shall have complete and sole discretion to take such action as it deems appropriate for the foregoing, and the right to control exclusively, or to delegate control to any of its Affiliates, of any settlement, litigation, or Patent and Trademark Office or other proceedings arising out of any such alleged infringement, challenge or claim or otherwise relating to any Proprietary Mark. Franchisee agrees to execute any and all instruments and documents, render such assistance, and do such acts or things as may, in the opinion of Franchisor, reasonably be necessary or advisable to protect and maintain the interests of Franchisor or its Affiliates in any litigation or other proceeding or to otherwise protect and maintain the interests of Franchisor or any other interested party in the Proprietary Marks, all at no cost to Franchisee unless such action is necessitated by the wrongful acts of Franchisee or any person or persons under its control.

E. Retained Rights. The right to use the Proprietary Marks granted hereunder to Franchisee is nonexclusive, and Franchisor may use, and grant licenses to others to use the Proprietary Marks, and may establish, develop, and license other systems which use the Proprietary Marks and the System, without offering or providing Franchisee any rights in, to, or under such other systems. Franchisor or its Affiliates may also engage, directly or indirectly, through their employees, representatives, licensees, assigns, agents and others, in the production, distribution, license and sale of products and services, and may use in connection therewith the Proprietary Marks and any and all trademarks, trade names, service marks, logos, insignia, slogans, emblems, symbols, designs and other identifying characteristics as may be developed or used from time to time by Franchisor.

## 11. MANUAL

A. The Manual. Franchisor has provided Franchisee access to a current copy of Franchisor's Manual (which may be in multiple volumes and may be provided electronically). The Manual contains, among other matters, minimum standards and requirements for constructing, equipping, furnishing, staffing and supplying the Hotel and management, training and operational standards, procedures and techniques. The provisions of the Manual shall be consistently applied by Franchisor to all Wyndham Hotels in the same tier as the Hotel; provided that, if in the reasonable judgment of Franchisor local conditions or special circumstances (including the market area or the physical peculiarities of a hotel in the System) warrant a deviation from such provisions, then Franchisor may allow such deviation.

B. Compliance with Manual. To protect the reputation and goodwill of Franchisor and to maintain high standards of operation under the Proprietary Marks, Franchisee shall conduct its business under and subject to the Manual, other written directives which Franchisor may issue from time to time (whether or not such directives are included in the Manual), and any other manuals and materials created or approved for use in the operation of the Hotel. The Manual shall supplement this Agreement.

C. Confidentiality of Manual. Franchisee shall at all times treat the Manual and the information contained therein as confidential, and shall maintain such information as confidential. Franchisee shall not at any time, without Franchisor's prior written consent, copy, duplicate, record or otherwise reproduce the Manual, in whole or in part, or otherwise make the same available to any unauthorized person.

D. Ownership of Manual. The Manual shall at all times remain the sole property of Franchisor and shall be returned to Franchisor immediately upon the termination or expiration of this Agreement.

E. Revisions to Manual. Franchisor may from time to time revise the contents of the Manual. Franchisor shall provide or make available to Franchisee a copy of all revisions and additions to the Manual, and Franchisee expressly agrees to comply with each new or changed standard.

F. Master Copy of Manual. Franchisee shall at all times ensure that Franchisee's copy of the Manual is kept current and up-to-date, and if there is any dispute as to the contents of said Manual, the terms of the master copy of the Manual maintained by Franchisor at Franchisor's home office shall be controlling.

G. Paper Manual Fee. Franchisor may charge a fee of Five Hundred Dollars (\$500) for any request for a paper copy of the Manual by Franchisee.

H. Electronic Publication. Franchisor may, at its option, publish the Manual and any amendments thereto only in electronic format available on-line or on magnetic, optical or other media that must be accessed via computer.

## **12. CONFIDENTIAL INFORMATION AND GUEST INFORMATION**

A. Use of Confidential Information. Franchisee shall not, during the Term or thereafter, without Franchisor's prior written consent, copy, duplicate, record, or otherwise reproduce, in whole or in part, the Manual, any Software and accompanying documentation developed for or used in the System, or any other confidential information, including, but not limited to, Internet/Intranet passwords, customer lists and customer information, knowledge or know-how concerning the System or the operation of the Hotel which may be communicated or provided to Franchisee ("Confidential Information"), or of which Franchisee may be apprised, by virtue of Franchisee's operation under this Agreement, or otherwise make the same available to any unauthorized person. Franchisee shall divulge such Confidential Information only to such of Franchisee's employees, agents, accountants and attorneys as must have access to it in order to operate the Hotel. The contents of the Manual, all Software and accompanying documentation developed for or used in the System, and all other information, knowledge, know-how or other data which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement.

B. Guest Information.

1. Franchisor shall own all Guest Information that is within the possession of Franchisor or any Franchisor service provider holding such information on Franchisor's behalf, and Franchisee shall own all Guest Information that is within the possession of Franchisee or any Franchisee service provider holding such information on Franchisee's behalf. To the extent that Franchisor and Franchisee both possess identical Guest Information, Franchisor's and Franchisee's respective ownership rights with regard to such Guest Information shall be separate and independent from one another.

2. Franchisee agrees to collect, use, disclose, and otherwise treat Guest Information in accordance with applicable privacy laws, as well as any privacy policy you adopt. Franchisor's Privacy Notice (the "Privacy Notice") for the use of Guest Information is posted on Franchisor's consumer website. Franchisor may modify or withdraw the Privacy Notice at any time in its sole discretion. During the Term, Franchisee may adopt and maintain a similar policy or portions of the Privacy Notice as its own. During the Term, Franchisee may copy and disclose the entire Privacy Notice to guests who inquire about Franchisor's Privacy Notice.

C. Survival. The covenants in this Section 12 shall survive the expiration, termination or transfer of this Agreement or any interest herein and shall be perpetually binding upon Franchisee.

### 13. ACCOUNTING AND RECORDS

A. Maintenance of Books and Records. Throughout the Term, Franchisee shall maintain and preserve, for at least five (5) years after the dates of their preparation, full, complete and accurate books, records and accounts under and subject to generally-accepted accounting principles and in the form and manner prescribed in the Manual. Franchisee's obligation to preserve such books, records and accounts shall survive the termination hereof.

B. Monthly Reports. Franchisee shall, at Franchisee's expense, prepare and submit to Franchisor by the third (3<sup>rd</sup>) day of each month following the Opening Date (including the first partial month if the Opening Date is other than the first day of a month), a statement in the form prescribed by Franchisor, accurately reflecting for the immediately preceding month all Gross Room Revenues, the source and amounts of all other revenues generated at the Hotel, room occupancy and rates, reservations data, and such other data or information as Franchisor may require. All statements shall be submitted to Franchisor via its WynPay tool or through such successor technologies or systems as Franchisor may develop for the System in the future.

C. Financial Statements. Within thirty (30) days following the end of each fiscal quarter during the Term, Franchisee shall, at Franchisee's expense, submit to Franchisor a balance sheet and an unaudited quarterly profit and loss statement for the Hotel on the form prescribed by Franchisor. Each statement shall be signed by an authorized officer of Franchisee attesting that it is true and correct. Franchisee shall, at Franchisee's expense, submit to Franchisor, within ninety (90) days following Franchisee's fiscal year end, an audited annual financial statement, prepared under and subject to generally accepted accounting principles by an independent certified public accountant satisfactory to Franchisor, showing the result of the operations of the Hotel during such fiscal year.

D. Additional Reports. Franchisee shall also submit to Franchisor, for review and audit, such other forms, periodic and other reports, records, information and data as Franchisor may reasonably designate, in the form and at the times and places reasonably required by Franchisor, upon request and as specified from time to time in the Manual or otherwise in writing.

E. Audits. Franchisor or its designated agent shall have the right at all reasonable times, and upon reasonable notice to Franchisee, to examine and copy, at Franchisor's expense, all books, records, accounts and tax returns of Franchisee related to the operation of the Hotel during the preceding five (5) years. Franchisor also shall have the right, at any time, and upon reasonable notice to Franchisee, to cause an audit to be performed of the books, accounts and records of Franchisee related to the operation of the Hotel by an independent auditor. Franchisee shall provide lodging, if available, without charge to Franchisor's auditors during the time that may reasonably be necessary to complete such audits and shall render such other assistance as may reasonably be requested. If an audit reveals that any payments to Franchisor have been underpaid, Franchisee shall immediately pay to Franchisor upon demand, the amount of the deficiency plus interest from the date such amount was due until paid. The rate of interest shall be one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is

less. If an audit discloses an underreporting of Gross Room Revenues in any one year of three percent (3%) or more, Franchisee shall reimburse Franchisor for any and all fees and expenses incurred by Franchisor for the audit (including, without limitation, reasonable accounting and attorneys' fees). The foregoing remedies shall be in addition to any other remedies Franchisor may assert. If an audit reveals that Franchisee has overpaid Franchisor, the amount of any such overpayment, without interest, shall be credited against future payments due and payable to Franchisor by Franchisee hereunder.

#### 14. INSURANCE

A. Coverage Requirements. Franchisee, at its expense, shall at all times during the Term procure and maintain such insurance as may be required by the terms of any lease or mortgage on the premises where the Hotel is located, and in any event no less than the types and amounts specified in the Manual. You must send us valid proof of insurance no later than thirty (30) days prior to the scheduled Opening Date.

B. General Requirements. The following general insurance requirements shall be satisfied by Franchisee.

1. All insurance shall name as additional insureds Franchisor, Wyndham Hotel Group, LLC, Wyndham Worldwide Corporation, and their current and former subsidiaries, affiliates, successors and assigns, as their interests may appear.

2. All insurance required hereunder shall be specifically endorsed to provide that the coverages for each additional insured (including "drop-down" coverage under an umbrella liability policy) is primary and is not contributory with or excess of any insurance coverage that may be available to an additional insured.

3. All insurance required hereunder shall contain an endorsement whereby the policies shall not be canceled, materially changed or non-renewed without at least thirty (30) days' prior written notice to Franchisee and Franchisor. If carrier, in writing, does not agree to make such endorsement, Franchisee shall be responsible to provide Franchisor with at least thirty (30) days' written notice of cancellation, non-renewal or material change of insurance.

4. Prior to the Effective Date, Franchisee shall deliver to Franchisor a certificate of insurance or certified copy of each insurance policy evidencing the coverages required herein and setting forth deductibles and amounts thereof, if any. You must submit to us, annually, a copy of the certificate of or other evidence of renewal or extension of each such insurance policy as required by the System Standards.

5. Franchisee's obligation to maintain the insurance hereunder shall not relieve Franchisee of liability under the indemnity provisions set forth in Section 21(B) of this Agreement, and each of the policies described in this Section 14 shall contain a contractual coverage endorsement specifically insuring the performance by Franchisee of the indemnity obligations set forth in Section 21(B).

6. All insurance shall be satisfactory to Franchisor under and subject to standards and specifications set forth or otherwise in writing. Should Franchisee for any reason fail to procure or maintain the insurance required by this Agreement, Franchisor shall have the right and authority (without however any obligation to do so) to immediately procure such insurance and to charge the cost thereof to Franchisee, which charges, together with a reasonable fee for Franchisor's expenses in so acting, shall be payable by Franchisee immediately upon demand.



## 15. TRANSFERABILITY OF INTERESTS

A. Transfer by Franchisor. Franchisor shall have the free and unconditional right to assign, delegate and transfer this Agreement to any person or legal entity without prior notice to, or consent of, Franchisee. Franchisee expressly and specifically waives any claims, demands, or damages against Franchisor arising from or related to the transfer. Nothing in this Agreement shall require Franchisor to continue any business operating under the System or to offer any services or products, whether or not bearing the Proprietary Marks, to Franchisee if Franchisor assigns its rights in this Agreement under and subject to the provisions of this Section 15A.

B. Transfer by Franchisee - Franchisor's Consent Required. Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee and its Principals, and that Franchisor has granted this franchise in reliance on the business skill, financial capacity, and character of Franchisee and its Principals. Except as provided in Section 15C (regarding certain permitted transfers) and Section 16 (regarding transfers of interests in publicly-held franchisees) of this Agreement, neither Franchisee nor any Principal shall sell, transfer, convey, give away, pledge, exchange, lease, mortgage, or otherwise encumber any direct or indirect interest in the Hotel (including a substantial portion of the assets of the Hotel inclusive of buildings and real estate), in this Agreement (including Franchisee's obligations under this Agreement), in Franchisee, or in any person or entity that owns a controlling interest in Franchisee, without the prior written consent of Franchisor. Except as provided in this Section 15 and Section 16 of this Agreement, any purported assignment or transfer, by operation of law or otherwise, not having the prior written consent of Franchisor shall be null and void and shall constitute a material breach of this Agreement, for which Franchisor may terminate this Agreement pursuant to Section 17A of this Agreement and pursue its equitable and legal remedies.

C. Permitted Transfers. Notwithstanding any other provision of this Section 15 or Section 16:

1. Franchisee may transfer its interest in this Agreement to another legal entity, if (a) there is no uncured event of default under this Agreement, (b) following such transfer, Franchisee has and continues to have during the Term a controlling interest in the transferee, (c) the transferee entity unconditionally assumes in writing all of Franchisee's past, present and future obligations under this Agreement and delivers a copy of such written assumption agreement to Franchisor, and (d) Franchisee provides prior written notice to Franchisor. No such transfer shall relieve or excuse the liability of Franchisee or any person or entity who guaranteed or is otherwise liable for Franchisee's performance hereunder for the past and continuing performance of this Agreement, and such liability shall extend to any subsequent amendments, renewals and modifications of this Agreement (and any extensions, adjustments or compromises of claims) which are effective between Franchisor and the then-current franchisee notwithstanding the absence of any notice to or approval by those parties who remain liable, all of whom waive all notices and agree that Franchisor may proceed directly against them without proceeding against any other person or entity who may also be liable therefor. At Franchisor's request, such persons further agree to execute or reexecute a guaranty substantially similar to the form of Guaranty attached to this Agreement.

2. Any individual holding an interest in Franchisee may transfer all or a portion of his or her interest in Franchisee to any immediate family member, to a trust established for the benefit of any such immediate family member, or to an entity in which such individual has and maintains a controlling interest if (a) there is no uncured event of default under this Agreement, (b) the transferor provides prior written notice to Franchisor, and (c) any transferor who transfers a controlling interest executes a guaranty substantially similar to the form of Guaranty attached to this Agreement and continues to maintain the unrestricted power to direct, directly or indirectly, the management and policies of the Franchisee, including those relating to the payment of financial obligations, as reasonably determined by Franchisor.

3. Franchisee may assign, transfer, pledge, or hypothecate all or any part of the assets of the Hotel excluding this Franchise and this Agreement (and, if Franchisee is an entity, all and any part of the equity ownership interests in Franchisee) to any lender for purposes of any financing or as collateral securing a loan made directly to or for the benefit of the Hotel.

D. Conditions to Franchisor's Consent. Franchisor shall not unreasonably withhold its consent to a transfer of any interest in the Hotel (including a substantial portion of the assets of the Hotel inclusive of buildings

and real estate), in this Agreement (including Franchisee's obligations under this Agreement), in Franchisee, or in any person or entity that owns a controlling interest in Franchisee; provided, however, Franchisor may, in its sole discretion, require satisfaction of any or all of the following as a condition precedent to its consent:

1. Transferor shall deliver to Franchisor a complete and accurate copy of any purchase and sale agreement or similar document covering the transaction, together with all such other documentation relating to the transaction as Franchisor may reasonably request. Without limitation of the foregoing, if this Agreement is proposed to be the collateral of a security interest, Franchisor may require the lender and Franchisee to enter into a non-disturbance agreement as to the Hotel and this Agreement in form and substance reasonably acceptable to Franchisor.

2. Transferor shall satisfy all of Franchisee's accrued monetary obligations to Franchisor and its Affiliates, shall execute a general release under seal in a form prescribed by Franchisor of any and all claims against Franchisor and its Affiliates, and their respective officers, directors, agents and employees, and shall pay to Franchisor a transfer fee in an amount equal to fifty percent (50%) of Franchisor's then-current initial franchise fee. An amount equal to the application fee, if any, actually paid to Franchisor pursuant to Section 15D(3) below will be credited against the transfer fee payable by transferor.

3. The proposed transferee shall obtain from, complete and submit to Franchisor the form franchise application then prescribed by Franchisor. Transferor must pay, or cause to be paid, to Franchisor an amount equal to the then-current application fee. The application fee is non-refundable. Franchisor reserves the right to reject an application for a transfer for reasons that may include, without limitation, the following: (i) if Franchisor deems the transferee's proposed debt service to be too great to permit the transferee to successfully operate the Hotel under the System, or (ii) if the proposed transferee or any of its affiliated entities (other than those holding interests as limited partners only) is the franchisor or owner, or is affiliated with the franchisor or owner, of a hotel trade name which is competitive with Franchisor or its Affiliates, regardless of the number of hotels operating under such trade name.

4. Transferee shall demonstrate to Franchisor's satisfaction that the transferee and its shareholders, members or partners, as appropriate, meet Franchisor's then-current managerial and business standards and have the aptitude and ability to conduct the franchised business (as may be evidenced by prior related business experience or otherwise); possess good moral character, business reputation and credit rating; and have adequate financial resources and capital to operate the franchised business, and any management company to be engaged by transferee shall meet Franchisor's then-current standards;

5. Franchisor and the transferee will, upon approval of transferee's application, enter into a new franchise agreement which shall require transferee to upgrade the Hotel to conform to Franchisor's then-current standards, and which new franchise agreement shall contain the then current standard terms (except for duration) then being issued for new franchised Hotels under the System. The transferee will be required to certify in writing that: (i) Franchisor did not endorse, recommend, or otherwise concur with the terms of the transfer, (ii) Franchisor did not comment upon any financial projections submitted by Franchisee to transferee, and (iii) Franchisor did not participate in the decision of the price to be paid, which decision was made without any intervention, support or participation by Franchisor;

6. Transferee's general manager shall, prior to assuming management of the Hotel, successfully (as defined by Franchisor) complete the management training program then being offered by Franchisor; and

7. Franchisee acknowledges that Franchisor has legitimate reasons to evaluate the qualification of potential transferees and the proposed terms of their purchase. Franchisee also acknowledges that Franchisor's contact with potential transferees for the purpose of protecting its business interests will not constitute improper or unlawful conduct. Franchisee expressly authorizes Franchisor to investigate any potential transferee's qualifications, to evaluate the proposed purchase terms, and to withhold consent to those transactions which Franchisor, in its sole judgment, determines are not consistent with its business interests, including, without limitation, economically questionable transactions. Franchisee waives any claim that any action Franchisor takes to

protect its business interests in relation to a proposed transfer constitutes tortious interference with contractual or business relationships.

E. Certain Changes of Controlling Principals. In the event of the death or permanent disability of Franchisee or any Controlling Principal, the interest of such person may be transferred under and subject to and subject to the terms of Section 15D provided that (i) any such transfer shall be made within six (6) months of the date of death or permanent disability and (ii) the obligations of Franchisee under this Agreement are satisfied pending the transfer, including adequate provision for management of the Hotel.

F. Right of First Refusal.

1. If Franchisee wishes to transfer all or part of its interest in the assets of the Hotel or this Agreement or if Franchisee or a Controlling Principal of Franchisee wishes to transfer any ownership interest in Franchisee, pursuant to any bona fide offer received from a third party to purchase such interest, then such proposed seller shall promptly notify Franchisor in writing of each such offer, and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of such written notification and copies of all documentation requested by Franchisor describing the terms of such offer, to send written notice to seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. If Franchisor elects to purchase the seller's interest, closing on such purchase must occur within the later of sixty (60) days from the date of notice to the seller of Franchisor's election to purchase, sixty (60) days after the date Franchisor receives and obtains all necessary permits and approvals, or such other date as the parties agree upon in writing. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same right of first refusal by Franchisor as in the case of an initial offer. Failure of Franchisor to exercise the option afforded by this Section 15F shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of Section 15, with respect to a proposed transfer.

2. If an offer from a third party provides for payment of consideration other than cash or involves specific intangible benefits, Franchisor may elect to purchase the interest proposed to be sold for the reasonable cash equivalent. If the parties cannot agree within a reasonable time on the reasonable cash equivalent of the non-cash part of the offer, then such amount shall be determined by two (2) appraisers, with each party selecting one (1) appraiser, and the average of their determinations shall be binding. In the event of such appraisal, each party shall bear its own legal and other costs and shall bear the appraisal fees equally. If Franchisor exercises its right of first refusal herein provided, it shall have the right to set off against any payment due the seller (i) all fees for any such independent appraiser due from the seller hereunder, and (ii) all amounts due from Franchisee or any of its Affiliates.

3. Failure to comply with the provisions of this Section prior to the transfer of any interest in Franchisee, the Hotel or this Agreement shall constitute a material event of default under this Agreement.

## 16. SECURITIES OFFERINGS

A. Consent Requirement. Any transfer of securities in a publicly-held Franchisee or in any publicly-held entity that owns a controlling interest in Franchisee which will result in a transfer of control requires Franchisor's prior written consent, which shall be conditioned upon satisfaction of the requirements of Section 15D and additionally upon satisfaction of the requirements of Section 16B below.

B. Review of Offering Materials. For any public or private offering of securities relating to Franchisee or the Hotel, whether or not involving a transfer of control, Franchisee shall: (1) Fully and unconditionally indemnify and hold harmless Franchisor and the Wyndham Companies for any liability associate with or arising from the offering; (2) state clearly in the prospectus or other offering material and supporting materials (the "Prospectus") and any press releases that Franchisor and the Wyndham Companies are not, in any way, participating in or endorsing the offering; and (3) include, in any proposed financing arrangement where the service mark "Wyndham" appears, or a reference to this Agreement appears, a disclaimer in bold face type substantially as follows: THE BORROWER IS A PARTY TO AN AGREEMENT WITH WYNDHAM HOTELS

AND RESORTS, LLC TO OPERATE HOTELS USING THE SERVICE MARK "WYNDHAM." NEITHER WYNDHAM HOTELS AND RESORTS, LLC NOR ITS AFFILIATES OWN ANY SUCH HOTELS OR ARE A PARTY TO THIS FINANCING AND HAVE NOT PROVIDED OR REVIEWED, AND ARE NOT RESPONSIBLE FOR, ANY DISCLOSURES OR OTHER INFORMATION SET FORTH HEREIN. Also, at least fifteen (15) days prior to closing such financing, Franchisee shall submit to Franchisor a written statement certifying that Franchisee has not misrepresented or overstated your relationship with Franchisor and the Wyndham Companies or Franchisee's rights to use the Marks.

## 17. DEFAULT AND TERMINATION

A. Termination - Notice Only. Franchisee shall be in material default and Franchisor may, at its option, terminate this Agreement and all rights granted hereunder, without affording Franchisee any opportunity to cure the default, effective immediately upon transmission of notice, upon the occurrence of any of the following: (1) Franchisee ceases to do business at the Hotel, or ceases to operate the Hotel under the Proprietary Marks and System; (2) Franchisee loses ownership or possession or the right to possession of the Hotel, or otherwise loses the right to conduct the franchised business at the Approved Location, except as otherwise provided in Section 19, by foreclosure, deed in lieu of foreclosure or exercise of the secured party's rights against any pledge of Franchisee's or any parent entity's equity securities; (3) If a threat or danger to public health or safety results from the construction, maintenance or operation of the Hotel, and an immediate shutdown of the Hotel is reasonably determined by Franchisor to be essential to avoid substantial risk of liability or loss of goodwill; provided, however, Franchisor shall reinstate this Agreement if, within six (6) months after termination under this clause, the threat or danger to public health or safety is eliminated and Franchisor reasonably determines that reopening the Hotel would not cause a substantial loss of goodwill; (4) If Franchisee or any Principal, officer, director or employee of Franchisee is convicted of a felony or any other crime or offense that is reasonably likely, in the reasonable opinion of Franchisor, to adversely affect the System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein; (5) If Franchisee discloses or divulges the contents of the Manual, the Software (including accompanying documentation) or other trade secret or Confidential Information provided to Franchisee by Franchisor contrary to Sections 11 and 12; (6) If Franchisee or any Principal or Controlling Principal purports to transfer any rights or obligations under this Agreement or any interest in Franchisee or the Hotel to any third party contrary to the terms of Sections 15 or 16; (7) If an audit conducted pursuant to this Agreement determines that Franchisee has underreported Gross Room Revenues by three percent (3%) or more for any one year period; (8) if Franchisee shall become insolvent or make a general assignment for the benefit of creditors, or if a case under the Federal bankruptcy code is filed by or against Franchisee and not dismissed within ninety (90) days after filing, or if Franchisee is adjudicated bankrupt, or if any other proceeding for the appointment of a receiver or other custodian or seeking marshalling or composition of or for Franchisee's business or assets, is filed in any court of competent jurisdiction and not dismissed within ninety (90) days; or (9) if a final judgment against Franchisee remains unsatisfied or of record for ninety (90) days or longer (unless supersedeas bond is filed), or if execution is levied against the Hotel or other real or personal property at the Hotel, or suit to foreclose any lien, mortgage or security interest against the Hotel or other real or personal property appurtenant thereto, or any pledge of the equity securities of Franchisee, is initiated against Franchisee or if the real or personal property of the Hotel shall be sold after levied upon by any sheriff, marshal, or constable; or (10) Franchisee's repeated violation of Section 6A hereof.

B. Termination - Notice and Cure. Franchisee shall have ten (10) days after receipt of a written notice of default within which to cure any monetary default under this Agreement. Except as provided in Section 17A and the preceding sentence, Franchisee shall have thirty (30) days after its receipt from Franchisor (or first refusal of delivery) of a written notice of default, or such longer period as specified in the default notice or required by applicable law, within which to remedy any other default and provide evidence of cure to Franchisor. Franchisor may grant additional time to cure if the default cannot reasonably be cured within such 30 day period, provided that Franchisor may terminate any such extension if Franchisee shall fail to perform the actions necessary to cure diligently and continuously. If a default is not cured within the time set forth above, Franchisor shall have the right to terminate this Agreement upon notice to Franchisee.

## 18. OBLIGATIONS UPON TERMINATION

Upon termination or expiration of this Agreement, all rights granted to Franchisee shall terminate, and Franchisee shall comply with all of the obligations applicable to the Approved Location in this Section 18.

A. Cease Operation as Wyndham Hotel. Franchisee shall immediately cease operation of the Hotel as a Wyndham Hotel and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Franchisor. Franchisee shall, at its expense, comply with the following de-identification obligations: promptly remove all distinctive signs, emblems, amenities and other items bearing the Proprietary Marks; change directory and other listings to remove all reference to such Proprietary Marks and to any telephone or other number used generally by other Wyndham Hotels for reservation or other purposes; and make such specific additional changes as Franchisor may reasonably request to prevent any possibility that the public may confuse the Hotel with a Wyndham Hotel. Franchisor also, to the extent permitted by applicable law, and without prior notice, may enter the Hotel and remove all copies of the Manual, Confidential Information, equipment and all other personal property of Franchisor's, and paint over or remove, all or part of any interior or exterior Proprietary Mark-bearing signage (or signage face plates), including billboards, whether or not located at the Hotel, that Franchisee has not removed or obliterated within ten (10) days after termination. Franchisee will promptly pay or reimburse Franchisor for its cost of removing such items. Franchisor will exercise reasonable care in removing or painting over signage. Franchisor will have no obligation or liability to restore the Hotel to its condition prior to removing the signage. Until all modifications and alterations required by this Section 18A are completed, Franchisee shall take all such actions as may reasonably be required by Franchisor to advise all customers and prospective customers that the Hotel is no longer associated with the Wyndham System. Franchisee expressly acknowledges that its failure to make such alterations will cause irreparable injury to Franchisor. If Franchisee does not strictly comply with all of the de-identification obligations described above, those set forth in the Manual and in any other brand directives, Franchisee agrees to pay Franchisor the De-Identification Fee as specified on Attachment B until de-identification is completed to Franchisor's satisfaction. You will transfer to us any domain names you own that include any material portion of the Marks.

B. Cancel Assumed Name Certificate. Franchisee shall take such action as may be necessary to cancel any assumed name or equivalent registration which contains the name "Wyndham" or any variation thereof or any other Proprietary Mark, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination or expiration of this Agreement.

C. Pay Liquidated Damages. If Franchisee terminates this Agreement for any reason other than Franchisor's uncured default (which continues after Franchisee gives Franchisor written notice specifying the default and a reasonable period of not less than 60 days after delivery of such notice to cure the default), or Franchisor terminates this agreement pursuant to Section 17, Franchisee shall pay to Franchisor, as liquidated damages for the premature termination of this Agreement only and not as a penalty, a lump sum equal to the product of (x) the monthly average of the sum of the Royalties and Marketing and Global Sales Fees accruing under Sections 3B and 3C during the twelve (12) full calendar months of Hotel operation preceding the termination (or such lesser period as has elapsed since the Opening Date), multiplied by (y) the lesser of (i) 36 or (ii) the number of months remaining until the expiration of the Term, which may be a fraction if termination occurs in the last month of the Term. The parties mutually acknowledge that the lump sum payment provided under this Section 18C is reasonable in light of the uncertainty as of the Effective Date about the precise damages for premature termination which Franchisor will sustain in such event. Such payment of liquidated damages shall be in addition to amounts provided immediately below in Section 18D. The payment of liquidated damages hereunder shall not affect Franchisor's rights to obtain appropriate equitable relief and remedies, nor shall it affect Franchisor's right to pursue any other remedies. If this Agreement terminates prior to the Opening Date, then this Section 18C shall not apply but Section 5 of the Conversion Addendum or Section 7 of the New Construction Addendum, as applicable, shall apply and the initial franchise fee paid by Franchisee hereunder shall be retained by Franchisor.

D. Pay Outstanding Amounts. Franchisee shall promptly pay all accounts, invoices and other charges for goods and services rendered to Franchisee, and amounts due under this Agreement or any other agreement to Franchisor and its Affiliates or suppliers. Franchisee shall also pay any and all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor (i) in obtaining injunctive or other relief for the enforcement of any provisions of this Agreement, or (ii) defending any contested termination of this Agreement.

E. Return of Manual and Other Materials. Franchisee shall immediately deliver to Franchisor the Manual, instructions, Software and accompanying documentation, and all other materials provided by Franchisor related to the operation of the Hotel, all copies thereof (all of which are acknowledged to be the Franchisor's property), and Franchisor's other Confidential Information, and shall retain no copy or record of any of the foregoing, excepting only Franchisee's copy of this Agreement and any correspondence between the parties, and any other documents which Franchisee reasonably needs for compliance with any provision of law.

F. Purchase of Certain Materials. Franchisor shall have the right but not the duty, to be exercised by notice of intent to do so within thirty (30) days after termination or expiration, to purchase any and all signs, advertising materials, supplies and inventory and any other item bearing Franchisor's Proprietary Marks, at Franchisee's cost. With respect to any purchase by Franchisor as provided herein, Franchisor shall have the right to set off all amounts due from Franchisee under this Agreement.

G. Survival. The obligations of Franchisee in Article 18 shall survive the expiration or termination of this Agreement.

## 19. CONDEMNATION AND CASUALTY

A. Condemnation. Franchisee shall, at the earliest possible time, give Franchisor notice of any proposed taking by eminent domain. Franchisee shall notify Franchisor if and when the condemning authority takes formal action to pursue condemnation. Franchisor may then seek a replacement Wyndham Hotel for the Hotel and any exclusive territorial rights granted under this Agreement or otherwise shall cease and terminate. When the Hotel is ultimately condemned, Franchisee shall give Franchisor notice that such event has occurred and this Agreement shall terminate. Unless Franchisor or an affiliate has then signed a franchise agreement or management agreement to replace the Hotel in its trading area with a Wyndham Hotel in the same tier as the Hotel, Franchisee shall pay Franchisor, from the condemnation award, Liquidated Damages as specified in Section 18. If a non-substantial condemnation shall occur, then Franchisee shall promptly make whatever repairs and restoration may be necessary to make the Hotel conform substantially to its former condition, character and appearance, according to plans and specifications approved by Franchisor. The resumption of normal operation of the Hotel shall not be unreasonably delayed.

B. Casualty. If the Hotel is damaged or destroyed by fire or other cause, which damage or destruction necessitates the closing of the Hotel for a period in excess of thirty (30) days, Franchisee shall be obligated to act diligently to repair, restore and rebuild the Hotel within a reasonable time after the casualty. If Franchisee elects not to repair or rebuild the Hotel, Franchisee shall have the right to terminate this Agreement upon written notice to Franchisor given within sixty (60) days of the closing of the Hotel; provided that Franchisee shall be obligated to promptly pay to Franchisor an amount equal to the liquidated damages set forth in Section 18.

## 20. TAXES, PERMITS AND INDEBTEDNESS

A. Payment of Taxes and Indebtedness. Franchisee shall promptly pay when due all taxes levied or assessed by any federal, state or local tax authority, and any and all other indebtedness incurred by Franchisee in the conduct of the franchised business. Franchisee shall pay to Franchisor an amount equal to any sales tax, gross receipts tax or similar tax imposed on Franchisor with respect to any payments to Franchisor required under this Agreement, unless the tax is credited against income tax otherwise payable by Franchisor. Franchisee shall have no obligation hereunder for any tax which is based upon the net income of Franchisor.

B. Contested Amounts. In the event of any bona fide dispute as to liability for taxes assessed or other indebtedness, Franchisee may contest the validity of the amount of the tax or indebtedness under and subject to the procedures of the taxing authority or applicable law; however, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by creditor, to occur against the premises of the Hotel or any improvement thereon.

C. Compliance with Laws. Franchisee shall comply with all global, federal, state, and local laws, rules and regulations, and shall timely obtain any and all permits, certificates or licenses necessary for the operation of the Hotel and for the full and proper conduct of the franchised business including, without limitation, licenses to do business, fictitious name registrations, sales tax permits, health and sanitation permits and ratings and fire clearances. Franchisee shall obtain and maintain in full force and effect from and after the opening of the Hotel all licenses required for the sale of alcoholic beverages.

D. Notice of Judicial and Regulatory Matters. Franchisee shall notify Franchisor in writing within five (5) days after Franchisee's actual or constructive receipt of notice of the commencement of any action, suit or proceeding, and of the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality, which may adversely affect the operation or financial condition of the franchised business. Copies of all inspection reports, warnings, certificates and ratings issued by any governmental entity during the Term for the Hotel which indicate a failure to meet or maintain governmental standards or less than full compliance with any applicable law, rule or regulation, shall be forwarded to Franchisor by Franchisee within five (5) days of Franchisee's receipt thereof.

E. Notice of Defaults. Franchisee shall promptly deliver to Franchisor a copy of any notice of default received from any mortgagee, trustee under any deed of trust, or ground lessor with respect to the Hotel and, upon the request of Franchisor, shall provide such additional information as may be requested in respect of any such alleged default or any subsequent action or proceeding in connection therewith.

F. Timely Payments. Franchisee recognizes that Franchisee's failure to make or repeated delay in making prompt payment of all amounts owed for the operation of the Hotel (including, without limitation, all taxes levied or assessed and all accounts and other indebtedness) that Franchisee does not timely contest in good faith under and subject to the terms of any agreements, leases, invoices or statements for purchase or lease of furniture, fixtures, equipment, inventories, supplies, ingredients, travel agent services, or other goods or services will be detrimental to the reputation and credit standing of Franchisee, Franchisor and other System franchisees. Franchisee shall pay when due all amounts owed by Franchisee for operating the Hotel.

## **21. INDEPENDENT CONTRACTORS AND INDEMNIFICATION**

A. Independent Contractors. Franchisee acknowledges that Franchisor and Franchisee are not and will not be considered as joint venturers, partners or agents of each other. Franchisee specifically acknowledges that the relationship created by this Agreement is not a fiduciary, special or any other similar relationship of trust and confidence, but rather is an arm's-length business relationship. Franchisor owes Franchisee no duties except as expressly provided in this Agreement.

1. During the Term, Franchisee shall hold itself out to the public as an independent contractor operating the business pursuant to a franchise from Franchisor and as an authorized user of the Proprietary Marks. Franchisee shall take such affirmative action as may be necessary to do so, including, without limitation, exhibiting notices of that fact at the Hotel as required under Section 10.

2. Nothing in this Agreement authorizes either party to make any contract, agreement, warranty or representation on the other's behalf, or to incur any indebtedness or other obligation in the other's name, provided that Franchisee shall honor all reservations and advance bookings effected through the Reservation System and the sales and marketing programs described in this Agreement. Neither party shall assume liability for, or be deemed liable hereunder, as a result of any such action, or by reason of any act or omission of the other party or any claim or judgment arising therefrom.

3. Franchisor does not exercise any discretion or control over the employment practices, policies or decisions of Franchisee. All employees of Franchisee are solely employees of Franchisee, not Franchisor. Franchisee is solely responsible for the recruitment, selection, hiring, training, scheduling, compensation, discipline and termination of all Hotel employees.

B. Indemnity. Franchisee shall indemnify, defend and save harmless Franchisor, its Affiliates, their respective officers, directors, agents, representatives, employees, successors and assigns (collectively, the "Wyndham Indemnified Parties"), from and against all payments of money (including, without limitation, all losses, costs, liabilities, damages, claims, fines, settlement amounts, legal fees, costs and expenses) of every kind and description arising out of or resulting from Franchisee's breach of any representation or warranty in this Agreement or the construction, conversion, equipping, operation, maintenance, housekeeping or use of the Hotel or Hotel premises or of any other business conducted on or for the Hotel by the Franchisee and any lessee, manager, licensee, contractor or operator of any business, enterprise or activity at the Hotel or the Approved Location, or because of any act or omission of the Franchisee or anyone associated with, employed by, or affiliated with Franchisee (even where the strict liability or negligence, whether sole, joint or concurrent, active or passive, of the Wyndham Indemnified Parties is actual or alleged). You have no obligation to indemnify any Wyndham Indemnified Party for damages to compensate for property damage or personal injury if a court of competent jurisdiction makes a final decision not subject to further appeal that the Wyndham Indemnified Party engaged in willful misconduct or intentionally caused such property damage or bodily injury. Franchisor shall in any event have the right, through counsel of its choice at Franchisee's expense, to control the defense or response to any such action if it could affect the Wyndham Indemnified Parties financially, and such undertaking by Franchisor shall not, in any manner or form, diminish Franchisee's obligations to Franchisor hereunder. Franchisee shall also reimburse Franchisor for all expenses (including legal fees and court costs) reasonably incurred by Franchisor to protect itself and any of the Wyndham Indemnified Parties from, or to remedy, Franchisee's defaults under this Agreement, provided, that under no circumstances shall Franchisor be required or obligated to seek recovery from third parties or otherwise mitigate its losses in order to maintain a claim under this indemnity and against Franchisee, and the failure of Franchisor to pursue such recovery or mitigate such loss will no way reduce the amounts recoverable by Franchisor from Franchisee. This indemnification shall survive the expiration, termination, or transfer of this Agreement or any interest herein.

## 22. APPROVALS, CONSENTS AND WAIVERS

A. Written Consent Required. Approvals and consents by either party will not be effective unless evidenced by a writing signed by such party. Either party's consent, wherever required, may be withheld if any default by the other party exists under this Agreement.

B. Effects of Consents. Except as otherwise provided in any written agreement executed by Franchisor and Franchisee, Franchisor makes no warranties or guarantees upon which Franchisee may rely. Franchisor assumes no liability or obligation to Franchisee by providing any waiver, approval, consent or suggestion to Franchisee for this Agreement or by reason of any delay or denial of any such request.

C. No Waiver. No failure of a party to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by the other party with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of such party's right thereafter to demand exact compliance with any of the terms herein. Waiver by a party of any particular default by the other party shall not affect or impair such party's rights with respect to any subsequent default of the same, similar, or different nature; nor shall any delay, forbearance, or omission of a party to exercise any power or right arising out of any breach or default by the other party of any of the terms, provisions, or covenants hereof, affect or impair such party's right to exercise the same.

## 23. REPRESENTATIONS, WARRANTIES AND COVENANTS OF FRANCHISEE

Franchisee represents, warrants, and covenants with Franchisor as follows:

A. Information Submitted by Franchisee. Franchisor has entered into this Agreement in reliance upon the statements and information submitted to Franchisor by Franchisee for this Agreement. Franchisee represents and warrants that all such statements and information submitted by Franchisee for this Agreement are true, correct and complete in all material respects. Franchisee agrees to promptly advise Franchisor of any material changes in the information or statements submitted.



B. Compliance With Laws. Franchisee is, and shall continue to be, in compliance with all laws, rules, regulations and court orders applicable to the Hotel or the operation of the Hotel including but not limited to, all health and safety laws, the Americans with Disability Act, innkeepers laws, anti-money laundering laws and otherwise as described in Section 20C. Franchisee certifies that neither Franchisee nor its owners, employees or anyone associated with Franchisee is listed in the Annex to Executive Order 13224. (The Annex is available at <http://www.treasury.gov/offices/enforcement/ofac/sanctions/terrorism.html>.) Franchisee agrees not to hire or have any dealings with a person listed in the Annex. Franchisee certifies that it has no knowledge or information that, if generally known, would result in Franchisee, its owners, employees, or anyone associated with Franchisee being listed in the Annex to Executive Order 13224. Franchisee covenants to comply with and/or assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with the Anti-Terrorism Laws (as defined below). For such compliance, Franchisee certifies, represents, and warrants that none of its property or interests are subject to being "blocked" under any of the Anti-Terrorism Laws and that Franchisee and its owners are not otherwise in violation of any of the Anti-Terrorism Laws. Franchisee is solely responsible for ascertaining what actions must be taken by Franchisee to comply with all such Anti-Terrorism Laws, and Franchisee specifically acknowledges and agrees that Franchisee's indemnification responsibilities as provided in Section 21B pertain to Franchisee's obligations under this Section 23B. Any misrepresentation by Franchisee under this Section or any violation of the Anti-Terrorism Laws by Franchisee, its owners, or employees shall constitute grounds for immediate termination of this Agreement and any other agreement Franchisee has entered into with Franchisor or one of Franchisor's affiliates. As used herein, "Anti-Terrorism Laws" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA PATRIOT Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any Governmental Authority (including, without limitation, the United States Department of Treasury Office of Foreign Assets Control) addressing or in any way relating to terrorist acts and acts of war.

C. This Transaction. Franchisee and the persons signing this Agreement for Franchisee have full power and authority and have been duly authorized, to enter into and perform or cause performance of Franchisee's obligations under this Agreement. Franchisee has obtained all necessary approvals of its owners, Board of Directors and lenders. No executory franchise, license, or affiliation agreement for the Hotel exists other than this Agreement. Franchisee's execution, delivery and performance of this Agreement will not violate, create a default under or breach of any charter, bylaws, agreement or other contract, license, permit, indebtedness, certificate, order, decree or security instrument to which Franchisee or any of its principal owners is a party or is subject or to which the Hotel is subject. Neither Franchisee nor the Hotel is the subject of any current or pending merger, sale, lease, dissolution, receivership, bankruptcy, foreclosure, reorganization, insolvency, or similar transaction, action or proceeding on the date Franchisee executes this Agreement and was not within the three years preceding such date, except as disclosed in the franchise application. Franchisee will submit to Franchisor the documents about the Hotel, Franchisee, its owners and its finances that Franchisor requests in the franchise application (or after review of Franchisee's initial submissions) before or within 30 days after Franchisee signs this Agreement.

D. Quiet Enjoyment and Financing. Franchisee owns, or will own prior to commencing improvement, or lease, the Approved Location and the Hotel. Franchisee will be entitled to possession of the Approved Location and the Hotel during the entire Term without restrictions that would interfere with Franchisee's performance under this Agreement, subject to the reasonable requirements of any financing secured by the Hotel. Franchisee has, when it signs this Agreement, and will maintain during the Term, adequate financial liquidity and financial resources to perform its obligations under this Agreement.

E. No Implied Covenants. Except as expressly stated in this Agreement, Franchisee acknowledges that there are no express or implied covenants or warranties, oral or written, between Franchisee and Franchisor.

## 24. NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be delivered (i) by personal delivery, (ii) by a nationally recognized overnight commercial delivery service (such as Airborne Express or Federal Express), (iii) by certified mail, return receipt requested, or (iv) by electronic mail, posting of the notice

on the System intranet site or by a similar technology, to the respective parties at the following addresses (unless and until a different address has been designated by written notice to the other party), or to the System intranet site:

Notices to Franchisor:	Wyndham Hotels and Resorts, LLC 22 Sylvan Way Parsippany, New Jersey 07054 Attention: Senior Vice President - Contracts Administration Facsimile: (973) 753-7254
Notices to Franchisee:	JWM Ventures, LLC 10161 Park Run Drive Suite 150 Las Vegas, NV 89145 Attention: John Mc Donald Facsimile: Telephone: 310-654-9808 Electronic Mail Address: john@jwmventures.net

Any notice shall be deemed to have been given at the date and time of (i) receipt or first refusal of delivery if sent via certified mail, or (ii) one (1) day after posting if sent via overnight commercial delivery service.

## 25. ENTIRE AGREEMENT

A. This Agreement, together with any attachments and addenda hereto, and the Franchise Disclosure Document Franchisee or its representatives received prior to entering into this Agreement contain the entire agreement between the parties hereto as it relates to the franchising of the Hotel at the Approved Location. There are no representations, inducements, promises, agreements, arrangements or undertakings, oral or written, between the parties relating to the franchising of the Hotel at the Approved Location other than those set forth herein and in such Disclosure Document. No agreement of any kind relating to the matters covered by this Agreement shall be binding upon either party unless and until the same has been made in writing and executed by all interested parties.

B. This Agreement may not be amended, modified or rescinded, or any performance requirement waived, except by a written document signed by Franchisor and Franchisee. This provision does not apply to changes in the Manual or notice of the Opening Date, which Franchisor may modify or designate unilaterally. The parties expressly agree that this Agreement may not be amended or modified, or any performance standard changed, by course of dealing, by special indulgences or benefits Franchisor bestows on Franchisee, or by inference from a party's conduct.

## 26. CONSTRUCTION AND SEVERABILITY

A. Severability. Except as expressly provided to the contrary herein, each section, part, term and provision of this Agreement shall be considered severable. If, for any reason, any section, part, term or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other sections, parts, terms and provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid sections, parts, terms or provisions shall be deemed not to be a part of this Agreement.

B. No Third Party Beneficiary. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies under or by reason of this Agreement upon any person or legal entity other than Franchisee, Franchisor, and such of Franchisee's and Franchisor's respective successors and assigns as may be contemplated (and, as to Franchisee, permitted) by this Agreement.

C. Maximum Duty Imposed. Franchisee and Franchisor expressly agree to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made part of this Agreement, that may result from striking from any of the provisions hereof portion or portions which a court may hold to be unreasonable and unenforceable

in a final decision to which Franchisor or Franchisee, as applicable, is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

D. Captions. All captions in the Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

E. Construction. All references herein to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, where applicable. All acknowledgments, promises, covenants, agreements and obligations herein made or undertaken by Franchisee shall be deemed jointly and severally undertaken by all the parties hereto signing the Guaranty on behalf of Franchisee.

F. Counterpart Execution. This Agreement may be executed in counterparts and each copy so executed shall be deemed an original. Execution pages manually signed and transmitted by electronic means shall be deemed delivered and fully accepted as validly executed.

## **27. DISPUTE RESOLUTION, REMEDIES AND GOVERNING LAW**

A. Franchisor and Franchisee agree to submit any claim, controversy or dispute arising out of or relating to this Agreement (including all attachments and addenda) or the relationship created by this Agreement to non-binding mediation prior to bringing such claim, controversy or dispute in a court or before any other tribunal. The mediation shall be conducted by either an individual mediator or a mediator appointed by a mediation services organization or body, experienced in the mediation of hotel industry disputes, agreed upon by the parties and, failing such agreement within a reasonable period of time (not to exceed fifteen (15) days), after either party has notified the other of its desire to seek mediation by the CPR institute dispute resolution (or any successor organization) under and subject to its rules governing mediation, at franchisor's principal place of business. The costs and expenses of mediation, including compensation and expenses of the mediator (except for the attorney's fees incurred by either party), shall be borne by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the mediator has been chosen, then, unless such time period is extended by written agreement of the parties, either party may bring a legal proceeding under Section 27B below to resolve such claim, controversy or dispute. Notwithstanding the foregoing, Franchisor may bring an action (1) for monies owed, (2) for injunctive or other extraordinary relief, or (3) involving the possession of or to secure other relief relating to the Hotel premises, in a court having jurisdiction and under and subject to Section 27B, below, without first submitting such action to mediation.

B. With respect to any claims, controversies or disputes which are not finally resolved through mediation or as otherwise provided above, franchisee hereby irrevocably submits itself to the non-exclusive personal jurisdiction of the state and the federal district courts located in the state, county or judicial district in which the Franchisor's principal place of business is located and waives all defenses to personal jurisdiction in such courts. Franchisee agrees that service of process may be made upon it in any proceeding relating to or arising out of this Agreement or the relationship created by this Agreement by any means allowed by New Jersey or federal law. Franchisee further agrees that venue for any proceeding relating to or arising out of this Agreement shall be the county or judicial district in which the franchisor's principal place of business is located; provided, however, with respect to any action (1) for monies owed, (2) for injunctive or other extraordinary relief or (3) involving possession or disposition of, or other relief relating to, the Hotel premises, Franchisor may bring such action in any state or federal district court of competent jurisdiction. The prevailing party in any cause of action brought under this Agreement, pursuant hereto or in connection herewith (including, without limitation, any action for declaratory or equitable relief) shall be entitled to recover from the non-prevailing party reasonable attorney's fees, expenses and costs of suit incurred by the prevailing party in such action.

C. This Agreement takes effect upon its acceptance and execution by Franchisor in the state of New Jersey and shall be interpreted and construed under New Jersey law (except for New Jersey choice of law rules), provided that the New Jersey Franchise Practices Act shall not apply to any franchise located outside the state of New Jersey.

D. Franchisee and Franchisor acknowledge that the parties' agreement regarding applicable state law and forum set forth herein provide each of the parties with the mutual benefit of uniform interpretation of this Agreement and any dispute arising out of this Agreement or the parties' relationship created by this Agreement. Franchisor and Franchisee further acknowledge the receipt and sufficiency of mutual consideration for such benefit.

E. IN ANY LITIGATION BETWEEN THE PARTIES FOUNDED UPON OR ARISING FROM THIS AGREEMENT, THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL, AND THE PARTIES HEREBY STIPULATE THAT ANY SUCH TRIAL SHALL OCCUR WITHOUT A JURY.

F. FRANCHISEE AGREES THAT, FOR THE SYSTEM TO FUNCTION PROPERLY, FRANCHISOR AND ITS AFFILIATES SHOULD NOT BE BURDENED WITH THE COSTS OF ARBITRATING OR LITIGATING SYSTEM WIDE CLAIMS. ACCORDINGLY, FRANCHISEE AGREES THAT ANY DISAGREEMENT BETWEEN THE PARTIES SHALL BE CONSIDERED UNIQUE AS TO ITS FACTS AND SHALL NOT BE BROUGHT AS A CLASS ACTION, AND FRANCHISEE WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO BRING, JOIN OR PARTICIPATE IN, A CLASS ACTION OR MULTI-PLANTIFF, CONSOLIDATED OR COLLECTIVE ACTION AGAINST FRANCHISOR OR ANY OF ITS AFFILIATES.

G. FRANCHISEE AND ITS PRINCIPALS HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO OR CLAIM OR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS) AGAINST FRANCHISOR, ITS AFFILIATES, AND THE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, AGENTS, REPRESENTATIVES, INDEPENDENT CONTRACTORS, SERVANTS AND EMPLOYEES OF EACH OF THEM, IN THEIR CORPORATE AND INDIVIDUAL CAPACITIES, ARISING OUT OF ANY CAUSE WHATSOEVER (WHETHER SUCH CAUSE BE BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) AND AGREE THAT IN THE EVENT OF A DISPUTE, FRANCHISEE AND THE PRINCIPALS SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED BY THEM. IF ANY OTHER TERM OF THIS AGREEMENT IS FOUND OR DETERMINED TO BE UNCONSCIONABLE OR UNENFORCEABLE FOR ANY REASON, THE FOREGOING PROVISIONS OF WAIVER BY AGREEMENT OF PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS) SHALL CONTINUE IN FULL FORCE AND EFFECT).

H. Remedies Cumulative. No right or remedy conferred upon or reserved to Franchisor or Franchisee by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

I. Injunctive Relief. Nothing herein contained shall bar either party's right to obtain injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

J. U.S. Currency. All fees and payments required by this Agreement shall be paid in U.S. currency.

## 28. FRANCHISEE ACKNOWLEDGMENTS

A. FRANCHISEE ACKNOWLEDGES THAT IT DID NOT RELY ON ANY PROMISES, REPRESENTATIONS OR AGREEMENTS ABOUT THE FRANCHISOR OR THE FRANCHISE NOT EXPRESSLY CONTAINED IN THIS AGREEMENT AND THE FRANCHISOR'S FRANCHISE DISCLOSURE DOCUMENT IN MAKING ITS DECISION TO SIGN THIS AGREEMENT. FRANCHISEE FURTHER REPRESENTS AND WARRANTS THAT FRANCHISOR AND ITS REPRESENTATIVES HAVE NOT MADE ANY PROMISES, REPRESENTATIONS OR AGREEMENTS, ORAL OR WRITTEN, EXCEPT AS EXPRESSLY CONTAINED IN THIS AGREEMENT OR SUCH DISCLOSURE DOCUMENT.

B. FRANCHISEE ACKNOWLEDGES THAT FRANCHISEE HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE BUSINESS FRANCHISED HEREUNDER, AND RECOGNIZES THAT THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT INVOLVES BUSINESS RISKS AND THAT ITS SUCCESS WILL BE LARGELY DEPENDENT UPON THE ABILITY OF FRANCHISEE. FRANCHISOR EXPRESSLY DISCLAIMS THE MAKING OF, AND FRANCHISEE ACKNOWLEDGES THAT FRANCHISEE HAS NOT RECEIVED OR RELIED UPON, ANY WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, AS TO THE POTENTIAL REVENUES, RESERVATION DELIVERY, SALES PRODUCTION, PROFITS OR SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT.

C. FRANCHISEE ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD THIS AGREEMENT AND THE ATTACHMENTS HERETO (IF ANY) AND THAT FRANCHISEE HAS HAD AMPLE TIME AND OPPORTUNITY TO CONSULT WITH ADVISORS OF FRANCHISEE'S OWN CHOOSING ABOUT THE POTENTIAL BENEFITS AND RISKS OF ENTERING INTO THIS AGREEMENT.

D. FRANCHISEE ACKNOWLEDGES THAT IT RECEIVED A COMPLETE COPY OF THIS AGREEMENT AND ALL RELATED ATTACHMENTS AND AGREEMENTS AT LEAST 7 DAYS PRIOR TO THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED. FRANCHISEE FURTHER ACKNOWLEDGES THAT IT HAS RECEIVED THE DISCLOSURE DOCUMENT REQUIRED BY THE FEDERAL TRADE COMMISSION AT LEAST 14 DAYS PRIOR TO THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED.

**29. Protected Territory.** Notwithstanding Section 1B, the Wyndham Companies will not own, operate, lease, manage, or license any party but you to operate a Wyndham Garden tier Hotel in the "Protected Territory", defined below, while this Agreement is in effect. The Wyndham Companies may own, operate, lease, manage, franchise or license anyone to operate any Wyndham Hotel, regardless of tier, located anywhere outside the Protected Territory without any restriction or obligation to Franchisee. Franchisor may grant Protected Territories for other Wyndham Hotels, regardless of tier, that overlap the Protected Territory. While this Agreement is in effect, neither Franchisee nor its officers, directors, general partners or owners of 25% or more of its equity interests, may own, operate, lease, manage or franchise any guest lodging facility other than the Project in the Protected Territory unless Franchisor or an affiliate licenses the facility. Franchisee will use any information obtained through the central reservation system to refer guests, directly or indirectly, only to Wyndham Hotels and Wyndham Garden Hotels. Franchisee acknowledges that the Protected Territory fairly represents the Hotel's trading area. There are no express or implied territorial rights or agreements between the parties except as stated in this Section. By electing to include this section in your Agreement, Franchisee irrevocably waives any right to seek or obtain the benefits of any policy Franchisor now follows or may in the future follow to notify franchisees about proposed Wyndham Hotels, regardless of tier, in the general area of the Hotel, solicit information about the effect of the proposed Wyndham Hotel on the revenue or occupancy of the Hotel or decide whether to add the proposed Wyndham Hotel to the chain based on the potential effect of the proposed Wyndham Hotel on the Hotel or its performance. The covenants in this Section are mutually dependent; if you breach this Section, your Protected Territory will be the Site only. **The Protected Territory means** an area to include a three (3) mile radius whose centerpoint is the front door of the Hotel.

**30. SPECIAL STIPULATIONS.** The following special stipulations apply to this Agreement and supersede any inconsistent or conflicting provisions. Franchisee acknowledges that these stipulations and any changes made to the body of this Agreement at Franchisee's request or in response to other changes to Franchisor's form agreement are the product of arms' length negotiations between Franchisor and Franchisee and represent mutually agreed, material inducements to enter into this Agreement, beneficial to Franchisee and supported by adequate consideration from both parties. These are personal to Franchisee and are not transferable or assignable.

**30.1 TRANSFER RIGHTS.** If Franchisee is then not in default under this Agreement, at any time before the first anniversary of the Opening Date, Franchisee may assign this Agreement at the same time as Franchisee conveys the Hotel to an entity in which Franchisee or the persons listed as the owners of Franchisee are to be owners of at least 51% of the interests of the transferee entity and retain control over the entity so that change of control does not occur. The transferee and Franchisee must sign and deliver to Franchisor an Assignment and Assumption Agreement before


Franchisee transfers the Hotel. No Application or Relicense Fees will be charged. The accounts of the transferee and Franchisee must be current at the time of transfer, or Franchisor will not recognize the transfer. The transferee must submit (i) an application on Franchisor's standard form, (ii) its organizational agreement or charter, (iii) updated insurance, and (iv) an updated Guaranty with the Assignment and Assumption Agreement. Franchisor will not recognize the transfer as effective until these documents are completed and delivered to Franchisor. The transferee must send us a copy of the warranty deed conveying the Hotel within 30 days after its delivery.

**30.2 Alternate Location Selection.** You may choose an alternate site for construction of the Hotel at your option. An application for changing the Location to the new site must be submitted to and approved by us before you commence construction of the Hotel. The approval will be at our sole discretion, and shall be subject to any notification procedures we establish for the benefit of current and prospective Chain, and any contractual obligations to which we believe we are bound. An application for the new site together with its legal description must be submitted to us for approval within **twelve months after the Effective date**, after which this stipulation shall be void. The time schedule in Section 7.A.1 and the New Construction Addendum will not be affected by your exercise of this option. Upon our written approval, the new site will become the Location.

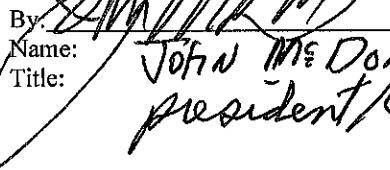
IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Agreement in duplicate on the day and year first above written.

**FRANCHISOR**

WYNDHAM HOTELS AND RESORTS, LLC  
a Delaware limited liability company

By:   
Michael Piccola, Senior Vice President

**FRANCHISEE**  
JWM Ventures, LLC  
a

By:   
Name: John McDonald  
Title: president/CEO.

**ATTACHMENT A**  
**SELECTED TERMS**

Wyndham Hotel Tier, Name and Proprietary Mark: Wyndham Garden

Opening Date: on or before December 30, 2017

Expiration Date: on the day prior to the 20<sup>th</sup> anniversary of the Opening Date

Approved Location of the Hotel: 215 East Central Ave, Valdosta, GA 31603

Number of guest rooms: 125

Food & Beverage Outlets: \_\_\_\_\_

Meeting Space (Rooms & Sq. Ft.) \_\_\_\_\_

Initial franchise fee: \$8,000 when you sign this Agreement and \$29,500 pursuant to the attached Initial Fee Note

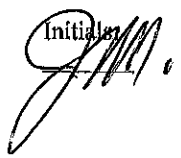
Application fee: \$2,500.00  
(to be credited against initial franchise fee)

Franchisee's Principals (names, addresses, and percentages of ownership in Franchisee or in any person or entity that owns a controlling interest in Franchisee):

<u>Name</u>	<u>Address</u>	<u>Percentage of Ownership</u>
*John McDonald	10161 Park Run Drive Suite 150 Las Vegas NV 89145	100%

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\*Designates Franchisee's controlling shareholders, controlling members or general partners signing the Guaranty as Controlling Principals.

Initials  




**ATTACHMENT B**

**OTHER FEES AND CHARGES**

**MANDATED CENTRAL SERVICES**

<b>Fees</b>	<b>Amount</b>	<b>Due Date</b>	<b>Explanation</b>
Reservation System Fee	The following Reservation System Fees are approximate as of the Effective Date and are charged on a net reservation basis, unless otherwise indicated: (a) Wyndham.com bookings: \$3.50; (b) Travelocity and Orbitz bookings: \$5.50; (c) GDS and Internet Booking Fees: \$7.75; (d) Voice reservations booked directly through the consumer toll-free reservation number: \$15.00 for Resort properties; \$12.90 for all other tiers; (e) Voice reservation booked through Centralized Property Transfer Program: \$2.10 per call answered plus \$.25 per net reservations; (f) Voice reservation booked through De-Centralized Property Transfer: \$2.36 per call answered plus \$1.25 per net reservations.	As indicated on the invoice or, if not indicated, 30 days after receipt of invoice.	Franchisee may elect to participate in either the Centralized or the De-Centralized Property Transfer Program. The Centralized Property Transfer Program is designed for a Wyndham Hotel that desires to transfer nearly 100% of incoming calls to Wyndham's central reservation agents. The De-Centralized Property Transfer Program is designed for a Wyndham Hotel that desires to transfer only those incoming calls which the Hotel cannot handle due to busy periods, shortage of staff or similar reasons.
Corporate Training Fee	Currently \$28 per room per year, but this fee is subject to change in the future.	As indicated in the invoice or, if not indicated, within 30 days after receipt of invoice.	Fee covers most training offered by the Wyndham brand training department.
Remedial Training	Online: \$250  Onsite: \$1,300	When we invoice you.	We may require you, the general manager and/or staff member to participate in a remedial customer experience assessment or training.
Required Reservation System Training	Currently \$500 per attendee, plus expenses, for 2½ day course. Offered approximately quarterly in Wyndham's NJ Office. Travel and lodging expenses are the franchisee's responsibility.	As indicated on the invoice or, if not indicated, 30 days after you receive the invoice.	If franchisee does not satisfactorily complete the Required Reservation System Training <u>prior</u> to the Hotel opening as a Wyndham Hotel, franchisee will be required to participate in the Weekly Revenue Management Services outlined below. Additional attendees may attend.

Wyndham Referral Rewards Program	10% of Gross Room Revenues	When Franchisor invoices Franchisee	Commission payable for a referral made by another Chain Facility or facility of a Lodging Affiliate: 7% is paid to the referring Facility or Lodging Affiliate facility; 3% is retained by us to offset Global Sales Office administrative and overhead costs. Commission payable for a referral made by an employee of Wyndham Worldwide: 6% is paid to the referring employee; 4% is retained by us to offset Global Sales Office administrative and overhead costs.
Conference Fee	In 2015, the Chain Conference fee will be \$1,049 for Franchisee's first attendee which will automatically be billed to franchisees; \$849 for each additional attendee.	Before Conference.	Franchisor's only current meeting requirement is that the Hotel General Manager attend Franchisor's Conference. Franchisee must pay its attendees' expenses (including travel, room, board and wages) as well as the Conference Fee. The Conference may be held as part of a multi-brand conference with other lodging company affiliates.
Quality Assurance Inspection Fees	<ul style="list-style-type: none"> <li>- Domestic Wyndham Hotels – Currently, \$1,400 for initial inspection (Currently, \$1,900 per re-inspection)</li> <li>- International Wyndham Hotels – Currently, \$2,400 for initial inspection (Currently, \$2,700 per re-inspection).</li> </ul>	As indicated on the invoice or, if not indicated, within 30 days after receipt of invoice.	This fee must be paid for each inspection that is conducted. Franchisee must also provide complimentary lodging to the inspector(s) if rooms are available.
Loyalty Program Fees	Loyalty Program Charge: 5% of total folio (invoice) for each member's stay (e.g. Gross Room Revenues, food and beverage revenues, in-room movie charges and taxes). If Franchisee does not achieve a certain number of Wyndham Rewards enrollments every month, Franchisee must pay Franchisor a Retraining Fee as described in the Front Desk Guide. Currently, the Retraining Fee is \$250. If Franchisee does not process a member's points in a timely manner and Franchisor must resolve the issue with the member, Franchisor will charge Franchisee a Loyalty Member Services Administration Fee as described in the Front Desk Guide.	Loyalty Program Fees are payable after a member is awarded points at the Hotel and upon receipt of Franchisor's invoice.	Loyalty Program Fees fund the costs associated with operation, customer support, technology and marketing of the Wyndham Rewards guest loyalty programs.
Third Party Channel Fee	\$3.00 per reservation booked with our distribution partners and processed directly or indirectly through our distribution platform.	When we invoice you.	Subject to modification as existing reservation channels are modified, partners are added to existing channels or new reservation channels are established.

<p>Agency Commissions</p> <hr/> <p>Service Charge</p>	<p>Up to 20% of Gross Room Revenues generated on qualifying reservations.</p> <hr/> <p>Service Charge – up to 1.5% of commissionable revenue booked by agencies.</p>	<p>When invoiced by Franchisor.</p>	<p>Reimburses us for Agency Commissions we pay on your behalf plus related administrative costs. Includes commissions for travel agents, on-line travel and referral websites, travel consortia, travel management companies and global sales agents (“GSA”). 20% limit is subject to modification to reflect changes in the commissions we pay these agencies. This fee may include commissions related to group sale activities to offset third party costs. Typically, standard travel agency commissions equal 10% but, in certain circumstances, may be as high as 20%.</p> <hr/> <p>The standard Service Fee is 0.75% but may be up to 1.5% on certain group sales and commission activities. Reimburses Franchisor for administrative and overhead costs. Subject to modification to reflect changes in Franchisor’s costs.</p>
<p>Member Benefits Commission</p> <hr/> <p>Service Charge</p>	<p>Up to 10% of Gross Room Revenues from reservations booked through Franchisor’s Member Benefits Program</p> <hr/> <p>Service Charge – Up to 1.5% of commissionable revenue booked by Member Benefits.</p>	<p>When invoiced by Franchisor</p>	<hr/> <p>The standard Service Fee is 0.75% but may be up to 1.5% on certain group sales and commission activities. Subject to modification to reflect changes in Franchisor’s costs.</p>
<p>Best Rate Guarantee Program</p>	<p>Franchisee must (i) make available through the Reservation System and the Chain Websites room rates equivalent to those offered to the general public directly or indirectly via third parties that Franchisee authorizes to offer and sell reservations for the Hotel’s guest rooms and (ii) participate in the Chain’s Best Rate Guarantee Program according to its published requirements. Franchisor will also charge Franchisee a Processing Fee, currently \$60 to reimburse Franchisor for its administrative charges of handling the complaint.</p>	<p>When Franchisor invoices Franchisee.</p>	<p>Under Franchisor’s Best Rate Guarantee Program, if a guest finds a lower publicly available rate on the Internet for the same date at Franchisee’s Hotel, Franchisee must participate in the Program according to its published requirements. Franchisor also charges a Processing Fee, currently \$60.</p>

Opening Date Extension Fee	\$2.00 per room per day.	Payable if scheduled opening date is extended within 30 days of such date. Will apply to any additional extensions requested as described above.	Paid per extension beyond opening deadline date.
Monthly Revenue Management Advocacy Fees	\$3.25 per room per month with a cap of 350 rooms.	As indicated on the invoice or, if not indicated, within 15 days after receipt of invoice.	Franchisee must participate in Monthly Revenue Management Advocacy. Franchisor may increase the fee in the future.
Distribution Technology Fee	\$4.00 per room per year.	As indicated on the invoice or, if not indicated, 30 days after receipt of invoice.	Charge covers training and support provided by Franchisor for all products in connection with the Reservation System, the property management system, and the Wyndham booking engine.

**OPTIONAL CENTRAL SERVICES**

<b>Fees</b>	<b>Amount</b>	<b>Due Date</b>	<b>Explanation</b>
Weekly Revenue Management Services	<p>\$15 per room per month with a minimum fee of \$1,500 (for 109 rooms) and a maximum fee of \$5,250 (for 400 rooms)</p> <p>For hotels up to 150 rooms, monthly fees will range between \$1,500 and \$4,500, depending on market dynamics.</p> <p>For hotels over 150 rooms and less than 400 rooms, monthly service will be more than the above ranges, based on a variety of factors.</p>	As indicated on the invoice or, if not indicated, within 15 days after receipt of invoice.	Franchisee may participate in this program, at its option, if offered to Hotels in franchisee's region. Franchisor may increase the fee in the future.
Additional Reservation System Training Fee	Currently \$750 per day, plus expenses; minimum of two days.	As indicated on the invoice or, if not indicated, 30 days after receipt of invoice.	Franchisees can elect to obtain this additional dedicated Hotel training at its option.

**OTHER CHARGES**

Fees	Amount	Due Date	Explanation
Customer Care Fee	Currently, up to \$195 Customer Care Fee plus resolution costs if Franchisee does not respond to a guest's complaint and resolve it within 3 business days after notification by Franchisor and if we become aware of complaints posted on third-party travel websites, distribution channels, blogs, social networks and other forums to which you don't respond.	When invoiced by Franchisor.	Franchisor reserves the right to modify the Customer Care Program from time to time including its operation and fees.
Reconnection Fee	Currently, \$4,000	When invoiced by Franchisor.	
De-Identification Fee	Currently, \$2,000 per day.	Upon demand.	Franchisor may assess this fee if, following termination of the Franchise Agreement, Franchisee fails to comply with the de-identification obligations under the Franchise Agreement.

ATTACHMENT C

GUARANTY

As an inducement to Wyndham Hotels And Resorts, LLC ("Franchisor") to execute the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_, applicable to the Wyndham Hotel located at 215 East Central Ave, Valdosta, GA 31603, the undersigned, jointly and severally, hereby unconditionally warrant to Franchisor and its successors and assigns that all of Franchisee's representations in the Franchise Agreement are true, agree to be bound by all the terms and conditions of the above Franchise Agreement including any amendments thereto whenever made (hereinafter the "Agreement"), and absolutely, unconditionally and irrevocably guaranty to Franchisor and its successors and assigns that all of Franchisee's obligations under the Agreement will be punctually paid and performed.

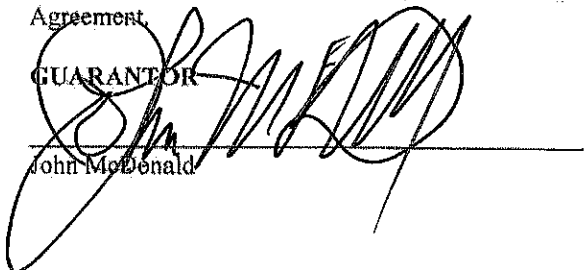
Upon default by Franchisee, the undersigned will immediately make each payment and perform each obligation required of Franchisee under the Agreement. Without affecting the obligations of the undersigned under this Guaranty, Franchisor may, without notice to the undersigned, extend, modify, waive, renew or release any indebtedness or obligation of Franchisee, or settle, adjust or compromise any claims against Franchisee. The undersigned waive notice of amendment of the Agreement and notice of demand for payment or performance by Franchisee.

Franchisor may pursue its rights against any of the undersigned without first exhausting its remedies against Franchisee and without joining any other guarantor. No delay on the part of the Franchisor in the exercise of any right or remedy, and no single or partial exercise by Franchisor of any right or remedy shall preclude the further exercise of such right or remedy. Upon the death of an 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 the other guarantors will continue in full force and effect.

In WITNESS WHEREOF, each of the undersigned has signed this Guaranty as of date of the above Agreement.

GUARANTOR

John McDonald



ATTACHMENT D

MANAGEMENT COMPANY RIDER

To Franchise Agreement Dated \_\_\_\_\_, 20\_\_  
Between Wyndham Hotels and Resorts, LLC ("Franchisor") and

\_\_\_\_\_  
("Franchisee")

\_\_\_\_\_ ("Management Company") has entered into a Management Agreement with Franchisee, under the terms of which Management Company will operate the Wyndham Hotel located at 215 East Central Ave, Valdosta, GA 31603 (the "Hotel") under and subject to the terms and conditions of the Franchise Agreement identified above.

In consideration of being permitted to operate the Hotel, Management Company hereby acknowledges and ratifies the terms and conditions of the Franchise Agreement and agrees to fully observe and be bound by all terms, conditions and restrictions regarding the management and operation of the Hotel set forth in the Franchise Agreement as if and as though Management Company had executed the Franchise Agreement as "Franchisee" for as long as Management Company operates the Hotel; provided, however, that the foregoing does not constitute an agreement of the Management Company to pay or assume any financial obligation of Franchisee to Franchisor or to any third party. Management Company further agrees to be bound by the confidentiality covenants set forth in Section 12 of the Franchise Agreement (including all remedies available to Franchisor under the Franchise Agreement for breach thereof) during and subsequent to its tenure as manager and operator of the Hotel. Additionally, Management Company will give Franchisor written notice that the management agreement has been terminated at least ninety (90) days' in advance of Hotel turnover unless termination is due to extraordinary circumstances that cause a shorter time frame before turnover to the successor management company for the Hotel.

Management Company agrees that Franchisor may enforce directly against Management Company those terms and conditions of the Franchise Agreement to which Management Company has hereby agreed to be bound. The prevailing party in any cause of action brought hereunder, pursuant hereto or in connection herewith (including, without limitation, any action for declaratory or equitable relief) shall be entitled to recover from the non-prevailing party reasonable attorney's fees, expenses and costs of suit incurred by the prevailing party in such action.

MANAGEMENT COMPANY:

\_\_\_\_\_  
a \_\_\_\_\_

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

## ATTACHMENT E

### DEFINITIONS

An "Affiliate" means, with respect to any person or entity, any other person or entity controlling, controlled by, or under common control with said person or entity.

"Control" or "controlling interest" mean the direct or indirect power to direct the management and policies of a person or entity, including those relating to the payment of financial obligations, whether through the ownership of voting securities or interests, by contract, or otherwise, each as reasonably determined by Franchisor.

"Effective Date" means the date set forth in the Preamble, and if not inserted, the date on which all parties have executed and delivered this Agreement. Notwithstanding the above, if this Agreement involves a transfer of an existing Hotel, "Effective Date" means the date Franchisee first takes possession of the Hotel, even if that occurs before the date that Franchisee signs this Agreement.

"Force Majeure" means acts of God, strikes, lockouts or other industrial disturbances, war, terrorism, riot, epidemic, fire or other catastrophe or other forces beyond Franchisee's control.

The "Franchisee" includes the entity identified in the preamble to this Agreement.

"Franchisee's Principals" include any individual, partnership, corporation, or other legal entity which directly or indirectly owns any interest in this franchise, in Franchisee, or in any person or entity that owns a controlling interest in Franchisee. "Franchisee's Controlling Principals" include Franchisee's general partners, controlling shareholders, or controlling members, as applicable.

"Guest Information" means any names, email addresses, phone numbers, mailing addresses and other information about guests and customers of the Facility, including without limitation stay information, that either Franchisor or Franchisee or a person acting on behalf of one or both of them receives from or on behalf of the other or any guest or customer of the Facility or any other third party.

"Gross Room Revenues" means gross revenues attributable to or payable for rentals of guest (sleeping) rooms at the Hotel, including all credit transactions, whether or not collected, guaranteed no-show revenue net of chargebacks from credit card issuers, and any proceeds from any business interruption or similar insurance applicable to the loss of revenues due to the non-availability of guest rooms. Excluded from Gross Room Revenues are separate charges to guests for Food and Beverage, room service, actual telephone charges, key forfeitures and entertainment (including Internet fees and commissions); vending machine receipts; and federal, state and local sales, occupancy and use taxes.

"Hotel" means the freehold or long-term ground or building leasehold title to the Approved Location, together with all improvements constructed on the Approved Location, including, without limitation, the buildings, structures, recreational amenities and facilities, parking areas and structures, appurtenances, easements, licenses, and all furniture, fixtures, equipment (including computer and telephone systems), supplies, and inventories.

The "Manager" is the party identified in the Management Company Rider attached as Attachment D to the Franchise Agreement.

"Mandated Central Services" means the services which we may choose to offer from time to time to Wyndham Hotels and in which Wyndham Hotels are obligated to participate as described in Section 3G and Attachment B.

The "Manual" is the Wyndham Brand Standards Manual, and all other written statements, directives and any other manuals and materials issued by Franchisor, and any modifications to such materials containing the standards, specifications, policies, and procedures for the establishment and operation of System hotels. The Manual may be in paper or electronic form.



The "Opening Date" is the date on which Franchisor authorizes Franchisee to open the Hotel as a "Wyndham Hotel." The Opening Date shall be entered on Attachment A to this Agreement unilaterally by Franchisor and a copy provided to Franchisee.

The "Proprietary Marks" are all trade names, trademarks, service marks, logos, emblems, symbols and indicia of origin that are now designated on Attachment A or as may hereafter be designated in writing by Franchisor as part of the System for use for System hotels. The Proprietary Marks may be modified by Franchisor from time to time.

"Publicly-held Franchisee" means a Franchisee or any direct or indirect owner of the Franchisee having equity securities representing at least a majority of the voting rights associated with such securities that are listed and traded on a recognized securities exchange.

The "System" is the collection of procedures, policies, standards, specifications, controls and other distinguishing elements which Franchisor or its Affiliates have developed for the establishment and operation of Wyndham business deluxe and resort hotels. The distinguishing characteristics of the System include, without limitation, standards and specifications for the establishment and operation of a Wyndham Hotel; reservation and property management systems; advertising, marketing and promotional programs; a Wyndham Hotel Directory; management and personnel training programs; operational standards, policies, procedures and techniques as prescribed in the Manual and a quality assurance program known as the "Wyndham Way," all of which may be changed, improved or further developed from time to time. The Wyndham Companies have all rights in and to the System and Franchisee has only the right to use the System under the terms and conditions of this Agreement.

"System Standards" has the meaning set forth in Section 6A.

"Transfer of control" of a publicly-held Franchisee means, with regard to the Franchisee or any entity that controls the Franchisee directly or indirectly (i) a merger, consolidation, reorganization, recapitalization or share or interest exchange, sale or transfer or any other transaction or series of transactions in which its equity interest holders immediately prior to such transaction or series of transactions receive in exchange for the equity interest owned by them, cash, property or securities of the resulting or surviving entity or any Affiliate thereof, and as a result thereof, persons or entities who, individually or in the aggregate, were holders of 50% or more of its voting equity interests, immediately prior to such transaction or series of transactions hold less than 50% of the voting equity interests of the surviving entity or such Affiliate thereof, calculated on a fully diluted basis, (ii) a direct or indirect sale, transfer or other conveyance or disposition, in any single transaction or series of transactions, of all or substantially all of its assets, (iii) the initial public offering of its securities, and (iv) any accumulation of the voting equity interests by an existing equity interest holder, or redemption or repurchase of voting equity interests by the issuer, which would result in any person acquiring 49% or more of any class of voting equity interest results in the person having the power to direct the management or affairs of Franchisee.

The "Wyndham Companies" include the Franchisor and any Affiliate of the Franchisor.

A "Wyndham Hotel" is a full-service or limited service upscale or luxury hotel operated under the Wyndham trade name.

## NEW CONSTRUCTION ADDENDUM

This New Construction Addendum is entered into effective as of \_\_\_\_\_, 20\_\_\_, by and between Wyndham Hotels and Resorts, LLC ("Franchisor") and JWM Ventures, LLC ("Franchisee") with respect to the construction of a hotel to be located at 215 East Central Ave, Valdosta, GA 31603 (the "Hotel"). Capitalized terms used, but not defined, in this Addendum shall have the meanings assigned to them in the Wyndham Hotel Franchise Agreement for the Hotel of even date ("Franchise Agreement").

### Recitals

Franchisor and Franchisee wish to enter into this Addendum to provide for the terms and conditions upon which the Hotel shall be constructed as a Wyndham Hotel ("Hotel").

Now, therefore, in consideration of the mutual promises and covenants set forth herein and in the Franchise Agreement, the parties agree as follows:

1. Franchisee's Representations. Franchisee represents that:

1.1 It owns or holds a ground lease for the property at the Approved Location, the term of which exceeds the term of the Franchise Agreement; and

1.2 It has obtained firm commitments for interim and permanent financing for the Hotel's construction that do not involve a public offering of any interest in the Hotel or in Franchisee.

2. Plans and Specifications. Franchisee shall construct and equip the Hotel under and subject to Franchisor's standards and specifications, including the construction and other standards set forth in the Manual, and shall comply with the development and construction obligations set forth in this Addendum and Schedule A hereto, within the time periods specified.

2.1 Before submitting Proposed Plans (defined in Section 2.2 hereof) to Franchisor, Franchisee shall (a) retain a qualified architect, design firm, engineer and/or contractor who shall prepare the necessary plans and specifications for the Hotel and (b) submit to Franchisor such information concerning such persons' qualifications as Franchisor may request. Franchisee acknowledges and agrees that Franchisor is not, and shall not be, liable for the performance of any architect, design firm, engineer and/or contractor retained by Franchisee.

2.2 On or before the date specified in Schedule A, Franchisee shall submit to Franchisor proposed renderings, plans and specifications for the Hotel conforming to Franchisor's then-current standards ("Proposed Plans"). The Proposed Plans shall include, without limitation, architectural, mechanical, electrical, structural, civil engineering, and landscaping drawings, in such detail and containing such information as Franchisor may request. Franchisor shall have the opportunity to review and comment upon the Proposed Plans. All comments shall be delivered in writing to Franchisee on or before the date set forth in Schedule A. Revised Plans, incorporating Franchisor's comments, shall be submitted to Franchisor for approval on or before the date set forth in Schedule A. Franchisee's architect must certify to Franchisor that the Hotel's plans and specifications comply with the design requirements of the Americans with Disabilities Act ("ADA"), the Department of Justice Standards for Accessible Design ("ADA Standards") under that Act, and all codes that apply using the ADA Certification Form for New Construction (Pre-Construction) in Schedule B to this Addendum.

2.2.1 Franchisee acknowledges and agrees that all Proposed Plans must be approved by Franchisor. Upon Franchisor's written approval, such Plans shall be considered Final Plans. Final Plans shall be completed and approved on or before the date set forth in Schedule A.

2.2.2 Franchisee shall cause the Hotel to be constructed under and subject to the Final Plans. Construction shall not commence until the Final Plans have been approved by Franchisor. After their

approval by Franchisor, the Final Plans shall not be changed or modified without the prior written consent of Franchisor.

2.2.3 Franchisee acknowledges that Franchisor's approval of the Final Plans is not, and should not be considered as, any assurance or guarantee that the Final Plans satisfy all federal, state and/or local construction and/or zoning requirements, including, without limitation, compliance with the Americans with Disabilities Act (the "ADA"). Franchisor's approval signifies only that the Final Plans are generally consistent with Franchisor's minimum standards and specifications. Franchisee shall be responsible for compliance with all federal, state and local laws, including but not limited to the ADA and the Accessibility Guidelines issued by the U.S. Department of Justice. Franchisor shall not be responsible for architecture or engineering, code, zoning, or other requirements or laws, ordinances, or regulations of any state, local or federal governmental body, or for any errors, omissions, or discrepancies of any nature in any drawings or specifications used for construction of the Hotel. Franchisee shall not reproduce, use or permit the use of any of the design concepts, drawings, or specifications of a Wyndham Hotel without Franchisor's prior written approval.

3. Construction. Franchisee shall commence construction of the Hotel on or before the date specified in Schedule A and shall give Franchisor written notice of the actual commencement date within five (5) days thereafter.

3.1 Franchisor may extend the dates specified in Schedule A for commencement or completion of the Hotel's construction for a reasonable period (not to exceed 90 days) for no additional fee in case of delays caused by Force Majeure or other causes that Franchisor considers beyond Franchisee's reasonable control. Franchisor may, in its sole discretion, agree to grant further extensions, provided that Franchisee submits a written request for the extension, together with an extension fee in an amount equal to two dollars (\$2.00) per guest room per day of any extension of the deadline. The extension fee shall be non-refundable if Franchisor grants a request for such extension.

3.2 Once construction has commenced, Franchisee shall continue the work (except for delays which may be caused by the occurrence of events constituting Force Majeure) until construction is completed under and subject to the approved Final Plans. Notwithstanding any event of Force Majeure, or any other cause, construction shall be completed and the Hotel shall be furnished, equipped and otherwise made ready to open for business under and subject to the Franchise Agreement not later than the completion date specified in Schedule A.

3.3 During construction, Franchisee shall, and shall cause its architect, engineer, contractors and subcontractors to, cooperate fully with Franchisor for the purpose of permitting Franchisor to inspect the Hotel, its premises, and the progress of the construction to determine whether construction is proceeding under and subject to the Final Plans and Franchisor's standards and specifications. Franchisee acknowledges and agrees that inspections by Franchisor shall be for the purpose of assuring Franchisee's compliance with the minimum standards required by Franchisor, and shall not be, nor be construed as, assurances or approvals that the construction is in compliance with any federal, state or local law, or regulation, or zoning or building requirement.

3.4 Franchisee shall provide construction progress reports to Franchisor, in the form and manner, and at such times, that Franchisor may reasonably request and provide to Franchisor simultaneously transmitted copies of regular or ad hoc reports on construction of the Hotel transmitted to Franchisor's construction and permanent lenders.

3.5 Before we authorize you to open the Hotel, you must complete and submit the ADA Certification Form for New Construction (Post-Construction) attached as Schedule C to this Addendum (the "Certification"). You must complete the Certification per its instructions and submit it to us only after it has been signed by your general contractor, your architect of record or a consulting architect you hire for the Certification. If you cannot obtain the signature of the contractor or such an architect for the Certification, you must sign the Franchisee's Certification of Compliance on the signature page of the Certification. If we determine that the Certification has not been properly completed, or if we have actual knowledge (not constructive or implied knowledge) that the signatures on the Certification are false or fraudulent, we will return the Certification to you with written notice that we will not permit you to open the Hotel for business under the System until we receive a properly completed Certification. We may terminate this Agreement if (i) you do not submit the Certification

properly completed before you open the Hotel under the System, (ii) you fail to meet the deadline for completing the Hotel as specified in this New Construction Addendum because you do not submit a properly completed Certification, or (iii) if you submit a false or fraudulent Certification. We will delay the Opening Date until you submit the properly completed Certification. We shall not be liable to you or any third party if the Certification is improperly completed or the Hotel is not built or operated in compliance with ADA.

4. Furniture, Fixtures and Supplies. Franchisee shall bear the entire cost of constructing and furnishing the Hotel, including the cost of signs, equipment, furniture, furnishings and supplies. Franchisee shall order, purchase and/or lease and install all fixtures, equipment, furnishings, furniture, signs, supplies and other items necessary to complete and open the Hotel as specified in the Final Plans and the Manual.

5. Opening. Except as set forth in Section 6 hereof, Franchisee shall not open the Hotel for business or advertise the Hotel as a "Wyndham Hotel" until all of the conditions of this Section 5 are satisfied:

5.1 Construction of the Hotel has been completed under and subject to the approved Final Plans, Franchisor's standards and specifications, and this Addendum;

5.2 Franchisee has submitted to Franchisor a Certificate of Occupancy and a contractor's certification that construction of the Hotel has been completed under and subject to the approved Final Plans;

5.3 Franchisee has installed at the Hotel all furnishings, furniture, equipment, signs, computer terminals, supplies and other items required by the Final Plans and the Manual;

5.4 Franchisee has hired and trained the staff necessary to operate the Hotel and Franchisor has approved the management company and management agreement for the Hotel under and subject to the Franchise Agreement;

5.5 Franchisee has paid all amounts due Franchisor and its Affiliates;

5.6 Franchisee has given Franchisor written notice that all terms and conditions of this Addendum have been satisfied, including but not limited to the Certifications referenced in Sections 2.2 and 3.5 of this Addendum, and the Hotel is ready to open for business as a Wyndham Hotel;

5.7 Franchisor has granted written approval to open and operate the Hotel as a Wyndham Hotel. Franchisor shall use its best efforts to inspect the Hotel within 14 days after receiving the notice specified in Section 5.6 above and to conduct any such other investigations that Franchisor deems necessary to determine whether Franchisee has satisfied all requirements for opening the Hotel as a Wyndham Hotel. Franchisor shall not be liable for delays or loss occasioned by the inability of Franchisor to complete its investigation and to make such determination for reasons beyond Franchisor's control; and

5.8 Except as permitted by Section 6 of this Addendum, Franchisee understands and agrees that it shall not operate the Hotel as part of the Wyndham System nor shall it advertise or otherwise hold out the Hotel as being a Wyndham Hotel until it has completed, and Franchisor has approved in writing, the opening, or conditional opening, of the Hotel pursuant to this Section 5.

6. Limited Service Mark License.

6.1 If Franchisor certifies that the improvements are being constructed under and subject to the final Plans, such certification will constitute the grant of a limited, temporary license under which Franchisee may use the Wyndham service mark to advertise the Hotel's anticipated opening. Such advertisements may appear only on signs at the Approved Location and in local print and broadcast media announcements that, in each instance, meet Franchisor's standards for design and quality.

6.2 Franchisor may, in its sole discretion, conditionally authorize Franchisee to open and operate the Hotel as a Wyndham Hotel even though Franchisee has not fully complied with the Final Plans, if Franchisee has substantially complied with the Plans and agrees to comply with all remaining terms thereof on or

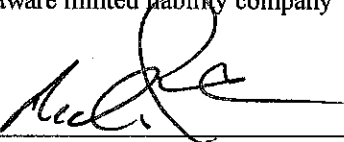
before the completion date specified in Schedule A. If Franchisee fails to comply with all such remaining terms on or before the completion date specified in Schedule A (or any extension thereof that may be granted by Franchisor), Franchisor may terminate the Franchise Agreement pursuant to Section 18C thereof.

7. Termination. Upon any termination of the Franchise Agreement as a result of Franchisee's failure to comply with the terms of this New Construction Addendum, Franchisee shall comply with all post-termination obligations under the Franchise Agreement, provided, that in lieu of the lump sum payment for premature termination set forth in Section 18C of such Franchise Agreement, Franchisee shall pay the Franchisor a lump sum equal to \$3,000 per guest room.

**[Signatures follow on next page]**

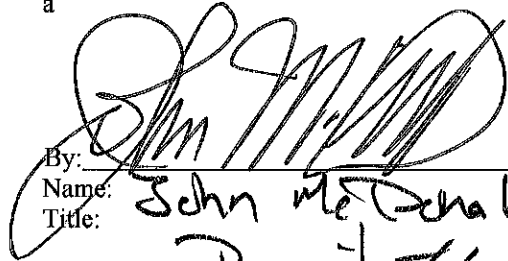
**FRANCHISOR**

WYNDHAM HOTELS AND RESORTS, LLC,  
a Delaware limited liability company

By:   
\_\_\_\_\_  
Michael Piccola, SVP

**FRANCHISEE**

JWM VENTURES, LLC,  
a

By:   
\_\_\_\_\_  
Name: John McDonald  
Title: President / CEO

**Schedule A  
to New Construction Addendum**

<u>Construction Requirements</u>	<u>By (Date)</u>
Submission of Proposed Plans to Franchisor	_____, 20__
Franchisor's comments on Proposed Plans	_____, 20__
Submission of Revised Plans to Franchisor	_____, 20__
Final Plans approved by Franchisor	_____, 20__
Commencement of construction in conformity with approved Final Plans	<u>December 30</u> , 2016
Completion of construction	December 30, 2017

## INSTRUCTIONS

New construction projects whose last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after March 15, 2012 must comply with the September 15, 2010 (28 C.F.R. Part 36, subpart D, and 2004 ADA Standards at 36 C.F.R. Part 1191, Appendices B and D). Thus, for projects that fall within this category, owners must use Schedule B at the pre-construction stage and Schedule C at the post-construction stage.



**SCHEDULE B**

**ADA CERTIFICATION FORM FOR NEW CONSTRUCTION  
(PRE-CONSTRUCTION)**

In connection with the project identified as: \_\_\_\_\_

To the best of my professional knowledge, information and belief, I hereby state the following:

1. I have professional experience applying the requirements of the Americans with Disabilities Act (ADA) and the 2010 Standards at 28 C.F.R. Part 36, subpart D, and 2004 ADA Standards at 36 C.F.R. Part 1191, Appendices B and D.
2. I have reviewed the plans (including architectural interior design plans if they are available prior to construction).
3. The plans comply with the 2010 Standards.
4. I have specifically determined that the plans provide:
  - a. The number of accessible car and van-accessible parking spaces required by the 2010 Standards (if parking facilities are to be provided);
  - b. The number of accessible rooms with features for guests with mobility disabilities (including the required number of accessible rooms with roll-in showers) and the number of accessible rooms with communications features for guests who are deaf or hard of hearing required under 2010 Standards.
  - c. An inventory of accessible rooms with mobility features and communications features for guests with hearing impairments that is dispersed among the various room types offered to the public as required by the 2010 Standards.

Sign: \_\_\_\_\_

Print  
Name: \_\_\_\_\_

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

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

**SCHEDULE C**

**ADA CERTIFICATION FORM FOR NEW CONSTRUCTION  
(POST-CONSTRUCTION)**

1. I have professional experience applying the requirements of the Americans with Disabilities Act (ADA) and the 2010 Standards at 28 C.F.R. Part 36, subpart D, and 2004 ADA Standards at 36 C.F.R. Part 1191, Appendices B and D.
2. I have inspected all areas of the hotel that are open to the public (including accessible guest rooms), and they comply with the 2010 Standards.
3. I have specifically determined that the hotel, as constructed, provides:
  - a. The number of accessible car and van-accessible parking spaces required by the 2010 Standards (if parking facilities are to be provided);
  - b. The number of accessible rooms with features for guests with mobility disabilities (including the required number of accessible rooms with roll-in showers) and the number of accessible rooms with communications features for guests who are deaf or hard of hearing required under the 2010 Standards.
  - c. An inventory of accessible rooms with mobility features and communications features for guests with hearing impairments that is dispersed among the various room types offered to the public as required by the 2010 Standards.

Sign: \_\_\_\_\_

Print  
Name: \_\_\_\_\_

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

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

ATTACHMENT C

GUARANTY

As an inducement to Wyndham Hotels And Resorts, LLC ("Franchisor") to execute the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_, applicable to the Wyndham Hotel located at 215 East Central Ave, Valdosta, GA 31603, the undersigned, jointly and severally, hereby unconditionally warrant to Franchisor and its successors and assigns that all of Franchisee's representations in the Franchise Agreement are true, agree to be bound by all the terms and conditions of the above Franchise Agreement including any amendments thereto whenever made (hereinafter the "Agreement"), and absolutely, unconditionally and irrevocably guaranty to Franchisor and its successors and assigns that all of Franchisee's obligations under the Agreement will be punctually paid and performed.

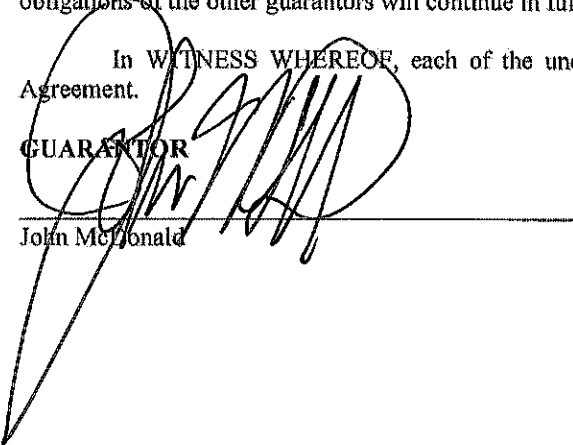
Upon default by Franchisee, the undersigned will immediately make each payment and perform each obligation required of Franchisee under the Agreement. Without affecting the obligations of the undersigned under this Guaranty, Franchisor may, without notice to the undersigned, extend, modify, waive, renew or release any indebtedness or obligation of Franchisee, or settle, adjust or compromise any claims against Franchisee. The undersigned waive notice of amendment of the Agreement and notice of demand for payment or performance by Franchisee.

Franchisor may pursue its rights against any of the undersigned without first exhausting its remedies against Franchisee and without joining any other guarantor. No delay on the part of the Franchisor in the exercise of any right or remedy, and no single or partial exercise by Franchisor of any right or remedy shall preclude the further exercise of such right or remedy. Upon the death of an 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 the other guarantors will continue in full force and effect.

In WITNESS WHEREOF, each of the undersigned has signed this Guaranty as of date of the above Agreement.

**GUARANTOR**

John McDonald



Hotel: Valdosta GA  
File No.:  
Brand: Wyndham

**OPERA SUPPLEMENTAL SERVICES AGREEMENT  
(WYNDHAM HOTELS AND RESORTS ONLY)**

3/31 This Opera Supplemental Services Agreement (“**Agreement**”) is dated as of \_\_\_\_\_, 2014, between Wyndham Hotels and Resorts, LLC a Delaware corporation (“**we**”, “**our**” or “**us**”), and **JWM Ventures, LLC**, a \_\_\_\_\_ (“**Franchisee**,” “**you**,” or “**your**”). The definitions of some capitalized terms are found throughout this Agreement and in Schedule A attached hereto. All other capitalized terms shall have the meanings ascribed in the Franchise Agreement.

**Recitals**

- A. You have entered or are about to enter into an agreement(s) with Oracle America, Inc. d/b/a Oracle Hospitality, or one of its affiliates, which may include Micros Systems, Inc. (collectively, “**Oracle**”) for the purpose of purchasing from Oracle the right to access and/or use, either via a software as a service solution or as an application installed and maintained onsite at the Hotel (per your selection on Schedule B attached hereto), Oracle’s proprietary property management system referred to as Opera (the “**Opera PMS**”), as well as to receive ongoing support from Oracle related to such use (the “**Oracle Agreement**”). You entering into an Oracle Agreement with Oracle, and its ongoing validity is a condition precedent to the effectiveness of this Agreement.
- B. In the event that you and we have already entered into an Opera Supplemental Services Agreement (“**Previous Agreement**”), this Agreement hereby supersedes and replaces the Previous Agreement in its entirety.

In consideration of the above premises and following mutual promises, the parties agree as follows:

**1. Activities.**

1.1 Collection of Fees. In exchange for you paying us any fees described in this Agreement, we will perform the Services. Your Oracle Agreement also requires you to pay certain fees directly to Oracle (“**Oracle Fees**”). We have entered, or in the future may enter, into an arrangement with Oracle wherein we will collect such Oracle Fees from you on Oracle’s behalf, and pay Oracle the Oracle Fees owed by you under the Oracle Agreement. In such case, we may retain a percentage of fees collected to reimburse us for our costs associated with such collection. We may modify this payment arrangement in our sole discretion from time to time. If we collect such Oracle Fees from you on Oracle’s behalf, you will see such fees reflected on the monthly invoice you receive from us.

1.2 Training and Support Services. The Training and Support Services include, but

are not limited to, support for technology applications we may offer you from time to time, such as our Reservation System, as well as support of tools such as the Brand Information Source Portal, and activities related to PMS Vendor Management. For the avoidance of doubt, the Training and Support Services do **not** include: (a) support relating to the Opera databases, servers, application servers and/or storage, each of which are housed at a Oracle data center and not at the Hotel; or (b) services relating to data backups, which shall be the Hotel's responsibility.

1.3 Additional Services. From time to time, we may provide you with Additional Services, for which we may charge you an additional fee. The additional fee, if any, for Additional Services will always be subject to your prior approval on a case-by-case basis. .

1.4 Disclaimer. We are not responsible for the loss of any data or for any viruses or malware infecting your systems. It is your responsibility to ensure that the Hotel's data is adequately backed up at all times and that you maintain current updated anti-virus/anti-malware software at all times. Assistance with restoring lost data or with addressing an infected system may be provided as Additional Services.

## **2. Payments and Terms.**

2.1 Fees. All amounts due to us (and for circumstances where we collect fees from you on Oracle's behalf, to Oracle), as are approved for Training and Support Services or Additional Services, are payable upon your receipt of our invoice. If you do not make all payments of fees to us when due, upon written notice to you, we may suspend the Service or Terminate this Agreement. We may increase the ongoing fees on an annual basis by no more than five percent (5%) above the fees paid by you during the immediately preceding twelve (12) month period; provided that we must notify you no less than thirty (30) days prior to any such increase taking effect.

2.2 Overdue Charges. If any charges are not received from you by the due date, then at our discretion, such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

2.3 Suspension of Service and Acceleration. If any fees owing by you under this or any other agreement for our Services is 30 or more days overdue, we may, without limiting our other rights and remedies, accelerate your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend our Services to you until such amounts are paid in full. We will give you at least 7 days prior notice that your account is overdue, in accordance with Section 8.3 below (Notices), before suspending Services to you.

**3. Indemnification.** You will indemnify and hold harmless us, our Affiliates, successors and assigns and each of the respective directors, officers and employees associated with them against all claims of employees, agents, guests, and all other persons and entities, arising out of the Services including, but not limited to, your failure to comply with this Agreement. We shall not be liable to you or any other person or entity for personal injury or property loss, including but not limited to,

damage to the Hotel. You are not obligated to indemnify us for our own negligence or our intentional misconduct.

#### **4. No Warranties.**

4.1 SAVE WHERE SUCH WARRANTIES OR REPRESENTATIONS ARE REQUIRED TO BE GIVEN OR MADE BY APPLICABLE LAW, (A) WE MAKE NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY ABOUT THE HTCS SERVICES OR ADDITIONAL SERVICES, THEIR MERCHANTABILITY, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, OR THEIR CONFORMANCE TO THE PROVISIONS AND SPECIFICATIONS OF ANY ORDER OR DOCUMENTATION; AND (B) WE MAKE NO REPRESENTATION OR WARRANTY REGARDING ANY OF THE DATA THAT YOU MAINTAIN OR THE PREVENTION OF ANY VIRUSES OR MALWARE, AND WE ARE NOT RESPONSIBLE FOR THE LOSS OF ANY DATA OR THE INTRODUCTION OF ANY VIRUSES OR MALWARE, EVEN IF SUCH LOSS OR INTRODUCTION RESULTS FROM OUR PERFORMANCE OF SERVICES HEREUNDER. YOU ARE RESPONSIBLE FOR ENSURING THAT YOUR DATA IS ADEQUATELY BACKED UP AND THAT YOU MAINTAIN CURRENT UPDATED ANTI-VIRUS/ANTI-MALWARE SOFTWARE.

4.2 YOU, ON BEHALF OF YOURSELF, YOUR SUCCESSORS AND ASSIGNS, HEREBY WAIVE, RELEASE AND RENOUNCE ALL CLAIMS OR CAUSES OF ACTION THAT YOU MAY HAVE AGAINST US, OUR AFFILIATES, OR OUR OR THEIR OFFICERS, DIRECTORS OR AGENTS, ARISING OUT OF THE SERVICES UNLESS DUE TO OUR WILLFUL MISCONDUCT.

**5. Damage Limitation.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL WE OR ANY AFFILIATE BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUES (COLLECTIVELY, "INDIRECT DAMAGES") IN CONNECTION WITH THE SERVICES, EVEN IF WE HAD BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE REASONABLY FORESEEN SUCH DAMAGES. IN ADDITION, FOR DIRECT DAMAGES CAUSED BY US (AND ANY INDIRECT DAMAGES TO THE EXTENT THAT THE ABOVE LIMITATION IS NOT RECOGNIZED BY A COURT OR OTHER AUTHORITY) ANY CLAIM SHALL BE LIMITED TO THE TOTAL AMOUNT PAYABLE BY YOU FOR THE SERVICES DURING THE TERM OF THIS AGREEMENT. THE ABOVE LIMITATIONS ON LIABILITY APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE.

**6. Term.** This Agreement will be effective from the date of execution by you and us, and unless earlier terminated in accordance with this Agreement, shall continue in full force and effect until notice of termination of your Oracle Agreement, or the expiration of the term of your license to operate the Hotel under the Franchise Agreement, whichever comes first.

#### **7. Termination and Other Remedies.**

7.1 At our option, we may terminate this Agreement immediately: (a) If you fail to make any payment required pursuant to this Agreement, the Oracle Agreement or any other agreement between you and us, and such failure continues uncured for a period of 10 days after we give you written notice; (b) If you breach any other covenant, warranty or agreement under this Agreement, the Oracle Agreement or any other agreement between you and us and the breach continues uncured for a period of 30 days after we or Oracle give you written notice; and/or (c) If the license granted under the Franchise Agreement terminates for any reason and is not immediately replaced by an express written agreement between you and us for a license to continue operation of the Hotel.

## **8. Ownership of Guest Information.**

8.1 We shall own all Guest Information that is within our possession or any service provider holding such information on our behalf, and you shall own all Guest Information that is within your possession or any service provider holding such information on your behalf. To the extent that we and you both possess identical Guest Information, our and your respective ownership rights with regard to such Guest Information shall be separate and independent from one another.

## **9. Additional Provisions.**

9.1 Costs and Expenses. The non-prevailing party will pay the costs and expenses incurred, including reasonable attorneys' fees and the expenses, by the prevailing party to enforce this Agreement.

9.2 Force Majeure. If performance by you or us is delayed or prevented because of strikes, inability to procure labor or materials, defaults of suppliers or subcontractors, delays or shortages of transportation, failure of power or telephone transmissions, restrictive governmental laws or regulations, weather conditions, or other reasons beyond the reasonable control of the party, then performance of such acts will be excused and the period for performance will be extended for a period equivalent to the period of such delay. Delays or failures to pay resulting from lack of funds will not be deemed delays beyond your reasonable control.

9.3 Notices. Notices will be effective if reduced to writing and delivered, by next day delivery service, with proof of delivery, by facsimile transmission immediately followed by first class mailing of the original material, or mailed by certified or registered mail, return receipt requested, to the appropriate party at its address in this Agreement or to such party at such address as may be designated by notice in accordance with this Section. Notices will be deemed given on the date delivered or date of attempted delivery, if service is refused.

9.4 Your Forms. We are not bound by any terms of your purchase order forms or notices of acceptance which attempt to impose any conditions at variance with our terms and conditions included in this Agreement or in our invoices, standards manuals, technical specifications or elsewhere. Our failure to object to any provision contained in your printed form is not a waiver of any provision of this Agreement.

9.5 Oral Modifications. This Agreement may not be amended, modified or rescinded

except in writing, signed by both parties and any attempt to do so shall be void and of no effect.

9.6 Governing Law/Venue. This Agreement is to be governed by and construed in accordance with the laws of the State of New Jersey, USA, without regard to the conflicts of law provisions thereof. You consent to the non-exclusive personal jurisdiction of the New Jersey state courts situated in Morris County, New Jersey, USA and the United States District Court for the District of New Jersey, USA. You waive objection to venue in any such courts.

9.7 Waiver. If either you or we fail to exercise any right or option at any time under this Agreement, such failure will not be deemed a waiver of the exercise of such right or option at any other time or the waiver of a different right or option. Termination of this Agreement by either you or we will not waive your obligation to make any payments then due to us under this Agreement.

9.8 Severability. If any provision of this Agreement is determined to be void or unenforceable, the provision shall be deemed severed from the Agreement and the remainder of this Agreement shall continue in full force and effect.

9.9 Entire Agreement. This Agreement (including all Appendices, Exhibits, Schedules and attachments) supersedes all prior oral and written agreements and understandings and, together with the order forms attached to this Agreement, constitutes the entire Agreement between the parties with respect to this subject matter. Nothing in this or any other related agreement, however, is intended to disclaim any representations we made in the Franchise Disclosure Document furnished to you by us.

9.10 No Third Party Beneficiary. This Agreement is intended for the sole benefit and protection of the named parties, and no other persons or entities shall have any cause of action or right to payments made or received under this Agreement.

9.11 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties, their successors and permitted assigns. Notwithstanding the above, you may not assign this Agreement without our express written consent, except as permitted under the Franchise Agreement.

9.12 Mediation. The parties agree that all disputes arising under this Agreement may be submitted to non-binding mediation under the National Franchise Mediation Program supervised by the Center for Public Resources (CPR) Institute for Dispute Resolution, 366 Madison Ave., New York, NY 10017; email: [info@cpradr.org](mailto:info@cpradr.org).

9.13 Survival. The provisions of Sections 3, 4 and 5 and any other provisions which due to their content should have continuing life shall survive the termination of this Agreement.

[Signature Page Follows]

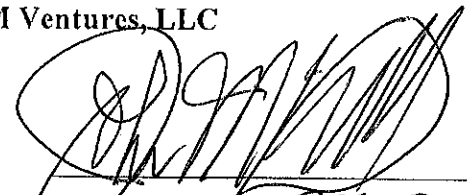


IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date set forth in the preamble to this Agreement.

**WE:**  
**Wyndham Hotels and Resorts, LLC**

BY: \_\_\_\_\_  
Michael Piccola  
Senior Vice President

**YOU, as Franchisee:**  
**JWM Ventures, LLC**

BY:   
NAME: John McDonald  
TITLE: President / CEO

By signing this Agreement, you represent that you are authorized to enter into this Agreement on behalf of the Franchisee.

Your address: 10161 Park Run Drive Suite 150 Las Vegas NV 89145

Address for Deliveries (if different): 215 East Central Ave Valdosta GA 31603

Our address: 22 Sylvan Way, Parsippany, New Jersey 07054, USA

**OPERA SUPPLEMENTAL SERVICES AGREEMENT**  
**SCHEDULE A**

**Definitions**

**“Additional Services”** means services performed pursuant to this Agreement that are in addition to Training and Support Services, and may include, without limitation, services relating to hardware installation, hardware upgrades, data recovery, configuration, and debugging.

**“Affiliate(s)”** means any and all of the subsidiaries and affiliates, including without limitation each of the corporations, limited liability companies, partnerships, firms, associations, businesses, organizations, and/or other entities that directly or indirectly (either presently or in the future and/or through one or more intermediate entities) control, are controlled by, or are under common control of, but not limited to, Wyndham Hotel Group, LLC.

**“Brand Information Source Portal”** means an online gateway for communications and important notifications between us and you by providing access to reports, guest feedback, marketing resources, brand standards, quality assurance, training resources and online bill payment. As of the date of this Agreement, the Brand Information Source Portal is currently called MyPortal.

**“Brand System”** means the business format franchise system and method of doing business defined under the Franchise Agreement.

**“Franchise Agreement”** means the Franchise Agreement between you and us granting to you the non-exclusive right to operate the Hotel under the Brand System.

**“Franchisee”** means the person or entity set forth in the introductory paragraph of this Agreement, its successors and assigns, as permitted in the Franchise Agreement.

**“Guest Information”** means any names, email addresses, phone numbers, mailing addresses and other information about guests and customers of the Hotel, including without limitation stay information, that either we or you or a person acting on behalf of one or both of us and/or you receives from or on behalf of the other or any guest or customer of the Hotel or any other third party.

**“Hotel”** means the Brand System guest lodging facility which you are licensed by us to operate using the Brand System under the Franchise Agreement.

**“PMS Vendor Management”** means coordination of vendors in support of troubleshooting issues related to the Services.

**“Reservation System”** means the applicable computerized central reservation system, or any replacement thereof, that we maintain (directly or by subcontracting with an affiliate or one or more third parties) and/or use, for the purpose of allowing the placing and receiving of lodging reservations, as well as such other services as we may develop and provide in the future, upon

conditions including fees which we, in our sole discretion, may place in effect under the Franchise Agreement.

**“Services”** means the Training and Support Services that we provide as described in Section 1, as well as any Additional Services.

**“Training and Support Services”** means services performed pursuant to this Agreement that may include, without limitation, support for technology applications we may offer you from time to time, such as our Reservation System, as well as support of tools such as the Brand Information Source Portal, and activities related to PMS Vendor Management.

**OPERA SUPPLEMENTAL SERVICES AGREEMENT**  
**SCHEDULE B**

You choose Opera as an application installed and maintained onsite at the Facility (premise based).

You choose Opera via a software as a service solution (SaaS).