

# UNOFFICIAL COPY

**THIS INSTRUMENT  
PREPARED BY AND WHEN  
RECORDED, RETURN TO:**

Brian S. Short, Esq.  
Winstead Sechrest & Minick P.C.  
5400 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270



Doc#: 0703940090 Fee: \$70.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/08/2007 12:38 PM Pg: 1 of 24

Permanent Tax Identification Number: 04-32-100-020-0000, 04-32-100-021-0000 and 04-32-100-022-0000  
Street Address: 1400 Milwaukee Avenue, Glenview, Illinois

## ASSIGNMENT OF ASSET MANAGEMENT AGREEMENT AND SUBORDINATION OF MANAGEMENT FEES

THIS ASSIGNMENT OF ASSET MANAGEMENT AGREEMENT AND SUBORDINATION OF MANAGEMENT FEES (this "Assignment") executed to be effective as of January 24, 2007, by GLENVIEW HOTEL PARTNERS, LLC, a Delaware limited liability company ("Borrower"), having its principal place of business at 203 North LaSalle Street, Suite 2300, Chicago, Illinois 60601, to COLUMN FINANCIAL, INC., a Delaware corporation ("Lender"), having an address at 11 Madison Avenue, 9th Floor, New York, New York 10010-3629, Attention: Edmund Taylor, and is consented and agreed to by MP MANAGEMENT, LLC, an Illinois limited liability company ("Manager"), having its principal place of business at 4949 Regent Blvd, Irving, Texas 75063, Attention: Mr. Michael Dunkle II.

### RECITALS:

A. Borrower, by its Promissory Note (as the same may be amended, restated, renewed, replaced, supplemented, extended, increased or otherwise modified from time to time, the "Note") of even date herewith given to Lender is indebted to Lender in the principal sum of **TWENTY-THREE MILLION SIX HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$23,630,000.00)** (the "Loan") advanced pursuant to that certain Loan Agreement (as the same may be amended, restated, renewed, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") of even date herewith between Borrower and Lender.

B. The Loan is secured by, among other things, a Mortgage, Security Agreement and Fixture Financing Statement (as the same may be amended, restated, renewed, replaced, supplemented or otherwise modified from time to time, the "Mortgage"), of even date herewith, which grants Lender a first lien on certain real property and improvements located in Cook County, Illinois and more particularly described on Exhibit A attached hereto and incorporated herein by reference, and known as Wyndham Glenview Suites (the "Property"). The Note, the Loan Agreement, the Mortgage, this Assignment and any of the other documents evidencing or

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securing the Loan or executed or delivered in connection therewith are collectively referred to as the "Loan Documents".

C. Pursuant to that certain Asset Management Agreement (as the same may be amended, restated, renewed, replaced, supplemented or otherwise modified from time to time, the "Management Agreement"), dated as of January 16, 2007, between Borrower and Manager (a true and correct copy of which Management Agreement is attached hereto as Exhibit B), Borrower employed Manager exclusively to perform the asset management services as described therein and Manager is entitled to certain asset management fees (the "Management Fees") thereunder.

D. Lender requires as a condition to the making of the Loan that Borrower assign the Management Agreement and that Manager subordinate its interest under the Management Agreement in lien and payment to the Loan Agreement and other Loan Documents as set forth below.

## AGREEMENT

For good and valuable consideration the parties hereto agree as follows:

1. Assignment of Management Agreement. As additional collateral security for the Loan, Borrower hereby conditionally transfers, sets over and assigns to Lender all of Borrower's right, title and interest in and to the Management Agreement, said transfer and assignment to automatically become a present, unconditional assignment, at Lender's option, upon an Event of Default (as defined in the Loan Agreement) by Borrower under the Loan Agreement or any of the other Loan Documents.
2. Subordination of Management Agreement. The Management Agreement and any and all liens, rights and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialmen's liens under applicable law) owed, claimed or held, by Manager in and to the Property, are and shall be in all respects subordinate and inferior to the liens and security interests created or to be created for the benefit of Lender, and securing the repayment of the Note and the obligations under the Loan Agreement including, without limitation, those created under the Mortgage covering, among other things, the Property, and filed or to be filed of record in the public records maintained for the recording of mortgages in the jurisdiction where the Property is located, and all renewals, extensions, increases, supplements, amendments, modifications or replacements thereof.
3. Termination. At such time as the Loan is paid in full and the Mortgage is released or assigned of record, this Assignment and all of Lender's right, title and interest hereunder with respect to the Management Agreement shall terminate.
4. Estoppel. Manager represents and warrants that (a) the Management Agreement is in full force and effect and has not been modified, amended or assigned other than pursuant to this Assignment; (b) neither Manager nor Borrower is in default under any of the terms, covenants or provisions of the Management Agreement and Manager knows of no event which, but for the passage of time or the giving of notice or both, would constitute an event of default under the Management Agreement; (c) neither Manager nor Borrower has commenced any

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action or given or received any notice for the purpose of terminating the Management Agreement; and (d) the Management Fees and all other sums due and payable to the Manager under the Management Agreement as of the date hereof have been paid in full.

5. Agreement by Borrower and Manager. Borrower and Manager hereby agree that upon the occurrence of an Event of Default under the Loan Documents during the term of this Assignment or upon the occurrence of any event which would entitle Lender to terminate, or cause the termination of, the Management Agreement in accordance with the terms of the Loan Documents, (a) Manager shall, at the request of Lender, continue to perform all of Manager's obligations under the terms of the Management Agreement with respect to the Property; or (b) at the option of Lender exercised by written notice to Borrower and Manager, Borrower and Manager shall immediately terminate the Management Agreement and Manager shall transfer its responsibility for the management of the Property to a Qualified Manager (as defined in the Loan Agreement) selected by Lender.

6. Receipt of Management Fees. Borrower and Manager hereby agree that Manager shall not be entitled to receive any Management Fees or other fee, commission or other amount payable to Manager under the Management Agreement for and during any period of time that any Event of Default has occurred and is continuing; provided, however, that notwithstanding anything to the contrary, (a) Manager shall not be obligated to return or refund to Lender any Management Fee or other fee, commission or other amount already received by Manager prior to the occurrence of the Event of Default, and to which Manager was entitled under this Assignment; and (b) in the event Borrower loses possession of the Property in connection with exercise by Lender of its rights or remedies pursuant to this Assignment, the Note, the Mortgage, the Loan Agreement or the other Loan Documents, Manager shall be entitled to collect any Management Fee or other fee, commission or other amount accrued but unpaid prior to the occurrence of the Event of Default, and to which Manager was entitled under this Assignment.

7. Consent and Agreement by Manager. Manager hereby acknowledges and consents to this Assignment and the terms and provisions of Section 9.5 of the Loan Agreement. Manager agrees that it will act in conformity with the provisions of this Assignment, such provisions of the Loan Agreement and Lender's rights hereunder or otherwise related to the Management Agreement. In the event that the responsibility for the management of the Property is transferred from Manager in accordance with the provisions hereof, Manager shall, and hereby agrees to, fully cooperate in transferring its responsibility to a new management company and effectuate such transfer no later than thirty (30) days from the date the Management Agreement is terminated. Further, Manager hereby agrees (a) not to contest or impede the exercise by Lender of any right it has under or in connection with this Assignment; and (b) that it shall, in the manner provided for in this Assignment, give at least thirty (30) days prior written notice to Lender of its intention to terminate the Management Agreement or otherwise discontinue its management of the Property.

8. Lender's Agreement. So long as Borrower is not in default (continuing beyond any applicable grace period) under this Assignment, the Note, the Loan Agreement, the Mortgage or the other Loan Documents, Lender agrees to permit any sums due to Borrower under the Management Agreement to be paid directly to Borrower.

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9. Further Assurances. Manager further agrees to (a) execute such affidavits and certificates as Lender shall require to further evidence the agreements herein contained; (b) on request from Lender, furnish Lender with copies of such information as Borrower is entitled to receive under the Management Agreement; and (c) cooperate with Lender's representative in any inspection of all or any portion of the Property. Manager hereby acknowledges that some, or all, permits, licenses and authorizations necessary for the use, operation and maintenance of the Property (the "Permits") may be held by, or on behalf of, the Manager. By executing this Agreement, Manager (i) agrees that it is holding or providing all such Permits for the benefit of Borrower; and (ii) hereby agrees that as security for the repayment of the Debt by Borrower in accordance with the Loan Agreement, to the extent permitted by applicable law, Manager hereby grants to Lender a security interest in and to the Permits. Moreover, Manager hereby agrees that, upon an Event of Default, it will assign the Permits to Lender if such Permits are assignable or otherwise continue to hold such Permits for the benefit of Lender until such time as Lender can obtain such Permits in its own name or the name of a nominee.

10. Assignment of Proceeds. Manager acknowledges that, as further security for the Note, (i) Borrower has executed and delivered to Lender an Assignment of Leases and Rents, dated as of the date hereof (the "Assignment of Leases"), assigning to Lender, among other things, all of Borrower's right, title and interest in and to all of the revenues of the Property; and (ii) Borrower and Lender, among others, have entered into that certain Cash Management Agreement (the "Cash Management Agreement") of even date herewith, pursuant to which Borrower has agreed that any Rents (as defined in the Loan Agreement), and other income and proceeds from the Property are to be deposited directly into an account of the Lender established pursuant to the Cash Management Agreement.

11. Manager Not Entitled to Rents. Manager acknowledges and agrees that it is collecting and processing the Rents solely as the agent for the Borrower and Manager has no right to, or title in, the Rents. Notwithstanding anything to the contrary in the Management Agreement, the Manager acknowledges and agrees that the Rents are the sole property of the Borrower, encumbered by the lien of the Mortgage and other Loan Documents in favor of Lender. In any bankruptcy, insolvency or similar proceeding the Manager, or any trustee acting on behalf of the Manager, waives any claim to the Rents other than as such Rents may be used to pay the fees and compensation of the Manager pursuant to the terms and conditions of the Management Agreement.

12. Governing Law. This Assignment shall be governed, construed, applied and enforced in accordance with Section 10.3 of the Loan Agreement.

13. Notices. All notices, demands, requests or other communications to be sent by one party to another hereunder or required by law shall be given and become effective as provided in Section 10.6 of the Loan Agreement, provided that the address of Manager shall be as follows:

If to Manager:	MP Management, LLC 4949 Regent Blvd. Irving, TX 75063 Attention: Mr. Michael W. Dunkle, II
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14. No Oral Change. This Assignment, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower, Lender or Manager, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

15. Liability. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

16. Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

17. Headings, etc. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

18. Duplicate Originals; Counterparts. This Assignment may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single Assignment. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

19. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

20. Miscellaneous. (a) Wherever pursuant to this Assignment (i) Lender exercises any right given to it to approve or disapprove; (ii) any arrangement or term is to be satisfactory to Lender; or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

(b) Wherever pursuant to this Assignment it is provided that Borrower shall pay any costs and expenses, such costs and expenses shall include, but not be limited to, legal fees and disbursements of Lender, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise.

21. Defined Terms. Any capitalized terms not otherwise defined herein shall be defined as set forth in the Loan Agreement.

**[No Further Text on this Page; Signature Page Follows]**

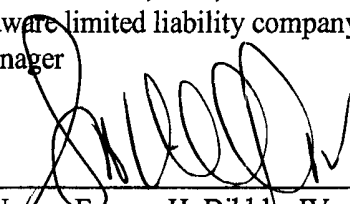
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IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have duly executed this Assignment (if in counterparts, each of which shall be deemed an original) to be effective as of the date set forth in the first paragraph hereof

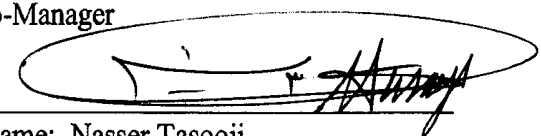
**BORROWER:**

**GLENVIEW HOTEL PARTNERS, LLC,**  
a Delaware limited liability company

By: MP PARTNERS 2, LLC,  
a Delaware limited liability company,  
its Manager

By:   
Name: Eugene H. Dibble, IV  
Title: Co-Manager

By: GLENVIEW INVESTMENTS, LLC,  
a Delaware limited liability company,  
its Co-Manager

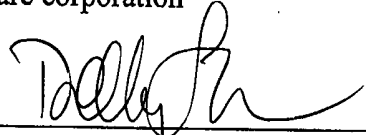
By:   
Name: Nasser Tasooji  
Title: Managing Member

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**LENDER:**

**COLUMN FINANCIAL, INC.,**  
a Delaware corporation


By:   
Name: Dolly Laubach  
Title: Vice President

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**MANAGER:**

**MP MANAGEMENT, LLC,**  
an Illinois limited liability company

By: 

Name: Bill Deramus

Title: President

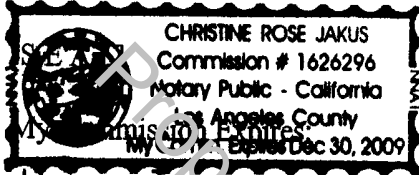
Property of Cook County Clerk's Office



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CALIFORNIA  
 STATE OF ~~ILLINOIS~~ *cy* §  
 Los Angeles §  
 COUNTY OF ~~COOK~~ §

This instrument was ACKNOWLEDGED before me on January 23, 2007, by EUGENE H. DIBBLE, IV, as Co-Manager of MP PARTNERS 2, LLC, a Delaware limited liability company, as Manager of GLENVIEW HOTEL PARTNERS, LLC, a Delaware limited liability company, on behalf of said limited liability company.



Dec. 30, 2009

*Christine Rose Jakus*  
 Notary Public, State of ~~Illinois~~ CALIFORNIA *cy*  
Christine Rose Jakus  
 Printed Name of Notary Public

CALIFORNIA  
 STATE OF ~~ILLINOIS~~ *cy* §  
 Los Angeles §  
 COUNTY OF ~~COOK~~ §

This instrument was ACKNOWLEDGED before me on January 23, 2007, by NASSER TASOOJI, as Managing Member of GLENVIEW INVESTMENTS, LLC, a Delaware limited liability company, as Co-Manager of MP PARTNERS 2, LLC, a Delaware limited liability company, as Manager of GLENVIEW HOTEL PARTNERS, LLC, a Delaware limited liability company, on behalf of said limited liability company.



My Commission Expires:  
Dec. 30, 2009

*Christine Rose Jakus*  
 Notary Public, State of ~~Illinois~~ CALIFORNIA  
Christine Rose Jakus  
 Printed Name of Notary Public

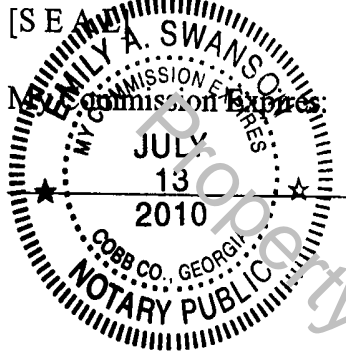
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STATE OF GEORGIA

§  
§  
§

COUNTY OF FULTON

This instrument was ACKNOWLEDGED before me on January 23, 2007 by DOLLY LAUBACH, as Vice President of COLUMN FINANCIAL, INC., a Delaware corporation, on behalf of said corporation.



Emily A Swanson  
Notary Public, State of Georgia

\_\_\_\_\_  
Printed Name of Notary Public

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STATE OF TEXAS

§  
§  
§

COUNTY OF DALLAS

This instrument was ACKNOWLEDGED before me on January 23 2007 by BILL DERAMUS, as President of MP MANAGEMENT, LLC, an Illinois limited liability company, on behalf of said limited liability company.

[S E A L]

*Cheri L. Abbott*

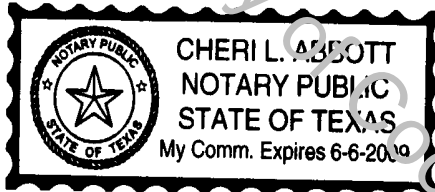
Notary Public

My Commission Expires:

*Cheri L. Abbott*

Printed Name of Notary Public

6-6-2009



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## EXHIBIT A

### Legal Description

Address: 1400 Milwaukee Avenue, Glenview, Illinois 60025

Perm Tax #s: 04-32-100-020-0000

04-32-100-021-0000

04-32-100-022-0000

Lot 1 in Park Central Subdivision in the Southwest  $\frac{1}{4}$  of Section 29 and the Northwest  $\frac{1}{4}$  of Section 32, Township 42 North, Range 12 East of the Third Principal Meridian, lying east of the Illinois State Toll Highway and Southwesterly of Milwaukee Avenue, according to the Plat thereof recorded January 14, 1986 as Document 86017692 in Cook County, Illinois.

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## EXHIBIT B

(Asset Management Agreement)

Property of Cook County Clerk's Office

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3011-2373 1/9/2007

EXHIBIT B, Asset Management Agreement – Cover Page  
3011-2373/Wyndham Glenview Suites

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DFW Courtyard

(FAX) 9729294207

P. 002/012

**ASSET MANAGEMENT AND CONSULTING AGREEMENT**

This ASSET MANAGEMENT AND CONSULTING AGREEMENT (this "Agreement") is entered into as of January 16, 2007 (the "Effective Date"), by and between Glenview Hotel Partners, LLC, a Delaware Limited Liability Company (Owner), and MP Management, LLC, an Illinois Limited Liability Company ("Consultant").

**RECITALS**

A. Reference is hereby made to that certain Hotel Management Agreement (between Owner and Wyndham Hotel Management, Inc., effective as of January 18, 2007), covering the hotel property known as Glenview Wyndham Suites, 1400 Milwaukee Avenue, Glenview Illinois. ("Property")

B. Owner desires to engage Consultant, pursuant to the terms and conditions of this Agreement, to provide to Owner certain business and financial advice, asset management, consultation, information and services, as more particularly described and set forth on EXHIBIT A attached hereto (the "Services"), in connection with the Property, the obligations of Owner under the Management Agreements, and otherwise.

NOW THEREFORE, in consideration of the covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Consultant, intending to be legally bound, agree as follows:

**ARTICLE I  
ENGAGEMENT**

**SECTION 1.1 CONSULTANT'S ENGAGEMENT.** Subject to the terms and conditions of this Agreement, Manager hereby engages and retains Consultant on a non-exclusive basis as an independent contractor to perform the Services, and Consultant hereby agrees to accept and undertake such engagement, and to perform the Services.

**SECTION 1.2 TERM OF ENGAGEMENT.** The terms of this Agreement (the "Term") shall be for an initial term of three (3) years. The Owner shall have the right to extend this Agreement for a period of an additional three years upon thirty (30) days notice to Consultant.

Notwithstanding the above, Owner shall have the right to terminate this Agreement at any time upon thirty (30) days written notice and upon payment to Consultant of any outstanding fees or reimbursable owed to the date of termination.

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01/24/2007 12:57

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(FAX) 9729294207

P. 003/012

This Agreement shall automatically terminate upon the sale of the Property by the Owner.

**SECTION 1.3 SCOPE OF AGREEMENT.** During the Term of this Agreement, Consultant shall provide its expertise and undertake the performance of the Services as requested by Owner from time to time. Owner is not required to follow the advice rendered by Consultant. Notwithstanding the foregoing, it is expressly acknowledged and agreed that Consultant shall have no responsibility for the employment, supervision, training, compensation, promotion or discharge of any employees of Owner, and no employee hired for or with respect to the Properties shall be or shall be deemed to be an employee of Consultant.

## ARTICLE II DEFAULT AND TERMINATION

**SECTION 2.1 EVENTS OF DEFAULT.** The following shall constitute events of default (each an "Event of Default"):

(a) The filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by Owner or Consultant;

(b) The consent to any involuntary petition in bankruptcy or the failure to vacate within ninety (90) days from the date of entry thereof, any order approving an involuntary petition by Owner or Consultant;

(c) The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating Owner or Consultant as bankrupt or insolvent, or approving a petition seeking reorganization or appointing a receiver, trustee, or liquidator of all or a substantial part of such party's assets, and such order, judgment or decree continues unstayed and in effect for any period of ninety (90) days or more;

(d) The appointment of a receiver for all or any substantial portion of the property of Owner or Consultant;

(e) The failure of Owner or Consultant to perform, keep or fulfill any of the other covenants, undertakings, obligations or conditions set forth in this Agreement, and the continuance of such default for a period of thirty (30) days after written notice of said failure; provided, however, if such default cannot be cured within such thirty (30) day period and Owner or Consultant, as the case may be, commences to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended so long as it shall require Owner or Consultant, as the case may be, in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days; or

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(FAX) 9729294207

P. 004/012

(f) The failure of Owner to make any payment required to be made in accordance with the terms of this Agreement within ten (10) days after receipt of notice from Consultant specifying said default with reasonable specificity, when such payment is due and payable.

**SECTION 2.2 CONSEQUENCE OF DEFAULT.** Upon the occurrence of an Event of Default, the non-defaulting party may give the defaulting party written notice of intention to terminate this Agreement (after the expiration of any applicable grace or cure period provided in Section 2.1 above), and upon the expiration of thirty (30) days from the date of such notice, this Agreement shall terminate (the "Termination Date") and the non-defaulting party shall be entitled to exercise any rights and remedies, at law or in equity, under this Agreement or under applicable law. In the event this Agreement is terminated, then Consultant shall also be entitled to receive any and all amounts due Consultant under this Agreement through and, except for expense reimbursements, prorated to the Termination Date. Any indemnification obligations contained herein shall survive any termination of this Agreement.

### ARTICLE III UNDERTAKINGS

**SECTION 3.1 Owner.** During the Term of this Agreement, Owner shall make available to Consultant for its periodic review and inspection, access to the Property, as well as such information as may be reasonably necessary for Consultant to perform its Services, such as the related operating statements, books, records, personnel (subject to the restrictions provided in Section 6.2 below), and such additional information, as may be deemed necessary by Owner in its sole discretion.

**SECTION 3.2 CONSULTANT.** During the Term of this Agreement, Consultant shall perform the Services reasonably requested by Owner in a commercially professional manner.

### ARTICLE IV COMPENSATION

**SECTION 4.1 CONSULTING FEE.** As compensation for all Services rendered pursuant to this Agreement, Owner shall pay Consultant a consulting fee (the "Consulting Fee"), equal to ONE PERCENT (1%) of the Gross Revenues (defined below) payable to Owner under the Management Agreement. The Consulting Fee shall be payable by Owner to Consultant monthly within ten (10) days after the close of each calendar month, beginning February 10, 2007, which fee shall be pro-rated for any partial month during the Term. Consultant shall also be reimbursed for travel and related expenses.



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CHICAGO TITLE &amp; TRUST

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01/24/2007 12:58

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(FAX) 9729294207

P. 005/012

**SECTION 4.2 ADVANCES TO CONSULTANT.** U, upon termination of this Agreement, money has been advanced to Consultant by Owner, whether for Expenses, future Consulting Fees or otherwise, the advances shall immediately be returned and paid to Owner. Owner shall have the right to offset any of the advances against any Consulting Fees or Expenses earned by and payable to Consultant through the date of termination of this Agreement.

**SECTION 4.3 INDEPENDENT CONTRACTOR.** Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or agency relationship between Consultant and Owner. Consultant shall perform the Services hereunder only as an independent contractor. The parties hereto acknowledge and agree that under no circumstances shall Consultant or its employees, agents or representatives be construed to be employees of Owner, nor shall the employee, agents or representatives of Owner be construed to be employees of Consultant by virtue of this Agreement or the Services performed hereunder. The parties hereto acknowledge that Consultant has and will continue to have various business activities and will perform services in the hospitality industry other than and in addition to those set forth in this Agreement.

**ARTICLE V  
REPRESENTATIONS, WARRANTIES AND  
COVENANTS**

**SECTION 5.1 OWNER.** Owner, in order to induce Consultant to enter into this Agreement, hereby warrants, represents and covenants to Consultant as follows:

(a) The execution of this Agreement is permitted by the Articles of Incorporation and Bylaws of Owner and this Agreement has been duly authorized, executed and delivered on behalf of Owner and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with the terms hereof.

(b) There is no claim, litigation, proceeding or governmental investigation pending, or, to the best knowledge and belief of Owner, threatened against or relating to Owner or the Properties which does, or may reasonably be expected to, materially or adversely affect the ability of Owner to enter into this Agreement or to carry out its obligations hereunder.

(c) Neither the consummation of the transactions contemplated by this Agreement, nor the fulfillment of the terms, conditions and provisions of this Agreement, conflicts with or will result in the breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement, indenture, instrument or undertaking to which Owner is a party or by which it is bound, including without limitation, the underlying Management Agreements.

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(FAX) 9729294207

P. 006/012

(d) No approval of any third party (including any party to the Management Agreements or the holder of any lien, mortgage, deed of trust or other security in the Properties in effect as of the Effective Date of this Agreement) is required for Owner's execution, delivery and performance of this Agreement that has not been obtained prior to the execution hereof.

(e) As of the Effective Date of this Agreement there are no defaults (or events which with the passage of time might become a default) under any of the Management Agreements, and the Management Agreements are in full force and effect.

(f) Owner will timely exercise all renewal or extension periods contained in the Management Agreements pursuant to the terms of such Management Agreements, provided said exercise is then commercially reasonable.

**SECTION 5.2 CONSULTANT.** Consultant, in order to induce Owner to enter into this Agreement, hereby represents and warrants as follows:

(a) The execution of this Agreement is permitted by the Articles of Incorporation and Bylaws of Consultant and this Agreement has been duly authorized, executed and delivered on behalf of Consultant and constitutes the legal, valid and binding obligation of Consultant enforceable in accordance with the terms hereof.

(b) There is no claim, litigation, proceeding or governmental investigation pending, or, to the best knowledge and belief of Consultant, threatened against or relating to Consultant which does, or may reasonably be expected to, materially or adversely affect the ability of Consultant to enter into this Agreement or to carry out its obligations hereunder.

(c) Neither the consummation of the transactions contemplated by this Agreement, nor the fulfillment of the terms, conditions and provisions of this Agreement, conflicts with or will result in the breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement, indenture, instrument or undertaking to which Consultant is a party or by which it is bound.

**SECTION 5.3** No approval of any third party is required for Consultant's execution, delivery and performance of this Agreement that has not been obtained prior to the execution hereof.

## ARTICLE VI COVENANTS

**SECTION 6.1 OWNER.** Owner covenants to Consultant as follows:

(a) Owner shall not cause or take any action or omit to take any action to terminate, or otherwise agree or permit the termination, in contravention of, directly or indirectly, the terms of the Management Agreement without the prior written consent of

**UNOFFICIAL COPY**

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(FAX) 9729294207

P. 007/012

Consultant, which consent may be provided or withheld within the sole discretion of Consultant; provided however, Owner shall provide prompt notice to Consultant of any notice of a termination or of the intent to terminate pursuant to and in accordance with the terms of the Management Agreement in effect as of the Effective Date.

(b) There shall be no modification or amendment of, or waivers or adjustments to, the Management Agreement that could, in the reasonable discretion of Consultant, (a) have a negative economic impact on the Total Management Fee or the Consulting Fee, or (b) materially increase the Services or the cost of providing the Services, without the prior written consent of Consultant.

(c) Owner shall not pledge or otherwise encumber that part of the Total Management Fee represented by the Consulting Fee payable under the Management Agreements.

**SECTION 6.2 CONSULTANT.** Consultant covenants to Owner that, except with the prior approval of Owner, Consultant shall not communicate with the representatives, employees or personnel of the investment partner or partners of Owner in the Properties who are not otherwise affiliates of Owner, other than the employees, personnel or representatives of Owner.

#### ARTICLE VII MISCELLANEOUS

**SECTION 7.1 ENTIRE AGREEMENT.** THIS AGREEMENT SETS FORTH ALL OF THE PROMISES, AGREEMENTS, CONDITIONS, UNDERSTANDINGS, WARRANTIES AND REPRESENTATIONS AMONG THE PARTIES WITH RESPECT TO THE SERVICES AND TRANSACTIONS CONTEMPLATED HEREBY, AND SUPERCEDES ALL PRIOR AGREEMENTS, ARRANGEMENTS AND UNDERSTANDINGS BETWEEN THE PARTIES HERETO, WHETHER WRITTEN, ORAL OR OTHERWISE. THERE ARE NO PROMISES, AGREEMENTS, CONDITIONS, UNDERSTANDING, WARRANTIES OR REPRESENTATIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, AMONG THE PARTIES CONCERNING THE SUBJECT HEREOF EXCEPT AS SET FORTH HEREIN.

**SECTION 7.2 NO ASSIGNMENT.** This Agreement may not be assigned by Owner or Consultant without the prior written consent of the other party, except that if this Agreement is assigned by Consultant to Ashford Hospitality Trust, Inc., a Maryland corporation (the "REIT") or any subsidiary of the REIT, and such assignment is consented to by Owner, then the REIT (or its assignee) may, without prior consent, further assign this Agreement to any of its wholly-owned subsidiaries that is a taxable real estate investment trust subsidiary or if, necessary to satisfy REIT requirements and to maintain its REIT status, any other entity.

**SECTION 7.3 CONFIDENTIALITY.** Consultant will not, either during the Term of this Agreement or thereafter, disclose, use or make known for its or another's benefit,

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01/24/2007 13:00

DFW Courtyard

(FAX) 9729294207

P. 008/012

any confidential information, knowledge, or data of Owner in any way acquired or used by Consultant during its engagement by Owner. Confidential information, knowledge or data of Owner shall not include any information that is or becomes generally available to the public other than as a result of a disclosure by Consultant.

**SECTION 7.4 RIGHTS OF CONSULTANT TO STAY AT PROPERTIES.** The executives, officers, directors and principals of Consultant shall be permitted the right to stay at the hotels located on the Properties on a "space available" basis. Charges for each such stay shall be consistent and in accordance with the policy under the Management Agreement.

**SECTION 7.5 VALIDITY.**

(a) In the event any of the provisions of this Agreement are held to be in conflict with any rule of law, statutory provision or policy, or otherwise unenforceable under the laws or regulations of any applicable jurisdiction within the United States of America, or any governmental subdivision or agency thereof, such provisions shall be deemed stricken from this Agreement.

(b) Any invalidity or unenforceability described in subsection (a) of this Section 8.5 shall not invalidate any of the other provisions of this Agreement, and this Agreement shall continue in full force and effect.

**SECTION 7.6 BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding upon Owner and Consultant and their respective heirs, administrators, executors, successors and permitted assigns. This Agreement shall not become effective until it has been executed by all parties hereto.

**SECTION 7.7 MODIFICATION AND WAIVER.**

(a) Subject to the specific exceptions set out in this Agreement, any waiver, modification or amendment of any provision of this Agreement shall be effective only if in written form signed by the party or parties affected by such modification or agreement.

(b) Each waiver shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the waiving party or the obligations of the other party in any other respect at any other time.

(c) No delay or omission or failure to exercise any right or remedy provided for in this Agreement shall be deemed to be a waiver of the right or remedy or acquiescence to the event giving rise to such right or remedy.

(d) Every right and remedy provided for in this Agreement may be exercised from time to time and so often as may be deemed expedient by the party exercising the right or remedy.

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(FAX) 9729294207

P. 009/012

**SECTION 7.8 NO THIRD PARTY RIGHTS.** This Agreement is entered into for the sole benefit of the parties hereto, their successors and permitted assigns. Nothing in this Agreement shall be deemed to create any right in any other person or entity not a party hereto and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party.

**SECTION 7.9 NO ASSUMPTION/INDEMNIFICATION.** It is expressly understood and agreed that Consultant does not, with the undertaking of this engagement and performance of the Services hereunder, assume any of the obligations of Owner under the Management Agreement. Owner does hereby indemnify and hold Consultant harmless from and against the following (the "Indemnified Claims") (i) all claims, costs, liabilities or losses in any manner incurred in connection with the performance by Consultant of the Services hereunder, unless such Indemnified Claims arise solely by reason of Consultant's gross negligence or willful misconduct, (ii) all claims, costs, liabilities or losses incurred in connection with the employment of any employees by Owner, and (iii) all claims, costs, liabilities or losses attributable to the operation or management of the Properties, whether pursuant to the Management Agreement or otherwise.

**SECTION 7.10 HEADINGS AND REFERENCES.** The headings of Articles and Sections in this Agreement are for convenience only and shall not be deemed to affect in any way the scope intent or meaning of the provisions to which they refer. The references made in this Agreement to Articles and Sections refer to Articles and Sections of this Agreement.

**SECTION 7.11 NOTICE.**

(a) Any written notice given under this Agreement by Owner or Consultant shall be given by prepaid Certified Mail, Return Receipt Requested, or by any nationally recognized overnight courier or by personal delivery or facsimile transmission, sent to the party to whom it is given at the address set out in below, or such other address as either party may direct by notice given in accordance with the provisions of this section, to the attention of the following persons (or any subsequently duly designated substitutes):

TO Owner: Glensview Hotel Partners, LLC  
 203 N. LaSalle St. Suite 2300  
 Chicago, Illinois 60614  
 800-366-3600 (O)  
 312-641-5137 (F)  
 Attn: Mr. Eugene H. Dibble IV

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01/24/2007 13:01

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(FAX) 9729294207

P. 010/012

**TO CONSULTANT:**

MP Management, LLC  
 4949 Regent Blvd  
 Irving, TX 75063  
 972-929-4004 ext. 601  
 972-870-9222  
 Attn: Mr. Michael W. Dunkle II

(b) Unless otherwise provided in this Agreement, any notice or approval shall be deemed to have been given on the date of its actual receipt by the addressee, or on the third day following the date of its dispatch (if sent by United States first class mail), whichever occurs earlier.

(c) Evidence that the notice or approval was duly posted or received shall be sufficient proof that the notice or approval was given, providing the requirements of this Section have been fully complied with.

(d) In the event notice is not given in accordance with the provisions of this Section, notice shall be deemed received by the addressee on the date of its actual receipt.

**SECTION 7.12 GENDER.** Reference in this Agreement to the male gender shall be deemed to include the female and neuter genders, unless otherwise stated or unless the circumstances eliminate such inclusion.

**SECTION 7.13 FURTHER DOCUMENTS.** The parties hereto agree to execute any and all documents, and to perform any and all other acts, reasonably necessary to accomplish the purposes of this Agreement.

**SECTION 7.14 GOVERNING LAW.** THIS AGREEMENT AND ITS INTERPRETATION, VALIDITY AND PERFORMANCE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS. IN THE EVENT ANY COURT OF LAW OF APPROPRIATE JUDICIAL AUTHORITY SHALL HOLD OR DECLARE THAT THE LAW OF ANOTHER JURISDICTION IS APPLICABLE, THIS AGREEMENT SHALL REMAIN ENFORCEABLE UNDER THE LAWS OF THE APPROPRIATE JURISDICTION. THE PARTIES HERETO AGREE THAT VENUE FOR ANY ACTION IN CONNECTION HERewith SHALL BE PROPER IN COOK COUNTY, ILLINOIS. EACH PARTY HERETO CONSENTS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT SITUATED IN ANY OF SUCH LOCATIONS AND WAIVES ANY OBJECTION WHICH IT MAY HAVE PERTAINING TO IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING IN ANY SUCH COURT.

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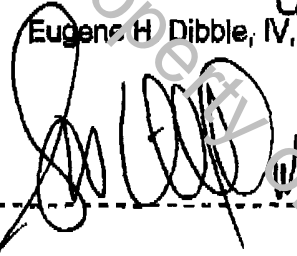
P. 011/012

SECTION 7.15 COUNTERPARTS. This Agreement may be signed in several counterparts, and each counterpart shall be deemed an original of this Agreement.

THIS AGREEMENT IS EXECUTED by the parties hereto as of the date first set forth above.

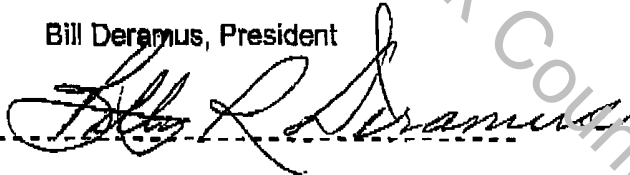
OWNER: GLENVIEW HOTEL PARTNERS, LLC, A DELAWARE LIMITED LIABILITY COMPANY

By: Eugene H. Dibble, IV, <sup>Co-Manager</sup> ~~Manager and Chief Executive Officer~~



CONSULTANT: MP MANAGEMENT, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY

By: Bill Deramus, President



Cook County Clerk's Office

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P. 012/012

**EXHIBIT A**  
**Scope of Consultant Services**

**Scope of Services:**

- a. Assist Owner in analysis of any contracts, leases, or other agreements and provide feedback where applicable.
- b. Handle communications between Wyndham Management, Inc., and Owner.
- c. Respond to manager and owner requests.
- d. Assist Wyndham Management, Inc., with feedback on all hotel related matters that include but not specific to P&L, Annual budget, Capital Expenditure Budget, Sales & Marketing initiatives, General Clean Preventative Maintenance Program.
- e. Perform scheduled monthly review of P & L with Wyndham Management, Inc.
- f. Complete quarterly on property review with Hotel Team and Wyndham Management, Inc.. (Quarterly P & L, Annual Budget, Capital Expenditure Budget, Sales & Marketing Plans, Sale & Marketing initiatives, General Clean Preventative Maintenance Program, Engineering, Design Improvements, Renovation Plans, etc...)
- g. Attend meetings and training classes as requested by Wyndham Management, Inc., and/or Owner.
- h. comply with all requirements set forth in the Lender Agreement, Management Agreement, and Asset Management Agreement.
- i. Provide feedback where applicable during design improvements and/or renovations.