

## MANAGEMENT AGREEMENT

This Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2026 (the "Effective Date"), by and among the City of Appleton, a Wisconsin municipal corporation with its principal offices at 100 North Appleton Street, Appleton, Wisconsin 54911 ("Owner" or "City"); Appleton Hotel Holdings, LLC, a Delaware limited liability company registered in the State of Wisconsin ("AHH"); and Appleton Hotel Holdings, LLC, a Delaware limited liability company registered in the State of Wisconsin ("Operator").

Owner, AHH, and Operator may each be referred to herein as a "Party," and collectively as the "Parties."

### **RECITALS**

WHEREAS, Owner is the owner of certain property within its municipal boundaries identified as the Fox Cities Exhibition Center ("FCEC") located at 355 West Lawrence Street in downtown Appleton.

WHEREAS, AHH is the current owner of the Hilton Appleton Paper Valley Hotel ("Hotel"), a 388-room, full-service hotel in downtown Appleton that is physically attached to the FCEC and serves as the de facto headquarters hotel for the FCEC.

WHEREAS, pursuant to a separate Hotel Management Agreement between AHH and the Operator, the Operator manages and operates the Hotel on behalf of AHH.

WHEREAS, Operator is also the current contracted operator of the FCEC and is expected to continue in such capacity pursuant to this Agreement.

WHEREAS, Owner and Operator (as predecessor in interest to AHH), as successor in interest to Hotel Owner (as defined in the Previous Agreement), entered into a Management Agreement ("Previous Agreement") with respect to the FCEC on November 18, 2015. The Previous Agreement expired on December 31, 2025, but was extended through May 1, 2026 via a mutually agreed upon Amendment executed on January 1, 2026. Parties subsequently entered a Memorandum of Understanding ("MOU") on April 16, 2026 memorializing material terms that are incorporated into this Agreement. Subsequently parties mutually extended the MOU effectively extending the Previous Agreement until this Agreement is executed by the Parties or July 1, 2026, whichever comes first.

WHEREAS, Owner and Operator have a mutual interest in holding meetings, gatherings, and other events at the FCEC and in maximizing the number of such events at and overall use of this facility. The intent of this Agreement is to best position the FCEC for long-term operational success, while enhancing the overall financial positions of the Parties and the economic impact and benefit delivered to Appleton and Fox Cities area citizens, as compared to the outcomes achieved under the Previous Agreement.

WHEREAS, the Common Council for the City of Appleton authorized City officials to enter into this Agreement with AHH on behalf of Operator.

WHEREAS, AHH acknowledges that certain FCEC operations, marketing activities, and services may be coordinated with the Hotel pursuant to the terms of this Agreement and the Hotel Management Agreement.

WHEREAS, AHH is a party to this Agreement solely for the limited purposes expressly set forth herein.

WHEREAS, the Parties agree that parking covenants concerning Operator's continued use of the City's Red Ramp parking will be memorialized in a new agreement separate of this Agreement.

WHEREAS, Owner and Operator have agreed to enter into this Agreement setting forth the terms under which Operator will have the exclusive right to book events and gatherings at the FCEC during the term of this Agreement.

THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency whereof is acknowledged, the Parties enter into the following agreement:

## **AGREEMENT**

### **1. Management Authority.**

- a. Owner hereby grants to Operator, and Operator hereby accepts, the exclusive right and obligation to manage, market, promote and operate the FCEC. Operator will undertake these duties in its own name as an independent contractor and not as an agent of Owner. In connection with these rights and obligations, Operator shall perform or furnish, or cause to be performed or furnished, all of such direct management services, including but not limited to the supervision, direction, and control of the management and operation of the FCEC, except for those rights and obligations which Owner retains, under the terms of this Agreement. Additionally, Operator shall provide, or cause to be provided, such food and beverage, scheduling, custodial, and other required maintenance services needed in the normal operation for the FCEC. Owner and Operator agree that they will cooperate with each other in every reasonable and proper way to permit and assist both Operator and Owner to carry out their respective duties hereunder.
  
- b. Subject to any limitations identified in this Agreement, Operator shall have full discretion and control, free from interference, interruption and disturbance, in all matters relating to the management and operation of the FCEC, including, without limitation unless otherwise stipulated herein: determining charges for bookings; credit policies; food and beverage services; employment policies; employee fringe benefits; receipt, holding and disbursement of funds; operating systems; personnel selection; maintenance of bank accounts; the procurement of inventories, supplies and services; promotion and publicity; the right to provide complimentary or discounted food, beverages, booking rates or other use of the FCEC for legitimate business purposes; and, generally, control of all activities necessary for or reasonably related to the operation of the FCEC. Operator is granted and accepts the authority to execute all contracts and agreements for the use of FCEC in a manner consistent with the authority it has been granted for the use of the facilities as described herein.

Operator shall use the facilities and equipment at the FCEC only as necessary for operation of the FCEC. Operator may use the facilities and equipment for other uses, including Hotel operation or catering, upon entering into a separate agreement with Owner for the same.

- c. Operator has the right to delegate or subcontract any specific tasks and responsibilities identified in this Agreement which are related to the management of the FCEC, except as may otherwise be prohibited herein. Owner hereby approves Operator's delegation of tasks under this agreement via a subcontract with Driftwood Hospitality Management, LLC, a Florida limited liability company.

## **2. Premises.**

The facilities subject to this Agreement consist of the FCEC, located at 355 West Lawrence Street, which is comprised of the exhibition center building, skywalk connection to the Hotel across West Lawrence Street, and the outdoor plaza located atop the exhibition center building adjacent to Jones Park (with such components collectively representing and referred to herein as "FCEC"). Any alcohol license available for use shall cover all such facility and space components comprising the FCEC.

## **3. Term of Agreement.**

- a. This Agreement shall be for an initial term of five (5) years commencing July 1, 2026, and ending June 30, 2031, unless sooner terminated or extended as provided in this Agreement.
- b. Operator shall have the right to renew the Agreement for one additional five (5) year term, provided Operator is not in default with respect to the Agreement. The renewal shall be initiated by Operator providing written notice to Owner of the intent to renew not less than one hundred eighty (180) days prior to the expiration of the then current term.
- c. After the initial term and first renewal period, Owner and Operator may, by mutual agreement, renew the Agreement with such amendments and modifications that the parties may agree to in writing, for two (2) additional five (5) year periods. Each renewal shall be initiated by Operator providing written notice to Owner of the request to renew not less than one hundred eighty (180) days prior to the expiration of the then current term.
- d. This Agreement is subject to termination before the expiration of the original term or any extension term under the following circumstances:
  - i. By mutual agreement of the Parties, at any time.
  - ii. At the sole discretion of Owner, if Operator materially fails to perform any of Operator's obligations under the Agreement and such failure is not cured within a reasonable time after Operator's receipt of a written notice from Owner.
  - iii. At the sole discretion of Owner, in the event of the bankruptcy, insolvency, or receivership of Operator or AHH.
  - iv. At the sole discretion of Operator, if Owner materially fails to perform any of Owner's obligations under the Agreement and such failure is not cured within a reasonable time after receipt of a written notice from Operator.
- e. In the event the Agreement is terminated, with or without cause, Operator and

Owner shall each be obligated to take such actions as may be reasonably necessary to ensure a smooth transition to a new operator of the FCEC as selected and contracted by Owner.

#### **4. Payments to Owner.**

- a. Except as otherwise expressly provided in this Agreement, Operator shall be responsible for all expenses of any kind directly related to the operation of the FCEC, including without limitation: salaries, wages and fringe benefits; management expenses; promotional expenses; cleaning and maintenance costs; customer service costs; Operator's liability insurance premiums; premiums for insurance on Operator's personal property; licenses and permit fees; sales and use taxes; attorney's fees; accountant's fees; consultant's fees; and other professional fees.
- b. On a quarterly basis, Operator shall pay Owner a percentage of the annual gross revenue from the operation of the FCEC, less any qualifying adjustments noted in Section 5(r) and Section 6(c), as rent for the FCEC, upon a quarterly reporting and reconciliation process outlined in Section 4(c), adhering to the following schedule with Year 1 commencing on July 1, 2026 and subsequent years commencing on the first day of each July thereafter:  
  
Year 1 = 1.0 percent of gross FCEC revenue.  
Year 2 = 3.0 percent of gross FCEC revenue.  
Year 3 = 5.0 percent of gross FCEC revenue.  
Year 4 and Beyond = 6.0 percent of gross FCEC revenue.
- c. On a quarterly basis, corresponding to the day that is 30 days after the start of each new quarter, Operator shall provide a sales and revenue report to Owner itemizing gross FCEC revenues by individual event, plus an itemization of all other non-event-related gross FCEC revenues for the previous quarter and make the payment due to Owner for the previous quarter's operations. By February 15 each year, Operator and Owner shall meet to complete a financial review of operations of the FCEC for the previous year. Operator shall initiate this annual financial review.

#### **5. General Duties and Obligations of Operator.**

- a. Operator shall operate the FCEC and pay all of Operator's expenses related to operation of the FCEC, including all utility costs. Operator will be responsible for any financial operating shortfalls of the FCEC and will benefit from any net financial operating surpluses generated therefrom, pursuant to Section 4 of this Agreement.
- b. Operator shall act as an independent contractor and not as an agent or representative of Owner.
- c. Operator shall provide all services necessary to promote and operate the FCEC as a first-class convention, exhibition and event facility.
- d. Operator shall comply with applicable laws and secure required permits.
- e. Operator shall have exclusive booking rights for events during the term of the agreement. Operator shall be responsible for marketing the FCEC, booking

events, working with caterers and other service providers, working with event sponsors, and providing other support for all events.

- f. Operator shall be responsible for operation of message signs (posting and changing messages).
- g. Operator shall cooperate and coordinate with Owner on messaging specific announcements and events on the message sign.
- h. Operator shall be responsible for building security.
- i. Operator may determine rates for FCEC space rental, equipment and services, globally or on an event-by-event basis.
- j. Food and beverage services at the FCEC will be provided or coordinated by Operator under a hybrid exclusive/preferred vendor arrangement. Operator will have first right of refusal to provide all food, alcohol and beverage services for FCEC events. A preferred list of qualifying caterers will be maintained by the Operator. Operator may establish a qualifying process and nominal registration fee for caterers on the preferred list. Should the Operator refuse a catering assignment for a particular event, the Operator may charge and receive from the selected Preferred Vendor a revenue split (percentage) of the gross food and beverage sales, to be determined by Operator. All FCEC revenues related to food, alcohol and beverage services, including any registration fees and revenue splits received by Operator from third party vendors for FCEC events, must appear in FCEC revenue reporting.
- k. Audiovisual, telecommunications, WiFi/internet, electrical, decorating, and other similar client-facing services at the FCEC will be provided or coordinated by Operator as it deems appropriate. Operator has the option to establish delivery policies (i.e., in-house/exclusive, preferred or open vendor), preferred lists, qualifying processes, nominal registration fees and revenue splits for these services as it deems appropriate. All FCEC revenues related to these services, including any registration fees and revenue splits received by Operator from third party vendors for FCEC events, must appear in FCEC revenue reporting.
- l. Operator shall provide for normal cleaning/care and upkeep of the FCEC, which shall generally include: cleaning of floors, shampooing of carpet on a regular basis; window cleaning (interior and exterior); cleaning of other exterior surfaces (e.g., power washing, spider treatment); cleaning of other interior surfaces; removal of interior waste, rubbish and recyclables from the FCEC; replacing lights as needed; operation and care of audio/visual equipment/systems; and day-to-day operation of HVAC system (e.g., thermostat adjustments).
- m. Except for qualifying Capital Expenditures that are the responsibility of Owner, as defined in Section 7(a), Operator shall be responsible for all routine, day-to-day maintenance and repairs of the FCEC, including: maintenance and repair of the structures, HVAC equipment and mechanical systems; repair of floors, recarpeting (based on need relative to wear and tear); repair of broken windows; repair/replacement of wall coverings and repainting of walls (based on need relative to wear and tear, and general upgrades in long term); HVAC system care & maintenance; care and related maintenance of sprinkler/fire alarm system and fire extinguishers; repair and/or replacement of hardware/fixtures attached to

premises, plumbing and lighting fixtures; provision of light bulbs; maintenance/repair/replacement of message signs and other interior signage; and the maintenance/repair/replacement of other exterior signage.

- n. Operator shall be responsible for maintenance activities related to the grounds outside the FCEC building, including year-round landscape maintenance and seasonal snow removal.
- o. Operator shall be responsible for normal cleaning/care and upkeep of the designated collection area for dumpsters and recyclables and for removal and emptying of all dumpsters and recyclables.
- p. Operator recognizes that the Fox Cities Convention and Visitors Bureau (“FCCVB”) is a critical marketing and sales partner for the FCEC, and that coordination and collaboration with the FCCVB on attracting and serving event business at the FCEC should be prioritized. Operator agrees to provide real time, view-only access of the FCEC’s booking and event calendar to Owner and the FCCVB. At a minimum, Operator shall provide a shared online calendar that displays real time FCEC bookings delineated by each day of booked FCEC use and type of booking (e.g., tentative vs. definite). Operator agrees to update the shared calendar regularly at the time bookings are made and/or modified.
- q. Operator agrees to collaborate with the FCCVB on cross-promotional and marketing endeavors, such as annual reports highlighting the market and economic performance of the FCEC, participation in industry conventions, collateral marketing, FCEC and FCCVB website content and strategies, room blocks, and other mutually beneficial areas of engagement.
- r. Operator may pursue the sale of advertising, sponsorship, pouring rights, branding/use rights, and other such rights in the FCEC, including the sale of naming rights associated with individual spaces within the FCEC, but excluding title naming rights for the entire FCEC. Excluding the sale of individual advertising and signage (fixed, temporary, banner or digital) opportunities in the FCEC, Owner will retain the right of approval for any new building-wide sponsorship or individual space naming rights agreements involving the FCEC and the term of said agreements shall run concurrent with the term of this Agreement. All revenues related to these Owner-approved agreements shall be prorated for those that are directly attributable to the FCEC itself and shall be represented as FCEC gross revenues. Excluding the sale of individual advertising and signage (fixed, temporary, banner or digital) opportunities, Operator-incurred expenses related to securing building-wide sponsorship and new naming rights agreements associated with FCEC spaces may be deducted from the Gross Revenue calculation outlined in Section 4(b). Operator will submit an itemization of these qualifying expenses to Owner prior to entering into any associated sponsorship or naming rights agreements.
- s. All records relating to or reflecting the operation of the FCEC by Operator shall be available to Owner, and their representatives, at all reasonable times for examination, audit, inspection and copying.
- t. Operator will collaborate with Owner in good faith to identify other mutually beneficial revenue opportunities and strategic pursuits designed to enhance the FCEC’s financial performance and determine equitable sharing splits therefrom.

## **6. General Duties and Obligations of Owner.**

- a. Owner shall use its best efforts to ensure that Operator obtains all licenses and permits necessary for the operation of the FCEC, including without limitation, a liquor license.
- b. Owner shall coordinate with Operator all activities related to its FCEC Capital Expenditure obligations associated with the FCEC, as defined in Section 7(a).
- c. Pursuant to its previous receipt of America Rescue Plan Act ("ARPA") funds, Owner agrees to fund a total of eight hundred thousand dollars (\$800,000), subject to the terms and limitations of the ARPA, for capital repair and replacement items associated with the FCEC, with all purchases completed by December 31, 2026. Owner will coordinate with Operator in a timely manner to identify the capital items to be purchased to this end. Should any dispute arise concerning these items, Owner shall retain the final purchasing decision authority related to these funds. Should Owner fail to effectuate these expenditures by the date indicated above, the Rent payment by Operator to Owner, as outlined in Section 4, shall be suspended until Owner's capital repair and replacement funding obligation related to the subject ARPA funds is fulfilled.
- d. Owner shall create and maintain a Capital Reserve Fund for the FCEC. All Rent payments received by Owner from Operator, as outlined under Section 4(b), shall be deposited into the Capital Reserve Fund. The only allowable use of money held in the Capital Reserve Fund will be for Capital Expenditures for the FCEC, pursuant to Section 7(a).

## **7. Capital Expenditures and Furniture, Fixtures and Equipment.**

- a. Costs related to Capital Expenditures will be the responsibility of Owner. Capital expenditures are defined as all expenditures for building additions, alterations, repairs or improvements, and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than \$10,000 and the depreciable life of the applicable item is, according to generally accepted accounting principles, in excess of one year. For the purposes of this section, individual expenditures must independently meet the \$10,000 threshold and may not be aggregated or combined with other expenditures to exceed this amount.
- b. Operator shall have the use of all tables; chairs; furniture; audio/visual equipment; stoves, refrigerators, freezers and other major appliances; major kitchen equipment and other furniture, fixtures and equipment of a similar nature owned by Owner and currently used for the operation of the FCEC ("Owner Furniture, Fixtures and Equipment"). Owner Furniture, Fixtures and Equipment, and Serving Items shall not be removed from the FCEC premises.
- c. All Owner Furniture, Fixtures and Equipment, and Serving Items shall remain the property of Owner and shall be returned to Owner upon the termination of the operation of the FCEC by Operator in the same condition as at the commencement of operations except for reasonable wear-and-tear and other loss or damage beyond the reasonable control of Operator.

- d. Operator shall be responsible for routine maintenance of Owner Furniture, Fixtures and Equipment and repairs to Owner Furniture, Fixtures and Equipment, and Serving Items and replacement of Serving Items on an ongoing basis as necessary.
- e. Owner shall be responsible for the replacement of any Owner Furniture, Fixtures or Equipment requiring replacement during the term of the Agreement, unless the replacement is required as a result of the negligence or intentional acts of Operator.
- f. Operator shall retain ownership of all equipment provided by Operator upon termination of the operation of the FCEC by Operator, except for any Owner Furniture, Fixtures and Equipment and Serving Items that Operator is required to replace pursuant to the stipulations in this Section.
- g. Operator shall be responsible for the replacement of any equipment provided by Operator, unless the replacement is required as the result of the negligence or intentional acts of Owner.

**8. Insurance.**

- a. Operator shall carry insurance for the FCEC of the coverage types and levels as more particularly set forth in IR 1.1 Large Exposure: \$2M Umbrella attached hereto and incorporated herein by reference.
- b. The City and its common council members, employees, agents and authorized volunteers shall be designated as additional insureds on the liability insurance coverage carried by Operator.
- c. Operator shall provide certificates of insurance for all insurance coverage required to be carried by Operator.
- d. Operator shall indemnify, defend and hold Owner harmless from any liability arising out of the failure of Operator to perform its obligations under this Agreement or the negligent or intentional acts or omissions of Operator or of its employees, contractors, agents, invitees, exhibitors, attendees, guests and the like.
- e. Operator shall indemnify, defend and hold Owner harmless from and against any and all damage to, or loss of, the FCEC (including any portion thereof) caused by, attributable to, or alleged to have been caused by any act or omission (including negligence or willful misconduct) of Operator's invitees, exhibitors, attendees, guests and the like present at or using the FCEC in connection with any event, booking, use, or activity arranged, managed, coordinated, permitted or serviced by Operator under this Agreement. Operator's exhibitor/vendor/event agreements shall include (i) indemnity in favor of Owner and Operator, (ii) minimum insurance requirements, and (iii) a covenant to pay for any damage caused by such parties to the FCEC.
- f. Subject to any limitations contained in Sec. 893.80 and any similar statute, of the Wisconsin Statutes, Owner shall indemnify and hold Operator harmless from any liability arising out of the failure of Owner to perform its obligations under the Agreement or the negligent or intentional acts or omissions of Owner or its employees, contractors or agents while acting within the scope of their

employment.

**9. Reports to Owner.**

- a. Operator shall provide an annual facilities inspection and inventory report to Owner by June 30 following the end of each previous calendar year for which the report is being provided.
- b. Operator shall provide quarterly and annual reports to Owner, as outlined in Section 4(c).

**10. Use and Access by Owner.**

- a. The FCEC shall be available for use by Owner and other municipalities paying the hotel room tax to FCEC Bonds (hereinafter "FCEC Municipality") for mutually agreed upon civic activities when it is not booked for other events. In the event Owner or other FCEC Municipality has requested the use of the FCEC with reasonable advance notice, such request shall not be unreasonably denied by Operator.
- b. For any Owner or other FCEC Municipality sponsored activity held at the FCEC premises, or for other civic activities held at the FCEC by mutual agreement of the parties, Operator shall have the right to charge reasonable and customary amounts for food, beverages, and other services provided by Operator. Rent for FCEC space shall not be charged higher than fifty percent (50%) of Operator's customary rental amount for a typical for-profit event. Owner retains the right to require Operator to present timely proof, through recent precedent FCEC event contracts, that a quoted rental fee for such an event is in alignment with these terms.
- c. Owner shall have the right to immediate access of the FCEC premises for its use as the emergency shelter.
- d. Owner shall have the right to access the FCEC premises at reasonable times upon reasonable notice for inspections and other legitimate purposes. Owner shall have the right to immediate access to the FCEC premises if such access is reasonably believed to be necessary to protect life and/or property from damage.

**11. Change of Control and Assignment.** The parties acknowledge that continuity of qualified management is material to the Operator and that transfers affecting Operator or the related Hotel operations may materially affect performance under this Agreement.

**a. Definitions.**

- i. **Change of Control** means, directly or indirectly, any of the following events with respect to AHH or Operator:
  - (a) Any sale, transfer, conveyance, assignment, or other disposition (whether in one transaction or a series of related transactions) to an unrelated third-party purchaser or assignee of all or substantially all of AHH or Operator's business or assets used to perform this Agreement, but expressly excluding a Transfer among affiliates or

entities under common control with AHH and/or Operator.

- (b) Any merger, consolidation, reorganization, recapitalization, or similar transaction in which Hotel or Operator is not the surviving entity, or in which the surviving entity's equity ownership is materially different from AHH or Operator's equity ownership immediately prior to such transaction.
- (c) Any sale, transfer, issuance, or other disposition of equity interests or voting power resulting in a change in the person(s) or entity(ies) that directly or indirectly control AHH or Operator.
- (d) Any change in the identity of the ultimate controlling person(s) or entity(ies) of AHH or Operator, whether by contract, voting arrangement, management agreement, or otherwise.
- (e) **Hotel Transfer Event** means any sale, transfer, conveyance, assignment, or other disposition (whether in one transaction or a series of related transactions) of the Hotel or of all or substantially all of the assets or equity interests of the entity that owns the Hotel, or any transaction that results in a change of control of such Hotel-owning entity.
- (f) **Required Transferee** means the acquiring, surviving, successor, or resulting entity (as applicable) in connection with a Change of Control or Hotel Transfer Event.
- (g) Exclusions from Change of Control shall consist of:
  - (i) Equity financing arrangements or transactions, including but not limited to the encumbrance, certification or other pledge of limited liability company membership interests in AHH that do not result in a change of control of AHH or Operator;
  - (ii) Pledges or encumbrances granted to institutional lenders in connection with debt financing of the Hotel;
  - (iii) Any transfer of less than a controlling interest (i.e. less than 50% of voting power or economic interest in such entity) that do not result in the ultimate controlling person.

b. **Notice; Information; Cooperation.**

- i. **Advance notice.** AHH or Operator shall provide the Owner written notice of any proposed, threatened, or reasonably likely Change of Control or Hotel Transfer Event promptly after AHH or Operator becomes aware of it and, to the extent practicable, no later than thirty (30) days prior to the anticipated closing; if thirty (30) days' prior notice is not practicable due to confidentiality or timing constraints, then as soon as practicable and in no event later than five (5) business days after execution of definitive documentation.
- ii. **Closing notice.** AHH or Operator shall provide the Owner written notice within five (5) business days after consummation of any Change of Control

or Hotel Transfer Event.

- iii. **Contents.** Each notice shall describe the transaction in reasonable detail, identify the Required Transferee, state the anticipated closing date, and include such information regarding the Required Transferee as the Owner may reasonably request to evaluate the request for approval, including evidence of financial capacity, relevant experience, and the proposed transition plan.

c. **Mandatory Assignment and Assumption.**

- i. **Operator Change of Control-required transfer.** Upon the occurrence of a Change of Control, AHH and Operator shall cause this Agreement to be transferred to the Required Transferee, and the Required Transferee shall assume and agree in writing to perform all of Operator's obligations under this Agreement, effective as of the closing of the Change of Control (or, if legally required, immediately following closing), subject in all cases to the Owner's prior written approval under Section 11(d).
- ii. **Hotel Transfer Event-required transfer.** Because the Hotel is operationally related to the FCEC and Operator's performance may be affected by a Hotel Transfer Event, upon the occurrence of a Hotel Transfer Event, Operator shall, at the Owner's election exercised by written notice delivered within thirty (30) days after the Owner's receipt of AHH or Operator's notice under Section 11(b), either (a) cause this Agreement to be transferred to the Required Transferee and cause the Required Transferee to assume this Agreement in accordance with this Provision, subject in all cases to the Owner's prior written approval under Section 11(d), or (b) if the Hotel Transfer Event does not involve a Change of Control of Operator, deliver to the Owner within thirty (30) days after the Owner's election a written operational continuity plan reasonably acceptable to the Owner demonstrating how Operator will maintain performance under this Agreement notwithstanding the Hotel Transfer Event.
- iii. **Assumption agreement.** Any Required Transferee assumption shall be in a written assumption agreement reasonably acceptable to the Owner and shall provide, at a minimum, that (a) the Required Transferee assumes and agrees to timely perform all duties, liabilities, and obligations of Operator under this Agreement, whether arising before, on, or after the effective time of the Transfer, (b) Operator remains responsible for all obligations which accrued and remained unpaid up to the effective time of the Transfer but only while Operator is responsible for such obligations, and (c) the Transfer will not impair performance standards, reporting, staffing, insurance, or any other material operational requirement under this Agreement.
- iv. **No avoidance.** Neither AHH nor Operator shall not structure, agree to, or consummate any Change of Control or Hotel Transfer Event in a manner intended to avoid the requirements of this Provision.

d. **Owner Approval; Standard; Process.**

- i. **Prior written approval required.** Notwithstanding anything to the contrary in this Agreement, any required or proposed Transfer of this Agreement (including any assignment and assumption required by Section 11(c)) shall be subject to the Owner's prior written approval.
- ii. **Approval standard.** The Owner's approval shall not be unreasonably withheld, conditioned, or delayed. Operator acknowledges that the Owner may reasonably withhold approval if the Owner determines, based on information reasonably requested and provided, that the Required Transferee lacks the financial capacity, operational experience, integrity, or ability to perform Operator's obligations under this Agreement at least to the standards required herein, or if the proposed Transfer would reasonably be expected to have a material adverse effect on the Owner or the FCEC.
- iii. **Deemed approval; no waiver.** In the event that AHH and/or Operator provide notice to Owner that a Required Transferee will be assuming this Agreement, Owner shall provide a written response within twenty one (21) days from the date of AHH and/or Operator notice containing a detailed explanation for why such Required Transferee is denied by Owner ("Owner RT Denial"). If Owner fails to issue an Owner RT Denial, then the proposed Required Transferee will be deemed approved. No Transfer shall be effective unless and until the Owner delivers written approval. The Owner's review, discussions, or failure to object shall not constitute approval or a waiver of any requirement of this Provision. Owner hereby pre-approves a Required Transferee that, at a minimum, meets all of the following requirements:
  - (a) has assets under management of not less than \$50,000,000 and liquidity of not less than \$5,000,000 (through and including its parents, subsidiaries and affiliates); and
  - (b) owns, operates, or manages not fewer than three (3) nationally branded, full-service hotels, each with no fewer than 100 guest rooms, at the time of transfer; and
  - (c) has the capability of managing group room blocks or convention-related business at one or more of such hotels; and
  - (d) the proposed Required Transferee has the capability of, the proposed Required Transferee owns, operates, manages, or the proposed Required Transferee owned, operated, or managed an exhibition center(s) or convention center(s) of comparable or greater size to the Exhibition Center; and
  - (e) The proposed Required Transferee is approved by the franchisor of the Hotel.
- iv. **Further assurances.** AHH and Operator shall promptly execute and deliver, and shall cause the Required Transferee to execute and deliver, all documents and take all actions reasonably requested by the Owner to evidence, implement, and enforce an approved Transfer and assumption.

- e. **Breach; Remedies.**
- i. **Material obligation.** Compliance with this Provision is a material obligation of AHH and Operator.
  - ii. **Unauthorized transfer.** Any Transfer (or attempted Transfer) in violation of this Provision, including any Transfer without the Owner's prior written approval, shall be voidable at the Owner's option and shall constitute a material breach of this Agreement.
  - iii. **Termination.** If AHH or Operator fails to comply with any material requirement of this Provision and does not cure such failure within thirty (30) days after receipt of written notice from the Owner specifying the failure (or, if the failure is not reasonably capable of cure within thirty (30) days, fails to commence cure within such period and diligently pursue cure to completion), the Owner may terminate this Agreement effective upon written notice to AHH and Operator, in addition to any other rights and remedies available at law or in equity.

**12. Contingencies.** The commencement of the terms of this Agreement shall be subject to the following contingencies:

The ability of Operator to secure all licenses and permits necessary for the operation of the FCEC, including without limitation, the liquor license.

**13. Damage or Destruction.** In the event the FCEC premises is damaged or destroyed by fire or other casualty, Owner shall be obligated to repair or rebuild the FCEC in its current location as soon as reasonably possible. The term of this Agreement shall not be extended by any period of time the FCEC premises is damaged, destroyed, or otherwise unavailable for use by Operator though no fault of Owner.

**14. Miscellaneous Provisions.**

- a. Authority. Operator shall not have the authority to contractually bind Owner without the prior written consent of Owner, except to the extent that Operator schedules or books events upon the FCEC premises pursuant to the authority granted herein.
- b. Alterations. Operator shall not have any authority to install any fixtures, to make any material alterations, or to make any structural changes to the FCEC premises, including the buildings, skywalk, and patio, without the prior written consent of Owner, and such consent shall not be unreasonably withheld.
- c. Encumbrances. Operator shall not allow any liens or encumbrances of any kind on the FCEC premises or Owner Furniture, Fixtures and Equipment. A breach of this covenant may be regarded as a material breach of this Agreement.
- d. Non-Discrimination. Operator agrees not to discriminate in its operations under this Agreement on the basis of race, color, creed, age, and gender, or as otherwise prohibited by law. A breach of this covenant may be regarded as a material breach of this Agreement.
- e. Governing Law. The laws of the State of Wisconsin shall govern the interpretation and construction of this Agreement. Outagamie County shall be the venue for all

disputes arising under this Agreement.

**15. Standard Provisions.**

- a. Severability. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision was not contained herein.
- b. Non-waiver. The action or inaction of any Party shall not constitute the waiver of any provision of this Agreement, except and unless the provision is expressly waived in writing and signed by an authorized representative of the Party.
- c. Entire Agreement. This Agreement supersedes all other agreements or other understandings between the Parties, whether verbal or written, and contains the entire understanding between the Parties, and it shall inure to the benefit of and shall bind the parties hereto, their respective heirs, executors, successors or assigns.
- d. Third Party Beneficiaries. This Agreement shall not bestow any rights upon any third party. It is the sole intention of Owner, Operator and AHH that the terms of this Agreement will bind and benefit only these three parties.

**16. Notices.**

- a. Any notice required or communication under this Agreement shall be given in writing, signed by the Party giving notice, either by personal delivery, or mailed by first class delivery, to the Party representatives as noted below. All such notices shall be addressed as follows:
  - i. To Owner: City of Appleton  
c/o City Clerk  
100 North Appleton Street  
Appleton, Wisconsin 54911  
  
And copy to: City of Appleton  
Attn: City Attorney  
100 North Appleton Street  
Appleton, Wisconsin 54911
  - ii. To AHH: Appleton Hotel Holdings, LLC  
c/o Mark Fogel  
390 RXR Plaza  
Uniondale, New York 11556  
  
And copy to: Appleton Hotel Holdings, LLC  
c/o Jaclyn Jesberger, Esq.  
390 RXR Plaza  
Uniondale, New York 11556

iii. To Operator: Appleton Hotel Holdings, LLC  
c/o Mark Fogel  
390 RXR Plaza  
Uniondale, New York 11556

And copy to: Appleton Hotel Holdings, LLC  
c/o Jaclyn Jesberger, Esq.  
390 RXR Plaza  
Uniondale, New York 11556

- b. Any Party may change its address for purposes of this Section by giving the other Party written notice with a new address in the manner set forth above.

SIGNATURES BEGIN ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, Owner, Operator and AHH have executed this Agreement as of the date set forth above.

APPLETON HOTEL HOLDINGS, LLC, as "AHH"

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

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

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

APPLETON HOTEL HOLDINGS, LLC, as "Operator"

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

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

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

CITY OF APPLETON, WISCONSIN, as "Owner" or "City"

By: \_\_\_\_\_  
Jacob A. Woodford, Mayor

By: \_\_\_\_\_  
Amy Molitor, City Clerk

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

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

Approved as to form:

\_\_\_\_\_  
Christopher R. Behrens, City Attorney

A25-0325

**IR 1.1 – Large Exposure: \$2M Umbrella  
City of Appleton  
Insurance Requirements**

**Project: Fox Cities Exhibition Center | Management Agreement**

The requirements herein are material terms of the Agreement. It is hereby agreed and understood that the insurance required by the City of Appleton is primary coverage and any insurance or self-insurance maintained by the City of Appleton, its officers, Council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force prior to the Agreement’s commencement and remain in force for the duration of the Agreement or as listed below, whichever is longer.

**1. INSURANCE REQUIREMENTS FOR OPERATOR**

**Commercial General Liability** coverage at least as broad as Insurance Services Office (ISO) Commercial General Liability Form, including coverage for products liability, completed operations, contractual liability, and explosion, collapse, underground coverage with the following minimum limits and coverage:

- Each occurrence limit ..... \$1,000,000
- Personal and advertising injury limit ..... \$1,000,000
- General aggregate limit (other than products/completed operations **per project**) ..... \$2,000,000
- Products/Completed Operations aggregate ..... \$2,000,000  
*NOTE: coverage must be carried for two years after acceptance of completed work*
- Fire damage limit – any one fire ..... \$50,000
- Medical expense limit – per person ..... \$5,000

**Automobile Liability** coverage at least as broad as Insurance Services Office Business Automobile Form with \$1,000,000 minimum limits combined single limit per accident for bodily injury and property damage, provided on a Symbol #1 - “Any Auto” basis.

**Workers’ Compensation** as required by the State of Wisconsin and employer’s liability insurance with sufficient limits to meet underlying umbrella liability insurance requirements. If applicable for the work, coverage must include Maritime (Jones Act) or Longshoremen’s and Harbor Workers Act coverage.

**Umbrella Liability** coverage at least as broad as the underlying Commercial General Liability, Automobile Liability and Employers Liability:

- Minimum limit each occurrence ..... \$2,000,000
- Aggregate ..... \$2,000,000
- Maximum self-insured retention ..... \$10,000

**Commercial Crime Policy** minimum per occurrence limit.....\$250,000

**Liquor Liability Insurance**

- Minimum limit each occurrence ..... \$1,000,000
- Minimum aggregate limit ..... \$1,000,000

## 2. APPLICABLE TO CONTRACTORS/SUBCONTRACTORS/SUB-SUB CONTRACTORS

- **Builder's Risk/Installation Floater/Contractor's Equipment or Property:** The Contractors are responsible for loss and coverage for these exposures. The City of Appleton will not assume responsibility for loss, including loss of use, or damage to property, materials, tools, equipment and items of a similar nature which are being used in the work being performed by the Contractor or its subcontractors or are to be built, installed or erected by the Contractor or subcontractors.
- **Primary and Non-Contributory Requirement:** For any claims related to the Agreement, the Operator's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 12 19 as respects to the City of Appleton, and its officers, Council members, agents, employees and authorized volunteers. Any insurance or self-insurance maintained by the City and its officers, Council members, agents, employees and authorized volunteers shall be excess of Operator's insurance and shall not contribute to it. This also applies to any Excess or Umbrella liability policies.
- **Waiver of Subrogation: Operator hereby agrees to waive rights of subrogation which any insurer of Operator may acquire** from Operator by virtue of the payment of any loss. Operator agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Appleton for all work performed by the Operator, its employees, agents and subcontractors.
- **Acceptability of Insurers:** Insurance is to be placed with insurers who have an *A.M. Best* rating of no less than A- and a Financial Size Category of no less than Class VI, and who are authorized as an admitted insurance company in the State of Wisconsin.
- **Additional Insured Requirements: The City of Appleton, and its officers, Council members, agents, employees and authorized volunteers** must be named as **additional insured** with respect to liability arising out of work or operations performed by on or on behalf of the Operator including materials, parts or equipment furnished in connection with such work or operations. Coverage can be provided by endorsement to the Operator's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37, or 20 40 if a later edition is used).
- Certificates of Insurance acceptable to the City of Appleton shall be submitted prior to commencement of the Agreement and shall contain a provision that coverage afforded under the policies will not be canceled or non-renewed until at least 30 days' prior written notice has been given to the City of Appleton.

## 3. INSURANCE REQUIREMENTS FOR SUBCONTRACTOR

All sub-contractors shall be required to obtain Commercial General Liability, Automobile Liability, Worker's Compensation, Employer's Liability and if applicable, Watercraft Liability, Aircraft Liability and Unmanned Aircraft Liability Insurance. This insurance shall be as broad as and with the same coverage limits as those required of the Operator.