

## Site Usage and Information Agreement

### **I. IMPORTANT! THIS IS A BINDING LEGAL AGREEMENT (this "Agreement"). PLEASE READ THESE TERMS AND CONDITIONS OF USE CAREFULLY BEFORE USING THIS SITE.**

This Agreement governs your use of this Internet site (collectively referred to herein as the "Site", or "Web Site") and is by and between Executive Hotel Management, a Missouri limited liability company and its affiliates and related parties and successors and assigns (referred to herein as "Company", "we", "us", or "our") and you, on behalf of yourself and any buyer, member or supplier for which you have registered ("you"). By using, viewing, transmitting, caching, storing and/or otherwise utilizing the Site, the services or functions offered in or by the Site and/or the contents of the Site in any way, you have agreed to each and all of the terms and conditions set forth below, and waive any right to claim ambiguity or error in this Agreement. **If you do not agree to each and all of these terms and conditions please do not use the Site and leave the Site immediately.** We reserve the right, at our sole and absolute discretion, to change, modify, add, or remove portions of these terms at any time without notice and, unless otherwise indicated, such changes will become effective immediately; therefore, please check these terms periodically for changes. Your continued use of the Site following the posting of changes to this Agreement will mean you accept those changes.

### **II. ELIGIBILITY**

The Site is available only to individuals and entities that can form legally binding contracts under applicable law. Without limiting the foregoing, the Site and the services offered by the Site are not available to minors. If you do not qualify, you may not use the Site. You warrant that you are eighteen (18) years of age or older to reserve a room on this Site. If you are under the age of eighteen, please do not use this Site.

You also warrant that you are legally authorized to make the travel reservations and/or purchases for either yourself or for another person for whom you are authorized to act. You may only use this Site or any web site linked to this Site whether the Reservation Web Site (as defined below in Section VI) or otherwise to make legitimate reservations or purchases and shall not use this Site or any web site linked to this Site whether the Reservation Web Site or otherwise for any other purposes, including without limitation, to make any speculative, false or fraudulent reservations, or any reservation in anticipation of demand.

We reserve the right to cancel or modify reservations where it appears that a customer has engaged in fraudulent or inappropriate activity or under other circumstances where it appears that the reservations contain or resulted from a mistake or error, or from an attempt to circumvent Company or hotel policies, terms or conditions.

You understand that overuse or abuse of the reservation facilities of this Site may result in your being denied access to such facilities.

Reservations made by one or more individuals or by an agency on the Site or any web site linked to this Site whether the Reservation Web Site or otherwise, on behalf of one or more proposed guests, and involving more than nine (9) rooms at the same hotel for the same period of stay, must be made directly through the front desk of the hotel. If more than nine (9) rooms at the same hotel for the same period of stay are booked through any other method, we reserve the right to cancel or impose additional requirements on such reservations.

Some rates may have special eligibility requirements. It is your responsibility to verify that you qualify for the rate that you have booked. Hotels are not obligated to honor rates if you do not qualify.

### **III. RESTRICTIONS ON USE OF MATERIALS**

All materials contained in the Site are the copyrighted property of Company, or its subsidiaries or affiliated companies and/or third party licensors ("Other Provider"). No material from the Site or any Internet site owned, operated, licensed, or controlled by us or our affiliates may be copied, "scraped," reproduced, republished, uploaded, posted, transmitted, or distributed in any way. For purposes of these terms, the use

of any such material on any other Web, Internet, intranet, extranet or other site or computer environment is prohibited. All trademarks, service marks, trade names and trade dress are proprietary to us or Other Providers. You may not frame or utilize framing techniques to enclose any of our or Other Provider's trademarks, logos, or other proprietary information (including images, text, page layout, or form) without our or Other Parties prior express written consent. You may not use any meta tags or any other "hidden text" utilizing our name, trademarks or other proprietary information without our or Other Providers prior express written consent.

Unless indicated otherwise, all names, logos, trademarks, service marks, trade dress and trade names are proprietary to Company or Other Providers in the United States and other countries and may not be used by anyone for any purpose without our or Other Providers prior express written consent. We and Other Providers consider our trademarks to be valuable assets, and take infringement of them seriously.

In the event you download software from the Site, the software, including any files, images incorporated in or generated by the software, and data accompanying the software (collectively, the "Software") are licensed to you by us or third party licensors for your use in connection with the Site only. We do not transfer title to the Software to you. You own the medium on which the Software is recorded, but we (or third party licensors) retain full and complete title to the Software and all intellectual property rights therein. You may not redistribute, sell, de-compile, reverse engineer, disassemble, or otherwise reduce the Software to a human-readable form.

#### **IV. SUBMISSIONS**

We are pleased to hear from our users and welcome your comments regarding the Site and the products and services offered in connection therewith. Unfortunately, however, our company policy does not allow us to accept or consider creative ideas, suggestions, or materials other than those that we have specifically requested. We employ a talented staff and consultants who may be working on the same or similar ideas. We hope you will understand that it is the intent of this policy to avoid the possibility of future misunderstandings when projects developed by our professional staff and/or consultants might seem to others to be similar to their own creative work. Please do not send us any unsolicited original creative materials of any kind. While we do value your feedback on the Site and the services and products offered in connection therewith, we request that you be specific in your comments with respect to the same, and not submit any creative ideas, suggestions, or materials (unless specifically requested by us).

If, at our request, you send certain specific submissions or, despite our request, you send us creative suggestions, ideas, notes, drawings, concepts, or other information (collectively, the "Submissions"), the Submissions shall be deemed, and shall remain, our property. None of the Submissions shall be subject to any obligation of confidence on our part and we shall not be liable for any use or disclosure of any Submissions. Without limitation of the foregoing, we shall exclusively own all now known or hereafter existing rights to the Submissions of every kind and nature throughout the universe and shall be entitled to unrestricted use of the Submissions for any purpose whatsoever, commercial or otherwise, without compensation to the provider of the Submissions.

#### **V. FORUMS AND PUBLIC COMMUNICATION**

"Forum" means a chat area, message board, or e-mail function which may be offered as part of the Site. If you participate in a Forum within the Site, if applicable, you must not: (i) defame, abuse, harass or threaten others; (ii) make any bigoted, hateful or racially offensive statements; (iii) advocate illegal activity or discuss illegal activities with the intent to commit them; (iv) post or distribute any material that infringes and/or violates any right of a third party or any law; (v) post or distribute any vulgar, obscene, discourteous or indecent language or images; (vi) advertise or sell to, or solicit others; (vii) use the Forum for commercial purposes of any kind other than to facilitate a transaction on the Site; (viii) post or distribute any software or other materials which contain a virus or other harmful component; or (ix) post material or make statements that do not generally pertain to the designated topic or theme of any chat room or bulletin board. You shall remain solely responsible for the content of your messages and shall indemnify and hold the Indemnified Parties harmless for the content of such messages. We reserve the right to remove or edit content from any Forum at any time and for any reason.

By uploading materials to any Forum or submitting any materials to us, you automatically grant (or warrant that the owner of such materials expressly granted) us a perpetual, royalty-free, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, publicly perform and display, create derivative works from and distribute such materials or incorporate such materials into any form, medium, or technology now known or later developed throughout the universe. In addition, you warrant that all so-called "moral rights" in those materials have been waived.

When participating in a Forum, never assume that people are who they say they are, know what they say they know, or are affiliated with whom they say they are affiliated with in any chat room, message board, or other user generated content area. Information obtained in a Forum may not be reliable, and it is not a good idea to trade or make any investment decisions based solely or largely on information you cannot confirm. We cannot be responsible for the content or accuracy of any information, and shall not be responsible for any trading or investment decisions made based on such information.

## **VI. CONTENT LINKED TO THE SITE**

Links to other sites we think may be of interest to you are provided for your convenience. By providing these links, we are not endorsing, sponsoring or recommending such sites or the materials disseminated by or services provided by them, and are not responsible for the materials, services or other situations at or related to or from any other site.

Please exercise discretion while browsing the Internet and using the Site. You should be aware that when you are using the Site, you could be directed to other sites that are beyond our control. There are links to other sites from the Site pages that take you outside of the Site. For example,

if you "click" on "Reservations" and then "Book Now" you will be taken off the Site to a booking web site operated by InterContinental Hotels Group ("Reservation Web Site") to complete your reservation, or

if you "click" on a banner advertisement or a search result, the "click" may take you off the Site. This includes links from advertisers, sponsors, and content partners that may use our logo(s) as part of a co-branding agreement.

These other sites may send their own cookies to users, collect data, solicit personal information, or contain information that you may find inappropriate or offensive. In addition, advertisers on the Site may send cookies to users that we do not control.

We reserve the right to disable links from any third party sites to the Site.

We make no representations concerning the content of sites listed in any of the Site's directories. Consequently, we cannot be held responsible for the accuracy, relevancy, copyright compliance, legality or decency of material contained in sites listed in any search results or otherwise linked to a Site.

Please keep in mind that whenever you give out information online, that information can be collected and used by people you don't know. We cannot guarantee the security of any information you disclose online; you make such disclosures at your own risk.

## **VII. DISCLAIMERS**

ELECTRONIC TRANSMISSIONS, INCLUDING THE INTERNET, ARE PUBLIC MEDIA, AND ANY USE OF SUCH MEDIA IS PUBLIC AND NOT PRIVATE. INFORMATION RELATED TO OR ARISING FROM SUCH USE IS PUBLIC, OR THE PROPERTY OF THOSE COLLECTING INFORMATION, AND NOT PERSONAL OR PRIVATE INFORMATION.

YOU AGREE THAT YOU USE THE SITE AT YOUR OWN RISK. THE CONTENT, SERVICES AND MATERIALS IN THE SITE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND EITHER EXPRESS, IMPLIED OR STATUTORY.

WE DO NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR ENDORSEMENTS REGARDING THE ACCURACY, RELIABILITY, USEFULNESS OR COMPLETENESS OF THE SERVICES, CONTENT OR MATERIALS IN THE SITE OR ANY SITE LINKED TO IT. TO THE MAXIMUM EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, DESIGN, ACCURACY, CAPABILITY, SUFFICIENCY, SUITABILITY, CAPACITY, COMPLETENESS, AVAILABILITY, COMPATIBILITY OR ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. WE DO NOT WARRANT THAT THE SITE OR THE SERVICES, CONTENT, MATERIALS OR FUNCTIONS CONTAINED IN THE SITE WILL BE CONTINUOUSLY AVAILABLE, UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE, SERVICES, CONTENT, MATERIALS OR THE SERVERS THAT MAKE THE SITE OR SUCH SERVICES, CONTENT AND MATERIALS AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR ARE ACCURATE OR COMPLETE. WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICES, CONTENT, MATERIALS, FUNCTIONS OR PRODUCTS AVAILABLE THROUGH THE SITE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. In the event we are held liable for any damages related to such matters, your sole and exclusive remedy will be limited to reimbursement for services or products paid by you to the entity held liable which were not provided by such entity. You hereby waive any and all rights to bring any claim or action related to such matters in any forum beyond one (1) year after the first occurrence of the kind of act, event, condition or omission upon which the claim or action is based.

We explicitly disclaim any responsibility for the accuracy, content, or availability of information found on sites that link to or from the Site, including without limitation the Reservation Web Site. We cannot ensure that you will be satisfied with any products or services that you purchase from the Site or from a third-party site that links to or from the Site or third party content on the Site. We do not endorse any of the merchandise, nor have we taken any steps to confirm the accuracy or reliability of, any of the information contained in such third-party sites or content. We do not make any representations or warranties as to the security of any information (including, without limitation, credit card and other personal information) you might be requested to give any third party, and you hereby irrevocably waive any claim against the Indemnified Parties with respect to such sites and third party content. We strongly encourage you to make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties.

The Indemnified Parties are not responsible for telephone, electric, electronic, network, Internet, computer, hardware or software program malfunctions, failures, delays or difficulties, or late, lost, stolen, illegible, incomplete, garbled, misdirected, mutilated or postage due mail, e-mail, form postings, connections, messages or entries, or the security of any and all such matters.

Further, the Indemnified Parties are not responsible for incorrect or inaccurate entry information, whether caused by Internet users or by any of the equipment or programming associated with or utilized in the Site or by any technical or human error which may occur in the processing of any information related to the Site.

We may prohibit you from participating in or utilizing the Site if in our sole and absolute discretion you show a disregard for this Agreement or act in an unprofessional manner, with the intent to annoy, abuse, threaten, or harass any other person, or in any other disruptive manner. We also reserve the right to refuse service, terminate accounts, remove or edit content or cancel orders in our sole and absolute discretion.

If for any reason any portion of the Site is not capable of running as planned, including infection by computer virus, bugs, tampering, unauthorized intervention, fraud, technical failures, or any other causes beyond the reasonable control of Company which corrupt or affect the administration, security, fairness, integrity, or proper conduct of the Site, we reserve the right (but not the obligation) in our sole and absolute discretion, to prohibit you and any member, buyer or supplier (and all of your and their Information) from using the Site, and to cancel, terminate, modify or suspend the Site or any portion thereof and void such Information.

You also agree that the Indemnified Parties are not responsible or liable in any way for injury, loss or damage to your computer or interception or use of credit card information, related to or resulting from use of the Site or any sites, services or materials linked or related thereto or therefrom, whether the Reservation Web Site or otherwise, and also are not responsible or liable in any way for any injury, loss, claim or damage relating to or resulting from any part of the Site operating or not operating on computers or networks used by you or communicating with such computers or networks.

To the extent we list or link to third party products or services, our site acts as the venue for suppliers to sell products and services (or, as appropriate, solicit offers to buy) and buyers to purchase such products and services. We are not involved in the actual transaction between buyers and suppliers. As a result, we have no control over the quality, safety or legality of the items advertised, the truth or accuracy of the listings, the ability of suppliers to sell items or the ability of buyers to buy items. We cannot ensure that a buyer or supplier will actually complete a transaction.

We do not control the information provided by other users which is made available through the Site. You may find other user's information to be offensive, harmful, inaccurate, or deceptive. Please use caution and common sense when using the Site. Please note that there are also risks of dealing with foreign nationals, underage persons or people acting under false pretense.

Although we intend that product descriptions contained in the Site be current and accurate, we make no warranty or representation that descriptions of products in the Site are accurate, complete, current, or reliable in any or all respects. In the event that a product described in the Site is not as described, your sole remedy is to return it in unused condition in accordance with the suppliers' return policy.

**ELECTRONIC COMMUNICATIONS PRIVACY ACT NOTICE (18 U.S.C. 2701-2711): WE MAKE NO GUARANTY OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON THE SITE OR ANY WEB SITE LINKED TO THE SITE WHETHER THE RESERVATION WEB SITE OR OTHERWISE. WE WILL NOT BE LIABLE FOR THE PRIVACY OF THE INFORMATION, E-MAIL ADDRESSES, REGISTRATION AND IDENTIFICATION INFORMATION, DISK SPACE, COMMUNICATIONS, CONFIDENTIAL OR TRADE- SECRET INFORMATION, OR ANY OTHER CONTENT TRANSMITTED OVER NETWORKS ACCESSED BY THE SITE, THE RESERVATION WEB SITE OR OTHERWISE, OR CONNECTED OR RELATED IN ANY WAY WITH YOUR USE OF THE SITE.**

**NO ORAL ADVICE OR WRITTEN CORRESPONDENCE OR INFORMATION PROVIDED BY US OR ANY OF THE INDEMNIFIED PARTIES WILL CREATE A WARRANTY OF ANY KIND AND USERS SHOULD NOT RELY ON ANY SUCH INFORMATION OR ADVICE. WE RESERVE THE RIGHT, IN OUR SOLE AND ABSOLUTE DISCRETION AND WITHOUT NOTICE, TO CORRECT ANY ERRORS OR OMISSIONS IN ANY PORTION OF THE SITE, OR TO DENY ACCESS TO THE SITE TO ANYONE AT ANY TIME. NEITHER WE NOR ANY OF THE INDEMNIFIED PARTIES, SHALL HAVE ANY LIABILITY ARISING FROM YOUR RELIANCE UPON THE INFORMATION PROVIDED ON THE SITE.**

Search and Directory are free services which may be offered in connection with the Site. Because the Web changes constantly, no search engine technology can possibly have all accessible sites at any given time. Thus, we explicitly disclaim any responsibility for the content or availability of information contained in any search index or directory offered in connection with the Site.

The Site and sites that link to or from the Site, including without limitation the Reservation Web Site, may contain technical inaccuracies or typographical errors or omissions in connection with information displayed on the Site, including without limitation rates, fees, or availability applicable to your transaction. Company is not responsible for any typographical, photographic, technical or pricing (including without limitation mistaken hotel rates) errors listed on our Site or sites that link to or from the Site, including without limitation the Reservation Web Site. Company reserves the right to make changes, corrections and/or improvements to the Site, and to the products and programs described in such information, at any time without notice, including after confirmation of a reservation.

## **VIII. INDEMNIFICATION**

You are entirely responsible for maintaining the confidentiality of your password and account and for all activities that occur under your account. You hereby indemnify, defend and hold us and our hotels and each of our and their owners, partners (general or limited), members, managers, shareholders, officers, directors, subsidiaries, affiliates, related parties franchisees and each of such person's or entities' officers, directors, related parties, agents, contractors, subcontractors, guests, residents, visitors, licensees, invitees, permittees and employees (collectively, the "Indemnified Parties") harmless from and against any and all allegations, demands, claims, liabilities, damages, fines, penalties or costs of whatsoever nature (including reasonable attorneys' fees) and whether by reason of death of or injury to any person or loss of or damage to any property or otherwise ("Claims") arising out of or in any way connected with (i) this Agreement, the services or products provided to you by the Site and sites that link to or from the Site, including without limitation the Reservation Web Site, (ii) your use of the Site or sites that link from or to the Site including without limitation the Reservation Web Site, or (iii) any act or failure to act by you and whether or not occasioned or contributed to by the negligence of Company or any agent or employee of the Indemnified Parties or any of them (except as and to the extent prohibited by applicable law) or (iv) Claims arising from your account, including, without limitation, any Claims related to infringement by you of the intellectual property rights of any person, including without limitation, copyright, patent, trade secret, trade mark, artist rights, droit moral, privacy, publicity or rights under other intellectual property laws. In the event that any Claim is made or any action or proceeding is brought against the Indemnified Parties, or any of them, arising out of or connected with this Agreement, any such Indemnified Party may, by reasonable notice to you, require you, at your expense, to resist such Claim or take over the defense of any such action or proceeding and employ counsel for such purpose, such counsel to be subject to the prior written approval of such Indemnified Party, which approval shall be deemed to have been given hereby in the case of counsel acting for your insurance underwriters engaged in such resistance or defense. You shall cooperate with us in the defense of any Claim. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

## **IX. LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SHALL WE BE LIABLE FOR ANY LOST PROFITS, COST OF COVER, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, CONSEQUENTIAL OR PUNITIVE DAMAGES THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, THE SITE OR ANY WEB SITE LINKED TO THE SITE WHETHER THE RESERVATION WEB SITE OR OTHERWISE OR THE SERVICES OR FUNCTIONS OF THE SITE OR ANY WEB SITE LINKED TO THE SITE WHETHER THE RESERVATION WEB SITE OR OTHERWISE OR ARISING OUT OF YOUR ACCESS TO, OR INABILITY TO ACCESS, THE SITE OR ANY WEB SITE LINKED TO THE SITE WHETHER THE RESERVATION WEB SITE OR OTHERWISE OR YOUR RELIANCE UPON, THE SITE OR ANY WEB SITE LINKED TO THE SITE WHETHER THE RESERVATION WEB SITE OR OTHERWISE OR THE SERVICES, CONTENT OR MATERIALS IN, OR FUNCTIONS OF, THE SITE OR ANY WEB SITE LINKED TO THE SITE WHETHER THE RESERVATION WEB SITE OR OTHERWISE, PROVISION OF, OR FAILURE TO PROVIDE SERVICES, OR INFORMATION, OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE). IN ADDITION, WE HAVE NO DUTY TO UPDATE THE SITE OR THE CONTENTS THEREOF. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, OR OTHERWISE) EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING THE SITE. IF YOU ARE DISSATISFIED WITH THE SITE OR ANY OF THE PRODUCTS, SERVICES, MEMBERS, SUPPLIERS AND/OR BUYER OFFERED IN CONNECTION THEREWITH OR ASSOCIATED THEREWITH, AS THE CASE MAY BE, YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE TO DISCONTINUE USE OF THE SITE AND TERMINATE THIS AGREEMENT IN ACCORDANCE WITH THE TERMS HEREOF.

## **X.RELEASE**

BY UTILIZING THE SITE, ALL USERS ACKNOWLEDGE AND AGREE THAT THE INDEMNIFIED PARTIES ARE RELEASED, DISCHARGED AND HELD HARMLESS FROM AND ARE NOT RESPONSIBLE OR LIABLE FOR ANY LIABILITY WITH RESPECT TO ALL ASPECTS OF THE SITE (INCLUDING WITHOUT LIMITATION, ANY ILLNESS, LOSSES, LITIGATION, PERSONAL INJURY, DEATH, PROPERTY DAMAGE, AND CLAIMS BASED ON PUBLICITY RIGHTS, DEFAMATION, OR INVASION OF PRIVACY, REASONABLE ATTORNEYS' FEES AND COURT COSTS) THAT MAY OCCUR IN ANY WAY OR RELATED IN ANY WAY FROM USE OF THE SITE OR ANY WEB SITE LINKED TO THE SITE WHETHER THE RESERVATION WEB SITE OR OTHERWISE OR THE ACCEPTANCE, POSSESSION, USE OR MISUSE OF INFORMATION, MATERIALS, SERVICES OR PRODUCTS RELATED THERETO OR ACQUIRED THEREFROM. WE RESERVE THE RIGHT AT ANY TIME AND WITHOUT LIABILITY TO RESTRICT OR REFUSE ACCESS TO THE SITE AND ITS SERVICES, CONTENT, MATERIALS AND FUNCTIONS TO ANYBODY. WE FURTHER RESERVE THE RIGHT TO SEEK ANY FORM OF RELIEF, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES, RELATED TO FRAUDULENT OR ILLEGAL ACTIVITY CONNECTED WITH THE USE OF THE SITE.

Because we are not involved in the actual transaction between buyers and suppliers, if applicable, in the event that you have a dispute with one or more users, you also on behalf of yourself, your predecessors, if applicable, and each of their present and former officers, employees, directors, shareholders, parents, subsidiaries, alter egos, affiliates, partners, agents, attorneys, accountants, heirs, executors, administrators, conservators, successors and assigns, as applicable, hereby fully and forever releases and discharges the Indemnified Parties, from any and all claims, demands, liens, actions, agreements, suits, causes of action, obligations, controversies, debts, costs, attorneys' fees, expenses, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or suspected which have existed or may have existed, or which do exist or which hereafter can, shall or may exist, based on any facts, events or omissions occurring from any time on or prior to the execution of this Agreement which arise out of, concern, pertain or relate in any way to this Agreement or the Site. You also acknowledge that there is a possibility that subsequent to the execution of this Agreement, you will discover facts or incur or suffer claims which were unknown or unsuspected at the time this Agreement was executed, and which if known by it at that time may have materially affected its decision to execute this Agreement. You acknowledge and agree that by reason of this Agreement, and the release contained in this section of this Agreement, you are assuming any risk of such unknown facts and such unknown and unsuspected claims. You have been advised of the existence of Section 1542 of the California Civil Code ("Section 1542"), which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

Notwithstanding such provisions, this release shall constitute a full release in accordance with its terms. You knowingly and voluntarily waive the provisions of Section 1542, as well as any other statute, law or rule of similar effect. In connection with such waiver and relinquishment, You acknowledge that you are aware that you may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which you now know or believe to be true, with respect to the matters released herein. Nevertheless, it is your intention, through this Agreement, and with the advice of counsel, fully and finally settle and release all such matters, and all claims relative thereto, which do now exist, may exist, or have existed between and among the parties hereto, including the Indemnified Parties. You hereby acknowledge that you have been advised by your legal counsel, understand and acknowledge the significance and consequence of this release and of this specific waiver of Section 1542 and other such laws.

## **XI. JURISDICTIONAL ISSUES**

The products and/or services described in and available through the Site may not be available in your country. We make no representation that the services or products offered in the Site are appropriate or available for use in any particular location. Those who choose to access the Site do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable. If

use of the Site and/or viewing or use of any material or content therein or services offered thereby violates or infringes any applicable law in your jurisdiction(s), you are not authorized to view or use the Site and must exit immediately. Your viewing and/or use of the Site constitutes your representation that you are unconditionally and without limitation permitted to view and use the Site and the Indemnified Parties may rely upon such representation. The Site is operated from the United States and it is possible that some Software from the Site may be subject to United States export controls. No Software from the Site may be downloaded or otherwise exported or reexported (i) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria, or any other country subject to a U.S. or U.N. embargo or sanction; or (ii) to anyone on the US Treasury Department's list of Specially Designated Nationals or anyone subject to the same or similar restrictions even if not listed or the US Commerce Department's Table of Deny Orders. By downloading or using the Software, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any of the above restricted lists or subject to such restrictions.

## **XII. ACCESS AND INTERFERENCE**

You will not use any robot, spider, other automatic device, or manual process to monitor or copy the Site or the contents or information (including the Information) contained therein without our prior express written consent. You agree that you will not use any device, software or routine to interfere or attempt to interfere with the proper working of the Site or any transaction being conducted through the Site. You agree that you will not copy, reproduce, alter, modify, create derivative works, or publicly display any content (except for any Information in which you have an ownership interest) from the Site without our prior express written consent or the appropriate third party.

The information (including the Information) you provide to us (i) shall not contain any viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; and (ii) shall not create liability for us or cause us to lose (in whole or in part) the services of our ISPs or other suppliers.

## **XIII. NO AGENCY**

You and Company are independent contractors, and no agency, partnership, joint venture., employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

## **XIV. GENERAL PROVISIONS**

If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions. This is the entire agreement between us relating to the subject matter herein and shall not be modified except as otherwise set forth herein. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other term, provision or condition hereof, whether or not similar, nor shall any waiver constitute a continuing waiver of any such term, provision or condition hereof. No waiver shall be binding unless executed in writing by the party making the waiver. This Agreement shall survive for the longer of either (i) the maximum period allowed by law, or (ii) twenty-five (25) years from your last use of the Site

## **XV. DIGITAL SIGNATURE PROVISIONS**

You represent and warrant that you have the legal right, power and authority to agree to the terms of this Agreement on behalf of yourself and the member, buyer or supplier participating in the Site. You further agree that your use constitutes an electronic signature as defined by the Electronic Signatures in Global and National Commerce Act ("E-Sign") and the Uniform Electronic Transactions Act ("UETA") and that you have formed, executed, entered into, accepted the terms of and otherwise authenticated this Agreement and acknowledged and agreed that this Agreement is an electronic record for purposes of E-Sign, UETA and the Uniform Computer Information Transactions Act and as such is completely valid, has legal effect, is enforceable, and is binding on, and non-refutable by you and the member, buyer or supplier on whose behalf you are acting.



## **XVI. NOTICE AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT**

Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement should be sent to us by mail at the address below:

Executive Hotel Management, 47W210 US Highway 30, Big Rock Illinois 60511 (Attn: Legal Department)

To be effective, under Title 17, United States Code, Section 512(c)(3), the notification must be a written communication that includes the following:

1. A physical signature of person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
2. Identification of the copyrighted work claimed to have been infringed, or if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;
4. Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and if available, an electronic mail address at which the complaining party may be contacted;
5. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
6. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

## **XVII. NON-LIABLE PARTIES.**

NOTWITHSTANDING ANY OTHER PROVISION HEREOF TO THE CONTRARY OR OTHERWISE, THE OWNERS, AND THE COMPANY'S AND OWNERS' PAST, PRESENT AND FUTURE AFFILIATES, RELATED PARTIES, MANAGERS, MEMBERS, TRUSTEES, BENEFICIARIES, PARTNERS (GENERAL AND LIMITED), SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND ANY DIRECT OR INDIRECT OWNER OF COMPANY OR THE OWNERS, AND ANY SUCCESSORS AND ASSIGNS OF THE AFOREMENTIONED (COLLECTIVELY "NON-LIABLE PARTIES") SHALL NOT HAVE ANY LIABILITY, PERSONAL OR OTHERWISE, HEREUNDER, OR IN CONNECTION HERewith, OR RELATED TO THE WEBSITE OR IT'S USE, OR OTHERWISE UNDER ANY CIRCUMSTANCES WHATSOEVER. IN NO EVENT, SHALL ANY DEFICIENCY JUDGMENT, OR ANY MONEY JUDGMENT, OR ANY JUDGMENT OF ANY KIND, OR ANY JUDICIAL PROCESS OF ANY KIND, OR ANY OTHER PROCESS OR CLAIM OF ANY KIND, BE SOUGHT OR OBTAINED AGAINST ANY OF THE NON-LIABLE PARTIES BY YOU AND ANYONE CLAIMING BY, THROUGH OR UNDER YOU OR OTHERWISE. THIS PARAGRAPH SHALL BE ABSOLUTE AND WITHOUT EXCEPTION WHATSOEVER AND SHALL INDEFINITELY SURVIVE (TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, AND TO THE EXTENT NOT PERMITTED, FOR THE LONGEST PERIOD OF TIME ALLOWED BY APPLICABLE LAW), AND SHALL BE BINDING UPON YOU, ANYONE CLAIMING BY, THROUGH OR UNDER YOU, AND ANY OF YOUR SUCCESSORS, AFFILIATES AND ASSIGNS.

The term "Owners" as used in this Agreement, including without limitation in this Section XVII, refers to Rayman Baton Rouge Hotel Associates, LLC, an Louisiana limited liability partnership, Columbia Center Affiliates, LLC., a Delaware limited liability company, Columbia Convention Center Investors, an Illinois limited partnership, Rayman Knoxville Hotel Associates, LLC, an Wyoming limited liability partnership, and BR Land Development, LLC, a Delaware limited liability company (collectively herein the "Owners")

## **XVIII. GOVERNING LAW, DISPUTE RESOLUTION AND CLASS ACTION WAIVER.**

For purposes of this Article XVIII the terms "Company", "we", "us", or "our" include without limitation collectively and individually the Company, the Owners, and all Non-Liable Parties.

This Agreement shall be governed by the laws of the State of Illinois, the United States of America and international copyright laws. To the extent not resolved by arbitration as provided herein, you agree to submit to the jurisdiction of the federal

and state courts in the State of Illinois for any and all disputes, claims and actions arising out of or in connection with the information provided to you herein.

YOU HEREBY WAIVE ANY RIGHT YOU MAY NOW HAVE OR HEREAFTER POSSESS TO A TRIAL BY JURY.

Certain portions of this Section are deemed to be a "written agreement to arbitrate" pursuant to the Federal Arbitration Act. You and any of Company agree that we intend that this Section satisfies the "writing" requirement of the Federal Arbitration Act. This Section can only be amended by mutual agreement.

### **First - Try to Resolve Disputes.**

If any controversy, allegation, or claim arises out of or relates to the Web Site, your use in any way of the Web Site, the Content, your Web Site activities or use and Submissions, this Agreement or in any way arising out of any claim, controversy, or dispute that arises in any way out of your use of the Web Site, whether heretofore or hereafter arising (collectively, "**Dispute**"), then you and we agree to send a written notice to the other providing a reasonable description of the Dispute, along with a proposed resolution of it. Our notice to you will be sent to you based on the most recent contact information that you provide us. But if no such information exists or if such information is not current, then we have no obligation to contact you or try to resolve the Dispute. Your notice to us must be sent to: Executive Hotel Management, 47W210 US Highway 30, Big Rock Illinois 60511 (Attn: Legal Department).

For a period of sixty (60) days from the date of receipt of notice from the other party, Company, as applicable and you will engage in a dialogue in order to attempt to resolve the Dispute, though nothing will require either you or any of Company to resolve the Dispute on terms with respect to which you and Company, as applicable, in each of our sole discretion, are not comfortable.

### **Binding Arbitration.**

If we cannot resolve a Dispute as set forth above within sixty (60) days of receipt of the notice, then ANY AND ALL DISPUTES ARISING BETWEEN YOU AND ANY OF COMPANY (WHETHER BASED IN CONTRACT, STATUTE, REGULATION, ORDINANCE, TORT- INCLUDING, BUT NOT LIMITED TO FRAUD, ANY OTHER INTENTIONAL TORT, OR NEGLIGENCE - COMMON LAW, CONSTITUTIONAL PROVISION, RESPONDEAT SUPERIOR, AGENCY OR ANY OTHER LEGAL OR EQUITABLE THEORY), WHETHER ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, MUST BE RESOLVED BY FINAL AND BINDING ARBITRATION. THIS INCLUDES WITHOUT LIMITATION ANY AND ALL DISPUTES BASED ON ANY PRODUCT, SERVICE OR ADVERTISING CONNECTED TO THE PROVISION OR USE OF THE WEB SITE. The Federal Arbitration Act ("**FAA**"), not state law, shall govern the arbitrability of all disputes between any of Company and you regarding this Agreement and the Web Site. Company, as applicable and you agree, however, that Illinois or federal law shall apply to and govern, as appropriate, any and all claims or causes of action, remedies, and damages arising between you and any of Company regarding a Dispute, whether arising or stated in contract, statute, common law, or any other legal theory, without regard to Illinois' choice of law principles that might apply other states' laws.

Disputes will be resolved solely by binding arbitration in accordance with the then-current commercial Arbitration Rules of the American Arbitration Association ("**AAA**"). If a party properly submits the Dispute to the AAA for formal arbitration and the AAA is unwilling to get a hearing then either party can elect to have the arbitration administered by the Judicial Arbitration and Mediation Services Inc. ("**JAMS**") using JAMS' streamlined Arbitration Rules and Procedures, or by any other arbitration administration service that you and an officer or legal representative of any of Company consent to in writing. If an in-person arbitration hearing is required, then it will be conducted in the "metropolitan statistical area" (as defined by the U.S. Census Bureau) where you are a resident at the time the Dispute is submitted to arbitration. You and we will pay the administrative and arbitrator's fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require any of Company to pay a greater portion or all of such fees and costs in order for this Section to be enforceable, then Company, as applicable, will have the right to elect to pay the fees and costs and proceed to arbitration. The arbitrator will apply applicable law and the provisions of this Agreement, will be bound by this Agreement, will determine any Dispute according to the applicable law and facts based upon the record and no other basis, and will issue a reasoned award only in favor of the individual party seeking relief and only to the extent to provide relief warranted by that party's individual claim. This arbitration provision shall survive termination of this Agreement or the Web Site.

### **Injunctive Relief.**

The foregoing provisions of this Section will not apply to any legal action taken by any of Company to seek an injunction or

other equitable relief in connection with, any loss, cost, or damage (or any potential loss, cost, or damage) relating to the Disputes and/or any of Company's rights (including such that may be in dispute), any of Company's operations, and/or National's products or services.

**No Class Action Matters.**

Disputes will be arbitrated only on an individual basis and will not be joined or consolidated with any other arbitrations or other proceedings that involve any claim or controversy of any other party. YOU AND THE COMPANY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. There shall be no right or authority for any Dispute to be arbitrated on a class action basis, collective action basis, or on any basis involving Disputes brought to a purported representative capacity on behalf of the general public, or other persons or entities similarly situated. But if, for any reason, any court with competent jurisdiction holds that this restriction is unconscionable or unenforceable, then our agreement in this Section to arbitrate will not apply and the Dispute must be brought exclusively in court in either the federal courts located in the Northern District of Illinois or state courts located in Kane County Illinois (to which jurisdiction and venue you irrevocably consent). Notwithstanding any other provision of this Section, any and all issues relating to the scope, interpretation and enforceability of these class action waiver provisions, are to be decided only by a court of competent jurisdiction, and not by the arbitrator.