

**SHARED TECHNOLOGY SERVICES OPERATING AGREEMENT**

**for**

**OVERLAND PARK CONVENTION CENTER**

**and**

**OVERLAND PARK CONVENTION CENTER HOTEL**

**By and Between**

**THE CITY OF  
OVERLAND PARK, KANSAS**

**and**

**OVERLAND PARK DEVELOPMENT CORPORATION**

Dated as of June \_\_\_, 2002

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## SHARED TECHNOLOGY SERVICES OPERATING AGREEMENT

This SHARED TECHNOLOGY SERVICES OPERATING AGREEMENT (this "Agreement") is made and entered into as of June \_\_\_, 2002, by and between THE CITY OF OVERLAND PARK, KANSAS, a municipal corporation and city of the first class (the "City") and OVERLAND PARK DEVELOPMENT CORPORATION, a Kansas not-for-profit public benefit corporation ("Corporation"). City and Corporation are sometimes referred to in this Agreement collectively as the "Parties" and each individually as a "Party."

WHEREAS, the City has fee simple title to certain real estate described on Exhibit A attached hereto (the "Site"); and

WHEREAS, the Corporation is an instrumentality of the City within the meaning of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Corporation was formed for the specific and sole purpose to aid, assist and foster the planning, designing, development, supervision, construction, furnishing, equipping, management, operation and improvement of a convention center hotel in the City and to engage in such activities as may be necessary or advisable in connection therewith; and

WHEREAS, the City leased the Site to the Corporation, pursuant to a Ground Lease dated as of January 1, 2001 (the "Ground Lease") by and between the City and the Corporation, and

WHEREAS, pursuant to the Ground Lease, the City appointed the Corporation as its agent for the purpose of planning, designing, developing, supervising, constructing, furnishing, equipping and opening a convention center hotel (the "Hotel") to be located on the Site (together with the Site, the "Project," and upon completion of the Project, the "Hotel"); and

WHEREAS, the Corporation issued its \$62,535,000 First Tier Revenue Bonds, Series 2000A (Overland Park Convention Center Hotel Project) (the "Series 2000A Bonds"), its \$24,600,000 Second Tier Revenue Bonds, Series 2000B (Overland Park Convention Center Hotel Project) (the "Series 2000B Bonds" and together with the Series 2000A Bonds, the "Series 2000 Bonds"), and its \$5,000,991.15 Third Tier Subordinate Revenue Bonds, Series 2000C (Overland Park Convention Center Hotel Project) (the "Subordinate Series 2000C Bonds") to finance the Project, fund reserve funds and capitalized interest and pay costs of issuance; and

WHEREAS, the Series 2000 Bonds were issued pursuant to the terms of a Trust Indenture dated as of December 1, 2000 (the "Indenture"), by and between the Corporation and Firststar Bank N.A., St. Louis, Missouri, as trustee (the "Trustee"); and

WHEREAS the Subordinate Series 2000C Bonds were issued pursuant to the terms of a Trust Indenture dated as of December 1, 2000 (the "Subordinate Indenture"), by and between the Corporation and Firststar Bank N.A., St. Louis, Missouri, as subordinate trustee (the "Subordinate Trustee"); and

WHEREAS, the Indenture provides for the issuance of Additional Bonds, Completion Bonds and Refunding Bonds, as defined therein; and

WHEREAS, the Series 2000 Bonds, the Additional Bonds, the Completion Bonds and the Refunding Bonds issued pursuant to the Indenture are herein collectively referred to as the "Bonds;" and

WHEREAS, the Subordinate Indenture provides for the issuance of Additional Subordinate Bonds, as defined therein; and

WHEREAS, the Subordinate Series 2000C Bonds and the Additional Subordinate Bonds issued pursuant to the Subordinate Indenture are herein collectively referred to as the "Subordinate Bonds;" and

WHEREAS, the Indenture and the Subordinate Indenture are herein collectively referred to as the "Indentures;" and

WHEREAS, the Corporation has retained Sheraton Operating Corporation (the "Hotel Operator") as the operator of the Hotel pursuant to the Hotel Operating Agreement dated as of December 1, 2000 (the "HOA"), by and between the Corporation and the Hotel Operator; and

WHEREAS, the Corporation has retained the Hotel Operator, as Pre-Opening Manager, to perform certain specified automation installation services with respect to the Hotel pursuant to the Automation Installation Agreement dated as of December 1, 2000 (the "Automation Agreement"); and

WHEREAS, concurrently with the construction of the Hotel, the City is constructing its Overland Park Convention Center (the "Convention Center") adjacent to the Hotel, on certain real estate described on Exhibit B attached hereto (the "Convention Center Site"); and

WHEREAS, the City has retained Global Spectrum (the "Convention Center Operator") as the operator of the Convention Center pursuant to the Convention Center Operating Agreement dated as of November 20, 2001 (the "Convention Center Operating Agreement") by and between the City and the Convention Center Operator; and

WHEREAS, the City has retained Convention Center Operator, as Pre-Opening Convention Center Manager, to perform certain pre-opening services relating to the Convention Center pursuant to the Pre-Opening Services Agreement dated as of September 1, 2001 (the "Convention Center Pre-Opening Agreement") by and between the City and the Convention Center Operator; and

WHEREAS, pursuant to the terms of this Agreement, the City and the Corporation have agreed to share certain technology services and operations (the "Shared Technology Services") to effect installation and operating cost savings for the Hotel and the Convention Center; and

WHEREAS, the City proposes to enter into this Agreement with the Corporation to provide terms and conditions relating to Shared Technology Services; and

WHEREAS, the City and the Corporation are also entering into the Shared Technology Services Development Agreement dated as of June \_\_, 2002 (the "Shared Technology Services Development Agreement") to provide for the sharing of certain technology equipment development and installation; and

WHEREAS, when in this Agreement it is provided that a Party, or the "Hotel" or "Convention Center" will undertake any responsibility relating to Shared Technology Services, it is understood and agreed that such reference indicates that unless otherwise provided, the Hotel Operator or the Convention Center Operator, as applicable, will undertake such responsibility for the Party or for the "Hotel" or "Convention Center," as applicable; and

WHEREAS, the Corporation has entered into the Supplemental Hotel Automation Agreement dated as of June \_\_, 2002 (the "Supplemental Hotel Automation Agreement") with the Hotel Operator pursuant to which the Hotel Operator has agreed to perform the services assigned to the Corporation, the Hotel and the Hotel Operator provided in this Agreement on behalf of the Corporation, and the City has entered into the Supplemental Convention Center Automation Agreement dated as of June \_\_, 2002 (the "Supplemental Convention Center Automation Agreement") pursuant to which the Convention Center Operator has agreed to perform the services assigned to the City, the Convention Center and the Convention Center Operator provided in this Agreement on behalf of the City;

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

## **1. FUNDAMENTAL BUSINESS TERMS**

**1.1 Definitions.** All capitalized terms used and defined in this Agreement shall have the meanings set forth on Exhibit C attached hereto and made a part hereof. All capitalized terms used without definition in this Agreement shall have the meanings assigned to such terms which are set forth in the document entitled "Master Definitions for Overland Park Development Corporation (Overland Park Convention Center Hotel Project) Revenue Bonds Series 2000", copies of the first and last pages of which are attached hereto identified as Exhibit D, with said document being incorporated herein by this reference.

### **1.2 Rules of Interpretation**

**1.2.1** Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**1.2.2** All references in this Shared Technology Services Operating Agreement to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

**1.3 Terms and Parties:** The following are the basic terms on which this Agreement is based and the identity of the parties hereto.

#### **1.3.1 Parties:**

##### **(a) City:**

the CITY OF OVERLAND PARK, KANSAS,  
a municipal corporation and city of the first class.

(i) City's notice address:

City of Overland Park, Kansas  
8500 Santa Fe Drive  
Overland Park, Kansas 66212  
Attn: City Clerk

with a copy to:

McDowell, Rice, Smith & Gaar,  
a Professional Corporation  
7100 College Blvd., Suite 200  
Overland Park, Kansas 66210

**(b) Corporation:**

Overland Park Development Corporation,  
A Kansas not-for-profit corporation  
8500 Santa Fee Drive  
Overland Park, Kansas 66212  
Attn: President,  
c/o City Manager

In addition, the following are the Notice Addresses for the respective Operators:

**(c) Hotel Operator:**

(i) Hotel Operator's notice address:

c/o Starwood Hotels & Resorts Worldwide, Inc.  
777 Westchester Avenue  
White Plains, New York 10604  
Attn: General Counsel  
Fax: 914.640.8260

**(d) Convention Center Operator:**

(i) Convention Center Operator's notice address:



Global Spectrum, LP  
c/o Michael F. Sauers  
5405 Cypress Center Drive #290  
Tampa, Florida 33609

Philip I. Weinberg, Esquire  
Comcast – Spectacor  
3601 South Broad Street  
Philadelphia , Pennsylvania 19148-5290

**1.3.2 Opening Date:** The date on which the Hotel and Convention Center are first opened for business to the general public is the Opening Date and is currently estimated to be December 1, 2002. The date set forth in the preceding sentence is an estimate only, and the Parties shall not be in breach of this Agreement if the Opening Date occurs after December 1, 2002.

**1.3.3 Term:** The period commencing on the date of approval of this Agreement by the Parties and expiring five (5) years from the Opening Date.

**1.3.4 Extensions to Term:** The Term of this Agreement may be extended upon the mutual consent of the Parties.

## **2. GENERAL MANAGEMENT AND OPERATIONS**

**2.1** The parties will develop an Administrative Standard Operating Procedure (the "SOP") to address administrative details and procedures. The provisions of this Agreement are intended to provide an overview of the types of shared operating services to provided under this Agreement.

**2.2 Equipment Locations.** The Equipment generally necessary to provide the respective shared technology services shall be located as follows:

**2.2.1 Telephone Switching System.** The telephone switching equipment shall be located at the Communications Center of the Convention Center and connected by appropriate transmission media to an Intermediate Distribution Frame (Expansion Cabinet) located in the Communications Center of the Hotel.

**2.2.2 Internet Routers and Related Equipment.** The routers, hubs, switches and related equipment necessary to distribute Broadband ISP signals between the Hotel and Convention Center shall be located in the Communications Center of the Hotel and connected by appropriate transmission media to the Communications Center of the Convention Center.

**2.2.3 Cable and Satellite Television Equipment.** The receivers, amplifiers and related equipment necessary to distribute cable and/or satellite television signals between the Hotel and Convention Center shall be located in the Communications Center of the Hotel and connected by appropriate cable media to the Communications Center of the Convention Center.

**2.3 Work Orders.** Subject to the work order procedures that will be set forth in the SOP, either Party may perform the initial preparation of technology services work orders, using either manual or computerized forms to gather the necessary client information, and accepting full payment or deposits in accordance with established operating policies. The Party that will provide the specified technology service (the "Responsible Party") shall be solely responsible for scheduling the work and providing the labor, tools, equipment and supplies necessary to complete the assigned tasks.

**2.3.1 Order Desk.** During each convention, conference, consumer show or other such assembly event, there shall be a physical location with voice and facsimile telephone numbers dedicated to receiving and processing technology services work orders for exhibitors. The Responsible Part(y)(ies) shall provide the labor, tools, equipment and supplies necessary to process, schedule and complete work orders.

**2.3.2 Advance Work Orders.** Technology services work orders requested more than 72 hours in advance of an event and using manual forms shall be forwarded to the Party providing that service for further processing. Work orders placed, using computerized forms, shall be processed by the Party providing that service. Time limits for advance orders may be increased or decreased by mutual agreement of both Parties.

**2.3.3 Day-of-Event Work Orders.** Work Orders requested on the day of any event shall be prepared, scheduled and completed exclusively by the Responsible Party providing the specified technology service to the end-user location.

**2.4 Staffing.** The City shall cause a trained technical staff to be provided at the Convention Center to manage and maintain the telephone switch and telecommunications subsystems. Staff shall be available onsite during all events and during regular working hours in accordance with established operating policies agreed to by the Parties and as modified from time to time. At all other times, a designated staff member shall be on call and available via electronic pager, telephone or other acceptable means, to respond to equipment failures, service disruptions or similar operational problems with shared technology services.

**2.4.1 Staff Training and Vendor Certification.** The City shall cause the Convention Center to have on staff at all times a technician or technicians who have completed training by the principal equipment vendor or a third-party training entity

acceptable to the principal equipment vendor. Upon completion of such training, the technician(s) shall have been certified by the principal equipment vendor to be able to maintain and repair its equipment by installing parts, operating software, related accessories or similar tasks without jeopardizing manufacturers' warranties.

**2.4.2 Temporary Installation of Event-Based Services.** The City shall cause the Convention Center to provide the technical staff labor, tools, equipment and supplies necessary to schedule, install, maintain and remove event-based services from the Hotel distribution areas to the prefunction, registration, meeting rooms and ballroom areas within the Hotel.

**2.5 Maintenance Agreements.** The Responsible Parties agree that a maintenance agreement with terms and conditions acceptable to both Parties shall remain in force [for so long as such Party is providing such technology services]. Such maintenance agreement shall be contracted with (i) the principal equipment vendor, its designated affiliates or subsidiaries, or (ii) the original systems integrator, or (iii) an independent vendor which has been qualified by the principal equipment vendor to provide service and to stock and install parts for the vendor's equipment.

**2.5.1 Maintaining Hotel Telecommunications Services.** The City shall cause the Convention Center to provide the technical staff labor, tools, equipment and supplies necessary to maintain and repair Telecommunications Services and Telecommunications Equipment in the Hotel, including but not limited to the Intermediate Distribution Frame (Expansion Cabinet), hotel operator console and switchboard, operating software, cable plant, station sets and accessories located in hotel rooms, administrative offices and other service and public areas.

**2.5.2 Service Calls and Responsiveness.** The Convention Center technical staff shall act as an exclusive service vendor with regard to maintenance and repair of Hotel Telecommunications Services. Maintenance of other technology services and the equipment required to provide those services may be on a non-exclusive arrangement. The Convention Center staff will provide maintenance coverage 24 hours per day, seven (7) days a week. Response time will be within two (2) hours from receipt of the trouble report for Minor Failures during normal working hours and within three (3) hours during non-working hours when no technical staff is on the premises.

**2.6 Downtime; Catastrophic Systems Failure.** Subject to the Catastrophic System Failure procedures that will be set forth in the SOP, the following procedures shall be followed upon the occurrence of a Catastrophic Systems Failure. When remote diagnostic access of the system is available to the technician, such technician will, within 30 minutes from receipt of the trouble report, run system diagnostics, analyze the trouble and disable or replace the faulty component, if possible. For events that require a technician's presence, response time will be within one (1) hour from receipt of the

trouble report for failures during normal working hours and within two (2) hours during non-working hours when no technical staff is on the premises.

**2.7 Separate Customer Rate Schedules for Hotel and Convention Center.**

The Parties shall have the right to establish separate customer rate schedules for technology services for the Hotel and Convention Center. Such rate schedules shall not be dependent upon the expenses incurred relative to the provision of related technology services, including carrier fees and charges for labor and network equipment or temporary installation and removal of services, cabling and terminations.

**2.8 Non-Exclusive Event-Based Client Services.** Event-Based Clients of both Parties shall be permitted to contract with third-party technology service providers for extending such external services to the Hotel and Convention Center, subject to the following:

**2.8.1** The SOP will establish procedures dealing with such matters as responsibility for management of Event-Based Client Services, ongoing regular review of associated costs of such Services and the like.

**2.8.2** Event-Based Clients shall arrange for and pay all fees and expenses related to the installation and removal or abandonment of temporary technology services from offsite to the DEMARC.

**2.8.3** Extension of temporary technology services from the DEMARC to the Event-Based Client's equipment shall be under the exclusive control of the Hotel and Convention Center. Work orders for such technology services shall be prepared and processed in accordance with established operating policies.

**2.8.4** Rates and charges for any such extension of temporary technology services shall be in accordance with published schedules or, in the absence of rates and charges having been established such as for the installation of previously unused technology services, as agreed to between the Event-Based Client and the Parties in writing.

**2.8.5** The Parties shall be prohibited from refusing to grant third-party technology service providers access to the facilities as necessary to complete temporary installation and removal or abandonment of equipment and supplies. Furthermore, the Parties may require such third parties to be accompanied at all times by technical staff, with any related costs to be borne by the Event-Based Client. The third-party shall be prohibited at all times from making any direct connection to the Hotel or Convention Center infrastructure.

### **3. SYSTEM EXPANSION AND UPGRADES**

**3.1 Responsibility to Upgrade Systems.** As contemplated by this Agreement, the Parties are jointly responsible for delivering high quality technology services to the clientele of the Hotel and Convention Center. Because these services are constantly evolving, the Parties shall periodically review the installed systems, identify available vendor- and third-party-supplied upgrades applicable to the technology equipment installed and services provided within the facilities, identify the costs associated with such upgrades and mutually agree to the types and scheduling of upgrades. The responsibility to upgrade each shared technology service is allocated to the Parties on the basis of which Party is responsible for operating the respective technology service. The review shall occur as a part of the annual budgeting process, and may occur more often as emerging technology and customer service may demand.

**3.2 System Enhancements.** Additional features or enhancements to the installed technology services and equipment may be procured as required in order to meet the Hotel Operating Standard (as defined in the Hotel Operating Agreement), Convention Center standards and operational needs; the parties agree to confer prior to any such procurement. The responsibility for securing such system enhancements to improve the quality or expand the capacity of shared technology services is allocated to the Parties on the basis of which Party is responsible for operating the specific services affected.

**3.3 Addition of New Technology Services.** New technology services may be added to this Agreement by mutual consent of the Parties in writing. Prior to executing any purchase or installation commitment for new technology services, such additions shall specify the share of new technology purchase and installation costs to be paid by the respective Parties, and the Party to be responsible for the operation of the new technology.

**3.4 Building Expansions.** The Parties hereto anticipate future expansion of the Convention Center and/or Hotel under the Special Use Permit 1990-50 approved by the City on February 23, 2000. Shared technology services may be extended to any future construction by mutual consent of the Parties in writing.

**3.5 Funding System Upgrades, Enhancements and Expansions.** The Parties understand and agree that system upgrades, enhancements and expansions may be necessary from time to time for the benefit of the Hotel and the Convention Center, and that provision for the payment of the costs of such upgrades, enhancement shall be provided for in the Parties' respective operating and reserve and replacement budgets as appropriate. The Parties further agree that in those cases where the benefit accrues solely to one party, the benefited Party shall be responsible to pay the cost of those improvements. Prior to executing any contract for system upgrades, enhancements and expansions, the Parties shall determine the share of such costs to be paid by the respective Parties, and the Party to be responsible for the procurement and installation of such work.

#### **4. STARTUP OF OPERATIONS**

**4.1 General.** These startup procedures shall generally apply for any and all technology services covered by this Agreement. The Parties responsible for causing the design and installation of each individual technology service under the Development Agreement shall be responsible for startup of that service unless specifically noted herein.

**4.2 Shared Technology Services Development Agreement.** The Shared Technology Services Development Agreement between the City and the Corporation is by this reference made a part of this Agreement.

**4.3 Twelve Weeks Prior to Opening.** Twelve weeks prior to the scheduled opening date of the Hotel, the Responsible Party shall verify that all equipment, accessories, software, cabling and services external to the facility, as required to provide an operational technology service, have been procured and, if not already delivered, are scheduled for timely delivery to the project.

**4.4 Eight Weeks Prior to Opening.** Eight weeks prior to the scheduled opening date of the Hotel, the Responsible Party shall verify that all equipment, accessories, software, cabling and services external to the facility, as required to provide an operational technology service, has been delivered and that vendor(s) is (are) proceeding with installation, configuration and testing to meet specified performance criteria.

**4.5 Four Weeks Prior to Opening.** Four weeks prior to the scheduled opening date of the Hotel, all equipment, accessories, software, cabling and services external to the facility, as required to provide an operational technology service, shall have been installed and configured and be fully operational.

**4.5.1** Each technology service system shall have been initialized and tested, by its appropriate vendor, and be performing without degradation of quality or

capabilities. All patching, painting and other restoration work shall have been completed and training of technical staff of the Hotel and Convention Center shall have commenced.

**4.6 Variations to Startup Schedule.** Variations of more than 10 percent for milestones on the start-up procedure schedule set forth above shall be immediately addressed with the affected vendor(s) to ensure completion within the allotted time. Written notification of any remedial action required by vendor(s) shall be copied by the Responsible Party via facsimile to the other Party, the Hotel Operator and Convention Center Operator.

**4.7 Matters Requiring Correction.**

**4.7.1** Within five days following the opening of the Hotel, a list of technology short falls shall be presented to the Responsible Party for rectification as more fully set forth in the SOP.

**4.7.2** Within five days following the opening of the Convention Center, a list of technology short falls shall be presented to the Responsible Party for rectification as more fully set forth in the SOP.

**5. FEES AND EXPENSES**

**5.1 Shared Technology Services Fees and Charges.** Initial fees and charges for certain shared technology services are set forth on Exhibit E attached hereto, to the extent such initial fees and charges are known on the date hereof. Exhibit E is subject to amendment to reflect the amount of initial fees and charges for other shared technology services when known. Fees and charges will be subject to annual adjustment as provided herein, or as otherwise may be agreed between the Parties. The Parties agree to evaluate fees and charges annually as a part of the annual budget processes for the Hotel and the Convention Center.

**5.2 Telecommunications Services.** The Convention Center shall be the primary responsible Party with regard to all Telecommunications Services provided to the Hotel. The Convention Center will make payments for all direct expenses associated with labor, maintenance, trunk lines, Direct-In-Dialing (DID) services, and ongoing Local Exchange Carrier (LEC); Local Long Distance (Intra LATA), Long Distance Carrier (LDC), Information and Operator Services associated with ongoing Telecommunications Services. The Hotel will reimburse the Convention Center for its proportionate share of such expenses as provided in Section 5.2.2 below.

**5.2.1 Fees, Expenses and Charges for Maintenance.** The Convention Center shall be responsible for keeping the Telecommunications Equipment, accessories, cable plant and terminations in operating condition at all times. Expenses include but are

not limited to labor, electrical supplies, modems, tools, transceivers, testing equipment and vendor maintenance contracts, and such other duties as may be assigned in the SOP. The Hotel shall pay the Convention Center a flat fee per telecommunications outlet in accordance with Exhibit E on the first day of each month, with fees to be adjusted annually for inflation and for changes in the number of outlets. Fees, expenses and charges related to system upgrades, expansion or catastrophic failures are specifically excluded from maintenance and are covered in Sections 3.5 and 5.5, respectively. It is understood and agreed that many items will be covered by warranties and that vendors and service contract providers will provide maintenance and repair services outside of this Agreement.

**5.2.2 Fees, Expenses and Charges for Administrative Uses.** The Hotel shall pay the Convention Center for LEC, LDC, Operator and related telephone services on the first day of each month. Actual expense incurred shall be the Hotel's pro rata share as determined by actual use metered at the telephone switch, with an additional administrative surcharge for expenses incurred for system administration, internal billing and related services, calculated as set forth in the SOP.

**5.2.3 Fees, Expenses and Charges for Event-Based Services.** The Hotel shall pay the Convention Center for Event-Based Services provided on its behalf per this Agreement. Fees and charges shall be calculated from a rate schedule for each type of Event-Based Service times the number and type of temporary installations and special services provided, with the rate schedule to be adjusted annually. Payments shall be made on the first day of each month.

**5.2.4 Fees, Expenses and Charges for Hotel Rooms.** The Hotel shall pay the Convention Center at the same unit rates for LEC, LDC, Operator and related telephone services as it pays for its Administrative Uses. Actual expense incurred shall be the Hotel's pro rata share as determined by actual use metered at the telephone switch.

**5.2.5 Payments.** Payments by the Hotel for Telecommunications Services shall be made by the Hotel Operator from the Hotel Operating Account maintained in the Lockbox Fund as provided in the Hotel Operating Agreement and the Indenture.

**5.3 Broadband (ISP) Services and Cable and Satellite Television Services.** As provided in the Technology Development Agreement, it is not anticipated that there will be any significant amount of shared Broadband (ISP) and Cable and Satellite Television Services. However, to the extent such services or any portion thereof may be shared, either on a temporary or permanent basis, provision shall be made in the SOP and/or in Exhibit E hereto for payment for expenses and administrative charges associated with such services.



**5.4 Catastrophic Failure and Replacement.** If a catastrophic failure should occur for any or all Shared Technology Services and insurance or similar proceeds are inadequate to fully restore the systems and equipment to its prior service levels, the Parties shall determine their respective responsibilities to contribute funds sufficient to make up the deficiency and to pay the costs of restoring the systems and equipment. In the absence of any agreement of the Parties as to the costs of the deficiency to be borne by the Parties, the responsibility to make up the deficiency shall be allocated to the Parties on the basis of the Party's use of the systems and equipment being replaced.

## **6. TERM AND TERMINATION**

**6.1 Term of Agreement.** Unless sooner terminated pursuant to the provisions of this Article 6, the term of this Agreement shall be the Operating Term specified in Section 1.3.4 of this Agreement or as otherwise agreed to in writing by City and Corporation.

**6.2 Events of Default.** Subject to the other provisions of this Agreement dealing with termination (including, but not limited to Section 1.3), if at any time during the Operating Term any of the events set forth in this Section 6.2 (each an "Event of Default") occurs and continues beyond the applicable grace period, if any, the nondefaulting Party may, at its option, terminate this Agreement by giving written notice to the other Party specifying a date, not earlier than five (5) days after the giving of such notice, when the Agreement shall terminate. In addition to its right of termination, the nondefaulting Party shall be entitled to pursue all other remedies available to it under applicable law as a result of such Event of Default.

**6.2.1** Any default in the payment of money by one Party to the other Party pursuant to this Agreement, that is not cured within ten (10) days following notice thereof by the nondefaulting Party;

**6.2.2** A breach of any material term (other than a breach covered by Section 6.2.1 above) of this Agreement that is not cured within thirty (30) days following notice thereof from the nondefaulting Party; provided however, unless the breach or default if continued would expose the nondefaulting Party to an imminent and material risk of criminal liability or of material damage to its business reputation or otherwise, an Event of Default shall not exist if the breach or default is not susceptible of cure within such thirty (30) day period and the defaulting Party commences to cure the breach or default within the thirty-day period and thereafter proceeds diligently and in good faith to complete the cure within one hundred twenty (120) days;

**6.2.3** Any action by a Party toward dissolution of its operations; a general assignment for the benefit of creditors; an arrangement or composition with its creditors by a Party; a judgment of insolvency against a Party; a voluntary petition for

relief under applicable bankruptcy, insolvency, or similar debtor relief laws or regulations; the appointment (or petition or application for appointment) of a receiver, custodian, trustee, conservator, or liquidator to oversee all or any substantial part of a Party's assets or the conduct of its business; an order for relief against a Party under applicable bankruptcy, insolvency, or similar debtor relief laws or regulations; a Party's failure generally to pay its debts as such debts become due; or notice to any governmental body of insolvency or pending insolvency or suspension of operations; or any other similar or analogous proceedings in any relevant jurisdiction; and

**6.2.4** The issuance of a levy or an attachment against all or any portion of the Hotel resulting from a final judgment against a Party for which all appeal periods have expired and which is not fully covered by insurance.

**6.3 Actions To Be Taken on Termination.** Upon termination of this Agreement for any reason, the following shall be applicable (in addition to and without limitation of, the rights of the non-defaulting Party to pursue all other remedies available to it under applicable law): Upon termination of this Agreement, each Party shall pay to the other all amounts owed under this Agreement. Reference is made to Article 7 hereof relating to the obligations of the parties with respect to the severing of shared technology services.

## **7. SEVERING SHARED TECHNOLOGY SERVICES**

**7.1 Termination Not As A Result Of Default.** After the minimum term of this Agreement has expired, and not as a result of default, the City or the Corporation may desire to terminate any or all of the Shared Technology Services covered by this agreement or to sever any or all shared technology services added later by subsequent agreement of the Parties. This Section provides the terms and conditions under which such a severing will be accomplished and the severed, stand alone services meet or exceed the technological criteria of the Shared Technology Services.

**7.2 Notification and Transition.** The Party desiring to terminate any or all of the shared technology services is required to provide the other Party with written notice of its intentions, specifying those specific services it wishes to terminate. Thirty days (30) after the receipt of this notification, a ninety (90) day transition period will be observed by the Parties during which the Parties will affect the physical and operational severing and replacement of the specific shared technology services defined in the Notification. In the event that replacement technology cannot be procured or made fully operational within this ninety (90) day transition period, the Party receiving the Notification hereby agrees to extend the transition period until such time as the services can be successfully severed.

**7.3 Funding of Severance.** It is hereby acknowledged that the severing of any or all Shared Technology Services covered by this agreement may require the expenditure of funds for replacement of equipment in order to have the severed, stand alone technology systems meet or exceed the technical criteria of the Shared Technology Systems. Prior to any severing of the Shared Technology Services, the Parties shall enter into such agreements as shall be necessary to provide for the costs of severing of services according to such allocation as shall be mutually agreed by the Parties.

## **8. MISCELLANEOUS**

### **8.1 Interpretation**

**8.1.1** The Recitals set forth at the beginning of this Agreement and Exhibits A through E attached to this Agreement are hereby incorporated in and made a part of this Agreement.

**8.1.2** Unless the language specifies or the context implies that a term of this Agreement is a condition, all of the terms of this Agreement shall be deemed and construed to be covenants to be performed by the designated Party.

**8.1.3** The use of the terms "including," "include," and "includes" followed by one or more examples is intended to be illustrative and shall not be deemed or construed to limit the scope of the classification or category to the examples listed.

**8.1.4** In this Agreement, any reference to a "Section" or an "Article" is a reference to a Section or Article of this Agreement, unless otherwise specified.

**8.1.5** Unless expressly stated otherwise in this Agreement, whenever a matter is submitted to a Party for approval or consent in accordance with the terms of this Agreement, that Party has a duty to act reasonably and timely in rendering a decision on the matter.

**8.1.6** This Agreement supersedes all prior agreements and understandings between the Parties with respect to the operation of technology services of the Hotel and Convention Center which are inconsistent with this Agreement. Without limiting the generality of the foregoing, as between City and Corporation, this Agreement shall supersede all prior agreements between City and Corporation's predecessors in interest with respect to the Site and/or Hotel pertaining to the development, operation and promotion of the Hotel which are inconsistent with this Agreement.

**8.1.7** The Table of Contents and captions to the Articles and Sections of this Agreement are for convenience of reference only and in no way define, limit, describe, or affect the scope or intent of any part of this Agreement.

**8.1.8** Whenever a provision in this Agreement specifies that an expenditure or an action shall be "consistent with" the Operating Plan and Budget or the Capital Budget, the determination of consistency shall be made in light of the level of detail set out in the Operating Plan and Budget and the Capital Budget, as applicable, with respect to the type of expenditure or action at issue.

**8.2 Waiver of Personal Liability.** All liabilities under this Agreement on the part of the City are solely liabilities of the City and, to the extent permitted by law, the Corporation hereby releases each and every officer, agent and employee of the City of and from any personal or individual liability under this Agreement. No officer, agent or employee of the City shall at any time or under any circumstances be individually or personally liable under this Agreement for anything done or omitted to be done by the City hereunder.

All liabilities under this Agreement on the part of the Corporation are solely liabilities of the Corporation and, to the extent permitted by law, the City hereby releases each and every officer, agent and employee of the Corporation of and from any personal or individual liability under this Agreement. No officer, agent or employee of the Corporation shall at any time or under any circumstances be individually or personally liable under this Agreement for anything done or omitted to be done by the Corporation hereunder.

**8.3 Amendment of Agreement.** This Agreement can be amended by agreement of the Corporation and the City.

**8.4 Partial Invalidity.** If any one or more of the terms, provisions, covenants or conditions of this Agreement shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding, order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Agreement shall be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**8.5 Notices.** All written notices to be given under this Agreement shall be given in the manner and to the Corporation, the City and to the Trustee at their addresses set forth in the Indenture, or at such address as they may provide to the other parties in writing from time to time.

**8.6 Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

**8.7 Execution in Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument. It is also

agreed that separate counterparts of this Agreement may separately be executed by the City and the Corporation, all with the same force and effect as though the same counterpart had been executed by both the City and the Corporation.

**8.8 Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Corporation and the City and their respective successors and assigns.

**8.9 Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused this Shared Technology Services Operating Agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

THIS SHARED TECHNOLOGY SERVICES OPERATING AGREEMENT is hereby executed as of the date first hereinabove written.

CITY OF OVERLAND PARK, KANSAS

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

(SEAL)

ATTEST:

\_\_\_\_\_  
City Clerk

THIS SHARED TECHNOLOGY SERVICES OPERATING AGREEMENT is hereby executed as of the date first hereinabove written.

OVERLAND PARK DEVELOPMENT CORPORATION

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

(SEAL)

ATTEST:

\_\_\_\_\_  
Secretary

**ACKNOWLEDGMENT**

STATE OF KANSAS                    )  
  ) SS:  
COUNTY OF JOHNSON            )

BE IT REMEMBERED that on this \_\_\_\_\_ day of June, 2002 before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Ed Eilert, Mayor of the City of Overland Park, Kansas, a municipal corporation duly organized and validly existing under the laws of the State of Kansas, and Marion Cook, City Clerk of said City, who are personally known to me to be the same persons who executed the foregoing instrument of writing as such officials, and said Ed Eilert as Mayor of said City, duly acknowledged the execution of the same to be the act of the City; and Marion Cook, as City Clerk of said City, duly acknowledged the attestation of the same for and on behalf of said City, and affixed thereto the seal of the City.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



**ACKNOWLEDGMENT**

STATE OF KANSAS                    )  
  ) SS:  
COUNTY OF JOHNSON            )

BE IT REMEMBERED that on this \_\_\_\_\_ day of June, 2002, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Neil Sader, President of the Overland Park Development Corporation, a not-for-profit public benefit corporation duly organized and validly existing under the laws of the State of Kansas, and Jim Hix, Secretary of said corporation, who are personally known to me to be the same persons who executed the foregoing instrument of writing as such officers, and said Neil Sader, as President of said corporation, duly acknowledged the execution of the same to be the act of the corporation; and Jim Hix, as Secretary of said corporation, duly acknowledged the attestation of the same for and on behalf of said corporation and affixed thereto the seal of the corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed by name and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF SITE**

The following described real property situated in Johnson County, Kansas:

Lot 2, Convention Center Plaza, a subdivision of land in the City of Overland Park, Johnson County, Kansas.

**EXHIBIT B**

**LEGAL DESCRIPTION OF CONVENTION CENTER SITE**

**EXHIBIT C**

**DEFINITIONS**

**EXHIBIT D**

**DEFINITIONS**

[Attach first and last pages of Master Definitions]

**EXHIBIT E**

**INITIAL FEES AND CHARGES**