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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2009

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Transition period from_____to_____

Commission File No. 001-32223

STRATEGIC HOTELS & RESORTS, INC.

(Exact name of registrant as specified in its charter)

Maryland	**33-1082757**
(State of Incorporation)	**(I.R.S. Employer Identification No.)**
200 West Madison Street, Suite 1700, Chicago, Illinois	**60606-3415**
(Address of Principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (312) 658-5000

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of exchange on which registered
Common Stock ($0.01 par value)	New York Stock Exchange
8.50% Series A Cumulative Preferred Stock ($0.01 par value)	New York Stock Exchange
8.25% Series B Cumulative Preferred Stock ($0.01 par value)	New York Stock Exchange
8.25% Series C Cumulative Preferred Stock ($0.01 par value)	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒ .

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes ☐ No ☒ .

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐ .

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐ .

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in rule 12b-2 of the Exchange Act. Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer

☐ Smaller reporting company ☐ .

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒ .

The aggregate market value of the common stock of the registrant held by nonaffiliates of the registrant was approximately $82.2 million as of June 30, 2009.

The number of shares of Common Stock ($0.01 par value) of the registrant outstanding as of February 23, 2010 was 75,349,854.

DOCUMENTS INCORPORATED BY REFERENCE

Part III of this report on Form 10-K incorporates by reference certain information from the registrant's definitive proxy statement which will be furnished to stockholders in connection with the Annual Meeting of Stockholders of the registrant scheduled to be held on May 27, 2010.

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FOR THE YEAR ENDED DECEMBER 31, 2009

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This report contains registered trademarks that are the exclusive property of their respective owners, which are companies other than us, including Fairmont®, Four Seasons ®, Hilton®, Hyatt®, InterContinental ®, Loews®, Marriott®, Renaissance®, Ritz-Carlton®, and Westin®. None of the owners of these trademarks, their affiliates or any of their respective officers, directors, agents or employees has or will have any liability or responsibility for any financial statements, projections, other financial information or other information contained in this report.

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DISCLOSURE REGARDING FORWARD LOOKING STATEMENTS

On one or more occasions, we may make statements regarding our assumptions, projections, expectations, targets, intentions or beliefs about future events. All statements other than statements of historical facts included or incorporated by reference in this 10-K are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act).

Words or phrases such as "anticipates," "believes," "estimates," "expects," "intends," "may," "plans," "potential," "predicts," "projects," "should," "targets," "will," "will continue," "will likely result" or other comparable expressions or the negative of these terms identify forward-looking statements. Forward-looking statements reflect our current views about future events and are subject to risks, uncertainties, assumptions and changes in circumstances that may cause actual results or outcomes to differ materially from those expressed in any forward-looking statement. We caution that while we make such statements in good faith and we believe such statements are based on reasonable assumptions, including without limitation, management's examination of historical operating trends, data contained in records and other data available from third parties, we cannot assure you that our projections will be achieved.

Our actual results may differ significantly from any results expressed or implied by these forward-looking statements. Some, but not all, of the factors that might cause such a difference include, but are not limited to:

- the factors discussed in this report set forth in Item 1A under the section titled "Risk Factors";
- the effects of the current general global economic recession upon business and leisure travel and the hotel markets in which we invest;
- our liquidity and refinancing demands;
- our ability to obtain or refinance maturing debt;
- our ability to maintain compliance with covenants contained in our debt facilities;
- our ability to dispose of properties in a manner consistent with our investment strategy and liquidity needs;
- stagnation or further deterioration in economic and market conditions, particularly impacting business and leisure travel spending in the markets where our hotels operate and in which we invest, including luxury and upper-upscale product;
- contagious disease outbreaks, including the H1N1 virus (swine flu) outbreak;
- availability of capital;
- our failure to maintain effective internal control over financial reporting and disclosure controls and procedures;
- risks related to natural disasters;
- increases in interest rates and operating costs;
- difficulties in identifying properties to acquire and completing acquisitions;
- rising insurance premiums;
- delays and cost-overruns in construction and development;
- marketing challenges associated with entering new lines of business or pursuing new business strategies;
- general volatility of the capital markets and the market price of our shares of common stock;
- our failure to maintain our status as a REIT;

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- increases in real property tax rates;
- changes in the competitive environment in our industry and the markets where we invest;
- changes in real estate and zoning laws or regulations;
- legislative or regulatory changes, including changes to laws governing the taxation of REITS;
- changes in generally accepted accounting principles, policies and guidelines;
- litigation, judgments or settlements; and
- hostilities, including future terrorist attacks, or the apprehension of hostilities, in each case that affect travel within or to the United States, Mexico, Czech Republic, Germany, France, England or other countries where we invest.

Any forward-looking statement speaks only as of the date on which such statement is made. New factors emerge from time to time and it is not possible for management to predict all such factors. We do not intend, and disclaim any duty or obligation, to update or revise any industry information or forward-looking statements set forth in this annual report on Form 10-K to reflect new information, future events or otherwise, except as required by law. Readers are urged to carefully review and consider the various disclosures made in this annual report on Form 10-K and in our other documents filed with the Securities and Exchange Commission (SEC) that attempt to advise interested parties of the risks and other factors that may affect our business, prospects and results of operations and financial condition.

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PART I

ITEM 1. BUSINESS.

Overview

Strategic Hotels & Resorts, Inc. (SHR) was incorporated in Maryland in January 2004 to own and asset manage upper upscale and luxury hotels that are subject to long-term management contracts. The terms upper upscale and luxury are classifications of hotels by brand that are defined by Smith Travel Research, an independent provider of lodging industry statistical data. We went public in an initial public offering in June 2004. Our accounting predecessor, Strategic Hotel Capital, L.L.C. (SHC LLC) was founded in 1997 by Laurence Geller, our president and chief executive officer, Goldman, Sachs & Co.'s Whitehall Fund and others. We own our properties through our investment in Strategic Hotel Funding, L.L.C., our operating partnership, which we refer to herein as SH Funding, and its subsidiaries.

We operate as a self-administered and self-managed real estate investment trust (REIT) managed by our board of directors and executive officers and conduct our operations through our direct and indirect subsidiaries including SH Funding. We are the managing member of SH Funding and hold approximately 99% of its membership units as of February 24, 2010.

As of February 24, 2010, we:

- Wholly own or lease 14 hotels, have a 51% interest in affiliates that own two hotels where we asset manage such hotels and have a 45% interest in and act as asset manager for a joint venture that owns one hotel;
- Own land held for development including:
  - 20.5 acres of oceanfront land adjacent to our Four Seasons Punta Mita Resort, Nayarit, Mexico and 60.0 acres near the Four Seasons Punta Mita Resort;
  - a 20,000 square-foot parcel of land on the ocean in Santa Monica, California adjacent to our Loews Santa Monica Beach Hotel entitled for development and residential units;
  - 10.0 acres of land adjacent to our Fairmont Scottsdale hotel; and
  - a 31% interest in a joint venture with two unaffiliated parties that is developing the fractional ownership program known as the Four Seasons Residence Club Punta Mita.

We do not operate any of our hotels directly; instead we employ internationally known hotel management companies to operate them for us under management contracts or operating leases. Our existing hotels are operated under the widely-recognized upper upscale and luxury brands of Fairmont®, Four Seasons®, Hyatt®, InterContinental®, Loews®, Marriott®, Ritz-Carlton® and Westin®. The Hotel del Coronado is operated by a specialty management company, KSL Resorts.

We seek to maximize asset values and operating results through asset management. Although we have no imperative to grow, we will opportunistically seek to acquire additional properties that meet our disciplined investment criteria.

As used in this report, references to "we", "our", "us", and "SHR" are to Strategic Hotels & Resorts, Inc. and, except as the context otherwise requires, its consolidated subsidiaries.

Business Strategy

We are a preeminent owner of upper upscale and luxury branded hotels located primarily in the United States with select international hotels. Our strategy involves the acquisition of hotels with strong underlying real estate values, adding value through the application of management's superior asset management skills, identifying

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redevelopment opportunities to enhance cash flow and value, and opportunistic dispositions of hotels upon completion of our value enhancement and cash flow generating strategies.

- Acquisition Strategy

  Acquisitions have historically been a significant part of the business strategy of the Company and one of our core competencies is a diligent approach that includes continuous research based selection of target markets and individual properties. Members of our management team have the skills and experience to acquire and asset manage hotels both domestically and internationally, which we believe differentiates us among lodging REITs.

- Asset Management Strategy

  We believe that we can enhance our cash flow and earnings growth through expert asset management, which will ultimately generate increased operating margins and higher investment returns. Our value-added asset management strategy has the following general components:

  - Working in partnership with the hotel management companies that operate our hotels, we build an asset management approach to enhance the cash flow and value of our properties. We have multi-property relationships with a select group of hotel management companies that in our opinion have strong brand recognition, superior marketing capabilities, management depth and an ability to work with our team to create efficient operations. We improve hotel operating performance through the application of value-added programs involving consumer and market research, competitive benchmarking, technology upgrades and systems development and upgrades.
  - We provide rigorous oversight of the properties and the hotel management companies that operate them to ensure the alignment of the hotel management companies' and our interests and to monitor the hotel management companies' and our compliance with the management contracts relating to our properties. Typically, this oversight provides sustained increases in operating margins and enhances property values.

- Redevelopment Strategy

  A major component of our value creation strategy is to create incremental sources of income from properties through thoughtfully executed and consumer market research based redevelopment.

  Our current portfolio now includes capital investments completed during the past three years, which give us a fresh and competitive portfolio that management believes can provide relative outperformance during the current recessionary cycle; moderates the need for near-term maintenance capital investment; and can provide incremental growth during a recovery. In addition, prior to this current period of market weakness, we created and planned a variety of property investment programs. Our goal is to enhance the cash flow growth of our portfolio during the future recovery through the careful execution of these plans.

- Disposition Strategy

  - We recycle capital for future investments through opportunistic dispositions. We would consider the disposition of all or part of our investment in a property in circumstances where we believe our asset management strategy has maximized the property's value, the proceeds of the disposition are unusually attractive, the market in which the property is located is declining or static, or competition in the market requires substantial capital investment that will not generate returns that meet our criteria.
  - Proceeds from dispositions would generally be intended to be reinvested in redevelopment activities in our existing portfolio, the acquisition of additional hotel properties where the application of our life cycle-based investment strategy can begin again, or enhancement of the company's balance sheet.

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- During the current market environment, we have undertaken a comprehensive review of our assets against sources of capital in the marketplace with the objective of seeking strategies to sell assets in order to supplement our liquidity position. We recently sold the Four Seasons Mexico City and Renaissance Paris Hotel Le Parc Trocadero for this purpose.

As a result of the current economic downturn, our revenues and operating cash flows have declined and we do not expect significant improvement in 2010. While we are beginning to see certain improvements in the macroeconomic trends, this has not yet translated into improved operating performance. While the depth and length of the current downturn is difficult to predict, we are prudently planning for a lengthy recession and are managing the Company accordingly. We amended our bank credit facility in 2009 to provide more operating cushion with respect to our financial covenants against a prolonged downturn. See "Item 8. Financial Statements and Supplementary Data—9. Indebtedness." In the current liquidity constrained marketplace, we are not actively pursuing acquisitions and have undertaken a process to sell assets and reduce capital commitments in order to enhance our liquidity.

Competition

The hotel industry is highly competitive and the hotels in which we invest are subject to competition from other hotels for guests. Competition is based on a number of factors, most notably convenience of location, brand affiliation, price, range of services, guest amenities or accommodations offered and quality of customer service. Competition is often specific to the individual markets in which our properties are located and includes competition from existing and new hotels operated under brands in the upper upscale and luxury segments. Increased competition could have a material adverse effect on the occupancy rate, average daily room rate and room revenue per available room of our hotels or may require us to make capital improvements that we otherwise would not have to make, which may result in decreases in our profitability.

Because our hotels operate in the upper upscale and luxury segment of the market, we face increased competition from providers of less expensive accommodations, such as limited service hotels or independent owner-managed hotels, during periods of economic downturn when leisure and business travelers become more sensitive to room rates. As a result, there is pressure to lower average daily rates during such periods to compete for these guests.

We face competition from institutional pension funds, private equity investors, other REITs and numerous local, regional and national owners in each of our markets. Some of these entities may have substantially greater financial resources and may be able to accept more risk than we can prudently manage. Competition may generally reduce the number of suitable investment opportunities offered to us and increase the bargaining power of property owners seeking to sell their properties to us.

Seasonality

For information relating to the seasonality of our business, please see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Seasonality" on page 57 of this Form 10-K.

Employees

As of February 24, 2010, we had 39 full-time and 4 part-time corporate employees. We believe that our relations with our employees are good. None of our corporate employees are unionized.

Environmental

Environmental consultants retained by us or our lenders conducted Phase I environmental site assessments in 2006 on many of our properties. These Phase I assessments often relied on older environmental assessments prepared in connection with a prior financing or acquisition. The lenders did not conduct Phase I assessments on

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our European properties, although older environmental assessments or building engineering surveys exist for these properties. Phase I assessments are designed to evaluate the potential for environmental contamination on properties based generally upon site inspections, facility personnel interviews, historical information and certain publicly-available databases, but Phase I assessments will not necessarily reveal the existence or extent of all environmental conditions, liabilities or compliance concerns at the properties.

Although the Phase I assessments and other environmental assessments that have been conducted with respect to certain of our properties disclose certain conditions on our properties and the use of hazardous substances in operation and maintenance activities that could pose a risk of environmental contamination or liability, we are not aware of any environmental liability that we believe would have a material adverse effect on our business, financial position, results of operations or cash flows. See "Item 1A. Risk Factors—Environmental and other governmental laws and regulations could increase our compliance costs and liabilities and adversely affect our financial condition and results of operations" and "Item 1A. Risk Factors—The presence of any environmental conditions at our properties could result in remediation and other costs and liabilities and adversely affect our financial condition and results of operations."

Insurance

Our management believes that our properties are adequately covered by insurance, subject to the risks described under "Item 1A. Risk Factors," including, among others, the factors described under "Uninsured and underinsured losses could adversely affect our financial condition and results of operations, which may affect our ability to make distributions to our stockholders." We are responsible for arranging the insurance for most of our hotels, although in certain cases, the hotel management companies that operate our hotels assume responsibility for arranging insurance under the relevant management agreement. Our properties are covered by blanket insurance policies, which cover multiple properties. In the event that these blanket policies are drawn on to cover certain losses on certain properties, the amount of insurance coverage available under such policies could thereby be reduced and could be insufficient to cover the remaining properties' insurable risks.

In August 2005, Hurricane Katrina caused substantial damage to our Hyatt Regency New Orleans property. The hurricane damage also caused significant interruption to the hotel's business and the hotel effectively ceased operations. On August 1, 2007, we entered into a complete and final settlement with our insurer for the property with respect to property damage and business interruption insurance claims relating thereto. On December 28, 2007, we sold the Hyatt Regency New Orleans property.

REIT Structure

The provisions of the REIT Modernization Act of 1999, as amended (the RMA), allow REITs, subject to certain limitations, to own, directly or indirectly, up to 100% of the stock of a taxable REIT subsidiary (TRS) that can engage in businesses previously prohibited to a REIT. In particular, these provisions permit hotel REITs to own a TRS that leases hotels from the REIT, rather than requiring the lessee to be a separate, unaffiliated party. However, hotels leased to a TRS still must be managed by an unaffiliated third party. The TRS provisions are complex and impose several conditions on the use of TRSs. No more than 25% of a REIT's assets may consist of securities of TRSs, and no more than 25% of a REIT's assets may consist of non-qualifying assets, including securities of TRSs and other taxable subsidiaries. In addition, the RMA provides that a REIT may generally not own more than 10% of the voting power or value of a corporation that is not treated as a TRS.

Ownership of Hotels

Where we have an ownership interest in a hotel, the entity through which we hold such ownership interest (a Strategic Ownership Entity) will generally lease the hotel to one of our TRSs and the TRS will enter into a management agreement with an independent third party for such party to operate the hotel. A lease between a Strategic Ownership Entity and one of our TRSs (an Affiliate Lease) provides for the TRS to pay to the Strategic Ownership Entity a base rent plus a percentage rent (as more fully described below). An Affiliate Lease must

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contain economic terms that are similar to a lease between unrelated parties or, pursuant to the RMA, the Strategic Ownership Entity may have to pay a 100% penalty tax on some of the payments it receives from our TRS under such Affiliate Lease.

Each Affiliate Lease, other than the lease with respect to the InterContinental Prague, has a non-cancelable term of approximately five years, subject to earlier termination upon the occurrence of certain contingencies such as damage or destruction that renders the hotel unsuitable for our TRS' use and occupancy, condemnation or our sale or disposition of the hotel.

During the term of each Affiliate Lease, other than the lease with respect to the InterContinental Prague, our TRS is obligated to pay a fixed annual base rent and a percentage rent to the applicable Strategic Ownership Entity. With respect to the InterContinental Prague, there is an existing lease agreement between the applicable Strategic Ownership Entity and its affiliated tenant that has prepaid the rent, which is being amortized on a straight-line basis over 15 years. Percentage rent is calculated by multiplying fixed percentages by gross room revenues and other revenues, subject to certain adjustments. Percentage rent is paid quarterly, except with respect to the Paris Marriott Champs Elysees, where percentage rent is paid monthly. Base rent accrues and is paid monthly. Base rents and percentage rents are adjusted annually for changes in the consumer price index or similar indices.

Fixed charges, including real estate and personal property taxes, capital expenditures and a reserve for capital expenditures are obligations of the lessor under our Affiliate Lease. Our TRSs are required to pay rent, all costs and expenses and all utility and other charges incurred in the operation of the hotels we own. The party responsible for maintaining insurance on a property is dependent on the specific lease.

Third Party Lease Agreements

We are the tenant under leases with third-party landlords for the Paris Marriott Champs Elysees and the Marriott Hamburg. We are also the tenant under ground leases with third-party landlords where we lease the land for the Marriott Lincolnshire, the Marriott London Grosvenor Square and a parcel of land that is part of the Fairmont Scottsdale hotel property. The remaining life on the initial terms of these third party leases range from 11 to 75 years. These third party lease agreements require us to make annual rental payments comprised of a minimum rental amount (subject to indexation) and may also include additional rent comprised of a percentage of hotel operating profit, less minimum rent, or the greater of a minimum rental amount and a percentage of certain revenues.

Hotel Management Agreements

Most of our hotels are managed and operated by third parties pursuant to management agreements entered into between our TRSs and hotel management companies. These management agreements generally provide for the payment of base management fees within a range of 1.25% to 5.00% of revenues, as defined in the applicable agreements. In addition, an incentive fee may be paid if certain criteria are met. Certain of the management agreements also provide for the payment by us of advisory fees or license fees. The remaining terms (not including renewal options) of these management agreements range from five to 27 years. A management agreement with one of our operators typically has the terms described below.

- ***Operational services.*** The manager has exclusive authority to supervise, direct and control the day-to-day operation and management of the hotel, including establishing all room rates, processing reservations, procuring inventories, supplies and services, and preparing public relations, publicity and marketing plans for the hotel. The manager receives compensation in the form of a base management fee and an incentive management fee, typically calculated as percentages of gross revenues and operating profits, respectively. In some cases, the incentive management fee is paid only after we have received a certain level of income.

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- ***Executive supervision and management services.*** The manager supervises all managerial and other employees for the hotel, reviews the operation and maintenance of the hotel, prepares reports, budgets and projections and provides other administrative and accounting support services to the hotel. In some cases, we maintain authority to approve the appointment of the hotel's general manager.
- ***Chain services.*** Our management agreements require the managers to furnish chain services that are generally made available to other hotels managed by such operators. Such services include: (1) the development and operation of computer systems and reservation services, (2) management and administrative services, (3) marketing and sales services, (4) human resources training services and (5) such additional services as may from time to time be more efficiently performed on a national, regional or group level.
- ***Working capital.*** Our management agreements typically require us to maintain working capital for a hotel and to fund the cost of fixed asset supplies such as linen and other similar items. We are also responsible for providing funds to meet the cash needs for the hotel operations if at any time the funds available from hotel operations are insufficient to meet the financial requirements of the hotel.
- ***Furniture, fixtures and equipment replacements.*** Our management agreements generally provide that once each year the manager will prepare a list of furniture, fixtures and equipment to be acquired and certain routine repairs to be performed in the next year and an estimate of the funds that are necessary therefore, subject to our review and approval. In addition, we are required to provide to the manager all necessary furniture, fixtures and equipment for the operation of a hotel (including funding any required furniture, fixtures and equipment replacements). For purposes of funding the furniture, fixtures and equipment replacements, a specified percentage of the gross revenues of the hotel is deposited by the manager in an escrow account (typically 4.0% to 5.0%).
- ***Building alterations, improvements and renewals.*** Our management agreements generally require the manager to prepare an annual estimate of the expenditures necessary for major repairs, alterations, improvements, renewals and replacements to the structural, mechanical, electrical, heating, ventilating, air conditioning, plumbing and vertical transportation elements of a hotel. In addition to the foregoing, the management agreements generally provide that the manager may propose such changes, alterations and improvements to the hotel as are required by reason of laws or regulations or, in the manager's reasonable judgment, to keep the hotel in a safe, competitive and efficient operating condition.
- ***Sale of the hotel.*** Most of our management agreements limit our ability to sell, lease, or otherwise transfer a hotel unless the transferee is not a competitor of the manager, and unless the transferee assumes the related management agreement and meets specified other conditions.
- ***Service marks.*** During the term of our management agreements, the service mark, symbols and logos currently used by the manager may be used in the operation of the hotel. Any right to use the service marks, logo and symbols and related trademarks at a hotel will terminate with respect to that hotel upon termination of the management agreement with respect to such hotel.

We lease one of our hotels, the Hamburg Marriott, pursuant to a lease agreement whereby rent is paid by the hotel management company that operates the hotel, as lessee, to us for an amount equal to a fixed base rent plus a specified percentage of profits in excess of the base rent. Otherwise, the terms of the lease are similar to the terms of our management contracts described above.

Code of Business Conduct and Ethics and Corporate Governance Documents

We have adopted a code of business conduct and ethics that applies to all of our employees, directors and officers, including our principal executive officer, principal financial officer and principal accounting officer. This code of business conduct and ethics is designed to comply with SEC regulations and New York Stock Exchange (NYSE) corporate governance rules related to codes of conduct and ethics and is posted on our corporate website at www.strategichotels.com. We intend to disclose future amendments to certain provisions of our code of business conduct and ethics, or waivers of such provisions granted to directors and specified officers, on our website within

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four business days following the date of such amendment or waiver. In addition, our corporate governance guidelines and charters for our audit, compensation and corporate governance and nominating committees are also posted on our corporate website. Copies of our code of business conduct and ethics, our corporate governance guidelines and our committee charters are also available free of charge upon request directed to Corporate Secretary, Strategic Hotels & Resorts, Inc., 200 West Madison Street, Suite 1700, Chicago, Illinois 60606.

Geographic and Business Segment Information

For information with respect to revenues from and our long-lived assets located in different geographic areas, please refer to "Item 8. Financial Statements and Supplementary Data—18. Geographic and Business Segment Information."

Where to Find More Information

We maintain a website at www.strategichotels.com. Through our website, we make available, free of charge, our annual proxy statement, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The SEC maintains a website that contains these reports at www.sec.gov.

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ITEM 1A. RISK FACTORS.

In addition to the information and factors discussed elsewhere in this annual report on Form 10-K, including our consolidated financial statements and the related notes, the factors disclosed below could cause our actual results to differ materially from those projected in any future-looking statements and could affect our future financial performance.

Risks Related to Our Business

The U.S. and other financial markets have been in turmoil and the U.S. and other economies in which we operate are in the midst of an economic recession, which continue to negatively impact our operations and our liquidity.

The U.S. and other financial markets have been experiencing extreme dislocations and a severe contraction in available liquidity globally as important segments of the credit markets are impaired. Global financial markets have been disrupted by, among other things, volatility in security prices, rating downgrades and declining valuations, and this disruption has been acute in real estate related markets. This disruption has lead to a decline in business and consumer confidence and increased unemployment and has precipitated an economic recession around the globe. As a consequence, owners and operators of commercial real estate, including hotels and resorts, may continue to experience declines in business and real estate values in the U.S. or elsewhere and continuing liquidity constraints as lenders are unwilling or unable to originate new credit and the capital markets may be otherwise unavailable. We are unable to predict the likely duration or severity of the current disruption in financial markets and adverse economic conditions and the effects they may have on our business, financial condition and results of operations.

Our financial covenants may adversely affect our financial position, results of operations and liquidity.

The agreement governing our bank credit facility and certain other agreements include financial and other covenants that must be met for us to remain in compliance with those agreements. Those agreements also contain customary restrictions, requirements and other limitations, including our ability to incur additional indebtedness. Importantly, the bank credit facility contains financial covenants that must be met, including the maintenance of stipulated minimum levels of tangible net worth and fixed charge coverage, and maximum levels of leverage and borrowing base availability. Availability under the bank credit facility is based on, among other factors, the calculation of 1.3 times debt service coverage based on an assumed 8% loan constant for the borrowing base assets. The actual interest rate on the bank credit facility is LIBOR plus 3.75%, or 3.98% as of December 31, 2009. Our ability to borrow under our bank credit facility is subject to compliance with these financial and other covenants, and our ability to comply with these covenants will be impacted by any deterioration in our operations brought on by the current economic downturn, conditions in Mexico related to the H1N1 flu outbreak and security concerns impacting travel to Mexico, potential further declines in our property values, and additional borrowings to maintain our liquidity and fund our capital and financing obligations.

Our available capacity under the bank credit facility and compliance with financial covenants in 2010 and future periods will depend substantially on the financial results of our hotels, and in particular, the results of the borrowing base assets. The operating results of a borrowing base property in Mexico has been negatively impacted by the H1N1 flu outbreak and security concerns impacting travel to Mexico, as well as the general economic downturn. If these negative conditions persist, the maximum availability under the bank credit facility may decline to a level below our short-term borrowing needs. If that were to occur, outstanding borrowings exceeding the maximum availability under the bank credit facility would need to be repaid to avoid a default under the bank credit facility, absent an amendment or waiver. If we are unable to borrow under our bank credit facility or to refinance existing indebtedness, we may be prevented from funding our working capital needs.

To improve liquidity in the short term, we are pursuing a number of alternatives, including but not limited to asset dispositions. In this regard, we sold two hotels in 2009. The net proceeds of any transaction could be utilized to reduce borrowings outstanding under the bank credit facility and improve liquidity. However, there

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can be no assurance that a successful transaction will occur as the current economic climate negatively affects the value of our properties and the weakness in the credit markets increases the cost and difficulty for potential purchasers to acquire financing. These conditions also negatively impact our ability to increase liquidity through other means, including through the sale of equity interests. Absent sufficient successful transactions, we may seek a modification of certain terms of the bank credit facility. We may be unable to complete sufficient successful transactions or modify the terms of the bank credit facility, or otherwise address currently anticipated liquidity requirements prior to a potential reduction in the maximum availability under the bank credit facility below our short-term borrowing needs or a breach of the terms of the bank credit facility. A default under the bank credit facility would allow the lenders to declare all amounts outstanding under the facility to become due and payable. Additionally, such an acceleration event would allow for acceleration of the interest rate swaps (with a termination value of $(101,306,000) as of December 31, 2009) and SH Funding's $180,000,000 in aggregate principal amount of 3.50% Exchangeable Senior Notes due 2012 (Exchangeable Notes).

In the event that negative conditions persist or worsen and we are unable to improve our short-term liquidity position or modify or obtain a waiver to our bank credit facility on acceptable terms, we will be required to take further steps to acquire the funds necessary to satisfy our short-term cash needs, including possibly liquidating some of our assets on terms that would be less attractive than would be obtainable after conditions in the economy, the credit markets and the hotel markets improve, or seeking legal protection from our creditors. If these negative conditions persist and we do not achieve a successful disposition of assets or increase its liquidity through alternative channels or modify or obtain a waiver to certain terms of the bank credit facility, then the risk increases that we may be unable to continue as a going concern.

In addition, our lenders, including the lenders participating in our bank credit facility, may have suffered losses related to their lending and other financial relationships, especially because of the general weakening of the economy and increased financial instability of many borrowers. As a result, lenders may become less able or unwilling to allow us to draw down on our bank credit facility and/or we may be unable to obtain other financing on favorable terms or at all. Our financial condition and results of operations would be adversely affected if we were unable to draw funds under our bank credit facility because of a lender default or if we were unable to obtain other financing.

We have substantial debt, a portion of which is variable rate debt, and upon maturity, we plan to refinance with new debt, which may not be available when required on optimal terms or at all.

We have a substantial amount of outstanding indebtedness, a portion of which bears interest at a variable rate, and to the extent available we may borrow additional variable rate debt under our bank credit facility. Increases in interest rates on our existing variable rate indebtedness would increase our interest expense, which could harm our cash flow and our ability to pay distributions. As of December 31, 2009, we had total debt of $1.6 billion, and, including the effect of interest rate swaps, 14.0% of our total debt had variable interest rates and 86.0% had fixed interest rates.

Our significant debt may negatively affect our business and financial results, including:

- requiring us to use a substantial portion of our funds from operations to make required payments on principal and interest, which reduces the amounts available for distributions to our stockholders and funds available for operations, capital expenditures, future business opportunities and other purposes;
- making us more vulnerable to economic and industry downturns and reducing our flexibility in responding to changing business and economic conditions;
- limiting our ability to borrow more money for operations, capital or to finance acquisitions in the future; and
- requiring us to dispose of properties to make required payments of interest and principal.

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Since we anticipate that our internally generated cash will be adequate to repay only a portion of our indebtedness prior to maturity, we expect that we will be required to repay debt through refinancings and/or equity offerings. The amount of our existing indebtedness may adversely affect our ability to repay debt through refinancings. See the discussion under the subheading "Debt Maturity:" in Note 9 of the Notes to our Consolidated Financial Statements included in Item 8 of this Form 10-K for quantified information regarding our debt maturities as of December 31, 2009. Due to the severe contraction in credit markets, there can be no assurance that we will be able to refinance our debt with new borrowings and our low common stock price may practically eliminate an equity offering as a viable financing alternative. If we are unable to refinance our indebtedness on acceptable terms, or at all, we might be forced to dispose of one or more of our properties on disadvantageous terms, which might result in losses to us and which might adversely affect cash available for distributions to our stockholders. Alternatively, any debt we may arrange may carry a higher rate of interest or the shares we issue in any equity offering may require a higher rate of dividends or other dilutive terms. As a result, certain growth initiatives could prove more costly or not economically feasible. A failure to retain or refinance our bank credit facility or to add new or replacement debt facilities could have a material adverse effect on our business, financial condition and results of operations.

The $630,000,000 in non-recourse financings related to our unconsolidated joint venture that owns the Hotel del Coronado matures January 9, 2011. Due to the severe contraction in the credit markets, the reduction in real estate values generally across the luxury hospitality market, and the size and complexity of this existing financing, there can be no assurance that the joint venture, of which we are the general partner, will be able to refinance or restructure this indebtedness or cure or receive a waiver for an event of default if one were to occur. In such an instance, we could lose our investment in this joint venture of $36,458,000 as of December 31, 2009.

We also intend to incur additional debt in connection with future acquisitions of real estate. We may, in some instances, to the extent available, borrow under our bank credit facility or borrow new funds to acquire properties. The curtailment of lending by many traditional commercial real estate lenders impedes our ability to grow our portfolio of hotels through future acquisitions and otherwise may prevent us from executing our business plans, including limiting the likelihood of successful asset dispositions. In addition, we may incur mortgage debt by obtaining loans secured by a portfolio of some or all of the real estate properties we acquire. If necessary or advisable, we may also borrow funds to satisfy the requirement that we distribute to stockholders at least 90% of our annual REIT taxable income or to ensure otherwise that we maintain our qualification as a REIT for U.S. federal income tax purposes.

Our working capital and liquidity reserves may not be adequate to cover all of our cash needs and we may have to obtain financing from either affiliated or unaffiliated sources. The financial market turmoil and economic recession have severely contracted available liquidity and therefore sufficient financing may not be available or, if available, may not be available on reasonable terms. Additional borrowings for working capital purposes will increase our interest expense, and therefore may harm our financial condition and results of operations.

Our organizational documents do not limit the amount of indebtedness that we may incur. To the extent we become more leveraged, then the resulting increase in our debt service obligations would reduce cash available for distributions to our stockholders and could adversely affect our ability to make payments on our outstanding indebtedness and harm our financial condition.

The outbreak of the H1N1 virus (swine flu) may continue to have an adverse impact on our financial results.

The H1N1 pandemic may continue to have a significant adverse impact on all leisure travel, as a significant number of cases have been reported in many places throughout the world and the World Health Organization, or the WHO, has raised the pandemic alert for the H1N1 virus to Phase 6, the highest level on the WHO's alert system. Currently, it is impossible to determine the severity the recent H1N1 outbreak and the effect it will have on our results of operations. However, it is expected that the H1N1 outbreak will continue to have an adverse effect on our operating results during the first quarter of 2010, at least.

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Our shares of common stock may be delisted from the NYSE if the price per share trades below $1.00 for an extended period of time, which could negatively affect our business, our financial condition and our results of operation and our ability to service our debt obligations.

As of February 24, 2010, the closing price of our common stock on the NYSE was $2.34. Our common stock at times has traded below $1.00. In the event the average closing price of our common stock for a 30-day period is below $1.00, our stock could be delisted from the NYSE. The threat of delisting and/or a delisting of our common stock could have adverse effects by, among other things:

- reducing the trading liquidity and market price of our common stock;
- reducing the number of investors willing to hold or acquire our common stock, thereby further restricting our ability to obtain equity financing;
- causing an event of default under certain of our debt agreements, including our bank credit facility and Exchangeable Notes, which could serve to accelerate the indebtedness, including our interest rate swaps; and
- reducing our ability to retain, attract and motivate directors, officers and employees.

The uncertain environment in the lodging industry and the economy generally will continue to impact our financial results and growth.

The present economic global recession and the uncertainty of its breadth, depth and duration have left unclear whether the lodging industry, which prior to 2008 had experienced a period of sustained growth, will continue to decline. Recent negative publicity regarding luxury hotels and decreases in airline capacity could also reduce demand for our hotel rooms. Accordingly, our financial results and growth could be harmed if the recession continues for a significant period or becomes worse.

The illiquidity of real estate investments and the lack of alternative uses of hotel properties could significantly limit our ability to respond to adverse changes in the performance of our properties and harm our financial condition.

Because real estate investments are relatively illiquid, our ability to promptly sell one or more of our properties in response to changing economic, financial and investment conditions is limited. We cannot predict whether we will be able to sell any property for the price or on the terms set by us, or whether any price or other terms offered by a prospective purchaser would be acceptable to us. We also cannot predict the length of time needed to find a willing purchaser and to close the sale of a property. The difficulty in selling an asset is exacerbated by the dislocation in the debt and equity markets currently being experienced.

In addition, hotel properties may not readily be converted to alternative uses if they were to become unprofitable due to competition, age of improvements, decreased demand or other factors. The conversion of a hotel to alternative uses would also generally require substantial capital expenditures.

We may be required to expend funds to correct defects or to make improvements before a property can be sold. We may not have funds available to correct those defects or to make those improvements and as a result our ability to sell the property would be limited. These factors and any others that would impede our ability to respond to adverse changes in the performance of our properties could significantly harm our financial condition and results of operations.

We incurred losses in fiscal years 2009 and 2008 and, due to the current negative economic environment, we may continue to incur losses in the future.

We incurred net losses of $246.4 million and $317.5 million for our 2009 and 2008 fiscal years, respectively. The economic downturn has negatively impacted business and leisure travel leading to a reduction in revenues at our hotel properties. A prolonged economic downturn will likely produce continued losses. There can be no assurance that we will resume profitable operations and generate net income for our stockholders in the near term or at all.

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We rely to a significant extent on our president and chief executive officer, Mr. Laurence Geller, the loss of whom could have a material adverse effect on our business.

Our continued success will depend to a significant extent on the efforts and abilities of our president and chief executive officer, Mr. Laurence Geller. Mr. Geller is an experienced hotel industry senior executive, operator and consultant with over 40 years of experience working with many major multinational hotel companies and executives. Mr. Geller is actively engaged in our management and determines our strategic direction, especially with regard to our operational, financing, acquisition and disposition activities. Mr. Geller's departure could have a material adverse effect on our operations, financial condition and operating results. Mr. Geller's employment agreement was amended and restated on August 27, 2009. Pursuant to that agreement, Mr. Geller will serve as our president and chief executive officer through December 31, 2012, subject to earlier termination under certain circumstances described in the agreement.

The geographic concentration of our hotels in California makes us more susceptible to an economic downturn or natural disaster in that state.

As of February 24, 2010, six of the hotels we own are located in California, the greatest concentration of our portfolio of properties in any state. California has been historically at greater risk to certain acts of nature, such as fire, floods and earthquakes, than other states, and has also been subject to a more pronounced economic downturn than other states. It is also possible that a change in California laws applicable to hotels and the lodging industry may have a greater impact on us than a change in comparable laws in another jurisdiction where we have hotels. Accordingly, our business, financial condition and results of operations may be particularly susceptible to a downturn or changes in the California economy.

We have suspended the payment of dividends on our common and preferred stock.

On November 4, 2008, we suspended payment of our dividend on our shares of common stock. In addition, in February 2009, our board of directors elected to suspend the quarterly dividend beginning with the first quarter of 2009 to holders of shares of our 8.50% Series A Cumulative Redeemable Preferred Stock, of 8.25% Series B Cumulative Redeemable Preferred Stock and 8.25% Series C Cumulative Redeemable Preferred Stock. We suspended these dividend payments in an effort to preserve liquidity. Pursuant to the Articles Supplementary governing our preferred stock, if we do not pay quarterly dividends on our preferred stock for six quarters, whether or not consecutive, the size of our board of directors will be increased by two and the holders of our preferred stock will have the right to elect two additional directors to our board. We can provide no assurance as to when we will resume paying dividends on our common and preferred stock, if ever.

If we fail to maintain effective internal control over financial reporting and disclosure controls and procedures in the future, we may not be able to accurately report our financial results, which could have an adverse effect on our business.

If our internal control over financial reporting and disclosure controls and procedures are not effective, we may not be able to provide reliable financial information. Subsequent to the filing of our annual report on Form 10-K for the year ended December 31, 2005, we determined that our consolidated statements of cash flows for the years ended December 31, 2005 and 2004 included in that annual report on Form 10-K and for the quarter ended March 31, 2005 included in our quarterly report on Form 10-Q for that quarter should be restated because the statements incorrectly classified certain items as cash flows from operating activities that should have been reported as cash flows from investing activities. Accordingly, we restated our consolidated statements of cash flows for the years ended December 31, 2005 and 2004 and our consolidated statement of cash flows for the quarter ended March 31, 2005 in our annual report on Form 10-K/A for the year ended December 31, 2005 and our quarterly report on Form 10-Q for the quarterly period ended March 31, 2006, respectively. In connection with these restatements, we determined that our internal control over financial reporting during the years ended December 31, 2004 and 2005 was not effective due to the existence of a material weakness in our internal control over financial reporting relating to the proper classification of cash flows pertaining to certain escrow deposits,

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purchased notes receivable and investments in our hotels. Although we have implemented additional procedures that we believe enable us to properly prepare and review our consolidated statement of cash flows, we cannot be certain that these measures will ensure that we will maintain adequate controls over our financial reporting process in the future. If we discover additional deficiencies, we will make efforts to remediate these deficiencies; however, there is no assurance that we will be successful either in identifying deficiencies or in their remediation. Any failure to maintain effective controls in the future could adversely affect our business or cause us to fail to meet our reporting obligations. Such non-compliance could also result in an adverse reaction in the financial marketplace due to a loss of investor confidence in the reliability of our financial statements. In addition, perceptions of our business among customers, suppliers, rating agencies, lenders, investors, securities analysts and others could be adversely affected.

Rising operating expenses and costs of capital improvements could reduce our cash flow, EBITDA and funds available for future distributions.

Our properties are subject to operating risks common to the lodging industry in general. If a property's occupancy or room rates drop to the point where its revenues are insufficient to cover its operating expenses, then we could be required to spend additional funds for that property's operating expenses. Our properties are continually subject to increases in real estate and other tax rates, wages and benefits, utility costs, operating expenses, insurance costs, repairs and maintenance and administrative expenses, which may reduce our cash flow, EBITDA and funds available for future distributions to our stockholders.

Our hotel properties have an ongoing need for renovations and other capital improvements, including replacements, from time to time, of furniture, fixtures and equipment. Some of these capital improvements are mandated by health, safety or other regulations. These capital improvements may give rise to (i) a possible shortage of available cash to fund capital improvements, (ii) the possibility that financing for these capital improvements may not be available to us on affordable terms and (iii) uncertainties as to market demand or a loss of market demand after capital improvements have begun. The costs of these capital improvements could adversely affect our financial condition and amounts available for distributions to our stockholders.

Our business and operating results depend in large part upon the performance of third-party hotel management companies that manage our hotels.

Our hotels are managed by third-party hotel management companies pursuant to management agreements or, with respect to the Marriott Hamburg, the lease applicable to that property. Therefore, our business and operating results depend in large part upon the performance of these hotel management companies under these management agreements.

Under the terms of these management agreements, the third-party hotel managers control the daily operations of our hotels. We do not have the authority to require any hotel to be operated in a particular manner or to govern any particular aspect of the daily operations of any hotel (for instance, setting room rates). Thus, even if we believe our hotels are being operated inefficiently or in a manner that does not result in satisfactory occupancy rates, net RevPAR or average daily rate, or ADR, we may not be able to force the hotel management companies in question to change their methods of operation of our hotels. Additionally, in the event that we need to replace any hotel management company, we may be required by the terms of the applicable management agreement to pay a substantial termination fee and may experience disruptions at any affected hotel. The effectiveness of the hotel management companies in managing our hotels will, therefore, significantly affect the revenues, expenses and value of our hotels. Occasionally, we have discovered accounting errors at some of our properties relating to the improper recording of income statement expenses, misstated inventories and other items apparently caused by poor accounting practices and oversight. In the event our third-party hotel management companies are not able to implement and maintain appropriate accounting controls with respect to our properties, our business, results of operations and financial condition could be adversely affected.

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Additionally, the hotel management companies that operate our hotels and their affiliates own, operate, or franchise properties other than our properties, including properties that directly compete with our properties. Therefore, a hotel management company may have different interests than our own with respect to short-term or long-term goals and objectives, including interests relating to the brand under which such hotel management company operates. Such differences may be significant depending upon many factors, including the remaining term of the applicable management agreement, trade area restrictions with respect to competitive practices by the hotel management company or its affiliates or differing policies, procedures or practices. Any of these factors may adversely impact the operation and profitability of a hotel, which could harm our financial condition and results of operations.

All revenues generated at our hotels, including credit card receivables, are deposited by the payors into accounts maintained and controlled by the relevant hotel management company, which pays operating and other expenses for the relevant hotel (including real and personal property taxes), pays itself management fees in accordance with the terms of the applicable management agreement and makes deposits into any reserve funds required by the applicable management agreement. In the event of a bankruptcy or insolvency involving a hotel management company, there is a risk that the payment of operating and other expenses for the relevant hotel and payment of revenues to us may be delayed or otherwise impaired. The bankruptcy or insolvency of a hotel management company may significantly impair its ability to provide services required under the management agreement.

Certain of the employees at our hotels are covered by collective bargaining agreements and labor disputes may disrupt operations or increase costs at our hotels.

Our hotel management companies act as employer of the hotel level employees. At certain of our hotels, these employees are covered by collective bargaining agreements. At the current time, the collective bargaining agreements at our Westin St. Francis hotel and Fairmont Chicago hotel have expired. At this time, we cannot predict when or whether new agreements will be reached in these markets and what the impact of prolonged negotiations could be. If agreements are reached, the agreements may cause us to incur additional expenses related to our employees, thereby reducing our profits and impacting our financial results negatively. Additionally, if agreements are not reached and there are labor disputes, including strikes, in these and other markets in which we have hotels, operations at our hotels could suffer due to the diversion of business to other hotels or increased costs of operating the hotel during such a labor dispute, thereby impacting our financial results negatively.

Our renovation and development activities are subject to timing, budgeting and other risks.

We are in the process of renovating several of our properties and expect to continue similar activities in the future, as well as develop and redevelop certain properties. These renovation, development, and redevelopment activities and the pursuit of acquisition and other corporate opportunities expose us to certain risks, including those relating to:

- construction delays or cost overruns that may increase project costs and, as a result, make the project uneconomical;
- defects in design or construction that may result in additional costs to remedy or require all or a portion of a property to be closed during the period required to rectify any such situation;
- the failure to complete construction of a property on schedule;
- insufficient occupancy rates at a completed project impeding our ability to pay operating expenses or achieve targeted rates of return on investment;
- the incurrence of acquisition and/or predevelopment costs in connection with projects that are delayed or not pursued to completion;
- natural disasters such as earthquakes, hurricanes, floods or fires that could adversely impact a project;

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- receipt of zoning, occupancy, building, land-use or other required governmental permits and authorizations; and
- governmental restrictions on the nature or size of a project or timing of completion.

In the case of an unsuccessful project, we may be required to write off capitalized costs associated with the project and such write-offs may be significant and adversely affect our financial condition and results of operations.

We face competition for the acquisition of real estate properties.

We compete with institutional pension funds, private equity investors, other REITs, owner-operators of hotels and others who are engaged in real estate investment activities that focus on the acquisition of hotels. These competitors may drive up the price we must pay for real property, other assets or other companies we seek to acquire or may succeed in acquiring those real properties, other assets or other companies themselves. In addition, our potential acquisition targets may find our competitors to be more attractive suitors because they may have greater resources, may be willing to pay more or may have a more compatible operating philosophy. In addition, the number of entities competing for suitable investment properties may increase in the future. This would result in increased demand for these real properties, other assets or other companies and therefore increase the prices required to be paid for them. If we pay higher prices for real properties, other assets or other companies, our profitability may be reduced. Also, future acquisitions of real property, other assets or other companies may not yield the returns we expect and, if financed using our equity, may result in stockholder dilution. We also may not be successful in identifying or consummating acquisitions and joint ventures on satisfactory terms. In addition, our profitability may suffer because of acquisition-related costs or amortization costs for intangible assets. We also may incur significant expenses in connection with acquisition or other corporate opportunities we pursue but do not consummate.

Investing through partnerships or joint ventures decreases our ability to manage risk.

In addition to acquiring or developing hotels and resorts directly, we have from time to time invested, and expect to continue to invest in hotels and ancillary businesses, as a co-venturer. Joint venturers often have shared control over the operation of the joint venture assets. Therefore, joint venture investments may involve risks such as the possibility that the co-venturer in an investment might become bankrupt or not have the financial resources to meet its obligations, or have economic or business interests or goals that are inconsistent with our business interests or goals, or be in a position to take action contrary to our instructions or requests or contrary to our policies or objectives. Consequently, actions by a co-venturer might subject hotels, resorts and businesses owned by the joint venture to additional risk. Although we generally seek to maintain sufficient control of any joint venture, we may be unable to take action without the approval of our joint venture partners. Alternatively, our joint venture partners could take actions binding on the joint venture without our consent. Additionally, should a joint venture partner become bankrupt, we could become liable for our partner's share of joint venture liabilities.

Risks Related to the Lodging and Real Estate Industries

A number of factors, many of which are common to the lodging industry and beyond our control, could affect our business, including those described elsewhere herein as well as the following:

- increased competition from new supply or existing hotel properties in our markets, which would likely adversely affect occupancy and revenues at our hotels;
- dependence on business, commercial and leisure travelers and tourism;
- dependence on group and meeting/conference business;
- increases in energy costs, airline strikes or other factors that may affect travel patterns and reduce the number of business and commercial travelers and tourists; and
- risks generally associated with the ownership of hotel properties and real estate, as we discuss in more detail below.

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These factors could have an adverse effect on our financial condition and results of operations, which may affect our ability to make distributions to our stockholders.

Uninsured and underinsured losses could adversely affect our financial condition and results of operations, which may affect our ability to make distributions to our stockholders.

Various types of catastrophic losses, such as losses due to wars, terrorist acts, earthquakes, floods, hurricanes or pollution or other environmental matters generally are either uninsurable or not economically insurable, or may be subject to insurance coverage limitations, such as large deductibles or co-payments. Although our earthquake insurance coverage is limited, as of February 24, 2010, six of our hotels are located in California, which has been historically at a greater risk for certain acts of nature (such as fire, floods and earthquakes) than other states. Our InterContinental Miami and Four Seasons Punta Mita Resort are located in areas that are prone to hurricanes and/or floods.

In the event of a catastrophic loss, our insurance coverage may not be sufficient to cover the full current market value or replacement cost of our lost investment. Should an uninsured loss or a loss in excess of insured limits occur, we could lose all or a portion of the capital we have invested in a property, as well as the anticipated future revenue from the property. In that event, we might nevertheless remain obligated for any mortgage debt or other financial obligations related to the property. In the event of a significant loss that is covered by insurance, our deductible may be high and, as a consequence, it could materially adversely affect our financial condition. Inflation, changes in building codes and ordinances, environmental considerations and other factors might also keep us from using insurance proceeds to replace or renovate a hotel after it has been damaged or destroyed. Under those circumstances, the insurance proceeds we receive might be inadequate to restore our economic position in the damaged or destroyed property.

Certain events, such as Hurricanes Katrina and Rita in 2005, have historically made it more difficult and expensive to obtain property and casualty insurance, including coverage for windstorm, flood and earthquake damage, and such events could occur again. We may encounter difficulty in obtaining or renewing property insurance, including coverage for windstorm, flood and earthquake damage, or casualty insurance on our properties at the same levels of coverage, under similar terms and in a timely manner due to a lack of capacity in the insurance markets or a lack of availability of such insurance at commercially reasonable rates. Insurance we would be able to obtain may be more limited and for some catastrophic risks (*e.g* ., earthquake, flood, windstorm and terrorism) may not be generally available to fully cover potential losses. Even if we would be able to obtain new policies with desired levels and with limitations, we cannot be sure that we would be able to obtain such insurance at premium rates that are commercially reasonable or that there would not be gaps in our coverage. If we were unable to obtain adequate insurance on our properties for certain risks or in a timely manner, it would expose us to uninsured losses and could cause us to be in default under specific covenants on certain of our indebtedness or other contractual commitments which require us to maintain adequate insurance on our properties to protect against the risk of loss. If this were to occur, or if we were unable to obtain adequate insurance and our properties experienced damage which would otherwise have been covered by insurance, it could materially adversely affect our financial condition and the operations of our properties.

We obtain terrorism insurance to cover any property damage caused by any terrorism act under a separate stand-alone policy of insurance, and also have terrorism insurance under our general liability program and in our program for directors' and officers' coverage. We may not be able to recover fully under our existing terrorism insurance for losses caused by some types of terrorist acts, and federal terrorism legislation does not ensure that we will be able to obtain terrorism insurance in adequate amounts or at acceptable premium levels in the future. Insurers only have to provide terrorism coverage to the extent mandated by the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) effective December 26, 2007. While TRIPRA will reimburse insurers for losses resulting from nuclear, radiological, biological and chemical perils, TRIPRA does not require insurers to offer coverage for these perils and, to date, insurers are not willing to provide this coverage, even with government reinsurance. Any damage related to war and to nuclear, biological and chemical incidents, therefore, is excluded under our policies. TRIPRA is due to expire on December 31, 2014. There is no guaranty that

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terrorism insurance will be readily available or affordable before or after expiration of the TRIPRA in December 2014 or that TRIPRA will not be modified or repealed. As a result of the above, there remains uncertainty regarding the extent and adequacy of terrorism coverage that will be available to protect our interests in the event of future terrorist attacks that impact our properties.

We derive revenues from outside the United States, which subjects us to different legal, monetary and political risks, as well as currency exchange risks, and may cause unpredictability in our cash flows.

Our business plan assumes that a portion of our investments will continue to be in hotel properties located outside the United States. International investments and operations generally are subject to various political and other risks that are different from and in addition to those for U.S. investments and operations, including:

- enactment of laws prohibiting or restricting the foreign ownership of property;
- laws restricting us from removing profits earned from activities within the country to the United States (*i.e.* , nationalization of assets located within a country);
- changes in laws, regulations and policies, including land use, zoning and environmental laws, and in real estate and other tax rates;
- exchange rate fluctuations;
- change in the availability, cost and terms of mortgage funds resulting from varying national economic policies or changes in interest rates;
- high administrative costs; and
- terrorism, war or civil unrest.

Unfavorable legal, regulatory, economic or political changes such as those described above could adversely affect our financial condition and results of operations.

The threat of terrorism has historically adversely affected the lodging industry generally and these adverse effects may worsen if there are further terrorist events.

The threat of terrorism has historically caused a significant decrease in hotel occupancy and average daily rates due to disruptions in business and leisure travel patterns and concerns about travel safety. Future terrorist acts, terrorism alerts or outbreaks of hostilities could have a negative effect on travel and on our business.

Seasonal variations in revenue at our hotels can be expected to cause quarterly fluctuations in our revenues.

Revenues for hotels in tourist areas generally are substantially greater during tourist season than other times of the year. To the extent that cash flows from operations are insufficient during any quarter, due to seasonal fluctuations in revenues, we may have to enter into short-term borrowings to fund operations, pay interest expense or make distributions to our stockholders.

We consider acquisition opportunities in the ordinary course of our business; we face competition in the acquisition of properties and properties that we acquire may not perform as anticipated.

In the ordinary course of our business and when our liquidity position permits, we consider strategic acquisitions. The acquisition of properties involves risks, including the risk that the acquired property will not perform as anticipated and the risk that any actual costs for rehabilitating, repositioning, renovating and improving identified in the pre-acquisition process will exceed estimates. There is, and it is expected that there will continue to be, significant competition for acquisitions that meet our investment criteria as well as risks associated with obtaining financing for acquisition activities.

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Environmental and other governmental laws and regulations could increase our compliance costs and liabilities and adversely affect our financial condition and results of operations.

Our hotel properties are subject to various U.S. federal, state and local environmental laws. Under these laws, courts and government agencies have the authority to require us, as owner of a contaminated property, to clean up the property, even if the contamination pre-dated our ownership of the property or we did not know of or were not responsible for the contamination. These laws may also force a party who owned a property at the time of its contamination, but no longer owns the property, to be responsible for the cleanup. In addition to the costs of clean-up, environmental contamination can affect the value of a property and, therefore, an owner's ability to borrow funds using the property as collateral or to sell the property. These laws can also impose liability on parties that arrange for the disposal of wastes at an offsite property that becomes contaminated.

In addition, some of these environmental laws can restrict the use of a property and place conditions on various activities. An example would be laws that require a business using hazardous substances on a property (such as swimming pool and lawn care chemicals) to manage them carefully and to notify local officials that the chemicals are being used. Failure to comply with these laws could result in fines and penalties or expose us to third-party liability.

From time to time, the United States Environmental Protection Agency (EPA) designates certain sites affected by hazardous substances as Superfund sites. Superfund sites can cover large areas, affecting many different parcels of land. The EPA may choose to pursue parties regardless of their actual contribution to the contamination. The Hilton Burbank Airport and Convention Center, which we sold in September 2006, is located within a Federal Superfund site. The area was designated as a Superfund site because groundwater underneath the area is contaminated. We have not been named, and do not expect to be named, as a party responsible for the clean-up of the groundwater contamination; however, there can be no assurance regarding potential future developments concerning this site.

The presence of any environmental conditions at our properties could result in remediation and other costs and liabilities and adversely affect our financial condition and results of operations.

We have reviewed environmental reports prepared by our consultants and consultants retained by our lenders at various times, which disclose certain conditions on our properties and the use of hazardous substances in operation and maintenance activities that could pose a risk of environmental contamination or impose liability on us. At some facilities these include on-site dry cleaning operations, petroleum storage in underground storage tanks, past tank removals and the known or suspected presence of asbestos, mold or thorium.

The costs to clean up a contaminated property to defend against a claim or to comply with environmental laws could be material and could adversely affect the funds available for distributions to our stockholders. Future laws or regulations may impose material environmental liabilities on us, the current environmental condition of our hotel properties may be affected by the condition of the properties in the vicinity of our hotel properties (such as the presence of leaking underground storage tanks) or by third parties unrelated to us and currently unknown environmental liabilities related to our hotel properties may be identified.

If we are not in compliance with the Americans with Disabilities Act of 1990, we may face significant costs to modify our properties and/or be subject to fines.

Under the Americans with Disabilities Act of 1990 (ADA), all public accommodations must meet various federal requirements related to access and use by disabled persons. Compliance with the ADA's requirements could require removal of access barriers, and non-compliance could result in the U.S. government imposing fines or in private litigants winning damages. If we are required to make substantial modifications to our hotels, whether to comply with the ADA or other changes in governmental rules and regulations, our financial condition, results of operations and ability to make distributions to our stockholders could be adversely affected.

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Risks Related to Our Organization and Structure

Provisions of our organizational documents may limit the ability of a third party to acquire control of our company and may depress our stock price.

In order for us to maintain our status as a REIT, no more than 50% of the value of outstanding shares of our stock may be owned, actually or constructively, by five or fewer individuals at any time during the last half of each taxable year. To make sure that we will not fail to qualify as a REIT under this test, subject to some exceptions, our charter prohibits any individual from owning beneficially or constructively more than 9.8% of the value of outstanding shares of our stock or more than 9.8% of the value or number of shares, whichever is more restrictive, of the outstanding shares of our common stock. Any attempt to own or transfer shares of our capital stock in excess of the ownership limit without the consent of our board of directors will be void, and could result in the shares being automatically transferred to a charitable trust. This ownership limitation may prevent an acquisition of control of our company by a third party without our board of directors' grant of an exemption from the ownership limitation, even if our stockholders believe the change of control is in their interest.

Our charter authorizes our board of directors to cause us to issue up to 150,000,000 shares of common stock and up to 150,000,000 shares of preferred stock, to amend our charter without stockholder approval to increase or decrease the aggregate number of shares of stock or the number of shares of any class or series of our stock that we have authority to issue, to classify or reclassify any unissued shares of common stock or preferred stock and to set the preferences, rights and other terms of the classified or reclassified shares. Issuances of additional shares of stock may have the effect of delaying or preventing a change in control of our company, including transactions at a premium over the market price of our stock, even if stockholders believe that a change of control is in their interest.

Our charter permits the removal of a director only upon the affirmative vote of two-thirds of the votes entitled to be cast, generally in the election of directors, and provides that vacancies may only be filled by a majority of the remaining directors. Our bylaws require advance notice of a stockholder's intention to nominate directors or present business for consideration by stockholders at an annual meeting of our stockholders. These provisions may delay, defer or prevent a transaction or change in control that involves a premium price for our common stock or that for other reasons may be desired by our stockholders.

Provisions of Maryland law and our shareholder rights plan may limit the ability of a third party to acquire control of our company.

Certain provisions of the Maryland General Corporation Law (MGCL), may have the effect of inhibiting a third party from making a proposal to acquire us or of impeding a change of control under circumstances that otherwise could provide the holders of shares of our common stock with the opportunity to realize a premium over the then prevailing market price of such shares, including:

- "business combination" provisions that, subject to limitations, prohibit certain business combinations between us and an "interested stockholder" (defined generally as any person who beneficially owns 10% or more of the voting power of our shares or an affiliate thereof) for five years after the most recent date on which the stockholder becomes an interested stockholder, and thereafter imposes special super majority stockholder voting requirements on these combinations;
- "control share" provisions that provide that "control shares" of our company (defined as shares which, when aggregated with other shares controlled by the stockholder, entitle the stockholder to exercise one of three increasing ranges of voting power in electing directors) acquired in a "control share acquisition" (defined as the direct or indirect acquisition of ownership or control of "control shares") have no voting rights except to the extent approved by our stockholders by the affirmative vote of at least two-thirds of all the votes entitled to be cast on the matter, excluding all interested shares; and
- "unsolicited takeover" provisions of Maryland law permit our board of directors, without stockholder approval, to implement a classified board as well as impose other restrictions on the ability of a third party to acquire control.

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We have opted out of the control share provisions of the MGCL pursuant to a provision in our bylaws. However, we may, by amendment to our bylaws, become subject to the control share provisions of the MGCL in the future.

On November 24, 2009, we also extended a shareholder rights plan, commonly known as a poison pill anti-takeover device, through November 30, 2012 to deter hostile or coercive attempts to acquire us. Under the plan, if any person or group acquires more than 20% of our common stock without approval of the board of directors under specified circumstances, our other stockholders have the right to purchase shares of our common stock, or shares of the acquiring company, at a substantial discount to the public market price. This plan makes an acquisition not approved by our board of directors much more costly to a potential acquirer, which may deter a potential acquisition.

You have limited control as a stockholder regarding any changes we make to our policies.

Our board of directors determines our major policies, including our investment objectives, financing, growth and distributions. Our board of directors may amend or revise these and other policies without a vote of our stockholders. This means that our stockholders will have limited control over changes in our policies.

Tax Risks

If we fail to maintain our status as a REIT, our distributions will not be deductible by us, and our income will be subject to U.S. federal taxation, reducing our earnings available for distribution.

We currently qualify as a REIT under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the Tax Code). The requirements for this qualification, however, are complex and require annual distributions to our stockholders tied to our taxable income (irrespective of available cash from operations), quarterly asset tests and diversity of stock ownership rules. If we fail to meet these requirements in the future, our distributions to our stockholders will not be deductible by us and we will have to pay a corporate U.S. federal level tax on our income. This would substantially reduce our cash available to pay distributions to our stockholders. In addition, such a tax liability might cause us to borrow funds, liquidate some of our investments or take other steps, which could negatively affect our results of operations. Moreover, if our REIT status is terminated because of our failure to meet a technical REIT requirement or if we voluntarily revoke our election, we would generally be disqualified from electing treatment as a REIT for the four taxable years following the year in which REIT status is lost.

Even if we maintain our status as a REIT, we may become subject to U.S. federal, state, local or foreign taxes on our income or property reducing our earnings available for distribution.

Even if we maintain our status as a REIT, we may become subject to U.S. federal income taxes and related state taxes. For example, if we have net income from a “prohibited transaction”, that income will be subject to a 100% tax. A “prohibited transaction” is, in general, the sale or other disposition of inventory or property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business. We may not be able to make sufficient distributions to avoid excise taxes applicable to REITs. We may also decide to retain income we earn from the sale or other disposition of our property and pay U.S. federal income tax directly on that income. In that event, our stockholders would be treated as if they earned that income and paid the tax on it directly. However, stockholders that are tax-exempt, such as charities or qualified pension plans, would have no benefit from their deemed payment of that tax liability. In addition, the REIT rules impose various taxes and penalties on transactions with taxable REIT subsidiaries that are determined not to be priced at an arm’s length, and on a REIT that has to avail itself of certain cure provisions in the Tax Code for the failure to meet all of the REIT qualification requirements. We cannot assure you that we will be able to continue to satisfy the REIT requirements, or that it will be in our best interests to continue to do so.

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We may also be subject to state and local taxes on our income or property, either directly or at the level of our operating partnerships or at the level of the other companies through which we indirectly own our assets.

Foreign countries impose taxes on our hotels and our operations within their jurisdictions. We may not fully benefit from a foreign tax credit against our U.S. federal income tax liability for the foreign taxes we pay. As a result, our foreign taxes may reduce our income and available cash flow from our foreign hotels, which, in turn, could reduce our ability to make distributions to our stockholders.

Certain of our entities, including our foreign entities, are subject to corporate income taxes. Consequently, these entities are always subject to potential audit. There can be no assurance that certain tax positions the entities have taken will not be challenged by tax authorities and if the challenge is successful, could result in increased tax expense, which could be material.

If the leases of our hotels to our taxable REIT subsidiaries (Affiliate Leases) are not respected as true leases for federal income tax purposes, we would fail to maintain our status as a REIT.

To continue to qualify as a REIT, we must satisfy two gross income tests, under which specified percentages of our gross income must be certain types of passive income, such as rent. The rent paid pursuant to our Affiliate Leases will only qualify for purposes of the gross income tests if such Affiliate Leases are respected as true leases for U.S. federal income tax purposes and are not treated as service contracts, joint ventures or some other type of arrangement. If our Affiliate Leases are not respected as true leases for U.S. federal income tax purposes, we would fail to qualify as a REIT.

Our taxable REIT subsidiaries (TRSs) are subject to special rules that may result in increased taxes.

The REIT has to pay a 100% penalty tax on certain payments that it receives if the economic arrangements between the REIT and the TRS are not comparable to similar arrangements between unrelated parties. The Internal Revenue Service may successfully assert that the economic arrangements of any of our inter-company transactions, including our Affiliate Leases, are not comparable to similar arrangements between unrelated parties.

We may be required to pay a penalty tax upon the sale of a hotel.

The U.S. federal income tax provisions applicable to REITs provide that any gain realized by a REIT on the sale of property held as inventory or other property held primarily for sale to customers in the ordinary course of business is treated as income from a "prohibited transaction" that is subject to a 100% penalty tax. Under current laws, unless a sale of real property qualifies for a safe harbor, the question of whether the sale of a hotel (or other property) constitutes the sale of property held primarily for sale to customers is generally a question of the facts and circumstances regarding a particular transaction. We may make sales that do not satisfy the requirements of the safe harbors or the Internal Revenue Service may successfully assert that one or more of our sales are prohibited transactions; consequently, we may be required to pay a penalty tax.

Dividends payable by REITs do not qualify for the reduced tax rates applicable to certain dividends.

The maximum federal tax rate for certain dividends payable to domestic stockholders that are individuals, trusts and estates is 15% (through 2010). Dividends payable by REITs, however, are generally not eligible for this reduced rate. Although this legislation does not adversely affect the taxation of REITs or dividends paid by REITs, the more favorable rates applicable to regular qualified corporate dividends could cause investors who are individuals, trusts and estates to perceive investments in REITs to be relatively less competitive than investments in stock of non-REIT corporations that pay dividends, which could adversely affect the comparative value of the stock of REITs, including our common stock.

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We may pay required dividends in the form of common stock.

We are required to distribute 90% of our annual REIT taxable income in order to maintain our REIT status. Under recent guidelines published by the Internal Revenue Service, we may pay a significant portion of required dividends for 2010 and 2011 in the form of additional shares of common stock equal in value up to 90% of the required dividend to our common shareholders. The amount of the dividend would be taxable to shareholders (to the extent the dividend is from earnings and profits), including the value of our stock received, not just the portion of the dividend paid in cash. We expect that as we undertake efforts to conserve cash and enhance our liquidity, future required dividends on our common stock, if any, may be paid in common stock to the fullest extent permitted. There can be no assurance as to when we will cease our efforts to conserve cash and enhance liquidity to an extent we believe positions us to resume the payment of dividends completely or substantially in cash.

ITEM 1B. UNRESOLVED STAFF COMMENTS.

None.

ITEM 2. PROPERTIES.

Offices. We lease our headquarters located at 200 West Madison Street, Suite 1700, Chicago, Illinois 60606.

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Property Overview and Performance. The following table presents certain information related to our hotel properties. All of the hotel properties in the following table relate to our one reportable business segment, hotel ownership.

				Year Ended December 31, 2009				% Change 2009 - 2008	
Hotel	Location	Date Acquired	Number of Rooms	Average Occupancy	Average Daily Rate	RevPAR	Total RevPAR	RevPAR	Total RevPAR
Fee Simple Property Interest									
Westin St. Francis(*)	San Francisco, CA	6/2006	1,195	78.7%	$ 177.49	$139.66	$234.96	(18.5)%	(24.5)%
InterContinental Chicago(1)(*)	Chicago, IL	4/2005	792	76.1%	$ 175.83	$133.84	$220.41	(21.5)%	(18.8)%
Hotel del Coronado(2)	Coronado, CA	1/2006	757	61.2%	$ 327.52	$200.30	$420.90	(22.7)%	(22.7)%
Fairmont Chicago(*)	Chicago, IL	9/2005	687	59.5%	$ 201.54	$119.84	$204.57	(20.1)%	(18.9)%
Fairmont Scottsdale(3)(*)	Scottsdale, AZ	9/2006	649	61.8%	$ 190.10	$117.42	$270.65	(30.0)%	(28.2)%
InterContinental Miami(*)	Miami, FL	4/2005	641	57.9%	$ 170.29	$ 98.54	$174.58	(26.4)%	(23.8)%
Hyatt Regency La Jolla(1)(*)	La Jolla, CA	7/1999	419	71.5%	$ 152.78	$109.17	$211.06	(21.5)%	(18.8)%
Ritz-Carlton Laguna Niguel(*)	Dana Point, CA	7/2006	396	49.4%	$ 344.41	$170.17	$371.28	(28.7)%	(28.7)%
InterContinental Prague(*)	Prague, Czech Republic	8/1998	372	57.6%	$ 203.86	$117.49	$209.11	(30.9)%	(26.9)%
Loews Santa Monica Beach Hotel(4)(*)	Santa Monica, CA	3/1998	342	77.4%	$ 262.88	$203.48	$309.07	(21.1)%	(19.2)%
Ritz-Carlton Half Moon Bay(*)	Half Moon Bay, CA	8/2004	261	58.8%	$ 306.95	$180.45	$480.46	(28.5)%	(23.7)%
Four Seasons Washington, D.C.(*)	Washington, D.C.	3/2006	222	67.9%	$ 509.53	$346.04	$703.89	(2.1)%	5.7%
Four Seasons Punta Mita Resort(*)	Punta Mita, Mexico	2/2001	173	50.1%	$ 707.10	$354.53	$631.21	(36.5)%	(35.4)%
Ground Lease Property Interest									
Marriott Lincolnshire(*)	Lincolnshire, IL	9/1997	389	48.4%	$ 115.09	$ 55.69	$215.87	(27.3)%	(19.0)%
Marriott London Grosvenor Square(*)	London, England	8/2006	237	76.2%	$ 321.10	$244.67	$348.96	(18.2)%	(21.9)%
Leasehold Property Interest									
Marriott Hamburg(5)	Hamburg, Germany	6/2000	278	82.3%	$ 170.87	$140.56	$209.19	(14.5)%	(11.1)%
Marriott Champs Elysees Paris(5)	Paris, France	2/1998	192	78.1%	$ 609.70	$476.06	$572.92	(14.2)%	(16.4)%
Total			8,002	66.2%	$ 239.31	$158.48	$293.28	(22.2)%	(21.8)%

(1) We own a 51% controlling interest in affiliates that own each of these properties.
(2) We have a 45% interest in the joint venture that owns this property, which is subject to a mortgage.
(3) We have a ground lease interest in one land parcel at this property.
(4) We are restricted by agreement from selling this property other than in a transaction that will qualify as a tax deferred exchange and must maintain a specific minimum level of indebtedness encumbering this property until a future date.
(5) These properties were originally acquired on the dates indicated in the table but were subsequently sold to a third party and leased back to us in transactions that are more fully described under “Item 8. Financial Statements and Supplementary Data—8. Operating Lease Agreements”.
(*) These properties are subject to mortgages as more fully described under “Item 8. Financial Statements and

Supplementary Data—9. Indebtedness".

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Principal Terms of Management Agreements. Of the Company's hotel properties, 16 of 17 are subject to management agreements with third party hotel managers and one is subject to a lease agreement with a third party hotel manager. For the management agreements, the principal terms are described below:

- *Base Management Fees* . Our agreements generally provide for the payment of base management fees between 1.25% and 5.00% of the applicable hotel's revenues, as determined in the agreements.
- *Incentive Management Fees*. Our agreements generally provide the opportunity for the hotel manager to earn incentive management fees, which are typically a percentage of a hotel's profit for the year. In certain instances, a level of return to us or performance of the hotel is required before a hotel manager is entitled to an incentive fee. Additionally, notwithstanding the specific formulas for the incentive fee calculations in the agreements, in certain instances, the incentive management fee to be earned by the hotel manager is capped.
- *Terms* . As of December 31, 2009, the remaining terms of the management agreements, not including renewal options, range from five to 27 years and average 15 years. Generally, we do not have the right to exercise renewal options for the agreements. Instead, the term of an agreement either renews automatically, unless the hotel manager provides notice of termination, or is otherwise renewable within the discretion of the hotel manager.
- *Services* . The agreements require the hotel managers to furnish the hotels with certain services, which include on-site management and may include central training, advertising and promotion, national reservations systems, payroll and accounting services and such additional services as needed. We are responsible for payment of the operating expenses related to the hotel.
- *Annual Budget* . The agreements require the hotel manager to prepare and implement annual budgets, subject to our review and approval.
- *Ability to Terminate* . The agreements generally are not subject to early termination by us unless certain conditions exist, including the failure of the hotel manager to satisfy yearly performance-related criteria in 13 of our agreements.
- *Working Capital* . Our agreements typically require us to maintain working capital for the related hotel. We are also responsible for providing funds to meet the cash needs for the hotel operations if at any time the funds available from the hotel operations are insufficient to meet the financial requirements of the hotel.
- *Furniture, Fixtures and Equipment Reserves* . We are required to provide to the hotel manager all of the necessary furniture, fixtures and equipment for the operations of the hotel. Our agreements generally provide that between 4.00% and 5.00% of revenues of the hotel be reserved by the manager or deposited into an escrow account held by us each year.
- *Sale of Hotel* . Generally, our agreements limit our ability to sell, lease or otherwise transfer each hotel unless the transferee is not a competitor of the manager, assumes the management agreement, and meets other specified conditions.

Mortgage Debt Pertaining to Our Properties. For information relating to the mortgage debt pertaining to our properties, please refer to "Item 8. Financial Statements and Supplementary Data—9. Indebtedness—Mortgages and Other Debt Payable."

ITEM 3. LEGAL PROCEEDINGS.

We are not involved in any material litigation nor, to our knowledge, are any material litigation threatened against us, other than routine litigation arising in the ordinary course of business or which is expected to be covered by insurance.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

None.

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PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES.

Our common stock is listed and traded on the New York Stock Exchange (NYSE) under the symbol "BEE". As of February 24 , 2010, the number of registered holders of record of our common stock was 91.

The following table sets forth the high and low sale prices for our common stock as reported on the NYSE composite transaction tape and the per share cash dividends declared on our common stock for the period January 1, 2008 through December 31, 2009.

	2009 Per Share of Common Stock			2008 Per Share of Common Stock		
	Market Price		Dividend	Market Price		Dividend
	High	Low	Paid	High	Low	Paid
First Quarter	$ 2.29	$ 0.61	$ 0.00	$ 16.90	$ 12.94	$ 0.24
Second Quarter	1.78	0.66	0.00	15.68	9.26	0.24
Third Quarter	3.07	0.94	0.00	11.01	6.48	0.24
Fourth Quarter	2.84	1.43	0.00	7.65	0.77	0.00
Year	$ 3.07	$ 0.61	$ 0.00	$ 16.90	$ 0.77	$ 0.72

On November 4, 2008, SHR's board of directors elected to suspend the quarterly dividend to holders of shares of common stock, and, in February 2009, our board of directors elected to suspend the quarterly dividend to holders of shares of our preferred stock. The decision to suspend the payment of dividends on our common and preferred stock was undertaken as a measure to preserve liquidity due to the declining economic environment for hotel operations, no projected taxable distribution requirement and uncertainty regarding operating cash flows for 2010. Based on our current forecasts, we would not be required to make any distributions in 2010 in order to maintain our REIT status through 2010.

We generally intend to distribute each year substantially all of our taxable income (which does not necessarily equal net income as calculated in accordance with generally accepted accounting principles) to our shareholders so as to comply with REIT provisions of the Tax Code. If necessary for REIT qualification purposes, we may need to distribute any taxable income in cash or by a special dividend. Our dividend policy is subject to revision at the discretion of our board of directors. All distributions will be made at the discretion of our board of directors and will depend on our taxable income, our financial condition, our maintenance of REIT status and other factors as our board of directors deems relevant.

For a description of restrictions on the payment of dividends, see "Item 8. Financial Statements and Supplementary Data—9. Indebtedness—Bank Credit Facility."

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Equity Compensation Plan Information

There are 4,200,000 shares of common stock authorized for issuance under our Amended and Restated 2004 Incentive Plan (the Amended Plan). The following table sets forth certain information with respect to securities authorized and available for issuance under the Amended Plan as of December 31, 2009.

	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under the Amended Plan (excluding securities reflected in column a) (c)
Equity compensation plans approved by security holders:			1,416,917
Stock options	885,026	$ 19.22	
Restricted stock units	862,342	N/A	
Equity compensation plans not approved by security holders:	—	N/A	—
Total	1,747,368		1,416,917

Repurchases of Equity Securities

We did not repurchase equity securities during the fourth quarter of 2009.

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ITEM 6. SELECTED FINANCIAL DATA.

The following sets forth our selected consolidated financial and operating information on a historical basis. The following information should be read together with "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and notes thereto, which are included in "Item 8. Financial Statements and Supplementary Data."

	Years Ended December 31,				
	2009(1)	2008(1)(2)	2007(1)(2)	2006(1)(2)	2005(1)(2)
	(In thousands, except per share data)				
Operating Data:					
Revenue:					
Rooms	$ 393,206	$ 507,383	$487,681	$345,327	$166,527
Food and beverage	230,630	310,939	316,068	222,552	110,643
Other hotel operating revenue	95,105	104,680	104,785	69,569	36,629
Lease revenue	4,858	5,387	23,405	20,257	16,787
Total revenues	723,799	928,389	931,939	657,705	330,586
Operating costs and expenses:					
Rooms	110,631	126,804	120,891	87,121	40,023
Food and beverage	170,503	215,683	214,224	155,920	77,552
Other departmental expenses	210,044	238,258	229,052	164,910	87,924
Management fees	26,593	35,920	35,117	23,240	8,434
Other hotel expenses	53,613	58,423	63,363	40,741	18,830
Lease expense	16,971	17,489	15,700	13,682	13,178
Depreciation and amortization	139,243	116,538	99,529	67,596	33,457
Impairment losses and other charges	100,009	328,485	7,372	—	—
Corporate expenses	25,703	26,369	29,767	25,254	20,787
Total operating costs and expenses	853,310	1,163,969	815,015	578,464	300,185
Operating (loss) income	(129,511)	(235,580)	116,924	79,241	30,401
Interest expense	(102,521)	(89,445)	(89,965)	(48,352)	(25,779)
Equity in earnings (losses) of joint ventures	1,718	2,810	8,344	(1,066)	2,818
(Loss) income from continuing operations	(237,116)	(335,327)	104,908	32,179	5,209
(Loss) income from discontinued operations, net of tax	(9,317)	17,841	(36,137)	90,540	32,447
Net (loss) income	(246,433)	(317,486)	68,771	122,719	37,656
Net loss (income) attributable to the noncontrolling interests in SHR's operating partnership	3,129	4,065	(969)	(1,827)	(7,396)
Net income attributable to the noncontrolling interests in consolidated affiliates	(641)	(3,870)	(1,363)	(763)	—
Preferred shareholder dividends	(30,886)	(30,886)	(30,107)	(24,543)	(6,753)
Net (loss) income attributable to SHR common shareholders	(274,831)	(348,177)	36,332	95,586	23,507
(Loss) income from continuing operations attributable to SHR common shareholders per share—basic and diluted	(3.53)	(4.86)	0.96	0.09	(0.09)
Cash flows provided by operating activities	46,638	95,187	174,681	141,206	76,456
Cash dividends declared per common share	—	0.72	0.96	0.92	0.88

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	As of and Years Ended December 31,				
	2009(1)	2008(1)(2)	2007(1)(2)	2006(1)(2)	2005(1)(2)
	(In thousands, except statistical data)				
Balance Sheet Data:					
Total assets	$2,598,143	$2,909,167	$3,365,909	$3,255,709	$1,448,110
Long-term debt obligations	1,648,197	1,672,690	1,633,869	1,557,865	659,380
Total liabilities	2,003,258	2,093,095	2,069,071	1,914,991	861,367
Noncontrolling interests in SHR's operating partnership	2,717	5,330	16,326	21,264	172,174
Noncontrolling interests in consolidated affiliates	23,188	27,203	30,653	10,965	11,616
SHR's shareholders' equity	568,980	783,539	1,249,859	1,308,489	402,953
Statistical Data:					
Number of hotels at the end of the year excluding unconsolidated joint venture hotels	16	18	19	19	15
Number of rooms at the end of the year excluding unconsolidated joint venture hotels	7,245	7,590	8,287	9,321	7,213
Average occupancy rate	66.8%	72.3%	76.0%	74.8%	70.8%

(1) We sold two hotel properties in 2009, one hotel property in 2008, one hotel property in 2007, two hotel properties in 2006, and two hotel properties in 2005. The operations of the sold hotels are included as discontinued operations in the operating data above for all years presented.

(2) The table presents certain selected historical financial data which has been updated to reflect the impact of the retrospective application of new accounting guidance related to noncontrolling interests and convertible debt instruments.

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ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

The following discussion and analysis is based primarily on the consolidated financial statements of Strategic Hotels & Resorts, Inc. and its subsidiaries for the years presented and should be read together with the notes thereto contained in this annual report on Form 10-K. Terms employed herein as defined terms, but without definition, have meanings set forth in the notes to the financial statements (see "Item 8. Financial Statements and Supplementary Data").

Overview

We were incorporated in Maryland in January 2004 to acquire and asset-manage upper upscale and luxury hotels (as defined by Smith Travel Research). Our accounting predecessor, Strategic Hotel Capital, L.L.C. (SHC LLC) was founded in 1997 by Laurence Geller, our president and chief executive officer, Goldman, Sachs & Co.'s Whitehall Fund and others. We made an election to be taxed as a real estate investment trust (REIT) under the Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the Tax Code). On June 29, 2004, we completed our initial public offering (IPO) of our common stock. Prior to the IPO, 21 hotel interests were owned by SHC LLC. Concurrent with and as part of the transactions relating to the IPO, a reverse spin-off distribution to shareholders separated SHC LLC into two companies, a new, privately-held SHC LLC, with interests, at that time, in seven hotels and SHR, a public entity with interests, at that time, in 14 hotels. See "Item 8. Financial Statements and Supplementary Data -1. General" for the hotel interests owned by us as of December 31, 2009.

We operate as a self-administered and self-managed REIT, which means that we are managed by our board of directors and executive officers. A REIT is a legal entity that holds real estate interests and, through payments of dividends to stockholders, is permitted to reduce or avoid federal income taxes at the corporate level. For us to continue to qualify as a REIT, we cannot operate hotels; instead we employ internationally known hotel management companies to operate our hotels for us under management contracts. We conduct our operations through our direct and indirect subsidiaries including our operating partnership, Strategic Hotel Funding, L.L.C. (SH Funding), which currently holds substantially all of our assets. We are the managing member of SH Funding and hold approximately 99% of its membership units as of December 31, 2009. We manage all business aspects of SH Funding, including the sale and purchase of hotels, the investment in these hotels and the financing of SH Funding and its assets.

Throughout this "Management's Discussion and Analysis of Financial Condition and Results of Operations" section, references to "we", "our", "us", and SHR are references to Strategic Hotels & Resorts, Inc. together, except as the context otherwise requires, with its consolidated subsidiaries, including SH Funding (the Company).

When presenting the dollar equivalent amount for any amounts expressed in a foreign currency, the dollar equivalent amount has been computed based on the exchange rate on the date of the transaction or the exchange rate prevailing on December 31, 2009, as applicable, unless otherwise noted.

Outlook

We expect revenue per available room (RevPAR) and occupancy declines to continue through the first part of 2010, with weakness concentrated in the first quarter and the prospects for growth improving in the second half of the year. The lodging industry continues to deal with a weak operating environment hampered by lagging consumer confidence and restrained corporate spending leading to softness in both transient and group demand.

The decline in occupied room nights continued in the fourth quarter of 2009 with losses of transient occupancy concentrated in the highest rated premium segment of the business, which was replaced primarily

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with less expensive discounted business. Corporate demand for group business waned as a result of corporate cost cutting initiatives. For the full year of 2009, occupied room nights declined over 8% with large losses in group room nights offset by a slight increase in transient occupied room nights. Transient room nights increased as a result of a sharp increase in discounted rooms coupled with significant losses in premium room nights.

In most cases, we are in advanced stages of carrying out hotel specific contingency plans designed to reduce costs and maximize efficiency at each hotel. This includes, but is not limited to, adjusting variable labor, eliminating fixed labor, reducing the hours of room service operations and other food and beverage outlets, and reducing, when possible, the implementation of certain brand standards. We believe these efforts have improved our margin performance in prior quarters and we plan to continue aggressively cutting costs as hotel demand deteriorates.

Our hotels have performed favorably against broad luxury hotel competitive metrics with our RevPAR consistently outpacing national luxury measurements.

Factors Affecting Our Results of Operations

Sale of Interests in Hotel Properties.

During 2007 through 2009, we sold the following properties and received net sales proceeds, after proration adjustments related to assets and liabilities of the hotels and closing costs, as shown below:

Property	Disposition Date	Net Sales Proceeds (in millions)
InterContinental Chicago & Hyatt Regency La Jolla(1)	August 31, 2007	$ 111.2
Hyatt Regency New Orleans	December 28, 2007	$ 28.0
Hyatt Regency Phoenix	July 2, 2008	$ 89.6
Four Seasons Mexico City	October 29, 2009	$ 52.2
Renaissance Paris Hotel Le Parc Trocadero	December 21, 2009	$ 50.3

(1) We sold a 49% interest in each of the InterContinental Chicago and Hyatt Regency La Jolla hotels.

Below is a summary of changes in our portfolio that have occurred during the years ended December 31, 2009, 2008 and 2007. The table summarizes the number of hotels and number of rooms, excluding unconsolidated joint ventures:

	2009	2008	2007
Hotels			
Number of hotels, beginning of year	18	19	19
Acquisitions	—	—	1
Dispositions	(2)	(1)	(1)
Number of hotels, end of year	16	18	19
Rooms			
Number of rooms, beginning of year	7,590	8,287	9,321
Acquisitions	—	—	116
Room expansions	11	1	34
Dispositions	(356)	(696)	(1,184)
Rooms converted to other uses	—	(2)	—
Number of rooms, end of year	7,245	7,590	8,287

Total Portfolio Definition. We define our Total Portfolio as properties that we wholly or partially own or lease and whose operations are included in our consolidated operating results. The Total Portfolio excludes all sold properties included in discontinued operations.

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Revenues. Substantially all of our revenue is derived from the operation of our hotels. Specifically, our revenue for the years ended December 31, 2009 and 2008 consisted of:

	Total Portfolio % of Total Revenues	
	2009	2008
Revenues:		
Rooms	54.3%	54.6%
Food and beverage	31.9%	33.5%
Other hotel operating revenue	13.1%	11.3%
	99.3%	99.4%
Lease revenue	0.7%	0.6%
Total revenues	100.0%	100.0%

- ***Rooms revenue .*** Occupancy and average daily rate (ADR) are the major drivers of rooms revenue.
- ***Food and beverage revenue .*** Occupancy, local catering and banquet events are the major drivers of food and beverage revenue.
- ***Other hotel operating revenue .*** Other hotel operating revenue consists primarily of cancellation fees, spa, telephone, parking, golf course, internet access, space rentals, retail and other guest services and is also driven by occupancy.
- ***Lease revenue .*** We sublease our interest in the Marriott Hamburg to a third party and earn annual base rent plus additional rent contingent on the hotel meeting performance thresholds. We subleased our interest in the Paris Marriott to a third party through December 31, 2007. Effective January 1, 2008, we no longer sublease our interest in the Paris Marriott and consolidate the operating results of the hotel in our consolidated statements of operations.

Changes in our revenues are most easily explained by performance indicators that are used in the hotel real estate industry:

- average daily occupancy;
- ADR;
- RevPAR, which is the product of ADR and average daily occupancy, but does not capture food and beverage revenue or other hotel operating revenue such as telephone, parking and other guest services; and
- Total RevPAR, which captures food and beverage and other hotel operating revenue.

We generate a significant portion of our revenue from two broad categories of customers, transient and group.

Our transient customers include individual or group business and leisure travelers that occupy less than 10 rooms per night. Transient customers accounted for approximately 61.1% and 54.1% of the rooms sold during the years ended December 31, 2009 and 2008, respectively. We divide our transient customers into the following subcategories:

- Transient Leisure – This category generates the highest room rates and includes travelers that receive published rates offered to the general public that do not have access to negotiated or discounted rates.
- Transient Negotiated – This category includes travelers, who are typically associated with companies and organizations that generate high volumes of business, that receive negotiated rates that are lower than the published rates offered to the general public.

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Our group customers include groups of 10 or more individuals that occupy 10 or more rooms per night. Group customers accounted for approximately 38.9% and 45.9% of the rooms sold during the years ended December 31, 2009 and 2008, respectively. We divide our group customers into the following subcategories:

- Group Association – This category includes group bookings related to national and regional association meetings and conventions.
- Group Corporate – This category includes group bookings related to corporate business.
- Group Other – This category generally includes group bookings related to social, military, education, religious, fraternal and youth and amateur sports teams.

Fluctuations in revenues, which, for our domestic hotels, tend to correlate with changes in the U.S. GDP, are driven largely by general economic and local market conditions as well as general health and safety concerns, which in turn affect levels of business and leisure travel. Guest demographics also affect our revenues. Due to the current economic environment, demand for hotel rooms has decreased significantly when compared to 2008. Lower occupancy at the hotels has put downward pressure on ADR, therefore contributing to lower rooms revenue. Premium transient and group business has been replaced with less expensive discounted business. The significant decline in percentage of group business guests, which consume larger relative amounts of food and beverage and other services, are contributing to lower total revenue.

In addition to economic conditions, supply is another important factor that can affect revenues. Room rates and occupancy tend to fall when supply increases unless the supply growth is offset by an equal or greater increase in demand. One reason why we target upper upscale and luxury hotels in select urban and resort markets, including major business centers and leisure destinations, is because they tend to be in locations that have greater supply constraints such as lack of available land, high development costs, long development and entitlement lead times and brand trade area restrictions that prevent the addition of a certain brand or brands in close proximity. Nevertheless, our hotels are not insulated from competitive pressures and our hotel operators will lower room rates to compete more aggressively for guests in periods when occupancy declines.

For purposes of calculating our Total Portfolio RevPAR for 2009 and 2008, we exclude unconsolidated joint ventures and the Marriott Hamburg because we sublease the operations of the hotel and only record lease revenue. For purposes of calculating Total Portfolio RevPAR in 2007, we excluded unconsolidated joint ventures and the Marriott Hamburg and the Paris Marriott hotels because we subleased the operations of these hotels and only recorded lease revenue. These methods for calculating RevPAR each period are consistently applied through the remainder of this "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and should be taken into consideration wherever RevPAR results are disclosed.

Hotel Operating Expenses. Our hotel operating expenses for the years ended December 31, 2009 and 2008 consisted of the costs and expenses to provide hotel services, including:

	Total Portfolio % of Total Hotel Operating Expenses	
	2009	2008
Hotel Operating Expenses:		
Rooms	19.4%	18.8%
Food and beverage	29.8%	31.9%
Other departmental expenses	36.8%	35.3%
Management fees	4.6%	5.3%
Other hotel expenses	9.4%	8.7%
Total hotel operating expenses	100.0%	100.0%

- ***Rooms expense.*** Occupancy is a major driver of rooms expense, which has a significant correlation with rooms revenue.

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- ***Food and beverage expense.*** Occupancy, local catering and banquet events are the major drivers of food and beverage expense, which has a significant correlation with food and beverage revenue.
- ***Other departmental expenses*** . Other departmental expenses consist of general and administrative, marketing, repairs and maintenance, utilities and expenses related to earning other operating revenue.
- ***Management fees.*** We pay base and incentive management fees to our hotel operators. Base management fees are computed as a percentage of revenue. Incentive management fees are incurred when operating profits exceed levels prescribed in our management agreements.
- ***Other hotel expenses*** . Other hotel expenses consist primarily of insurance costs and property taxes.

Salaries, wages and related benefits are included within the categories of hotel operating expenses described above and represented approximately 47.4% and 46.4% of the total hotel operating expenses for the years ended December 31, 2009 and 2008, respectively.

Most categories of variable operating expenses, such as utilities and certain labor such as housekeeping, fluctuate with changes in occupancy. Increases in RevPAR attributable to increases in occupancy are accompanied by increases in most categories of variable operating costs and expenses while increases in RevPAR attributable to increases in ADR typically only result in increases in limited categories of operating costs and expenses, such as management fees charged by our operators, which are based on hotel revenues. Thus, changes in ADR have a more significant impact on operating margins.

Lease expense. As a result of sale and leaseback transactions applicable to the Paris Marriott and Marriott Hamburg hotels, we recorded lease expense in our statements of operations. In conjunction with the sale and leaseback transactions, we also recorded a deferred gain. Net lease expense includes an offset for the amortization of the deferred gain of $4.9 million, $5.2 million, and $4.8 million for the years ended December 31, 2009, 2008 and 2007, respectively.

Impairment losses . Overall weakness in the U.S. economy, particularly turmoil in the credit markets, weakness in the housing market, and volatile energy and commodity costs, have resulted in considerable negative pressure on both consumer and business spending. As a result, lodging demand, which is primarily driven by the U.S. GDP growth, business investment and employment growth, weakened. We determined that these conditions have contributed to our low stock price and reduced market capitalization relative to the book value of our equity, which are indicators of potential impairment of goodwill and long-lived assets. Based on our evaluation, we recorded an estimated non-cash goodwill impairment charge of $41.9 million during the year ended December 31, 2009.

An impairment test of long-lived assets was performed for two Mexican development sites at December 31, 2009 based on uncertainties surrounding the development of this land in a manner consistent with our original plan, resulting in an impairment charge of $23.2 million. An impairment test of long-lived assets was performed for the Renaissance Paris Hotel Le Parc Trocadero (Renaissance Paris) at September 30, 2009 based on a change in the anticipated holding period of the hotel, resulting in an impairment charge of $30.8 million.

During the year ended December 31, 2009, we recorded a $26.5 million impairment charge due to an other-than-temporary decline in value of our 45% investments in SHC KSL Partners, LP (Hotel Venture), the owner of the Hotel del Coronado in San Diego, California, and HdC North Beach Development, LLLP (North Beach Venture).

The estimates and assumptions made in assessing fair value of the reporting units, which for us is each of our hotel properties, and the valuation of the underlying assets and liabilities are inherently subject to significant uncertainties. In addition, continued deterioration in economic and market conditions present a potential for

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additional impairment charges on our hotel properties subsequent to December 31, 2009. Any such adjustment could be material, but will be non-cash. See "—Critical Accounting Policies" for further detail regarding our analysis.

Corporate expenses. Corporate level expenses include payroll and related costs, professional fees, travel expenses and office rent.

Recent Events . We expect that the following events will cause our future results of operations to differ from our historical performance:

Acceleration of Restricted Stock Units (RSUs). During the first quarter of 2009, the compensation committee approved the acceleration of vesting of certain RSUs issued prior to December 31, 2008. Effective March 31, 2009, the vesting of approximately 295,000 shares was accelerated resulting in a one-time charge of $3.6 million in the first quarter of 2009 to recognize the remaining unamortized deferred compensation costs related to these vested RSUs.

Suspension of Stock Dividends . On November 4, 2008, the board of directors elected to suspend the quarterly dividend to holders of shares of our common stock. On February 24, 2009, the board of directors elected to suspend the quarterly dividend to holders of shares of our preferred stock.

Amendment to Bank Credit Facility. In February 2009, we entered into the third amendment to our bank credit facility. This amendment, among other things, provides us with additional flexibility with respect to our financial covenants and related financial calculations, reduces the facility size from $500.0 million to $400.0 million and increases the interest rate from the London Interbank Offered Rate (LIBOR) plus a margin of 0.80% to 1.50% to LIBOR plus a margin of 3.75%. See "—Liquidity and Capital Resources" for further detail regarding the third amendment to our bank credit facility.

Sale of Interests in Hotel Properties. In 2009, we sold the Four Seasons Mexico City and the Renaissance Paris hotels for net sales proceeds of $52.2 million and $50.3 million, respectively.

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Comparison of Year Ended December 31, 2009 to Year Ended December 31, 2008

Operating Results

The following table presents the operating results for the years ended December 31, 2009 and 2008, including the amount and percentage change in these results between the two periods of our Total Portfolio (in thousands, except operating data).

	Total Portfolio			
	2009	2008	Change ($)	Change (%)
Revenues:				
Rooms	$ 393,206	$ 507,383	$(114,177)	22.5%
Food and beverage	230,630	310,939	(80,309)	25.8%
Other hotel operating revenue	95,105	104,680	(9,575)	9.1%
	718,941	923,002	(204,061)	22.1%
Lease revenue	4,858	5,387	(529)	9.8%
Total revenues	723,799	928,389	(204,590)	22.0%
Operating Costs and Expenses:				
Hotel operating expenses	571,384	675,088	(103,704)	15.4%
Lease expense	16,971	17,489	(518)	3.0%
Depreciation and amortization	139,243	116,538	22,705	19.5%
Impairment losses and other charges	100,009	328,485	(228,476)	69.6%
Corporate expenses	25,703	26,369	(666)	2.5%
Total operating costs and expenses	853,310	1,163,969	(310,659)	26.7%
Operating loss	(129,511)	(235,580)	106,069	45.0%
Interest expense, net	(101,783)	(87,649)	(14,134)	16.1%
Loss on early extinguishment of debt	(883)	—	(883)	100.0%
Equity in earnings of joint ventures	1,718	2,810	(1,092)	38.9%
Foreign currency exchange loss	(2,119)	(1,113)	(1,006)	90.4%
Other expenses, net	(609)	(690)	81	11.7%
Loss before income taxes, distributions in excess of noncontrolling interest capital, loss on sale of noncontrolling interests in hotel properties and discontinued operations	(233,187)	(322,222)	89,035	27.6%
Income tax expense	(3,929)	(10,560)	6,631	62.8%
Distributions in excess of noncontrolling interest capital	—	(2,499)	2,499	100.0%
Loss before loss on sale of noncontrolling interests in hotel properties and discontinued operations	(237,116)	(335,281)	98,165	29.3%
Loss on sale of noncontrolling interests in hotel properties	—	(46)	46	100.0%
Loss from continuing operations	(237,116)	(335,327)	98,211	29.3%
(Loss) income from discontinued operations, net of tax	(9,317)	17,841	(27,158)	152.2%
Net loss	(246,433)	(317,486)	71,053	22.4%
Net loss attributable to the noncontrolling interests in SHR's operating partnership	3,129	4,065	(936)	23.0%
Net income attributable to the noncontrolling interests in consolidated affiliates	(641)	(3,870)	3,229	83.4%
Net loss attributable to SHR	$(243,945)	$ (317,291)	$ 73,346	23.1%
Operating Data(1):				
Number of hotels	16	16		
Number of rooms	7,245	7,234		

(1) Operating data includes leased properties and excludes unconsolidated joint ventures and properties included in discontinued operations.

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We sold the Four Seasons Mexico City and Renaissance Paris hotels during the fourth quarter of 2009. We sold the Hyatt Regency Phoenix hotel during the third quarter of 2008. The results of operations for these sold hotels are included in (loss) income from discontinued operations, net of tax for the years ended December 31, 2009 and 2008.

Rooms . Rooms revenue decreased $114.2 million, or 22.5%, for the year ended December 31, 2009 from the year ended December 31, 2008. RevPAR for the year ended December 31, 2009 decreased by 22.3% from the year ended December 21, 2008. The components of RevPAR from our Total Portfolio for the years ended December 31, 2009 and 2008 are summarized as follows:

	Years Ended December 31,	
	2009	2008
Occupancy	66.13%	72.11%
ADR	$ 233.84	$ 276.17
RevPAR	$ 154.65	$ 199.15

When comparing the same period from prior year, rooms revenue decreased across our portfolio of hotels. The reduction in rooms revenue was the result of declines in both occupancy and ADR. Corporate spending on travel has decreased as a result of corporate cost cutting initiatives and the negative perception of staying at luxury hotels. In addition, consumer spending on travel has decreased significantly due to the current economic downturn. Lower occupancy at the hotels has put downward pressure on ADR, and premium transient and group business has been replaced by less expensive discount business. The majority of our portfolio properties incurred significant declines in RevPAR ranging from 20%-30%.

Food and Beverage. Food and beverage revenue decreased $80.3 million, or 25.8%, for the year ended December 31, 2009 from the year ended December 31, 2008. Consistent with the decrease in rooms revenue, food and beverage revenue decreased across our entire portfolio of hotels, except at the Four Seasons Washington, D.C. hotel. The primary driver of the food and beverage revenue decrease was the decline in occupancy at the hotels, in particular, a decline in group bookings, which typically have significant levels of spending on food and beverage. The decrease in revenue was partially offset by increases at the Four Seasons Washington, D.C. hotel, which opened a new restaurant in the first quarter of 2009 and recovered business that was displaced during the renovation of the hotel in 2008.

Other Hotel Operating Revenue. For the Total Portfolio, other hotel operating revenue decreased $9.6 million, or 9.1%, for the year ended December 31, 2009 from the year ended December 31, 2008. The decline in occupancy at the hotels has resulted in overall decreases in ancillary revenues at the hotels, including spa, retail and telephone revenues. In addition, there was a decrease in fees earned from the villa rental program at the Four Seasons Punta Mita Resort due to the weak economy and the swine flu outbreak. These decreases were partially offset by a $6.2 million increase in cancellation fees received primarily at the Fairmont Scottsdale, Ritz-Carlton Half Moon Bay, Four Seasons Punta Mita and Ritz-Carlton Laguna Niguel hotels.

Lease Revenue. Lease revenue decreased $0.5 million, or 9.8%, for the year ended December 31, 2009 from the year ended December 31, 2008. The decrease in lease revenue is due to a decline in ADR at the Marriott Hamburg due to lower demand in the market.

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Hotel Operating Expenses. The following table presents the components of our hotel operating expenses for the years ended December 31, 2009 and 2008, including the amount and percentage changes in these expenses between the two years (in thousands):

	Total Portfolio			
	2009	2008	Change($)	Change (%)
Hotel operating expenses:				
Rooms	$110,631	$126,804	$ (16,173)	12.8%
Food and beverage	170,503	215,683	(45,180)	20.9%
Other departmental expenses	210,044	238,258	(28,214)	11.8%
Management fees	26,593	35,920	(9,327)	26.0%
Other hotel expenses	53,613	58,423	(4,810)	8.2%
Total hotel operating expenses	$571,384	$675,088	$(103,704)	15.4%

Hotel operating expenses decreased $103.7 million, or 15.4%. Rooms, food and beverage, and other departmental expenses decreased due to a combination of a decline in occupancy at the hotels, which reduced variable costs, including a $17.3 million decrease in food and beverage costs and a $8.2 million decrease in credit card and travel agent commissions, and the successful implementation of our fixed-cost reduction initiative, which included a $42.6 million decrease in payroll due to lower headcount totals. A modification of the license and service agreement of a restaurant operator at the Westin St. Francis hotel contributed to the decrease in both the food and beverage and payroll costs. The $9.3 million decrease in management fee expense includes a decrease in base management fees, which correlates with the overall decrease in revenue at the hotels, and a decrease in the incentive management fees, which decreased based on declines in the profitability at the hotels.

Depreciation and Amortization. Depreciation and amortization increased $22.7 million, or 19.5%, for the year ended December 31, 2009 when compared to year ended December 31, 2008. The increase is due to capital projects being placed in service during late 2008 through 2009. Major projects were placed in service at the Marriott London Grosvenor Square, the Fairmont Scottsdale, the Westin St. Francis, the Four Seasons Washington, D.C., and the Paris Marriott.

Impairment Losses and Other Charges. During the year ended December 31, 2009, we recorded a non-cash goodwill impairment charge of $41.9 million. The charge related to the Four Seasons Washington, D.C. ($23.9 million), Ritz-Carlton Half Moon Bay ($15.5 million) and Marriott London Grosvenor Square ($2.5 million) hotels. We recorded a long-lived asset impairment charge of $23.2 million related to two Mexican development sites based on uncertainties surrounding the development of this land in a manner consistent with our original plan. We also recorded an impairment charge of $26.5 million related to an other-than-temporary decline in value of our investment in the Hotel and North Beach Ventures.

During the year ended December 31, 2009, we abandoned several capital projects due to unfavorable market conditions and recorded a charge of approximately $8.3 million to write off capitalized costs and deposits related to these projects. For the year ended December 31, 2009, we also recorded a charge of $0.2 million to write off our investment in Luxury Leisure Properties International, L.L.C. (LLPI). See “Item 8. Financial Statements and Supplementary Data—6. Investment In Joint Ventures” for a description of LLPI. Our interest in the LLPI venture was redeemed in May 2009.

During the year ended December 31, 2008, we recorded a non-cash impairment charge that consisted of $284.1 million of goodwill, $0.6 million of other intangible assets, and $1.0 million of investment in joint ventures. The charges related to the Ritz-Carlton Laguna Niguel ($61.5 million), Westin St. Francis ($57.1 million), Fairmont Scottsdale ($50.7 million) Marriott London Grosvenor Square ($49.6 million), the InterContinental Prague ($49.4 million), the Four Seasons Washington, D.C. ($16.4 million) and our investment in the Residence Club Punta Mita (RCPM) ($1.0 million).

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We also recorded a charge of approximately $35.7 million during the year ended December 31, 2008 related to abandoning our planned purchase of an interest in a mixed-use building, the Aqua Building. The charge included the loss of our $28.0 million deposit in the form of a letter of credit that secured the contract and approximately $7.7 million in planning and development costs. Additionally, we abandoned several capital projects at certain of our properties due to unfavorable market conditions and recorded a charge of approximately $7.1 million to write off capitalized costs related to these projects.

Corporate Expenses. Corporate expenses decreased $0.7 million, or 2.5%, for the year ended December 31, 2009 when compared to the same period in 2008. These expenses consist primarily of payroll and related costs, professional fees, travel expenses and office rent. The overall decrease in corporate expenses is attributable to a decrease in professional fees and a decrease in costs related to terminated transactions, partially offset by an increase related to the vesting acceleration of certain RSUs issued prior to December 31, 2008.

Interest Expense, Net. The $14.1 million, or 16.1%, increase in interest expense, net for the year ended December 31, 2009 when compared to the year ended December 31, 2008 was primarily due to:

- a $6.9 million decrease in capitalized interest,
- a $2.6 million increase attributable to higher average borrowings,
- a $2.6 million increase in the amortization of deferred financing costs,
- a $1.1 million decrease in interest income, and
- a $0.9 million increase due to the net impact of an increase in amortization of interest rate swap costs offset by lower average interest rates.

The components of interest expense, net for the years ended December 31, 2009 and 2008 are summarized as follows (in thousands):

	Years Ended December 31,	
	2009	2008
Mortgages and other debt	$ (55,557)	$(77,423)
Bank credit facility	(10,998)	(6,211)
Exchangeable Notes	(6,311)	(6,265)
Amortization of Exchangeable Notes discount	(4,296)	(4,141)
Amortization of deferred financing costs	(6,693)	(4,051)
Amortization of interest rate swap costs	(20,389)	—
Interest income	738	1,796
Capitalized interest	1,723	8,646
Total interest expense, net	$(101,783)	$(87,649)

The weighted average debt outstanding for the years ended December 31, 2009 and 2008 amounted to $1.71 billion and $1.66 billion, respectively, and the weighted average interest rate for each of the years ended December 31, 2009 and 2008, including the effect of interest rate swaps, was 5.7%. At December 31, 2009, including the effect of interest rate swaps, 14.0% of our total debt had variable interest rates and 86.0% had fixed interest rates.

Loss on Early Extinguishment of Debt. During the first quarter of 2009, we amended the terms of our bank credit facility and wrote off $0.9 million of deferred financing costs.

Equity in Earnings of Joint Ventures. The following tables present equity in earnings and certain components included in the calculation of equity in earnings resulting from our unconsolidated joint ventures.

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Year ended December 31, 2009 (in thousands):

	Hotel/North Beach Ventures	RCPM	BuyEfficient (1)	Total
Equity in earnings	$ 936	$ 254	$ 528	$1,718
Depreciation	7,736	128	—	7,864
Interest expense	7,799	104	—	7,903

Income tax expense

82 86 — 168

Year ended December 31, 2008 (in thousands):

	Hotel/North Beach Ventures	RCPM	BuyEfficient	LLPI	Total
Equity in earnings (losses)	$ 2,177	$ 988	$ 239	$(594)	$ 2,810
Depreciation	7,379	—	—	—	7,379
Interest expense	15,204	178	—	—	15,382
Income tax (benefit) expense	(157)	381	—	—	224

(1) See "Item 8. Financial Statements and Supplementary Data—6. Investment In Joint Venutures" for a description of BuyEfficient.

We recorded $1.7 million of equity in earnings during the year ended December 31, 2009, which is a $1.1 million decrease from the $2.8 million equity in earnings recorded during the year ended December 31, 2008. The change was primarily due to a decrease in operating performance related to the Hotel Del Coronado and the RCPM, partially offset by a decrease in interest expense at the Hotel Venture, which was the result of lower interest rates.

Foreign Currency Exchange Loss. We recorded a foreign currency exchange loss of $2.1 million during the year ended December 31, 2009, which is a $1.0 million increase from the $1.1 million foreign currency exchange loss recorded in the same period in the prior year. The change was primarily related to changing foreign exchange rates related to Euro-denominated loans associated with the InterContinental Prague hotel and working capital at certain foreign hotel properties.

Income Tax Expense. Income tax expense decreased $6.6 million during the year ended December 31, 2009 when compared to the year ended December 31, 2008. The decrease in the income tax expense is primarily attributable to decreases in earnings at our various U.S. domestic and foreign properties.

Distributions in Excess of Noncontrolling Interest Capital. We made a distribution to our noncontrolling interest partner in excess of the noncontrolling interest partners' capital account in the amount of $2.5 million during the year ended December 31, 2008. On January 1, 2009, we adopted new accounting guidance related to noncontrolling interests in consolidated financial statements. The adoption of this new guidance requires any future distributions that exceed a noncontrolling interest partner's capital balance to be recorded as a deficit in the noncontrolling interest balance and no longer reflected in the consolidated statements of operations.

(Loss)Income from Discontinued Operations, Net of Tax . We sold the Four Seasons Mexico City and Renaissance Paris hotels during the fourth quarter of 2009 and the Hyatt Regency Phoenix hotel during the third quarter of 2008. The results of operations of these hotels were reclassified as discontinued operations for the periods presented. (Loss) income from discontinued operations amounted to $9.3 million in loss and $17.8 million in income for the years ended December 31, 2009 and 2008, respectively.

The loss from discontinued operations for the year ended December 31, 2009 primarily consisted of the operating results of the Four Seasons Mexico City and the Renaissance Paris hotels, which included a non-cash

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long-lived asset impairment charge of $30.8 million related to the Renaissance Paris hotel, offset by a $6.5 million gain recognized on the sale of the Four Seasons Mexico City hotel and a $11.7 million gain recognized on the sale of the Renaissance Paris hotel.

The $17.8 million income from discontinued operations for the year ended December 31, 2008 primarily consisted of a $37.1 million gain recognized on the sale of the Hyatt Regency Phoenix hotel and a $0.4 million gain recognized on the sale of the Hyatt Regency New Orleans hotel as well as the operating results of the Four Seasons Mexico City and Hyatt Regency Phoenix hotels, partially offset by the operating results of the Renaissance Paris, which included a non-cash goodwill impairment charge of $33.3 million.

Net Loss Attributable to the Noncontrolling Interests in SHR's Operating Partnership. We record net loss or income attributable to noncontrolling interest in SHR's operating partnership based on the percentage of SH Funding we do not own. Net loss attributable to noncontrolling interests in SHR's operating partnership decreased by $0.9 million when compared to prior year. This change was due to the decrease in net loss recognized during the year ended December 31, 2009 when compared to the year ended December 31, 2008. Our ownership percentage of SH Funding did not change.

Net Income Attributable to the Noncontrolling Interests in Consolidated Affiliates. We record net loss or income attributable to noncontrolling interests in consolidated affiliates for the non-ownership interests in hotels that are partially owned by us. Net income attributable to noncontrolling interests in consolidated affiliates decreased by $3.2 million for the year ended December 31, 2009 when compared to the same period in the prior year due to lower net income of our consolidated affiliates.

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Comparison of Year Ended December 31, 2008 to Year Ended December 31, 2007

Operating Results

The following table presents the operating results for the years ended December 31, 2008 and 2007, including the amount and percentage change in these results between the two periods of our Total Portfolio (in thousands, except operating data).

	Total Portfolio			
	2008	2007	Change ($)	Change (%)
Revenues:				
Rooms	$ 507,383	$487,681	$ 19,702	4.0%
Food and beverage	310,939	316,068	(5,129)	1.6%
Other hotel operating revenue	104,680	104,785	(105)	0.1%
	923,002	908,534	14,468	1.6%
Lease revenue	5,387	23,405	(18,018)	77.0%
Total revenues	928,389	931,939	(3,550)	0.4%
Operating Costs and Expenses:				
Hotel operating expenses	675,088	662,647	12,441	1.9%
Lease expense	17,489	15,700	1,789	11.4%
Depreciation and amortization	116,538	99,529	17,009	17.1%
Impairment losses and other charges	328,485	7,372	321,113	4,355.8%
Corporate expenses	26,369	29,767	(3,398)	11.4%
Total operating costs and expenses	1,163,969	815,015	348,954	42.8%
Operating (loss) income	(235,580)	116,924	(352,504)	301.5%
Interest expense, net	(87,649)	(87,370)	(279)	0.3%
Loss on early extinguishment of debt	—	(7,845)	7,845	100.0%
Equity in earnings of joint ventures	2,810	8,344	(5,534)	66.3%
Foreign currency exchange loss	(1,113)	(3,501)	2,388	68.2%
Other expenses, net	(690)	(201)	(489)	243.3%
(Loss) income before income taxes, distributions in excess of noncontrolling interest capital, (loss) gain on sale of noncontrolling interests in hotel properties and discontinued operations	(322,222)	26,351	(348,573)	1,322.8%
Income tax expense	(10,560)	(7,205)	(3,355)	46.6%
Distributions in excess of noncontrolling interest capital	(2,499)	—	(2,499)	100.0%
(Loss) income before (loss) gain on sale of noncontrolling interests in hotel properties and discontinued operations	(335,281)	19,146	(354,427)	1,851.2%
(Loss) gain on sale of noncontrolling interests in hotel properties	(46)	85,762	(85,808)	100.1%
(Loss) income from continuing operations	(335,327)	104,908	(440,235)	419.6%
Income (loss) from discontinued operations, net of tax	17,841	(36,137)	53,978	149.4%
Net (loss) income	(317,486)	68,771	(386,257)	561.7%
Net loss (income) attributable to the noncontrolling interests in SHR's operating partnership	4,065	(969)	5,034	519.5%
Net income attributable to the noncontrolling interests in consolidated affiliates	(3,870)	(1,363)	(2,507)	183.9%
Net (loss) income attributable to SHR	$ (317,291)	$ 66,439	$(383,730)	577.6%
Operating Data(1):				
Number of hotels	16	16		
Number of rooms	7,234	7,235		

(1) Operating data includes leased properties and excludes unconsolidated joint ventures and properties included in discontinued operations.

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We sold the Four Seasons Mexico City and Renaissance Paris hotels during the fourth quarter of 2009, the Hyatt Regency Phoenix hotel during the third quarter of 2008, and the Hyatt Regency New Orleans hotel during the fourth quarter of 2007. The results of operations for these sold hotels are included in income (loss) from discontinued operations, net of tax for the years ended December 31, 2008 and 2007.

Rooms . Rooms revenue increased $19.7 million, or 4.0%. RevPAR for the year ended December 31, 2008 increased by 0.7% from the year ended December 31, 2007. The components of RevPAR for the years ended December 31, 2008 and 2007 are summarized as follows:

	Years Ended December 31,	
	2008	2007
Occupancy	72.11%	76.28%
ADR	$ 276.17	$ 259.30
RevPAR	$ 199.15	$ 197.78

The primary driver of the increase in rooms revenue was the consolidation of the Paris Marriott operations on January 1, 2008, which generated $39.0 million of rooms revenue during the year ended December 31, 2008. The remaining properties realized a $19.3 million decrease in rooms revenue. This decrease was driven mainly by RevPAR declines at the Marriott Lincolnshire (13.7%), which saw a drop in group demand due to increased competition coupled with a discounting of transient room rates, at the Marriott London Grosvenor Square (11.9%), which experienced displacement from room renovations earlier in the year as well as foreign currency translation, and at the Fairmont Chicago (10.2%), which experienced displacement from renovations during the first half of 2008.

Food and Beverage. Food and beverage revenue decreased by $5.1 million, or 1.6%. Food and beverage revenue for all properties, excluding the Paris Marriott, decreased by $12.9 million due to a shifting of the mix of business from group to transient at several of our hotels. In addition, lower overall occupancy has resulted in decreases in ancillary revenues such as food and beverage. This decrease was partially offset by the consolidation of the Paris Marriott in 2008, which generated food and beverage revenue of $7.8 million.

Lease Revenue. Lease revenue decreased $18.0 million, or 77.0%. The decrease in lease revenue was primarily related to the Paris Marriott. Effective January 1, 2008, we no longer sublease the operations of the Paris Marriott to a third party and no longer record lease revenue. We now record the operating results of the Paris Marriott in our consolidated statement of operations, including operating revenues and expenses.

Hotel Operating Expenses. The following table presents the components of our hotel operating expenses for the years ended December 31, 2008 and 2007, including the amount and percentage changes in these expenses between the two periods (in thousands):

	Total Portfolio			
	2008	2007	Change ($)	Change (%)
Hotel operating expenses:				
Rooms	$126,804	$120,891	$ 5,913	4.9%
Food and beverage	215,683	214,224	1,459	0.7%
Other departmental expenses	238,258	229,052	9,206	4.0%
Management fees	35,920	35,117	803	2.3%
Other hotel expenses	58,423	63,363	(4,940)	7.8%
Total hotel operating expenses	$675,088	$662,647	$12,441	1.9%

Hotel operating expenses increased $12.4 million, or 1.9%. Approximately $24.0 million of the increase in hotel operating expenses related to the consolidation of the Paris Marriott operations. For the remainder of the

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properties, hotel operating expenses decreased $11.6 million, which mainly consisted of declines in insurance expense of $4.0 million due to lower premiums. In addition, in the prior year, we wrote off $1.2 million of deferred costs related to a condominium-hotel project that was delayed indefinitely at the Fairmont Chicago, with no similar write-off during 2008.

Depreciation and Amortization. Depreciation and amortization increased $17.0 million, or 17.1%, for the year ended December 31, 2008 when compared to the year ended December 31, 2007. Approximately $0.9 million of the increase related to depreciation on corporate assets, which increased when the corporate office relocated in September 2007. The remainder of the increase in depreciation and amortization is primarily due to capital projects being placed in service at the individual hotels.

Impairment Losses and Other Charges. During the year ended December 31, 2008, we recorded a non-cash impairment charge that consisted of $284.1 million of goodwill, $0.6 million of other intangible assets, and $1.0 million of investment in joint ventures. The charges related to the Ritz-Carlton Laguna Niguel ($61.5 million), Westin St. Francis ($57.1 million), Fairmont Scottsdale ($50.7 million) Marriott London Grosvenor Square ($49.6 million), the InterContinental Prague ($49.4 million), the Four Seasons Washington, D.C. ($16.4 million) and our investment in RCPM ($1.0 million).

We also recorded a charge of approximately $35.7 million during the year ended December 31, 2008 related to abandoning our planned purchase of an interest in a mixed-use building, the Aqua Building. The charge included the loss of our $28.0 million deposit in the form of a letter of credit that secured the contract and approximately $7.7 million in planning and development costs. Additionally, we abandoned several capital projects at certain of our properties due to unfavorable market conditions and recorded a charge of approximately $7.1 million to write off capitalized costs related to these projects.

During the year ended December 31, 2007, we recorded a charge of $7.4 million to write off previously deferred costs related to our decision to abandon the planned public listing of our European hotel assets.

Corporate Expenses. Corporate expenses decreased $3.4 million, or 11.4% for the year ended December 31, 2008 when compared to the same period in 2007. These expenses consist primarily of payroll and related costs, professional fees, travel expenses and office rent. The overall decrease in corporate expenses is primarily attributable to:

- a $2.2 million decrease in payroll and related costs primarily due to decreases in bonus expenses partially offset by increase in severance costs,
- a $0.9 million decrease in travel and entertainment and recruiting expenses, and
- a $0.5 million decrease in office expenses, partially offset by
- a $0.3 million increase in professional fees.

Interest Expense, Net. The $0.3 million, or 0.3%, increase in interest expense, net for the year ended December 31, 2008 when compared to the year ended December 31, 2007 was primarily due to:

- a $5.8 million increase attributable to higher average borrowings and
- an $0.8 million decrease in interest income, partially offset by
- a $3.0 million decrease due to lower average rates,
- a $2.7 million increase in capitalized interest, and
- a $0.6 million decrease in amortization.

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The components of interest expense, net for the years ended December 31, 2008 and 2007 are summarized as follows (in thousands):

	Years Ended December 31,	
	2008	2007
Mortgages and other debt	$ (77,423)	$ (74,590)
Bank credit facility	(6,211)	(9,107)
Exchangeable Notes	(6,265)	(4,646)
Amortization of Exchangeable Notes discount	(4,141)	(2,893)
Amortization of deferred financing costs	(4,051)	(4,634)
Interest income	1,796	2,595
Capitalized interest	8,646	5,905
Total interest expense, net	$ (87,649)	$ (87,370)

The weighted average debt outstanding for the years ended December 31, 2008 and 2007 amounted to $1.7 billion and $1.6 billion, respectively, and the weighted average interest rates for the years ended December 31, 2008 and 2007, including the effect of interest rate swaps, were 5.7% and 5.9%, respectively. At December 31, 2008, including the effect of interest rate swaps, 15.4% of our total debt had variable interest rates and 84.6% had fixed interest rates.

Loss on Early Extinguishment of Debt. There was a loss of early extinguishment of debt of $7.8 million for the year ended December 31, 2007. Approximately $3.5 million of the loss was driven by costs related to the defeasance of a fixed rate loan partially secured by the Hyatt Regency La Jolla hotel on August 23, 2007. Approximately $3.0 million of the balance included the prepayment premium and the write-off of unamortized deferred financing costs related to the March 9, 2007 repayment of a floating rate loan portfolio secured by six hotel properties. Another $0.8 million related to the unamortized deferred financing costs written off in conjunction with the March 9, 2007 refinancing of our bank credit facility. The remaining balance consisted of the write-off of unamortized deferred financing costs related to the repayment or refinancing of other mortgage loans.

Equity in Earnings of Joint Ventures. The following tables present equity in earnings and certain components included in the calculation of equity in earnings resulting from our unconsolidated joint ventures.

Year ended December 31, 2008 (in thousands):

	Hotel del Coronado/North Beach Ventures	RCPM	BuyEfficient	LLPI	Total
Equity in earnings (losses)	$ 2,177	$ 988	$ 239	$(594)	$ 2,810
Depreciation	7,379	—	—	—	7,379
Interest	15,204	178	—	—	15,382
Income tax (benefit) expense	(157)	381	—	—	224

Year ended December 31, 2007 (in thousands):

	Hotel del Coronado/North Beach Ventures	RCPM	BuyEfficient	Total
Equity in earnings	$ 8,075	$ 231	$ 38	$ 8,344
Depreciation	6,844	—	—	6,844
Interest	20,943	247	—	21,190
Income tax	2,520	49	—	2,569

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Equity in earnings decreased $5.5 million during the year ended December 31, 2008 when compared to the year ended December 31, 2007. The decrease in equity in earnings was primarily due to the sale of the North Beach Venture residential condominium hotel units in 2007. During the year ended December 31, 2007, our share of income, net of taxes related to the sale of these units was approximately $13.1 million. There was one unit sold during the year ended December 31, 2008. The decrease in equity in earnings was partially offset by a $5.7 million decrease in our share of interest expense at the Hotel del Coronado Venture due to lower borrowings and interest rates in 2008 when compared to 2007.

Foreign Currency Exchange Loss. Foreign currency exchange loss decreased by $2.4 million during the year ended December 31, 2008 when compared to the same period in the prior year. The decrease was primarily related to changing foreign exchange rates related to Euro-denominated loans associated with the InterContinental Prague hotel.

Other Expenses, Net. Other expenses, net includes asset management fees, non-income related state, local and franchise taxes, as well as miscellaneous income and expenses. The increase in this expense of $0.5 million is primarily attributable to a $0.7 million decrease in asset management fees, offset by a $0.2 million decrease in state and local tax expense.

Income Tax Expense. Income tax expense increased $3.4 million during the year ended December 31, 2008 when compared to the year ended December 31, 2007. The increase in income tax expense is primarily due to a decrease in the deferred tax benefit at the InterContinental Prague due to the enactment of lower tax rates effective after January 1, 2008, partially offset by a decrease in the InterContinental Prague's current foreign income tax due to a decrease in earnings in 2008 when compared to 2007. Additionally, taxes in the United States decreased related to residential sales at the North Beach Venture. The majority of the North Beach Venture units were sold in 2007 with no significant activity in 2008.

Distributions in Excess of Noncontrolling Interest Capital . We made a distribution to our noncontrolling interest partner in a consolidated entity in excess of the noncontrolling interest partner's capital account in the amount of $2.5 million for the year ended December 31, 2008.

(Loss) Gain on Sale of Noncontrolling Interests in Hotel Properties. On August 31, 2007, we sold a 49% interest in each of the InterContinental Chicago and Hyatt Regency La Jolla hotels. We recognized a gain on the sale of approximately $85.8 million during the year ended December 31, 2007.

Income (Loss) from Discontinued Operations, Net of Tax . We sold the Four Seasons Mexico City and Renaissance Paris hotels during the fourth quarter of 2009, the Hyatt Regency Phoenix hotel during the third quarter of 2008, and the Hyatt Regency New Orleans hotel during the fourth quarter of 2007. The results of operations of these hotels were reclassified as discontinued operations for the periods presented. Income (loss) from discontinued operations amounted to $17.8 million in income and $36.1 million in loss for the years ended December 31, 2008 and 2007, respectively.

The $17.8 million income from discontinued operations for the year ended December 31, 2008 primarily consisted of a $37.1 million gain recognized on the sale of the Hyatt Regency Phoenix hotel and a $0.4 million gain recognized on the sale of the Hyatt Regency New Orleans hotel and the operating results of the Four Seasons Mexico City and Hyatt Regency Phoenix hotels, partially offset by the operating results of the Renaissance Paris hotel, which included a non-cash goodwill impairment charge of $33.3 million.

The loss from discontinued operations for the year ended December 31, 2007 primarily consisted of the operating results at the Four Seasons Mexico City, Renaissance Paris, Hyatt Regency Phoenix and Hyatt Regency New Orleans hotels, which included $7.3 million of losses on the early extinguishment of debt related to the defeasance of fixed rate mortgage loans secured by two of these hotels and a $37.7 million impairment loss on the Hyatt Regency New Orleans hotel due to a change in our anticipated holding period of the property and our updated estimates of the fair value of the property.

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Net Loss (Income) Attributable to the Noncontrolling Interests in SHR's Operating Partnership. We record net loss or income attributable to noncontrolling interests in SHR's operating partnership based on the percentage of SH Funding we do not own. Net loss (income) attributable to the noncontrolling interest in SHR's operating partnership changed to $4.1 million of loss for the year ended December 31, 2008 when compared to income of $1.0 million for the year ended December 31, 2007. This change was due to the change in the results of our operations and primarily driven by the impairment losses and other charges recorded during 2008. Our ownership percentage of SH Funding did not change.

Net Income Attributable to the Noncontrolling Interests in Consolidated Affiliates. We record net loss or income attributable to noncontrolling interests in consolidated affiliates for the non-ownership interests in hotels that are partially owned by us. Net income attributable to the noncontrolling interests in consolidated affiliates increased $2.5 million for the year ended December 31, 2008 when compared to the year ended December 31, 2007. The change reflected the effect of the sale of 49% noncontrolling interests in the InterContinental Chicago and Hyatt Regency La Jolla hotels in August 2007, as well as the acquisition of the remaining noncontrolling interests in the InterContinental Miami hotel in September 2007.

Liquidity and Capital Resources

Our short-term liquidity requirements consist primarily of funds necessary to pay for operating expenses and other expenditures. Historically, we have satisfied our short-term liquidity requirements through our existing working capital, cash provided by operations, and our bank credit facility. In February 2009, we entered into the third amendment to our bank credit facility, which among other things provides us with additional flexibility to maintain compliance with our financial covenants during 2010 and provides sufficient borrowing capacity to meet our short-term liquidity requirements during such time. As of December 31, 2009, the Company was in compliance with its financial and other restrictive covenants contained in the bank credit facility.

Our available capacity under the bank credit facility and compliance with financial covenants in future periods will depend substantially on the financial results of our hotels, and in particular, the results of the borrowing base assets. As of February 24, 2010, the outstanding borrowings and letters of credit in the aggregate were $197.8 million.

In the fourth quarter of 2009, we sold the Four Seasons Mexico City and Renaissance Paris for net sales proceeds of $102.4 million. A significant portion of the net proceeds from the sales were used to pay down the bank credit facility. To further improve liquidity in the short term, we are actively pursuing a number of alternatives, including but not limited to additional asset dispositions. The net proceeds of any additional transaction could be utilized to reduce borrowings outstanding under the bank credit facility and further improve liquidity. As of December 31, 2009, maximum availability under the bank credit facility was $287.3 million, and outstanding borrowings and letters of credit in the aggregate were $180.8 million. The administrative agent for the bank credit facility is currently obtaining appraisals for the borrowing base assets and depending upon the final appraised values, the maximum availability may decrease. We believe that the measures we have taken as described above should be sufficient to satisfy our liquidity needs for the next 12 months. However, if current financial market conditions worsen and our business deteriorates further, we may breach one or more of our financial covenants or the maximum availability under the bank credit facility may fall below our short-term borrowing needs. A default under the bank credit facility would allow the lenders to declare all amounts outstanding under the facility to become due and payable. Additionally, such an acceleration event would allow for acceleration of the interest rate swaps and the Exchangeable Notes.

If an event of default were to occur and we were unable to modify or obtain a waiver to certain terms of the bank credit facility, then the risk increases that we may be unable to continue as a going concern. The accompanying consolidated financial statements have been prepared in conformity with GAAP applicable to a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course

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of business. Accordingly, our consolidated financial statements do not reflect any adjustments related to the recoverability of assets and satisfaction of liabilities that might be necessary should we be unable to continue as a going concern.

In February 2009, our board of directors elected to suspend the quarterly dividend to holders of Series A, B and C Cumulative Redeemable Preferred Stock as a measure to preserve liquidity. Factors contributing to this decision were the declining economic environment for hotel operations, no projected taxable distribution requirement for 2009 under the REIT rules, and uncertainty regarding operating cash flows in 2009. Elimination of preferred dividends equates to approximately $7.7 million in cash flow savings each quarter. In November 2008, our board of directors elected to suspend the quarterly dividend to holders of shares of our common stock beginning in the fourth quarter of 2008, which was estimated to save approximately $22.5 million each quarter.

Capital expenditures for the years ended December 31, 2009, 2008 and 2007 amounted to $75.4 million, $182.8 million and $129.1 million, respectively. Included in the 2009, 2008 and 2007 amounts were $1.7 million, $8.6 million and $8.4 million of capitalized interest, respectively, which include amounts related to continuing and discontinued operations. Capital expenditures for the year ended December 31, 2007 included approximately $16.7 million to redevelop the Hyatt Regency New Orleans hotel. For the year ended December 31, 2010, we expect to fund hotel property and equipment replacement projects in accordance with hotel management or lease agreements of approximately $30.0 million and owner-funded projects of up to approximately $5.0 million. Consistent with our efforts to preserve liquidity, capital expenditures have been cancelled or deferred to a minimum spending level in 2010.

Bank credit facility . In February 2009, we entered into the third amendment to our bank credit facility, which among other things provides us with additional flexibility with respect to our financial covenants and related financial calculations. The following summarizes key financial terms and conditions of the bank credit facility, as amended:

- the maximum facility size was reduced to $400.0 million;
- interest rate on the facility is LIBOR plus a margin of 3.75% in the case of each LIBOR loan and base rate plus a margin of 2.75% in the case of each base rate loan and a commitment fee of 0.50% per annum based on the unused revolver balance;
- lenders received additional collateral in the form of mortgages over the four borrowing base properties which mortgages supplement the existing pledges of the Company's interest in SH Funding and SH Funding's interest in certain subsidiaries and guarantees of the loan from the Company and certain of its subsidiaries, all of which continue to secure the bank credit facility;
- maximum availability is determined by the lesser of a 1.3 times debt service coverage on the borrowing base assets (based on the trailing 12 months net operating income for these assets divided by an 8% debt constant on the balance outstanding under the facility, as defined in the loan agreement), or a 45% advance rate against the appraised value of the borrowing base assets;
- minimum corporate fixed charge coverage of 1.0 times, which may be reduced at SH Funding's option to 0.9 times for up to four consecutive quarters with a quarterly fee of 0.25% paid on outstanding balances during each quarter that the coverage ratio is reduced, provided that the minimum corporate fixed charge coverage can increase up to 1.15 times subject to certain conditions set forth in the bank credit facility;
- maximum corporate leverage of 80.0% as defined in the third amendment;
- minimum tangible net worth, as defined in the agreement, of $600.0 million, excluding goodwill and currency translation adjustments;
- default under and acceleration of any loan secured by property located in Europe, would not constitute an event of default;

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- maturity date of March 9, 2011, with a one-year extension option conditioned upon compliance with a corporate fixed charge coverage ratio of 1.15 times for the year ending December 31, 2010; and
- restrictions on the Company and SH Funding's ability to pay dividends. Such restrictions include:
  - a prohibition on each of the Company and SH Funding's ability to pay any amount of preferred dividends in cash or in kind if SH Funding has elected to reduce its fixed charge coverage ratio to 0.9 as discussed above;
  - prohibitions on the Company and SH Funding and their respective subsidiaries' ability to pay any dividends unless certain ratios and other conditions are met; and
  - prohibitions on the Company and SH Funding's ability to issue dividends in cash or in kind at any time an event of default shall have occurred.

  Notwithstanding the dividend restriction described above, for so long as the Company qualifies, or has taken all other actions necessary to qualify as a REIT, SH Funding may authorize, declare and pay quarterly cash dividends to the Company when and to the extent necessary for the Company to distribute cash dividends to its shareholders generally in an aggregate amount not to exceed the minimum amount necessary for the Company to maintain its tax status as a REIT, unless SH Funding receives notice of any monetary event of default or other material event of default.

Other terms and conditions exist including provisions to release assets from the borrowing base and limitations on the Company's ability to incur costs for discretionary capital programs.

Mortgages and other debt payable . The following table summarizes our outstanding debt and scheduled maturities, including extensions, which can be exercised at our option, related to mortgages and other debt payable as of December 31, 2009 (in thousands):

	Balance as of December 31, 2009	2010	2011	2012	2013	2014	Thereafter
Mortgage loans							
Fairmont Chicago, LIBOR plus 0.70%(1)	$ 123,750	$ —	$ —	$123,750	$ —	$ —	$ —
Loews Santa Monica Beach Hotel, LIBOR plus 0.63%	118,250	—	—	118,250	—	—	—
Ritz-Carlton Half Moon Bay, LIBOR plus 0.67%	76,500	—	—	76,500	—	—	—
Hyatt Regency La Jolla, LIBOR plus 1.00%	97,500	—	—	97,500	—	—	—
InterContinental Chicago, LIBOR plus 1.06%	121,000	—	121,000	—	—	—	—
InterContinental Miami, LIBOR plus 0.73%	90,000	—	90,000	—	—	—	—
InterContinental Prague, 3-month EURIBOR plus 1.20%(2)	148,886	4,467	4,467	139,952	—	—	—
Westin St. Francis, LIBOR plus 0.70%(1)	220,000	—	220,000	—	—	—	—
Marriott London Grosvenor Square, 3-month GBP LIBOR plus 1.10%	124,859	3,329	3,329	3,330	114,871	—	—
Fairmont Scottsdale, LIBOR plus 0.56%	180,000	—	180,000	—	—	—	—
Total mortgage loans	$1,300,745	$7,796	$618,796	$559,282	$114,871	$ —	$ —

(1) These mortgage loans require that we maintain a minimum tangible net worth requirement. On March 25, 2009, we entered into second amendments to our mortgage loans to modify the tangible net worth covenant

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to be consistent with the amended covenant in the bank credit facility as described above, which is calculated without regard to goodwill. We met the requirements of this modified tangible net worth calculation as of December 31, 2009.

(2) As of December 31, 2009, we were in violation of certain loan to value and interest cover ratio covenants under the InterContinental Prague loan agreement. The lender provided us with a waiver through March 15, 2010 to comply with these loan covenants. In February 2010, we entered into an amended and restated loan agreement with the lender. Under the amended terms, the maturity date of the loan is extended to March 2015. Interest remains payable quarterly and is equal to EURIBOR plus 1.20% through March 2012 and subsequently increases to EURIBOR plus 1.80% through loan maturity. Additionally, the amended and restated loan agreement a) waives the loan to value and interest cover ratio covenants through March 2012 and reintroduces the ratio covenants with increased thresholds subsequent to March 2012 through loan maturity, b) postpones the amortization of principal payments, c) establishes a €2.0 million liquidity reserve to cover potential shortfalls in debt service, d) allows accrued and unpaid interest up to €2.0 million to be added to the principal balance under certain circumstances and e) requires that we use the net proceeds from the prior sale of two apartment buildings in Prague that were previously part of the lender's security for the loan to pay down the principal amount of the loan by €2.4 million.

Our long-term liquidity requirements consist primarily of funds necessary to pay for scheduled debt maturities, renovations, expansions and other non-recurring capital expenditures that need to be made periodically to our properties and the costs associated with acquisitions of properties. In addition, we may use cash to buy back outstanding debt or common or preferred securities from time to time when market conditions are favorable through open market purchases, privately negotiated transactions, or a tender offer, although the terms of our bank credit facility prohibit us from buying back common or preferred shares unless certain conditions are met.

Historically, we have satisfied our long-term liquidity requirements through various sources of capital, including our existing working capital, cash provided by operations, sales of properties, long-term property mortgage indebtedness, bank credit facilities, issuance of senior unsecured debt instruments and through the issuance of additional equity securities. The recent crisis in the credit markets has resulted in a challenging credit environment and our ability to raise capital through various debt markets is uncertain. Our ability to raise funds through the issuance of equity securities is dependent upon, among other things, general market conditions for both REITs in general and us specifically and market perceptions about us. We will continue to analyze which source of capital is most advantageous to us at any particular point in time, but equity and debt financing may not be consistently available to us on terms that are attractive or at all. In addition, the credit crisis and general uncertainty regarding the economy have also resulted in a substantial decline in the volume of real estate transactions and have contributed to an environment where sales of properties are difficult to complete and subject to a high degree of uncertainty.

Equity Securities

As of December 31, 2009, we had 862,342 RSUs outstanding, of which 216,004 were vested. In addition, we had 885,026 options to purchase shares of SHR common stock (Options) outstanding.

The following table presents the changes in our issued and outstanding shares of common stock and operating partnership units (OP Units) since December 31, 2008 (excluding RSUs):

	Common Shares	OP Units Represented by Noncontrolling Interests	Total
Outstanding at December 31, 2008	74,410,012	975,855	75,385,867
RSUs redeemed for shares of our common stock	827,251	—	827,251
OP Units redeemed	15,989	(21,109)	(5,120)
Outstanding at December 31, 2009	75,253,252	954,746	76,207,998

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Cash Flows

Operating Activities. Net cash provided by operating activities was $46.6 million for the year ended December 31, 2009 compared to $95.2 million for the year ended December 31, 2008 and $174.7 million for the year ended December 31, 2007. Cash flows from operations decreased from 2008 to 2009 primarily due to decreased operating income at the hotels, which have been negatively impacted by the current economic downturn. Cash flows from operations decreased from 2007 to 2008 primarily due to $12.7 million of insurance proceeds that were received in 2007, with no corresponding proceeds received in 2008, a $28.5 million charge in 2008 related to our decision not to purchase an interest in the Aqua Building, and a decrease in accounts payable and accrued expenses, partially offset by a decrease in accounts receivable.

Investing Activities. Net cash provided by investing activities was $66.3 million for the year ended December 31, 2009 compared to net cash used in investing activities of $83.9 million for the year ended December 31, 2008 and $49.4 million for the year ended December 31, 2007. The significant investing activities during these periods are summarized below:

- We sold the Four Seasons Mexico City and Renaissance Paris hotels during the year ended December 31, 2009 for net sales proceeds of $52.2 million and $50.3 million, respectively, we sold the Hyatt Regency Phoenix hotel during the year ended December 31, 2008 for net sales proceeds of $89.6 million, and we sold the Hyatt Regency New Orleans hotel during the year ended December 31, 2007 for net sales proceeds of $23.0 million.
- We sold two apartment buildings associated with the InterContinental Prague for net sales proceeds of $6.6 million during the year ended December 31, 2009.
- We received $10.1 million of cash from our investments in joint ventures during the year ended December 31, 2009.
- We received a $6.0 million payment on a promissory note from the purchaser of Hyatt Regency New Orleans during the year ended December 31, 2008.
- We paid $1.2 million during the year ended December 31, 2008 for an interest in a newly-formed joint venture, LLPI.
- We purchased the Renaissance Paris hotel for approximately $95.0 million in July 2007.
- We sold a 49% interest in each of the InterContinental Chicago and Hyatt Regency La Jolla hotels in August 2007 and received net proceeds of approximately $111.2 million.
- We purchased a 60-acre oceanfront parcel for development in Punta Mita, Mexico in October 2007 for an initial payment of $16.1 million, including closing costs.
- We purchased a 50% interest in BuyEfficient for approximately $6.3 million in December 2007.
- We received $62.1 million of insurance proceeds during the year ended December 31, 2007 as a result of the hurricane that struck our Hyatt Regency New Orleans property in August 2005.
- We acquired our partner’s 15% interest in the InterContinental Chicago hotel in May 2007 and the InterContinental Miami hotel in September 2007 for approximately $22.0 million and $9.4 million, respectively.
- We paid $5.7 million in escrow deposits in connection with a potential hotel acquisition in 2007 and in 2009 we received a return of $3.8 million of this deposit.
- We disbursed $75.4 million, $182.8 million and $129.1 million during the years ended December 31, 2009, 2008 and 2007, respectively, for capital expenditures primarily related to room renovations and additions; food and beverage and spa facilities.
- Restricted cash and cash equivalents decreased by $14.5 million during the year ended December 31, 2009 primarily due to renovations funded through property and equipment replacement reserves

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(FF&E Reserves). Restricted cash and cash equivalents decreased by $4.8 million during the year ended December 31, 2008, primarily due to renovations funded through FF&E Reserves. Restricted cash and cash equivalents decreased by $34.2 million during the year ended December 31, 2007 primarily due to the release of insurance proceeds.

Financing Activities. Net cash used in financing activities was $78.8 million for the year ended December 31, 2009 compared to $34.7 million for the year ended December 31, 2008 and $104.8 million for the year ended December 31, 2007. The significant financing activities during these periods are summarized below:

- During the year ended December 31, 2009, we made net payments of $28.0 million on our bank credit facility. During the year ended December 31, 2008, we had net borrowings on our bank credit facility of $97.0 million. During the year ended December 31, 2007, we made net payments on our bank credit facility of $6.0 million.
- We paid $37.2 million to buy down the interest rate swap fixed pay rates during the year ended December 31, 2009.
- We paid financing costs of $8.3 million, $0.4 million and $23.8 million for the years ended December 31, 2009, 2008 and 2007, respectively.
- We paid distributions to the noncontrolling interest holders in our consolidated affiliates in the amount of $4.8 million, $9.8 million, and $1.2 million for the years ended December 31, 2009, 2008, and 2007, respectively.
- During the years ended December 31, 2008 and 2007, we paid quarterly distributions to our common shareholders amounting to $72.0 million and $71.4 million, respectively, we paid quarterly distributions to preferred shareholders amounting to $30.9 million and $30.1 million, respectively, and SH Funding paid quarterly distributions to noncontrolling interest holders amounting to $0.9 million and $1.0 million, respectively.
- During the year ended December 31, 2008, we made a payment of $17.5 million on the promissory note issued in conjunction with our purchase of a land parcel in Punta Mita, Nayarit, Mexico.
- We received net proceeds from the issuance of the Exchangeable Notes of $179.1 million during the year ended December 31, 2007 and paid $9.9 million for call options that were purchased in connection with the issuance of the Exchangeable Notes.
- We paid $25.0 million for the repurchase of common stock during the year ended December 31, 2007.
- We received proceeds from issuance of preferred stock, net of offering costs of approximately $10.7 million for the year ended December 31, 2007.
- During the year ended December 31, 2007, we made net payments on mortgage debt and other debt of $126.0 million, which includes the defeasance of the fixed rate loan portfolio.

Dividend Policy

We generally intend to distribute each year substantially all of our taxable income (which does not necessarily equal net income as calculated in accordance with GAAP) to our shareholders so as to comply with REIT provisions of the Tax Code. If necessary for REIT qualification purposes, we may need to distribute any taxable income in cash or by a special dividend. Our dividend policy is subject to revision at the discretion of our board of directors. All distributions will be made at the discretion of our board of directors and will depend on our taxable income, our financial condition, our maintenance of REIT status and other factors as our board of directors deems relevant.

Our board of directors elected to suspend the quarterly dividend to holders of shares of our common and preferred stock as a measure to preserve liquidity due to the declining economic environment for hotel operations, no projected taxable distribution requirement and uncertainty regarding operating cash flows for

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2009. Based on our current forecasts, we would not be required to make any distributions in order to maintain our REIT status. The elimination of our preferred and common dividends equates to approximately $30.2 million in cash flow savings each quarter. The board of directors will continue to evaluate the dividend policy in light of the REIT provisions of the Tax Code and the economic climate.

Contractual Obligations

The following table summarizes our future payment obligations and commitments as of December 31, 2009 (in thousands):

	Payments Due by Period				
	Total	Less than 1 year(1)	1 to 3 years	4 to 5 years	More than 5 years
Long-term debt obligations(2)	$1,658,745	$ 7,796	$1,650,949	$ —	$ —
Interest on long-term debt obligations(3)	194,133	69,760	115,873	8,500	—
Operating lease obligations—ground leases and office space	8,320	605	1,906	1,347	4,462
Operating leases—Paris Marriott and Hamburg Marriott	453,785	22,561	67,684	45,123	318,417
Total	$2,314,983	$100,722	$1,836,412	$54,970	$322,879

(1) These amounts represent obligations that are due within fiscal year 2010.
(2) Long-term debt obligations include our mortgages, Exchangeable Notes (excluding the effect of the discount) and bank credit facility. Maturity dates assume all extension options are exercised, excluding the conditional option to extend the bank credit facility.
(3) Interest on variable rate debt obligations is calculated based on the variable rates at December 31, 2009 and includes the effect of our interest rate swaps.

Reserve Funds for Capital Expenditures

We maintain each of our hotels in excellent repair and condition and in conformity with applicable laws and regulations and in accordance with the agreed upon requirements in our management agreements with our preferred operators.

We are obligated to maintain reserve funds for capital expenditures at the majority of our hotels (including the periodic replacement or refurbishment of furniture, fixtures and equipment) as determined pursuant to the management agreements with our preferred operators. As of December 31, 2009, $15.8 million was in restricted cash reserves for future capital expenditures. Generally, our agreements with hotel operators require us to reserve funds at amounts ranging between 4.0% and 5.0% of the individual hotel's annual revenues and require the funds to be set aside in restricted cash. Expenditures are capitalized as incurred and depreciation begins when the related asset is placed in service. Any unexpended amounts will remain our property upon termination of the management and operating contracts.

Off-Balance Sheet Arrangements

Hotel and North Beach Ventures

On January 9, 2006, our subsidiaries closed the acquisition of 45% joint venture ownership interests in the Hotel Venture, the owner of the Hotel del Coronado in San Diego, California, and the North Beach Venture, the owner of an adjacent residential condominium-hotel development. The Hotel Venture and North Beach Venture are collectively referred to as the Partnerships. We account for our investments in the Partnerships under the equity method of accounting. The Hotel Venture obtained $610.0 million of non-recourse mortgage and

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mezzanine debt financings and a $20.0 million revolving credit facility, concurrent with our acquisitions, which are secured by, among other things, a mortgage on the Hotel del Coronado. At December 31, 2009, there was an outstanding balance of $18.5 million on the revolving credit facility. At December 31, 2009, there were letters of credit outstanding of $1.5 million, which are secured by the revolving credit facility. The mortgage and mezzanine debt financings and revolving credit facility mature January 9, 2011. At December 31, 2009, our investment in the Partnerships amounted to $36.5 million. Our equity in earnings of the Partnerships was $0.9 million for the year ended December 31, 2009.

We earn fees under an asset management agreement with the Partnerships. We receive fees amounting to 1% of the Partnerships' revenues and 2% of the Partnerships' development costs. In addition, we earn financing fees of 0.325% of any debt principal placed on behalf of the Hotel Venture, as well as certain incentive fees as provided by the asset management agreements. We recognize income of 55% of these fees, representing the percentage of the Partnerships not owned by us.

RCPM

We own a 31% interest in and act as asset manager for a joint venture with two unaffiliated parties that is developing the RCPM, a luxury vacation home product sold in fractional ownership interests on the property adjacent to our Four Seasons Punta Mita Resort hotel in Mexico. We account for this investment under the equity method of accounting. At December 31, 2009, our investment in the joint venture amounted to $3.6 million. Our equity in earnings of the joint venture was $0.3 million for the year ended December 31, 2009.

BuyEfficient

We own a 50% interest in an electronic purchasing platform joint venture called BuyEfficient with an unaffiliated third party. This platform allows members to procure food, operating supplies, furniture, fixtures and equipment. We account for this investment under the equity method of accounting. At December 31, 2009, our investment in the joint venture amounted to $6.7 million. Our equity in earnings of the joint venture was $0.5 million for the year ended December 31, 2009.

Related Party Transactions

We have in the past engaged in and currently engage in transactions with related parties. See "Item 8. Financial Statements and Supplementary Data—15. Related Party Transactions" for a discussion of our transactions with related parties.

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosure of contingent assets and liabilities.

We evaluate our estimates on an ongoing basis. We base our estimates on historical experience, information that is currently available to us and on various other assumptions that we believe are reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions. We believe the following critical accounting policies affect the most significant judgments and estimates used in the preparation of our consolidated financial statements.

- ***Impairment of Long-Lived Assets and Goodwill.*** We review our long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. We review goodwill for impairment at least annually and whenever circumstances or events indicate potential impairment. The recoverability of assets to be held and used is measured by a

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comparison of the carrying amount of an asset to future undiscounted net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment recognized is measured by the amount by which the carrying amount of the assets exceeds the estimated fair value of the assets. In our analysis of fair value, we use discounted cash flow analysis to estimate the fair value of our properties taking into account each property's expected cash flow from operations, holding period and proceeds from disposing of the property. In addition to the discounted cash flow analysis, management also considers external independent appraisals to estimate fair value. The analysis and appraisals used by management are consistent with those used by a market participant. The factors addressed in determining estimated proceeds from disposition include anticipated operating cash flow in the year of disposition, terminal capitalization rate and selling price per room. Judgment is required in determining the discount rate applied to estimated cash flows, growth rate of the properties, the need for capital expenditures, as well as specific market and economic conditions. Additionally, the classification of assets as held for sale requires the recording of assets at their net realizable value which can affect the amount of impairment recorded.

Goodwill has an indefinite useful life that should not be amortized but should be reviewed annually for impairment, or more frequently if events or changes in circumstances indicate that goodwill might be impaired. The measurement of impairment of goodwill consists of two steps. In the first step, we compare the fair value of each reporting unit, which in our case is each hotel property, to its carrying value. In the second step of the impairment test, the impairment loss is determined by comparing the implied fair value of goodwill to the recorded amount of goodwill. The activities in the second step include hypothetically allocating the fair value of the reporting unit used in step one to all of the assets and liabilities, including all intangible assets, even if no intangible assets are currently recorded, of that reporting unit as if the reporting unit had been acquired in a business combination and the fair value of the reporting unit was the price paid to acquire the reporting unit.

During 2009, management concluded that indicators of potential impairment were present and that evaluations of carrying values of goodwill, intangible assets, and other long-lived assets were therefore required. We reached the conclusion that impairment tests were required to be performed as of June 30, 2009 based on our assessment of the conditions that have contributed to our low stock price and reduced market capitalization relative to the book value of our equity, including generally weak economic conditions, macroeconomic factors impacting industry business conditions, recent and forecasted operating performance, and continued tightening of the credit markets, along with other factors. Based on our analysis, we recorded a non-cash impairment charge that consisted of $41.9 million of goodwill.

At December 31, 2009, we performed an impairment test of long-lived assets for two Mexican development sites based on uncertainties surrounding the development of this land in a manner consistent with our original plan, resulting in an impairment charge of $23.1 million. In addition, during the third quarter of 2009, we recorded an impairment charge of $30.8 million, which is included in income (loss) from discontinued operations, related to the Renaissance Paris due to a change in the anticipated holding period for this hotel.

The estimates and assumptions made in assessing the fair value of the reporting units and the valuation of the underlying assets and liabilities are inherently subject to significant uncertainties. In addition, continued deterioration in economic and market conditions present a potential for additional impairment charges on our hotel properties subsequent to December 31, 2009. Any such adjustments could be material, but will be non-cash.

- ***Acquisition Related Assets and Liabilities.*** Accounting for the acquisition of a hotel property as a purchase transaction requires an allocation of the purchase price to the assets acquired and the liabilities assumed in the transaction at their respective estimated fair values. The most difficult estimations of individual fair values are those involving long-lived assets, such as property and equipment and intangible assets. We use all available information to make these fair value determinations and, for hotel acquisitions, engage an independent valuation specialist to assist in the

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fair value determination of the acquired long-lived assets. Due to inherent subjectivity in determining the estimated fair value of long-lived assets, we believe that the recording of acquired assets and liabilities is a critical accounting policy.

- ***Depreciation and Amortization Expense.*** Depreciation expense is based on the estimated useful life of our assets. The life of the assets is based on a number of assumptions, including cost and timing of capital expenditures to maintain and refurbish the asset, as well as specific market and economic conditions. While management believes its estimates are reasonable, a change in the estimated lives could affect depreciation expense and net income or the gain or loss on the sale of any of the assets.
- ***Derivative Instruments and Hedging Activities.*** Derivative instruments and hedging activities require management to make judgments on the nature of its derivatives and their effectiveness as hedges. These judgments determine if the changes in fair value of the derivative instruments are reported in our consolidated statements of operations as a component of net income or as a component of comprehensive income and as a component of equity on our consolidated balance sheets. While management believes its judgments are reasonable, a change in a derivative's effectiveness as a hedge could affect expenses, net income and equity.
- ***Disposal of Long-Lived Assets.*** We classify assets as held for sale in accordance with GAAP. Assets identified as held for sale are reclassified on our balance sheet and the related results of operations are reclassified as discontinued operations on our statement of operations. While these classifications do not have an effect on total assets, net equity or net income, they affect the classifications within each statement. Additionally, a determination to classify an asset as held for sale affects depreciation expense as long-lived assets are not depreciated while classified as held for sale.

Seasonality

The lodging business is seasonal in nature, and we experience some seasonality in our business. Revenues for hotels in tourist areas, those with significant group business, and in areas driven by greater climate changes are generally seasonal. Quarterly revenues also may be adversely affected by events beyond our control, such as extreme weather conditions, terror attacks or alerts, airline strikes, economic factors and other considerations affecting travel.

The Marriott domestic hotels report their results of operations using a fiscal year consisting of thirteen four-week periods. As a result, for our domestic Marriott branded property, for all years presented, the first three quarters consist of 12 weeks each and the fourth quarter consists of 16 weeks.

To the extent that cash flows from operations are insufficient during any quarter, due to temporary or seasonal fluctuations in revenues, we may have to enter into short-term borrowings to pay operating expenses and make distributions to our stockholders.

New Accounting Pronouncements

In June 2009, the Financial Accounting Standards Board (FASB) issued the FASB Accounting Standards Codification™ (Codification). This is the single source of authoritative nongovernmental U.S. generally accepted accounting principles (GAAP). The Codification launched on July 1, 2009 and is effective for interim and annual periods ending after September 15, 2009. The Codification does not change U.S. GAAP, but combines all authoritative standards into a comprehensive, topically organized online database. After the Codification launch on July 1, 2009, only one level of authoritative GAAP exists, other than guidance issued by the SEC. All other accounting literature excluded from the Codification is considered non-authoritative. The Codification has an impact on our financial statement disclosures as all references to authoritative accounting literature are references in accordance with the Codification.

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In June 2009, the FASB issued new accounting guidance, which amends the consolidation guidance applicable to variable interest entities (VIEs). The new guidance requires a qualitative rather than a quantitative analysis to determine the primary beneficiary of a VIE, requires continuous assessment of whether an enterprise is the primary beneficiary of a VIE and requires enhanced disclosures about an enterprise's involvement with a VIE. The new guidance is effective as of the beginning of each reporting entity's first annual reporting period that begins after November 15, 2009. We do not expect that the adoption of this new guidance will have a material impact on our consolidated financial statements.

In June 2009, we adopted new guidance on interim disclosures about fair value of financial instruments. This new guidance relates to fair value disclosures for any financial instruments that are not currently reflected on the balance sheet at fair value. Prior to the issuance of this new guidance, fair values for these assets and liabilities were only disclosed once a year. The new guidance now requires these disclosures on a quarterly basis, providing qualitative and quantitative information about fair value estimates for all those financial instruments not measured on the balance sheet at fair value.

In April 2009, the FASB issued new accounting guidance on accounting for assets acquired and liabilities assumed in a business combination that arise from contingencies. This new guidance amends and clarifies the initial recognition and measurement, subsequent measurement and accounting, and related disclosures arising from contingencies in a business combination. This new guidance is effective for business combinations with acquisition dates on or after fiscal years beginning on or after December 15, 2008. This new guidance will impact our accounting for future acquisitions.

In April 2009, the FASB issued new accounting guidance to determine fair values when there is no active market or where the price inputs being used represent distressed sales. It reaffirms the objective of fair value measurement—to reflect how much an asset would be sold for in an orderly transaction (as opposed to a distressed or forced transaction) at the date of the financial statements under current market conditions. Specifically, it reaffirms the need to use judgment to ascertain if a formerly active market has become inactive and in determining fair values when markets have become inactive. We adopted this new guidance in June 2009 and determined that this new guidance did not have a material impact on our consolidated financial statements.

On January 1, 2009, we adopted new accounting guidance on accounting for convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement). This new guidance requires the liability and equity components of convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement) to be separately accounted for in a manner that reflects the issuer's nonconvertible debt borrowing rate. The resulting debt discount is amortized over the debt instrument's expected life as additional interest expense. We applied this change in accounting principle retrospectively to all prior periods presented. The adjustment had no effect on net cash flows from operations.

In June 2008, the FASB ratified new accounting guidance to determine whether an instrument or embedded feature is indexed to an entity's own stock. This new guidance provides a two-step approach to determine whether a financial instrument or an embedded feature is indexed to an issuer's own stock and exempt from the accounting guidance regarding derivative instruments and hedging activities. The transition under this new guidance requires a cumulative adjustment to the opening balance of retained earnings in the year in which the new guidance becomes effective. We adopted this guidance on January 1, 2009 and determined that this new guidance did not have a material impact on our consolidated financial statements.

In June 2008, the FASB issued new accounting guidance to address whether instruments granted in share-based payment transactions are participating securities prior to vesting. This new guidance indicates that unvested share-based payment awards that contain non-forfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities that should be included in earnings per share calculations under the two-class method. We adopted this new guidance on January 1, 2009 and determined that this new guidance did not have a material impact on our consolidated financial statements.

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In March 2008, the FASB issued new accounting guidance to improve financial reporting about derivative instruments by requiring enhanced disclosures to enable investors to better understand their effects on an entity's financial position, financial performance, and cash flows. This new guidance is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. We adopted this new guidance on January 1, 2009 and complied with the expanded disclosure requirements, as applicable.

In February 2008, the FASB issued new accounting guidance which deferred the effective date for measuring fair value of non-financial assets and liabilities, except those items recognized or disclosed at fair value on an annual or more frequently recurring basis, until fiscal years beginning after November 15, 2008 and interim periods within those fiscal years. We adopted the new guidance with respect to our non-financial assets and liabilities and determined that the new guidance did not have a material impact on our financial statements.

In December 2007, the FASB issued new accounting guidance on noncontrolling interests in consolidated financial statements. The new guidance requires that noncontrolling interests, previously reported as minority interests, be reported as a separate component of equity, a change that affects our financial statement presentation of minority interests in our consolidated subsidiaries. The new guidance specifies that consolidated net income attributable to the parent and to the noncontrolling interests be clearly identified and presented separately on the face of the consolidated statements of operations. The new guidance also establishes a single method of accounting for changes in a parent's ownership interest in a subsidiary and specifies that these transactions be recorded as equity transactions as long as the ownership change does not result in deconsolidation. The new guidance also expands disclosures in the financial statements to include a reconciliation of the beginning and ending balances of the equity attributable to the parent and the noncontrolling owners and a schedule showing the effects of changes in a parent's ownership interest in a subsidiary on the equity attributable to the parent. We adopted this new guidance on January 1, 2009. The new guidance is applied prospectively in 2009, except for the presentation and disclosure requirements which are applied retrospectively. The retrospective presentation and disclosure requirements had no effect on previously reported net loss available to common shareholders or earnings per share. The prospective accounting requirements are dependent on future transactions involving noncontrolling interests.

In December 2007, the FASB issued new accounting guidance on business combinations. The new guidance broadens the previous guidance on business combinations, extending its applicability to all transactions and other events in which one entity obtains control over one or more other businesses. This new guidance also establishes requirements for how the acquirer recognizes the fair value of the assets acquired, liabilities assumed, and noncontrolling interests in the acquiree as a result of business combinations; and requires the acquisition related costs to be expensed rather than included as part of the basis of the acquisition. The new guidance expands required disclosures to improve the ability to evaluate the nature and financial effects of business combinations. The new guidance is effective for all business combinations for which the acquisition date is on or after fiscal years beginning on or after December 15, 2008. We adopted this new guidance on January 1, 2009 and the guidance will impact our accounting for future acquisitions and related transaction costs.

Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

Interest Rate Risk

Our future income, cash flows and fair values relevant to financial instruments are dependent upon prevailing market interest rates. Market risk refers to the risk of loss from adverse changes in market prices and interest rates. The majority of our outstanding debt, after considering the effect of interest rate swaps, has a fixed interest rate. We use some derivative financial instruments to manage, or hedge, interest rate risks related to our borrowings, from lines of credit to medium- and long-term financings. We generally require that hedging derivative instruments be effective in reducing the interest rate risk exposure that they are designed to hedge. We do not use derivatives for trading or speculative purposes and only enter into contracts with major financial institutions based on their credit rating and other factors. We use methods which incorporate standard market

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conventions and techniques such as discounted cash flow analysis and option pricing models to determine fair value. All methods of estimating fair value result in general approximation of value and such value may or may not actually be realized.

See "Item 8. Financial Statements and Supplementary Data—11. Derivatives" for information on our interest rate cap and swap agreements outstanding as of December 31, 2009.

As of December 31, 2009, our total outstanding mortgages, bank credit facility and Exchangeable Notes, net of discount, were approximately $1.6 billion, of which approximately $230.0 million, or 14.0%, was variable rate debt. Total variable rate debt excluded $1.2 billion fixed by the interest rate swaps described above. If market rates of interest on our variable rate debt, including the effect of the interest rate swaps described above, increase by 20%, the increase in interest expense on the variable rate debt would decrease future earnings and cash flows by approximately $0.1 million annually. If market rates of interest on our variable rate debt, including the effect of the swaps, decrease by 10%, the decrease in interest expense on our variable rate debt would increase future earnings and cash flows by approximately $50,000 annually.

Interest risk amounts were determined by considering the impact of hypothetical interest rates on our financial instruments. These analyses do not consider the effect of the reduced level of overall economic activity that could exist in that environment. Furthermore, in the event of a 20% increase in the market rates of interest on our variable rate debt as discussed above, we may take actions to further mitigate our exposure to the change. However, due to the uncertainty of the specific actions that would be taken and their possible effects, these analyses assume no changes in our financial structure.

Currency Exchange Risk

As we have international operations, currency exchange risk arises as a normal part of our business. In particular, we are subject to fluctuations due to changes in foreign exchange rates in the British pound, euro, Czech crown and Mexican peso. We reduce this risk by transacting our international business in local currencies. In this manner, assets and liabilities are matched in the local currency, which reduces the need for dollar conversion. Generally, we do not enter into forward or option contracts to manage our currency exchange risk exposure applicable to net operating cash flows.

To manage the currency exchange risk applicable to equity positions in foreign hotels, we may use long-term mortgage debt denominated in the local currency. In addition, we may enter into forward or option contracts. We do not currently have any currency forward or option contracts.

Our exposure to foreign currency exchange rates relates primarily to our foreign hotels. For our foreign hotels, exchange rates impact the U.S. dollar value of our reported earnings, our investments in the hotels and the intercompany transactions with the hotels.

For the year ended December 31, 2009, approximately 19.8% of our total revenues were generated outside of the United States, with approximately 6.2% of total revenues generated from the Paris Marriott and Marriott Hamburg (which use the euro), approximately 5.5% of total revenues generated from the Four Seasons Punta Mita Resort (which uses the Mexican peso), approximately 4.2% of total revenues generated from the Marriott London Grosvenor Square (which uses the British pound), and approximately 3.9% of total revenues generated from the InterContinental Prague (which uses the Czech crown). As a result, fluctuations in the value of foreign currencies against the U.S. dollar may have a significant impact on our reported results. Revenues and expenses denominated in foreign currencies are translated into U.S. dollars at a weighted average exchange rate for the period. Consequently, as the value of the U.S. dollar changes relative to the currencies of these markets, our reported results vary.

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If the U.S. dollar had weakened an additional 10% during the year ended December 31, 2009, total revenues and operating income or loss would have changed from the amounts reported by (in millions):

	Mexican Peso	Euro	Czech Crown	British Pound	Total
Increase in total revenues	$ 4.0	$4.5	$ 2.8	$ 3.0	$14.3
Increase (decrease) in operating income	$ (2.0)	$0.3	$ 0.2	$ (0.2)	$ (1.7)

Fluctuations in foreign currency exchange rates also impact the U.S. dollar amount of our shareholders' equity. The assets and liabilities of our non-U.S. hotels are translated into U.S. dollars at exchange rates in effect at the end of the period. The resulting translation adjustments are recorded in shareholders' equity as a component of accumulated other comprehensive loss. If the U.S. dollar had weakened by 10% as of December 31, 2009, resulting translation adjustments recorded in shareholders' equity would have decreased by approximately $5.3 million from the amounts reported.

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ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
Strategic Hotels & Resorts, Inc.
Chicago, Illinois

We have audited the accompanying consolidated balance sheets of Strategic Hotels & Resorts, Inc. and subsidiaries (the "Company") as of December 31, 2009 and 2008, and the related consolidated statements of operations and comprehensive (loss) income, shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2009. Our audit also included the financial statement schedule listed in the Index at Item 15. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Strategic Hotels & Resorts, Inc. and subsidiaries as of December 31, 2009 and 2008, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2009, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As discussed in Note 2 to the consolidated financial statements, on January 1, 2009, the Company changed its method of accounting for noncontrolling interests and convertible debt instruments and retrospectively adjusted all periods presented in the consolidated financial statements.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2009, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 25, 2010 expressed an unqualified opinion on the Company's internal control over financial reporting.

/s/ DELOITTE & TOUCHE LLP

Chicago, Illinois
February 25, 2010

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)

CONSOLIDATED BALANCE SHEETS
(In Thousands, Except Share Data)

	December 31,	
	2009	2008
Assets		
Investment in hotel properties, net	$2,162,584	$2,383,860
Goodwill	75,758	120,329
Intangible assets, net of accumulated amortization of $4,400 and $3,096	34,046	32,277
Investment in joint ventures	46,745	82,122
Cash and cash equivalents	116,310	80,954
Restricted cash and cash equivalents	22,829	37,358
Accounts receivable, net of allowance for doubtful accounts of $2,657 and $2,203	54,524	70,945
Deferred financing costs, net of accumulated amortization of $12,543 and $6,655	11,225	10,375
Deferred tax assets	34,244	38,260
Other assets	39,878	52,687
Total assets	$2,598,143	$2,909,167
Liabilities and Equity		
Liabilities:		
Mortgages and other debt payable	$1,300,745	$1,301,535
Exchangeable senior notes, net of discount	169,452	165,155
Bank credit facility	178,000	206,000
Accounts payable and accrued expenses	236,269	281,918
Deferred tax liabilities	16,940	34,236
Deferred gain on sale of hotels	101,852	104,251
Total liabilities	2,003,258	2,093,095
Noncontrolling interests in SHR's operating partnership	2,717	5,330
Equity:		
SHR's shareholders' equity:		
8.50% Series A Cumulative Redeemable Preferred Stock ($0.01 par value per share; 4,488,750 shares issued and outstanding; liquidation preference $25.00 per share and $121,757 in the aggregate)	108,206	108,206
8.25% Series B Cumulative Redeemable Preferred Stock ($0.01 par value per share; 4,600,000 shares issued and outstanding; liquidation preference $25.00 per share and $124,488 in the aggregate)	110,775	110,775
8.25% Series C Cumulative Redeemable Preferred Stock ($0.01 par value per share; 5,750,000 shares issued and outstanding; liquidation preference $25.00 per share and $155,609 in the aggregate)	138,940	138,940
Common shares ($0.01 par value per share; 150,000,000 common shares authorized; 75,253,252 and 74,410,012 common shares issued and outstanding)	752	744
Additional paid-in capital	1,233,856	1,228,774
Accumulated deficit	(954,208)	(710,263)
Accumulated other comprehensive loss	(69,341)	(93,637)
Total SHR's shareholders' equity	568,980	783,539
Noncontrolling interests in consolidated affiliates	23,188	27,203
Total equity	592,168	810,742
Total liabilities and equity	$2,598,143	$2,909,167

The accompanying notes to the consolidated financial statements are an integral part of these statements.

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)

CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE (LOSS) INCOME
(In Thousands, Except Per Share Data)

	For the years ended December 31,		
	2009	2008	2007
Revenues:			
Rooms	$ 393,206	$ 507,383	$487,681
Food and beverage	230,630	310,939	316,068
Other hotel operating revenue	95,105	104,680	104,785
	718,941	923,002	908,534
Lease revenue	4,858	5,387	23,405
Total revenues	723,799	928,389	931,939
Operating Costs and Expenses :			
Rooms	110,631	126,804	120,891
Food and beverage	170,503	215,683	214,224
Other departmental expenses	210,044	238,258	229,052
Management fees	26,593	35,920	35,117
Other hotel expenses	53,613	58,423	63,363
Lease expense	16,971	17,489	15,700
Depreciation and amortization	139,243	116,538	99,529
Impairment losses and other charges	100,009	328,485	7,372
Corporate expenses	25,703	26,369	29,767
Total operating costs and expenses	853,310	1,163,969	815,015
Operating (loss) income	(129,511)	(235,580)	116,924
Interest expense	(102,521)	(89,445)	(89,965)
Interest income	738	1,796	2,595
Loss on early extinguishment of debt	(883)	—	(7,845)
Equity in earnings of joint ventures	1,718	2,810	8,344
Foreign currency exchange loss	(2,119)	(1,113)	(3,501)
Other expenses, net	(609)	(690)	(201)
(Loss) income before income taxes, distributions in excess of noncontrolling interest capital, (loss) gain on sale of noncontrolling interests in hotel properties and discontinued operations	(233,187)	(322,222)	26,351
Income tax expense	(3,929)	(10,560)	(7,205)
Distributions in excess of noncontrolling interest capital	—	(2,499)	—
(Loss) income before (loss) gain on sale of noncontrolling interests in hotel properties and discontinued operations	(237,116)	(335,281)	19,146
(Loss) gain on sale of noncontrolling interests in hotel properties	—	(46)	85,762
(Loss) income from continuing operations	(237,116)	(335,327)	104,908
(Loss) income from discontinued operations, net of tax	(9,317)	17,841	(36,137)
Net (Loss) Income	(246,433)	(317,486)	68,771
Gain (loss) on currency translation adjustments	7,151	(30,225)	22,018
Gain (loss) on mark to market of derivatives	17,145	(45,007)	(50,725)
Comprehensive (Loss) Income	(222,137)	(392,718)	40,064
Comprehensive loss (income) attributable to the noncontrolling interests in SHR's operating partnership	2,821	5,026	(601)
Comprehensive income attributable to the noncontrolling interests in consolidated affiliates	(641)	(3,870)	(1,363)
Comprehensive (Loss) Income Attributable to SHR	$(219,957)	$ (391,562)	$ 38,100
Net (Loss) Income	$(246,433)	$ (317,486)	$ 68,771

Net loss (income) attributable to the noncontrolling interests in SHR's operating partnership	3,129	4,065	(969)
Net income attributable to the noncontrolling interests in consolidated affiliates	(641)	(3,870)	(1,363)
Net (Loss) Income Attributable to SHR	(243,945)	(317,291)	66,439
Preferred shareholder dividends	(30,886)	(30,886)	(30,107)
Net (Loss) Income Attributable to SHR Common Shareholders	$(274,831)	$ (348,177)	$ 36,332

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)

CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE (LOSS) INCOME—(CONTINUED)
(In Thousands, Except Per Share Data)

	For the years ended December 31,		
	2009	2008	2007
Amounts Attributable to SHR:			
(Loss) income from continuing operations	$(234,745)	$(334,907)	$102,132
(Loss) income from discontinued operations	(9,200)	17,616	(35,693)
Net (loss) income	$(243,945)	$(317,291)	$ 66,439
Basic (Loss) Income Per Share:			
(Loss) income from continuing operations attributable to SHR common shareholders	$ (3.53)	$ (4.86)	$ 0.96
(Loss) income from discontinued operations attributable to SHR	(0.12)	0.23	(0.48)
Net (loss) income attributable to SHR common shareholders	$ (3.65)	$ (4.63)	$ 0.48
Weighted average common shares outstanding	75,267	75,140	75,075
Diluted (Loss) Income Per Share:			
(Loss) income from continuing operations attributable to SHR common shareholders	$ (3.53)	$ (4.86)	$ 0.96
(Loss) income from discontinued operations attributable to SHR	(0.12)	0.23	(0.48)
Net (loss) income attributable to SHR common shareholders	$ (3.65)	$ (4.63)	$ 0.48
Weighted average common shares outstanding	75,267	75,140	75,324

The accompanying notes to the consolidated financial statements
are an integral part of these statements.

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(In Thousands)

	For the years ended December 31,		
	2009	2008	2007
8.50% Series A Cumulative Redeemable Preferred Stock			
Balance, beginning of year	$ 108,206	$ 108,206	$ 97,553
Offering of shares (net of offering costs of $833)	—	—	10,653
Balance, end of year	$ 108,206	$ 108,206	$ 108,206
8.25% Series B Cumulative Redeemable Preferred Stock			
Balance, beginning and end of year	$ 110,775	$ 110,775	$ 110,775
8.25% Series C Cumulative Redeemable Preferred Stock			
Balance, beginning and end of year	$ 138,940	$ 138,940	$ 138,940
Common shares			
Balance, beginning of year	$ 744	$ 742	$ 753
Restricted stock units redeemed for SHR common shares	8	2	—
Common shares repurchased and retired	—	—	(11)
Balance, end of year	$ 752	$ 744	$ 742
Additional paid-in capital			
Balance, beginning of year	$1,228,774	$1,217,242	$1,224,400
Adjustment for adopting new guidance on noncontrolling interest	—	—	(8,801)
Balance, beginning of year (as revised, see note 2)	1,228,774	1,217,242	1,215,599
Common shares repurchased and retired	—	—	(19,010)
Purchase of call options	—	—	(9,900)
Share-based compensation	5,598	5,310	5,037
Impact of adopting new guidance on convertible debt instruments	—	—	20,553
Adjustment for noncontrolling interest ownership in SHR's operating partnership	(516)	1,408	976
Change in redemption value	—	4,814	3,987
Balance, end of year	$1,233,856	$1,228,774	$1,217,242
Accumulated deficit			
Balance, beginning of year	$ (710,263)	$ (307,641)	$ (265,435)
Net (loss) income attributable to SHR	(243,945)	(317,291)	66,439
Distributions to shareholders	—	(85,331)	(102,666)
Common shares repurchased and retired	—	—	(5,979)
Balance, end of year	$ (954,208)	$ (710,263)	$ (307,641)
Accumulated other comprehensive loss			
Balance, beginning of year	$ (93,637)	$ (18,405)	$ 10,304
Currency translation	7,151	(30,225)	22,018
Mark to market of derivatives and other adjustments	17,145	(45,007)	(50,727)
Balance, end of year	$ (69,341)	$ (93,637)	$ (18,405)
Total SHR's Shareholders' Equity	$ 568,980	$ 783,539	$1,249,859

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY—(CONTINUED)
(In Thousands)

	For the years ended December 31,		
	2009	2008	2007
Noncontrolling interest in consolidated affiliates			
Balance, beginning of year	$ 27,203	$ 30,653	$ 10,965
Net income attributable to the noncontrolling interests in consolidated affiliates	641	3,870	1,363
Distributions to owners	(4,808)	(7,301)	(821)
Acquisition of interest in consolidated affiliates	—	—	(8,942)
Sale of interest in consolidated affiliates	—	—	27,416
Contributions	—	—	391
Other	152	(19)	281
Balance, end of year	$ 23,188	$ 27,203	$ 30,653
Total Equity	$592,168	$810,742	$1,280,512

The accompanying notes to the consolidated financial statements
are an integral part of these statements.

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)

	For the years ended December 31,		
	2009	2008	2007
Operating Activities:			
Net (loss) income	$(246,433)	$(317,486)	$ 68,771
Adjustments to reconcile net (loss) income to net cash provided by operating activities (including discontinued operations):			
Deferred income tax expense (benefit)	2,764	1,440	(133)
Depreciation and amortization	144,260	123,617	106,091
Amortization of deferred financing costs and discount and interest rate swap costs	31,234	8,192	7,647
Non-cash impairment losses and other charges	130,804	333,362	45,088
Loss on early extinguishment of debt	883	—	15,139
Equity in earnings of joint ventures	(1,718)	(2,810)	(8,344)
Share-based compensation	5,953	5,067	4,712
Gain on sale of assets	(17,721)	(37,709)	(22)
Loss (gain) on sale of noncontrolling interests in hotel properties	—	46	(85,762)
Foreign currency exchange loss	2,036	814	3,701
Recognition of deferred and other gains, net	(4,902)	(5,161)	(4,848)
Distributions in excess of noncontrolling interest capital	—	2,499	—
Decrease (increase) in accounts receivable	11,015	11,208	(16,163)
Insurance proceeds received	—	—	12,701
Decrease in other assets	1,655	4,601	3,150
(Decrease) increase in accounts payable and accrued expenses	(13,192)	(32,493)	22,953
Net cash provided by operating activities	46,638	95,187	174,681
Investing Activities:			
Proceeds from sales of assets	109,151	90,367	23,441
Proceeds from sale of noncontrolling interests in hotel properties	—	—	111,188
Proceeds from promissory note	—	6,000	—
Acquisition of hotel investments	—	(170)	(96,558)
Acquisition of land held for development	—	—	(16,121)
Acquisition of interest in joint ventures	—	(1,228)	(6,346)
Acquisition of interest in consolidated affiliates	—	—	(31,440)
Restricted and unrestricted cash (sold) acquired	(1,088)	—	1,549
Cash received from joint venture	10,099	805	6,049
Decrease (increase) in escrow deposits	3,840	—	(5,693)
Decrease (increase) in security deposits related to sale-leasebacks	4,826	(1,625)	(449)
Insurance proceeds received	—	—	62,092
Capital expenditures	(75,385)	(182,750)	(129,116)
Decrease in restricted cash and cash equivalents	14,452	4,803	34,239
Other investing activities	359	(113)	(2,207)
Net cash provided by (used in) investing activities	66,254	(83,911)	(49,372)
Financing Activities:			
Proceeds from issuance of preferred stock, net of offering costs	—	—	10,653
Borrowings under bank credit facility	125,500	228,000	670,000
Payments on bank credit facility	(153,500)	(131,000)	(676,000)
Borrowings from mortgages and other debt	—	—	593,291
Payments on mortgages and other debt	—	(17,500)	(719,293)
Proceeds from exchangeable senior notes, net of discount	—	—	179,100
Purchase of call options	—	—	(9,900)
Financing costs	(8,305)	(361)	(23,835)
Distributions to common shareholders	—	(71,952)	(71,364)
Distributions to preferred shareholders	—	(30,886)	(30,107)
Distributions to holders of noncontrolling interests in SHR's operating partnership	—	(940)	(1,032)
Distributions to holders of noncontrolling interests in consolidated affiliates	(4,808)	(9,800)	(1,164)
Interest rate swap costs	(37,210)	—	—
Common stock repurchase	—	—	(25,000)
Other financing activities	(513)	(239)	(139)
Net cash used in financing activities	(78,836)	(34,678)	(104,790)
Effect of exchange rate changes on cash	1,300	(7,138)	4,513
Net change in cash and cash equivalents	35,356	(30,540)	25,032
Cash and cash equivalents, beginning of year	80,954	111,494	86,462
Cash and cash equivalents, end of year	$ 116,310	$ 80,954	$ 111,494

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)

CONSOLIDATED STATEMENTS OF CASH FLOWS—(CONTINUED)
(In Thousands)

	For the years ended December 31,		
	2009	2008	2007
Supplemental Schedule of Non-Cash Investing and Financing Activities:			
(Gain) loss on mark to market of derivative instruments (see notes 2 and 11)	$(17,145)	$45,007	$50,725
Distributions declared and payable to common shareholders (see note 10)	$ —	$ —	$17,941
Distributions payable to holders of noncontrolling interests in SHR's operating partnership (see note 10)	$ —	$ —	$ 236
Mortgage and other debt assumed upon acquisitions of properties (see note 3)	$ —	$ —	$30,800
Promissory note received upon property disposition (see note 5)	$ —	$ —	$ (7,789)
Hyatt Regency New Orleans property damage and impairment recoverable through insurance (see note 5)	$ —	$ —	$82,886
(Decrease) increase in capital expenditures recorded as liabilities	$ (8,653)	$ 7,231	$ (2,314)
Cash Paid For (Receipts Of):			
Interest, net of interest capitalized	$ 72,605	$82,882	$82,216
Income taxes, net of refunds	$ (2,888)	$11,645	$ 7,861

The accompanying notes to the consolidated financial statements
are an integral part of these statements.

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. GENERAL

Strategic Hotels & Resorts, Inc. (SHR and, together with its subsidiaries, the Company) was incorporated in January 2004 to acquire and asset-manage upper upscale and luxury hotels that are subject to long-term management contracts. As of December 31, 2009, the Company's portfolio included 17 full-service hotel interests located in urban and resort markets in the United States; Paris, France; Punta Mita, Nayarit, Mexico; Hamburg, Germany; London, England and Prague, Czech Republic. The Company operates in one reportable business segment, hotel ownership.

SHR operates as a self-administered and self-managed real estate investment trust (REIT), which means that it is managed by its board of directors and executive officers. A REIT is a legal entity that holds real estate interests and, through payments of dividends to stockholders, is permitted to reduce or avoid federal income taxes at the corporate level. For SHR to continue to qualify as a REIT, it cannot operate hotels; instead it employs internationally-known hotel management companies to operate its hotels under management contracts. SHR conducts its operations through its direct and indirect subsidiaries, including its operating partnership, Strategic Hotel Funding, L.L.C. (SH Funding), which currently holds substantially all of the Company's assets. SHR is the sole managing member of SH Funding and holds approximately 99% of its membership units as of December 31, 2009. SHR manages all business aspects of SH Funding, including the sale and purchase of hotels, the investment in these hotels and the financing of SH Funding and its assets.

As of December 31, 2009, SH Funding owned or leased the following 17 hotels:

1. Fairmont Chicago
2. Fairmont Scottsdale(1)
3. Four Seasons Punta Mita Resort
4. Four Seasons Washington, D.C.
5. Hotel del Coronado(2)
6. Hyatt Regency La Jolla(3)
7. InterContinental Chicago(3)
8. InterContinental Miami
9. InterContinental Prague
10. Loews Santa Monica Beach Hotel
11. Marriott Champs Elysees Paris (Paris Marriott)(4)(5)
12. Marriott Hamburg(4)
13. Marriott Lincolnshire(6)
14. Marriott London Grosvenor Square(6)
15. Ritz-Carlton Half Moon Bay
16. Ritz-Carlton Laguna Niguel
17. Westin St. Francis

(1) The Company has a ground lease interest in one land parcel at this property.
(2) This property is owned by an unconsolidated affiliate in which the Company indirectly holds a 45% interest.
(3) These properties are owned by consolidated affiliates in which the Company indirectly holds 51% interests.
(4) The Company has leasehold interests in these properties.
(5) Effective January 1, 2008, the Company reflects the operating results of this property in its consolidated statements of operations.
(6) These properties are subject to ground lease arrangements.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation:

The accompanying consolidated financial statements and related notes have been prepared in accordance with accounting principles generally accepted in the United States of America (GAAP). The accompanying consolidated financial statements include the accounts of SHR, its subsidiaries and other entities in which the Company has a controlling interest.

If the Company determines that it is the holder of a variable interest in a variable interest entity (VIE) and that its variable interest will absorb a majority of the entity's expected losses, receive a majority of the entity's

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

expected residual returns, or both, then the Company will consolidate the entity. For entities that are not considered VIEs, the Company consolidates those entities it controls. It accounts for those entities over which it has a significant influence but does not control using the equity method of accounting. At December 31, 2009, SH Funding owned the following interests in joint ventures, which are accounted for using the equity method of accounting: a 50% interest in BuyEfficient, L.L.C. (BuyEfficient); a 45% interest in the joint ventures that own the Hotel del Coronado and an associated condominium-hotel development adjacent to the Hotel del Coronado; and a 31% interest in the joint venture that owns the Four Seasons Residence Club Punta Mita (RCPM) (see note 6). At December 31, 2009, SH Funding also owned 51% controlling interests in each of the entities that own the InterContinental Chicago and the Hyatt Regency La Jolla hotels, which are consolidated in the accompanying financial statements.

All significant intercompany transactions and balances have been eliminated in consolidation. Certain amounts included in the financial statements for prior periods have been reclassified to conform to the current financial statement presentation.

Use of Estimates:

The preparation of the consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

Investment in Hotel Properties and Depreciation:

Investment in hotel properties consists of land, leasehold interest, buildings, building and leasehold improvements, site improvements and furniture, fixtures and equipment.

Depreciation is computed on a straight-line basis over the following useful lives:

Leasehold interest	Life of lease (51 years)
Buildings	37-39 years
Building and leasehold improvements	5 – 10 years
Site improvements	15 years
Furniture, fixtures & equipment	3-5 years

Hotel improvements in progress include costs incurred for capital projects for hotels that are in the process of being developed, renovated, rehabilitated or expanded. Completed renovations and improvements are capitalized and depreciated over their estimated useful lives. Interest expense and certain other costs as well as project related salary and benefit costs incurred during a renovation or development period are capitalized and depreciated over the lives of the related assets. Costs incurred for repairs and maintenance are expensed.

Assets to be disposed of are reported at the lower of the carrying amount or estimated fair value less costs to sell. The Company classifies the operations of hotels sold or to be sold as discontinued operations (see note 5).

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Goodwill:

Goodwill consists of the excess of the allocated purchase price over the fair value of the net assets at the time a property is acquired. The changes in the carrying amount of goodwill for the years ended December 31, 2009 and 2008 are as follows (in thousands):

	2009	2008
Balance at the beginning of the year		
Goodwill	$ 437,803	$ 462,536
Accumulated impairment losses	(317,474)	—
	120,329	462,536
Impairment losses—continuing operations	(41,869)	(284,139)
Impairment losses—discontinued operations	—	(33,335)
Goodwill written off related to sales of hotels	(37,777)	—
Accumulated impairment losses written off related to sales of hotels	33,335	—
Currency translation adjustment	1,740	(24,733)
Balance at the end of the year		
Goodwill	401,766	437,803
Accumulated impairment losses	(326,008)	(317,474)
	$ 75,758	$ 120,329

Intangible Assets:

Intangible assets at December 31, 2009 and 2008 include (in thousands):

	2009	2008	Useful Life
Below market ground lease	$33,746	$30,469	Term of lease (51 years)
Golf course use agreement	1,500	1,500	14 years
Advanced bookings	3,200	3,404	Period of booking (up to 8 years)
	38,446	35,373	
Accumulated amortization	(4,400)	(3,096)	
Intangible assets, net	$34,046	$32,277	

Amortization of intangible assets is computed on a straight-line basis over the respective useful lives. For the years ended December 31, 2009, 2008 and 2007, amortization expense of intangible assets was $1,327,000, $1,993,000, and $2,075,000, respectively. The estimated aggregate annual amortization expense for intangible assets at December 31, 2009 is summarized as follows (in thousands):

Years ending December 31,	
2010	$ 1,166
2011	1,166
2012	1,166
2013	1,166
2014	933
Thereafter	28,449
Total	$34,046

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Impairment:

Investment in Hotel Properties

The Company reviews its investment in hotel properties for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. An impairment loss is recognized if the estimated future undiscounted cash flows derived from the asset are less than its carrying amount. The impairment loss is measured as the excess of the carrying value over the fair value of the asset, with fair value determined based on estimated future discounted cash flows or other relevant data as to the fair value of the asset (Level 3 inputs).

Goodwill

Goodwill is reviewed for impairment at least annually as of December 31 and whenever circumstances or events indicate potential impairment. The measurement of impairment of goodwill consists of two steps. In the first step, the Company compares the fair value of each reporting unit, which for the Company is each hotel property, to its carrying value. The assessment of fair values of the hotel properties incorporates unobservable inputs (Level 3), including existing market-based considerations, as well as discounted cash flow analysis of the Company's projections. When the fair value of the property is less than its carrying value, the Company is required to perform a second step in order to determine the implied fair value of each reporting unit's goodwill, and to compare it to the carrying value of the reporting unit's goodwill. The activities in the second step include hypothetically valuing all of the tangible and intangible assets and liabilities of the impaired reporting unit as if the reporting unit had been acquired in a business combination, which includes valuing all of the Company's intangibles, even if they are not currently recorded within the carrying value.

Intangible Assets

Intangible assets are reviewed for impairment whenever circumstances or events indicate potential impairment, as part of the Company's investment in hotel property impairment process described above.

Investment in Unconsolidated Joint Ventures

A series of operating losses of an investee or other factors may indicate that a decrease in value of the Company's investment in unconsolidated joint ventures has occurred which is other-than-temporary. Accordingly, the investment in each of the unconsolidated joint ventures is evaluated periodically and as deemed necessary for recoverability and valuation declines that are other than temporary. If the investment is other than temporarily impaired, the Company writes down the investment to its estimated fair value. The Company also considers any impairments in the underlying real estate investments, the ownership and distribution preferences and limitations and rights to sell and repurchase of its ownership interests.

Deferred Financing Costs:

Deferred financing costs consist of loan fees and other costs incurred in connection with obtaining various loans. The deferred financing costs have been capitalized and are being amortized to interest expense over the life of the underlying loan using the straight-line method, which approximates the effective interest method. In determining the life of the loan, the Company considers the extension option periods when (a) it is the Company's intention, at loan inception, to exercise the options and renew the loans to extend through the option periods, and (b) such extension is at the discretion of the Company without a requirement of a significant financial obligation upon such extension. If the aforementioned criteria are not met, the Company does not

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

include the extension periods in the life of the loan. Upon early extinguishment of the various loans, any related unamortized deferred financing costs are written off and included in loss on early extinguishment of debt.

Inventories:

Inventories located at the hotel properties consist primarily of food and beverage stock. These items are stated at the lower of cost, as determined by an average cost method, or market and are included in other assets on the accompanying consolidated balance sheets.

Cash and Cash Equivalents:

The Company considers all cash on hand, demand deposits with financial institutions and short-term highly liquid investments with purchased or original maturities of three months or less to be cash equivalents.

Restricted Cash and Cash Equivalents:

As of December 31, 2009 and 2008, restricted cash and cash equivalents included $15,829,000 and $32,104,000, respectively, that will be used for property and equipment replacement in accordance with hotel management or lease agreements (FF&E Reserves). At December 31, 2009 and 2008, restricted cash and cash equivalents also included reserves of $7,000,000 and $5,254,000, respectively, required by loan and other agreements.

Foreign Currency:

Foreign currency-denominated assets and liabilities, where the functional currency is the local currency, are translated into U.S. dollars at the exchange rates in effect at the balance sheet date. Income and expense items are translated at the average exchange rates during the respective periods. Gains and losses from foreign currency translation, where the functional currency is the local currency, are recorded as a separate component of accumulated other comprehensive loss within shareholders' equity.

Revenue Recognition:

Revenues include rooms, food and beverage and other hotel operating revenue such as internet access, telephone, parking, golf course, spa, retail and space rentals. These revenues are recorded net of taxes collected from customers and remitted to government authorities and are recognized as the related services are rendered. Lease revenues are based on a percentage of hotel revenues or a percentage of adjusted operating profit, as defined in the lease agreements. Lease revenues are recognized on an accrual basis pursuant to the terms of each lease.

Noncontrolling Interests:

Third party noncontrolling partners own an approximate one percent interest in SH Funding. The interests held by these noncontrolling partners are stated at the greater of carrying value or their redemption value and are presented as noncontrolling interests in SHR's operating partnership in the consolidated balance sheets. Net loss (income) attributable to the noncontrolling interest partners is presented as noncontrolling interest in SHR's operating partnership in the consolidated statements of operations. Net (loss) income and other comprehensive (loss) income are attributed to noncontrolling interest partners in SH Funding based on their weighted average

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

ownership percentages during the period. The ownership percentage is calculated by dividing the number of units held by the noncontrolling interest partners by the sum of units held by SHR and the units held by noncontrolling interest partners, all calculated based on the weighted average days outstanding at the end of the period.

These noncontrolling partners have a right to exercise a redemption right to require SH Funding to redeem all or a portion of the units held by the noncontrolling interest partners on a specified redemption date at a redemption price equal to the number of operating partnership units multiplied by SHR's common stock price and in the form of a cash amount. SH Funding is not obligated to satisfy the redemption right if SHR elects to purchase the units. SHR has the sole and absolute discretion to purchase the units. If it does purchase the units, SHR has the sole and absolute discretion to pay either in cash or shares.

The following table reflects the activity of the noncontrolling interests in SHR's operating partnership (in thousands):

	For the years ended December 31,		
	2009	2008	2007
Noncontrolling interest in SHR's operating partnership			
Balance, beginning of year	$ 5,330	$16,326	$12,463
Impact of adopting new guidance on noncontrolling interests	—	—	8,801
Balance, beginning of year (restated)	5,330	16,326	21,264
Net (loss) income attributable to the noncontrolling interests in SHR's operating partnership	(3,129)	(4,065)	969
Currency translation	91	(386)	283
Mark to market of derivatives and other adjustments	217	(575)	(649)
Deferred compensation activity	72	68	64
Distributions	—	(709)	(944)
Change in redemption value	—	(4,814)	(3,987)
Adjustment for noncontrolling interest ownership in SHR's operating partnership	136	(515)	(674)
Balance, end of year	$ 2,717	$ 5,330	$16,326

The historical cost of the redeemable noncontrolling interests is based on the proportional relationship between the carrying value of equity associated with SHR's common shareholders relative to that of the unitholders of SH Funding, as SH Funding units may be exchanged into SHR common stock on a one-for-one basis. As of December 31, 2009, 2008 and 2007, the redeemable noncontrolling interests had a redemption value of approximately $1,776,000 (based on SHR's common share price of $1.86 on December 31, 2009), $1,639,000 (based on SHR's common share price of $1.68 on December 31, 2008), and $16,326,000 (based on SHR's common share price of $16.73 on December 31, 2007), respectively.

The Company also consolidates affiliates that it controls but does not wholly own. The ownership interests held by the third party noncontrolling partners are presented as noncontrolling interests in consolidated affiliates in the Company's consolidated balance sheets. The net income attributed to the noncontrolling partners is presented as noncontrolling interests in consolidated affiliates. The activity for the noncontrolling interests in consolidated affiliates for the years ended December 31, 2009, 2008 and 2007 is presented in the Company's consolidated statements of equity.

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Income Taxes :

SHR has elected to be taxed as a REIT under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the Tax Code). As a REIT, SHR generally will not be subject to U.S. federal income tax if it distributes 100% of its annual taxable income to its shareholders. As a REIT, SHR is subject to a number of organizational and operational requirements. If it fails to qualify as a REIT in any taxable year, SHR will be subject to U.S. federal income tax (including any applicable alternative minimum tax) on its taxable income at regular corporate tax rates. Even if it qualifies for taxation as a REIT, it may be subject to foreign, state and local income taxes and to U.S. federal income tax and excise tax on its undistributed income. In addition, taxable income from SHR's taxable REIT subsidiaries is subject to federal, foreign, state and local income taxes. Also, the foreign countries where the Company has operations do not recognize REITs under their respective tax laws. Accordingly, the Company is subject to tax in those jurisdictions.

Deferred tax assets and liabilities are established for temporary differences between the financial reporting basis and the tax basis of assets and liabilities at the enacted tax rates expected to be in effect when the temporary differences reverse. A valuation allowance for deferred tax assets is provided if the Company believes all or some portion of the deferred tax asset may not be realized. Any increase or decrease in the valuation allowance that results from a change in circumstances that causes a change in the estimated realizability of the related deferred tax asset is included in income.

Distributions in Excess of Noncontrolling Interest Capital:

Prior to the Company adopting new guidance on accounting for noncontrolling interests in consolidated financial statements on January 1, 2009, distributions that exceeded noncontrolling interest partners' capital in a consolidated entity were recorded as an expense in the consolidated statements of operations. The adoption of the new guidance requires that any future distributions that exceed noncontrolling interest partners' capital will result in a deficit noncontrolling interest balance.

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Per Share Data:

Basic (loss) income per share is computed by dividing the net (loss) income attributable to SHR common shareholders by the weighted average common shares outstanding during each period. Diluted (loss) income per share is computed by dividing the net (loss) income attributable to SHR common shareholders as adjusted for the impact of dilutive securities, if any, by the weighted average common shares outstanding plus potentially dilutive securities. Dilutive securities may include restricted stock units (RSUs), stock options (Options), exchangeable debt securities and noncontrolling interests that have an option to exchange their interests to shares. No effect is shown for securities that are anti-dilutive. The following table sets forth the components of the calculation of (loss) income from continuing operations attributable to SHR common shareholders for the years ended December 31, 2009, 2008 and 2007 (in thousands):

	2009	2008	2007
Numerator:			
(Loss) income from continuing operations attributable to SHR	$(234,745)	$(334,907)	$102,132
Preferred shareholder dividends	(30,886)	(30,886)	(30,107)
(Loss) income from continuing operations attributable to SHR common shareholders	$(265,631)	$(365,793)	$ 72,025
Denominator:			
Weighted average common shares—basic	75,267	75,140	75,075
Potentially dilutive securities	—	—	249
Weighted average common shares—diluted	75,267	75,140	75,324

Securities that could potentially dilute basic (loss) income per share in the future that are not included in the computation of diluted (loss) income per share because they are anti-dilutive as of December 31, 2009, 2008 and 2007 are as follows (in thousands):

	2009	2008	2007
Noncontrolling interests	955	976	976
Options and RSUs	1,531	1,413	804

In addition, the diluted (loss) income per share computation will not give effect to the dilution from the exchange of SH Funding's 3.50% Exchangeable Senior Notes due 2012 (Exchangeable Notes) (see note 9) until the average share price of SHR's common stock exceeds the initial exchange price of approximately $27.70.

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Accumulated Other Comprehensive Loss:

The Company's accumulated other comprehensive loss (OCL) results from mark to market of certain derivative financial instruments and unrealized gains or losses on foreign currency translation adjustments (CTA). The following table provides the components of accumulated other comprehensive loss as of December 31, 2009 2008, and 2007 (in thousands):

	Derivative and Other Adjustments	CTA	Accumulated OCL
Balance at January 1, 2007	$ (2,860)	$ 13,164	$ 10,304
Mark to market of derivative instruments	(51,339)	—	(51,339)
Reclassification to equity in earnings of joint ventures	612	—	612
CTA activity	—	22,018	22,018
Balance at December 31, 2007	(53,587)	35,182	(18,405)
Mark to market of derivative instruments	(46,086)	—	(46,086)
Reclassification to equity in earnings of joint ventures	1,079	—	1,079
CTA activity	—	(30,225)	(30,225)
Balance at December 31, 2008	(98,594)	4,957	(93,637)
Mark to market of derivative instruments	17,119	—	17,119
Reclassification to equity in earnings of joint ventures	26	—	26
CTA activity	—	7,151	7,151
Balance at December 31, 2009	$ (81,449)	$ 12,108	$ (69,341)

Derivative Instruments and Hedging Activities:

The Company recognizes all derivatives as either assets or liabilities on the balance sheet and measures those instruments at fair value. If certain conditions are met, a derivative may be specifically designated as (a) a hedge of the exposure to changes in the fair value of a recognized asset or liability or an unrecognized firm commitment, (b) a hedge of the exposure to variable cash flows of a forecasted transaction, or (c) a hedge of the foreign currency exposure of a net investment in a foreign-currency-denominated forecasted transaction. The accounting for changes in the fair value of a derivative depends on the intended use of the derivative and resulting designation.

Fair Value of Financial and Nonfinancial Instruments:

Fair value is a market-based measurement, not an entity-specific measurement. Therefore, a fair value measurement should be determined based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, a fair value hierarchy has been established that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Levels 1 and 2 of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy).

Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access. Level 2 inputs are inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs may include quoted prices for similar assets and liabilities in active markets, as well as inputs that are observable for the asset or liability (other

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

than quoted prices), such as interest rates, foreign exchange rates, and yield curves that are observable at commonly quoted intervals. Level 3 inputs are unobservable inputs for the asset or liability, which are typically based on an entity's own assumptions, as there is little, if any, related market activity. In instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, the level in the fair value hierarchy within which the entire fair value measurement falls is based on the lowest level input that is significant to the fair value measurement in its entirety. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability.

Retrospective Adoption of New Accounting Guidance on Convertible Debt Instruments and Noncontrolling Interests:

On January 1, 2009, the Company adopted new accounting guidance on accounting for convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement). This new guidance requires the liability and equity components of convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement) to be separately accounted for in a manner that reflects the issuer's nonconvertible debt borrowing rate. The resulting debt discount is amortized over the debt instrument's expected life as additional interest expense. The Company applied this change in accounting principle retrospectively to all prior periods presented. The adjustment had no effect on net cash flows from operations.

For the year ended December 31, 2009, this change in accounting principle resulted in an increase of $4,023,000 to interest expense and net loss and an increase of $0.05 to basic and diluted loss per share. The following table summarizes the effect of the accounting change on the Company's prior period consolidated financial statements (in thousands, expect per share data):

	Originally Reported	Effect of Change	As Adjusted
Statement of Operations for the year ended December 31, 2008:			
Interest expense	$ (85,578)	$ (3,867)	$ (89,445)
Loss from continuing operations attributable to SHR	(357,465)	(3,867)	(361,332)
Net loss attributable to SHR	(313,424)	(3,867)	(317,291)
Per common share:			
Basic loss	(4.58)	(0.05)	(4.63)
Diluted loss	(4.58)	(0.05)	(4.63)
Statement of Operations for the year ended December 31, 2007 :			
Interest expense	$ (87,246)	$ (2,719)	$ (89,965)
Income from continuing operations attributable to SHR	108,005	(2,719)	105,286
Net income (loss) attributable to SHR	69,158	(2,719)	66,439
Per common share:			
Basic earnings (loss)	0.52	(0.04)	0.48
Diluted earnings (loss)	0.52	(0.04)	0.48
Balance Sheet as of December 31, 2008:			
Deferred financing costs, net	10,668	(293)	10,375
Exchangeable Notes, net of discount	179,415	(14,260)	165,155
Additional paid-in capital	1,208,221	20,553	1,228,774
Accumulated deficit	(703,677)	(6,586)	(710,263)

On January 1, 2009, the Company adopted new guidance on accounting for noncontrolling interests in consolidated financial statements. The new guidance requires that noncontrolling interests, previously reported as minority interests, be reported as a separate component of equity, a change that affects the Company's financial

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

statement presentation of noncontrolling interests in its consolidated subsidiaries. The new guidance specifies that consolidated net (loss) income attributable to the parent and to the noncontrolling interests be clearly identified and presented separately on the face of the consolidated statements of operations. The new guidance also establishes a single method of accounting for changes in a parent's ownership interest in a subsidiary and specifies that these transactions be recorded as equity transactions as long as the ownership change does not result in deconsolidation. This new guidance also expands disclosures in the financial statements to include a reconciliation of the beginning and ending balances of the equity attributable to the parent and the noncontrolling owners and a schedule showing the effects of changes in a parent's ownership interest in a subsidiary on the equity attributable to the parent. The new guidance is applied prospectively in 2009, except for the presentation and disclosure requirements, which are applied retrospectively. The retrospective presentation and disclosure requirements had no effect on previously reported net loss available to common shareholders or earnings per share. The prospective accounting requirements are dependent on future transactions involving noncontrolling interests.

New Accounting Guidance:

In June 2009, the Financial Accounting Standard Board (FASB) issued the FASB Accounting Standards Codification™ (Codification). This is the single source of authoritative nongovernmental U.S. GAAP. The Codification launched on July 1, 2009 and is effective for interim and annual periods ending after September 15, 2009. The Codification does not change U.S. GAAP, but combines all authoritative standards into a comprehensive, topically organized online database. After the Codification launch on July 1, 2009, only one level of authoritative GAAP exists, other than guidance issued by the SEC. All other accounting literature excluded from the Codification is considered non-authoritative. The Codification has an impact on the Company's financial statement disclosures as all references to authoritative accounting literature are references in accordance with the Codification.

In June 2009, the FASB issued new accounting guidance, which amends the consolidation guidance applicable to VIEs. The new guidance requires a qualitative rather than a quantitative analysis to determine the primary beneficiary of a VIE, requires continuous assessment of whether an enterprise is the primary beneficiary of a VIE, and requires enhanced disclosures about an enterprise's involvement with a VIE. The new guidance is effective as of the beginning of each reporting entity's first annual reporting period that begins after November 15, 2009. The Company does not expect that the adoption of this new guidance will have a material impact on its consolidated financial statements.

In June 2009, the Company adopted new guidance on interim disclosures about fair value of financial instruments. This new guidance relates to fair value disclosures for any financial instruments that are not currently reflected on the balance sheet at fair value. Prior to the issuance of this new guidance, fair values for these assets and liabilities were only disclosed once a year. The new guidance now requires these disclosures on a quarterly basis, providing qualitative and quantitative information about fair value estimates for all those financial instruments not measured on the balance sheet at fair value.

In April 2009, the FASB issued new accounting guidance on accounting for assets acquired and liabilities assumed in a business combination that arise from contingencies. This new guidance amends and clarifies the initial recognition and measurement, subsequent measurement and accounting, and related disclosures arising from contingencies in a business combination. This new guidance is effective for business combinations with acquisition dates on or after fiscal years beginning on or after December 15, 2008. This new guidance will impact the Company's accounting for future acquisitions.

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In April 2009, the FASB issued new accounting guidance to determine fair values when there is no active market or where the price inputs being used represent distressed sales. It reaffirms the objective of fair value measurement—to reflect how much an asset would be sold for in an orderly transaction (as opposed to a distressed or forced transaction) at the date of the financial statements under current market conditions. Specifically, it reaffirms the need to use judgment to ascertain if a formerly active market has become inactive and in determining fair values when markets have become inactive. The Company adopted this new guidance in June 2009 and determined that this new guidance did not have a material impact on its consolidated financial statements.

In June 2008, the FASB issued new accounting guidance to determine whether an instrument or embedded feature is indexed to an entity's own stock. This new guidance provides a two-step approach to determine whether a financial instrument or an embedded feature is indexed to an issuer's own stock and exempt from the accounting guidance regarding derivative instruments and hedging activities. The transition under this new guidance requires a cumulative adjustment to the opening balance of retained earnings in the year in which the new guidance becomes effective. The Company adopted the new guidance on January 1, 2009 and determined that this new guidance did not have a material impact on its consolidated financial statements.

In June 2008, the FASB issued new accounting guidance to address whether instruments granted in share-based payment transactions are participating securities prior to vesting. This new guidance indicates that unvested share-based payment awards that contain non-forfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities that should be included in earnings per share calculations under the two-class method. The Company adopted this new guidance on January 1, 2009 and determined that this new guidance did not have a material impact on its consolidated financial statements.

In March 2008, the FASB issued new accounting guidance to improve financial reporting about derivative instruments by requiring enhanced disclosures to enable investors to better understand their effects on an entity's financial position, financial performance, and cash flows. This new guidance is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. The Company adopted this new guidance on January 1, 2009 and complied with the expanded disclosure requirements, as applicable (see note 11).

In February 2008, the FASB issued new accounting guidance which deferred the effective date for measuring fair value of non-financial assets and liabilities, except those items recognized or disclosed at fair value on an annual or more frequently recurring basis, until fiscal years beginning after November 15, 2008 and interim periods within those fiscal years. The Company adopted the new guidance with respect to its non-financial assets and liabilities and determined that the new guidance did not have a material impact on its financial statements.

In December 2007, the FASB issued new accounting guidance on business combinations. The new guidance broadens the previous guidance on business combinations, extending its applicability to all transactions and other events in which one entity obtains control over one or more other businesses. The new guidance also establishes requirements for how the acquirer recognizes the fair value of the assets acquired, liabilities assumed, and noncontrolling interests in the acquiree as a result of business combinations; and requires the acquisition related costs to be expensed rather than included as part of the basis of the acquisition. The new guidance expands required disclosures to improve the ability to evaluate the nature and financial effects of business combinations.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The new guidance is effective for all business combinations for which the acquisition date is on or after fiscal years beginning on or after December 15, 2008. The Company adopted this new guidance on January 1, 2009 and the guidance will impact the Company's accounting for future acquisitions and related transaction costs.

3. INVESTMENT IN HOTEL PROPERTIES, NET

The following summarizes the Company's investment in hotel properties as of December 31, 2009 and 2008, excluding unconsolidated joint ventures (in thousands):

	2009	2008
Land	$ 362,288	$ 397,429
Land held for development	110,589	120,367
Leasehold interest	11,633	11,633
Buildings	1,569,848	1,652,641
Building and leasehold improvements	101,621	81,821
Site improvements	53,488	53,510
Furniture, fixtures and equipment	437,855	412,840
Improvements in progress	13,280	70,229
Total investment in hotel properties	2,660,602	2,800,470
Less accumulated depreciation	(498,018)	(416,610)
Total investment in hotel properties, net	$2,162,584	$2,383,860
Consolidated hotel properties	16	18
Consolidated hotel rooms (unaudited)	7,245	7,590

The table below demonstrates the geographic distribution of the Company's portfolio based on its undepreciated carrying amount as of December 31, 2009 and 2008, excluding unconsolidated joint ventures:

	2009	2008
Southern California	20.2%	18.6%
Northern California	19.3	18.7
Chicago, IL	17.7	16.4
Scottsdale, AZ	12.8	11.8
Washington, D.C.	6.0	6.4
Miami, FL	5.4	5.0
United States	81.4	76.9
Mexico	7.3	9.6
Prague, Czech Republic	6.0	5.7
London, England	4.9	4.2
Paris, France	0.4	3.6
Total	100.0%	100.0%

Sale of InterContinental Prague Apartment Buildings:

On October 19, 2009, the Company sold two apartment buildings associated with the InterContinental Prague hotel for a gross sales price of 130,000,000 Czech crown ($7,496,000 based on the foreign exchange rate as of October 19, 2009). The Company recognized a loss on the sale of the apartment buildings of $472,000, which is recorded in other expenses, net.

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Acquisition of Controlling Interests in Hotel Properties:

On July 31, 2007, the Company purchased the 116-room Renaissance Paris Hotel Le Parc Trocadero (Renaissance Paris) for approximately $94,965,000, including acquisition costs. The acquisition was financed using borrowings under the Company's bank credit facility and the facility secured by the Marriott London Grosvenor Square. In 2009, the Company sold the Renaissance Paris (see note 5).

The following is a summary of the allocation of the purchase price for the acquisition completed in the year ended December 31, 2007 (in thousands):

	Renaissance Paris
Land(1)	$ 16,452
Building(1)	52,398
Site improvements(1)	35
Furniture, fixtures and equipment(1)	7,881
Goodwill(1)	33,398
Deferred tax liability	(13,975)
Net working capital	(1,224)
	$ 94,965

(1) For the year ended December 31, 2009, the Company recorded impairment losses to reduce long-lived assets (see note 5). For the year ended December 31, 2008, the Company recorded impairment losses to reduce goodwill (see note 5).

Acquisition of Noncontrolling Interests in Hotel Properties

On May 9, 2007, the Company purchased its partner's 15% interest in the entity that owns the InterContinental Chicago for approximately $22,042,000, including acquisition costs. On September 1, 2007, the Company purchased its partner's 15% interest in the entity that owns the InterContinental Miami for approximately $9,398,000, including acquisition costs. The acquisitions were funded using borrowings under the Company's bank credit facility (see note 9). The acquisitions were accounted for as step acquisitions under purchase accounting.

Purchase of Land Parcel in Mexico

In October 2007, the Company entered into an agreement to purchase a 60-acre oceanfront land parcel in Punta Mita, Nayarit, Mexico, near the Four Seasons Punta Mita Resort, for a purchase price of approximately $45,800,000 paid in three installments through 2009. The Company paid the first installment of $15,000,000 plus closing costs of $1,121,000 on October 4, 2007 and executed two non-interest bearing promissory notes for the remaining balance. On September 30, 2008, the Company paid the first of the two notes (see note 9). In August 2009, the Company entered into an agreement with the holder of the promissory note whereby the Company was released from the final installment payment in exchange for the Company agreeing to provide the holder with the right to an interest in the property (see note 9).

Gain on Sale of Noncontrolling Interests in Hotel Properties

On August 31, 2007, the Company sold a 49% interest in each of the InterContinental Chicago and Hyatt Regency La Jolla hotels to DND Hotel JV Pte Ltd., an affiliate of GIC Real Estate Pte Ltd., a real estate investment company and subsidiary of the Government of Singapore Investment Corporation Pte Ltd., for a gross aggregate sales price of $220,500,000. At the time of the closing of the transactions, the hotels were encumbered by mortgage loans totaling an aggregate of $218,500,000, with a 49% interest in such mortgage loans equaling

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$107,065,000. The net proceeds to the Company totaled approximately $111,188,000 after prorations related to assets and liabilities of the hotels and closing costs. The Company recognized a gain on the sale of approximately $85,762,000 during the year ended December 31, 2007. The Company holds the remaining 51% interest in each hotel and has entered into long-term asset management agreements with the ventures.

4. IMPAIRMENT LOSSES AND OTHER CHARGES

Goodwill and Intangible Asset Impairment Losses

During the second quarter of 2009, management concluded that indicators of potential impairment were present and that evaluations of carrying values of goodwill and intangible assets were therefore required based on the continued deterioration of economic and credit market conditions and declines in the Company's revenues, operating profits, forecasted performance and market capitalization from previous levels.

The Company performed an interim (during the second quarter of 2009) test of impairment of goodwill and an annual (during the fourth quarter of 2009) test for impairment of goodwill. Based on its interim impairment test in the second quarter of 2009, the Company recorded non-cash goodwill impairment losses of $41,869,000. In the fourth quarter of 2009, the Company performed its annual impairment analysis and did not record any additional non-cash impairment losses related to goodwill. For the year ended December 31, 2008, the Company recorded impairment losses of $284,139,000. There was no goodwill impairment for the year ended December 31, 2007.

Long-Lived Asset Impairment Losses

The Company also performed an impairment test of its long-lived assets for two Mexican development sites at December 31, 2009 based on uncertainties surrounding the development of this land in a manner consistent with the Company's original plan, resulting in an impairment loss of $23,173,000. The Company determined there was no impairment of investment in hotel properties included in loss from continuing operations for the years ended December 31, 2008 and 2007.

Investment in Unconsolidated Joint Venture Impairment Losses

During the fourth quarter of 2009, the Company recorded a $26,500,000 impairment loss due to an other-than-temporary decline in value of its 45% interests in the joint ventures that own the Hotel del Coronado and an associated condominium-hotel development adjacent to the Hotel del Coronado. For the year ended December 31, 2008, the Company recognized an other-than-temporary decline in the value of its investment in RCPM and recorded an impairment loss of $1,000,000. There was no impairment of investment in unconsolidated joint ventures for the year ended December 31, 2007.

Fair Value of Assets Measured on a Nonrecurring Basis

The following tables present information related to assets that were measured at fair value on a nonrecurring basis.

For the year ended December 31, 2009 (in thousands):

Description	Fair Value Measurements Using Significant Unobservable Inputs (Level 3)	Total Losses
Goodwill	$ —	$(41,869)
Long-lived assets	103,089	(23,173)
Investment in unconsolidated joint ventures	36,458	(26,500)

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For the year ended December 31, 2008 (in thousands):

Description	Fair Value Measurements Using Significant Unobservable Inputs (Level 3)	Total Losses
Goodwill	$ 60,044	$(284,139)
Intangible assets	—	(583)
Investment in unconsolidated joint ventures	3,397	(1,000)

Other Charges

The Company's interest in the Luxury Leisure Properties International, L.L.C. (LLPI) venture was redeemed in May 2009 (see note 15). During the year ended December 31, 2009, the Company recorded a charge of $206,000 to write off its investment in LLPI.

The Company recorded a charge of approximately $8,261,000 and $7,079,000 to write off costs and deposits related to capital projects that management decided to abandon during the years ended December 31, 2009 and 2008, respectively.

During the third quarter of 2008, management decided to not purchase an interest in a mixed-use building, the Aqua Building, which was under construction and adjacent to the Fairmont Chicago hotel. As a result, the Company recorded a charge of approximately $35,684,000, which includes the loss of $28,000,000 deposited in the form of a letter of credit that secured the purchase agreement and approximately $7,684,000 of planning and development costs previously recorded as investment in hotel properties, net.

During the fourth quarter of 2006 and the first half of 2007, the Company incurred direct costs in connection with its planned public listing of its European hotel assets. Due to unfavorable market conditions, the Company determined in the third quarter of 2007 to abandon the plan in its current form. In connection therewith, the Company recorded a charge of $7,372,000 during the year ended December 31, 2007 to write off previously deferred costs relating to this potential transaction.

5. DISCONTINUED OPERATIONS

The results of operations of hotels sold are classified as discontinued operations and segregated in the consolidated statements of operations for all periods presented. During the three years ended December 31, 2009, the Company sold the following hotels:

Hotel	Location	Date Sold	Net Sales Proceeds
Renaissance Paris	Paris, France	December 21, 2009	$50,275,000
Four Seasons Mexico City	Mexico City, Mexico	October 29, 2009	$52,156,000
Hyatt Regency Phoenix	Phoenix, AZ	July 2, 2008	$89,581,000
Hyatt Regency New Orleans	New Orleans, LA	December 28, 2007	$28,047,000

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Renaissance Paris Impairment

An impairment test of long-lived assets was performed for the Renaissance Paris at September 30, 2009 as a result in a change in the anticipated holding period for that hotel. The Company determined that the hotel's long-lived assets' carrying value exceeded the fair value of $51,954,000, with fair value determined based on estimated future discounted cash flows or the relevant data as to the fair value of the asset (Level 3 inputs). As a result of this test, the Company recorded an impairment loss of $30,795,000 related to the Renaissance Paris hotel, which is included in (loss) income from discontinued operations in the consolidated statement of operations for the year ended December 31, 2009.

In the fourth quarter of 2008, the Company performed its annual impairment analysis. Based on the results of its impairment test, the Company recorded a non-cash impairment loss of $33,335,000 to reduce the carrying value of the goodwill related to the Renaissance Paris to its fair value of $0, which is included in loss from discontinued operations in the consolidated statement of operations for the year ended December 31, 2008.

Hyatt Regency New Orleans Impairment and Disposition

In August 2005, Hurricane Katrina caused substantial damage to the Hyatt Regency New Orleans property. The hurricane damage also caused significant interruption to the hotel's business, and the hotel effectively ceased operations. On August 1, 2007, the Company entered into a complete and final settlement of its property damage and business interruption insurance claims. The total settlement, net of deductibles, was $143,007,000.

In connection with completing the insurance settlement process, the Company updated its ongoing evaluation and assessment of its strategic options with respect to the Hyatt Regency New Orleans property, including updating the Company's estimate of the fair market value of the property. Based on this assessment the Company recognized an impairment loss of $37,716,000 to property and equipment and goodwill in the third quarter of 2007 as shown below (in thousands):

Total impairment of property and equipment	$ 141,217
Less insurance settlement allocated to property and equipment damage	(115,571)
Impairment loss—property and equipment	25,646
Impairment loss—goodwill	12,070
Total impairment loss	$ 37,716

On December 28, 2007, the Company sold the Hyatt Regency New Orleans hotel for a gross sales price of $32,000,000, of which $23,000,000 was received in cash at closing and $9,000,000 was received in the form of a promissory note from the purchaser. The promissory note provides for payment in two tranches, a $6,000,000 tranche which bore interest at 10.0% and was due on March 31, 2008, and a $3,000,000 tranche which is non-interest bearing and is due on or before December 27, 2013. The Company recorded this note at its estimated present value of $7,789,000. After payment of commissions and other selling costs, the net sales proceeds to the Company were $28,047,000 resulting in a gain on sale of $2,279,000. The Company initially deferred recognition of the gain and recorded it as an offset to the promissory note. On March 31, 2008, the Company received the $6,000,000 promissory note tranche plus interest and recognized $416,000 of the gain, which is recorded in income from discontinued operations for the year ended December 31, 2008. The Company will recognize the remainder of the gain when remaining cash payments are received from the buyer.

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The following is a summary of (loss) income from discontinued operations for the years ended December 31, 2009, 2008 and 2007 (in thousands):

	2009	2008	2007
Hotel operating revenues	$ 31,892	$ 70,808	$ 76,437
Operating costs and expenses	24,687	50,554	56,316
Depreciation and amortization	5,019	7,079	6,562
Impairment losses	30,795	33,335	37,716
Total operating costs and expenses	60,501	90,968	100,594
Operating loss	(28,609)	(20,160)	(24,157)
Interest expense	—	—	(2,483)
Interest income	3	19	1,178
Loss on early extinguishment of debt	—	—	(7,294)
Foreign currency exchange gain (loss)	82	299	(200)
Other expenses, net	(82)	(257)	(383)
Income tax benefit (expense)	1,125	458	(2,798)
Gain on sale	18,164	37,482	—
(Loss) income from discontinued operations	$ (9,317)	$ 17,841	$ (36,137)

6. INVESTMENT IN JOINT VENTURES

Investment in joint ventures as of December 31, 2009 and 2008 includes the following (in thousands):

	2009	2008
Hotel del Coronado and North Beach Ventures(a)	$36,458	$71,467
RCPM(b)	3,607	3,397
BuyEfficient(c)	6,680	6,653
LLPI(d)	—	605
Total investment in joint ventures	$46,745	$82,122

(a) The Company owns 45% joint venture ownership interests in SHC KSL Partners, LP (Hotel Venture), the existing owner of the Hotel del Coronado, and in HdC North Beach Development, LLLP (North Beach Venture), the owner of an adjacent residential condominium-hotel development. The Hotel Venture and the North Beach Venture are collectively referred to as the Partnerships. In January 2006, the Hotel Venture entered into non-recourse mortgage and mezzanine loans with principal amounts of $610,000,000. The loans accrue interest at LIBOR plus a blended spread of 2.08%. In addition, the Hotel Venture entered into a $20,000,000 revolving credit facility that bears interest at LIBOR plus 2.50%. Principal on the loans and revolving credit facility have a maturity date of January 9, 2011. At December 31, 2009 and 2008, there was a balance of $18,500,000 and $17,523,000, respectively, on the revolving credit facility. The Company earns asset management, development and financing fees under agreements with the Partnerships. The Company recognizes income of 55% of these fees, representing the percentage of the Partnerships not owned by the Company. These fees amounted to $645,000, $900,000, and $1,191,000 for the years ended December 31, 2009, 2008 and 2007, respectively, and are included in other expenses, net on the consolidated statements of operations. During the fourth quarter of 2009, the Company recorded a $26,500,000 impairment loss due to an other-than-temporary decline in value of its 45% investments in the Partnerships.

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(b) The Company owns a 31% interest in and acts as asset manager for a joint venture, with two unaffiliated parties, that is developing the RCPM, a luxury vacation home product that is being sold in fractional ownership interests on the property adjacent to the Company's Four Seasons Punta Mita Resort in Mexico. The Company earns asset management fees and recognizes income of 69% of these fees, representing the percentage not owned by the Company. These fees amounted to $91,000, $169,000 and $295,000 for the years ended December 31, 2009, 2008 and 2007, respectively, and are included in other expenses, net on the consolidated statements of operations.

The Company performed a valuation of its investment in RCPM in the fourth quarter of 2008 and determined that the current fair value of the investment was less than the carrying value. For the year ended December 31, 2008, the Company recognized an other-than-temporary decline in the value of its investment in RCPM and recorded an impairment loss of $1,000,000.

(c) On December 7, 2007, the Company acquired a 50% interest in BuyEfficient for approximately $6,346,000. BuyEfficient is an electronic purchasing platform that allows members to procure food, operating supplies, furniture, fixtures and equipment.

(d) On February 12, 2008, the Company invested $1,200,000 in LLPI, a newly-formed venture with the objectives of purchasing, developing and arranging for the operations of luxury resort and tourist-oriented destination properties in multiple locations throughout North America, Central America and Europe. One of the founders and officers of LLPI is the son-in-law of our president and chief executive officer. As of December 31, 2008, the Company had a 40% interest in this venture. The Company's interest in the LLPI venture was redeemed in May 2009 (see note 15). During the year ended December 31, 2009, the Company recorded a charge of $206,000 to write off its investment in LLPI.

Condensed Combined Financial Information of Investment in Joint Ventures

Following is summarized financial information for the Company's joint ventures as of December 31, 2009 and 2008 and for the years ended December 31, 2009, 2008 and 2007 (in thousands):

	2009	2008
Assets		
Investment in hotel properties, net	$ 313,323	$ 325,845
Goodwill	23,401	23,401
Intangible assets, net	49,000	49,000
Cash and cash equivalents	23,993	58,367
Restricted cash and cash equivalents	8,391	1,160
Other assets	21,939	25,861
Total assets	$ 440,047	$ 483,634
Liabilities and Partners' Deficit		
Mortgage and other debt payable	$ 634,670	$ 632,276
Other liabilities	31,877	35,848
Partners' deficit	(226,500)	(184,490)
Total liabilities and partners' deficit	$ 440,047	$ 483,634

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	2009	2008	2007
Revenues			
Hotel operating revenue	$116,297	$150,918	$141,404
Residential sales	8,198	18,113	121,069
Other	5,414	4,587	3,364
Total revenues	129,909	173,618	265,837
Expenses			
Residential costs of sales	4,272	10,045	83,696
Hotel operating expenses	78,309	93,970	88,479
Depreciation and amortization	16,709	15,874	13,217
Other operating expenses	8,128	9,797	7,723
Total operating expenses	107,418	129,686	193,115
Operating income	22,491	43,932	72,722
Interest expense, net	(17,948)	(34,643)	(46,566)
Other expenses, net	(1,147)	(4,032)	(713)
Net income	$ 3,396	$ 5,257	$ 25,443
Equity in earnings of joint ventures			
Net income	$ 3,396	$ 5,257	$ 25,443
Joint venture partners' share of income of joint ventures	(1,911)	(3,210)	(13,986)
Adjustments for basis differences, taxes and intercompany eliminations	233	763	(3,113)
Total equity in earnings of joint ventures	$ 1,718	$ 2,810	$ 8,344

To the extent that the Company's cost basis is different than the basis reflected at the joint venture level, the basis difference, excluding amounts attributable to land and goodwill, is amortized over the life of the related asset and included in the Company's share of equity in earnings of the unconsolidated affiliates.

7. MANAGEMENT AGREEMENTS

Most of the Company's hotels are subject to management agreements that the Company assumed upon acquisition of the hotels. These agreements generally provide for the payment of base management fees of 1.25% to 5.00% of revenues (as defined in the agreements). In addition, an incentive fee may be paid if certain criteria are met. The terms of these agreements generally require management of the hotels to furnish the hotels with certain services, which include on-site management and may include central training, advertising and promotion, national reservation system, payroll and accounting services, and such additional services as needed. At December 31, 2009, the remaining terms (not including renewal options) of these management agreements range from five to 27 years and average 15 years.

In the second quarter of 2007, Marriott and the Company executed amendments to the terms of various management agreements. In connection with such amendments, Marriott agreed to pay specified cash consideration to the Company over a four year period and waived a termination fee related to termination of a management agreement on the Rancho Las Palmas Resort that was due in 2009. Consideration resulting from the amendments, including amounts previously recognized as termination liabilities, are classified as deferred credits and will be recognized ratably in earnings (as an offset to management fee expense) over the expected remaining initial terms of the respective management agreements. At December 31, 2009 and 2008, deferred credits of $9,120,000 and $9,964,000, respectively, were included in accounts payable and accrued expenses.

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Renaissance Paris Performance Guarantee

In connection with the acquisition of Renaissance Paris in July 2007, the Company entered into a management agreement with an affiliate of Marriott. A provision of the management agreement required that Marriott provide the Company with a limited performance guarantee that ensured, subject to certain limitations, a target level of net operating profit. Guarantee payments were calculated and paid to the Company on an annual basis. The maximum guarantee that could be paid to the Company during the guarantee period was €5,000,000. The guarantee period began on July 31, 2007 and continued through December 21, 2009, the date at which the Renaissance Paris was sold. During the years ended December 31, 2009, 2008 and 2007, the Company earned €1,419,000 ($1,972,000 based on the foreign exchange rate at December 21, 2009), €1,463,000 ($2,141,000 based on the foreign exchange rate at December 31, 2008), and €610,000 ($890,000 based on the foreign exchange rate at December 31, 2007), respectively, related to the performance guarantee, which is recorded in (loss) income from discontinued operations in the consolidated statements of operations.

Asset Management Agreement

In April 2009, the Company entered into an asset management services agreement with an unaffiliated third party to provide asset management services to two hotels not owned by the Company. Under the agreement, the Company earns a base management fee of $400,000 per year and has the potential to earn an additional incentive management fee. For the year ended December 31, 2009, the Company earned $228,000 in fees under this agreement, which are included in other expenses, net.

8. OPERATING LEASE AGREEMENTS

In February 2004, the Company sold its interest in the Marriott Hamburg to a third party, Union Investment Real Estate AG (UIRE), formerly Deutsche Immobilien Fonds Aktiengesellschaft. UIRE subsequently leased the hotel back to the Company. The sale and leaseback transaction was originally recorded as a finance obligation due to a collateralized guarantee issued as part of the sale. In June 2004, the collateralized guarantee was cancelled and the Company recorded a sale of the Marriott Hamburg and the leaseback was reflected as an operating lease. A deferred gain of $5,619,000 was recorded in conjunction with the sale. The deferred gain is being recognized as a reduction of lease expense over the life of the lease. For the years ended December 31, 2009, 2008 and 2007, the Company recognized $217,000, $228,000, and $234,000 of the deferred gain, respectively. As of December 31, 2009 and 2008, the deferred gain on sale of hotel recorded on the accompanying consolidated balance sheets amounted to $4,319,000 and $4,457,000, respectively. The lease's initial term runs through June 14, 2030 and is subject to extension. The Company makes monthly minimum rent payments aggregating €3,575,000 ($5,117,000 based on the foreign exchange rate as of December 31, 2009) annually (increasing by an index formula) and pays additional rent based upon the performance of the hotel, which is recorded as lease expense in the accompanying consolidated statements of operations. The Company funded a Euro-denominated security deposit with UIRE initially representing approximately 18 months of the minimum rent. This amount at December 31, 2009 and 2008 was $7,158,000 and $6,984,000, respectively, and is included in other assets on the accompanying consolidated balance sheets. The Company subleases its interest in the Marriott Hamburg to a third party. The Company has reflected the sublease arrangement as an operating lease and records lease revenue. The Company's annual base rent received from the sublease arrangement can increase or decrease based on changes in a cost of living index defined in the sublease agreement. The Company may also receive additional rent based on the hotel's performance.

In July 2003, the Company sold its interest in the Paris Marriott to UIRE. UIRE subsequently leased the hotel back to the Company. The sale and leaseback transaction was originally recorded as a finance obligation due to a collateralized guarantee issued as part of the sale. In June 2004, the collateralized guarantee was

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cancelled, and the Company recorded a sale of the Paris Marriott and the leaseback was reflected as an operating lease. A deferred gain of $103,590,000 was recorded in conjunction with the sale. The deferred gain is being recognized as a reduction of lease expense over the life of the lease. For the years ended December 31, 2009, 2008 and 2007, the Company recognized $4,685,000, $4,933,000, and $4,614,000 of the deferred gain, respectively. As of December 31, 2009 and 2008, the deferred gain on sale of hotel recorded on the accompanying consolidated balance sheets amounted to $97,533,000 and $99,794,000, respectively. The lease's initial term runs through December 31, 2029. The Company makes monthly minimum rent payments aggregating €12,185,000 ($17,444,000 based on the foreign exchange rate as of December 31, 2009) annually (increasing by an index formula) and pays additional rent based upon the performance of the hotel, which is recorded as lease expense in the accompanying consolidated statements of operations. The Company funded a Euro-denominated security deposit with UIRE initially representing approximately 16 months of the minimum rent. This amount at December 31, 2009 and 2008 was $10,720,000 and $15,507,000, respectively, and is included in other assets on the accompanying consolidated balance sheets. Prior to January 1, 2008, the Company subleased its interest in the Paris Marriott to a third party. The Company reflected the sublease arrangement as an operating lease and recorded lease revenue. Effective January 1, 2008, the Company no longer subleases the operations of the Paris Marriott to a third party and reflects the operating results of the Paris Marriott in its consolidated statements of operations.

Lease payments related to office space are included in corporate expenses on the consolidated statements of operations and lease payments related to hotel ground leases are included in other hotel expenses on the consolidated statements of operations.

Minimum future rental payments due under non-cancelable operating leases, related to office space, hotel ground leases, and building leases having remaining terms in excess of one year as of December 31, 2009 are as follows (in thousands):

Years Ending December 31,	
2010	$ 23,166
2011	23,181
2012	23,197
2013	23,212
2014	23,227
Thereafter	346,122
	$462,105

9. INDEBTEDNESS

Mortgages and Other Debt Payable:

Certain subsidiaries of SHR are the borrowers under various financing arrangements. These subsidiaries are separate legal entities and their respective assets and credit are not available to satisfy the debt of SHR or any of its other subsidiaries.

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Mortgages and other debt payable at December 31, 2009 and 2008 consisted of the following (in thousands):

Debt	Spread (a) (basis points)	Maturity	Balance Outstanding at December 31, 2009	2008
Mortgage loans				
Westin St. Francis(b)	70	August 2010(c)	$ 220,000	$ 220,000
Fairmont Scottsdale(d)	56	September 2010(c)	180,000	180,000
InterContinental Chicago	106	October 2010(c)	121,000	121,000
InterContinental Miami	73	October 2010(c)	90,000	90,000
Loews Santa Monica Beach Hotel	63	March 2011(c)	118,250	118,250
Ritz-Carlton Half Moon Bay	67	March 2011(c)	76,500	76,500
InterContinental Prague(e)	120	March 2012	148,886	145,277
Fairmont Chicago(b)	70	April 2012	123,750	123,750
Hyatt Regency La Jolla	100	September 2012	97,500	97,500
Marriott London Grosvenor Square(f)	110	October 2013	124,859	112,731
Total mortgage loans			1,300,745	1,285,008
Other debt(g)			—	16,527
Total mortgages and other debt payable			$1,300,745	$1,301,535

(a) Interest is paid monthly at the applicable spread over LIBOR (0.23% at December 31, 2009) for all loans except for those secured by the InterContinental Prague and the Marriott London Grosvenor Square. Interest on the InterContinental Prague loan is paid quarterly at the applicable spread over three-month EURIBOR (0.70% at December 31, 2009). Interest on the Marriott London Grosvenor Square loan is paid quarterly at the applicable spread over three-month GBP LIBOR (0.61% at December 31, 2009).

(b) In October 2008, the lender agreed to substitute the minimum market capitalization requirement with a minimum tangible net worth requirement (as defined in, and consistent with, the bank credit facility agreement). On February 23, 2009, the lender consented to modify the tangible net worth covenant to be consistent with the amended covenant in the bank credit facility as described below, which is calculated without regard to goodwill. The Company meets the requirements of this modified tangible net worth calculation as of December 31, 2009.

(c) These loans have one one-year extensions remaining at the option of the Company or its consolidated affiliates. As of December 31, 2009, the Company had exercised its second option to extend the maturity date of the Westin St. Francis, Fairmont Scottsdale, InterContinental Chicago and InterContinental Miami loans by an additional year. On February 2, 2010, the Company exercised its second option to extend the maturity date of the Loews Santa Monica Beach Hotel and Ritz-Carlton Half Moon Bay mortgage loans by an additional year. The maturity dates exclude the one remaining one-year extension options.

(d) On March 9, 2007, the $90,000,000 mezzanine loan on the Fairmont Scottsdale Princess was repaid with borrowings on the Company's bank credit facility. In connection with the repayment, SHR wrote off the unamortized deferred financing costs of $185,000, which are included in loss on early extinguishment of debt for the year ended December 31, 2007.

(e) As of December 31, 2009, the Company was in violation of certain loan to value and interest cover ratio covenants under the InterContinental Prague loan agreement. The lender provided the Company with a waiver through March 15, 2010 to comply with these loan covenants. In February 2010, the Company entered into an amended and restated loan agreement with the lender. Under the amended terms, the maturity date of the loan is extended to March 2015. Interest remains payable quarterly and is equal to EURIBOR plus 1.20% through March 2012 and subsequently increases to EURIBOR plus 1.80% through loan maturity. Additionally, the amended and restated loan agreement a) waives the loan to value and

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interest cover ratio covenants through March 2012 and reintroduces the ratio covenants with increased thresholds subsequent to March 2012 through loan maturity, b) postpones the amortization of principal payments, c) establishes a €2,000,000 liquidity reserve to cover potential shortfalls in debt service, d) allows accrued and unpaid interest up to €2,000,000 to be added to the principal balance under certain circumstances and e) requires that the Company use the net proceeds from the prior sale of two apartment buildings in Prague (see note 3) that were previously part of the lender's security for the loan to pay down the principal amount of the loan by €2,400,000.

(f) This loan agreement requires maintenance of financial covenants, all of which the Company was in compliance with at December 31, 2009.

(g) In connection with the acquisition of a 60-acre oceanfront land parcel in Punta Mita, Nayarit, Mexico, the Company executed two $17,500,000 non-interest bearing promissory notes. The Company recorded these notes at their present value based on an imputed interest rate of 9.5% and amortized the resulting discount over the life of the promissory notes. On September 30, 2008, the Company paid the first of the $17,500,000 non-interest bearing promissory notes. The second note was due August 31, 2009. In August 2009, the Company entered into an agreement with the holder of the promissory note whereby the holder released the Company from its final installment payment of $17,500,000 that was due in August 2009 in exchange for the Company agreeing to provide the note holder with the right to an interest in the property. The Company will receive a preferred position which will entitle it to receive the first $12,000,000 of distributions generated from the project with any excess distributions split equally among the partners. The Company's obligations under this agreement, recorded as other liabilities in accounts payable and accrued expenses, are subject to the note holder being able to obtain certain permits and licenses to develop the land. If they are unable to obtain such permits and licenses within a prescribed time period, the Company would have the right to a full refund of the amounts previously paid to purchase the property, and the land ownership would revert back to the seller.

Commercial Mortgage-Backed Securities (CMBS)

On March 9, 2007, proceeds from three mortgage loans secured by the Fairmont Chicago, the Loews Santa Monica Beach Hotel and the Ritz-Carlton Half Moon Bay were used to retire the outstanding balance of the Company's CMBS floating rate loan portfolio. In connection with the repayment, the Company wrote off the unamortized deferred financings costs and paid prepayment penalties applicable to the debt amounting to $3,038,000, which are included in loss on early extinguishment of debt for the year ended December 31, 2007.

On August 23, 2007, the Company defeased the outstanding balance of its CMBS fixed rate mortgage loan secured by the Hyatt Regency New Orleans, Hyatt Regency Phoenix and the Hyatt Regency La Jolla hotels. The Company incurred defeasance costs and wrote off the unamortized deferred financing costs amounting to $10,820,000 for the year ended December 31, 2007, of which $3,526,000 is included in loss on early extinguishment of debt and $7,294,000 is included in (loss) income from discontinued operations.

Exchangeable Notes:

On April 4, 2007, SH Funding issued $150,000,000 in aggregate principal amount of Exchangeable Notes and on April 25, 2007 issued an additional $30,000,000 of Exchangeable Notes in connection with the exercise by the initial purchasers of their over-allotment option. The 3.50% Exchangeable Notes were issued at 99.5% of par value. The Company received proceeds of $175,593,000, net of underwriting fees and expenses and original issue discount. On January 1, 2009, the Company adopted the provisions of new guidance on accounting for convertible debt instruments that may be settled in cash upon conversion, including partial cash settlements, and retrospectively recorded an additional discount on the Exchangeable Notes of $20,978,000 as of the issuance date

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(see note 2). The Exchangeable Notes pay interest in cash semi-annually in arrears on April 1 and October 1 of each year beginning October 1, 2007 and mature on April 1, 2012, unless previously redeemed by the Company, repurchased by the Company or exchanged in accordance with their terms prior to such date.

The tables below present the effect of the Exchangeable Notes on the Company's consolidated balance sheets as December 31, 2009 and 2008 and on the consolidated statements of operations for the years ended December 31, 2009, 2008 and 2007 (in thousands):

	2009	2008
Balance Sheets :		
Principal amount of liability	$180,000	$180,000
Unamortized discount	(10,548)	(14,845)
Carrying amount of liability component	$169,452	$165,155
Carrying amount of equity component	$ 20,978	$ 20,978

	2009	2008	2007
Statements of Operations :			
Coupon interest	$ 6,311	$ 6,265	$4,646
Discount amortization	4,296	4,141	2,892
Total interest	$10,607	$10,406	$7,538
Effective interest rate	6.25%	6.25%	6.25%

The Exchangeable Notes can be exchanged for cash or shares of SHR's common stock or a combination thereof, at the Company's option, based on the applicable exchange rate prior to the close of business on the business day immediately preceding the stated maturity date at any time on or after November 1, 2011 and also under the following circumstances:

(1) if during any calendar quarter beginning after June 30, 2007 (and only during such calendar quarter) the closing price per share of the Company's common stock for at least 20 trading days in 30 consecutive trading days of the previous quarter is more than 130% of the applicable exchange price per share;

(2) if, for any five consecutive trading-day period, the trading price of the Exchangeable Notes on each trading day during such period is less than 95% of the product of the closing price per share of SHR's common stock multiplied by the exchange rate on such trading day;

(3) if the Company calls the Exchangeable Notes for redemption;

(4) as described in the indenture governing the Exchangeable Notes, if the Company makes specified distributions to holders of SHR's common stock or specified corporate transactions occur; or

(5) if SHR's common stock ceases to be listed on a U.S. national or regional securities exchange.

The Exchangeable Notes may be exchanged based on an initial exchange rate of 36.1063 shares per $1,000 principal amount of the Exchangeable Notes, which represented an initial exchange price of approximately $27.70 per share and an exchange premium of approximately 20% based on a price of $23.08 per share of SHR's common stock on March 29, 2007. Upon exchange, at the Company's election, a holder would receive an amount in cash equal to the lesser of (i) the principal amount of such holder's Exchangeable Notes, or (ii) the exchange value, as defined. If the exchange value exceeds $1,000, the Company will also deliver, at its option, cash or SHR common stock or a combination of cash and SHR common stock for the exchange value in excess of

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$1,000. If the Exchangeable Notes are exchanged in connection with events specified in the indenture governing the Exchangeable Notes, the Company may be required to provide a make-whole premium in the form of an increase in the exchange rate, subject to a stated maximum amount. In addition, in connection with designated events, the holders of the Exchangeable Notes may require the Company to purchase all or a portion of their Exchangeable Notes at a purchase price equal to 100% of the principal amount of the Exchangeable Notes, plus accrued and unpaid interest, if any.

The Exchangeable Notes are unsecured obligations that rank equally in right of payment with any other senior unsecured indebtedness the Company may incur and are effectively subordinated in right of payment to all of the Company's secured indebtedness and all liabilities and preferred equity of the Company's subsidiaries. The Company is not subject to any financial covenants under the indenture governing the Exchangeable Notes. However, a default under the bank credit facility would allow for acceleration of the Exchangeable Notes.

In connection with the issuance of the Exchangeable Notes, the Company purchased call options for $9,900,000, which was recorded in additional paid-in capital, to purchase approximately 928,000 shares of SHR's common stock at a strike price of $27.70 up to a cap price of $32.31 per share (subject to adjustment in certain circumstances). The call options generally allow the Company to receive shares of SHR's common stock from counterparties equal to the number of shares of common stock to be issued to holders of the Exchangeable Notes upon exchange. The economic impact of these call option transactions is to mitigate the dilutive impact on the Company as if the exchange price were increased from $27.70 to $32.31 per common share, which represents an increase from the 20% premium to a 40% premium based on the March 29, 2007 closing price of $23.08 per share. The call option transactions are expected to generally reduce the potential dilution upon exchange in the event the market value per share of SHR's common stock is greater than the strike price of the call option transaction. If however the market value per share of SHR's common stock exceeds the $32.31 per common share, then the dilution mitigation under the call option transactions will be capped, which means there would be dilution from exchange of the Exchangeable Notes to the extent that the market value per share of SHR's common stock exceeds $32.31. These call options will terminate April 1, 2012, subject to earlier exercise.

The Company also entered into a registration rights agreement in connection with the issuance of the Exchangeable Notes. As required under the registration rights agreement, the Company filed a shelf registration statement, which became effective August 23, 2007. The Company must use reasonable efforts to keep the shelf registration statement effective until the earlier of 1) the date one year following the last date on which the Exchangeable Notes have been exchanged and settlement has occurred or 2) the date on which there are no longer any Exchangeable Notes or restricted shares of SHR's common stock outstanding. If the Company fails to comply with certain of its obligations under the registration rights agreement, it will be required to pay additional interest on the Exchangeable Notes in an amount equal to an annual rate of 0.25% for the first 90 days following a registration default and 0.50% following the first 90 days through the day on which the registration default is cured or the date that registration statement is no longer required to be kept effective. If the Exchangeable Notes are exchanged into SHR common stock during a period of registration default, a holder will not be entitled to receive additional interest, but instead will receive an increase in the exchange rate of 3% for each $1,000 principal amount of the Exchangeable Notes. The maximum amount of consideration that the Company would be required to transfer if a registration default were to occur would be approximately $1,913,000 in additional interest or approximately 195,000 additional shares of SHR common stock, if the Exchangeable Notes were exchanged. After the filing of the annual report on Form 10-K for the year ended December 31, 2008, the Company's previous shelf registration statement was no longer effective. On March 26, 2009, a new registration statement was declared effective by the SEC. During the year ended December 31, 2009, the Company recorded additional interest expense of $11,000 under the registration rights agreement described above for the temporary unavailability of an effective registration statement with respect to SHR's common stock that may, under certain circumstance, be issued with respect to the Exchangeable Notes.

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Contemporaneously with the closing of the sale of the Exchangeable Notes, approximately $25,000,000 of the net proceeds was used to repurchase and retire approximately 1,083,000 shares of SHR's common stock. The remaining net proceeds were used to repay amounts outstanding under the Company's bank credit facility.

Bank Credit Facility:

In February 2009, SH Funding entered into the third amendment to the bank credit facility, which among other things provides the Company with additional flexibility with respect to its financial covenants and related financial calculations. In connection with this amendment, the Company wrote off $883,000 of unamortized deferred financing costs during the year ended December 31, 2009. The following summarizes key financial terms and conditions of the bank credit facility, as amended:

- the maximum facility size was reduced to $400,000,000;
- interest rate on the facility is LIBOR plus a margin of 3.75% in the case of each LIBOR loan and base rate plus a margin of 2.75% in the case of each base rate loan and a commitment fee of 0.50% per annum based on the unused revolver balance;
- lenders received additional collateral in the form of mortgages over four borrowing base properties, which mortgages supplement the existing pledges of the Company's interest in SH Funding and SH Funding's interest in certain subsidiaries and guarantees of the loan from the Company and certain of its subsidiaries, all of which continue to secure the bank credit facility;
- maximum availability is determined by the lesser of a 1.3 times debt service coverage on the borrowing base assets (based on the trailing 12 months net operating income for these assets divided by an 8% debt constant on the balance outstanding under the facility, as defined in the loan agreement) or a 45% advance rate against the appraised value of the borrowing base assets;
- minimum corporate fixed charge coverage of 1.0 times, which may be reduced at SH Funding's option to 0.9 times for up to four consecutive quarters with a quarterly fee of 0.25% paid on outstanding balances during each quarter that the coverage ratio is reduced, provided that the minimum corporate fixed charge coverage can increase up to 1.15 times subject to certain conditions set forth in the bank credit facility;
- maximum corporate leverage of 80% as defined in the agreement;
- minimum tangible net worth, as defined in the agreement, of $600,000,000, excluding goodwill and currency translation adjustments;
- default under and acceleration of any loan secured by property located in Europe would not constitute an event of default;
- maturity date of March 9, 2011, with a one-year extension option conditioned upon compliance with a corporate fixed charge coverage ratio of 1.15 times for the year ending December 31, 2010; and
- restrictions on the Company and SH Funding's ability to pay dividends. Such restrictions include:
  - a prohibition on each of the Company and SH Funding's ability to pay any amount of preferred dividends in cash or in kind if SH Funding has elected to reduce its fixed charge coverage to 0.9 as discussed above;
  - prohibitions on the Company and SH Funding and their respective subsidiaries' ability to pay any dividends unless certain ratios and other conditions are met; and
  - prohibitions on the Company and SH Funding's ability to issue dividends in cash or in kind at any time an event of default shall have occurred.

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Notwithstanding the dividend restrictions described above, for so long as the Company qualifies, or has taken all other actions necessary to qualify as a REIT, SH Funding may authorize, declare and pay quarterly cash dividends to the Company when and to the extent necessary for the Company to distribute cash dividends to its shareholders generally in an aggregate amount not to exceed the minimum amount necessary for the Company to maintain its tax status as a REIT, unless SH Funding receives notice of any monetary event of default or other material event of default.

Other terms and conditions exist including provisions to release assets from the borrowing base and limitations on the Company's ability to incur costs for discretionary capital programs. Under the agreement, SH Funding has a letter of credit sub-facility of $75,000,000, which is secured by the amended $400,000,000 bank credit facility. Letters of credit reduce the borrowing capacity under the facility.

This amended agreement replaced the previous $225,000,000 bank credit facility agreement. SHR wrote off $796,000 of unamortized deferred financing costs applicable to the $225,000,000 bank credit facility, which is included in loss on early extinguishment of debt for the year ended December 31, 2007.

The weighted average interest rate for the year ended December 31, 2009 was 3.72%. As noted above, maximum availability is determined by the lesser of a 1.3 times debt service coverage on the borrowing base assets or a 45% advance rate against the appraised value of the borrowing base assets. Based on these requirements, the Company had $287,300,000 available under the bank credit facility at December 31, 2009. At December 31, 2009, there was $178,000,000 of borrowings outstanding under the bank credit facility and outstanding letters of credit of $2,750,000 (see note 16). The agreement also requires maintenance of financial covenants, all of which SH Funding and SHR were in compliance with at December 31, 2009.

Debt Maturity:

The following table summarizes the aggregate maturities (assuming all extension options exercised, excluding the conditional option to extend the bank credit facility) as of December 31, 2009 for all mortgage debt, the Exchangeable Notes and the Company's bank credit facility (in thousands):

Years ending December 31,	
2010	$ 7,796
2011	796,796
2012	739,282
2013	114,871
2014	—
Thereafter	—
	1,658,745
Less discount on the Exchangeable Notes	(10,548)
Total	$1,648,197

Interest Expense:

Total interest expense in continuing and discontinued operations includes a reduction related to capitalized interest for the years ended December 31, 2009, 2008 and 2007 of $1,723,000, $8,646,000, and $8,403,000, respectively. Total interest expense in continuing and discontinued operations includes amortization of deferred financing costs of $6,693,000, $4,051,000, and $4,755,000 for the years ended December 31, 2009, 2008 and 2007, respectively.

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Liquidity and Operating Matters:

The Company's short-term liquidity requirements consist primarily of funds necessary to pay for operating expenses and other expenditures. Historically, the Company has satisfied its short-term liquidity requirements through its existing working capital, cash provided by operations, and its bank credit facility. In February 2009, the Company entered into the third amendment to its bank credit facility, which among other things provides the Company with additional flexibility to maintain compliance with its financial covenants during 2010 and provides sufficient borrowing capacity to meet its short-term liquidity requirements during such time. As of December 31, 2009, the Company was in compliance with its financial and other restrictive covenants contained in the bank credit facility.

The Company's available capacity under the bank credit facility and compliance with financial covenants in 2010 and future periods will depend substantially on the financial results of the Company's hotels, and in particular, the results of the borrowing base assets. As of February 24, 2010, the outstanding borrowings and letters of credit in the aggregate were $197,750,000.

In the fourth quarter of 2009, the Company sold the Four Seasons Mexico City and Renaissance Paris for net sales proceeds of $102,431,000. A significant portion of the net proceeds from the sales were used to pay down the bank credit facility. To further improve liquidity in the short term, the Company is actively pursuing a number of alternatives, including but not limited to additional asset dispositions. The net proceeds of any additional transaction could be utilized to reduce borrowings outstanding under the bank credit facility and further improve liquidity. As of December 31, 2009, maximum availability under the bank credit facility was $287,300,000, and outstanding borrowings and letters of credit in the aggregate were $180,750,000. The administrative agent for the bank credit facility is currently obtaining appraisals for the borrowing base assets and depending upon the final appraised values, the maximum availability may decrease. The Company believes that the measures it has taken as described above should be sufficient to satisfy its liquidity needs for the next 12 months. However, if current financial market conditions worsen and the Company's business deteriorates further, it may breach one or more of its financial covenants or the maximum availability under the bank credit facility may fall below the Company's short-term borrowing needs. A default under the bank credit facility would allow the lenders to declare all amounts outstanding under the facility to become due and payable. Additionally, such an acceleration event would allow for acceleration of the interest rate swaps and the Exchangeable Notes.

If an event of default were to occur and the Company was unable to modify or obtain a waiver to certain terms of the bank credit facility, then the risk increases as to whether the Company can continue as a going concern. The accompanying consolidated financial statements have been prepared in conformity with GAAP applicable to a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. Accordingly, the Company's consolidated financial statements do not reflect any adjustments related to the recoverability of assets and satisfaction of liabilities that might be necessary should the Company be unable to continue as a going concern.

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10. EQUITY AND DISTRIBUTION ACTIVITY

Common Shares:

The following table presents the changes in the issued and outstanding shares of SHR common stock since January 1, 2007 (excluding 954,746 units of SH Funding outstanding at December 31, 2009 and 975,855 units of SH Funding outstanding at December 31, 2008 and 2007, which are exchangeable for shares of SHR common stock on a one-for-one basis, or the cash equivalent thereof, subject to certain restrictions and at the option of SH Funding) (in thousands):

Outstanding at January 1, 2007	75,407
RSUs redeemed for shares of SHR common stock	35
Operating partnership units redeemed for shares of SHR common stock	12
Common shares repurchased and retired	(1,083)
Outstanding at December 31, 2007	74,371
RSUs redeemed for shares of SHR common stock	39
Outstanding at December 31, 2008	74,410
RSUs redeemed for shares of SHR common stock	827
Operating partnership units redeemed for shares of SHR common stock	16
Outstanding at December 31, 2009	75,253

As of December 31, 2009, no shares of SHR common stock have been repurchased under the $50,000,000 share repurchase program.

Stockholder Rights Plan

In November 2008, SHR's board of directors adopted a stockholder rights plan. Under the plan, SHR declared a dividend of one preferred share purchase right (Right) for each outstanding share of SHR common stock. The dividend was payable on November 28, 2008 to the stockholders of record as of the close of business on November 28, 2008. Each Right will allow its holder to purchase from SHR one one-thousandth of a share of a new series of SHR participating preferred stock for $20.00, once the Rights become exercisable. The Rights will become exercisable and will separate from SHR's common stock only upon the occurrence of certain events. On November 24, 2009, the Company entered into an amendment to extend the stockholder rights plan through November 30, 2012, unless the rights are earlier redeemed or amended by SHR's board of directors.

Distributions to Shareholders and Unitholders

To the extent distributions are declared, they are declared quarterly to holders of shares of SHR common stock and to SH Funding unitholders. SHR's board of directors declared distributions per share of SHR common stock of $0.72 and $0.96 for the years ended December 31, 2008 and 2007, respectively. On November 4, 2008, SHR's board of directors elected to suspend the quarterly dividend to holders of shares of SHR common stock.

Preferred Stock:

On October 1, 2007, SHR completed a public offering of 488,750 additional shares of 8.50% Series A Cumulative Redeemable Preferred Stock, par value $0.01 per share (liquidation preference $25.00 per share) at a price of $23.50 per share. After discounts, commissions and expenses, SHR raised net proceeds of approximately $10,653,000. These proceeds were used to repay existing indebtedness under the Company's bank credit facility. As of December 31, 2009, SHR has 4,488,750 shares issued and outstanding of 8.50% Series A Cumulative Redeemable Preferred Stock, par value $0.01 per share (liquidation preference $25.00 per share). The Series A Preferred Stock has a perpetual life and is not redeemable before March 16, 2010. Beginning March 16, 2010,

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SHR may redeem Series A Preferred Stock at $25.00 per share plus accrued distributions. Distributions on the Series A Preferred Stock will be cumulative from the date of issuance. In February 2009, SHR's board of directors elected to suspend the quarterly dividend beginning with the first quarter of 2009 to holders of shares of 8.50% Series A Cumulative Redeemable Preferred Stock. As of December 31, 2009, unpaid cumulative dividends were $9,539,000 in the aggregate or $2.13 per share.

As of December 31, 2009, SHR has 5,750,000 shares issued and outstanding of 8.25% Series C Cumulative Redeemable Preferred Stock, par value $0.01 per share (liquidation preference $25.00 per share). The Series C Preferred Stock has a perpetual life and is not redeemable before May 17, 2011. Beginning May 17, 2011, SHR may redeem Series C Preferred Stock at $25.00 per share plus accrued distributions. Distributions on the Series C Preferred Stock will be cumulative from the date of issuance. In February 2009, SHR's board of directors elected to suspend the quarterly dividend beginning with the first quarter of 2009 to holders of shares of 8.25% Series C Cumulative Redeemable Preferred Stock. As of December 31, 2009, unpaid cumulative dividends were $11,859,000 in the aggregate or $2.06 per share.

As of December 31, 2009, SHR has 4,600,000 shares issued and outstanding of 8.25% Series B Cumulative Redeemable Preferred Stock, par value $0.01 per share (liquidation preference $25.00 per share). The Series B Preferred Stock has a perpetual life and is not redeemable before January 31, 2011. Beginning January 31, 2011, SHR may redeem Series B Preferred Stock at $25.00 per share plus accrued distributions. Distributions on the Series B Preferred Stock will be cumulative from the date of issuance. In February 2009, SHR's board of directors elected to suspend the quarterly dividend beginning with the first quarter of 2009 to holders of shares of 8.25% Series B Cumulative Redeemable Preferred Stock. As of December 31, 2009, unpaid cumulative dividends were $9,488,000 in the aggregate or $2.06 per share.

11. DERIVATIVES

The Company manages its interest rate risk by varying its exposure to fixed and variable rates while attempting to minimize its interest costs. The Company manages its fixed interest rate and variable interest rate risk through the use of interest rate caps and swaps. The Company enters into interest rate caps and swaps with high credit quality counterparties and diversifies its positions among such counterparties in order to reduce its exposure to credit losses. The caps limit the Company's exposure on its variable rate debt that would result from an increase in interest rates. The Company's lenders, as stipulated in the respective loan agreements, generally require such caps. Upon extinguishment of debt, income effects of cash flow hedges are reclassified from accumulated OCL to interest expense, equity in earnings of joint ventures, loss on early extinguishment of debt, or (loss) income from discontinued operations as appropriate. The Company recognizes all derivatives at fair value as either assets or liabilities in the accompanying consolidated balance sheets as either other assets or in accounts payable and accrued expenses.

The valuation of the interest rate swaps and caps is determined using widely accepted valuation techniques including discounted cash flow analysis on the expected cash flows of each derivative. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves and implied volatilities. The Company incorporates credit valuation adjustments (CVA) to appropriately reflect its own nonperformance risk and the respective counterparty's nonperformance risk. When assessing nonperformance risk, the Company has considered the impact of netting and any applicable credit enhancements, such as collateral postings, thresholds, mutual puts, and guarantees.

Except for the CVA noted below, all inputs used to measure fair value of the derivative financial instruments are Level 2 inputs. The Company has concluded that the inputs used to measure its CVA are Level 3 inputs. If the inputs used to measure fair value fall in different levels of the fair value hierarchy, the level in the

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fair value hierarchy within which the fair value measurement in its entirety falls shall be determined based on the lowest level input that is significant to the fair value measurement in its entirety. The Company assessed the impact of the CVA on the overall fair value of its derivative instruments and concluded that the CVA has a significant impact to the fair values as of December 31, 2009. As of December 31, 2009, all derivative liabilities are categorized as Level 3 and the Company does not have any fair value measurements using inputs based on quoted prices in active markets (Level 1 or Level 2).

Cash Flow Hedges of Interest Rate Risk:

The Company's objectives in using interest rate derivatives are to add stability to interest expense and to manage its exposure to interest rate movements. To accomplish this objective, the Company primarily uses interest rate swaps and caps as part of its interest rate risk management strategy. Interest rate swaps designated as cash flow hedges involve the receipt of variable-rate amounts from a counterparty in exchange for the Company making fixed-rate payments over the life of the agreements without exchange of the underlying notional amount.

The effective portion of changes in the fair value of derivatives designated and that qualify as cash flow hedges is recorded in accumulated OCL and is subsequently reclassified into earnings in the period that the hedged forecasted transaction affects earnings. During the years ended December 31, 2009, 2008, and 2007, such derivatives were used to hedge the variable cash flows associated with existing variable-rate debt. The ineffective portion of the change in fair value of the derivatives is recognized directly in earnings. During the year ended December 31, 2009, the Company recorded $1,197,000 of hedge ineffectiveness as interest expense.

Amounts reported in accumulated OCL related to derivatives will be reclassified to interest expense as interest payments are made on the Company's variable-rate debt. During the next twelve months, the Company estimates that an additional $51,059,000 will be reclassified as an increase to interest expense.

As of December 31, 2009, the Company had the following outstanding interest rate derivatives that were designated as cash flow hedges of interest rate risk:

Interest Rate Derivative	Number of Instruments	Notional (in thousands)	
Interest rate swaps	20	$	1,250,000
Interest rate swap	1	£	77,250
Interest rate swap	1	€	104,000

At December 31, 2009 and 2008, the aggregate notional amount of the Company's domestic interest rate swaps was $975,000,000. These swaps have fixed pay rates against LIBOR ranging from 0.90% to 5.50% and maturity dates ranging from April 2010 to December 2014. In addition, at December 31, 2009 and 2008, the Company had a GBP LIBOR interest rate swap agreement with a notional amount of £77,250,000. The swap has a fixed pay rate against GBP LIBOR of 5.72%, which adjusts to 3.22% for the period from January 2009 through January 2011, and a maturity date of October 2013. The Company also has a EURIBOR interest rate swap agreement with a notional amount of €104,000,000. The swap has a fixed pay rate against EURIBOR of 4.53% and a maturity date of March 2012.

At December 31, 2009 and 2008, the aggregate notional amount of the Company's forward-starting interest rate swaps was $275,000,000 and $475,000,000, respectively. The forward-starting swaps have effective dates ranging from April 2010 to February 2011. These swaps have fixed pay rates against LIBOR ranging from 5.23% to 5.42% and maturity dates ranging from April 2015 to February 2016. These outstanding forward-starting interest rate swaps will hedge the future interest payments of debt that are currently hedged by interest rate swaps that will mature on the dates that these swaps become effective.

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Non-designated Hedges:

Derivatives not designated as hedges are not speculative and are used to manage the Company's exposure to interest rate movements and other identified risks but do not meet the strict hedge accounting requirements. Changes in the fair value of derivatives not designated in hedging relationships are recorded directly in earnings. As of December 31, 2009, the Company had the following outstanding interest rate derivatives that were non-designated hedges:

Interest Rate Derivative	Number of Instruments	Notional (in thousands)
Interest rate caps	9	$ 594,750

At December 31, 2009 and 2008, the aggregate notional amount of the Company's purchased and sold interest rate cap agreements was $594,750,000. These caps have LIBOR strike rates ranging from 5.00% to 7.50% and maturity dates ranging from March 2010 to January 2011.

Fair Values of Derivative Instruments:

The table below presents the fair value of the Company's derivative financial instruments as well as their classification on the consolidated balance sheets as of December 31, 2009 and 2008 (in thousands):

		Fair Value	
	Balance Sheet Location	2009	2008
Derivatives designated as hedging instruments:			
Interest rate swaps(a)	Accounts payable and accrued expenses	$(63,755)	$(98,089)
Derivatives not designated as hedging instruments:			
Interest rate caps	Accounts payable and accrued expenses	$ —	$ (1)

(a) This liability is based on an aggregate termination value of $(98,840,000) and $(166,616,000) excluding accrued interest and includes a CVA of $35,085,000 and $68,527,000 as of December 31, 2009 and December 31, 2008, respectively.

The Company does not have any fair value measurements using inputs based on quoted prices in active markets (Level 1 or Level 2) as of December 31, 2009 or 2008. The following table reflects changes in interest rate swap liabilities categorized as Level 3 since January 1, 2008 (in thousands):

Balance as of January 1, 2008	$ —
Transfers into Level 3	(48,225)
Unrealized losses	(49,864)
Balance as of December 31, 2008	(98,089)
Interest rate swap transaction(b)	37,280
Unrealized losses	(2,946)
Balance as of December 31, 2009	$(63,755)

(b) As part of the Company's long-term financing strategy, the Company entered into transactions to buy down several of the domestic interest rate swap fixed pay rates to current market rates during the year ended December 31, 2009. The swaps have effective dates of March 15, 2009 and remain designated as cash flow hedges. The termination value of $32,220,000 will be reclassified from accumulated OCL into earnings over

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the life of the swaps. During the year ended December 31, 2009, the Company paid $5,060,000 to buy down the GBP LIBOR interest rate swap fixed pay rate from 5.72% to 3.22% for the period from January 15, 2009 through January 17, 2011. The modified swap will remain designated as a cash flow hedge and any amounts in accumulated OCL existing from the original transaction will be reclassified into earnings over the life of the swap.

Effect of Derivative Instruments on the Statements of Operations:

The tables below present the effect of the Company's derivative financial instruments on the statements of operations for the years ended December 31, 2009, 2008 and 2007 (in thousands):

Derivatives in Cash Flow Hedging Relationships

	2009	2008	2007
Interest rate swaps:			
Effective portion of loss recognized in accumulated OCL	$(38,547)	$(65,864)	$(46,879)
Effective portion of (loss) gain reclassified into interest expense	$(55,692)	$(20,856)	$ 3,846
Ineffective portion of loss recognized in interest expense	$ (1,197)	$ —	$ —

Derivatives Not Designated as Hedging Instruments

	2009	2008	2007
Interest rate caps:			
(Loss) gain recognized in other expenses, net	$ 1	$ 31	$ (29)
(Loss) gain recognized in equity in earnings of joint ventures	$(350)	$(1,918)	$(672)

Credit-risk-related Contingent Features:

The Company has agreements with each of its derivative counterparties that contain a provision where if the Company defaults and its indebtedness is accelerated or declared due or capable of being accelerated or declared due, then the Company could also be declared in default on its derivative obligations associated with the relevant indebtedness.

As of December 31, 2009, the fair value of derivatives in a net liability position, which includes accrued interest but excludes any adjustment for nonperformance risk, related to these agreements was $(101,306,000). As of December 31, 2009, the Company has not posted any collateral related to these agreements. If the Company had breached any of these provisions at December 31, 2009, it would have been required to settle its obligations under the agreements at their termination value of $(101,306,000). The Company has not breached any of the provisions as of December 31, 2009.

12. SHARE-BASED EMPLOYEE COMPENSATION PLANS

On June 21, 2004, the Company adopted the 2004 Incentive Plan (the Plan). The Plan provided for the grant of equity-based awards in the form of, among others, options to purchase shares of SHR common stock (Options), RSUs, and stock appreciation rights (SARs), which are collectively referred to as the Awards. On May 22, 2008, SHR's shareholders approved SHR's Amended and Restated 2004 Incentive Plan (the Amended Plan). The Amended Plan: (a) added units of SH Funding as an additional type of award (OP Units); (b) adjusted the number of authorized shares from 3,000,000 shares of SHR common stock to 4,200,000 shares of SHR common stock or OP Units; (c) limited the maximum term of Options and SARs to no more than 10 years and prohibited the repricing of Options and SARs; and (d) established minimum vesting periods for certain awards.

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The Plan is administered by a Compensation Committee (the Committee) appointed by the board of directors. The Committee consists of two or more members of the board of directors. The Committee has the authority and sole discretion to determine the type, extent, and terms (including vesting) of Awards granted, as well as those eligible to receive Awards. Options granted have an exercise price determined by the Committee but cannot be less than 100% of the fair market value of the shares on the grant date. The term of the Options is determined by the Committee but is generally ten years from the date of grant.

The Company recorded compensation expense of $5,954,000, $5,067,000, and $4,712,000 related to share-based employee compensation (net of estimated forfeitures) for the years ended December 31, 2009, 2008 and 2007, respectively.

Value Creation Plan:

On August 27, 2009, the Company adopted the Value Creation Plan to further align the interests and efforts of key employees to the interests of the Company's stockholders in creating stockholder value and providing key employees an added incentive to work towards the Company's growth and success. The Value Creation Plan provides for up to 2.5% of SHR's market capitalization (limited to a maximum market capitalization based on a common stock price of $20.00 per share) to be provided to participants in the Value Creation Plan in 2012 if the highest average closing price of SHR's common stock during certain consecutive twenty trading day periods in 2012 is at least $4.00 (Normal Distribution Amount). In addition, if a change of control occurs at any time prior to December 31, 2012, participants in the Value Creation Plan will generally not be entitled to the Normal Distribution Amount and will instead be entitled to receive 2.5% of SHR's market capitalization based on the value of a share of the SHR's common stock upon the change of control (Change of Control Price), regardless of whether the Change of Control Price is at least $4.00 or greater than $20.00. A total of up to one million units (representing the opportunity to earn an amount equal to 2.5% of SHR's market capitalization) can be allocated under the Value Creation Plan to key employees, and 600,000 of those units have been granted to the Company's chief executive officer. Payments upon a unit of distribution may be made in cash, in shares of SHR's common stock (subject to approval by the stockholders of SHR), in some combination thereof or in any other manner approved by the committee of the board administering the Value Creation Plan.

The Company has accounted for the Value Creation Plan as a liability award and has recorded the liability in accounts payable and accrued expenses on the consolidated balance sheet. The fair value of the Value Creation Plan will be re-measured at the end of each reporting period, and the Company will make adjustments to the compensation expense and liability to reflect the fair value. The fair value of the liability at December 31, 2009 and the compensation expense recognized for the year ended December 31, 2009 was $108,000.

Options:

The Company measures compensation expense for the Options based upon the fair value at the date of grant as calculated by a binomial option pricing model. Compensation expense is recognized on a straight-line basis over the service period, net of estimated forfeitures, if any. Compensation expense related to the Options is included in corporate expenses in the consolidated statements of operations. Total unrecognized compensation expense related to Options at December 31, 2009 was $749,000 and is expected to be recognized over a period of one year.

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The table below summarizes the Option activity under the Plan for 2009, 2008 and 2007.

	2009		2008		2007	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Options outstanding at the beginning of the year	885,026	$ 19.22	736,221	$ 20.39	669,797	$ 20.40
Granted	—	—	148,805	13.44	66,424	20.24
Options outstanding at the end of the year	885,026	$ 19.22	885,026	$ 19.22	736,221	$ 20.39
Options exercisable at the end of the year	612,159	$ 19.25	317,150	$ 19.29	22,141	$ 20.24

The fair value for Options granted in 2008 and 2007 was estimated at the date of grant using a binomial option-pricing model based on the following inputs:

Inputs:	2008	2007
Risk-free interest rate	2.94%	4.53%
Expected dividend yield	7.14%	4.55%
Volatility	25.26%	21.85%
Weighted average expected life	6 years	7 years
Weighted average fair value of options granted	$ 1.92	$ 3.75

The inputs in the binomial option-pricing model included the following assumptions: a) a risk-free interest rate equal to U.S. Government Strip rates for the number of years remaining until exercise; b) a dividend yield based on SHR's historical dividend payments per share; c) volatility equal to an average that includes available historic volatility data; and d) an expected life equal to 60% (for 2008 grants) and 70% (for 2007 grants) of the term of the Option.

RSUs:

SHR has issued RSUs to certain employees, officers and directors under the Plan. RSUs represent awards of shares of SHR's common stock that generally vest over three or four years or as otherwise approved by the Committee, provided the participant continues as an employee, director or continues to provide services to the Company. Unvested RSUs will be forfeited upon termination. RSUs are essentially the same as restricted stock except that, instead of actual shares, RSUs represent a promise to distribute shares at some future date. Participants holding RSUs will have no voting rights until such time as the underlying shares are issued. Dividends will no longer accrue on RSUs as a result of the decision by SHR's board of directors to suspend the dividend.

On August 27, 2009, the Company granted an award of 75,000 RSUs to its chief executive officer in connection with his amended and restated employment agreement. These RSUs will vest in three equal annual installments, subject to acceleration upon certain events and other terms of his amended and restated employment agreement.

During the first quarter of 2009, the compensation committee approved the acceleration of vesting of certain RSUs issued prior to December 31, 2008. Effective March 31, 2009, the vesting of approximately 295,000 shares was accelerated.

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
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The Company measures compensation expense for RSUs based on the fair market value of its common shares at the date of grant, adjusted for estimated forfeitures. Compensation expense for RSUs is recognized on a straight-line basis over the service period and is included in corporate expenses in the consolidated statements of operations. Total unrecognized compensation expense related to nonvested RSUs at December 31, 2009 was $615,000 and is expected to be recognized over a weighted average period of 2.19 years.

Information regarding RSUs is summarized in the following table:

	2009		2008		2007	
	Shares	Weighted Average Grant Date Fair Value	Shares	Weighted Average Grant Date Fair Value	Shares	Weighted Average Grant Date Fair Value
RSUs outstanding at the beginning of the year	1,184,709	$ 16.86	907,112	$ 17.48	760,912	$ 17.00
Granted	673,308	0.84	377,512	12.01	200,938	20.49
Issued to common shares	(781,821)	15.70	(38,782)	19.36	(46,019)	16.81
Forfeited	(245,419)	16.30	(61,133)	17.31	(8,719)	20.20
RSUs outstanding at the end of the year	830,777	$ 3.83	1,184,709	$ 16.86	907,112	$ 17.48

Performance-Based RSUs

The Company granted performance-based RSUs to its chief executive officer and chief financial officer providing a right to earn shares of SHR common stock at target performance (Target Performance Shares). Two-thirds of the Target Performance Shares are earned based on the Company's performance versus budgeted Funds from Operations (FFO) per share and one-third are earned based on SHR's shareholder return measured against the Bloomberg Hotel REIT Index. The chief executive officer's Target Performance Shares are earned in equal amounts on three annual measurement dates beginning December 31, 2007 and will vest one year after they are earned subject to acceleration upon certain events and other terms. The chief financial officer's Target Performance Shares are earned in the year granted and will vest in three equal installments beginning in the year earned.

The Company measures compensation expense for performance-based RSUs based on the fair market value of its common shares at the date of grant, adjusted for estimated forfeitures. Compensation expense for performance-based RSUs is recognized on a straight-line basis over the service period and is included in corporate expenses in the consolidated statements of operations. Total unrecognized compensation expense related to performance-based RSUs at December 31, 2008 was $214,000 and is expected to be recognized over a weighted average period of one year.

Information regarding performance-based RSUs is summarized in the following table:

	2009		2008		2007	
	Shares	Weighted Average Grant Date Fair Value	Shares	Weighted Average Grant Date Fair Value	Shares	Weighted Average Grant Date Fair Value
Outstanding at the beginning of the year	119,057	$ 20.26	151,760	$ 20.46	117,647	$ 20.40
Granted	—	—	25,859	12.25	34,113	20.35
Issued to common shares	(52,669)	20.20	—	—	—	—
Forfeited	(34,823)	20.27	(58,562)	18.10	—	—
Outstanding at the end of the year	31,565	$ 20.35	119,057	$ 20.26	151,760	$ 20.46

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SARs:

The Amended Plan allows the Committee to grant SARs. As of December 31, 2009, no SARs have been issued under the Amended Plan.

13. DEFINED CONTRIBUTION PLAN

The Company has a defined contribution plan that covers employees meeting eligibility requirements. The Company matches 100% of the first 6% of compensation that an employee elects to defer. The Company's matching contribution vests immediately. The Company can make additional discretionary contributions up to 4% of compensation. Any discretionary matching contributions are fully vested on grant date upon such contributions, or if employees have less than three years of service, the contributions vest at 33.33% per year of service. Contributions by the Company were $432,000, $613,000, and $719,000 for the years ended December 31, 2009, 2008 and 2007, respectively.

14. INCOME TAXES

As a REIT, SHR generally will not be subject to U.S. federal income tax if it distributes 100% of its annual taxable income to its shareholders. SHR may be subject to certain state and local taxes on its income and property and to federal income and excise taxes on its undistributed taxable income. In addition, taxable income from taxable REIT subsidiaries is subject to federal, state and local taxes.

For the years ended December 31, 2009, 2008 and 2007, income tax expense from continuing operations is summarized as follows (in thousands):

	2009	2008	2007
Current tax benefit (expense):			
Europe	$ 18	$ (3,641)	$(2,695)
Mexico	(1,451)	(4,109)	(2,537)
United States	1,529	(855)	(3,635)
	96	(8,605)	(8,867)
Deferred tax (expense) benefit:			
Europe	(617)	(706)	3,297
Mexico	(1,767)	845	524
United States	(1,641)	(2,094)	(2,159)
	(4,025)	(1,955)	1,662
Total income tax expense	$(3,929)	$(10,560)	$(7,205)

Deferred income taxes consist of the following as of December 31, 2009 and 2008 (in thousands):

	2009	2008
Deferred gain on Paris Marriott sale(a)	$ 30,106	$ 30,844
Advanced deposits—Mexico	1,467	3,778
Net operating loss carryforwards(b) and other timing differences	32,952	23,568
Other	2,048	770
Gross deferred tax assets	66,573	58,960
Valuation allowance(c)	(32,329)	(20,700)
Deferred tax asset after valuation allowance	$ 34,244	$ 38,260
Gross deferred tax liability—book property basis in excess of tax basis	$(16,940)	$(34,236)

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(a) The transaction involving the Paris Marriott (see note 8) was treated as a sale for French income tax purposes. For financial reporting purposes the transaction was recorded as a sale-leaseback and the related gain on sale has been deferred. As a result, SHR incurred a significant current tax liability and deferred tax asset. The deferred tax asset is reduced as the deferred gain is amortized over the life of the lease. The balance also fluctuates based on changes in foreign currency exchange rates.

(b) For income tax purposes, the Company's net operating losses can be carried forward for a time period ranging from nine years to indefinitely depending on the rules of the related tax jurisdictions.

(c) The Company provides a valuation against net operating loss carryforwards due to the uncertainty of realization. The valuation allowance increased by $11,629,000, $4,491,000, and $8,176,000 during the years ended December 31, 2009, 2008 and 2007, respectively.

Characterization of Cash Distributions

For federal income tax purposes, the cash distributions paid to SHR's common and preferred shareholders may be characterized as ordinary income, return of capital (generally non-taxable) or capital gain. The following characterizes distributions paid per common share and preferred share for the years ended December 31, 2009, 2008 and 2007 (see note 10 for additional distribution information):

	2009		2008		2007	
	$	%	$	%	$	%
Common shares:						
Ordinary income	$0.00	0.00%	$0.00	0.00%	$0.17	17.71%
Return of capital	0.00	0.00%	0.72	100.0%	0.05	5.21%
Capital gain	0.00	0.00%	0.00	0.00%	0.56	58.33%
Unrecaptured Section 1250 gain	0.00	0.00%	0.00	0.00%	0.18	18.75%
	$0.00	100.0%	$0.72	100.0%	$0.96	100.0%
Preferred shares (Series A):						
Ordinary income	$0.00	0.00%	$0.00	0.00%	$0.40	18.78%
Return of capital	0.00	0.00%	2.13	100.0%	0.00	0.00%
Capital gain	0.00	0.00%	0.00	0.00%	1.32	61.97%
Unrecaptured Section 1250 gain	0.00	0.00%	0.00	0.00%	0.41	19.25%
	$0.00	100.0%	$2.13	100.0%	$2.13	100.0%
Preferred shares (Series B):						
Ordinary income	$0.00	0.00%	$0.00	0.00%	$0.39	18.93%
Return of capital	0.00	0.00%	2.06	100.0%	0.00	0.00%
Capital gain	0.00	0.00%	0.00	0.00%	1.28	62.14%
Unrecaptured Section 1250 gain	0.00	0.00%	0.00	0.00%	0.39	18.93%
	$0.00	100.0%	$2.06	100.0%	$2.06	100.0%
Preferred shares (Series C):						
Ordinary income	$0.00	0.00%	$0.00	0.00%	$0.39	18.93%
Return of capital	0.00	0.00%	2.06	100.0%	0.00	0.00%
Capital gain	0.00	0.00%	0.00	0.00%	1.28	62.14%
Unrecaptured Section 1250 gain	0.00	0.00%	0.00	0.00%	0.39	18.93%
	$0.00	100.0%	$2.06	100.0%	$2.06	100.0%

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15. RELATED PARTY TRANSACTIONS

LLPI

On February 12, 2008, the Company invested $1,200,000 of a $2,000,000 subscription in LLPI, a newly-formed venture with the objectives of purchasing, developing and arranging for the operations of luxury resort and tourist-oriented destination properties in multiple locations throughout North America, Central America and Europe. The son-in-law of Laurence Geller, the Company's president and chief executive officer, Mr. Franco, was one of the founders of and served as executive vice president—development of LLPI. Upon formation, the Company owned 40%, Mr. Franco owned 10% and unrelated parties owned the remaining interests in the venture.

The Company's interest in the LLPI venture was redeemed in May 2009, at which time, Mr. Franco then owned 40% and the other remaining member owned 60% of LLPI. As part of the redemption, the Company received a return of $185,000 of capital and the remaining $190,000 in the Company's capital account was re-allocated to the remaining members, including Mr. Franco. At the time of the Company's redemption, LLPI also distributed $181,000 to each of the remaining members, including Mr. Franco.

From March 2009 through August 2009, LLPI, which has changed its name to Punta Mita Properties, LLC, provided asset management services to RCPM for a fee of $25,000 per month. Beginning in September 2009, the fees for the asset management services were reduced to a $10,000 base fee per month, with an opportunity to earn an additional $15,000 per month if certain sales occur (see note 6).

Consulting Agreement

On August 16, 2007, the Company entered into a consulting agreement with Sir David M.C. Michels, a member of SHR's board of directors. On August 21, 2008, the Company amended the agreement. Under the terms of the agreement, Mr. Michels provides certain consulting services to the Company relating to its European strategy, including pursuing acquisition opportunities, facilitating relationships and advising on current European operations.

On August 5, 2009, the Company and Mr. Michels agreed to terminate the consulting agreement dated August 16, 2007, as amended on August 21, 2008 (collectively, the Consulting Agreement). Pursuant to the termination agreement dated August 5, 2009 between the parties (the Termination Agreement, and together with the Consulting Agreement, the Agreements), Mr. Michels served as a consultant to the Company until December 31, 2009 (the Termination Date) and received $125,000, in consideration of (i) Mr. Michels' consulting services through the Termination Date and (ii) contractually provided termination fees and the waiver of certain other benefits to which Mr. Michels was otherwise entitled to under the terms of the Consulting Agreement. Mr. Michels shall not receive any additional compensation or equity grants under the terms of the Agreements. All prior grants made by the Company to Mr. Michels pursuant to the Consulting Agreement shall continue to vest provided the conditions to such vesting contained in the Consulting Agreement are satisfied. For the years ended December 31, 2009, 2008 and 2007, the Company recognized expense of $212,000, $418,000, and $198,000, respectively, related to the Agreements.

16. COMMITMENTS AND CONTINGENCIES

Environmental Matters:

Generally, the properties acquired by the Company have been subjected to environmental reviews. While some of these assessments have led to further investigation and sampling, none of the environmental assessments have revealed, nor is the Company aware of any environmental liability that it believes would have a material adverse effect on its business or financial statements.

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Litigation:

The Company is party to various claims and routine litigation arising in the ordinary course of business. Based on discussions with legal counsel, the Company does not believe that the results of these claims and litigation, individually or in the aggregate, will have a material adverse effect on its business or financial statements.

Letters of Credit:

As of December 31, 2009, the Company provided $750,000 in letters of credit related to its office space lease and $2,000,000 in connection with the Four Seasons Mexico City hotel purchase and sale agreement to secure the indemnity obligations of the seller thereunder.

Purchase Commitments:

On May 17, 2007, the Company entered into a promise to purchase and sale agreement to potentially acquire certain floors to be completed as hotel rooms in a to-be-built hotel and residential complex in the Santa Fe area of Mexico City. The Company paid a $5,693,000 earnest money deposit, secured by a performance bond obtained by the developer, upon the execution of the agreement.

On October 9, 2009, the Company entered into an agreement to terminate the promise to purchase and sale agreement. During the year ended December 31, 2009, the Company received payment of $4,000,000 and wrote off the remaining $1,693,000. The Company had $0 and $5,693,000 recorded as earnest money deposits in other assets as of December 31, 2009 and December 31, 2008, respectively

17. FAIR VALUE OF FINANCIAL INSTRUMENTS

As of December 31, 2009 and 2008, the carrying amounts of certain financial instruments employed by the Company, including cash and cash equivalents, restricted cash and cash equivalents, accounts receivable, and accounts payable and accrued expenses were representative of their fair values because of the short-term maturity of these instruments. At December 31, 2009 and 2008, there was no fixed-rate mortgage debt.

To calculate the estimated fair value of the variable-rate mortgage debt and bank credit facility as of December 31, 2009, the Company estimated that in the current market the spread over the applicable index (LIBOR, EURIBOR, or GBP LIBOR as applicable) would be in the range of 400 to 600 basis points as compared to the current contractual spread as disclosed above (see note 9). Using these estimated market spreads and a discount rate of 7.4%, the Company estimated the fair value of the debt to be approximately $82,000,000 to $139,000,000 lower than the carrying value of $1,479,000,000. To calculate the fair value of the Exchangeable Notes as of December 31, 2009, the Company assumed a market spread of between 400 to 600 basis points and estimated the fair value to be approximately $8,000,000 to $15,000,000 lower than the face value of $180,000,000. For every 100 basis point change in the assumed market spread, the corresponding change in the fair value of our total debt would be approximately $32,000,000.

To calculate the estimated fair value of the variable-rate mortgage debt and bank credit facility as of December 31, 2008, the Company estimated that in the current market the spread over the applicable index (LIBOR, EURIBOR, or GBP LIBOR as applicable) would be in the range of 400 to 600 basis points as compared to the current contractual spread as disclosed above (see note 9). Using these estimated market spreads and a discount rate of 7.4%, the Company estimated the fair value of the debt to be approximately $148,000,000 to $252,000,000 lower than the carrying value of $1,491,000,000. To calculate the fair value of the Exchangeable

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Notes as of December 31, 2008, the Company assumed a market spread of between 400 to 600 basis points over the five-year swap rate at December 31, 2008 and estimated the fair value to be approximately $10,000,000 to $21,000,000 lower than the face value of $180,000,000. For every 100 basis point change in the assumed market spread, the corresponding change in the fair value of the Company's total debt would be approximately $57,000,000.

Interest rate swap and cap agreements have been recorded at their estimated fair values.

18. GEOGRAPHIC AND BUSINESS SEGMENT INFORMATION

The Company operates in one reportable business segment, hotel ownership. As of December 31, 2009, the Company's foreign operations and long-lived assets consisted of one Mexican hotel property, two Mexican development sites, a 31% interest in a Mexican joint venture RCPM and four European properties, including leasehold interests in each a French and a German hotel property.

The following table presents revenues (excluding the unconsolidated joint ventures and discontinued operations) and long-lived assets for the geographical areas in which the Company operates (in thousands):

	Years ended December 31,		
	2009	2008	2007
Revenues:			
United States	$580,353	$734,865	$765,753
Mexico	39,858	62,316	57,742
Europe	103,588	131,208	108,444
Total	$723,799	$928,389	$931,939

	December 31,	
	2009	2008
Long-lived Assets:		
United States	$1,817,698	$1,943,608
Mexico	177,500	242,287
Europe	277,190	350,571
Total	$2,272,388	$2,536,466

19. QUARTERLY OPERATING RESULTS (UNAUDITED)

The Company's unaudited consolidated quarterly operating data for the years ended December 31, 2009 and 2008 are as follows. Certain 2009 and 2008 items have been reclassified to conform to the current presentation of discontinued operations and the retrospective application of new accounting guidance. In the opinion of management, all adjustments (consisting of normal recurring accruals) necessary for a fair presentation of quarterly results have been reflected in the data.

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It is also management's opinion, however, that quarterly operating data for hotel properties are not indicative of results to be achieved in succeeding quarters or years.

	Year ended December 31, 2009 (Dollars in thousands, except per share data)			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Revenues	$172,044	$185,395	$178,517	$187,843
Loss from continuing operations attributable to SHR common shareholders	$ (44,800)	$ (84,807)	$ (43,279)	$ (92,745)
Income (loss) from discontinued operations attributable to SHR	1,610	(1,175)	(30,195)	20,560
Net loss attributable to SHR common shareholders	$ (43,190)	$ (85,982)	$ (73,474)	$ (72,185)
Earnings per weighted average common share outstanding—Basic				
Loss from continuing operations attributable to SHR common shareholders per share	$ (0.59)	$ (1.12)	$ (0.57)	$ (1.23)
Income (loss) from discontinued operations attributable to SHR per share	0.02	(0.02)	(0.40)	0.27
Net loss attributable to SHR common shareholders per share	$ (0.57)	$ (1.14)	$ (0.97)	$ (0.96)
Weighted average common shares outstanding—Basic	75,166	75,381	75,441	75,426
Earnings per weighted average common share outstanding—Diluted				
Loss from continuing operations attributable to SHR common shareholders per share	$ (0.59)	$ (1.12)	$ (0.57)	$ (1.23)
Income (loss) from discontinued operations attributable to SHR per share	0.02	(0.02)	(0.40)	0.27
Net loss attributable to SHR common shareholders per share	$ (0.57)	$ (1.14)	$ (0.97)	$ (0.96)
Weighted average common shares outstanding—Diluted	75,166	75,381	75,441	75,426

	Year ended December 31, 2008 (Dollars in thousands, except per share data)			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Revenues	$228,606	$257,192	$ 227,206	$ 215,385
(Loss) income from continuing operations attributable to SHR common shareholders	$ (13,185)	$ 6,887	$(104,302)	$(255,193)
Income (loss) from discontinued operations attributable to SHR	5,253	3,679	38,574	(29,890)
Net (loss) income attributable to SHR common shareholders	$ (7,932)	$ 10,566	$ (65,728)	$(285,083)
Earnings per weighted average common share outstanding—Basic				
(Loss) income from continuing operations attributable to SHR common shareholders per share	$ (0.18)	$ 0.09	$ (1.39)	$ (3.40)
Income (loss) from discontinued operations attributable to SHR per share	0.07	0.05	0.51	(0.39)
Net (loss) income attributable to SHR common shareholders per share	$ (0.11)	$ 0.14	$ (0.88)	$ (3.79)
Weighted average common shares outstanding—Basic	74,950	75,000	75,022	75,146
Earnings per weighted average common share outstanding—Diluted				
(Loss) income from continuing operations attributable to SHR common shareholders per share	$ (0.18)	$ 0.09	$ (1.39)	$ (3.40)
Income (loss) from discontinued operations attributable to SHR per share	0.07	0.05	0.51	(0.39)
Net (loss) income attributable to SHR common shareholders per share	$ (0.11)	$ 0.14	$ (0.88)	$ (3.79)
Weighted average common shares outstanding—Diluted	74,950	75,048	75,022	75,146

The Marriott domestic hotels report their results of operations using a fiscal year consisting of thirteen four-week periods. As a result, for the Marriott Lincolnshire, for all years presented, the first three quarters consist of 12 weeks each and the fourth quarter consists of 16 weeks.

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STRATEGIC HOTELS & RESORTS, INC. AND SUBSIDIARIES (SHR)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

20. SUBSEQUENT EVENTS

In February 2010, the Company paid approximately $24,700,000 to buy down the fixed pay rates of various domestic interest rate swaps. For certain of these interest rate swaps, the fixed pay rate will only be adjusted through December 2010 and will resume the original fixed pay rate in January 2011. The modified swaps will remain designated as cash flow hedges and any amounts included in accumulated OCL for these modified swaps will be reclassified to earnings over the life of the swaps.

In February 2010, the Company entered into an amended and restated InterContinental Prague loan agreement (see note 9). In connection with the loan amendment, the Company paid approximately €2,400,000 to modify the interest rate swap associated with the loan. Under the terms of the modified interest rate swap, the fixed pay rate has been reduced to 3.32% and the maturity date has been extended to March 2015.

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STRATEGIC HOTELS & RESORTS, INC.

SCHEDULE III—REAL ESTATE AND ACCUMULATED DEPRECIATION
December 31, 2009
(In Thousands)

Description	Location	Debt	Initial Costs		Subsequent Costs Capitalized	Gross Amount at December 31, 2009			Accumulated Depreciation	Date of Completion of Construction
			Land	Building & Improvements		Land	Building & Improvements	Total		
Marriott Lincolnshire Resort	Lincolnshire, IL	$ —	$ —	$ 47,248	$ 107	$ —	$ 47,355	$ 47,355	$ (20,186)	1975
Loews Santa Monica	Santa Monica, CA	118,250	5,833	91,717	1,015	5,833	92,732	98,565	(30,997)	1989
Hyatt Regency La Jolla	La Jolla, CA	97,500	13,093	66,260	—	13,093	66,260	79,353	(17,840)	1989
Four Seasons Punta Mita	Punta Mita, Mexico	—	4,359	44,950	25,700	7,358	67,651	75,009	(12,004)	1999
Ritz-Carlton Half Moon Bay	Half Moon Bay, CA	76,500	20,100	79,400	3,088	20,100	82,488	102,588	(12,607)	2001
InterContinental Chicago	Chicago, IL	121,000	20,259	139,204	2,885	20,252	142,096	162,348	(18,141)	1929
InterContinental Miami	Miami, FL	90,000	41,891	69,296	7,920	41,877	77,230	119,107	(10,639)	1982
Fairmont Chicago	Chicago, IL	123,750	17,347	129,153	25,911	17,347	155,064	172,411	(22,656)	1987
Four Seasons Washington, D.C.	Washington, D.C.	—	44,900	75,600	21,530	44,900	97,130	142,030	(11,892)	1979
Westin St. Francis	San Francisco, CA	220,000	61,400	287,800	2,641	61,400	290,441	351,841	(27,151)	1907
Ritz-Carlton Laguna Niguel	Dana Point, CA	—	76,700	176,300	1,149	76,700	177,449	254,149	(17,915)	1984
InterContinental Prague	Prague, Czech Republic	148,886	32,516	69,252	15,124(1)	38,027	78,865	116,892	(9,469)	1974
Marriott London Grosvenor Square	London, England	124,859	—	85,468	(12,808)(1)	—	72,660	72,660	(6,761)	1962
Fairmont Scottsdale Princess	Scottsdale, AZ	180,000	22,900	260,100	24,841	22,900	284,941	307,841	(32,529)	1987
La Solana (Land held for development)	Punta Mita, Mexico	—	51,900	—	—	51,900	—	51,900	—	—
H Five Lot B (Land held for development)	Punta Mita, Mexico	—	46,921	—	4,269	51,190	—	51,190	—	—
Totals		**$1,300,745**	**$460,119**	**$ 1,621,748**	**$ 123,372**	**$472,877**	**$ 1,732,362**	**$2,205,239**	**$ (250,787)**	

(1) Includes currency translation adjustments of $21,905 for the InterContinental Prague and $(12,808) for the Marriott London Grosvenor Square.

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STRATEGIC HOTELS & RESORTS, INC.

REAL ESTATE AND ACCUMULATED DEPRECIATION
December 31, 2009
(In Thousands)

Notes:

(A) The change in total cost of properties for the years ended December 31, 2009, 2008 and 2007 is as follows:

	2009	2008	2007
Balance, beginning of period	$2,313,188	$2,339,678	$2,262,595
Additions:			
Acquisition of property	—	—	133,329
Improvements	21,655	74,630	26,723
Currency translation adjustment	12,228	—	17,359
Deductions:			
Dispositions	(130,202)	(66,983)	(15,000)
Property damage writedown	—	—	(84,940)
Reclassifications	(879)	—	(388)
Currency translation adjustment	—	(34,137)	—
Impairment of land held for development	(10,751)	—	—
Balance, end of period	$2,205,239	$2,313,188	$2,339,678

(B) The change in accumulated depreciation and amortization of real estate assets for the years ended December 31, 2009, 2008 and 2007 is as follows:

	2009	2008	2007
Balance, beginning of period	$200,228	$158,244	$135,293
Depreciation and amortization	61,613	55,332	48,558
Property damage writedown	—	—	(26,135)
Dispositions	(12,394)	(11,348)	—
Currency translation adjustment	1,340	(2,000)	528
Balance, end of period	$250,787	$200,228	$158,244

(C) The aggregate cost of properties for federal income tax purposes is approximately $2,513,183 at December 31, 2009.

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ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

ITEM 9A. CONTROLS AND PROCEDURES.

Evaluation of Disclosure Controls and Procedures

An evaluation of the effectiveness of the design and operation of our "disclosure controls and procedures" (as defined in Rule 13a-15(e) under the Exchange Act), as of the end of the period covered by this annual report on Form 10-K, was made under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer. Based upon this evaluation, as of December 31, 2009, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures are effective to ensure that information required to be disclosed by us in reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that information required to be disclosed by us in reports filed or submitted under the Securities Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, and for performing an assessment of the effectiveness of internal control over financial reporting as of December 31, 2009. Internal control over financial reporting is a process designed to provide reasonable assurance to our management and board of directors regarding the reliability of financial reporting and the preparation and fair presentation of published financial statements. Our system of internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

All internal control systems, no matter how well designed, have inherent limitations, which include the possibility of human error and the circumvention or overriding of the controls and procedures. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentations and all misstatements may not be prevented or detected. Also, the effectiveness of internal control over financial reporting may deteriorate in future periods due to either changes in conditions or declining levels of compliance with policies or procedures.

Our management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2009. In making this assessment, management used criteria set forth in *Internal Control— Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

Based on this assessment management believes that, as of December 31, 2009, our internal control over financial reporting was effective based on such criteria.

Deloitte & Touche LLP, an independent registered public accounting firm, issued an audit report on the effectiveness of our internal control over financial reporting as of December 31, 2009. This report appears below.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
Strategic Hotels & Resorts, Inc.
Chicago, Illinois

We have audited the internal control over financial reporting of Strategic Hotels & Resorts, Inc. and subsidiaries (the "Company") as of December 31, 2009, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2009, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements and financial statement schedule as of and for the year ended December 31, 2009 of the Company and our report dated February 25, 2010 expressed an unqualified opinion on those financial statements and financial statement schedule, and included an explanatory paragraph regarding the change in accounting for noncontrolling interests and convertible debt instruments for which the consolidated financial statements were retrospectively adjusted.

/s/ DELOITTE & TOUCHE LLP

Chicago, Illinois
February 25, 2010

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Changes in Internal Control Over Financial Reporting

There have been no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) during the quarter ended December 31, 2009 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION.

None.

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PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.

The information required by Items 401, 405, 406, and 407(c)(3), (d)(4) and (d)(5) of Regulation S-K is incorporated herein by reference to the Company's definitive proxy statement to be filed with the SEC pursuant to Regulation 14A under the Exchange Act.

ITEM 11. EXECUTIVE COMPENSATION.

The information required by Item 402 and paragraph (e)(4) and (e)(5) of Item 407 of Regulation S-K is incorporated herein by reference to the Company's definitive proxy statement to be filed with the SEC pursuant to Regulation 14A under the Exchange Act.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.

The information required by Item 403 of Regulation S-K is incorporated herein by reference to the Company's definitive proxy statement to be filed with the SEC pursuant to Regulation 14A under the Exchange Act.

The information required by Item 201(d) of Regulation S-K is incorporated herein by reference to "Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities —Equity Compensation Plan Information" of this annual report on Form 10-K.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE.

The information required by Items 404 and 407(a) of Regulation S-K is incorporated herein by reference to the Company's definitive proxy statement to be filed with the SEC pursuant to Regulation 14A under the Exchange Act.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES.

The information required by Item 9(e) of Schedule 14A is incorporated herein by reference to the Company's definitive proxy statement to be filed with the SEC pursuant to Regulation 14A under the Exchange Act.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULE.

(a) The following is a list of documents filed as part of this report:

(1) Financial Statements.

All financial statements are set forth under Item 8. Financial Statements and Supplementary Data of this report.

(2) Financial Statement Schedules.

The following financial statement schedule is included herein at pages 114 through 115.

Schedule III – Real Estate and Accumulated Depreciation

All other schedules are omitted because they are not applicable or the required information is included in the consolidated financial statements or notes thereto.

(b) The exhibits required to be filed by Item 601 of Regulation S-K are listed in the Exhibit Index on pages 121 through 128 of this report, which is incorporated by reference herein.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: February 24, 2010

STRATEGIC HOTELS & RESORTS, INC.

By: /S/ LAURENCE S. GELLER
Laurence S. Geller
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Each Dated: February 24, 2010

By: /S/ LAURENCE S. GELLER
Laurence S. Geller
President, Chief Executive Officer and Director

By: /S/ JAMES E. MEAD
James E. Mead
Executive Vice President and Chief Financial Officer

By: /S/ STEPHEN M. BRIGGS
Stephen M. Briggs
Senior Vice President, Principal Accounting Officer

By: /S/ WILLIAM A. PREZANT
William A. Prezant
Chairman

By: /S/ ROBERT P. BOWEN
Robert P. Bowen
Director

By: /S/ JAMES A. JEFFS
James A. Jeffs
Director

By: /S/ KENNETH FISHER
Kenneth Fisher
Director

By: /S/ RAYMOND L. GELLEIN, JR.
Raymond L. Gellein, Jr.
Director

By: /S/ RICHARD D. KINCAID
Richard D. Kincaid
Director

By: /S/ DAVID M.C. MICHELS
David M.C. Michels
Director

By: /S/ EUGENE F. REILLY
Eugene F. Reilly
Director

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EXHIBIT INDEX

on Form 8-K (File No. 1-32223), filed on February 2, 2006 and incorporated herein by reference).

Exhibit Number	Description
3.1a	Articles of Amendment and Restatement of Strategic Hotel Capital, Inc. (filed as Exhibit 3.1 to the Company's Amendment No. 3 to Registration Statement on Form S-11 (File No. 333-112846), filed on June 8, 2004 and incorporated herein by reference).
3.1b	Articles Supplementary relating to the 8.50% Series A Cumulative Redeemable Preferred Stock (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-32223), filed on March 18, 2005 and incorporated herein by reference).
3.1c	Certificate of Correction relating to the 8.50% Series A Cumulative Redeemable Preferred Stock (filed as Exhibit 3.2 to the Company's Current Report on Form 8-K (File No. 001-32223), filed on March 18, 2005 and incorporated herein by reference).
3.1d	Articles Supplementary relating to the 8.25% Series B Cumulative Redeemable Preferred Stock (filed as Exhibit 3.5 to the Company's Form 8-A (File No. 001-32223), filed on January 13, 2006 and incorporated herein by reference).
3.1e	Articles Supplementary relating to the 8.25% Series C Cumulative Redeemable Preferred Stock (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-32223), on April 21, 2006 and incorporated herein by reference).
3.1f	Articles Supplementary relating to the Series D Junior Participating Preferred Stock (filed as Exhibit 3.1 to the Company's Form 8-K (File No. 001-32223), on November 18, 2008 and incorporated herein by reference).
3.2	By-Laws of Strategic Hotels & Resorts, Inc., as amended and restated on November 14, 2008 (filed as Exhibit 3.2 to the Company's Form 8-K (File No. 001-32223), on November 18, 2008 and incorporated herein by reference).
3.3	Articles of Amendment filed on March 9, 2006 with the Maryland State Department of Assessments and Taxation relating to the Company's name change to Strategic Hotels & Resorts, Inc. (filed as Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-32223), filed on March 15, 2006 and incorporated herein by reference).
4.1	Rights Agreement, dated as of November 14, 2008 between Strategic Hotels & Resorts, Inc. and Mellon Investor Services LLC (filed as Exhibit 4.1 to the Company's Current Report on Form 8-K (File No. 001-32223), filed on November 19, 2008 and incorporated herein by reference).
4.2	Amendment No. 1 to the Rights Agreement, dated as of November 24, 2009, by and between Strategic Hotels & Resorts, Inc. and Mellon Investor Services LLC, amending the Rights Agreement, dated as of November 14, 2008 (filed as Exhibit 4.1 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on November 25, 2009 and incorporated herein by reference).
10.1	Limited Liability Company Agreement of Strategic Hotel Funding, LLC (filed as Exhibit 10.1 to the Company's Amendment No. 4 to Registration Statement on Form S-11 (File No. 333-112846), filed on June 18, 2004 and incorporated herein by reference).
10.2	First Amendment to the Limited Liability Company Agreement of SHC Funding, LLC, dated as of March 15, 2005 (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-32223), filed on March 18, 2005 and incorporated herein by reference).
10.3	Third Amendment to the Limited Liability Company Agreement of Strategic Hotel Funding, LLC, dated as of January 31, 2006 (filed as Exhibit 10.1 to the Company's Current Report

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No. 001-32223), filed on September 11, 2006 and incorporated herein by reference).

Exhibit Number	Description
10.4	Fourth Amendment to the Limited Liability Company Agreement of Strategic Hotel Funding, L.L.C., dated as of May 17, 2006 (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-32223), filed on May 18, 2006 and incorporated herein by reference).
10.5	Fifth Amendment to the Limited Liability Company Agreement of Strategic Hotel Funding, L.L.C., dated as of March 1, 2007 (filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on May 7, 2007 and incorporated herein by reference).
10.6	Structuring and Contribution Agreement, dated as of February 13, 2004, by and among Strategic Hotel Funding, LLC, Strategic Hotel Capital, LLC and the other parties thereto (filed as Exhibit 10.2 to the Company's Amendment No. 1 to Registration Statement on Form S-11 (File No. 333-112846), filed on April 9, 2004 and incorporated herein by reference).
*10.13	Registration Rights Agreement, dated as of June 29, 2004, by and between Strategic Hotel Capital, Inc. and Rockmark Corporation.
*10.14	Registration Rights Agreement, dated as of June 29, 2004, by and among Strategic Hotel Capital, Inc., WHSHC, LLC, W9/WHSHC, LLC I, The Prudential Insurance Company of America, PIC Realty Corporation and Strategic Value Investors LLC.
†10.15	Strategic Hotel Capital, Inc. 2004 Incentive Plan (filed as Exhibit 10.13 to the Company's Amendment No. 3 to Registration Statement on Form S-11 (File No. 333-112846), filed on June 8, 2004 and incorporated herein by reference).
†10.16	Strategic Hotel Capital, Inc. Employee Stock Purchase Plan (filed as Exhibit 10.14 to the Company's Amendment No. 3 to Registration Statement on Form S-11 (File No. 333-112846), filed on June 8, 2004 and incorporated herein by reference).
†10.17	Form of Strategic Hotel Capital, Inc. Stock Unit Award Agreement for employees (filed as Exhibit 10.23 to the Company's Annual Report on Form 10-K (File No. 001-32223), filed on March 7, 2005 and incorporated herein by reference).
†10.18	Form of Strategic Hotel Capital, Inc. Stock Unit Award Agreement for directors (filed as Exhibit 10.22 to the Company's Annual Report on Form 10-K (File No. 001-32223), filed on March 7, 2005 and incorporated herein by reference).
†10.19	Strategic Hotel Capital, Inc. Severance Program (filed as Exhibit 10.21 to the Company's Annual Report on Form 10-K (File No. 001-32223), filed on March 7, 2005 and incorporated herein by reference).
†10.20	Summary of Director Compensation (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-32223), filed on April 5, 2005 and incorporated herein by reference).
†10.24	Employment Agreement by and among Strategic Hotel Capital, Inc., Strategic Hotel Funding, LLC and James E. Mead (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-32223), filed on December 1, 2004 and incorporated herein by reference).
†10.25	Amendment No. 1 to Employment Agreement, dated as of February 13, 2007, between James E. Mead, the Company and Strategic Hotel Funding, L.L.C. (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on February 20, 2007 and incorporated herein by reference).
†10.29	Employment Agreement dated as of September 7, 2006, by and between Laurence S. Geller and the Company (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K (File

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Form 10-Q (File No. 001-32223), filed on August 7, 2006 and incorporated herein by reference).

Exhibit Number	Description
†10.30	Stock Option Agreement dated as of September 7, 2006, by and between Laurence S. Geller and the Company (filed as Exhibit 10.2 to the Company's Current Report on Form 8-K (File No. 001-32223), filed on September 11, 2006, and incorporated herein by references.
†10.31	Stock Unit Award Agreement, dated as of September 7, 2006, by and between Laurence S. Geller and the Company (filed as Exhibit 10.3 to the Company's Current Report on Form 8-K (File No. 001-32223), filed on September 11, 2006 and incorporated herein by reference).
†10.32	Form of stock unit award agreement for earned Performance Shares (filed as Exhibit 10.4 to the Company's Current Report on Form 8-K (File No. 001-32223), filed on September 11, 2006 and incorporated herein by reference).
†10.33	Letter Agreement dated July 27, 2006 by and between Strategic Hotel Funding, L.L.C. and Stephen K. Miller (filed as Exhibit 10.20 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on November 8, 2006 and incorporated herein by reference).
10.50	Letter Agreement, dated October 3, 2005, between Strategic Hotel Capital, LLC and SHC DTRS, Inc. (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-32223), filed on October 5, 2005 and incorporated herein by reference).
10.52	Amended and Restated Limited Partnership Agreement of SHC KSL Partners, L.P. by and among SHC del GP, LLC, SHC del LP, LLC, Dcoro Holdings, LLC, KSL DC Newco, LLC and HdC DC Corporation, dated January 9, 2006 (filed as Exhibit 10.42 to the Company's Annual Report on Form 10-K (File No. 001-32223), filed on March 2, 2006 and incorporated herein by reference).
10.53	Amended and Restated Limited Liability Limited Partnership Agreement of HdC North Beach Development, LLLP by and among DTRS North Beach del Coronado, LLC, Dcoro Holdings, LLC, KSL DC Newco, LLC and HdC DC Corporation, dated January 9, 2006 (filed as Exhibit 10.43 to the Company's Annual Report on Form 10-K (File No. 001-32223), filed on March 2, 2006 and incorporated herein by reference).
10.60	Second Amended and Restated Indenture, dated as of November 9, 2005, by and between the Issuers names therein and LaSalle Bank, N.A., as note trustee (filed as Exhibit 10.50 to the Company's Annual Report on Form 10-K (File No. 001-32223), filed on March 2, 2006 and incorporated herein by reference).
10.61	Amended and Restated Credit Agreement, dated as of November 9, 2005, by and among Strategic Hotel Funding, LLC, as the Borrower, the financial institutions listed therein, as the Lenders, Deutsche Bank Trust Company Americas, as the Administrative Agent and Wachovia Bank, N.A. as the Syndication Agent (filed as Exhibit 10.51 to the Company's Annual Report on Form 10-K (File No. 001-32223), filed on March 2, 2006 and incorporated herein by reference).
10.65	Revolving Loan Commitment Agreement, dated as of May 30, 2006, by and between Strategic Hotel Funding, LLC and Citicorp North America, Inc. (filed as Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on August 7, 2006 and incorporated herein by reference).
10.67	Mortgage Loan Application, dated July 6, 2006, by and between SHR St. Francis, L.L.C. and Metropolitan Life Insurance Company (filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on November 8, 2006 and incorporated herein by reference).
10.68	Promissory Note, dated July 6, 2006, by and between SHR St. Francis, L.L.C. and Metropolitan Life Insurance Company (filed as Exhibit 10.8 to the Company's Quarterly Report on

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(File No. 001-32223), filed on May 7, 2007 and incorporated herein by reference).

Exhibit Number	Description
10.74	Facility Agreement, dated August 31, 2006, by and among Grosvenor Square Hotel S.a.r.l., and Lomar Hotel Company Limited, Barclay's Bank PLC and Barclay's Capital Mortgage Servicing Limited (filed as Exhibit 10.8 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on November 8, 2006 and incorporated herein by reference).
*10.76	Loan and Security Agreement, dated September 1, 2006, by and among SHR Scottsdale X, L.L.C., SHR Scottsdale Y, L.L.C. and Citigroup Global Markets Realty Corp.
10.77	Note, dated September 1, 2006 (filed as Exhibit 10.11 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on November 8, 2006 and incorporated herein by reference).
*10.78	Mezzanine Loan and Security Agreement, dated September 1, 2006, by and among SHR Scottsdale Mezz X-1, L.L.C., SHR Scottsdale Mezz Y-1, L.L.C., and Citigroup Global Markets Realty Corp.
10.79	Mezzanine Note, dated September 1, 2006 (filed as Exhibit 10.13 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on November 8, 2006 and incorporated herein by reference).
10.81	Amendment to Promissory Note dated as of October 20, 2006, by and between SHC Michigan Avenue, LLC and Citigroup Global Markets Realty Corp. (filed as Exhibit 10.19 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on November 8, 2006 and incorporated herein by reference).
*10.82	Loan and Security Agreement, dated as of October 6, 2006, by and between SHC Michigan Avenue, LLC and Citigroup Global Markets Realty Corp.
10.83	Amended and Restated Note, dated as of October 6, 2006, by and between SHC Michigan Avenue, LLC and Citigroup Global Realty Corp. (filed as Exhibit 10.2 to the Company's current report on Form 8-K (File No. 001-32223), filed on October 12, 2006 and incorporated herein by reference).
*10.84	Loan and Security Agreement, dated as of October 6, 2006, by and between SHC Chopin Plaza, LLC and Citigroup Global Markets Realty Corp.
10.85	Amended and Restated Note, dated as of October 6, 2006, by and between SHC Chopin Plaza, LLC and Citigroup Global Markets Realty Corp. (filed as Exhibit 10.4 to the Company's current report on Form 8-K (File No. 001-32223), filed on October 12, 2006 and incorporated herein by reference).
10.86	Indenture, dated as of April 4, 2007, by and among the Company, Strategic Hotel Funding, L.L.C. and LaSalle Bank National Association (filed as Exhibit 4.1 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on April 4, 2007 and incorporated herein by reference).
10.87	Registration Rights Agreement, dated as of April 4, 2007, by and among the Company, Strategic Hotel Funding, L.L.C., Deutsche Bank Securities Inc., Citigroup Global Markets Inc. and J.P. Morgan Securities Inc. (filed as Exhibit 4.2 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on April 4, 2007 and incorporated herein by reference).
10.88	Common Stock Delivery Agreement, dated as of April 4, 2007, by and among the Company and Strategic Hotel Funding, L.L.C. (filed as Exhibit 4.3 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on April 4, 2007 and incorporated herein by reference).
10.89	Facility Agreement, dated as of February 20, 2007, by and between SHR Prague Praha B.V. and Aareal Bank AG (filed as Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q

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Exhibit Number	Description
*10.90	Credit Agreement, dated as of March 9, 2007, by and among Strategic Hotel Funding, L.L.C., Deutsche Bank Trust Company Americas as administrative agent, the various financial institutions as are or may become parties thereto, Deutsche Bank Securities Inc. and Citigroup Global Markets Inc., as co-lead arrangers and joint book running managers, Citicorp North America, Inc. and Wachovia Bank National Association, as co-syndication agents, Bank of America, N.A. and JPMorgan Chase Bank, N.A., as co-documentation agent, and LaSalle Bank, National Association, as senior managing agent.
10.91	First Amendment to Credit Agreement, dated as of March 29, 2007, by and among Strategic Hotel Funding, L.L.C., Deutsche Bank Trust Company Americas as administrative agent, the various financial institutions as are or may become parties thereto, Deutsche Bank Securities Inc. and Citigroup Global Markets Inc., as co-lead arrangers and joint book running managers, Citicorp North America, Inc. and Wachovia Bank National Association, as co-syndication agents, Bank of America, N.A. and JPMorgan Chase Bank, N.A., as co-documentation agent, and LaSalle Bank, National Association, as senior managing agent (filed as Exhibit 4.4 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on April 4, 2007 and incorporated herein by reference).
10.92	Second Amendment to Credit Agreement, dated as of April 18, 2007, by and among Strategic Hotel Funding, L.L.C., Deutsche Bank Trust Company Americas as administrative agent, the various financial institutions as are or may become parties thereto, Deutsche Bank Securities Inc. and Citigroup Global Markets Inc., as co-lead arrangers and joint book running managers, Citicorp North America, Inc. and Wachovia Bank National Association, as co-syndication agents, Bank of America, N.A. and JPMorgan Chase Bank, N.A., as co-documentation agent, and LaSalle Bank, National Association, as senior managing agent (filed as Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q (File No. 1-32223), filed on May 7, 2007 and incorporated herein by reference).
10.93	Promissory Note, dated as of March 9, 2007, by and between SHC Columbus Drive, LLC and Metropolitan Life Insurance Company (filed as Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on May 7, 2007 and incorporated herein by reference).
10.94	Mortgage, Security Agreement and Fixture Filing, dated as of March 9, 2007, by and between SHC Columbus Drive, LLC and Metropolitan Life Insurance Company (filed as Exhibit 10.8 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on May 7, 2007 and incorporated herein by reference).
*10.95	Loan and Security Agreement, dated as of March 9, 2007, by and between New Santa Monica Beach Hotel, L.L.C. and JPMorgan Chase Bank N.A.
10.96	Note, dated as of March 9, 2007, by SHC Half Moon Bay, LLC in favor of Column Financial, Inc. (filed as Exhibit 10.10 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on May 7, 2007 and incorporated herein by reference).
*10.97	Loan and Security Agreement, dated as of March 9, 2007, by and between SHC Half Moon Bay, LLC and Column Financial, Inc.
10.98	Note, dated as of March 9, 2007, by SHC Half Moon Bay, LLC in favor of Column Financial, Inc. (filed as Exhibit 10.12 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on May 7, 2007 and incorporated herein by reference).
10.99	Capped Call Confirmation, dated as of March 29, 2007, by and among the Company, Strategic Hotel Funding, L.L.C. and J.P. Morgan Securities Inc., as agent for JPMorgan Chase Bank, National Association (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on April 4, 2007 and incorporated herein by reference).

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Report on Form 8-K (File No. 001-32223) filed on November 18, 2008 and incorporated herein by reference).

Exhibit Number	Description
10.100	Capped Call Confirmation, dated as of March 29, 2007, by and among the Company, Strategic Hotel Funding, L.L.C. and Deutsche Bank AG (filed as Exhibit 10.2 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on April 4, 2007 and incorporated herein by reference).
*10.101	Amended and Restated Limited Liability Company Agreement of SHC Michigan Avenue Mezzanine II, LLC, dated as of August 31, 2007.
*10.102	Amended and Restated Limited Liability Company Agreement of SHC Aventine II, L.L.C., dated as of August 31, 2007.
†10.105	Consulting Agreement by and between the Company and David M.C. Michels, dated as of August 16, 2007 (filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223), filed on November 8, 2007 and incorporated herein by reference).
10.106	Side Letter, dated as of August 31, 2007, between SHC Michigan Avenue, LLC and Citigroup Global Markets Realty Corp. (filed as Exhibit 99.1 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on September 7, 2007 and incorporated herein by reference).
10.107	Third Amendment to the Mortgage Loan and Security Agreement, dated as of August 31, 2007, between SHC Michigan Avenue, LLC and Citigroup Global Markets Realty Corp. (filed as Exhibit 99.2 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on September 7, 2007 and incorporated herein by reference).
10.108	Mortgage Loan Application, dated as of August 31, 2007, between New Aventine, L.L.C. and Metropolitan Life Insurance Company (filed as Exhibit 99.3 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on September 7, 2007 and incorporated herein by reference).
10.109	Deed of Trust, Security Agreement and Fixture Filing by New Aventine, L.L.C. and New DTRS La Jolla, L.L.C. to First American Title Insurance Company as Trustee for the benefit of Metropolitan Life Insurance Company and MetLife Bank, N.A. (filed as Exhibit 99.4 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on September 7, 2007 and incorporated herein by reference).
10.110	Promissory Note, dated as of August 31, 2007, between New Aventine, L.L.C. as Borrower and MetLife Bank, N.A. as Lender (filed as Exhibit 99.5 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on September 7, 2007 and incorporated herein by reference).
10.111	Promissory Note, dated as of August 31, 2007, between New Aventine, L.L.C. as Borrower and Metropolitan Life Insurance Company as Lender (filed as Exhibit 99.6 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on September 7, 2007 and incorporated herein by reference).
10.112	Guaranty Agreement, dated as of August 31, 2007, between New Aventine, L.L.C. as Borrower and Metropolitan Life Insurance Company and MetLife Bank N.A., collectively, as Lender (filed as Exhibit 99.7 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on September 7, 2007 and incorporated herein by reference).
†10.113	First Amendment to Consulting Agreement, dated as of August 21, 2008, between the Company and Sir David M.C. Michels (filed as Exhibit 99.1 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on August 25, 2008 and incorporated herein by reference).
†10.114	Form of Employment Agreement to be entered into between Strategic Hotels & Resorts, Inc. and certain executives thereof (filed as Exhibit 10.1 to the Company's Current

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Form 8-K (File No. 001-32223), filed with the SEC on August 28, 2009 and incorporated herein by reference).

Exhibit Number	Description
†10.115	Amendment No. 2 to Employment Agreement, dated November 14, 2008, between Strategic Hotels & Resorts, Inc. and James E. Mead (filed as Exhibit 10.2 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on November 18, 2008 and incorporated herein by reference).
†10.116	Amendment No. 3 to Employment Agreement, dated December 17, 2008, between Strategic Hotels & Resorts, Inc. and James E. Mead (filed as Exhibit 10.116 to the Company's Annual Report on Form 10-K (File No. 001-32223), filed on March 2, 2009 and incorporated herein by reference).
†10.117	Amendment No. 1 to Employment Agreement, dated December 17, 2008, between Strategic Hotels & Resorts, Inc. and Laurence S. Geller (filed as Exhibit 10.117 to the Company's Annual Report on Form 10-K (File No. 001-32223), filed on March 2, 2009 and incorporated herein by reference).
10.118	Modification of Promissory Note, Mortgage, Security Agreement and Fixture Filing, Assignment of Leases and Other Loan Documents, dated as of January 21, 2009, among SHC Columbus Drive, LLC, DTRS Columbus Drive, LLC and Metropolitan Life Insurance Company (filed as Exhibit 10.118 to the Company's Annual Report on Form 10-K (File No. 001-32223), filed on March 2, 2009 and incorporated herein by reference).
10.119	Modification of Promissory Note, Deed of Trust, Security Agreement and Fixture Filing, Assignment of Leases and Other Loan Documents, dated as of January 21, 2009, among SHR St. Francis, L.L.C., DTRS St. Francis, L.L.C. and Metropolitan Life Insurance Company (filed as Exhibit 10.119 to the Company's Annual Report on Form 10-K (File No. 001-32223), filed on March 2, 2009 and incorporated herein by reference).
*10.120	Third Amendment to Credit Agreement, dated as of February 25, 2009, by and among Strategic Hotel Funding, L.L.C., Deutsche Bank Trust Company Americas as administrative agent and various financial institutions.
10.121	Second Modification of Promissory Note, Mortgage, Security Agreement and Fixture Filing, Assignment of Leases and Other Loan Documents, dated as of March 25, 2009, by and among SHC Columbus Drive, LLC, DTRS Columbus Drive, LLC and Metropolitan Life Insurance Company (filed as Exhibit 99.2 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on March 30, 2009 and incorporated herein by reference).
10.122	Second Modification of Promissory Note, Deed of Trust, Security Agreement and Fixture Filing, Assignment of Leases and Other Loan Documents, dated as of March 25, 2009, by and among SHR St. Francis, L.L.C., DTRS St. Francis, L.L.C. and Metropolitan Life Insurance Company (filed as Exhibit 99.1 to the Company's Current Report on Form 8-K (File No. 001-32223) filed on March 30, 2009 and incorporated herein by reference).
†10.123	Termination Agreement by and between the Company and Sir David M.C. Michels dated August 5, 2009 (filed as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q (File No. 001-32223) filed on August 6, 2009 and incorporated herein by reference).
†10.124	Amended and Restated Employment Agreement by and between Laurence S. Geller and the Company, dated August 27, 2009 (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-32223), filed with the SEC on August 28, 2009 and incorporated herein by reference).
†10.125	Strategic Hotels & Resorts, Inc. Value Creation Plan (filed as Exhibit 10.2 to the Company's Current Report on Form 8-K (File No. 001-32223), filed with the SEC on August 28, 2009 and incorporated herein by reference).
†10.126	Strategic Hotels & Resorts, Inc. Unit Agreement under Strategic Hotels & Resorts, Inc. Value Creation Plan (filed as Exhibit 10.3 to the Company's Current Report on

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Exhibit Number	Description
10.127	Amendment and Restatement Deed, dated February 18, 2010, between SHR Prague Praha B.V. and Aareal Bank AG (filed as Exhibit 99.1 to the Company's Current Report on Form 8-K (File No. 001-32223), filed with the SEC on February 23, 2010 and incorporated herein by reference).
14.1	Strategic Hotels & Resorts, Inc. Code of Business Conduct and Ethics, as amended November 16, 2006 (filed as Exhibit 14.1 to the Company's Annual Report on Form 10-K (File No. 001-32223), filed on March 1, 2007 and incorporated herein by reference).
*21.1	Subsidiaries of Strategic Hotels & Resorts, Inc.
*23.1	Consent of Deloitte & Touche LLP
*31.1	Certification of Laurence S. Geller, Chief Executive Officer, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
*31.2	Certification of James E. Mead, Chief Financial Officer, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
*32.1	Certification of Laurence S. Geller, Chief Executive Officer, as adopted pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
*32.2	Certification of James E. Mead, Chief Financial Officer, as adopted pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of

† Represents a management contract or compensatory plan or arrangement.
* Filed herewith.

Exhibit 10.13

REGISTRATION RIGHTS AGREEMENT
(Rockefeller Interests)

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement"), is made and entered into as of June 29, 2004, among Strategic Hotel Capital, Inc., a Maryland corporation (the " Company"), each of the parties identified as an "Investor" on Schedule I hereto (each, an "Investor") and Rockmark Corporation, a Delaware corporation ("Rockmark"), on behalf of itself and as Investor Representative.

WHEREAS, Strategic Hotel Capital, L.L.C., a Delaware limited liability company ("SHC LLC"), the Investors and Rockmark are parties to a Second Amended and Restated Transfer and Registration Rights Agreement dated as of October 31, 1999 (the "SHC LLC Agreement");

WHEREAS, concurrently with the execution of this Agreement, the Company will effect an initial public offering of shares of its common stock (the "IPO"); and

WHEREAS, the parties desire to provide each investor with certain registration rights analogous to those in the SHC LLC Agreement.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. DEFINITIONS.

As used in this Agreement, the following terms shall have the following respective meanings:

"Affiliate": with regard to a Person, a Person that controls, is controlled by, or is under common control with, such original Person. For purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "affiliated," "controlling" and "controlled" have meanings correlative to the foregoing.

"Closing Price": the reported last sale price of a unit of a security, on a given day, regular way, or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices regular way, in each case on the New York Stock Exchange Composite Tape, or, if the security is not listed or admitted to trading on such exchange, on the American Stock Exchange Composite Tape, or, if the security is not listed or admitted to trading on such exchange, the principal national securities exchange on which the security is listed or admitted to trading, or, if the security is not listed or admitted to trading on any national securities exchange, the closing sales price, or, if there is no closing sales price, the average of the closing bid and asked prices, in the over-the-counter market as reported by the Nasdaq Stock Market, Inc., or, if not so reported, as reported by the National Quotation Bureau, Incorporated, or any successor thereof, or, if not so reported, the average of the closing bid and asked prices as furnished by any member of the National Association of Securities Dealers, Inc. selected from time to time by the Company for that purpose, or, if no such prices are furnished, the fair market value of the security as determined in good faith by the board of directors of the Company, which determination shall be based upon recent issuances or current offerings pursuant to bona fide private offerings of the same class of security by the Company; provided, however, that any determination of the "Closing Price" of any security hereunder shall be based on the assumption that such security is freely transferable without registration under the Securities Act.

"Commission": the Securities and Exchange Commission or any other applicable Federal agency at the time administering the Securities Act.

"Company": as defined in the preamble, and shall include, where the context requires, any Person into which the Company is merged or with which the Company is consolidated.

"Exchange Act": the Securities Exchange Act of 1934, as amended.

"Membership Units": any Membership interests in Strategic Hotel Capital Funding, L.L.C., a Delaware limited liability company.

"Operating Agreement ": the Limited Liability Company Agreement of Strategic Hotel Funding, L.L.C. of even date herewith, as such agreement may be amended and supplemented from time to time.

"Partnership Agreement ": as defined in Section 4.1.

"Person": an individual, partnership, corporation, company (including a limited liability company), trust or unincorporated organization, or a government or agency or political subdivision thereof.

"Resale Rules": as defined in Section 3.3.

"Securities": the Shares and the Membership Units owned by any Investor.

"Securities Act": the Securities Act of 1933, as amended.

"Shares": shares of common stock of the Company and any other securities that subsequently may be issued or issuable by the Company upon conversion or exchange of any convertible or exchangeable securities (including any Membership Units) or as a result of a split or dividend or other similar transaction involving the Shares by the Company and any securities into which the Shares may thereafter be changed or exchanged as a result of the reincorporation of the Company or merger, consolidation, recapitalization or other similar transaction.

"Shelf Registration": a registration under Rule 415 of the Securities Act pursuant to Section 2.1 that has become effective under the Securities Act and not subsequently withdrawn.

"Violation": as defined in Section 3.2(a).

2. SHELF REGISTRATION RIGHTS.

2.1 Shelf Registration .

(a) Shelf Registration. Beginning on June 30, 2005, the Company shall file and thereafter use its reasonable efforts to continuously maintain a registration statement relating to the resale of all of the Investors' Shares pursuant to Rule 415 under the Securities Act. No Investor shall have the right to cause the Company to register its Shares under this Section 2.1 if the number of Shares requested to be so registered may be immediately sold pursuant to the Resale Rules.

(b) Company's Ability to Postpone . The Company shall have the privilege to postpone, on one occasion only, each filing of a registration statement under this Section 2.1 and each proposed sale of Shares by an Investor under an effective Shelf Registration, for a reasonable period of time (not exceeding 90 days) if the Company furnishes the Investor with a certificate signed by the Chairman of the Board or the Chief Executive Officer of the Company stating that, in its good faith judgment, the Company's board of directors has determined that effecting the registration at such time would adversely affect a material financing, acquisition, disposition of assets or stock, merger or other comparable transaction or would require the Company to make public disclosure of information the public disclosure of which would have a material adverse effect upon the Company.

2.2 Registration Procedures . If and whenever the Company is required by any of the provisions of this Article 2 to use its reasonable efforts to effect the registration of any of the Shares pursuant to Rule 415 under the Securities Act, the Company shall use its reasonable efforts to as expeditiously as possible:

(a) prepare and file with the Commission a registration statement with respect to such securities and use its reasonable efforts to cause such registration statement to become effective and remain effective for as long as shall be necessary to complete the distribution of the Shares so registered;

(b) prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for so long as shall be necessary to complete the distribution of the Shares so registered and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all securities covered by such registration statement whenever the Investor shall desire to sell or otherwise dispose of the same;

(c) furnish to the Investor such numbers of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement, including any preliminary prospectus, and any amendments or supplement thereto, and such other documents, as the Investor may reasonably request in order to facilitate the sale or other disposition of the Shares owned by the Investor;

(d) use its reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as the Investor shall reasonably request, and do any and all other acts and things reasonably requested by the Investor to assist the Investor to consummate the sale or other disposition in such jurisdictions of the securities owned by the Investor, except that the Company shall not for any such purpose be required to qualify to do business as a foreign corporation in any jurisdiction wherein it is not so qualified or to file therein any general consent to service of process;

(e) otherwise use its reasonable efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months, beginning with the first fiscal quarter beginning after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act;

(f) use its reasonable efforts to list such securities on any securities exchange or interdealer quotation system on which any stock of the Company is then listed, if the listing or quotation of such securities is then permitted under the rules of such exchange or interdealer quotation system;

(g) if the Investor intends to dispose of its securities through an underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter or underwriters of such underwritten offering, including, without limitation, to obtain an opinion of counsel to the Company and a “comfort letter” from the independent public accountants to the Company in the usual and customary form for such underwritten offering;

(h) notify the Investor, at any time when a prospectus relating to such registration statement is required to be delivered under the Securities Act, of the happening of any event of which it has knowledge as a result of which the prospectus included in such registration statement, as then in effect, contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(i) make the Company's executive officers available at the Company's principal executive offices to discuss the affairs of the Company at times that may be mutually and reasonably agreed to; and

(j) upon the request of the Investor, take any and all other actions which may be reasonably necessary to complete the registration and thereafter to complete the distribution of the Shares so registered.

2.3 Dribble Out . From and after the time that an Investor's Shares are registered under an effective registration statement under this Article 2, such Investor shall not in any calendar quarter sell, transfer or assign through the facilities of any exchange or quotation system on which the Shares are then listed or quoted a number of Shares to another Person if the aggregate number of Shares so sold, transferred or assigned in such calendar quarter would exceed 5% of the Shares of the Company then outstanding. The foregoing provisions of this Section 2.3 shall not restrict a block (as defined pursuant to Rule 10b-18(a)(5) under the Exchange Act) sale of the Investor's Shares, the transfer of Shares to an Affiliate or any sale of Shares by the Investor pursuant to an underwritten offering.

2.4 Black-Out Period . During the period beginning on the date of each subsequently filed prospectus or prospectus supplement with respect to an offering under such Shelf Registration and ending 90 days thereafter, each Investor agrees that it will not request that the Company register any of its Shares pursuant to this Article 2.

3. PROVISIONS APPLICABLE TO REGISTRATION RIGHTS.

3.1 Expenses .

(a) Except as set forth in Section 3.1(b), the expenses specified in the following sentence incurred in any Shelf Registration (or any attempted Shelf Registration that is not consummated) of an Investor's Shares under this Agreement shall be paid by the Investor. The expenses referred to in the preceding sentence shall be limited to underwriters' discounts or commissions or fees or fees of placement agents, the expenses of printing and distributing the registration statement and the prospectus used in connection therewith and any amendment or supplement thereto, fees and disbursements of counsel for the Investor.

(b) All other expenses incurred in any Shelf Registration (or any attempted Shelf Registration that is not consummated) shall be paid by the Company, including, without limitation, (i) the expenses of its internal counsel (and/or, if the Company chooses, its outside counsel) including fees and expenses related to the preparation of the registration statement and the prospectus used in connection therewith and any amendment or supplement thereto, (ii) any necessary accounting expenses, including any special audits which shall be necessary to comply with governmental requirements in connection with any such registration, including the expense related to any comfort letters and (iii) expenses of complying with the securities or blue sky laws of any jurisdictions.

3.2 Indemnification . In the event any Investor's Shares are included in a registration statement under Article 2:

(a) Indemnity by Company . Without limitation of any other indemnity provided to an Investor, to the extent permitted by law, the Company will indemnify and hold harmless each Investor, the Affiliates, officers, directors and partners of each Investor, each underwriter (as defined in the Securities Act), and each Person, if any, who controls an Investor or underwriter (within the meaning of the Securities Act), against any losses, claims, damages, liabilities and expenses (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, liabilities and expenses (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statements (including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto), (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or (iii) any other violation or alleged violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law, and the Company will reimburse each Investor and its Affiliates, officers, directors or partners, underwriter and controlling person for any reasonable legal or other expenses incurred by them in connection with investigating or defending any such loss, claim, damage, liability, expense or action; provided , however , that the Company shall not be liable to any Investor in any such case for any such loss, claim, damage, liability, expense or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by such Investor or any Affiliate, officer, director, partner or controlling person thereof.

(b) Indemnity by Investors . In connection with any registration statement in which any Investor is participating, the participating Investor(s) will furnish to the Company in writing such reasonably necessary information and affidavits as the Company reasonably requests for use in connection with any such registration statement or prospectus and, to the extent permitted by law, will indemnify the Company, its directors and officers and each Person who controls the Company (within the meaning of the Securities Act or Exchange Act) against any losses, claims, damages, liabilities and expenses resulting from any Violation, but only to the extent that such Violation is contained in any information or affidavit so furnished in writing to the Company by such Investor stated to be specifically for use in such registration statement or prospectus (the furnishing of such reasonably necessary information or affidavit by the Investor being a condition precedent to the Company's obligation to cause the registration statement to become effective); provided , that the obligation to indemnify will be several and not joint with any other Person and will be limited to the net amount received by the Investor from the sale of Shares, pursuant to such registration statement.

(c) Notice; Right to Defend . Promptly after receipt by an indemnified party under this Section 3.2 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 3.2, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, if the indemnifying party agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnified party with respect to such claim, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided , however , that an indemnified party shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnifying party, if the indemnified party reasonably believes that representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall relieve such indemnifying party of any liability to the indemnified party under this Section 3.2 only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party other than under this Section 3.2.

(d) Contribution . If the indemnification provided for in this Section 3.2 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other hand in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations. The relative fault of the indemnifying party and the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. Notwithstanding the foregoing, the amount an Investor shall be obligated to contribute pursuant to this Section 3.2(d) shall be limited to an amount equal to the proceeds to the Investor of the Shares sold pursuant to the registration statement which gives rise to such obligation to contribute (less the aggregate amount of any damages which the Investor has otherwise been required to pay in respect of such loss, claim, damage, liability or action or any substantially similar loss, claim, damage, liability or action arising from the sale of such Shares).

(e) Survival of Indemnity . The indemnification provided by this Section 3.2 shall be a continuing right to indemnification and shall survive the registration and sale of any securities by any Person entitled to indemnification hereunder and the expiration or termination of this Agreement.

3.3 Rule 144 . In order to permit each Investor to sell the Shares it holds, if it so desires, from time to time pursuant to Rule 144 promulgated by the Commission or any successor to such rule or any other rule or regulation of the Commission that may at any time permit each Investor to sell its Shares to the public without registration ("Resale Rules"), the Company will:

(a) comply with all rules and regulations of the Commission applicable in connection with use of the Resale Rules;

(b) make and keep adequate and current public information available, as those terms are understood and defined in the Resale Rules, at all times;

(c) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act;

(d) furnish to each Investor so long as it owns any Shares, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of the Resale Rules, the Securities Act and the Exchange Act, (ii) a copy of the most recent annual or quarterly report of the Company and any other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing an Investor of any rule or regulation of the Commission which permits the selling of any such Shares without registration; and

(e) take any action (including cooperating with each Investor to cause the transfer agent to remove any restrictive legend on certificates evidencing the Shares) as shall be reasonably requested by the Investor or which shall otherwise facilitate the sale of Shares from time to time by the Investor pursuant to the Resale Rules.

3.4 Investor Status and Responsibilities . Each Investor acknowledges the limitations that may be imposed upon the Investor under Section 10 of the Exchange Act and the rules and regulations thereunder in connection with the Investor's sale or transfer of Shares and agrees to sell or transfer any such shares only subject to any such applicable limitations.

3.5 Limitations on Other Registration Rights . Except as otherwise set forth in this Agreement, the Company shall not, without the prior written consent of each Investor include in any registration in which an Investor has a right to participate pursuant to this Agreement any securities of any Person.

3.6 Piggyback Registration Rights . Nothing contained in this Agreement shall confer upon any holder of securities of the Company any right to include any or all of such holder's securities in a registration statement filed by the Company under the Securities Act for the sale of such securities for the Company's own account or in any registration statement filed on behalf of Investor pursuant to Article 2.

4. MISCELLANEOUS.

4.1 Appointment of Investor Representative . Each Investor hereby designates and appoints Rockmark as its attorney-in-fact, representative and agent (in such capacity, the "Investor Representative"), and Rockmark hereby accepts such designation and appointment. By such designation and appointment, each Investor authorizes the Investor Representative to act at the direction of and for and on behalf such Investor whenever any consent, approval or action is to be taken by or on behalf of the Investor under each of this Agreement, the Operating Agreement, the Fifth Amended and Restated Agreement of Limited Partnership of Strategic Hotel Capital Limited Partnership (the "Partnership Agreement "). Delivery to the Investor Representative of any amount, notice, document or instrument which is to be given, delivered or paid to any Investor pursuant to this Agreement or the Partnership Agreement shall be deemed to be (and shall be effective as) delivery to such Investor. The Company shall be entitled to rely upon any notice, document or instrument delivered by the Investor Representative as having been authorized by the Investor. The appointment and powers conferred upon the Investor Representative shall be in addition to the powers conferred upon Rockmark pursuant to the Operating Agreement.

4.2 Amendment . This Agreement may be amended, modified or supplemented but only in writing signed by each of the parties hereto.

4.3 Notices . Any notice, request, instruction or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been given, (a) when received if given in person or by courier or a courier service, (b) on the date of transmission if sent by telex, facsimile or other wire transmission or (c) three Business Days after being deposited in the U.S. mail, certified or registered mail, postage prepaid:

(a) If to the Company, addressed as follows:

Strategic Hotel Capital Inc.
77 West Wacker Drive, 46th Floor
Chicago, Illinois 60601
Attention: General Counsel
Facsimile No.: (312) 658-5799

with a copy to:

Sullivan & Cromwell
125 Broad Street
New York, New York 10004
Attention: Robert W. Downes
Facsimile No.: (212) 558-3588

(b) If to any Investor, addressed as follows:

c/o Rockmark Corporation
610 Fifth Avenue, 7th Floor
New York, New York 10020
Attention: Richard E. Salomon
Facsimile No.: (212) 218-8844

with a copy to:

142 Interlaken Road
Lakeville, CT 06039
Attention: Bruce M. Montgomerie
Facsimile No.: (860) 435-0065
Telephone No.: (860) 435-0075
E-mail: mongobmon@aol.com

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

4.4 Waivers . The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

4.5 Counterparts . This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4.6 Interpretation . The headings preceding the text of Articles and Sections included in this Agreement and the headings to Exhibits and Schedules attached to this Agreement are for convenience only and shall not be deemed part of this Agreement or be given any effect in interpreting this Agreement. The use of the masculine, feminine or neuter gender herein shall not limit any provision of this Agreement. The use of the terms "including" or "include" shall in all cases herein mean "including, without limitation" or "include, without limitation," respectively. Underscored references to Articles, Sections, Subsections, Exhibits or Schedules shall refer to those portions of this Agreement.

4.7 Governing Law . THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

4.8 Assignment . This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Except as otherwise specifically provided in this Agreement, no assignment of any of Investor's rights or obligations shall be made without the written consent of the Company.

4.9 No Third Party Beneficiaries . This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to confer upon any third parties any remedy, claim, liability, reimbursement, cause of action or other right.

4.10 Severability . If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

4.11 Entire Understanding . This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the matters set forth herein and supersedes any and all prior agreements, arrangements and understandings among the parties.

4.12 Specific Performance . The parties hereto acknowledge that there would be no adequate remedy at law if any party fails to perform any of its obligations hereunder, and accordingly agree that each party, in addition to any other remedy to which it may be entitled at law or in equity, shall be entitled to compel specific performance of the obligations of any other party under this Agreement in accordance with the terms and conditions of this Agreement in any court of the United States or any state thereof having jurisdiction.

4.13 Reorganization . In connection with any merger, consolidation, sale of all or substantially all of the Company's assets, the Company will use its best efforts to take such actions, or to cause the other party to such transaction to take such actions, to ensure that Investors have, immediately after consummation of such transaction, substantially the same rights in respect of such other Person or the Company, as applicable, as they may have immediately prior to consummation of such transaction in respect of the Company under this Agreement.

* * * * *

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date and year first above written.

STRATEGIC HOTEL CAPITAL, INC.

By: /s/ David E. Sims
Name: David E. Sims
Title: Senior Vice President

INVESTORS:

ROCKMARK CORPORATION, on its own behalf and as the Investor Representative

By: /s/ Richard E. Salomon
Name: Richard E. Salomon
Title:

SCHEDULE I

Rockmark Corporation
Fedmark Corporation
EC Holdings, Inc.
ECW Investor Associates
Realrock I
Louis R. Benzak
John R.H. Blum
James R. Bronkema Trust
Vincent deP. Farrell, Jr.
Leslie H. Larsen
Bill F. Osborne
Portman Family Trust
William F. Pounds
David Rockefeller
DR & Descendants, L.L.C.
The Estate of Edna B. Salomon
Robert B. Salomon
Ralph B. Salomon
William G. Spears
George M. Topliff
Winrock International Institute for Agricultural Development
WRTEC, Inc.
John O. Wolcott
Bruce W. Jones
The Trust Created under Article Seventh of the Will of Winthrop Rockefeller c/o Marion Burton, Trustee

Exhibit 10.14

REGISTRATION RIGHTS AGREEMENT
(Principal Investors)

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement"), is made and entered into as of June 29, 2004, among Strategic Hotel Capital, Inc., a Maryland corporation (the " Company"), WHSHC, L.L.C., a Delaware limited liability company (" Whitehall 7"), W9/WHSHC, L.L.C., a Delaware limited liability company (" Whitehall 9"; and, together with Whitehall 7, "Whitehall"), The Prudential Insurance Company of America, a New Jersey corporation (" Prudential Insurance"), PIC Realty Corporation, a Delaware corporation (" PIC"; and, together with Prudential Insurance, "Prudential") and Strategic Value Investors, LLC, a Delaware limited liability company ("SVI ").

WHEREAS, Strategic Hotel Capital, L.L.C., a Delaware limited liability company ("SHC LLC"), Whitehall, Prudential and SVI are parties to a Transfer and Registration Rights Agreement dated as of October 31, 1999 (the "SHC LLC Agreement");

WHEREAS, concurrently with the execution of this Agreement, the Company will effect an initial public offering of shares of its common stock ("IPO"); and

WHEREAS, the parties desire to provide each Investor (as defined herein) with certain registration rights substantially analogous to those under the SHC LLC Agreement.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. DEFINITIONS.

As used in this Agreement, the following terms shall have the following respective meanings:

"Affiliate": with regard to a Person, a Person that controls, is controlled by, or is under common control with, such original Person. For purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "affiliated," "controlling" and "controlled" have meanings correlative to the foregoing.

"Closing Price": the reported last sale price of a unit of a security, on a given day, regular way, or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices regular way, in each case on the New York Stock Exchange Composite Tape, or, if the security is not listed or admitted to trading on such exchange, on the American Stock Exchange Composite Tape, or, if the security is not listed or admitted to trading on such exchange, the principal national securities exchange on which the security is listed or admitted to trading, or, if the security is not listed or admitted to trading on any national securities exchange, the closing sales price, or, if there is no closing sales price, the average of the closing bid and asked prices, in the Nasdaq Stock Market, Inc., or, if not so reported, as reported by the National Quotation Bureau, Incorporated, or any successor thereof, or, if not so reported, the average of the closing bid and asked prices as furnished by any member of the National Association of Securities Dealers, Inc. selected from time to time by the Company for that purpose, or, if no such prices are furnished, the fair market value of the security as determined in good faith by the board of directors of the Company, which determination shall be based upon recent issuances or current offerings pursuant to bona fide private offerings of the same class of security by the Company; provided , however , that any determination of the "Closing Price" of any security hereunder shall be based on the assumption that such security is freely transferable without registration under the Securities Act.

"Commission": the Securities and Exchange Commission or any other applicable Federal agency at the time administering the Securities Act.

"Company": as defined in the preamble, and shall include, where the context requires any Person into which the Company is merged or with which the Company is consolidated.

"Demand Registration ": an effective registration pursuant to a request made by an Investor pursuant to Section 2.1.

"Exchange Act": the Securities Exchange Act of 1934, as amended.

"First Effective Date ": the effective date of the First Registration Statement in the event of a Proration.

"First Registration Statement": in the event of a Proration, the registration statement initially filed in which all securities sought to be included were not so included.

"Investor": means each of Whitehall and Prudential including each member of the Whitehall Group and the SVI Group; provided that if (i) any member of the SVI Group liquidates all of its assets by distributing such assets to its members, investors or beneficial owners ("distributees") and (ii) there is no Shelf Registration or other effective registration statement that would permit such member of the SVI Group to distribute Securities that are not subject to restrictions on transfer under the Exchange Act or the Securities Act to such distributees then such distributees shall be included in the definition of "Investor" hereunder.

"Membership Units": any membership interests in Strategic Hotel Funding, L.L.C., a Delaware limited liability company.

"Overhang Risk": a substantial risk that the sale of some or all of the Shares sought to be sold will substantially reduce the proceeds or price per unit to be derived from such sale.

"Person": an individual, partnership, corporation, company (including a limited liability company), trust or unincorporated organization, or a government or agency or political subdivision thereof.

"Proration": any reduction pursuant to Section 2.1(b) in the number of securities to be included in a Demand Registration.

"Requesting Investor ": as defined in Section 2.1.

"Resale Rules": as defined in Section 4.3.

"Rockmark Registration Rights Agreement": the Registration Rights Agreement of even date herewith between the Company, the Investors identified on the signature pages thereto, and Rockmark Corporation, as Investor Representative.

"Saleable Amount": the greatest number of securities which would not create an Overhang Risk.

"Securities": the Shares and the Membership Units owned by any Investor.

"Securities Act": the Securities Act of 1933, as amended.

"Selling Period": for purposes of a Proration pursuant to a Demand Registration, the period beginning with the First Effective Date and ending 90 days after the First Effective Date (unless a shorter period is agreed to by the managing underwriter for such offering).

"Shares": the shares of common stock of the Company and any other securities that subsequently may be issued or issuable by the Company upon conversion or exchange of any convertible or exchangeable securities (including any Membership Units) or as a result of a stock split or dividend or other similar transaction involving the Shares by the Company and any securities into which the Shares may thereafter be changed or exchanged as a result of the reincorporation of the Company or merger, consolidation, recapitalization or other similar transaction.

"Shelf Registration": an effective registration under Rule 415 of the Securities Act pursuant to Section 3.1.

"Shelf Takedown": as defined in Section 3.1.

"SVI Group": Prudential, together with SVI, any direct or indirect wholly-owned subsidiary of Prudential Financial, Inc. and any "Redemption Vehicle" of SVI or Strategic Value Investors International, LLC, a Delaware limited liability company, that is managed by Prudential or any of its affiliates, as "Redemption Vehicle" is defined in the Investment Advisory Agreement, dated as of October 7, 1997, by and among SVI and the parties thereto, as amended and as in effect on March 19, 2003, and the Operating Agreement of Strategic Value Investors International, LLC, dated as of October 7, 1997, as amended and as in effect on March 19, 2003.

"Unincluded Securities ": any securities sought to be registered but which are not registered due to a Proration.

"Violation": as defined in Section 4.2(a).

"Whitehall Group": Whitehall and any entity that is an Affiliate of Whitehall (if and for so long as such entity remains and Affiliate).

2. DEMAND REGISTRATION.

2.1 Demand Registration . Subject to any limitations set forth in Section 2.1(d) and to any applicable standstill agreement to which the Company and any Investor is a party, from and after the date hereof and until June 29, 2005 (and for such additional period during which the Company fails to file or maintain a Shelf Registration pursuant to Article 3), each Investor may request (a "Requesting Investor") registration of all or any portion of its Shares. The request shall state that the Investor intends to dispose of such securities through a registered public offering. The Company will effect the registration of such Shares under the Securities Act, in accordance with the remaining provisions of this Article 2.

(a) Company's Ability to Postpone . The Company shall have the privilege to postpone the filing of a registration statement under this Section 2.1 for a reasonable period of time (not exceeding 90 days) if the Company furnishes the Requesting Investor with a certificate signed by the Chairman of the Board or the Chief Executive Officer of the Company stating that, in its good faith judgment, the Company's board of directors has determined that effecting the registration at such time would adversely affect a material financing, acquisition, disposition of assets or shares, merger or other comparable transaction or would require the Company to make public disclosure of information the public disclosure of which would have a material adverse effect upon the Company. The Company shall only be entitled to exercise its rights under this Section 2.1(a) on one occasion during any 12-month period as to any Investor.

(b) Overhang Risk . If the managing underwriter for the Requesting Investor (and the other Investors pursuant to Section 2.3) advises that the number of Shares sought to be included in such registration would create an Overhang Risk, then the number of securities to be registered by the Investors participating in such registration shall be reduced to the number of Shares recommended by the managing underwriter as set forth in Section 2.1(e) below.

(c) Required Inclusion in Underwritten Offering . If a Demand Registration is an underwritten offering, the Requesting Investor shall (together with the Company as provided in Section 2.4(g) and the other Investors), enter into an underwriting agreement in customary and usual form with the underwriter or underwriters selected for such underwriting by the Requesting Investor.

(d) Number of Demand Registrations . Each of Whitehall 7 and Prudential Insurance shall be entitled to two Demand Registrations (such Demand Registrations being assignable to, and divisible among, any Person who is an "Investor" as defined in this Agreement), provided that such Investor continues to own at least $50 million of Securities (based on the Closing Price) on the date the registration is requested; provided , however , that in the event of a Proration, each Investor shall be entitled to one additional Demand Registration (which shall not be subject to such $50 million requirement). In the event of a Proration: (i) upon the expiration of the Selling Period, the Company shall be obligated to file an additional registration statement (which registration statement shall contain a current prospectus) relating to the Unincluded Securities; (ii) the Company shall use its reasonable efforts to effect the registration of the Unincluded Securities as promptly as practicable thereafter; and (iii) an Investor may withdraw its Unincluded Securities from such additional registration without cost or penalty at any time prior to the effective date of such additional registration statement.

(e) Limitation . If the number of securities to be registered in any Demand Registration is to be reduced as described in Section 2.1(b), then the amount of securities to be offered by the participating Investors shall be allocated pro rata among all participating investors on the basis of the number of securities such Investors have requested to be included in such Demand Registration.

(f) Black-Out Period . During the period beginning on either (x) the effective date of a Demand Registration or (y) the effective date of a registration statement filed pursuant to the exercise of registration rights granted to other holders of securities of the Company and ending 90 days thereafter (unless a shorter period is agreed to by the managing underwriter for such offering), each Investor agrees that it will not request that the Company register any of its Shares pursuant to this Article 2; provided , however , that the Company may only utilize clause (y) above to postpone an Investor's right to require the Company to file a registration statement under Section 2.1 on one occasion only as to each Demand Registration.

2.2 Option to Acquire . In the event that the Company has received a request for a Demand Registration from an Investor pursuant to Section 2.1, the Company or any non-Requesting Investor (in proportion to their percentage ownership of Shares) shall have the option, for a period of 30 days from the date of the Requesting Investor's request, to acquire all of the Shares sought to be included in a Demand Registration at a per share price equal to the average Closing Price of the Shares during the 20-day period beginning 10 days prior to receipt of the Investor's request and ending 10 days thereafter. The Requesting Investor shall have the absolute right to withdraw its request for a Demand Registration at any time prior to the expiration of such 20-day period. In the event that the Company or the non-requesting Investors elect not to purchase all of the Shares covered by the Investor's request, the Company shall proceed with the registration of the Shares pursuant to this Article 2.

2.3 Participation Rights of Other Investors . Whenever the Company shall be requested by an Investor pursuant to Section 2.1 to effect the registration of any of its Shares under the Securities Act, and the Company or a non-requesting Investor shall not have exercised its rights under Section 2.2, the Company shall:

(a) promptly (but not later than 10 days after such request) give written notice of such proposed registration to the other Investors (which notice shall inform Investors that they have 15 days to notify the Company that they wish to participate in such registration and which notice shall also be sent to each investor pursuant to the Rockmark Registration Rights Agreement);

(b) as expeditiously as possible (but not later than 45 days after such request) file a registration statement under the Securities Act with respect to:

(1) those Shares which the Company has been requested to register pursuant to Section 2.1; and

(2) all other Shares (subject to Section 2.1(e)) held by the other Investors (including the investors requesting inclusion pursuant to Section 2.3(a)) included by such Investors in written request to the Company for registration thereof within 15 days after the Company has given written notice to such Investors; and

(c) use its reasonable efforts to effect such registration as quickly as practicable.

2.4 Registration Procedures . If and whenever the Company is required by any of the provisions of this Article 2 to effect the registration of any of the Shares under the Securities Act, the Company will (except as otherwise provided in this Agreement) use its reasonable efforts to as expeditiously as possible:

(a) prepare and file with the Commission a registration statement with respect to such securities and use its reasonable efforts to cause such registration statement to become effective and remain effective for as long as shall be necessary to complete the distribution of the Shares so registered;

(b) prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all securities covered by such registration statement whenever the Investors shall desire to sell or otherwise dispose of the same;

(c) furnish to the Investors such numbers of copies of a summary prospectus or other prospectus, including a preliminary prospectus or any amendment or supplement to any prospectus, in conformity with the requirements of the Securities Act, and such other documents, as the Investors may reasonably request in order to facilitate the public sale or other disposition of the securities covered by such registration statement;

(d) use its reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as the Investors shall request, and do any and all other acts and things reasonably requested by the Investors to assist them to consummate the public sale or other disposition in such jurisdictions of the securities owned by the Investors, except that the Company shall not for any such purpose be required to qualify to do business as a foreign corporation in any jurisdiction wherein it is not so qualified or to file therein any general consent to service of process;

(e) otherwise use its reasonable efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months, beginning with the first fiscal quarter beginning after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act;

(f) use its reasonable efforts to list such securities on any securities exchange or interdealer quotation system on which any shares of the Company are then listed, if the listing or quotation of such securities is then permitted under the rules of such exchange or interdealer quotation system;

(g) enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter or underwriters of such underwritten offering, including, without limitation, to obtain an opinion of counsel to the Company and a "comfort letter" from the independent public accountants to the Company in the usual and customary form for such underwritten offering;

(h) notify the Investors, at any time when a prospectus relating thereto covered by such registration statement is required to be delivered under the Securities Act, of the happening of any event of which it has knowledge as a result of which the prospectus included in such registration statement, as then in effect, contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(i) with respect to a single Demand Registration by each Investor, make the Company's executive officers available for a total of five business days to participate in "road show" presentations in New York City, Boston, Philadelphia, Baltimore, Washington D.C. and Chicago and, with respect to any other Demand Registrations by an Investor, make the Company's executive officers available at the Company's principal executive offices to discuss the affairs of the Company at times that may be mutually and reasonably agreed upon; and

(j) upon the request of any Investor, take any and all other actions which may be reasonably necessary to complete the registration and thereafter to complete the distribution of the Shares so registered.

3. SHELF REGISTRATION RIGHTS.

3.1 Shelf Registration . Beginning on June 30, 2005, the Company shall file and use its reasonable efforts to continuously maintain a registration statement relating to the resale of the Investors' Shares pursuant to Rule 415 under the Securities Act. Any Investor shall be entitled, upon 15 days' prior written notice to the Company and each other Investor, to sell such number of Shares as are then registered pursuant to such registration statement (each a "Shelf Takedown"). The selling Investor shall also give the Company and each other Investor prompt written notice of the consummation of such Shelf Takedown. The selling Investor shall also give the Company and each other Investor prompt written notice of the consummation of such Shelf Takedown. No Investor shall have the right to cause the Company to register its Shares under this Section 3.1 if the number of Shares requested to be so registered may be immediately sold pursuant to the Resale Rules.

(a) Company's Ability to Postpone . The Company shall have the privilege to postpone, on one occasion only as to each Shelf Registration to which a party is entitled, each filing of a registration statement under this Section 3.1 and each proposed Shelf Takedown by an Investor under an effective Shelf Registration, for a reasonable period of time (not exceeding 90 days) if the Company furnishes the Investor with a certificate signed by the Chairman of the Board or the Chief Executive Officer of the Company stating that, in its good faith judgment, the Company's board of directors has determined that effecting the registration at such time would adversely affect a material financing, acquisition, disposition of assets or stock, merger or other comparable transaction or would require the Company to make public disclosure of information the public disclosure of which would have a material adverse effect upon the Company; provided , however , that notwithstanding anything herein to the contrary, the Company shall only be entitled to exercise its rights under this Section 3.1(a) on one occasion during any 12-month period as to any Investor.

(b) Overhang Risk . If a Shelf Takedown is an underwritten offering and the managing underwriter for the Requesting Investor (and the other Investors pursuant to Section 3.2) advises that the number of Shares sought to be included in such underwritten Shelf Takedown would create an Overhang Risk, then the number of securities to be registered by the Investors participating in such registration shall be reduced to the number of Shares recommended by the managing underwriter as set forth in Section 3.1(d) below.

(c) Required Inclusion in Underwritten Offering . If a Shelf Takedown is an underwritten offering, the Requesting Investor shall (together with Company as provided in Section 3.3(g) and the other Investors), enter into an underwriting agreement in customary and usual form with the underwriter or underwriters selected for such underwriting by the Requesting Investor.

(d) Limitation . If the number of securities proposed to be sold in a Shelf Takedown is to be reduced as described in Section 3.1(b), then the amount of securities to be offered by the participating Investors shall be allocated pro rata among the all participating Investors on the basis of the number of securities such Investors have requested to be included in such Shelf Takedown.

3.2 Participating Rights of Other Investors . Whenever the Company shall be requested by an Investor pursuant to Section 3.1 to effect the Shelf Takedown of any of its Shares under the Securities Act, the Company shall:

(a) promptly (but not later than 5 days after such request) give written notice of such proposed Shelf Takedown to the other Investors (which notice shall inform Investors that they have 5 days to notify the Company that they wish to participate in such Shelf Takedown and which notice shall also be sent to each investor pursuant to the Rockmark Registration Rights Agreement); and

(b) use its reasonable efforts to include all other Shares (subject to Section 3.1(d)) held by the other Investors requesting inclusion pursuant to Section 3.2(a) included in such Shelf Takedown.

3.3 Registration Procedures . If and whenever the Company is required by any of the provisions of this Article 3 to use its reasonable efforts to effect the registration of any of the Shares pursuant to Rule 415 under the Securities Act, the Company shall:

(a) prepare and file with the Commission a registration statement with respect to such securities and use its reasonable efforts to cause such registration statement to become effective and remain effective for as long as shall be necessary to complete the distribution of the Shares so registered;

(b) prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for so long as shall be necessary to complete the distribution of the Shares so registered and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all securities covered by such registration statement whenever the Investor shall desire to sell or otherwise dispose of the same;

(c) furnish to the Investor such numbers of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement, including any preliminary prospectus, and any amendments or supplement thereto, and such other documents, as the Investor may reasonably request in order to facilitate the sale or other disposition of the Shares owned by the Investor;

(d) use its reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as the Investor shall reasonably request, and do any and all other acts and things reasonably requested by the Investor to assist the Investor to consummate the sale or other disposition in such jurisdictions of the securities owned by the Investor, except that the Company shall not for any such purpose be required to qualify to do business as a foreign corporation in any jurisdiction wherein it is not so qualified or to file therein any general consent to service of process;

(e) otherwise use its reasonable efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months, beginning with the first fiscal quarter beginning after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act;

(f) use its reasonable efforts to list such securities on any securities exchange or interdealer quotation system on which any stock of the Company is then listed, if the listing or quotation of such securities is then permitted under the rules of such exchange or interdealer quotation system;

(g) if the Investor intends to dispose of its securities through an underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter or underwriters of such underwritten offering, including, without limitation, to obtain an opinion of counsel to the Company and a "comfort letter" from the independent public accountants to the Company in the usual and customary form for such underwritten offering;

(h) notify the Investor, at any time when a prospectus relating to such registration statement is required to be delivered under the Securities Act, of the happening of any event of which it has knowledge as a result of which the prospectus included in such registration statement, as then in effect, contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(i) with respect to a single Shelf Takedown, in the form of an underwritten offering by each Investor, make the Company's executive officers available for a total of five business days to participate in "road show" presentations in New York City, Boston, Philadelphia, Baltimore, Washington, D.C. and Chicago, and with respect to any other underwritten Shelf Takedowns by an Investor, make the Company's executive officers available at the Company's principal executive offices to discuss the affairs of the Company at times that may be mutually and reasonably agreed upon; and

(j) upon the request of the Investor, take any and all other actions which may be reasonably necessary to complete the registration and thereafter to complete the distribution of the Shares so registered.

3.3 Dribble Out . From and after the time that an Investor's Shares are registered under an effective registration statement under this Article 3, such Investor shall not in any calendar quarter sell, transfer or assign through the facilities of any exchange or quotation system on which the Shares are then listed or quoted a number of Shares to another Person if the aggregate number of Shares so sold, transferred or assigned in such calendar quarter would exceed 5% of the Shares of the Company then outstanding. The foregoing provisions of this Section 3.3 shall not restrict a block (as defined pursuant to Rule 10b-18(a)(5) under the Exchange Act) sale of the Investor's Shares, the transfer of Shares to an Affiliate or any sale of Shares by the Investor pursuant to an underwritten offering.

3.4 Black-Out Period . During the period beginning on the date of each subsequently filed prospectus or prospectus supplement with respect to a Shelf Takedown in the form of an underwritten offering and ending 90 days thereafter (unless a shorter period is agreed to by the managing underwriter for such offering), each Investor agrees that it will not request that the Company register any of its Shares pursuant to this Article 3. The Company may postpone, on one occasion only, each filing of a registration statement under this Article 3 if registration rights granted pursuant to any other holders of securities of the Company have been exercised and the distribution thereto not completed. The period during which the Company may postpone such filing shall commence on the date such registration rights have been commenced and shall terminate 90 days after the effective date of such registration statement; provided , however , that the Company may only utilize this provision to postpone an Investor's right to require the Company to file a registration statement under this Article 3 on one occasion as to each Shelf Registration.

4. PROVISIONS APPLICABLE TO REGISTRATION RIGHTS.

4.1 Expenses .

(a) Except as set forth in Section 4.1(b), the expenses specified in the following sentence incurred in any Shelf Registration or Demand Registration (or any attempted Shelf Registration or Demand Registration that is not consummated) of an Investor's Shares under this Agreement shall be paid by the Investor. The expenses referred to in the preceding sentence shall be limited to underwriters' discounts or commissions or fees or fees of placement agents, the expenses of printing and distributing the registration statement and the prospectus used in connection therewith and any amendment or supplement thereto, fees and disbursements of counsel for the Investor.

(b) All other expenses incurred in any Shelf Registration or Demand Registration (or any attempted Shelf Registration or Demand Registration that is not consummated) shall be paid by the Company, including, without limitation, (i) the expenses of its internal counsel (and/or, if the Company chooses, its outside counsel) including fees and expenses related to the preparation of the registration statement and the prospectus used in connection therewith and any amendment or supplement thereto, (ii) any necessary accounting expenses, including any special audits which shall be necessary to comply with governmental requirements in connection with any such registration, including the expense related to any comfort letters and (iii) expenses of complying with the securities or blue sky laws of any jurisdictions.

4.2 Indemnification . In the event any Investor's Shares are included in a registration statement under Article 2 or Article 3:

(a) Indemnity by Company . Without limitation of any other indemnity provided to an Investor, to the extent permitted by law, the Company will indemnify and hold harmless each Investor, the Affiliates, officers, directors and partners of each Investor, each underwriter (as defined in the Securities Act), and each Person, if any, who controls an Investor or underwriter (within the meaning of the Securities Act), against any losses, claims, damages, liabilities and expenses (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, liabilities and expenses (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statements (including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto), (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or (iii) any other violation or alleged violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law, and the Company will reimburse each Investor and its Affiliates, officers, directors or partners, underwriter and controlling person for any reasonable legal or other expenses incurred by them in connection with investigating or defending any such loss, claim, damage, liability, expense or action; provided , however , that the Company shall not be liable to any Investor in any such case for any such loss, claim, damage, liability, expense or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by such Investor or any Affiliate, officer, director, partner or controlling person thereof.

(b) Indemnity by Investors . In connection with any registration statement in which any Investor is participating, the participating Investor(s) will furnish to the Company in writing such reasonably necessary information and affidavits as the Company reasonably requests for use in connection with any such registration statement or prospectus and, to the extent permitted by law, will indemnify the Company, its directors and officers and each Person who controls the Company (within the meaning of the Securities Act or Exchange Act) against any losses, claims, damages, liabilities and expenses resulting from any Violation, but only to the extent that such Violation is contained in any information or affidavit so furnished in writing to the Company by such Investor stated to be specifically for use in such registration statement or prospectus (the furnishing of such reasonably necessary information or affidavit by the Investor being a condition precedent to the Company's obligation to cause the registration statement to become effective); provided , that the obligation to indemnify will be several and not joint with any other Person and will be limited to the net amount received by the Investor from the sale of Shares, pursuant to such registration statement.

(c) Notice; Right to Defend . Promptly after receipt by an indemnified party under this Section 4.2 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 4.2, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, if the indemnifying party agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnified party with respect to such claim, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided , however , that an indemnified party shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnifying party, if the indemnified party reasonably believes that representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall relieve such indemnifying party of any liability to the indemnified party under this Section 4.2 only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party other than under this Section 4.2.

(d) Contribution . If the indemnification provided for in this Section 4.2 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other hand in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations. The relative fault of the indemnifying party and the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. Notwithstanding the foregoing, the amount an Investor shall be obligated to contribute pursuant to this Section 4.2(d) shall be limited to an amount equal to the proceeds to the Investor of the Shares sold pursuant to the registration statement which gives rise to such obligation to contribute (less the aggregate amount of any damages which the Investor has otherwise been required to pay in respect of such loss, claim, damage, liability or action or any substantially similar loss, claim, damage, liability or action arising from the sale of such Shares).

(e) Survival of Indemnity . The indemnification provided by this Section 4.2 shall be a continuing right to indemnification and shall survive the registration and sale of any securities by any Person entitled to indemnification hereunder and the expiration or termination of this Agreement.

4.3 Rule 144 . In order to permit each Investor to sell the Shares it holds, if it so desires, from time to time pursuant to Rule 144 promulgated by the Commission or any successor to such rule or any other rule or regulation of the Commission that may at any time permit each Investor to sell its Shares to the public without registration ("Resale Rules"), the Company will:

(a) comply with all rules and regulations of the Commission applicable in connection with use of the Resale Rules;

(b) make and keep adequate and current public information available, as those terms are understood and defined in the Resale Rules, at all times;

(c) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act;

(d) furnish to each Investor so long as it owns any Shares, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of the Resale Rules, the Securities Act and the Exchange Act, (ii) a copy of the most recent annual or quarterly report of the Company and any other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing an Investor of any rule or regulation of the Commission which permits the selling of any such Shares without registration; and

(e) take any action (including cooperating with each Investor to cause the transfer agent to remove any restrictive legend on certificates evidencing the Shares) as shall be reasonably requested by the Investor or which shall otherwise facilitate the sale of Shares from time to time by the Investor pursuant to the Resale Rules.

4.4 Investor Status and Responsibilities . Each Investor acknowledges the limitations that may be imposed upon the Investor under Section 10 of the Exchange Act and the rules and regulations thereunder in connection with the Investor's sale or transfer of Shares and agrees to sell or transfer any such shares only subject to any such applicable limitations.

4.5 Limitations on Other Registration Rights . Except as otherwise set forth in this Agreement, the Company shall not, without the prior written consent of each Investor include in any registration in which an Investor has a right to participate pursuant to this Agreement any securities of any Person.

4.6 Piggyback Registration Rights . Nothing contained in this Agreement shall confer upon any holder of securities of the Company any right to include any or all of such holder's securities in a registration statement filed by the Company under the Securities Act for the sale of such securities for the Company's own account or in any registration statement filed on behalf of another Investor pursuant to Article 3.

5. MISCELLANEOUS.

5.1 Amendment . This Agreement may be amended, modified or supplemented but only in writing signed by each of the parties hereto.

5.2 Notices . Any notice, request, instruction or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been given, (a) when received if given in person or by courier or a courier service, (b) on the date of transmission if sent by telex, facsimile or other wire transmission or (c) three Business Days after being deposited in the U.S. mail, certified or registered mail, postage prepaid:

If to the Company, addressed as follows:

Strategic Hotel Capital, Inc.
77 West Wacker Drive
Chicago, Illinois 60601
Attention: General Counsel
Facsimile No.: (312) 658-5000

with a copy to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Robert W. Downes
Facsimile No.: (212) 558-3588

If to Whitehall 7 or Whitehall 9, addressed as follows:

c/o Whitehall Street Real Estate Limited Partnership
85 Broad Street
New York, New York 10004
Attention: David M. Weil
Facsimile No.: (212) 357-5505

with a copy to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Joseph C. Shenker
Facsimile No.: (212) 558-3588

If to Prudential or SVI, addressed as follows:

The Prudential Insurance Company of America
8 Campus Drive, 4th Floor
Parsippany, New Jersey 07054
Attention: SVI Portfolio Manager
Facsimile No.: (973) 683-1797

with a copy to:

Goodwin, Procter LLP
599 Lexington Avenue, 40th Floor
New York, New York 10022
Attention: Robert S. Insolia
Facsimile No.: (212) 355-3333

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

5.3 Waivers . The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

5.4 Counterparts . This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5.5 Interpretation . The headings preceding the text of Articles and Sections included in this Agreement and the headings to Exhibits and Schedules attached to this Agreement are for convenience only and shall not be deemed part of this Agreement or be given any effect in interpreting this Agreement. The use of the masculine, feminine or neuter gender herein shall not limit any provision of this Agreement. The use of the terms “including” or “include” shall in all cases herein mean “including, without limitation” or “include, without limitation,” respectively. Underscored references to Articles, Sections, Subsections, Exhibits or Schedules shall refer to those portions of this Agreement.

5.6 Governing Law . THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

5.7 Assignment . This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Except as otherwise specifically provided in this Agreement, no assignment of any rights or obligations shall be made by any party without the written consent of each of SVI and Whitehall. Notwithstanding the foregoing, each of the members of the Whitehall Group and each of the members of the SVI Group shall be entitled to assign its rights under this Agreement to any Investor (as such term is defined herein).

5.8 No Third Party Beneficiaries . This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to confer upon any third parties any remedy, claim, liability, reimbursement, cause of action or other right.

5.9 Severability . If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

5.10 Entire Understanding . This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the matters set forth herein and supersedes any and all prior agreements, arrangements and understandings among the parties.

5.11 Specific Performance . Each of the parties acknowledges that the obligations undertaken by it pursuant to this Agreement are unique and that the other parties will not have an adequate remedy at law if it shall fail to perform any of its obligations hereunder, and each party therefore confirms that the right of each other party hereto to specific performance of the terms of this Agreement is essential to protect the rights and interests of such parties. Accordingly, in addition to any other remedies that the parties may have at law or in equity, each party shall have the right to have all obligations, covenants, agreements and other provisions of this Agreement specifically performed by each other party, and shall have the right to obtain preliminary and permanent injunctive relief to secure specific performance and to prevent a breach or contemplated breach of this Agreement by each other party.

5.12 Reorganization . In connection with any merger, consolidation, sale of all or substantially all of the Company's assets, the Company will use its best efforts to take such actions, or to cause the other party to such transaction to take such actions, to ensure that the parties hereto have, immediately after consummation of such transaction, substantially the same rights in respect of such other Person or the Company, as applicable, as they may have immediately prior to consummation of such transaction in respect of the Company under this Agreement.

* * * * *

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date and year first above written.

STRATEGIC HOTEL CAPITAL, INC.

By: /S/ David E. Sims
Name: David E. Sims
Title: Senior Vice President

WHSHC, L.L.C.

By: Whitehall Street Real Estate Limited Partnership VII

By: WH Advisors, L.L.C. VII, General Partner

By: /S/ Todd Giannoble
Name: Todd Giannoble
Title: Vice President

W9/WHSHC, L.L.C. I

By: Whitehall Street Real Estate Limited Partnership IX

By: WH Advisors, L.L.C. IX, General Partner

By: /S/ Todd Giannoble
Name: Todd Giannoble
Title: Vice President

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

By: Prudential Investment Management, Inc. its Attorney-in-Fact

By: /S/ Robert M. Falzon
Name: Robert M. Falzon
Title: Vice President

PIC REALTY CORPORATION

By: Prudential Investment Management, Inc.
its Attorney-in-Fact

By: /S/ Robert M. Falzon
Name: Robert M. Falzon
Title: Vice President

STRATEGIC VALUE INVESTORS, LLC

By: Prudential Investment Management, Inc.
its Attorney-in-fact

By: /S/ Robert M. Falzon
Name: Robert M. Falzon
Title: Vice President

Exhibit 10.76

LOAN AND SECURITY AGREEMENT

Dated as of September 1, 2006

Between

SHR SCOTTSDALE X, L.L.C and **SHR SCOTTSDALE Y, L.L.C.,**
as Borrower

and

CITIGROUP GLOBAL MARKETS REALTY CORP.,
as Lender

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SCHEDULE VII	INTENTIONALLY DELETED

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT dated as of September 1, 2006 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement** "), between SHR SCOTTSDALE X, L.L.C., a Delaware limited liability company and SHR SCOTTSDALE Y, L.L.C., a Delaware limited liability company, (each a " **Co-Borrower**" and collectively, on a joint and several liability basis, the "**Borrower**") having an office at c/o Strategic Hotel Funding, L.L.C., 77 West Wacker Drive, Suite 4600, Chicago, Illinois 60601, and CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation, having an address at 388 Greenwich Street, New York, New York 10013 (together with its successors and assigns, "**Lender**").

W I T N E S S E T H :

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW, THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions . For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"Acceptable Counterparty" shall mean a bank or other financial institution which has a long-term unsecured debt or counterparty rating of "AA-" (long term) and "A-1+" (short term) or higher by S&P and its equivalent by Moody's and, if the counterparty is rated by Fitch, by Fitch.

"Acceptable Management Agreement"shall mean, with respect to the Property, a new or amended management agreement with the Manager which agreement (as applicable) shall be upon terms and conditions entered into by Borrower, Operating Lessee, and/or Manager with respect to the Property in accordance with the terms of Section 5.2.14 hereof.

"Acceptable Manager "shall mean (i) the current Manager as of the Closing Date or any wholly-owned Affiliate (whether direct or indirect) of said current Manager, (ii) at any time after the Closing Date, any Pre-approved Manager listed on **Schedule IV** hereto, provided each such property manager continues to be Controlled by substantially the same Persons Controlling such property manager as of the Closing Date (or if such Manager is a publicly traded company, such Manager continues to be publicly traded on an established

securities market), (iii) any other hotel management company that manages a system of at least six (6) hotels or resorts of a class and quality of at least as comparable to the Property (as reasonably determined by Manager and Operating Lessee; provided , however , Operating Lessee shall obtain Lender's prior approval of such determination, not to be unreasonably withheld) and containing not fewer than 1,500 hotel rooms in the aggregate (including hotel/condominium units under management) in the aggregate, (iv) any Close Affiliate of any of the foregoing Persons or (v) any other reputable and experienced professional hotel management company with respect to which a Rating Agency Confirmation has been obtained.

"Accommodation Security Documents"shall mean the Security Instrument, the Assignment of Leases and UCC-1 Financing Statements which have been executed by Borrower and Operating Lessee in favor of Lender to secure Borrower's obligations under the Loan Documents.

"Account Agreement "shall mean the Account and Control Agreement, dated the date hereof, among Lender, Borrower and Cash Management Bank.

"Account Collateral "shall have the meaning set forth in Section 3.1.2 .

"Acknowledgment" shall mean the Acknowledgment, dated on or about the date hereof made by Counterparty, or as applicable, Acceptable Counterparty in the form of **Exhibit M** .

"Additional Non-Consolidation Opinion"shall have the meaning set forth in Section 4.1.29(b) .

"Affiliate" shall mean, with respect to any specified Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with, or any general partner or managing member in, such specified Person.

"Agreement" shall mean this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"ALTA"shall mean American Land Title Association, or any successor thereto.

"**Alteration**" shall mean any demolition, alteration, installation, improvement or decoration of or to the Property or any part thereof or the Improvements (including FF&E) thereon (other than any of the foregoing that (i) is permitted to be done and actually is done by or on behalf of the Manager without the consent of the Borrower (it being the intent of the parties that for this purpose amounts expended by Manager in respect of FF&E in the ordinary course of business from amounts reserved for FF&E under the Management Agreement shall be deemed not to be an Alteration), or (ii) is paid for out of any reserve account described in Article XVI.

"Approved Bank" shall have the meaning set forth in the Account Agreement.

"Assignment and Acceptance"shall mean an assignment and acceptance entered into by Lender and an assignee, and accepted by Lender in accordance with Article XV and in substantially the form of **Exhibit J** or such other form customarily used by Lender in connection with the participation or syndication of mortgage loans at the time of such assignment.

"Assignment of Leases "shall mean that certain first priority Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated as of the date hereof, from Borrower and Operating Lessee, as assignor, to Lender, as assignee, assigning to Lender all of Borrower's and Operating Lessee's interest in and to the Leases, Rents, Hotel Revenue and Security Deposits as security for the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Assignment of Management Agreement"shall mean that certain Manager's Consent, Subordination of Management Agreement and Non-disturbance Agreement, dated the date hereof, among Lender, Borrower, Operating Lessee, and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Bankruptcy Code" shall mean Title 11, U.S.C.A., as amended from time to time and any successor statute thereto.

"Beneficial" when used in the context of beneficial ownership has the analogous meaning to that specified in Rule 13d-3 under the Securities Exchange Act of 1934, as amended.

"Best of Borrower's Knowledge", shall mean the actual (as opposed to imputed or constructive) present knowledge of: Cory Warning and Ryan Bowie after due inquiry, and without creating any personal liability on the part of any said individuals. In the case where the term "Best of Borrower's Knowledge" is used in the context of representations or warranties of Borrower to be made after the date hereof, the term shall include the Person or Persons, as applicable, that occupy the capacities of said individuals on the date such representation or warranty to the extent that one or more of such individuals no longer occupy their current capacities.

"Borrower"has the meaning set forth in the first paragraph of this Agreement.

"Borrower's Account"shall mean an account with any Person subsequently identified in a written notice from Borrower to Lender, which Borrower's Account shall be under the sole dominion and control of Borrower:

Bank: [_____]
ABA#: [_____]
Attention: [_____]
Account Name: [_____]
Account Number: [_____]

"Budget"shall mean the operating budget for the Property prepared by Manager on Borrower's behalf, pursuant to the Management Agreement, for the applicable Fiscal Year or other period setting forth, in reasonable detail, Manager's estimates, consistent with the Management Agreement, of the anticipated results of operations of the Property, including revenues from all sources, all Operating Expenses, Management Fees and Capital Expenditures.

"Building Equipment "shall have the meaning set forth in the Security Instrument.

"Business Day"shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, Arizona or in the state in which Servicer is located are not open for business. When used with respect to an Interest Determination Date, Business Day shall mean any day on which dealings in deposits in U.S. Dollars are transacted in the London interbank market.

"Capital Expenditures "shall mean any amount incurred in respect of capital items which in accordance with GAAP would not be included in Borrower's annual financial statements for an applicable period as an operating expense of the Property.

"Cash"shall mean the legal tender of the United States of America.

"Cash and Cash Equivalents"shall mean any one or a combination of the following: (i) Cash, and (ii) U.S. Government Obligations.

"Cash Management Bank "shall mean LaSalle Bank National Association or any successor Approved Bank acting as Cash Management Bank under the Account Agreement or other financial institution approved by the Lender and, if a Securitization has occurred, the Rating Agencies.

"Casualty" shall mean a fire, explosion, flood, collapse, earthquake or other casualty affecting the Property.

"CGM"shall have the meaning set forth in Section 14.4.2(b) .

"CGM Group"shall have the meaning set forth in Section 14.4.2(b) .

"Close Affiliate" shall mean with respect to any Person (the "First Person") any other Person (each, a "Second Person") which is an Affiliate of the First Person and in respect of which any of the following are true: (a) the Second Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in such First Person, (b) the First Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in such Second Person, or (c) a third Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in both the First Person and the Second Person.

"Closing Date"shall mean the date of this Agreement set forth in the first paragraph hereof.

"Code"shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Collateral Accounts "shall have the meaning set forth in Section 3.1.1 .

"Collection Account "shall have the meaning set forth in Section 3.1.1 .

"Condemnation"shall mean a taking or voluntary conveyance during the term hereof of all or any part of the Property or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority, whether or not the same shall have actually been commenced.

"Control" shall mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise and (ii) the ownership, direct or indirect, of no less than 51% of the voting securities of such Person, and the terms Controlled, Controlling and Common Control shall have correlative meanings.

"Counterparty" shall mean the counterparty to the Interest Rate Cap Agreement and any counterparty under a Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement and, if applicable, any credit support provider identified in the Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement.

"Counterparty Opinion "shall have the meaning set forth in Section 9.3(f) .

"Current Debt Service Reserve Account"shall have the meaning set forth in Section 3.1.1 .

"Debt"shall mean, with respect to any Person at any time, (a) indebtedness or liability of such Person for borrowed money whether or not evidenced by bonds, debentures, notes or other instruments, or for the deferred purchase price of property or services; (b) obligations of such Person as lessee under leases which should have been or should be, in accordance with GAAP, recorded as capital leases; (c) current liabilities of such Person in respect of unfunded vested benefits under plans covered by Title IV of ERISA; (d) obligations issued for, or liabilities incurred on the account of, such Person; (e) obligations or liabilities of such Person arising under letters of credit, credit facilities or other acceptance facilities; (f) obligations of such Person under any guarantees or other agreement to become secondarily liable for any obligation of any other Person, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss; (g) obligations of such Person secured by any Lien on any property of such Person, whether or not the obligations have been assumed by such Person; or (h) obligations of such Person under any interest rate or currency exchange agreement.

"Debt Service" shall mean, with respect to any particular period of time, scheduled interest payments under the Note.

"Default" shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

"Default Rate" shall have the meaning set forth in the Note.

"Disclosure Documents "shall have the meaning set forth in Section 14.4.1 .

"Disqualified Transferee "shall mean any Person or its Close Affiliate that, (i) has (within the past five (5) years) defaulted, or is now in default, beyond any applicable cure period, of its material obligations, under any material written agreement with Lender, any Affiliate of Lender, or, unless approved by the Rating Agencies, any other financial institution or other person providing or arranging financing; (ii) has been convicted in a criminal proceeding for a felony or a crime involving moral turpitude or that is an organized crime figure or is reputed (as determined by Lender in its sole discretion) to have substantial business or other affiliations with an organized crime figure; (iii) has at any time filed a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (iv) as to which an involuntary petition (which was not subsequently dismissed within one hundred twenty (120) days) has at any time been filed under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (v) has at any time filed an answer consenting to or acquiescing in any involuntary petition filed against it by any other person under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (vi) has at any time consented to or acquiesced in or joined in an application for the appointment of a custodian, receiver, trustee or examiner for itself or any of its property; (vii) has at any time made an assignment for the benefit of creditors, or has at any time admitted its insolvency or inability to pay its debts as they become due; or (viii) has been found by a court of competent jurisdiction or other governmental authority in a comparable proceeding to have violated any federal or state securities laws or regulations promulgated thereunder.

"Downgrade"shall have the meaning as set forth in Section 9.3(c) hereof.

"DSCR"shall mean, with respect to a particular period, the ratio of Net Operating Income to the aggregate amount of Debt Service and the Mezzanine Loan Debt Service that is payable in respect of such period, as computed by Lender from time to time pursuant to the terms hereof, using in all cases, an assumed loan constant (instead of actual debt service payable under such loan) per annum equal to the sum of (a) the strike price of the Interest Rate Cap Agreement in effect on the date of such determination, and (b) the weighted average of the LIBOR Margin (Mortgage) and the LIBOR Margin that is applicable to the Mezzanine Loan, weighted on the basis of the outstanding principal balance of the Loan and the Mezzanine Loan outstanding as of such measurement date (which constant shall be calculated at all times using an actual/360 accrual convention). If no such period is specified, then the period shall be deemed to be the immediately preceding four (4) Fiscal Quarters.

"Eligibility Requirements"means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of $600,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of $250,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial properties.

"Eligible Account "has the meaning set forth in the Account Agreement.

"Eligible Collateral "shall mean U.S. Government Obligations, Letters of Credit or Cash and Cash Equivalents, or any combination thereof.

"Environmental Certificate"shall have the meaning set forth in Section 12.2.1 .

"Environmental Claim "shall mean any claim, action, cause of action, investigation or written notice by any Person alleging potential liability (including potential liability for investigatory costs, cleanup costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based upon or resulting from (a) the presence, threatened presence, release or threatened release into the environment of any Hazardous Materials from or at the Property, or (b) the violation, or alleged violation, of any Environmental Law relating to the Property.

"Environmental Event "shall have the meaning set forth in Section 12.2.1 .

"Environmental Indemnity "shall mean the Environmental Indemnity, dated the date hereof, made by Guarantor in favor of Lender.

"Environmental Law "shall have the meaning provided in the Environmental Indemnity.

"Environmental Reports" shall have the meaning set forth in Section 12.1 .

"ERISA"shall mean the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

"Event of Default "shall have the meaning set forth in Section 17.1(a) .

"Excess Cash Flow "shall have the meaning set forth in Section 3.1.5 .

"Exchange" shall mean either (i) one or more "reverse exchanges" under Section 1031 of the Internal Revenue Code of 1986, as amended, and Revenue Procedure 2000-37, 2002-2 C.B. 308, promulgated thereunder, pursuant to which one or more Qualified Intermediaries shall acquire and hold 100% of the indirect interests in Borrower and, upon consummation of the sales or transfers of one or more other properties in connection with the Exchange, transfer, or cause to be transferred, 100% of the indirect interests in Borrower to Strategic Hotel Funding, L.L.C., CIMS Limited Partnership, an Illinois limited partnership (provided Strategic Hotel Funding, L.L.C. owns directly or indirectly, not less than 85% equity interest in CIMS Limited Partnership), or other Affiliates of Strategic Hotel Funding, L.L.C. or (ii) one or more transfers of up to 100% of the indirect interests in Borrower to Strategic Hotel Funding, L.L.C. or Affiliates of Strategic Hotel Funding, L.L.C., if, for any reason, the transaction fails to qualify as a "reverse exchange" under Section 1031 of the Internal Revenue Code of 1986, as amended, all as generally contemplated by the Exchange Documents and in accordance with the terms of Section 8.8 of this Agreement, which establishment of the exchange at the closing of the Loan shall be pursuant to those certain initial agreements, documents and instruments in the form reviewed and approved by Lender prior to the closing of the Loan, a list of which is attached hereto as Schedule II; provided, except as otherwise provided in this definition, the ultimate

control of the Borrower is transferred only as otherwise permitted by this Agreement; provided further the Prime Lease and Operating Lease initially entered into, and the parties thereto, may be restructured, merged, terminated, modified or replaced without restriction so long as such leases or replacements thereof remain subordinate to the rights of the holder of the Loan.

"Exchange Act" shall have the meaning set forth in Section 14.4.1 .

"Exchange Documents"shall mean the documents identified on as Schedule II.

"Exculpated Parties "shall have the meaning set forth in Section 18.1.1 .

"Excusable Delay" shall mean a delay due to acts of god, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Borrower, but Borrower's lack of funds in and of itself shall not be deemed a cause beyond the control of Borrower.

"Expansion"shall mean any expansion or reduction of the Property or any portion thereof or the Improvements thereon.

"Extension Interest Rate Cap Agreement"shall mean, following the Borrower's exercise of its option to extend the Maturity Date pursuant to Section 5 of the Note, an Interest Rate Cap Agreement or Agreements (together with the confirmations and schedules relating thereto), each from an Acceptable Counterparty and satisfying the requirements set forth on **Exhibit I** hereto; provided that, to the extent any such interest rate cap agreement does not meet the foregoing requirements, an "Extension Interest Rate Cap Agreement" shall be such interest rate cap agreement as may be approved by each of the Rating Agencies (such approval to be evidenced by the receipt of a Rating Agency Confirmation).

"FF&E" shall mean furniture, fixtures and equipment of the type customarily utilized in hotel properties in Arizona similar to the Property.

"FF&E Reserve Account"shall have the meaning set forth in Section 3.1.1 .

"Final Completion "shall mean, with respect to any specified work, the final completion of all such work, including the performance of all "punch list" items, as confirmed by an Officer's Certificate and, with respect to any Material Alteration or Material Expansion, a certificate of the Independent Architect, if applicable.

"Fiscal Quarter" shall mean each quarter within a Fiscal Year in accordance with GAAP.

"Fiscal Year"shall mean the period commencing on the Closing Date and ending on and including December 31 of the calendar year in which the Closing Date occurs and thereafter each twelve month period commencing on January 1 and ending on December 31 until the Debt is repaid in full, or such other common fiscal year of Borrower as Borrower may select from time to time with the prior consent of Lender, such consent not to be unreasonably withheld.

"Fitch"shall mean Fitch Ratings Inc.

"Fountain" shall mean the decorative water feature on the Main Resort Parcel which is identified in the GaiaTech Physical Property Report dated June 2006 in respect of the Property as requiring restoration or repair.

"GAAP"shall mean the generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination, as appropriately modified by the Uniform System.

"Governmental Authority"shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Ground Lease" shall mean the ground lease dated December 30, 1985 between the City of Scottsdale, a municipal corporation, as ground lessor, and the predecessors of Borrower, as lessee, in respect of the Ground Lease Property, as amended by the First Amendment to Ground Lease dated November 17, 1986, Second Amendment to Ground Lease dated April 4, 1995, and Wall and Sign Agreement and Third Amendment to Lease dated May 19, 2003, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Ground Lease Property"shall mean the part of the Property which is the subject premises of the Ground Lease, being the real and personal property demised to Borrower pursuant to the Ground Lease.

"Group Services Fee "shall mean the expenses payable to Manager or any Affiliate as permitted under Section 9.5 of the Management Agreement or any similar provision in a replacement Management Agreement.

"Guarantor" shall mean, Strategic Hotel Funding, L.L.C., a Delaware limited liability company, which shall execute and deliver the Recourse Guaranty on the Closing Date.

"Hazardous Materials "shall have the meaning provided in the Environmental Indemnity.

"Holding Account" shall have the meaning set forth in Section 3.1.1 .

"Hotel Revenue"shall mean all revenues, income, Rents, issues, profits, termination or surrender fees, penalties and other amounts arising from the use or enjoyment of

all or any portion of the Property, including, without limitation, the rental or surrender of any office space, retail space, parking space, halls, stores, and offices of every kind, the rental or licensing of signs, sign space or advertising space and all membership fees and dues, rentals, revenues, receipts, income, accounts, accounts receivable, cancellation fees, penalties, credit card receipts and other receivables relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, conference and banquet rooms, food and beverage facilities, health clubs, spas, vending machines, parking facilities, telecommunication and television systems, guest laundry, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System.

"Impositions" shall mean all taxes (including all ad valorem, sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible transaction, privilege or license or similar taxes), governmental assessments (including all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not commenced or completed within the term of this Agreement), water, sewer or other rents and charges, excises, levies, fees (including license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Property and/or any Rents and Hotel Revenue (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a Lien upon (a) Borrower (including all income, franchise, single business or other taxes imposed on Borrower for the privilege of doing business in the jurisdiction in which the Property is located), (b) the Property, or any other collateral delivered or pledged to Lender in connection with the Loan, or any part thereof, or any Rents or Hotel Revenue therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Property or the leasing or use of all or any part thereof. Nothing contained in this Agreement shall be construed to require Borrower to pay any tax, assessment, levy or charge imposed on (i) any tenant occupying any portion of the Property, (ii) any manager of the Property, including any Manager, or (iii) Servicer, Lender or any other third party in the nature of a capital levy, estate, inheritance, succession, income or net revenue tax.

"Improvements" shall have the meaning set forth in the Security Instrument.

"Increased Costs" shall have the meaning set forth in Section 2.4.1 .

"Indebtedness" shall mean, at any given time, the Principal Amount, together with all accrued and unpaid interest thereon and all other obligations and liabilities due or to become due to Lender pursuant hereto, under the Note or in accordance with the other Loan Documents and all other amounts, sums and expenses paid by or payable to Lender hereunder or pursuant to the Note or the other Loan Documents.

"Indemnified Parties " shall have the meaning set forth in Section 19.12(b) .

"Independent" shall mean, when used with respect to any Person, a Person who: (i) does not have any direct financial interest or any material indirect financial interest in any Borrower or in any Affiliate of any Borrower, (ii) is not connected with Borrower or any

Affiliate of Borrower as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, supplier, customer or person performing similar functions and (iii) is not a member of the immediate family of a Person defined in (i) or (ii) above.

"Independent Architect" shall mean an architect, engineer or construction consultant selected by Borrower which is Independent, licensed to practice in the State and has at least five (5) years of architectural experience and which is reasonably acceptable to Lender.

"Independent Director ",**"Independent Manager"**, or**"Independent Member"** shall mean a Person who is not and will not be while serving and has never been (i) a member (other than an Independent Member), manager (other than an Independent Manager), director, (other than an Independent Director), employee, attorney, or counsel of Borrower or its Affiliates (provided that Borrower and Mezzanine Borrower may not have the same Independent Directors, Independent Managers or Independent Members), (ii) in the seven (7) years prior to the Closing Date, a customer, supplier or other Person who derives more than 1% of its purchases or revenues from its activities with Borrower or its Affiliates, (iii) a direct or indirect legal or beneficial owner in such entity or any of its Affiliates, (iv) a member of the immediate family of any member, manager, employee, attorney, customer, supplier or other Person referred to above, or (v) a person Controlling or under the common Control of anyone listed in (i) through (iv) above. A Person that otherwise satisfies the foregoing shall not be disqualified from serving as an Independent Director or Independent Manager or Independent Member if such individual is at the time of initial appointment, or at any time while serving as such, is an Independent Director or Independent Manager or Independent Member, as applicable, of a Single Purpose Entity affiliated with Borrower, other than the Mezzanine Borrower.

"Insurance Requirements" shall mean, collectively, (i) all material terms of any insurance policy required pursuant to this Agreement and (ii) all material regulations and then-current standards applicable to or affecting the Property or any part thereof or any use or condition thereof, which may, at any time, be recommended by the Board of Fire Underwriters, if any, having jurisdiction over the Property, or such other body exercising similar functions.

"Insurance Reserve Account" shall have the meaning set forth in Section 3.1.1(b) .

"Insurance Reserve Amount" shall have the meaning set forth in Section 16.2 .

"Insurance Reserve Trigger" shall mean Borrower's failure to deliver to Lender not less than five Business Days prior to each Payment Date (unless the prior notice to Lender provided evidence reasonably satisfactory to Lender that Borrower had prepaid such insurance premiums through a future Payment Date), evidence that all insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement have been paid in full.

"Intangible" shall have the meaning set forth in the Security Instrument.

"Interest Determination Date" shall have the meaning set forth in the Note.

"Interest Period" shall have the meaning set forth in the Note.

"Interest Rate Cap Agreement" shall mean an Interest Rate Agreement or Agreements (together with the confirmation and schedules relating thereto), or, with Lender's prior written consent (which shall not be unreasonably withheld, delayed or conditioned), a swap or other interest rate hedging instrument, each between a Counterparty and Borrower obtained by Borrower and collaterally assigned to Lender pursuant to this Agreement, and each satisfying the requirements set forth in **Exhibit I** and, in the case of a swap or other interest rate hedging agreement consented to by Lender, any additional requirements of the Rating Agencies).

"Land" shall have the meaning set forth in the Security Instrument and includes the Ground Lease Property.

"Late Payment Charge " shall have the meaning set forth in Section 2.2.3 .

"Lease" shall mean any lease (other than the Prime Lease and the Operating Lease), sublease or subsublease, letting, license, concession, or other agreement (whether written or oral and whether now or hereafter in effect) (excluding club membership programs now or hereafter in effect entitling Persons to preferential access to the Property) pursuant to which any Person is granted by the Borrower or Operating Lessee a possessory interest in, or right to use or occupy all or any portion of any space in the Property or any facilities at the Property (other than typical short-term occupancy rights of hotel guests which are not the subject of a written agreement), and every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"Lease Modification " shall have the meaning set forth in Section 8.8.1 .

"Legal Requirements" shall mean all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, and irrespective of the nature of the work to be done, of every Governmental Authority including, without limitation, Environmental Laws and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Borrower or to the Property and the Improvements and the Building Equipment thereon, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Property and the Improvements and the Building Equipment thereon including, without limitation, building and zoning codes and ordinances and laws relating to handicapped accessibility.

"Lender" shall have the meaning set forth in the first paragraph of this Agreement.

"Letter of Credit" shall mean an irrevocable, unconditional, transferable (without the imposition of any fee except any fees which are expressly payable by the Borrower), clean sight draft letter of credit (either an evergreen letter of credit or one which does not expire until at least sixty (60) days after the Maturity Date (the **"LC Expiration Date "**), in favor of Lender and entitling Lender to draw thereon in New York, New York, based solely on a statement executed by an officer or authorized signatory of Lender and issued by an Approved Bank. If at any time (a) the institution issuing any such Letter of Credit shall cease to be an

Approved Bank or (b) the Letter of Credit is due to expire prior to the LC Expiration Date, Lender shall have the right immediately to draw down the same in full and hold the proceeds thereof in accordance with the provisions of this Agreement, unless Borrower shall deliver a replacement Letter of Credit from an Approved Bank within (i) as to (a) above, twenty (20) days after Lender delivers written notice to Borrower that the institution issuing the Letter of Credit has ceased to be an Approved Bank or (ii) as to (b) above, at least twenty (20) days prior to the expiration date of said Letter of Credit.

"Liabilities" shall have the meaning set forth in Section 14.4.2(b) .

"LIBOR"shall have the meaning set forth in the Note.

"LIBOR Cap Strike Rate"shall mean 7.50%.

"LIBOR Margin (Mortgage)"shall mean "LIBOR Margin" as defined in the Note.

"LIBOR Rate"shall have the meaning set forth in the Note.

"License" shall have the meaning set forth in Section 4.1.23 .

"Lien"shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance or charge on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and the filing of mechanic's, materialmen's and other similar liens and encumbrances.

"Loan"shall mean the loan in the amount of $180,000,000 made by Lender to Borrower pursuant to this Agreement.

"Loan Documents" shall mean, collectively, this Agreement, the Note, the Security Instrument, the Assignment of Leases, the Trademark Security Agreement, the Environmental Indemnity, the Assignment of Management Agreement, the Account Agreement, the Recourse Guaranty and all other documents executed and/or delivered by Borrower in connection with the Loan including any certifications or representations delivered by or on behalf of Borrower, any Affiliate of Borrower, the Manager, or any Affiliate of the Manager (including, without limitation, any certificates in connection with any legal opinions delivered on the date hereof), together with all of the Accommodation Security Documents executed by the Operating Lessee.

"Loan to Value Ratio "shall mean the ratio, as of a particular date, in which the numerator is equal to the outstanding principal balance of the Loan and the denominator is equal to the appraised value of the Property as determined by Lender in its reasonable discretion.

"Management Agreement "shall mean that certain Hotel Management Agreement dated September 1, 2006 between Fairmont Hotels & Resorts (U.S.) Inc. and the Operating Lessee, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"Management Control "shall mean, with respect to any direct or indirect interest in the Borrower or the Property (not including Manager under an Approved Management Agreement), the power and authority to make and implement or cause to be made and implemented all material decisions with respect to the operation, management, financing and disposition of the specified interest.

"Management Fee"shall mean an amount equal to the monthly property management fees payable to the Manager pursuant to the terms of the Management Agreement for management services, the Group Services Fee, incentive management fees and any other fees described in the Management Agreement, and any allocated franchise fees.

"Manager" shall mean, as of the Closing Date, Fairmont Hotels & Resorts (U.S.) Inc., a Delaware corporation, or any replacement "Manager" appointed in accordance with Section 5.2.14 hereof.

"Manager Accounts "shall mean the "Bank Accounts" (as defined in the Management Agreement) maintained by Manager in the name of Borrower or Operating Lessee with respect to the Property and in accordance with the terms of the Management Agreement.

"Manager FF&E Reserve Account"shall mean the "Reserve Fund" as defined in the Management Agreement.

"Manager Reimbursable Expenses"shall mean the "Reimbursable Expenses" as defined in Section 5.4 of the Management Agreement.

"Material Adverse Effect"shall mean any event or condition that has a material adverse effect on (i) the Property taken as a whole, (ii) the use, operation, or value of the Property, (iii) the business, profits, operations or financial condition of the Borrower or (iv) the ability of Borrower to repay the principal and interest of the Loan as it becomes due or to satisfy any of Borrower's obligations under the Loan Documents.

"Material Alteration "shall mean any Alteration (other than with respect to replacements of FF&E that are funded from reserves for FF&E reserved for hereunder or under the Management Agreement by the Manager) to be performed by or on behalf of Borrower at the Property, the total cost of which (including, without limitation, construction costs and costs of architects, engineers and other professionals), as reasonably estimated by an Independent Architect, exceeds the Threshold Amount.

"Material Casualty "shall mean a Casualty where the loss (i) is in an aggregate amount equal to or in excess of thirty percent (30%) of the outstanding Principal Amount of the Loan and the Mezzanine Loan or (ii) has caused thirty percent (30%) or more of the hotel rooms or common areas (including banquet and conference facilities) in the Property to be unavailable for its applicable use.

"Material Condemnation" shall mean a Condemnation where the loss (i) is in an aggregate amount equal to or in excess of thirty percent (30%) of the outstanding Principal Amount of the Loan and the Mezzanine Loan or (ii) has caused thirty percent (30%) or more of the hotel rooms or common areas (including banquet and conference facilities) in the Property to be unavailable for its applicable use.

"Material Expansion " shall mean any Expansion to be performed by or on behalf of the Borrower at the Property, the total cost of which, as reasonably estimated by an Independent Architect, exceeds the Threshold Amount.

"Material Lease" shall mean any Lease (a) demising a premises within the Property that is more than 10,000 net rentable square feet or (b) that is for a term equal to or greater than sixty (60) months.

"Maturity Date" shall have the meaning set forth in the Note.

"Maturity Date Payment" shall have the meaning set forth in the Note.

"Maximum Legal Rate" shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

"Mezzanine Account " shall mean account number 724043.1 at LaSalle Bank National Association.

"Mezzanine Borrower " shall mean SHR Scottsdale Mezz X-1, L.L.C., a Delaware limited liability company and SHR Scottsdale Mezz Y-1, L.L.C., a Delaware limited company, jointly and severally.

"Mezzanine Lender " shall mean Citigroup Global Markets Realty Corp., a New York corporation, its successors and assigns in its capacity as the holder of the Mezzanine Loan.

"Mezzanine Lender Monthly Debt Service Notice Letter" shall mean the written notice required to be delivered by Mezzanine Lender pursuant to Section 3.1.5(e) of the Mezzanine Loan Agreement to Lender at least five (5) Business Days prior to each Payment Date setting forth (i) the Mezzanine Loan Debt Service payable by Mezzanine Borrower on the first Payment Date occurring after the date such notice is delivered and (ii) whether or not an Event of Default has then occurred and is continuing under the Mezzanine Loan Documents.

"Mezzanine Loan " shall mean the $90,000,000 mezzanine loan from Mezzanine Lender to the Mezzanine Borrower that is evidenced and secured by the Mezzanine Loan Documents.

"Mezzanine Loan Agreement" shall mean that certain Mezzanine Loan and Security Agreement, dated as of the date hereof, between Mezzanine Borrower, as borrower, and Mezzanine Lender, as lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Mezzanine Loan Debt Service" shall mean, with respect to any particular period of time, scheduled interest payments under the Mezzanine Note.

"Mezzanine Loan Default Notice" shall mean a notice from Mezzanine Lender (upon which Lender may conclusively rely without any inquiry into the validity thereof) that an "Event of Default" has occurred and is continuing under any of the Mezzanine Loan Documents.

"Mezzanine Loan Default Revocation Notice" shall have the meaning set forth in Section 3.1.5(f) .

"Mezzanine Loan Documents" shall mean, collectively, the Mezzanine Loan Agreement, the Mezzanine Note, the Mezzanine Pledge and any and all other agreements, instruments or documents executed by Mezzanine Borrower evidencing, securing or delivered in connection with the Mezzanine Loan and the transactions contemplated thereby, including, without limitation, officer's certificates.

"Mezzanine Note" shall mean that certain Mezzanine Note, dated the date hereof, made by Mezzanine Borrower, as maker, in favor of Mezzanine Lender, as payee, in the principal amount of $90,000,000.

"Mezzanine Pledge " shall mean that certain Pledge and Security Agreement, dated as of the date hereof, from Mezzanine Borrower to Mezzanine Lender.

"Monetary Default " shall mean a Default (i) that can be cured with the payment of money or (ii) arising pursuant to Section 17.1(a)(vi) or (vii) .

"Monthly FF&E Reserve Amount" shall mean the amount required to be deposited to the FF&E Account under the Management Agreement.

"Monthly Insurance Reserve Amount" shall have the meaning set forth in Section 16.2 .

"Monthly Tax Reserve Amount" shall have the meaning set forth in Section 16.1 .

"Moody's" shall mean Moody's Investors Service, Inc.

"Net Operating Income " shall mean, for any specified period, the excess of Operating Income over Operating Expenses for the trailing twelve (12) month period.

"New Lease" shall have the meaning set forth in Section 8.8.1 .

"Non-Consolidation Opinion" shall have the meaning provided in Section 2.5.5 .

"Non-Disturbance Agreement" shall have the meaning set forth in Section 8.8.9 .

"Note" shall mean that certain Note (Mortgage Loan) in the principal amount of One Hundred and Eighty Million Dollars ($180,000,000), made by Borrower in favor of Lender as of the date hereof, as the same may be amended, restated, replaced, substituted (including any components or subcomponents) or supplemented or otherwise modified from time to time.

"Obligations" shall have meaning set forth in the recitals of the Security Instrument.

"OFAC List" means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office Foreign Assets Control and accessible through the internet website www.treas.gov/ofac/t11sdn.pdf.

"Officer's Certificate" shall mean a certificate executed by an authorized signatory of Borrower that is familiar with the financial condition of Borrower and the operation of the Property or the particular matter which is the subject of such Officer's Certificate.

"Operating Asset" shall have the meaning set forth in the Security Instrument.

"Operating Expenses" shall mean, for any specified period, without duplication, all expenses of Borrower or Operating Lessee (or by Manager for the account of Borrower or Operating Lessee) during such period in connection with the ownership or operation of the Property, including costs (including labor) of providing services including rooms, food and beverage, telecommunications, garage and parking and other operating departments, as well as real estate and other business taxes, ground lease rental and other rental expenses, insurance premiums, utilities costs, administrative and general costs, repairs and maintenance costs, Management Fees under the Management Agreement, other costs and expenses relating to the Property, required FF&E reserves, and legal expenses incurred in connection with the operation of the Property, determined, in each case on an accrual basis, in accordance with GAAP. "Operating Expenses" shall not include (i) depreciation or amortization or other noncash items, (ii) the principal of and interest on the Note and the Mezzanine Note, (iii) income taxes or other taxes in the nature of income taxes, (iv) any expenses (including legal, accounting and other professional fees, expenses and disbursements) incurred in connection with and allocable to the issuance of the Note, or (v) distributions to the shareholders of the Borrower. Expenses that are accrued as Operating Expenses during any period shall not be included in Operating Expenses when paid during any subsequent period.

"Operating Lease" means that certain Sublease Agreement dated as of the date hereof between SHR Scottsdale Operating Lessee I, L.L.C. and SHR Scottsdale Operating Lessee II, L.L.C. as co-sublessor and the Operating Lessee, as sublessee.

"Operating Lessee" means DTRS Scottsdale, L.L.C, a Delaware limited liability company, as sublessee under the Operating Lease.

"Operating Income "shall mean for any specified period, all income received by Borrower or Operating Lessee (or by Manager for the account of Borrower or Operating Lessee) from any Person during such period in connection with the ownership or operation of the Property, determined on an accrual basis of accounting determined in accordance with GAAP, including the following:

(i) all amounts payable to Borrower, Operating Lessee or to Manager for the account of Borrower or Operating Lessee by any Person as Rent and/or Hotel Revenue;

(ii) all amounts payable to Borrower or Operating Lessee (or to Manager for the account of Borrower or Operating Lessee) pursuant to any reciprocal easement and/or operating agreements, covenants, conditions and restrictions, condominium documents and similar agreements affecting the Property and binding upon and/or benefiting Borrower and other third parties, but specifically excluding the Management Agreement;

(iii) condemnation awards to the extent that such awards are compensation for lost rent allocable to such specified period;

(iv) business interruption and loss of "rental value" insurance proceeds to the extent such proceeds are allocable to such specified period; and

(v) all investment income with respect to the Collateral Accounts.

Notwithstanding the foregoing clauses (i) through (v), Operating Income shall not include (A) any Proceeds (other than of the types described in clauses (iii) and (iv) above), (B) any proceeds resulting from the sale, exchange, transfer, financing or refinancing of all or any part of the Property (other than of the types described in clause (i) and (iii) above), (C) any repayments received from Tenants of principal loaned or advanced to Tenants by Borrower, (D) any type of income that would otherwise be considered Operating Income pursuant to the provisions above but is paid directly by any Tenant to a Person other than Borrower or Manager or its agent and (E) any fees or other amounts payable by a Tenant or another Person to Borrower that are reimbursable to Tenant or such other Person.

"Opinion of Counsel"shall mean opinions of counsel of law firm(s) licensed to practice in Arizona and New York selected by Borrower and reasonably acceptable to Lender.

"Other Charges" shall mean maintenance charges, impositions other than Impositions, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof by any Governmental Authority, other than those required to be paid by a Tenant pursuant to its respective Lease.

"Other Taxes" shall have the meaning set forth in Section 2.4.3 .

"Payment Date" shall have the meaning set forth in the Note.

"Permitted Borrower Transferee"shall mean any entity (i) that is experienced in owning and operating (including acting as asset manager) properties similar to the Property,

(ii) (a) with a net worth together with its Close Affiliates, as of a date no more than six (6) months prior to the date of the transfer of at least $1 Billion (exclusive of the Property) and (b) who, immediately prior to such transfer, controls, together with its Close Affiliates real estate equity assets of at least $1 Billion, (iii) which, together with its Close Affiliates owns or has under management or acts as the exclusive fund manager or investment advisor, at the time of the transfer, not fewer than 20 first class full service resort hotels or business hotel properties (excluding the Property) containing not fewer than 5,000 hotel rooms in the aggregate and (iv) that is not a Disqualified Transferee..

"Permitted Borrower Transferee Alternative"shall mean any entity (i) that is experienced in owning and operating (including acting as asset manager of) properties similar to the Property, (ii) that either (a) has a net worth together with its Close Affiliates, as of a date no more than six (6) months prior to the date of the transfer of at least $300 Million (exclusive of the Property) and, immediately prior to such transfer, controls, together with its Close Affiliates real estate equity assets of at least $1 Billion or (b) together with its Close Affiliates owns or has under management or acts as the exclusive fund manager or investment advisor, at the time of the transfer, not fewer than 6 luxury resort hotels (excluding the Property) containing not fewer than 3,000 hotel rooms in the aggregate and (iii) that is not a Disqualified Transferee.

"Permitted Debt" shall mean collectively, (a) the Note and the other obligations, indebtedness and liabilities specifically provided for in any Loan Document and secured by this Agreement, the Security Instrument and the other Loan Documents, (b) the Mezzanine Note and the other obligations, indebtedness and liabilities specifically permitted under the Mezzanine Loan Documents (solely as obligations of the Mezzanine Borrower), (c) trade payables and other liabilities incurred in the ordinary course of Borrower's business and payable by or on behalf of Borrower in respect of the operation of the Property, not secured by Liens on the Property (other than liens being properly contested in accordance with the provisions of this Agreement or the Security Instrument), such payables and liabilities (which shall not include taxes, accrued payroll and benefits, customer, membership and security deposits and deferred income), not to exceed at any one time outstanding two percent (2%) of the Principal Amount of the Loan and the Mezzanine Loan, provided that (but subject to the remaining terms of this definition) each such amount shall be paid within sixty (60) days following the date on which each such amount is incurred, provided, that such two percent (2.0%) limitation shall not include normal and customary retainages related to Alterations that are reserved for by Borrower, (d) purchase money indebtedness and capital lease obligations incurred in the ordinary course of Borrower's business, having scheduled annual debt service not to exceed $600,000, (e) contingent obligations to repay customer, membership and security deposits held in the ordinary course of Borrower's business, (f) obligations incurred in the ordinary course of Borrower's business for the financing of any applicable portfolio insurance premiums, (g) any Management Fees not yet due and payable under the Management Agreement, (h) taxes or other charges not yet due and payable or delinquent or which are being diligently contested in good faith in accordance with Section 5.1(b)(ii) hereof, (i) indebtedness relating to Liens in respect of property or assets imposed by law which were incurred in the ordinary course of business, such as carriers', warehousemen's, landlord's, mechanic's, materialmen's, repairmen's and other similar Liens arising in the ordinary course of business, and Liens for workers' compensation, unemployment insurance and similar programs, in each case arising in the ordinary course of business which are either not yet due and payable or being diligently contested in good faith in accordance with the

requirements of the Loan Documents, (j) the Revolver Loan and (k) such other unsecured indebtedness approved by Lender in its sole discretion and with respect to which Borrower has received a Rating Confirmation. Nothing contained herein shall be deemed to require Borrower to pay any amount, so long as Borrower is in good faith, and by proper legal proceedings, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) adequate reserves with respect thereto are maintained on the books of Borrower in accordance with GAAP, and (iii) such contest operates to suspend collection or enforcement, as the case may be, of the contested amount and such contest is maintained and prosecuted continuously and with diligence. Notwithstanding anything set forth herein, in no event shall Borrower be permitted under this provision to enter into a note (other than the Note and the other Loan Documents) or other instrument for borrowed money other than permitted purchase money indebtedness as described in this definition.

"Permitted Encumbrances"shall mean collectively, (a) the Liens and security interests created or permitted by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Policy, (c) Liens, if any, for Impositions imposed by any Governmental Authority not yet due or delinquent (other than any such Lien imposed pursuant to Section 401(a)(29) of the Code or by ERISA), (d) Liens on personal property items that are the subject of clause (d) of the definition of Permitted Debt, (e) with respect to the owner of Borrower, the Liens and Security Interests in its ownership interest in the Borrower covered by and otherwise permitted under the Mezzanine Loan Documents, and (f) the Prime Lease.

"Permitted Fund Manager"means any Person that on the date of determination is (i) a nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (ii) investing through a fund with committed capital of at least $250,000,000 and (iii) not subject to a bankruptcy proceeding.

"Permitted Investments"shall have the meaning set forth in the Account Agreement.

"Permitted Mezzanine Transfer"shall mean (a) a pledge of direct or indirect equity interests in Borrower to secure the Mezzanine Loan and (b) any foreclosure (or transfer in lieu thereof) in respect of the Mezzanine Loan, provided that the secured party or the acquirer at foreclosure (or transfer in lieu thereof), as applicable, (i) shall be a Qualified Transferee or (ii) shall have received a Rating Confirmation prior to such foreclosure (or such transfer in lieu of foreclosure), subject in the case of each of clauses (i) and (ii) to the requirement that the Borrower deliver to Lender and the Rating Agencies a nonconsolidation opinion satisfactory to the Rating Agencies with respect to any Person having more than a 49% direct or indirect equity interest (either individually or together with any interests held by an affiliate of such Person) in Borrower.

"Person"shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Physical Conditions Report" shall mean, with respect to the Property, collectively, the (i) seismic report and (ii) structural engineering report (prepared by an Independent Architect), both of which have been (a) addressed to Lender (b) prepared based on a scope of work determined by Lender in Lender's reasonable discretion, and (c) in form and content acceptable to Lender in Lender's reasonable discretion, together with any amendments or supplements thereto.

"Plan" shall have the meaning set forth in Section 4.1.10 .

"Pre-approved Manager " shall mean any entity set forth on **Schedule IV** .

"Pre-approved Transferee " shall mean any of the entities set forth on **Schedule III** hereof, or any Close Affiliates thereof, provided any of the foregoing entities or their Close Affiliates shall only be a "Pre-approved Transferee" if (i) such entity continues to be Controlled by substantially the same Persons Controlling such entity as of the Closing Date or if such Pre-approved Transferee is a publicly traded company, such Pre-approved Transferee continues to be publicly traded on an established securities market, (ii) there has been no material adverse change in the financial condition or results of operations of such entity since the Closing Date, (iii) such entity is not a Disqualified Transferee and (iv) if such entity as of the Closing Date is rated (a) "Investment Grade", there has been no deterioration in such entity's long-term or short-term credit rating (if any) since the Closing Date below "BBB-" or (b) below "Investment Grade", there has been no deterioration in such entity's long-term or short-term credit rating (if any) since the Closing Date.

"Prepayment Fee" shall have the meaning set forth in the Note.

"Prime Lease" means that certain Lease Agreement dated as of the date hereof between the Borrower, as lessor, and SHR Scottsdale Operating Lessee I, L.L.C. and SHR Scottsdale Operating Lessee II, L.L.C., as co-lessees.

"Prime Lessee" shall mean SHR Scottsdale Operating Lessee I, L.L.C. and SHR Scottsdale Operating Lessee II, L.L.C., each a Delaware limited liability company.

"Principal Amount" shall have the meaning set forth in the Note.

"Proceeds" shall mean amounts, awards or payments payable to Borrower (including, without limitation, amounts payable under any title insurance policies covering Borrower's ownership interest in the Property) or Lender with respect to any insurance required to be maintained hereunder (after the deduction therefrom and payment to Borrower and Lender, respectively, of any and all reasonable expenses incurred by Borrower and Lender in the recovery thereof, including all attorneys' fees and disbursements, the fees of insurance experts and adjusters and the costs incurred in any litigation or arbitration with respect to any claim under such insurance policies).

"Prohibited Person " means any Person identified on the OFAC List or any other Person with whom a U.S. Person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States of America.

"Property" shall have the meaning set forth in the Security Instrument, and includes the Ground Lease Property.

"Provided Information "shall have the meaning set forth in Section 14.1.1 .

"Purchase Agreement" shall mean that certain Purchase and Sale Agreement in respect of the Property, dated June 30, 2006, between Scottsdale Princess Partnership, as seller and SHR Scottsdale, L.L.C., as purchaser, as the same have been assigned, amended or supplemented as of the date hereof.

"**Qualified Intermediary**" shall mean Nationwide Exchange Services Corporation, a California corporation, in its capacity as an "Exchange Accommodation Titleholder," as defined in Revenue Procedure 2000-37, 2000-2 C.B. 308 promulgated under the Internal Revenue Code of 1986, as amended, and, in such capacity, the owner of one hundred percent (100%) of the indirect ownership interests in Borrower as of the Closing Date, or any other entity engaged in a similar line of business and reasonably acceptable to Lender.

"Qualified Transferee"shall mean one or more of the following:

(i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan that satisfies the Eligibility Requirements;

(ii) an investment company, money management firm or "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended, that satisfies the Eligibility Requirements;

(iii) an institution substantially similar to any of the foregoing entities described in clauses (i) or (ii) that satisfies the Eligibility Requirements;

(iv) any entity Controlled (and only so long as such entity continues at all times to be Controlled) by any of the entities described in clause (i), (ii) or (iii) above;

(v) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clause (i), (ii), (iii) or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clause (i), (ii), (iii) or (iv) of this definition.

"Rate Cap Collateral "shall have the meaning set forth in Section 9.2 .

"Rating Agencies" shall mean (a) prior to a Securitization, each of S&P, Moody's and Fitch and any other nationally-recognized statistical rating agency which has been approved by Lender and (b) after a Securitization has occurred, each such Rating Agency which has rated the Securities in the Securitization.

"Rating Agency Confirmation" shall mean, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency's sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

"Real Property" shall mean, collectively, the Land, the Improvements and the Appurtenances (as defined in the Security Instrument).

"Recourse Guaranty " shall mean that certain Guaranty of Recourse Obligations of Borrower, dated as of the date hereof, by Guarantor in favor of Lender, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"Register" shall have the meaning set forth in Section 15.4 .

"Regulatory Change " shall mean any change after the date of this Agreement in federal, state or foreign laws or regulations or the adoption or the making, after such date, of any interpretations, directives or requests applying to Lender, or any Person Controlling Lender or to a class of banks or companies Controlling banks of or under any federal, state or foreign laws or regulations (whether or not having the force of law) by any court or Governmental Authority or monetary authority charged with the interpretation or administration thereof.

"Release Prices" shall mean the fixed price figures for the relevant Release Parcels identified more fully in **Schedule V** .

"Release Parcels" shall mean the parcels of Property identified more fully in **Schedule V** .

"Relevant Portions " shall have the meaning set forth in Section 14.4.2(a) .

"Remaining Property " shall have the meaning set forth in Section 2.3.4(a) .

"Rents" shall mean all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower and/or Operating Lessee from any and all sources arising from or attributable to the Property and Proceeds, if any, from business interruption or other loss of income insurance.

"Restoration" shall have the meaning provided in Section 6.2.2 .

"Replacement Interest Rate Cap Agreement"shall mean, in connection with a replacement of an Interest Rate Cap Agreement following a Downgrade of the Counterparty thereto, an interest rate cap agreement (together with the confirmation and schedules relating thereto) from an Acceptable Counterparty and satisfying the requirements set forth on **Exhibit I** hereto; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements a "Replacement Interest Cap Agreement" shall be such interest rate cap agreement approved by each of the Rating Agencies, such approval to be evidenced by the receipt of a Rating Agency Confirmation.

"**Revolver Loan** " shall mean that certain revolving credit facility from Deutsche Bank Trust Company Americas to Strategic Hotel Funding, L.L.C., evidenced by that certain Revolving Credit Agreement, dated as of November 5, 2006, hereof, between Deutsche Bank Trust Company Americas, Wachovia Bank National Association, as lender, various financial institutions, as lenders specified therein and Strategic Hotel Funding, L.L.C., as the same has heretofore and may hereafter be amended, restated, supplemented or otherwise modified or replaced, from time to time.

"S&P" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"Securities" shall have the meaning set forth in Section 14.1 .

"Securities Act"shall have the meaning set forth in Section 14.4.1 .

"Securitization" shall have the meaning set forth in Section 14.1 .

"Security Instrument" shall mean that certain first priority Fee and Leasehold Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated the date hereof, executed and delivered by Borrower and certain of its affiliates to Lender and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Servicer" shall mean such Person designated in writing with an address for such Person by Lender, in its sole discretion, to act as Lender's agent hereunder with such powers as are specifically delegated to the Servicer by Lender, whether pursuant to the terms of this Agreement, the Account Agreement or otherwise, together with such other powers as are reasonably incidental thereto.

"Single Purpose Entity" shall mean a Person, other than an individual, which (i) is formed or organized solely for the purpose of owning, leasing, managing, holding, developing, using, operating and financing the Property, (ii) does not engage in any business unrelated to the Property and the ownership, development, use, operation and financing thereof, (iii) does not have any assets other than those related to its interest in the Property or the operation, management and financing thereof or any indebtedness other than the Permitted Debt, (iv) maintains its own separate books and records and its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person, (v) holds itself out as being a Person, separate and apart from any other Person, (vi) does not and will not

commingle its funds or assets with those of any other Person except as provided in this Agreement with regards to the Co-Borrowers, Co-Mezzanine Borrowers (as defined under the Mezzanine Loan Agreement) or the Prime Lessees under the Prime Lease, (vii) conducts its own business in its own name; (viii) maintains separate financial statements; provided, however, that any consolidated financial statements contain a note indicating that it and its Affiliates are separate legal entities and maintain records, books of account, and accounts separate and apart from any other Person, (ix) pays its own liabilities out of its own funds, (x) observes all partnership, corporate or limited liability company formalities, as applicable, (xi) pays the salaries of its own employees, if any, and maintains a sufficient number of employees, if any, in light of its contemplated business operations, (xii) does not pledge its assets or guarantee or otherwise obligate itself with respect to the debts of any other Person or hold out itself or its credit as being available to satisfy the obligations of any other Person, (xiii) does not acquire obligations or securities of its partners, members or shareholders, (xiv) allocates fairly and reasonably shared expenses, including, without limitation, any overhead for shared office space, if any, (xv) uses separate stationary, invoices, and checks bearing its own name, (xvi) maintains an arms-length relationship with its Affiliates, (xvii) except as provided in this Agreement with regards to the Co-Borrowers, Co-Mezzanine Borrowers or the Prime Lessees under the Prime Lease, does not pledge its assets for the benefit of any other Person (other than as permitted under clauses (a) and (d) of the definition of Permitted Encumbrances) or make any cash loans or advances to any other Person, (xviii) uses commercially reasonable efforts to correct any known misunderstanding regarding its separate identity and (xix) maintains adequate capital in light of its contemplated business operations. In addition, if such Person is a partnership, (1) all general partners of such Person shall be Single Purpose Entities; and (2) if such Person has more than one general partner, then the organizational documents shall provide that such Person shall continue (and not dissolve) for so long as a solvent general partner exists. In addition, if such Person is a corporation, then, at all times: (a) such Person shall have at least two (2) Independent Directors and (b) the board of directors of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including the Independent Directors, shall have participated in such vote. In addition, if such Person is a limited liability company, (a) such Person shall have at least two (2) Independent Managers or Independent Members, (b) if such Person is managed by a board of managers, the board of managers of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of managers unless all of the managers, including the Independent Managers, shall have participated in such vote, (c) if such Person is not managed by a board of managers, the members of such Person may not take any action requiring the affirmative vote of 100% of the members of such Person unless all of the members, including the Independent Members, shall have participated in such vote, (d) each managing member shall be a Single Purpose Entity and (e) its articles of organization, certificate of formation and/or operating agreement, as applicable, shall provide that until all of the Indebtedness and Obligations are paid in full such entity will not dissolve. In addition, the organizational documents of such Person shall provide that such Person (1) without the unanimous consent of all of the partners, directors or members, as applicable, shall not with respect to itself or to any other Person in which it has a direct or indirect legal or beneficial interest (a) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or other similar official for the benefit of the creditors of such Person or all or any portion of such

Person's properties, or (b) take any action that might cause such Person to become insolvent, petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (2) will maintain its books, records, resolutions and agreements as official records, (3) will hold its assets in its own name, (4) will maintain its financial statements, accounting records and other organizational documents, books and records separate and apart from any other Person, (5) will not identify its partners, members or shareholders, or any Affiliates of any of them as a division or part of it, (6) will maintain an arms-length relationship with its Affiliates, (7) except for capital contributions or capital distributions will not enter into or be a party to any transaction with its partners, members, shareholders, or its Affiliates except in the ordinary course of business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arms-length transaction with a third party; (8) will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities); and (9) except as permitted by the Loan Documents, will not form, acquire or hold any subsidiary (whether corporation, partnership, limited liability company or other) or own any equity interest in any other entity other than the Property.

For purposes of the foregoing definition, it is agreed and understood that entities which are tenants-in-common such as the Co-Borrowers, the entities which comprise the Operating Lessee and Prime Lessee and the Co-Mezzanine Borrowers are Single Purpose Entities notwithstanding the relationship and affiliated transactions among and between some or all of such entities as contemplated by the Loan Documents.

"Special Taxes" shall mean any and all present or future taxes, levies, imposts, deductions, charges or withholdings, or any liabilities with respect thereto, including those arising after the date hereof as result of the adoption of or any change in law, treaty, rule, regulation, guideline or determination of a Governmental Authority or any change in the interpretation or application thereof by a Governmental Authority but excluding, in the case of Lender, such taxes (including income taxes, franchise taxes and branch profit taxes) as are imposed on or measured by Lender's net income by the United States of America or any Governmental Authority of the jurisdiction under the laws under which Lender is organized or maintains a lending office.

"State"shall mean the State in which the Property or any part thereof is located.

"Sub-Account(s)"shall have the meaning set forth in Section 3.1.1 .

"Survey"shall mean a survey of the Property prepared by a surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Policy, and containing a certification of such surveyor satisfactory to Lender.

"Tax Reserve Account" shall have the meaning set forth in Section 3.1.1 .

"**Tax Reserve Amount**" shall have the meaning set forth in Section 16.1 .

"Tenant" shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property or permitted to use any portion of the facilities at the Property, other than the Manager and its employees, agents and assigns.

"Threshold Amount" shall mean an amount equal to 10% of the Principal Amount of the Loan, being $18,000,000 as of the date of this Agreement.

"**TIC Agreement** " shall mean that certain Co-Tenancy Agreement, dated as of the date hereof, between the Co-Borrowers.

"Title Company " shall mean, Lawyers Title Insurance Corporation.

"Title Policy" shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued by the Title Company with respect to the Property and insuring the lien of the Security Instrument.

"Total Insurable Value" shall mean $189,000,000, increased each year commencing on the first (1st) anniversary of the Closing Date by the percentage increase in the Consumer Price Index for All Urban Consumers that is published by the Bureau of Labor Statistics for the city in which the Property is located.

"Trademark Security Agreement" shall have the meaning provided in Section 2.5.14 .

"Transfer" shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise.

"UCC" or **" Uniform Commercial Code"** shall mean the Uniform Commercial Code as in effect in the State.

"Ultimate Equity Owner" shall mean Strategic Hotel Funding, L.L.C., a Delaware limited liability company.

"Underwriter Group " shall have the meaning set forth in Section 14.4.2(b) .

"Uniform System" shall mean the Uniform System of Accounts for Hotels, 9th Edition, International Association of Hospitality Accountants (1996), as from time to time amended.

"U.S. Government Obligations" shall mean any direct obligations of, or obligations guaranteed as to principal and interest by, the United States Government or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States. Any such obligation must be limited to instruments that have a

predetermined fixed dollar amount of principal due at maturity that cannot vary or change. If any such obligation is rated by S&P, it shall not have an "r" highlighter affixed to its rating. Interest must be fixed or tied to a single interest rate index plus a single fixed spread (if any), and move proportionately with said index. U.S. Government Obligations include, but are not limited to: U.S. Treasury direct or fully guaranteed obligations, Farmers Home Administration certificates of beneficial ownership, General Services Administration participation certificates, U.S. Maritime Administration guaranteed Title XI financing, Small Business Administration guaranteed participation certificates or guaranteed pool certificates, U.S. Department of Housing and Urban Development local authority bonds, and Washington Metropolitan Area Transit Authority guaranteed transit bonds. In no event shall any such obligation have a maturity in excess of 365 days.

Section 1.2 Principles of Construction . All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All accounting terms not specifically defined herein shall be construed in accordance with GAAP as modified by the Uniform System. When used herein, the term "financial statements" shall include the notes and schedules thereto. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the definitions given them in this Agreement when used in any other Loan Document or in any certificate or other document made or delivered pursuant thereto. All uses of the word "including" shall mean including, without limitation unless the context shall indicate otherwise. Unless otherwise specified, the words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

II. GENERAL TERMS

Section 2.1 Loan; Disbursement to Borrower .

2.1.1 The Loan . Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2 Disbursement to Borrower . Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed. Borrower acknowledges and agrees that the full proceeds of the Loan have been disbursed by Lender to Borrower on the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents . The Loan shall be evidenced by the Note and secured by the Security Instrument, the Assignment of Leases, this Agreement and the other Loan Documents.

2.1.4 Use of Proceeds . Borrower shall use the proceeds of the Loan to acquire the Property and/or repay and discharge any existing mortgage loans secured by the Property, to make cash distributions to its partners, and as may be otherwise set forth on the Loan closing statement executed by Borrower at closing.

Section 2.2 Interest; Loan Payments; Late Payment Charge .

2.2.1 Payment of Principal and Interest .

(i) Except as set forth in Section 2.2.1(ii) , interest shall accrue on the Principal Amount as set forth in the Note.

(ii) Upon the occurrence and during the continuance of an Event of Default and from and after the Maturity Date if the entire Principal Amount is not repaid on the Maturity Date, interest on the outstanding principal balance of the Loan and, to the extent permitted by law, overdue interest and other amounts due in respect of the Loan shall accrue at the Default Rate calculated from the date such payment was due without regard to any grace or cure periods contained herein. Interest at the Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Indebtedness (or that portion thereof that is then due). To the extent permitted by applicable law, interest at the Default Rate shall be added to the Indebtedness, shall itself accrue interest at the same rate as the Loan and shall be secured by the Security Instrument. This paragraph shall not be construed as an agreement or privilege to extend the date of the payment of the Indebtedness, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default, and Lender retains its rights under the Note to accelerate and to continue to demand payment of the Indebtedness upon the happening of any Event of Default.

2.2.2 Method and Place of Payment .

(a) On each Payment Date, Borrower shall pay or cause to be paid to Lender interest accruing pursuant to the Note for the entire Interest Period during which said Payment Date shall occur.

(b) All amounts advanced by Lender pursuant to the applicable provisions of the Loan Documents, other than the Principal Amount, together with any interest at the Default Rate or other charges as provided therein, shall be due and payable hereunder as provided in the Loan Documents. In the event any such advance or charge is not so repaid by Borrower, Lender may, at its option and upon notice to Borrower, first apply any payments received under the Note to repay such advances, together with any interest thereon, or other charges as provided in the Loan Documents, and the balance, if any, shall be applied in payment of any installment of interest or principal then due and payable.

(c) The Maturity Date Payment shall be due and payable in full on the Maturity Date.

2.2.3 Late Payment Charge . If any interest payment due under the Loan Documents is not paid by Borrower within five (5) days after to the date on which it is due (or, if such fifth (5^{th}) day is not a Business Day, then the Business Day immediately preceding such day) on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of three percent (3%) of such unpaid sum or the Maximum Legal

Rate (the**"Late Payment Charge"**) in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by this Agreement, the Security Instrument and the other Loan Documents to the extent permitted by applicable law. Borrower acknowledges and agrees that the five day grace period with respect to the applicability of the Late Payment Charge (i) shall only apply to Borrower's first failure to make a monthly interest payment in any calendar year and (ii) shall not constitute a payment grace period and shall in no way limit Lender's rights under Article XVII .

2.2.4 Usury Savings . This Agreement and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Principal Amount of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the Principal Amount due under the Note at a rate in excess of the Maximum Legal Rate, then the LIBOR Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due under the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Prepayments .

2.3.1 Prepayments . No prepayments of the Indebtedness shall be permitted except as set forth in Section 4 of the Note. Borrower agrees and acknowledges after the closing of the Loan that prior to a material Event of Default (as determined by Lender in its sole and absolute discretion) (x) in the case of prepayments of the Loan in connection with a Casualty or Condemnation, principal will be applied (to the extent not used for restoration pursuant to the terms hereof) to the Note, any substitute or component notes (as applicable) and the Mezzanine Note sequentially starting with the most senior securitized tranche and (y) in the case of all prepayments of the Loan other than in accordance with the preceding clause (x), such prepayments will be applied to the Note, any substitute or component notes (as applicable) and the Mezzanine Note pro-rata (on the basis of their respective principal balances) among the securitized and any non-securitized portions of the Loan (and pro-rata within the securitized portions of the Loan). Notwithstanding the foregoing, upon the occurrence and during the continuance of a material Event of Default (as determined by Lender in its sole and absolute discretion), Borrower agrees and acknowledges that any principal prepayments of the Loan will be applied to the Note, any substitute or component notes (as applicable) and the Mezzanine Note sequentially, starting with the most senior securitized tranche (it being acknowledged that during the continuance of a material Event of Default all securitized portions of the Loan shall be paid in full prior to the payment of any non-securitized portions of the Loan or the Mezzanine Loan).

2.3.2 Prepayments after Event of Default . If, following an Event of Default, Lender shall accelerate the Indebtedness and Borrower thereafter tenders payment of all or any part of the Indebtedness, or if all or any portion of the Indebtedness is recovered by Lender after such Event of Default, (a) such payment may be made only on the next occurring Payment Date together with all unpaid interest thereon as calculated through the end of the Interest Period during which such Payment Date occurs (even if such period extends beyond such Payment Date and calculated as if such payment had not been made on such Payment Date), and all other fees and sums payable hereunder or under the Loan Documents, including without limitation, interest that has accrued at the Default Rate and any Late Payment Charges), (b) such payment shall be deemed a voluntary prepayment by Borrower, and (c) Borrower shall pay, in addition to the Indebtedness, an amount equal to the Prepayment Fee, if applicable.

2.3.3 Release of Property . Lender shall, at the reasonable expense of Borrower, upon payment in full of the Principal Amount and interest on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of (i) this Agreement upon the Account Collateral and the Rate Cap Collateral and (ii) the Security Instrument on the Property or assign it, in whole or in part, to a new lender. In such event, Borrower shall submit to Lender, on a date prior to the date of such release or assignment sufficient to provide a reasonable period for review thereof, a release of lien or assignment of lien, as applicable, for such property for execution by Lender. Such release or assignment, as applicable, shall be in a form appropriate in each jurisdiction in which the Property is located and satisfactory to Lender in its reasonable discretion. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release or assignment, as applicable.

2.3.4 Release of Certain Release Parcels .

(a) *General Release Conditions* : Provided no Event of Default has occurred and is continuing, on one or more occasions Borrower may request that Lender release one or more of the Release Parcels in accordance with the terms of this Section 2.3.4. Prior to releasing any Release Parcel from the Lien of the Security Instrument and consenting to corresponding modifications to the provisions of the Operating Lease, the Management Agreement and the other Loan Documents pursuant to this Section 2.3.4, in addition to satisfying the additional conditions set forth below in Section 2.3.4(b), Lender shall release the Release Parcel from the Lien of the Security Instrument and shall consent to corresponding modifications of the provisions of the Operating Lease, the Management Agreement and the other Loan Documents, provided Lender determines that Borrower shall have satisfied the following conditions, as determined by Lender (such determination not to be unreasonably withheld, delayed or conditioned): (1) the released Release Parcel shall constitute a separate conveyable legal parcel in accordance with the subdivision map act or the equivalent thereof in the jurisdiction of the applicable Property or other relevant granted government approvals in such jurisdiction; (2) to the extent any easements benefiting or burdening any such released property are necessary or appropriate for the use or operation of such parcel or the remaining portions of the applicable Property (such remaining portion of an applicable Property, the **"Remaining Property"**), such easements shall have been granted or reserved prior to or at the time of the release or reconveyance of such released parcel and shall have been approved by Lender, which

approval shall not be unreasonably withheld, delayed or conditioned; (3) the Remaining Property shall remain a legal parcel (or parcels) in compliance in all material respects with all applicable Legal Requirements, zoning, subdivision, land use and other laws and regulations; (4) at the time of, but not prior to, any release or reconveyance, each released Release Parcel shall be transferred to a person or entity that does not result in a breach of Borrower's obligation to be a Single Purpose Entity; (5) Lender shall have received satisfactory evidence that any tax, bond or assessment that constitutes a lien against the applicable Property has (i) prior to such release, been properly allocated between the released Release Parcel and the Remaining Property and (ii) after such release, will be properly assessed against the released Release Parcel and the Remaining Property separately; (6) Lender shall have received such endorsements to the Title Policy (or substantially equivalent assurance) for the applicable Property as Lender may reasonably require confirming continuing title insurance and that (A) the Security Instrument constitutes a first priority lien (subject to Permitted Encumbrances) on the Remaining Property after the release, (B) the Remaining Property constitutes a separate tax lot or tax lots and (C) such release shall not result in the Remaining Property ceasing to comply in all material respects with all applicable Legal Requirements, zoning, land use and subdivision laws; (7) Borrower shall have executed and delivered such documents (including amendments to the Loan Documents) as Lender may reasonably require to reflect such release; (8) Lender shall have determined (such determination not to be unreasonably withheld, delayed or conditioned) that the proposed uses and structures to be developed on the released Release Parcel are materially consistent and/or complementary with the existing uses of the applicable Property and could not materially and adversely affect the Remaining Property; (9) Borrower shall pay to Lender all reasonable out-of-pocket costs and expenses incurred by Lender (including, without limitation, attorneys fees and any applicable costs and expenses of the Rating Agencies) in connection with each such release; (10) Borrower shall have provided Lender at least thirty (30) days prior written notice of such requested release; (11) if any portion of any Property is released to an Affiliate of Borrower, Borrower shall deliver to Lender a new non-consolidation opinion in form acceptable to Lender; (12) Borrower shall submit to Lender not less than fifteen (15) days prior to the date of such proposed release (which must be on a Business Day), a release of Liens (and related Loan Documents) for each applicable Release Parcel (for execution by Lender) in a form appropriate in the applicable state and otherwise satisfactory to Lender in its reasonable discretion and all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release (collectively,**"Parcel Release Instruments "**) (for execution by Lender) together with an Officer's Certificate certifying that (i) the Parcel Release Instruments are in compliance with all applicable Legal Requirements, (ii) the release to be effected will not violate the terms of this Agreement and (iii) the release to be effected will not impair or otherwise adversely affect the Liens, security interests and other rights of Lender under the Loan Documents not being released (or as to the parties to the Loan Documents and Properties subject to the Loan Documents not being released), (13) the Mezzanine Loan shall have been repaid in full and (14) after giving effect to such release, the Loan to Value Ratio for the Remaining Property is equal to or less than 55%. The Release Conditions described in this paragraph are hereinafter collectively referred to as the General Release Conditions.

(b) *Parcel Release Prices and Additional Parcel Release Conditions* : Prior to releasing any Release Parcel as described above, Borrower shall have satisfied the General Release Conditions and additionally, Borrower shall: (i) in the case of each Release Parcel (or portion thereof) that is transferred to an affiliate of Borrower, cause such parcel (or portion

thereof) to be developed (if at all) with uses and structures materially consistent and/or complementary with the existing uses at the Property; (ii) in the case of each Release Parcel (or portion thereof) that is transferred to any person or entity that is not an affiliate of Borrower, impose deed restrictions (which run with the land) or obtain such transferee's covenant (which, in either case, shall be enforceable by the owner of the applicable Remaining Property and its successors and assigns) to be developed as provided in clause (i) above; and (iii) pay to Lender the applicable Release Price required to be paid pursuant to this Section with respect to the applicable Release Parcel that shall be applied as a prepayment of the Loan in accordance with Note, together with any Prepayment Fees required to be paid pursuant to the Note in connection with such prepayment. Borrower shall further covenant and agree to enforce, consistent with Borrower's reasonable judgment, such transferee's deed restrictions and covenants. The foregoing covenants of Borrower shall survive the release of any such Release Parcel.

Section 2.4 Regulatory Change; Taxes .

2.4.1 Increased Costs . If, at any time prior to the first Securitization of the Loan, as a result of any Regulatory Change or compliance of Lender therewith, the basis of taxation of payments to Lender of the principal of or interest on the Loan is changed or Lender or the company Controlling Lender shall be subject to (i) any tax, duty, charge or withholding of any kind with respect to this Agreement (excluding federal taxation of the overall net income of Lender); or (ii) any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities, of Lender or any company Controlling Lender is imposed, modified or deemed applicable; or (iii) any other condition affecting loans to borrowers subject to LIBOR-based interest rates is imposed on Lender or any company Controlling Lender and Lender determines that, by reason thereof, the cost to Lender or any company Controlling Lender of making, maintaining or extending the Loan to Borrower is increased, or any amount receivable by Lender or any company Controlling Lender hereunder in respect of any portion of the Loan to Borrower is reduced, in each case by an amount deemed by Lender in good faith to be material (such increases in cost and reductions in amounts receivable being herein called **"Increased Costs"**), then Lender shall provide notice thereof to Borrower and Borrower agrees that it will pay to Lender upon Lender's written request such additional amount or amounts as will compensate Lender or any company Controlling Lender for such Increased Costs to the extent Lender determines that such Increased Costs are allocable to the Loan and provided that Lender is generally exercising rights similar to those set forth in this Section 2.4.1 against other borrowers similarly situated to Borrower. Lender will notify Borrower of any event occurring after the date hereof which will entitle Lender to compensation pursuant to this Section 2.4.1 as promptly as practicable after it obtains knowledge thereof and determines to request such compensation; provided , however , that, if Lender fails to deliver a notice within 90 days after the date on which an officer of Lender responsible for overseeing this Agreement knows or has reason to know of its right to additional compensation under this Section 2.4.1 , Lender shall only be entitled to additional compensation for any such Increased Costs incurred from and after the date that is 90 days prior to the date Borrower received such notice. If Lender requests compensation under this Section 2.4.1 , Borrower may, by notice to Lender, require that Lender furnish to Borrower a statement setting forth the basis for requesting such compensation and the method for determining the amount thereof, and a description as to why Section 2.4.5 is not applicable.

2.4.2 Special Taxes . At all times prior to the first Securitization of the Loan, Borrower shall make all payments hereunder free and clear of and without deduction for Special Taxes. If, at any time prior to the first Securitization of the Loan, Borrower shall be required by law to deduct any Special Taxes from or in respect of any sum payable hereunder or under any other Loan Document to Lender, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.4.2) Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions, and (iii) Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

2.4.3 Other Taxes . In addition, for all periods prior to the first Securitization of the Loan, Borrower agrees to pay any present or future stamp or documentary taxes or other excise or property taxes, charges, or similar levies which arise from any payment made hereunder, or from the execution, delivery or registration of, or otherwise with respect to, this Agreement, the other Loan Documents, or the Loan (hereinafter referred to as "**Other Taxes** ").

2.4.4 Indemnity . Borrower shall indemnify Lender for all periods prior to the first Securitization of the Loan, for the full amount of Special Taxes and Other Taxes (including any Special Taxes or Other Taxes imposed by any Governmental Authority on amounts payable under this Section 2.4.4) paid by Lender and any liability (including penalties, interest, and expenses) arising therefrom or with respect thereto, whether or not such Special Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within thirty (30) days after the date Lender makes written demand therefor.

2.4.5 Change of Office . To the extent that changing the jurisdiction of Lender's applicable office would have the effect of minimizing Special Taxes, Other Taxes or Increased Costs, Lender shall use reasonable efforts to make such a change, provided that same would not otherwise be disadvantageous to Lender.

2.4.6 Survival . Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this Section 2.4 shall survive the payment in full of principal and interest hereunder, and the termination of this Agreement.

Section 2.5 Conditions Precedent to Closing . The obligation of Lender to make the Loan hereunder is subject to the fulfillment by, or on behalf of, Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date; provided , however , that unless a condition precedent shall expressly survive the Closing Date pursuant to a separate agreement, by funding the Loan, Lender shall be deemed to have waived any such conditions not theretofore fulfilled or satisfied:

2.5.1 Representations and Warranties; Compliance with Conditions . The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or Event of Default shall have

occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

2.5.2 Delivery of Loan Documents; Title Policy; Reports; Leases .

(a) **Loan Documents** . Lender shall have received an original copy of this Agreement, the Note and all of the other Loan Documents, in each case, duly executed (and to the extent required, acknowledged) and delivered on behalf of Borrower and any other parties thereto.

(b) **Security Instrument, Assignment of Leases** . Lender shall have received evidence that original counterparts of the Security Instrument and Assignment of Leases, in proper form for recordation, have been delivered to the Title Company for recording, so as effectively to create, in the reasonable judgment of Lender, upon such recording valid and enforceable first priority Liens upon the Property, in favor of Lender (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents.

(c) **UCC Financing Statements** . Lender shall have received evidence that the UCC financing statements relating to the Security Instrument and this Agreement have been delivered to the Title Company for filing in the applicable jurisdictions.

(d) **Title Insurance** . Lender shall have received a pro forma Title Policy or a Title Policy issued by the Title Company and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such Title Policy shall (i) provide coverage in the amount of the Loan, (ii) insure Lender that the Security Instrument creates a valid, first priority Lien on the Property, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain the endorsements and affirmative coverages set forth on **Exhibit A** (or such other endorsements and affirmative coverages approved by Lender) and such additional endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The Title Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Policy have been paid.

(e) **Survey** . Lender shall have received a current or rectified Survey for the Property, containing the survey certification substantially in the form attached hereto as **Exhibit B** or such other form as approved by Lender. Such Survey shall reflect the same legal description contained in the Title Policy referred to in clause (d) above. The surveyor's seal shall be affixed to the Survey and the surveyor shall provide a certification for such Survey in form and substance acceptable to Lender.

(f) **Insurance** . Lender shall have received valid certificates of insurance for the policies of insurance required hereunder, satisfactory to Lender in its reasonable discretion, and evidence of the payment of all insurance premiums currently due and payable for the existing policy period.

(g) **Environmental Reports** . Lender shall have received an Environmental Report in respect of the Property satisfactory to Lender.

(h) **Zoning** . Lender shall have received an ALTA 3.1 zoning endorsement for the Title Policy.

(i) **Certificate of Occupancy** . Lender shall have received a copy of the valid certificates of occupancy for the Property or evidence acceptable to Lender that a certificate of occupancy is not required by applicable law.

(j) **Encumbrances** . Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first Lien as of the Closing Date on the Property, subject only to Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

2.5.3 Related Documents . Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

2.5.4 Delivery of Organizational Documents . On or before the Closing Date, Borrower shall deliver, or cause to be delivered, to Lender copies certified by an Officer's Certificate, of all organizational documentation related to Borrower, Operating Lessee, Prime Lessee and Guarantor and certain Affiliates of the foregoing as have been requested by Lender and/or the formation, structure, existence, good standing and/or qualification to do business of Borrower, Operating Lessee, Prime Lessee and Guarantor and such Affiliates, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender. Each of the organizational documents of Borrower shall contain provisions having a substantive effect materially similar to that of the language set forth in **Exhibit C** or such other language as approved by Lender. Lender hereby approves the organizational documents of Borrower delivered to Lender on the date hereof.

2.5.5 Opinions of Borrower's Counsel . (a) Lender shall have received from Counterparty the Counterparty Opinion substantially in compliance with the requirements set forth in **Exhibit F** or in such other form approved by the Lender.

2.5.6 Budgets . Borrower shall have delivered the Budget for the current Fiscal Year, which Budget shall be certified by an Officer's Certificate.

2.5.7 Completion of Proceedings . All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

2.5.8 Payments . All payments, deposits or escrows, if any, required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

2.5.9 Interest Rate Cap Agreement . Lender shall have received the original Interest Rate Cap Agreement which shall be in form and substance satisfactory to Lender and an original counterpart of the Acknowledgment executed and delivered by the Counterparty.

2.5.10 Account Agreement . Lender shall have received the original of the Account Agreement executed by each of Cash Management Bank, Operating Lessee, and Borrower.

2.5.11 Trademark Security Agreement . Lender shall have received the original of the Trademark Security Agreement in the form of **Exhibit Q** executed by Borrower (the**"Trademark Security Agreement"**).

2.5.12 Intentionally Deleted .

2.5.13 Transaction Costs . Borrower shall have paid or reimbursed Lender for all title insurance premiums, recording and filing fees, costs of Environmental Reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses incurred in connection with the origination of the Loan.

2.5.14 Material Adverse Effect . No event or condition shall have occurred since the date of Borrower's most recent financial statements previously delivered to Lender which has or could reasonably be expected to have a Material Adverse Effect. The Operating Income and Operating Expenses of the Property and all other features of the transaction shall be as represented to Lender without material adverse change. Neither Borrower nor any of its constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

2.5.15 Tax Lot . Lender shall have received evidence that the Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

2.5.16 Physical Conditions Report . Lender shall have received a Physical Conditions Report (or re-certified Physical Conditions Report) with respect to the Property, which report shall be satisfactory in form and substance to Lender.

2.5.17 Appraisal . Lender shall have received an appraisal of the Property, which shall be satisfactory in form and substance to Lender.

2.5.18 Operating Lease . Lender shall have received the originals of the Operating Lease, executed by Operating Lessee and Borrower and the Subordination of Operating Lease, executed by Operating Lessee.

2.5.19 Management Agreement . Lender shall have received a certified copy of the Management Agreement which shall be satisfactory in form and substance to Lender.

2.5.20 Further Documents . Lender or its counsel shall have received such other and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested including the Loan Documents in form and substance satisfactory to Lender and its counsel.

III. CASH MANAGEMENT

Section 3.1 Cash Management .

3.1.1 Establishment of Accounts . Borrower hereby confirms that, simultaneously with the execution of this Agreement, pursuant to the Account Agreement, Operating Lessee has established with Cash Management Bank, in the name of Borrower for the benefit of Lender, as secured party, a collection amount (the**"Collection Account"**), which has been established as an interest-bearing deposit account, and a holding account (the**"Holding Account"**), which has been established as a securities account. Both the Collection and the Holding Account and each sub-account of either such account and the funds deposited therein and the securities and other assets credited thereto shall serve as additional security for the Loan. Pursuant to the Account Agreement, Borrower shall irrevocably instruct and authorize Cash Management Bank to disregard any and all orders for withdrawal from the Collection Account or the Holding Account made by, or at the direction of, Borrower or Operating Lessee other than to transfer all amounts on deposit in the Collection Account on a daily basis to the Holding Account. Borrower agrees that, prior to the payment in full of the Indebtedness, the terms and conditions of the Account Agreement shall not be amended or modified without the prior written consent of Lender (which consent Lender may grant or withhold in its sole discretion), and if a Securitization has occurred, the delivery by Borrower of a Rating Agency Confirmation. In recognition of Lender's security interest in the funds deposited into the Collection Account and the Holding Account, Borrower shall identify both the Collection Account and the Holding Account with the name of Lender, as secured party. The Collection Account shall be named as follows: "Fairmont Scottsdale Princess f/b/o Citigroup Global Markets Realty Corp., as secured party Collection Account," account number 724042.1. The Holding Account shall be named as follows: "Fairmont Scottsdale Princess f/b/o Citigroup Global Markets Realty Corp., as secured party Holding Account," account number 724047.1. Borrower confirms that it has established with Cash Management Bank the following sub-accounts of the Holding Account (each, a**"Sub-Account "**and, collectively, the**"Sub-Accounts"**and together with the Holding Account and the Collection Account, the**"Collateral Accounts"**), which (i) may be ledger or book entry sub-accounts and need not be actual sub-accounts, (ii) shall each be linked to the Holding Account, (iii) shall each be a "Securities Account" pursuant to Article 8 of the UCC and (iv) shall each be an Eligible Account to which certain funds shall be allocated and from which disbursements shall be made pursuant to the terms of this Agreement:

(a) a sub-account for the retention of Account Collateral in respect of Impositions and Other Charges for the Property with the account number 724042.1 (the**"Tax Reserve Account "**);

(b) a sub-account for the retention of Account Collateral in respect of insurance premiums for the Property with the account number 724042.1 (the**"Insurance Reserve Account "**);

(c) a sub-account for the retention of Account Collateral in respect of FF&E with the account number 724042.1 (the**"FF&E Reserve Account"**); and

(d) a sub-account for the retention of Account Collateral in respect of current Debt Service on the Loan with the account number 724042.1 (the**"Current Debt Service Reserve Account "**).

3.1.2 Pledge of Account Collateral . To secure the full and punctual payment and performance of the Obligations, Borrower and Operating Lessee hereby collaterally assigns, grants a security interest in and pledges to Lender, to the extent not prohibited by applicable law (and shall cause Operating Lessee to execute the Accommodation Security Documents with respect thereto), a first priority continuing security interest in and to the following property of Borrower and/or Operating Lessee, as applicable, whether now owned or existing or hereafter acquired or arising and regardless of where located (all of the same, collectively, the**"Account Collateral"**):

(a) the Collateral Accounts and Manager Accounts and all cash, checks, drafts, securities entitlements, certificates, instruments and other property, including, without limitation, all deposits and/or wire transfers from time to time deposited or held in, credited to or made to Collateral Accounts;

(b) any and all amounts invested in Permitted Investments;

(c) all interest, dividends, cash, instruments, securities entitlements and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing or purchased with funds from the Collateral Accounts; and

(d) to the extent not covered by clauses (a), (b) or (c) above, all proceeds (as defined under the UCC) of any or all of the foregoing.

In addition to the rights and remedies herein set forth, Lender shall have all of the rights and remedies with respect to the Account Collateral available to a secured party at law or in equity, including, without limitation, the rights of a secured party under the UCC, as if such rights and remedies were fully set forth herein.

This Agreement shall constitute a security agreement for purposes of the Uniform Commercial Code and other applicable law.

3.1.3 Maintenance of Collateral Accounts . (a) Borrower agrees that the Collection Account is and shall be maintained (i) as a "deposit account" (as such term is defined in Section 9-102(a) of the UCC), (ii) in such a manner that Lender shall have control (within the meaning of Section 9-104(a) of the UCC) over the Collection Account and (iii) such that neither the Borrower, Operating Lessee, nor Manager shall have any right of withdrawal

from the Deposit Accounts and, except as provided herein, no Account Collateral shall be released to the Borrower, Operating Lessee, or Manager from the Collection Account. Without limiting the Borrower's obligations under the immediately preceding sentence, Borrower shall only establish and maintain the Collection Account with a financial institution that has executed an agreement substantially in the form of the Account Agreement or in such other form acceptable to Lender in its sole discretion.

(b) Borrower agrees that each of the Holding Account and the Sub-Accounts is and shall be maintained (i) as a "securities account" (as such term is defined in Section 8-501(a) of the UCC), (ii) in such a manner that Lender shall have control (within the meaning of Section 8-106(d)(2) of the UCC) over the Holding Account and any Sub-Account, (iii) such that neither Borrower, Operating Lessee, nor Manager shall have any right of withdrawal from the Holding Account or the Sub-Accounts and, except as provided herein, no Account Collateral shall be released to Borrower from the Holding Account or the Sub-Accounts, (iv) in such a manner that the Cash Management Bank shall agree to treat all property credited to the Holding Account or the Sub-Accounts as "financial assets" and (v) such that all securities or other property underlying any financial assets credited to the Accounts shall be registered in the name of Cash Management Bank, indorsed to Cash Management Bank or in blank or credited to another securities account maintained in the name of Cash Management Bank and in no case will any financial asset credited to any of the Collateral Accounts be registered in the name of Borrower, payable to the order of Borrower or specially indorsed to Borrower except to the extent the foregoing have been specially indorsed to Cash Management Bank or in blank. Without limiting Borrower's obligations under the immediately preceding sentence, Borrower shall only establish and maintain the Holding Account with a financial institution that has executed an agreement substantially in the form of the Account Agreement or in such other form acceptable to Lender in its sole discretion.

(c) The Collateral Accounts shall be Eligible Accounts. The Collateral Accounts shall be subject to such applicable laws, and such applicable regulations of the Board of Governors of the Federal Reserve System and of any other banking or governmental authority, as may now or hereafter be in effect. Income and interest accruing on the Collateral Accounts or any investments held in such accounts shall be periodically added to the principal amount of such account and shall be held, disbursed and applied in accordance with the provisions of this Agreement and the Account Agreement. Borrower shall be the beneficial owner of the Collateral Accounts for federal income tax purposes and shall report all income on the Collateral Accounts.

3.1.4 Deposits into Sub-Accounts . On the date hereof, Borrower has deposited the following amounts into the Sub-Accounts:

(i) $0.00 into the Tax Reserve Account;

(ii) $0.00 into the Insurance Reserve Account;

(iii) $0.00 into the Current Debt Service Reserve Account; and

(iv) $0.00 into the FF&E Reserve Account.

3.1.5 Monthly Funding of Sub-Accounts . (a) Borrower hereby irrevocably authorizes Lender to transfer (and, pursuant to the Account Agreement shall irrevocably authorize Cash Management Bank to execute any corresponding instructions of Lender), and Lender shall transfer (or cause Cash Management Bank to transfer pursuant to disbursement instructions from Lender), from the Holding Account by 11:00 a.m. New York time on each Business Day, or as soon thereafter as sufficient funds are in the Holding Account to make the applicable transfers, funds in the following amounts and in the following order of priority:

(i) during the continuance of an Event of Default and at any such time that Manager does not reserve for or otherwise set aside and pay Impositions and Other Charges directly, funds in an amount equal to the Monthly Tax Reserve Amount and any other amounts required pursuant to Section 16.1 for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Tax Reserve Account;

(ii) during the continuance of an Event of Default and at any time when the insurance required to be maintained pursuant to this Agreement is provided under a blanket policy in accordance with Article VI hereof and the premiums in respect of such blanket policy are not paid or caused to be paid before such premiums become due and payable or at any time that Manager does not pay, reserve for or otherwise set aside and pay, premiums with respect to the Insurance Requirements, funds in an amount equal to the Monthly Insurance Reserve Amount for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Insurance Reserve Account, or following an Event of Default or an Insurance Reserve Trigger, funds sufficient (calculated on a monthly basis from the Insurance Reserve Trigger until the month in which the premium is due) to permit Lender to pay insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement and the Security Instrument on the respective due dates therefor (up to a maximum amount equal to the aggregate annual insurance premium required hereunder), and Lender shall so pay such funds to the insurance company having the right to receive such funds;

(iii) funds in an amount equal to the amount of Debt Service due on the Payment Date for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Current Debt Service Reserve Account;

(iv) at any such time that Manager does not reserve or otherwise set aside for FF&E in accordance with the terms of the Management Agreement, funds in an amount equal to the Monthly FF&E Reserve Amount for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the FF&E Reserve Account;

(v) provided no Event of Default has occurred and is continuing and to the extent Lender receives the Mezzanine Lender Monthly Debt Service Notice Letter, funds in an amount equal to the Mezzanine Loan Debt Service for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Mezzanine Account; and

(vi) provided no Event of Default shall have occurred and is then continuing and subject to the provisions of Section 3.1.5(b) , funds in an amount equal to the balance (if any) remaining or deposited in the Holding Account after the foregoing deposits (such remainder being hereinafter referred to as "**Excess Cash Flow** ") and transfer the same to the Borrower's Account (or a third party account as directed by Borrower), free of any Lien or continuing security interest.

(b) Notwithstanding anything to the contrary contained herein or in the Security Instrument, but subject to Section 7.3 , to the extent that Borrower shall fail to pay any mortgage recording tax, costs, expenses or other amounts pursuant to Section 19.12 of this Agreement within the time period set forth therein, Lender shall have the right, at any time, upon five (5) Business Days' notice to Borrower, to withdraw from the Holding Account, an amount equal to such unpaid taxes, costs, expenses and/or other amounts and pay such amounts to the Person(s) entitled thereto.

(c) Lender agrees to deliver each Mezzanine Lender Monthly Debt Service Notice Letter and corresponding disbursement instructions to Cash Management Bank within two (2) Business Days of Lender's receipt thereof to the extent Mezzanine Lender is entitled to a payment pursuant to the terms of Section 3.1.5 above.

(d) Borrower hereby irrevocably directs that all Excess Cash Flow shall (in lieu of transferring such funds to the Borrower's Account as Borrower may have so directed): to the extent Lender has received a Mezzanine Loan Default Notice and until such time as Lender receives a Mezzanine Loan Default Revocation Notice, be deposited directly into the Mezzanine Loan Account for application as provided in the Mezzanine Loan Agreement. The direction set forth in the immediately preceding sentence shall not be changed or terminated without the written consent of the Mezzanine Lender. Notwithstanding any provision herein to the contrary, no Mezzanine Loan Default Notice shall be required for the deposit of Proceeds into the Mezzanine Loan Deposit Account in accordance with the terms of Section 6.2.3 hereof.

3.1.6 Payments from Sub-Accounts . Borrower irrevocably authorizes Lender to make and, provided no Event of Default shall have occurred and be continuing, Lender hereby agrees to make, the following payments from the Sub-Accounts to the extent of the monies on deposit therefor:

(i) if notified (timely) by Borrower or otherwise determined by Lender in its reasonable discretion that Manager will not pay Impositions or Other Charges, funds from the Tax Reserve Account to Lender sufficient to permit Lender to pay (or otherwise to Borrower to reimburse Borrower for) (A) Impositions and (B) Other Charges, on the respective due dates therefor, and Lender shall so pay such funds to the Governmental Authority having the right to receive such funds (or shall reimburse Borrower or Operating Lessee upon confirmation of payment);

(ii) at any time when the insurance required to be maintained pursuant to this Agreement is provided under a blanket policy in accordance with Article VI hereof and the premiums in respect of such blanket policy are not paid or caused to be paid before such premiums become due and payable or at any time that Manager does not pay, reserve for or otherwise set aside and pay, premiums with respect to the Insurance Requirements and otherwise following an Insurance Reserve Trigger, funds from the Insurance Reserve Account to Lender sufficient to permit Lender to pay insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement and the Security Instrument, on the respective due dates therefor, and Lender shall so pay such funds to the insurance company having the right to receive such funds;

(iii) funds from the Current Debt Service Reserve Account to Lender sufficient to pay Debt Service on each Payment Date, and Lender, on each Payment Date, shall apply such funds to the payment of the Debt Service payable on such Payment Date; and

(iv) if notified (timely) by Borrower or otherwise determined by Lender in its reasonable discretion that Manager will not reserve for FF&E as required under the Management Agreement, and provided Borrower shall have complied with the procedures set forth in Section 16.6 , funds from the FF&E Reserve Account to the Borrower's Account to pay for FF&E.

If and to the extent any Guarantor or any Close Affiliate (other than Borrower, Prime Lessee or Operating Lessee) makes a payment of any Imposition, any insurance premium under a blanket policy or capital expenditure or overhead charge which qualifies as an Operating Expense, with respect to the Property and such expense is provided for in the Budget, provided no Event of Default has occurred and is continuing, such Guarantor or Close Affiliate will be entitled to receive reimbursement from the Manager, Lender, or the applicable Sub-Account established under hereunder or under the Management Agreement and such payment shall not be required to be re-deposited into the Collection Account.

3.1.7 Cash Management Bank . (a) Lender shall have the right to replace the Cash Management Bank with a financial institution reasonably satisfactory to Borrower in the event that (i) the Cash Management Bank fails, in any material respect, to comply with the Account Agreement, (ii) the Cash Management Bank named herein is no longer the Cash Management Bank or (iii) the Cash Management Bank is no longer an Approved Bank. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right at Borrower's sole cost and expense to replace Cash Management Bank at any time, without notice to Borrower. Borrower shall cooperate with Lender in connection with the appointment of any replacement Cash Management Bank and the execution by the Cash Management Bank and the Borrower of an Account Agreement and delivery of same to Lender (with a copy to the Mezzanine Lender).

(b) So long as no Event of Default shall have occurred and be continuing, Borrower shall have the right at its sole cost and expense to replace the Cash Management Bank with a financial institution that is an Approved Bank, provided that such financial institution and Borrower shall execute and deliver to Lender (with a copy to the Mezzanine Lender) an Account Agreement substantially similar to the Account Agreement executed as of the Closing Date.

3.1.8 Borrower's Account Representations, Warranties and Covenants . Borrower represents, warrants and covenants that (i) as of the date hereof, Borrower has caused Operating Lessee to direct all Tenants under the Leases to mail all checks and wire all funds with respect to any payments due under such Leases directly to Manager, (ii) Borrower shall cause Manager and Operating Lessee to deposit all amounts payable to Borrower or Operating Lessee pursuant to the Management Agreement directly into the Collection Account, (iii) Borrower and Operating Lessee shall pay or cause to be paid all Rents, Cash and Cash Equivalents or other items of Operating Income not otherwise collected by Manager within two Business Days after receipt thereof by Borrower, Operating Lessee or its Affiliates directly into the Collection Account and, until so deposited, any such amounts held by Borrower or Operating Lessee, shall be deemed to be Account Collateral and shall be held in trust by it for the benefit, and as the property, of Lender and shall not be commingled with any other funds or property of Borrower, or Operating Lessee, (iv) other than the Manager Accounts, there are no accounts other than the Collateral Accounts maintained by Borrower, or Operating Lessee with respect to the Property or the collection of Rents and credit card company receivables with respect to the Property and (v) so long as the Loan shall be outstanding, neither Borrower, Operating Lessee, nor any other Person shall open any other operating accounts with respect to the Property or the collection of Rents or credit card company receivables with respect to the Property, except for the Collateral Accounts and the Manager Accounts; provided that, Borrower and Manager shall not be prohibited from utilizing one or more separate accounts for the disbursement or retention of funds that have been transferred to the Borrower's Account pursuant to Section 3.1.5 .

3.1.9 Account Collateral and Remedies . (a) Upon the occurrence and during the continuance of an Event of Default, without additional notice from Lender to Borrower, (i) Lender may, in addition to and not in limitation of Lender's other rights, make any and all withdrawals from, and transfers between and among, the Collateral Accounts as Lender shall determine in its sole and absolute discretion to pay any Obligations; (ii) all Excess Cash Flow shall be retained in the Holding Account or applicable Sub-Accounts, (iii) all payments to the Mezzanine Lender pursuant to Section 3.1.5 shall immediately cease and (iv) Lender may liquidate and transfer any amounts then invested in Permitted Investments to the Collateral Accounts to which they relate or reinvest such amounts in other Permitted Investments as Lender may reasonably determine is necessary to perfect or protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce Lender's rights and remedies hereunder with respect to any Account Collateral or to preserve the value of the Account Collateral.

(b) Upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of Borrower with respect to the Account Collateral, and do in the name, place and stead of Borrower, all such acts, things and deeds for and on behalf of and in the name of Borrower, which Borrower could or might do or which Lender may deem necessary or desirable to more fully vest in Lender the rights and remedies provided for herein and to accomplish the purposes of this Agreement. The foregoing powers of attorney are irrevocable and coupled with an interest. Upon the occurrence and during the continuance of an Event of Default, Lender may perform or cause performance of any such agreement, and any reasonable expenses of Lender incurred in connection therewith shall be paid by Borrower as provided in Section 5.1.16 .

(c) Borrower hereby expressly waives, to the fullest extent permitted by law, presentment, demand, protest or any notice of any kind (except as expressly required under the Loan Documents) in connection with this Agreement or the Account Collateral. Borrower acknowledges and agrees that ten (10) Business Days' prior written notice of the time and place of any public sale of the Account Collateral or any other intended disposition thereof shall be reasonable and sufficient notice to Borrower within the meaning of the UCC.

3.1.10 Transfers and Other Liens . Borrower agrees that it will not (i) sell or otherwise dispose of any of the Account Collateral except as may be expressly permitted under the Loan Documents, or (ii) create or permit to exist any Lien upon or with respect to all or any of the Account Collateral, except for the Lien granted to Lender under this Agreement.

3.1.11 Reasonable Care . Beyond the exercise of reasonable care in the custody thereof, Lender shall have no duty as to any Account Collateral in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any person or otherwise with respect thereto. Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Account Collateral in its possession if the Account Collateral is accorded treatment substantially equal to that which Lender accords its own property, it being understood that Lender shall not be liable or responsible for any loss or damage to any of the Account Collateral, or for any diminution in value thereof, by reason of the act or omission of Lender, its Affiliates, agents, employees or bailees, except to the extent that such loss or damage results from Lender's gross negligence or willful misconduct. In no event shall Lender be liable either directly or indirectly for losses or delays resulting from any event which may be the basis of an Excusable Delay, computer malfunctions, interruption of communication facilities, labor difficulties or other causes beyond Lender's reasonable control or for indirect, special or consequential damages except to the extent of Lender's gross negligence or willful misconduct. Notwithstanding the foregoing, Borrower acknowledges and agrees that (i) Lender does not have custody of the Account Collateral, (ii) Cash Management Bank has custody of the Account Collateral, (iii) the initial Cash Management Bank was chosen by Borrower and (iv) Lender has no obligation or duty to supervise Cash Management Bank or to see to the safe custody of the Account Collateral.

3.1.12 Lender's Liability . (a) Lender shall be responsible for the performance only of such duties with respect to the Account Collateral as are specifically set forth in this Section 3.1 or elsewhere in the Loan Documents, and no other duty shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act with respect to the Account Collateral which would cause it to incur any expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Borrower shall indemnify and hold Lender, its employees and officers harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender in connection with the transactions contemplated hereby with respect to the Account Collateral (excluding losses on Permitted Investments) except as such may be caused by the gross negligence or willful misconduct of Lender, its employees, officers or agents.

(b) Lender shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature believed by it in good faith to be genuine, and, in so acting, it may be assumed that any person purporting to give any of the foregoing in connection with the provisions hereof has been duly authorized to do so. Lender may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder and in good faith in accordance therewith.

3.1.13 Continuing Security Interest . This Agreement shall create a continuing security interest in the Account Collateral and shall remain in full force and effect until payment in full of the Indebtedness; provided , however , such security interest shall automatically terminate with respect to funds which were duly deposited into Borrower's Account in accordance with the terms hereof. Upon payment in full of the Indebtedness, this security interest shall automatically terminate without further notice from any party and Borrower shall be entitled to the return, upon its request, of such of the Account Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof and Lender shall execute such instruments and documents as may be reasonably requested by Borrower to evidence such termination and the release of the Account Collateral.

IV. REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations . Borrower represents and warrants as of the Closing Date that:

4.1.1 Organization . Each Co-Borrower, Guarantor, Prime Lessee and Operating Lessee is a limited liability company, and have been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Each of Borrower, Prime Lessee and Operating Lessee has duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Collectively, Borrower, Prime Lessee and Operating Lessee possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which each is now engaged, and the sole business of Borrower is the ownership of the Property. The organizational structure of Borrower upon the closing is accurately depicted by the schematic diagram attached hereto as **Exhibit H-1** . Borrower shall not itself, and shall not permit Prime Lessee or Operating Lessee to, change its name, identity, corporate structure or jurisdiction of organization unless it shall have given Lender seven (7) days prior written notice of any such change and shall have taken all steps reasonably requested by Lender to grant, perfect, protect and/or preserve the security interest granted hereunder to Lender.

4.1.2 Proceedings . Each of Borrower, Prime Lessee, Operating Lessee, and Guarantor, has full power to and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents have been duly executed and delivered by, or on behalf of, each of Borrower, Prime Lessee, Operating Lessee, and Guarantor, as applicable, and constitute legal, valid and binding obligations of Borrower, Prime Lessee, Operating Lessee, and Guarantor, as

applicable, enforceable against Borrower, Prime Lessee, Operating Lessee, and Guarantor, as applicable, in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts . The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower, Prime Lessee, Operating Lessee, and Guarantor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower, Prime Lessee, Operating Lessee, and Guarantor, pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement or other agreement or instrument to which Borrower, Prime Lessee, Operating Lessee, and Guarantor, is a party or by which any of Borrower's, Prime Lessee's, Operating Lessee's, and Guarantor's, property or assets is subject (unless consents from all applicable parties thereto have been obtained), nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority, and any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Borrower, Prime Lessee, Operating Lessee, and Guarantor, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4 Litigation . There are no lawsuits, administrative proceedings, arbitration proceedings, or other such legal proceedings that have been filed and served upon Borrower (or with respect to which Borrower has otherwise received proper notice) or, to the Best of Borrower's Knowledge, otherwise pending or threatened against or affecting Borrower, Prime Lessee, Operating Lessee, or the Property whose outcome, if determined against Borrower, Prime Lessee, Operating Lessee, or the Property, would have a Material Adverse Effect. To the Best of Borrower's Knowledge, **Schedule I** includes each pending action against Borrower, Prime Lessee, Operating Lessee, or otherwise affecting the Property that involves a claim or claims for either (a) monetary damages exceeding $250,000, or (b) injunctive relief or other equitable remedy that could have a Material Adverse Effect, excluding: (i) actions for monetary damages only that have been tendered to, and accepted without reservation of rights by, the liability insurance carrier for the Property, (ii) worker's compensation claims, and (iii) any proceedings by employees working at the Property where the amount claimed in such proceeding is less than $250,000; to the Best of Borrower's Knowledge, the aggregate amount of such claims described in subclause (iii) of this sentence is less than $1,000,000.

4.1.5 Agreements . Neither Borrower, Prime Lessee nor Operating Lessee is a party to any agreement or instrument or subject to any restriction which is reasonably likely to have a Material Adverse Effect. Neither Borrower, Prime Lessee nor Operating Lessee is in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower, Prime Lessee, Operating Lessee, or the Property is bound, which default is reasonably likely to have a Material Adverse Effect. Neither Borrower, Prime Lessee nor Operating Lessee has any material financial obligation (contingent or otherwise) under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower, Prime Lessee or Operating Lessee is a party or by which

Borrower, Prime Lessee, Operating Lessee, or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property, including membership programs disclosed in writing to Lender on or prior to the date hereof, and (b) obligations under the Loan Documents.

4.1.6 Title . Borrower has good, marketable and insurable fee simple title and/or leasehold title, as applicable, to the Land and the Improvements, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Borrower or Operating Lessee, as applicable, has good and marketable title to the remainder of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, and Accommodation Security Documents, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first mortgage lien on the Land and the Improvements, subject only to Permitted Encumbrances and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. Except as may be indicated in and insured over by the Title Policy, to the Best of Borrower's Knowledge, there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents. Borrower represents and warrants that none of the Permitted Encumbrances will have a Material Adverse Effect. Borrower shall preserve its right, title and interest in and to the Property for so long as the Note remains outstanding and will warrant and defend same and the validity and priority of the Lien hereof from and against any and all claims whatsoever other than the Permitted Encumbrances.

4.1.7 No Bankruptcy Filing . None of Borrower, Prime Lessee, Operating Lessee, or Guarantor, is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of such entity's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against Borrower or against Prime Lessee, Operating Lessee or any Guarantor.

4.1.8 Full and Accurate Disclosure . To the Best of Borrower's Knowledge, no statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower which has not been disclosed which has a Material Adverse Effect, or to the Best of Borrower's Knowledge could reasonably be expected to have a Material Adverse Effect.

4.1.9 All Property . The Property constitutes all of the real property, personal property, equipment and fixtures currently (i) owned or leased by Borrower, Prime Lessee or Operating Lessee or (ii) used in the operation of the business located on the Property, other than items owned by Manager or any Tenants (excluding items owned by Prime Lessee or Operating Lessee).

4.1.10 ERISA . (a) Borrower does not maintain or contribute to and is not required to contribute to, an "employee benefit plan" as defined by Section 3(3) of ERISA, which is subject to Title IV of ERISA (other than a "multiemployer plan" as defined by Section 3(37) of ERISA), and Borrower (i) has no knowledge of any material liability which has been incurred or is expected to be incurred by Borrower which is reasonably likely to result in a Material Adverse Effect and is or remains unsatisfied for any taxes or penalties or unfunded contributions with respect to any "employee benefit plan" or any "plan," within the meaning of Section 4975(e)(1) of the Internal Revenue Code or any other benefit plan (other than a "multiemployer plan") maintained, contributed to, or required to be contributed to by Borrower or by any entity that is under common control with Borrower within the meaning Section 4001(a)(14) of ERISA (each, an **"ERISA Affiliate"**) (each, a **"Plan"**) or any plan that would be a Plan but for the fact that it is a multiemployer plan within the meaning of ERISA Section 3(37); and (ii) has made and shall continue to make when due all required contributions to all such Plans (other than Plans relating to ERISA Affiliates), if any, where the failure to so contribute is reasonably likely to result in a Material Adverse Effect. Each such Plan (other than Plans relating to ERISA Affiliates), if any, has been and will be administered in material compliance with its terms and the applicable provisions of ERISA, the Internal Revenue Code, and any other applicable federal or state law; and no action shall be taken or fail to be taken that would result in the disqualification or loss of tax-exempt status of any such Plan intended to be qualified and/or tax exempt; and

(b) With respect to any "multiemployer plan," (i) Borrower has not, since September 26, 1980, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA, (ii) Borrower has made and shall continue to make when due all required contributions to all such "multiemployer plans" and (iii) no ERISA Affiliate has, since September 26, 1980, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA which withdrawal is reasonably expected to have a Material Adverse Effect.

(c) Borrower is not an employee benefit plan, as defined in Section 3(3) of ERISA, whether or not subject to Title I of ERISA, none of the assets of Borrower constitutes or will constitute plan assets of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101 and transactions by or with Borrower are not subject to similar laws regulating investment of, and fiduciary obligations with respect to, plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect ("**Similar Laws** "), which prohibit or otherwise restrict the transactions contemplated by this Agreement.

4.1.11 Compliance . Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes except where the failure to so comply is not reasonably expected to result in a Material Adverse Effect. To the Best of Borrower's Knowledge, neither Borrower, Prime Lessee nor Operating Lessee is in default or in violation of any order, writ, injunction, decree or demand of any Governmental Authority. To the Best of Borrower's Knowledge, there has not been committed by Borrower, Prime Lessee or Operating Lessee any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

4.1.12 Financial Information . To the Best of Borrower's Knowledge, all financial data including, without limitation, the statements of cash flow and income and operating expense, that have been delivered by or on behalf of Borrower to Lender in respect of the Property (i) are true, complete and correct in all material respects, (ii) fairly represent the financial condition of the Property as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Neither Borrower, Prime Lessee nor Operating Lessee has any material contingent liabilities, liabilities for delinquent taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and could reasonably be expected to have a Material Adverse Effect, except as referred to or reflected in said financial statements and operating statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operations or business of Borrower, Prime Lessee or Operating Lessee from that set forth in said financial statements.

4.1.13 Condemnation . No Condemnation has been commenced or, to the Best of Borrower's Knowledge, is contemplated with respect to all or any portion of the Property.

4.1.14 Federal Reserve Regulations . None of the proceeds of the Loan will be used for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U, Regulation X or Regulation T or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry "margin stock" or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of Regulation U or Regulation X. As of the Closing Date, Borrower does not own any "margin stock."

4.1.15 Utilities and Public Access . The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. To the Best of Borrower's Knowledge, all utilities necessary to the existing use of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property. All roads necessary for the use of the Property for its current purposes have been completed and, if necessary, dedicated to public use.

4.1.16 Not a Foreign Person . Borrower is not a foreign person within the meaning of § 1445(f)(3) of the Code.

4.1.17 Separate Lots . The Property is comprised of one (1) or more contiguous parcels which constitute a separate tax lot or lots and does not constitute or include a portion of any other tax lot not a part of the Property.

4.1.18 Assessments . To the Best of Borrower's Knowledge, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

4.1.19 Enforceability . The Loan Documents are not subject to any existing right of rescission, set-off, counterclaim or defense by Borrower, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law)), and Borrower has not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.20 No Prior Assignment . There are no prior sales, transfers or assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding following the funding of the Loan, other than those being terminated or assigned to Lender concurrently herewith.

4.1.21 Insurance . Borrower has obtained and has delivered to Lender certified copies or certificates of all insurance policies required under this Agreement, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. Borrower has not, and to the Best of Borrower's Knowledge no Person has, done by act or omission anything which would impair the coverage of any such policy.

4.1.22 Use of Property . The Property is used exclusively for hotel purposes and other appurtenant and related uses.

4.1.23 Certificate of Occupancy; Licenses . To the Best of Borrower's Knowledge, all material certifications, permits, licenses (including, without limitation, a license to serve alcohol on the Property) and approvals, including without limitation, certificates of completion and occupancy permits required of Borrower for the legal use, occupancy and operation of the Property for hotel purposes (collectively, the **"Licenses"**), have been obtained and are in full force and effect. Borrower shall keep and maintain all Licenses necessary for the operation of the Property for hotel purposes. The use being made of the Property is in conformity with the certificate of occupancy issued for the Property.

4.1.24 Flood Zone . Except as may be shown on the Survey with respect to portions of the Improvements other than buildings and enclosed structures, none of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards.

4.1.25 Physical Condition . To the Best of Borrower's Knowledge and except as expressly disclosed in the Physical Conditions Report, the Property, including, without limitation, all buildings, Improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; to the Best of Borrower's Knowledge and except as disclosed in the Physical Conditions Report, there exists no structural or other material defects or damages in or to the Property, whether latent or otherwise, and Borrower has not received any written notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which

would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

4.1.26 Boundaries . To the Best of Borrower's Knowledge and except as disclosed on the Survey, all of the Improvements lie wholly within the boundaries and building restriction lines of the Real Property, and no improvements on adjoining properties encroach upon the Real Property, and no easements or other encumbrances upon the Real Property encroach upon any of the Improvements, so as to have a Material Adverse Effect on the value or marketability of the Real Property except those which are insured against by the Title Policy.

4.1.27 Leases . The Property is not subject to any Leases other than the Prime Lease, the Sublease and the Leases described in the certified rent roll delivered in connection with the origination of the Loan. Such certified rent roll is true, complete and correct in all material respects as of the date set forth therein. No Person has any possessory interest in the Property or right to occupy the same (other than typical short-term occupancy rights of hotel guests which are not the subject of a written agreement) except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and to the Best of Borrower's Knowledge, there are no material defaults thereunder by either party (other than as expressly disclosed on the certified rent roll delivered to Lender or the Tenant estoppel certificates delivered to Lender in connection with the closing of the Loan) and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute material defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date, except as disclosed in the Tenant estoppel certificates delivered to Lender in connection with the closing of the Loan. There has been no prior sale, transfer or assignment, hypothecation or pledge by Borrower of any Lease or of the Rents received therein, which will be outstanding following the funding of the Loan, other than those being assigned to Lender concurrently herewith. No Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the property of which the leased premises are a part.

4.1.28 Filing and Recording Taxes . All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid and the granting and recording of the Security Instrument and the UCC financing statements required to be filed in connection with the Loan. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid, and, under current Legal Requirements, the Security Instrument is enforceable against Borrower in accordance with its terms by Lender (or any subsequent holder thereof) subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law.

4.1.29 Single Purpose Entity/Separateness . (a) Borrower hereby represents, warrants and covenants that each of Operating Lessee, Prime Lessee, Borrower and

Mezzanine Borrower is and has been, since the date of its respective formation, a Single Purpose Entity and has not, since the date of its respective formation, conducted any business and owned any property whatsoever, except as specifically described in the Non-Consolidation Opinion.

(b) All of the assumptions made in the Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto and any certificates delivered by Borrower in connection with the issuance of the Non-Consolidation Opinion, are true and correct in all respects and any assumptions made in any subsequent non-consolidation opinion delivered in connection with the Loan Documents (an **"Additional Non-Consolidation Opinion"**), including, but not limited to, any exhibits attached thereto, are true and correct in all material respects. Borrower has complied with all of the assumptions made with respect to it in the Non-Consolidation Opinion. To the Best of Borrower's Knowledge, each entity other than Borrower with respect to which an assumption shall be made in any Additional Non-Consolidation Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Non-Consolidation Opinion.

4.1.30 Management Agreement . The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Manager is not an Affiliate of Borrower.

4.1.31 Illegal Activity . No portion of the Property has been or will be purchased with proceeds of any illegal activity.

4.1.32 Intentionally Deleted .

4.1.33 Tax Filings . Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower.

4.1.34 Solvency/Fraudulent Conveyance . Borrower (a) has not entered into the transaction contemplated by this Agreement or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) has received reasonably equivalent value in exchange for its obligations under the Loan Documents. After giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

4.1.35 Investment Company Act . Borrower is not (a) an investment company or a company Controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended, (b) a holding company or a subsidiary company of a holding company or an affiliate of either a holding company or a subsidiary company within the mean of the Public Utility Holding Company Act of 1935, as amended or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.36 Interest Rate Cap Agreement . The Interest Rate Cap Agreement is in full force and effect and enforceable against Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws generally affecting the enforcement of creditors' rights and subject as to enforceability to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.37 Labor . Except as described on **Schedule I** , no work stoppage, labor strike, slowdown or lockout is pending or threatened by employees and other laborers at the Property. Except as described on **Schedule I** , neither Borrower, Prime Lessee, nor Operating Lessee (i) is involved in or, to the Best of Borrower's Knowledge, threatened with any material labor dispute, material grievance or litigation relating to labor matters involving any employees and other laborers at the Property, including, without limitation, violation of any federal, state or local labor, safety or employment laws (domestic or foreign) and/or charges of unfair labor practices or discrimination complaints, (ii) to the Best of Borrower's Knowledge, has engaged with respect to the Property, in any unfair labor practices within the meaning of the National Labor Relations Act or the Railway Labor Act, or (iii) is a party to, or bound by, any existing collective bargaining agreement or union contract with respect to employees and other laborers at the Property.

4.1.38 Brokers . Neither Borrower nor, to the Best of Borrower's Knowledge, Lender has dealt with any broker or finder with respect to the loan transactions contemplated by the Loan Documents and neither party has done any acts, had any negotiations or conversations, or made any agreements or promises which will in any way create or give rise to any obligation or liability for the payment by either party of any brokerage fee, charge, commission or other compensation to any Person with respect to the transactions contemplated by the Loan Documents. Borrower covenants and agrees that it shall pay as and when due any and all brokerage fees, charges, commissions or other compensation or reimbursement due to any broker of Borrower with respect to the transactions contemplated by the Loan Documents. Borrower and Lender shall each indemnify and hold harmless the other from and against any loss, liability, cost or expense, including any judgments, attorneys' fees, or costs of appeal, incurred by the other party and arising out of or relating to any claim for brokerage commissions or finder's fees alleged to be due as a result of the indemnifying party's agreements or actions. The provisions of this Section 4.1.38 shall survive the expiration and termination of this Agreement and the payment of the Indebtedness.

4.1.39 No Other Debt . Borrower has not borrowed or received debt financing that has not been heretofore repaid in full, other than the Permitted Debt.

4.1.40 Taxpayer Identification Number . Borrower's Federal taxpayer identification numbers are 20-5432891 (SHR Scottsdale X, L.L.C.) and 20-5432996 (SHR Scottsdale Y, L.L.C.).

4.1.41 Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws . (i) None of Borrower or any Person who owns any equity interest in or Controls Borrower or, to the Best of Borrower's Knowledge, Guarantor or Ultimate Equity Owners, currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and Borrower has implemented procedures to ensure that no Person who now or hereafter owns any equity interest in Borrower, Ultimate Equity Owners or Guarantor is a Prohibited Person or Controlled by a Prohibited Person, and (ii) none of Borrower, Ultimate Equity Owners or Guarantor is in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time.

4.1.42 Knowledge Qualifications . Borrower represents that Scott Dalecio, Claude Brock, Eric Resnick and Peter McDermott are in a position to have meaningful knowledge with respect to the matters set forth in the Loan Documents which have been qualified to the knowledge of such Persons.

4.1.43 Leases . Borrower represents that it has heretofore delivered to Lender true and complete copies of all Leases and any and all amendments or modifications thereof.

4.1.44 FF&E . Manager is reserving for FF&E on a monthly basis in accordance with the terms of the Management Agreement not less than an amount equal to four percent (4%) of gross revenues with respect to the Property; such reserves are maintained in the Manager FF&E Reserve Account (subject to disbursements therefrom as permitted by the Management Agreement).

4.1.45 Ground Lease . Borrower hereby represents and warrants to Lender the following with respect to the Ground Lease:

(a) *Recording; Modification* . A memorandum of the Ground Lease has been duly recorded. The Ground Lease permits the interest of Borrower to be encumbered by a mortgage. Except as described in the definition of "Ground Lease", there have not been amendments or modifications to the terms of the Ground Lease since its recordation. Assuming compliance by Lender with Section 15.2 of the Ground Lease, the Ground Lease may not be canceled, surrendered or modified without the prior written consent of Lender.

(b) *No Liens* . Except for the Permitted Encumbrances, Borrower's interest in the Ground Lease is not subject to any Liens or encumbrances superior to, or of equal priority with, the related Security Instrument other than the ground lessor's related fee interest.

(c) *Ground Lease Assignable* . After Lender complies with Section 15.2 of the Ground Lease, any sale of the Ground Lease and of the leasehold estate created thereby in any proceeding for the foreclosure of the Security Instrument shall be deemed to be a permitted sale, transfer or assignment of the Ground Lease and of the leasehold estate created thereby.

(d) *Default* . As of the date hereof, the Ground Lease is in full force and effect and no default has occurred under the Ground Lease and there is no existing condition which, but for the passage of time or the giving of notice, could result in a default under the terms of the Ground Lease.

(e) *Notice* . Assuming compliance by Lender with Section 15.2 of the Ground Lease, the Ground Lease requires the ground lessor to give Lender notice of any default by Borrower to Lender as well as notice of termination of the Ground Lease.

(f) *Cure* . Assuming compliance by Lender with Section 15.2 of the Ground Lease, Lender is permitted the opportunity to cure any default under the Ground Lease as set forth in Section 15.4 of the Ground Lease.

(g) *Term* . The Ground Lease has a term which extends not less than ten (10) years beyond the Maturity Date.

(h) *New Lease* . Assuming compliance by Lender with Section 15.2 of the Ground Lease, the Ground Lease requires the ground lessor to enter into a new lease with Lender upon termination of the Ground Lease by reason of a default by ground lessee thereunder in the event of compliance with the provisions of Section 15.12 of the Ground Lease.

(i) *Insurance Proceeds* . Under the terms of the Ground Lease and the Security Instrument, taken together, any related insurance and condemnation proceeds will be applied either to the repair or restoration of all or part of the Ground Lease Property, with Lender having the right to hold and disburse the proceeds as the repair or restoration progresses, or to the payment of the outstanding principal balance of the Loan together with any accrued interest thereon.

(j) *Subleasing* . The Ground Lease does not impose any restrictions on subleasing other than a "sublet in whole" as is more fully set forth in Article XIII of the Ground Lease.

4.1.46 TIC. The TIC Agreement is in full force and effect and no default has occurred and there is no condition existing which, but for the passage of time or the giving of notice, or both, could result in a default under the terms of the TIC Agreement. Borrower has delivered to Lender a true and correct copy of the TIC Agreement.

4.1.47 Survival of Representations . Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall be deemed given and made as of the date of the funding of the Loan and survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower or Guarantor unless a longer survival period is expressly stated in a Loan Document with respect to a specific representation

or warranty, in which case, for such longer period. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

V. BORROWER COVENANTS

Section 5.1 Affirmative Covenants . From the Closing Date and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of this Agreement and the Security Instrument in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender to comply with and to cause Prime Lessee and Operating Lessee to comply with, the following covenants, and in such connection, references in this Article V to Borrower shall alternatively mean Prime Lessee or Operating Lessee, as the context may require:

5.1.1 Performance by Borrower . Borrower shall observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, in accordance with the provisions of each Loan Document, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower, as applicable, without the prior written consent of Lender.

5.1.2 Existence; Compliance with Legal Requirements; Insurance . Subject to Borrower's right of contest pursuant to Section 7.3 , Borrower shall comply and cause the Property to be in compliance with all Legal Requirements applicable to the Borrower, Manager and the Property and the uses permitted upon the Property. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises necessary to comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall not knowingly permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, knowingly permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all material franchises and trade names and preserve all the remainder of its property used in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully set forth in the Security Instrument. Borrower shall keep the Property insured at all times to such extent and against such risks, and maintain liability and such other insurance, as set forth in this Agreement.

5.1.3 Litigation . Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower which, if determined adversely to Borrower, would have a Material Adverse Effect.

5.1.4 Single Purpose Entity . (a) Borrower shall remain a Single Purpose Entity.

(b) Except as permitted by the Loan Documents, Borrower shall continue to maintain its own deposit account or accounts, separate from those of any Affiliate, with commercial banking institutions. None of the funds of Borrower will be commingled with the funds of any other Affiliate.

(c) To the extent that Borrower shares the same officers or other employees as any of its Affiliates, the salaries of and the expenses related to providing benefits to such officers and other employees shall be fairly allocated among such entities, and each such entity shall bear its fair share of the salary and benefit costs associated with all such common officers and employees.

(d) To the extent that Borrower jointly contracts with any of its Affiliates to do business with vendors or service providers or to share overhead expenses, the costs incurred in so doing shall be allocated fairly among such entities, and each such entity shall bear its fair share of such costs. To the extent that Borrower contracts or does business with vendors or service providers where the goods and services provided are partially for the benefit of any other Person, the costs incurred in so doing shall be fairly allocated to or among such entities for whose benefit the goods and services are provided, and each such entity shall bear its fair share of such costs. All material transactions between (or among) Borrower and any of its Affiliates shall be conducted on substantially the same terms (or on more favorable terms for Borrower) as would be conducted with third parties.

(e) To the extent that Borrower or any of its Affiliates have offices in the same location, there shall be a fair and appropriate allocation of overhead costs among them, and each such entity shall bear its fair share of such expenses.

(f) Borrower shall conduct its affairs strictly in accordance with its organizational documents, and observe all necessary, appropriate and customary corporate, limited liability company or partnership formalities, as applicable, including, but not limited to, obtaining any and all consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, without limitation, payroll and intercompany transaction accounts.

(g) In addition, Borrower shall: (i) maintain books and records separate from those of any other Person; (ii) maintain its assets in such a manner that it is not more costly or difficult to segregate, identify or ascertain such assets; (iii) hold regular meetings of its board of directors, shareholders, partners or members, as the case may be, and observe all other corporate, partnership or limited liability company, as the case may be, formalities; (iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; (v) prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group; (vi) transact all business with its Affiliates on an arm's-length basis and pursuant to enforceable agreements; (vii) conduct business in its name and use separate stationery, invoices and checks; (viii) not commingle its assets or funds with those of any other Person; and (ix) not assume, guarantee or pay the debts or obligations of any other Person.

5.1.5 Consents . If Borrower is a corporation, the board of directors of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including the Independent Directors, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents). If Borrower is a limited liability company, (a) if such Person is managed by a board of managers, the board of managers of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of managers unless all of the managers, including the Independent Managers, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents), (b) if such Person is not managed by a board of managers, the members of such Person may not take any action requiring the affirmative vote of 100% of the members of such Person unless all of the members, including the Independent Members, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents). An affirmative vote of 100% of the directors, board of managers or members, as applicable, including without limitation the Independent Directors, of Borrower shall be required to (i) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings or to authorize Borrower to do so or (ii) file an involuntary bankruptcy petition against any Close Affiliate. Furthermore, Borrower's formation documents shall expressly state that for so long as the Loan is outstanding, Borrower shall not be permitted to (i) dissolve, liquidate, consolidate, merge or sell all or substantially all of Borrower's assets other than in connection with the repayment of the Loan or (ii) engage in any other business activity and such restrictions shall not be modified or violated for so long as the Loan is outstanding.

5.1.6 Access to Property . Borrower shall permit agents, representatives and employees of Lender and the Rating Agencies to inspect the Property or any part thereof during normal business hours on Business Days upon reasonable advance notice.

5.1.7 Notice of Default . Borrower shall promptly advise Lender (a) of any event or condition that has or is likely to have a Material Adverse Effect and (b) of the occurrence of any Default or Event of Default of which Borrower has knowledge.

5.1.8 Cooperate in Legal Proceedings . Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which would reasonably be expected to affect in any material adverse way the rights of Lender hereunder or under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings which may have a Material Adverse Effect.

5.1.9 Perform Loan Documents . Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required, under the Loan Documents executed and delivered by, or applicable to, Borrower.

5.1.10 Insurance . (a) Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any expenses incurred in connection therewith (including reasonable attorneys' fees and disbursements) out of such Proceeds.

(b) Borrower shall comply with all Insurance Requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by any Insurance Requirement, or would invalidate insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to Section 6.1 .

5.1.11 Further Assurances; Separate Notes . (a) Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement and the other Loan Documents and any security interest created or purported to be created thereunder, to protect and further the validity, priority and enforceability of this Agreement and the other Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder. At any time after the Closing Date, Borrower agrees that it shall, upon request, reasonably cooperate with Lender in connection with any request by Lender to reallocate the LIBOR Margin among the Notes or to sever the Note into two (2) or more separate substitute or component notes in an aggregate principal amount equal to the Principal Amount and to reapportion the Loan among such separate substitute notes, including, without limitation, by executing and delivering to Lender new substitute or component notes to replace the Note, amendments to or replacements of existing Loan Documents to reflect such severance and/or Opinions of Counsel with respect to such substitute or component notes, amendments and/or replacements, provided that Borrower shall bear no costs or expenses in connection therewith (other than administrative costs and expenses of Borrower and legal fees of counsel to the Borrower and Guarantor), and the holders of such substitute or component notes shall designate a lead lender or agent for such holders to whom Borrower may direct all communications with respect to the Loan. Any such substitute or component notes may have varying principal amounts and economic terms, provided , however , that (i) the maturity date of any such substitute or component notes shall be the same as the scheduled Maturity Date of the Note immediately prior to the issuance of such substitute notes, (ii) the substitute notes shall provide for amortization of the Principal Amount on a weighted average basis over a period not less than the amortization period provided under the Note, if any, immediately prior to the issuance of the substitute notes, (iii) the weighted average LIBOR Margin for the term of the substitute notes shall not exceed the LIBOR Margin under the Note immediately prior to the issuance of such substitute notes; and (iv) the economics of the Loan, taken as a whole, shall not change in a manner which is adverse to Borrower. Upon the occurrence and during the continuance of an Event of Default, Lender may apply payment of all sums due under such substitute notes in such order and priority as Lender shall elect in its sole and absolute discretion.

(b) No Securitization shall occur prior to March 1, 2007. Borrower further agrees that if, in connection with the Securitization, it is determined by the Rating Agencies that

a portion of the Securitization would not receive an "investment grade" rating unless the principal amount of the Loan were to be decreased and, as a result, the principal amount of the Loan is decreased, then (i) the Borrower shall take all actions as are necessary to effect the "resizing", including the reallocation of the LIBOR Margin of the Mezzanine Loan and the Loan, (ii) the Borrower shall cause the Mezzanine Borrower to comply with its agreements to effect a "resizing", and (iii) Lender shall on the date of the "resizing" of the Loan lend to the Mezzanine Borrower (by way of a reallocation of the principal amount of the Loan and the Mezzanine Loan) such additional amount equal to the amount of the principal reduction of the Loan (without Prepayment Fee or penalty) provided that Borrower and the Mezzanine Borrower execute and deliver any and all necessary amendments or modifications to the Loan Documents and the Mezzanine Loan Documents. In addition, Borrower and Lender agree that if, in connection with the Securitization, it is determined by the Rating Agencies that, if the principal amount of the Mezzanine Loan were to be decreased and, as a result the principal amount of the Loan were increased, more "investment grade" rated securities could be issued, then (i) if "resizing" to decrease the size of the Mezzanine Loan and increase the size of the Loan is provided for in the Mezzanine Loan Documents, each of them shall take all actions provided for in the documentation for the Loan as are necessary to effect the "resizing" of the Loan and the Mezzanine Loan, (ii) Borrower shall cause the Mezzanine Borrower to comply with its agreements to effect a "resizing" and (iii) Lender shall on the date of the "resizing" of the Loan lend to the Borrower (by way of a reallocation of the principal amount of the Loan and the Mezzanine Loan) an additional amount equal to the amount of principal reduction of the Mezzanine Loan, provided that Borrower and the Mezzanine Borrower execute and deliver any and all necessary modifications to the Loan Documents and Mezzanine Loan Documents. In connection with the foregoing, Borrower agrees, at Lender's sole cost and expense other than with respect to (1) Borrower's, Prime Lessee's, Operating Lessee's, the Guarantor's, each Ultimate Equity Owners' and their Affiliate's counsel fees and (2) if the principal amount of the Loan is increased, an endorsement to the Title Policy reflecting an increase in the insured amount thereunder which shall be at Borrower's sole cost and expense, to execute and deliver such documents and other agreements reasonably required by Mezzanine Lender and/or Lender to "re-size" the Loan and the Mezzanine Loan, including, without limitation, an amendment to this Agreement, the Note, the Security Instrument and the other Loan Documents. Borrower agrees to reimburse Lender for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Lender in connection with any "resizing" of the Loan. Notwithstanding the foregoing, Lender agrees that any "resizing" of the Loan and the Mezzanine Loan shall not change the economics of the Loan and the Mezzanine Loan taken as a whole in a manner which is adverse to Borrower .

(c) In addition, Borrower shall, at Borrower's sole cost and expense:

(i) furnish to Lender, to the extent not otherwise already furnished to Lender and reasonably acceptable to Lender, all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents;

(ii) execute and deliver, from time to time, such further instruments (including, without limitation, delivery of any financing statements under the UCC) as may be reasonably requested by Lender to confirm the Lien of the Security Instrument on any Building Equipment, Operating Asset or any Intangible;

(iii) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require;

(iv) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the carrying out of the terms and conditions of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time; and

(v) cause its New York counsel to re-issue the New York opinion delivered on the date hereof (in identical form and without updating) in favor of a trustee in a Securitization if such trustee is different that the trustee currently listed in such opinion.

5.1.12 Mortgage Taxes . Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender.

5.1.13 Operation . Borrower shall, and shall cause Manager to, (i) promptly perform and/or observe all of the covenants and agreements required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any "event of default" under the Management Agreement of which it is aware; (iii) enforce in a commercially reasonable manner the performance and observance of all of the covenants and agreements required to be performed and/or observed by the Manager under the Management Agreement.

5.1.14 Business and Operations . Borrower shall continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower shall qualify to do business and shall remain in good standing under the laws of the State in which the Property is located and as and to the extent required for the ownership, maintenance, management and operation of the Property.

5.1.15 Title to the Property . Borrower shall warrant and defend (a) its title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Security Instrument, the Assignment of Leases and this Agreement on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.16 Costs of Enforcement . In the event (a) that this Agreement or the Security Instrument is foreclosed upon in whole or in part or that this Agreement or the Security

Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any security agreement prior to or subsequent to this Agreement in which proceeding Lender is made a party, or a mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including reasonable attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.17 Estoppel Statement . (a) Borrower shall, from time to time, upon thirty (30) days' prior written request from Lender, execute, acknowledge and deliver to the Lender, an Officer's Certificate, stating that this Agreement and the other Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that this Agreement and the other Loan Documents are in full force and effect as modified and setting forth such modifications), stating the amount of accrued and unpaid interest and the outstanding principal amount of the Note and containing such other information, qualified to the Best of Borrower's Knowledge, with respect to the Borrower, the Property and the Loan as Lender shall reasonably request. The estoppel certificate shall also state either that no Default exists hereunder or, if any Default shall exist hereunder, specify such Default and the steps being taken to cure such Default.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender, within thirty (30) days of Lender's request, tenant estoppel certificates from each Tenant under any Material Lease entered into after the Closing Date in substantially the form and substance of the estoppel certificate set forth in **Exhibit G** provided that Borrower shall not be required to deliver such certificates more frequently than one time in any calendar year; provided , however , that there shall be no limit on the number of times Borrower may be required to obtain such certificates if a Default hereunder or under any of the Loan Documents has occurred and is continuing.

5.1.18 Loan Proceeds . Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4 .

5.1.19 No Joint Assessment . Borrower shall not suffer, permit or initiate the joint assessment of the Property (a) with any other real property constituting a tax lot separate from the Property and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.1.20 No Further Encumbrances . Borrower shall do, or cause to be done, all things necessary to keep and protect the Property and all portions thereof unencumbered from any Liens, easements or agreements granting rights in or restricting the use or development of the Property, except for (a) Permitted Encumbrances, (b) Liens permitted pursuant to the Loan Documents, (c) Liens for Impositions prior to the imposition of any interest, charges or expenses for the non-payment thereof and (d) any Liens permitted pursuant to Leases.

5.1.21 Leases . Borrower shall promptly after receipt thereof deliver to Lender a copy of any notice received with respect to any Material Lease claiming that Borrower is in default in the performance or observance of any of the material terms, covenants or conditions of any of the Material Leases, if such default is reasonably likely to have a Material Adverse Effect.

5.1.22 Article 8 "Opt In" Language . Each organizational document of Borrower, Mezzanine Borrower and each of the other entities identified in Section 4.1.29 hereof shall be modified to include the language set forth on **Exhibit R** .

5.1.23 FF&E . Borrower shall cause Manager to reserve for FF&E on a monthly basis in accordance with the Management Agreement, such reserves to be maintained in the Manager FF&E Reserve Account.

5.1.24 Qualified Intermediary. Prior to consummation of the Exchange, Qualified Intermediary shall not pledge its indirect interests in Borrower, except as permitted by the terms of this Agreement and the Exchange Documents.

5.1.25 TIC. (a) Borrower will: (i) promptly perform and observe all of the covenants, agreements, obligations and conditions required to be performed and observed by Borrower under the TIC Agreement, and do all things necessary to preserve and keep unimpaired its rights thereunder; (ii) promptly notify Lender in writing of the receipt by any Co- Borrower of any notice (other than notices customarily sent on a regular periodic basis) from any party under the TIC Agreement and of any notice noting or claiming any default by any party to the TIC Agreement in the performance or observance of any of the terms, covenants, or conditions on the part of Borrower to be performed or observed under the TIC Agreement; (iii) promptly notify Lender in writing of the receipt by any party to the TIC Agreement of any notice from any party to the TIC Agreement of any alleged termination of the TIC Agreement and promptly cause a copy of each such notice to be delivered to Lender; and (iv) promptly notify Lender in writing of any request made by any party to the TIC Agreement to any other party thereto for arbitration or appraisal proceedings pursuant to the TIC Agreement, and of the institution of any arbitration or appraisal proceedings and promptly deliver to Lender a copy of the determination of the arbitrators or appraisers in each such proceeding. Upon the written demand of Lender, Borrower will promptly deliver to Lender a certificate stating that the TIC Agreement is in full force and effect, is unmodified (or identifying any modifications), that no notice of termination thereof has been served on Borrower and stating whether or not there are any defaults thereunder and specifying the nature of such defaults, if any. Borrower shall deliver to Lender such certificate within ten (10) days after Lender's demand therefor. Each of the Co-Borrowers, as owners in indivision, shall at all times share one centralized address for notice and one centralized address for service of process, which common service of process address and notice address are as set forth in Section 19.3 and Section 19.6 hereof (and which common service of process address and notice address may be changed by Borrower from time to time in accordance with the provisions of Section 19.3 and Section 19.6 respectively).

(b) Borrower will not surrender the TIC Agreement or its estate and interest therein, nor terminate or cancel the TIC Agreement; and (except for modifications or amendments made in connection with permitted Transfers under Article VIII solely to reflect such transfers of interests) Borrower will not, without the prior written consent of Lender, modify, change, supplement, alter or amend the TIC Agreement (except for modifications or amendments made in connection with permitted Transfers under Article VIII solely to reflect such transfers of interests), either orally or in writing, and as further security for the repayment of the Debt and for the performance of the covenants, agreements, obligations and conditions herein and in the TIC Agreement contained, each Co-Borrower hereby pledges and assigns to Lender all of its rights, privileges and prerogatives as a party to the TIC Agreement, including, without limitation, any and all rights of first refusal (including those which arise under Section 363(i) of the Bankruptcy Code), any options to purchase and similar rights (provided, however, the foregoing shall not be deemed to limit or restrict any Co-Borrower's right to exercise any such rights or options in order to effect transfers otherwise permitted by Article VIII) as well as rights to terminate, cancel, modify, change, supplement, alter or amend the TIC Agreement (except as provided above), and any such termination, cancellation, modification, change, supplement, alteration or amendment of the TIC Agreement (except as provided above), without the prior written consent thereto by Lender, shall be void and of no force and effect. Without limiting the generality of the foregoing, Borrower will not reject the TIC Agreement pursuant to Section 365(a) of the Bankruptcy Code or any successor law, or allow the TIC Agreement to be deemed rejected by inaction and lapse of time, and will not elect to treat the TIC Agreement as terminated by any party to the TIC Agreement's rejection of such TIC Agreement pursuant to Section 365(h)(1) of the Bankruptcy Code or any successor law, and as further security for the repayment of the Indebtedness and for the performance of the covenants, agreements, obligations and conditions herein and in the TIC Agreement contained, Borrower hereby assigns to Lender all of the rights, privileges and prerogatives of Borrower and any of Borrower's bankruptcy trustee to deal with the TIC Agreement, which right may arise as a result of the commencement of a proceeding under the federal bankruptcy laws by or against any party under the TIC Agreement, including, without limitation, the right to assume or reject, or to compel the assumption or rejection of the TIC Agreement pursuant to Section 365(a) of the Bankruptcy Code or any successor law, the right to seek and obtain extensions of time to assume or reject the TIC Agreement, the right to elect whether to treat the TIC Agreement as terminated by any party's rejection of such TIC Agreement or to remain in possession of the Property and offset damages pursuant to Section 365(b)(1) of the Bankruptcy Code or any successor law; and any exercise of such rights, privileges or prerogatives by Borrower's bankruptcy trustee without the prior written consent thereto by Lender shall be void and of no force and effect. No release or forbearance of any of Borrower's obligations under the TIC Agreement, whether pursuant to the TIC Agreement or otherwise, shall release either party from any of its obligations under this Agreement. Borrower hereby expressly grants to Lender, and agrees that Lender shall have, the absolute and immediate right (notwithstanding any cure periods applicable to acceleration of the Note or exercise of remedies provided for herein) to enter in and upon the Property or any part thereof, to such extent and as often as Lender, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by any party to the TIC Agreement. Lender may immediately pay and expend such sums of money (notwithstanding any cure periods applicable to acceleration of the Note or exercise of remedies provided for herein) as Lender, in its sole discretion, deems necessary to prevent or cure any such default by any party to the TIC

Agreement, and Borrower hereby agrees to pay to Lender, upon not less than ten (10) business days' notice, all such sums so paid and expended by Lender, together with interest thereon from the date of each such payment at the Default Rate. All sums so paid and expended by Lender, and the interest thereon, shall be added to and be secured by the Lien of the Loan Documents. Each Co-Borrower, as owners in indivision, for themselves and for their respective successors and assigns hereby (w) so long as any portion of the Indebtedness is outstanding, waive and relinquish its rights to partition, in kind or by licitation, the Property, which they own and hold in common, (x) subordinates in all respects the TIC Agreement and all of its rights and remedies, indemnity or otherwise, under the TIC Agreement to the Lien of the Security Instrument and the other Loan Documents and to all of Lender's rights under the Security Instrument and the other Documents, and (y) subordinates in all respects any options to purchase or rights of first refusal and any other similar rights with respect to another Co-Borrower's interest in the Property to the Lien of the Security Instrument and the other Loan Documents (including without limitation, the transfer restrictions contained herein and therein) and to all of Lender's rights under the Security Instrument and the other Loan Documents (provided, however, the foregoing shall not be deemed to limit or restrict any Co-Borrower's right to exercise any such rights or options in order to effect transfers otherwise permitted by Article VIII hereof).

5.1.26 Fountain . Within six (6) months of the date of this Agreement, Borrower shall provide Lender with all plans, drawings, cost estimations and all other documentation as may be required by Lender (acting reasonably) relating to all works proposed by Borrower and/or Operating Lessee in respect of the Fountain.

Section 5.2 Negative Covenants . From the Closing Date until payment and performance in full of all Obligations of Borrower under the Loan Documents or the earlier release of the Lien of this Agreement or the Security Instrument in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that it will not do (and will not permit Prime Lessee or Operating Lessee to do), or permit to be done, directly or indirectly, any of the following (and in such connection, references in this Article V to Borrower shall alternatively mean Prime Lessee or Operating Lessee, as the context may require):

5.2.1 Incur Debt . Incur, create or assume (or permit Prime Lessee or Operating Lessee to incur, create or assume) any Indebtedness other than Permitted Debt or Transfer all or any part of the Property or any interest therein, except as permitted in the Loan Documents;

5.2.2 Encumbrances . Other than in connection with a Permitted Mezzanine Transfer and except as permitted pursuant to Article VIII , incur, create or assume or permit the incurrence, creation or assumption of any Indebtedness other than Permitted Debt secured by an interest in Borrower, Prime Lessee, Operating Lessee or Mezzanine Borrower and shall not Transfer (other than the Prime Lease) or permit the Transfer of any interest in such Persons;

5.2.3 Engage in Different Business . Engage, or permit Prime Lessee or Operating Lessee to engage, directly or indirectly, in any business other than that of entering into this Agreement and the other Loan Documents to which Borrower is a party and the use, ownership, management, leasing, renovation, financing, development, operation and maintenance of the Property and activities related thereto;

5.2.4 Make Advances . Make or permit Prime Lessee or Operating Lessee to make advances or make loans to any Person, or hold any investments, except as expressly permitted pursuant to the terms of this Agreement or any other Loan Document;

5.2.5 Partition . Partition or permit the partition of the Property, except as permitted hereunder;

5.2.6 Commingle . Commingle its assets or permit Prime Lessee or Operating Lessee to commingle its assets with the assets of any of Borrower's, Prime Lessee's and/or Operating Lessee's Affiliates except as permitted by the definition of "Single Purpose Entity";

5.2.7 Guarantee Obligations . Guarantee or permit Prime Lessee's or Operating Lessee to guarantee any obligations of any Person;

5.2.8 Transfer Assets . Transfer or permit Prime Lessee or Operating Lessee to transfer any asset other than in the ordinary course of business or Transfer any interest in the Property except as may be permitted hereby or in the other Loan Documents;

5.2.9 Amend Organizational Documents . Amend or modify any of its, Prime Lessee's or Operating Lessee's organizational documents without Lender's consent, other than in connection with any Transfer permitted pursuant to Article VIII or to reflect any change in capital accounts, contributions, distributions, allocations or other provisions that do not and could not reasonably be expected to have a Material Adverse Effect and provided that each such Person remain a Single Purpose Entity;

5.2.10 Dissolve . Dissolve, wind-up, terminate, liquidate, merge with or consolidate into another Person, except following or simultaneously with a repayment of the Loan in full or as expressly permitted pursuant to this Agreement;

5.2.11 Bankruptcy . (i) File (or permit Prime Lessee or Operating Lessee to file) a bankruptcy or insolvency petition or otherwise institute insolvency proceedings, (ii) dissolve, liquidate, consolidate, merge or sell all or substantially all of Borrower's assets other than in connection with the repayment of the Loan, (iii) engage (or permit Prime Lessee or Operating Lessee to engage) in any other business activity or (iv) file or solicit the filing (or permit Prime Lessee or Operating Lessee to file or solicit the filing) of an involuntary bankruptcy petition against Borrower, Prime Lessee or Operating Lessee, or any Close Affiliate of any such Person without obtaining the prior consent of all of the directors of Borrower, including, without limitation, the Independent Directors;

5.2.12 ERISA . Engage in any activity that would subject it to regulation under ERISA or qualify it as an "employee benefit plan" (within the meaning of Section 3(3) of ERISA) to which ERISA applies and Borrower's assets do not and will not constitute plan assets within the meaning of 29 C.F.R. Section 2510.3-101;

5.2.13 Distributions . From and after the occurrence and during the continuance of an Event of Default, make (or permit Prime Lessee or Operating Lessee to make) any distributions to or for the benefit of any of Borrower's, Prime Lessee's or Operating Lessee's shareholders, partners or members, as the case may be, or its or their Affiliates;

5.2.14 Manager . (a) Borrower represents, warrants and covenants on behalf of itself, Prime Lessee and Operating Lessee that the Property shall at all times be managed by an Acceptable Manager pursuant to an Acceptable Management Agreement.

(b) Notwithstanding any provision to the contrary contained herein or in the other Loan Documents, except as provided in this Section 5.2.14 or in connection with a release made in accordance with Section 2.3.4 , Borrower may not amend, modify, supplement, alter or waive any right under the Management Agreement (or permit any such action) without the receipt of a Rating Agency Confirmation. Without the receipt of a Rating Agency Confirmation, Borrower shall be permitted to make any nonmaterial modification, change, supplement, alteration or amendment to the Management Agreement and to waive any nonmaterial rights thereunder, provided that no such modification, change, supplement, alteration, amendment or waiver shall affect the cash management procedures set forth in the Management Agreement or the Loan Documents, decrease the cash flow of the Property, adversely affect the marketability of the Property, change the definitions of "default" or "event of default," change the definitions of "operating expense" or words of similar meaning to add additional items to such definitions, change any definitions or provisions so as to reduce the payments due the Borrower thereunder, change the timing of remittances to the Borrower thereunder, increase or decrease reserve requirements, change the term of the Management Agreement or increase any Management Fees payable under the Management Agreement.

(c) Borrower may enter into a new Management Agreement with an Acceptable Manager upon receipt of a Rating Agency Confirmation with respect to the Management Agreement and delivery of an acceptable Non-Consolidation Opinion covering such replacement manager if such Person (i) is not covered by the Non-Consolidation Opinion or an Additional Non-Consolidation Opinion, and (ii) is an Affiliate of Borrower.

5.2.15 Management Fee . Borrower may not, without the prior written consent of Lender (which may be withheld in its sole and absolute discretion) take or permit to be taken any action that would increase the percentage amount of the Management Fee, or add a new type of fee (other than a "Group Services Expense" as permitted by Section 5.2.14 above) payable to Manager relating to the Property, including, without limitation, the Management Fee.

5.2.16 Operating Lease . Without the prior written consent of Lender surrender or terminate the Operating Lease unless the other party thereto is in material default and the termination of such agreement would be commercially reasonable.

5.2.17 Modify Account Agreement . Without the prior consent of Lender, which shall not be unreasonably withheld, delayed or conditioned (and if a Securitization shall have occurred, a Rating Agency Confirmation obtained by Borrower), Borrower shall not execute any modification to the Account Agreement;

5.2.18 Zoning Reclassification . Except as contemplated by Section 2.3.4 , without the prior written consent of Lender, which consent shall not be unreasonably withheld, (a) initiate or consent to any zoning reclassification of any portion of the Property, (b) seek any variance under any existing zoning ordinance that would result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, or (c) allow any portion of the Property to be used in any manner that could result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation;

5.2.19 TIC Agreement. Except for transfers and other actions permitted by Article VIII , the Co-Borrowers will not terminate, modify, change, supplement, alter, amend or cancel the TIC Agreement without the Lender's prior written consent.

5.2.20 Debt Cancellation . Cancel or otherwise forgive or release any material claim or debt owed to it by any Person, except for adequate consideration or in the ordinary course of its business and except for termination of a Lease as permitted by Section 8.8 ;

5.2.21 Misapplication of Funds . Distribute any revenue from the Property or any Proceeds in violation of the provisions of this Agreement, fail to remit amounts to the Collection Accounts or Holding Account, as applicable, as required by Section 3.1 , misappropriate any security deposit or portion thereof or apply the proceeds of the Loan in violation of Section 2.1.4 ; or

5.2.22 Single-Purpose Entity . Fail to be (or permit Prime Lessee or Operating Lessee) to fail to be a Single-Purpose Entity or take or suffer any action or inaction the result of which would be to cause such Person to cease to be a Single-Purpose Entity.

Section 5.3 Ground Lease Provisions .

Notwithstanding any other provision of this Agreement or any other Loan Document to the contrary, Borrower hereby warrants, covenants, represents and agrees as to the Ground Lease as follows:

(a) **The Ground Lease .** Borrower shall (i) pay all rents, additional rents and other sums required to be paid by Borrower as tenant under and pursuant to the provisions of the Ground Lease as and when such rent or other charge is payable, (ii) diligently perform and observe all of the terms, covenants and conditions of the Ground Lease on the part of Borrower, as tenant thereunder, to be performed and observed at least three (3) days prior to the expiration of any applicable grace period therein provided, and (iii) promptly notify Lender of the giving of any written notice by the lessor under the Ground Lease to Borrower of any default by Borrower in the performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of Borrower, as tenant thereunder, to be performed or observed and deliver to Lender a true copy of each such notice. Borrower shall not, without the prior consent of Lender, surrender the leasehold estate created by any Ground Lease or terminate or cancel the Ground Lease or modify, change, supplement, alter or amend the Ground Lease, either orally or in writing, and Borrower hereby assigns to Lender, as further security for the payment of the Indebtedness and for the performance and observance of the terms, covenants and conditions of

the Security Agreement and this Agreement, all of the rights, privileges and prerogatives of Borrower, as tenant under the Ground Lease, to surrender the leasehold estate created by the Ground Lease or to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease and any such surrender of the leasehold estate created by the Ground Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease without the prior consent of Lender shall be void and of no force and effect. If Borrower shall default in the performance or observance of any term, covenant or condition of the Ground Lease on the part of Borrower, as tenant thereunder, to be performed or observed, then, without limiting the generality of the other provisions of the Security Agreement and this Agreement and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Ground Lease on the part of Borrower, as tenant thereunder, to be performed or observed or to be promptly performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under the Ground Lease shall be kept unimpaired as a result thereof and free from default, even though the existence of such event of default or the nature thereof be questioned or denied by Borrower or by any party on behalf of Borrower. If Lender shall make any payment or perform any act or take action in accordance with the preceding sentence, Lender will give prior written notice thereof to Borrower before the making of any such payment, the performance of any such act, or the taking of any such action. In any such event, subject to the rights of tenants, subtenants and other occupants under the leases, Lender and any person designated as Lender's agent by Lender shall have, and are hereby granted, the right to enter upon the Ground Lease Property at any reasonable time, on reasonable notice and from time to time for the purpose of taking any such action. Lender may pay and expend such sums of money as Lender reasonably deems necessary for any such purpose and upon so doing shall be subrogated to any and all rights of the landlord under the Ground Lease. Borrower hereby agrees to pay to Lender within five (5) days after demand, all such sums so paid and expended by Lender, together with interest thereon from the day of such payment at the Default Rate. All sums so paid and expended by Lender and the interest thereon shall be secured by the legal operation and effect of the Security Agreement. If the lessor under any Ground Lease shall deliver to Lender a copy of any notice of default sent by said lessor to Borrower, as tenant under the Ground Lease, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender, in good faith, in reliance thereon. Borrower shall exercise each individual option, if any, to extend or renew the term of the Ground Lease upon demand by Lender made at any time within one (1) year of the last day upon which any such option may be exercised, and if Borrower shall fail to do so, Borrower hereby expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest. Lender shall not require Borrower to exercise such option to extend or renew the term of the Ground Lease unless such option to extend or renew is, by the terms of the Ground Lease, exercisable within two (2) years of the Maturity Date. Borrower will not subordinate or consent to the subordination of any Ground Lease to any mortgage, security deed, lease or other interest on or in the landlord's interest in all or any part of the Ground Lease Property, unless, in each such case, the written consent of Lender shall have been first had and obtained, which approval shall not unreasonably be withheld, it being acknowledged by Lender that the Ground Lease in the form in effect as of the date hereof provides for such subordination.

(b) **Subleases .** Each Material Lease of any portion of the Ground Lease Property subject to the Ground Lease hereafter made and each renewal of any existing such Lease shall provide that, (i) in the event of the termination of the Ground Lease, the lease shall not terminate or be terminable by the tenant; (ii) in the event of any action for the foreclosure of the Security Agreement, the lease shall not terminate or be terminable by the subtenant by reason of the termination of the Ground Lease unless the tenant is specifically named and joined in any such action and unless a judgment is obtained therein against the tenant; and (iii) in the event that the Ground Lease is terminated as aforesaid, the tenant shall attorn to the landlord under the Ground Lease or to the purchaser at the sale of the Ground Lease Property on such foreclosure, as the case may be.

(c) **No Merger of Fee and Leasehold Estates; Releases .** So long as any portion of the Indebtedness shall remain unpaid, unless Lender shall otherwise consent, the fee title to the Ground Lease Property and the leasehold estate therein created pursuant to the provisions of the Ground Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower, Lender, or in any other person by purchase, operation of law or otherwise.

(d) **Borrower's Acquisition of Fee Estate .** In the event that Borrower, so long as any portion of the Indebtedness remains unpaid, shall be the owner and holder of the fee title to the Ground Lease Property subject to the Ground Lease, the Lien of the Security Agreement shall be spread to cover Borrower's fee title to the Ground Lease Property and said fee title shall be deemed to be included in the Ground Lease Property. Borrower agrees, at its sole cost and expense, including, without limitation, Lender's reasonable attorneys' fees, to (i) execute any and all documents or instruments necessary to subject its fee title to the Ground Lease Property to the lien of the Security Agreement; and (ii) provide a title insurance policy which shall insure that the lien of the Security Agreement is a first lien (subject to Permitted Encumbrances) on Borrower's fee title to the Ground Lease Property. Notwithstanding the foregoing, if the Ground Lease is for any reason whatsoever terminated prior to the natural expiration of its term, and if, pursuant to any provisions of the Ground Lease or otherwise, Lender or its designee shall acquire from the landlord thereunder another lease of the Ground Lease Property, Borrower shall have no right, title or interest in or to such other lease or the leasehold estate created thereby.

(e) **Rejection of the Ground Lease .** If the Ground Lease is terminated by the landlord thereunder for any reason in the event of the rejection or disaffirmance of the Ground Lease by the landlord thereunder pursuant to the Bankruptcy Code or any other law affecting creditor's rights, (i) Borrower, immediately after obtaining notice thereof, shall give notice thereof to Lender, (ii) Borrower, without the prior written consent of Lender, shall not elect to treat the Ground Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code or any comparable federal or state statute or law, and any election by Borrower made without such consent shall be void and (iii) the Security Agreement and all the Lien, terms, covenants and conditions of the Security Agreement shall extend to and cover Borrower's possessory rights under Section 365(h) of the Bankruptcy Code and to any claim for damages due to the rejection of the Ground Lease or other termination of the Ground Lease. In addition, Borrower hereby assigns irrevocably to Lender, Borrower's rights to treat the Ground Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code and to offset rents under the Ground Lease in

the event any case, proceeding or other action is commenced by or against the landlord under the Bankruptcy Code or any comparable federal or state statute or law, provided that Lender shall not exercise such rights and shall permit Borrower to exercise such rights with the prior written consent of Lender, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing.

(i) Borrower hereby assigns to Lender Borrower's right to reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Borrower under the Bankruptcy Code or comparable federal or state statute or law, provided the Lender shall not exercise such right, and shall permit Borrower to exercise such right with the prior written consent of Lender, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing. Further, if Borrower shall desire to so reject the Ground Lease, at Lender's request, to the extent not prohibited by the terms of the Ground Lease and applicable law, Borrower shall assign its interest in the Ground Lease to Lender in lieu of rejecting the Ground Lease as described above, upon receipt by Borrower of written notice from Lender of such request together with Lender's agreement to cure any existing defaults of Borrower under the Ground Lease and to provide adequate assurance of future performance of Borrower's obligations thereunder.

(ii) Borrower hereby assigns to Lender Borrower's right to seek an extension of the 60-day period within which Borrower must accept or reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Borrower under the Bankruptcy Code or comparable federal or state statute or law, provided the Lender shall not exercise such right, and shall permit Borrower to exercise such right with the prior written consent of Lender, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing. Further, if Borrower shall desire to so reject the Ground Lease, at Lender's request, to the extent not prohibited by the terms of the Ground Lease and applicable law, Borrower shall assign its interest in the Ground Lease to Lender in lieu of rejecting such Ground Lease as described above, upon receipt by Borrower of written notice from Lender of such request together with Lender's agreement to cure any existing defaults of Borrower under the Ground Lease and to provide adequate assurance of future performance of Borrower's obligations thereunder.

(iii) Borrower hereby agrees that if the Ground Lease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Lease pursuant to the Bankruptcy Code or any other law affecting creditor's rights, any property of Borrower not removed from the Ground Lease Property by Borrower as permitted or required by the Ground Lease, shall at the option of Lender be deemed abandoned by Borrower, provided that Lender may remove any such property required to be removed by Borrower pursuant to the Ground Lease and all reasonable out-of-pocket costs and expenses associated with such removal shall be paid by Borrower within five (5) days of receipt by Borrower of an invoice for such removal costs and expenses.

VI. INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

Section 6.1 Insurance Coverage Requirements . Borrower shall, at its sole cost and expense, keep in full force and effect insurance coverage of the types and minimum limits as follows during the term of this Agreement for the mutual benefit of Borrower and Lender:

6.1.1 Property Insurance . Insurance insuring against loss or damage by standard perils included within the classification "All Risks of Physical Loss". Except as otherwise provided in section 6.1.11, such insurance (i) shall be Replacement Cost Coverage in an amount equal to the full replacement cost of the Property or such lesser amounts approved by Lender in its sole discretion (or after a Securitization, upon receipt of a Rating Agency Confirmation), and (ii) shall have deductibles no greater than $100,000 for insurance required hereunder. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" with a waiver of depreciation and with an "Agreed Amount Endorsement";

6.1.2 Liability Insurance . Commercial general liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages and containing minimum limits per occurrence of $1,000,000 with a $2,000,000 general aggregate for any policy year. In addition, at least $100,000,000 excess and/or umbrella liability insurance shall be obtained and maintained for claims, including legal liability imposed upon Borrower and all related court costs and attorneys' fees and disbursements;

6.1.3 Workers' Compensation Insurance . Worker's compensation insurance with respect to all employees of Borrower as and to the extent required by any Governmental Authority or Legal Requirement and employer's liability coverage of at least $1,000,000 which is scheduled to the excess and/or umbrella liability insurance as referenced in Section 6.1.2 above;

6.1.4 Business Interruption Insurance . Business interruption insurance in an amount sufficient to avoid any co-insurance penalty and equal to the greater of (A) the estimated gross revenues (minus estimated variable costs which will no longer be incurred due to the business interruption) from the operation of the Property (including (x) the total payable under the Leases and all Rents and (y) the total of all other amounts to be received by Borrower or third parties that are the legal obligation of the Tenants), net of non-recurring expenses, for a period of up to the next succeeding eighteen (18) months (subject to adjustment for each such 18 month period) plus a twelve (12) month extended period of indemnity, or (B) the projected Operating Expenses (including Debt Service) for the maintenance and operation of the Property for a period of up to the next succeeding eighteen (18) months plus a twelve (12) month extended period of indemnity as the same may be reduced or increased from time to time due to changes in such Operating Expenses. The amount of such insurance shall be (a) increased from time to time as and when the Rents increase or the estimates of (or the actual) gross revenue (minus estimated (or actual) variable costs which will no longer be incurred due to the business interruption) increases or (b) decreased from time to time to the extent Rents or the estimates of such gross revenue or variable costs decreases;

6.1.5 Builder's All-Risk Insurance . During any period of repair or restoration, builder's "all risk" insurance in amounts equal to not less than the full insurable value of the applicable Improvements and insuring against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as Lender may request, in form and substance acceptable to Lender;

6.1.6 Boiler and Machinery Insurance . Insurance against loss or damage from explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in any of the Improvements and insurance against loss of occupancy or use arising from any breakdown, in such amounts as are generally available at reasonable premiums and are generally required by institutional lenders for properties comparable to the Property;

6.1.7 Flood Insurance . Flood insurance if any part of any structure or improvement comprising the Property is located in an area identified by the Federal Emergency Management Agency as an area federally designated a "100 year flood plain" and (a) flood insurance is generally available at reasonable premiums and in such amount as generally required by institutional lenders for similar properties or (b) if not so available from a private carrier, from the federal government at commercially reasonable premiums to the extent available;

6.1.8 Terrorism Insurance . Provided that insurance coverage ("**Terrorism Insurance**") relating to the acts of terrorism is either (i) commercially available, (ii) commonly obtained by owners of commercial properties in the same geographic area as the Property and which are similar to the Property or (iii) maintained for another hotel property in the same geographic area as the Property which is at least 51% owned directly or indirectly by Ultimate Equity Owners, Borrower shall be required to carry Terrorism Insurance throughout the term of the Loan (including any extension terms) on a per occurrence basis in an amount equal to the Total Insurable Value, plus twelve (12) months business interruption insurance pursuant to the requirements of Section 6.1.4 above (the "**Required Terrorism Amount**"), with a maximum deductible of five percent (5%) of the Required Terrorism Amount, unless a greater deductible is approved by Lender in writing in its reasonable discretion); provided , however ; if Borrower maintains a Terrorism Insurance deductible of less than five percent (5%) of the Required Terrorism Amount, the Required Terrorism Amount may be reduced by the difference between (i) five percent (5%) of the Required Terrorism Amount and (ii) the actual amount of the Terrorism Insurance deductible. Notwithstanding the foregoing, Borrower shall at all times maintain Terrorism Insurance in an amount not less than that which can be purchased for a sum equal to $283,500, provided that Borrower shall not be obligated to purchase more than the Required Terrorism Amount. Lender agrees that Terrorism Insurance coverage may be provided under a blanket policy that is acceptable to Lender and that such coverage may cover foreign acts of terrorism for the Required Terrorism Amount and only $100,000,000 of Terrorism Insurance coverage with respect to domestic acts of terrorism.

6.1.9 Demolition and Increased Construction Costs . Coverage to compensate for the cost of demolition and the increased cost of construction for the Property;

6.1.10 Law and Ordinance Insurance . Law and ordinance insurance coverage in an amount no less than $15,000,000; and

6.1.11 Other Insurance . Upon sixty (60) days' notice, such other reasonable types of insurance not covered in Sections 6.1.1 through 6.1.10 and in such reasonable amounts as Lender from time to time may reasonably require against such other insurable hazards (but not earthquake) which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located and as may be reasonably required to protect Lender's interests.

6.1.12 Ratings of Insurers . Borrower shall maintain insurance coverage with one or more domestic primary insurers reasonably acceptable to Lender, having claims-paying-ability and financial strength ratings by S&P of not less than "A-" (and its equivalent by the other Rating Agencies); provided , however , such rating requirements will deemed to be satisfied if (A) the required insurance is provided by a syndicate of five (5) or more insurers with (i) at least sixty percent (60%) of the total coverage under such policies provided by carriers having claims-paying-ability and financial strength ratings by S&P of not less than "A-" (and its equivalent by the other Rating Agencies), (ii) at least thirty percent (30%) of the total coverage under such policies provided by carriers having claims-paying-ability and financial strength ratings by S&P of not less than "BBB+" (and its equivalent by the other Rating Agencies) (without duplication with the carriers having ratings by S&P of not less than "A-" (and its equivalent by the other Rating Agencies)), and (iii) the remaining ten percent (10%) of the total coverage under policies provided by carriers having an AM Best Rating of at least "A-VIII" (without duplication with the carriers having ratings by S&P of not less than "A-" or "BBB+" (and their equivalents by the other Rating Agencies)); or (B) the required insurance is provided by a syndicate of four (4) or fewer insurers with (i) at least seventy-five percent (75%) of the total coverage under such policies provided by carriers having claims-paying-ability and financial strength ratings by S&P of not less than "A-" (and its equivalent by the other Rating Agencies), (ii) at least fifteen percent (15%) of the total coverage under such policies provided by carriers having claims-paying-ability and financial strength ratings by S&P of not less than "BBB+" (and its equivalent by the other Rating Agencies) (without duplication with the carriers having ratings by S&P of not less than "A-" (and its equivalent by the other Rating Agencies)), and (iii) the remaining ten percent (10%)of the total coverage under policies under such policies provided by carriers having an AM Best Rating of at least "A-VIII" (without duplication with the carriers having ratings by S&P of not less than "A-" or "BBB+" (and their equivalents by the other Rating Agencies)). Seismic Insurance required pursuant to Section 6.1.11 shall not be required to satisfy the foregoing rating requirements, provided that such Seismic Insurance shall be required to be provided by insurers having an AM Best Rating of A-VIII, if available. Notwithstanding the foregoing, after a Securitization, required insurance may be obtained from insurers that do not satisfy the foregoing ratings requirements if Borrower shall have obtained a Rating Agency Confirmation with respect thereto. All insurers providing insurance required by this Agreement shall be authorized to issue insurance in the applicable State.

6.1.13 Form of Insurance Policies; Endorsements . The Policies (i) shall name Lender and its successors and/or assigns as their interest may appear as an additional insured or as a loss payee (except that in the case of general liability insurance, Lender shall be named an additional insured and not a loss payee); (ii) shall contain a Non-Contributory

Standard Lender Clause and, except with respect to general liability insurance and workers' compensation insurance, a Lender's Loss Payable Endorsement, or their equivalents; (iii) shall include effective waivers by the insurer of all claims for insurance premiums against all loss payees, additional insureds and named insureds (other than Borrower) and all rights of subrogation against any loss payee, additional insured or named insured; (iv) shall be assigned to Lender; (v) except as otherwise provided above, shall be subject to a deductible, if any, not greater in any material respect than the deductible for such coverage on the date hereof; (vi) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest, including endorsements providing that neither Borrower, Lender nor any other party shall be a Contributor-insurer (except deductibles) under said Policies and that no material modification, reduction, cancellation or termination in amount of, or material change (other than an increase) in, coverage of any of the Policies shall be effective until at least thirty (30) days after receipt by each named insured, additional insured and loss payee of written notice thereof or ten (10) days after receipt of such notice with respect to nonpayment of premium; (vii) shall permit Lender to pay the premiums and continue any insurance upon failure of Borrower to pay premiums when due, upon the insolvency of Borrower or through foreclosure or other transfer of title to the Property (it being understood that Borrower's rights to coverage under such policies may not be assignable without the consent of the insurer); and (viii) shall provide that any proceeds shall be payable to Lender and that the insurance shall not be impaired or invalidated by virtue of (A) any act, failure to act, negligence of, or violation of declarations, warranties or conditions contained in such policy by the Borrower, Lender or any other named insured, additional insured or loss payee, except for the willful misconduct of Lender knowingly in violation of the conditions of such policy, (B) the occupation, use, operation or maintenance of the Property for purposes more hazardous than permitted by the terms of the Policy, (C) any foreclosure or other proceeding or notice of sale relating to the Property, or (D) any change in the possession of the Property without a change in the identity of the holder of actual title to the Property (provided that with respect to items (C) and (D), any notice requirements of the applicable Policies are satisfied). Notwithstanding the foregoing, for purposes hereof, Lender hereby approves the existing insurance policies as of the Closing Date and any renewals thereof with the same insurance ratings and terms.

6.1.14 Premiums; Certificates; Renewals . (a) Borrower shall pay or cause to be paid the premiums for such Policies (the **"Insurance Premiums"**) as the same become due and payable and shall furnish to Lender the receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided , however , that Borrower is not required to furnish such evidence of payment to Lender if such Insurance Premiums are to be paid by Lender pursuant to the terms of this Agreement). Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested in writing by Lender or as may be requested in writing by the Rating Agencies (except with respect to the Terrorism Insurance and seismic insurance required hereunder), taking into consideration changes in liability laws, changes in prudent customs and practices, and the like. In the event Borrower satisfies the requirements under this Section 6.1.14 through the use of a Policy covering properties in addition to the Property, then (unless such policy is provided in substantially the same manner as it is as of the date hereof), Borrower shall provide evidence satisfactory to Lender that the Insurance Premiums for the Property are separately allocated under such Policy to the Property and that payment of such allocated amount (A) shall maintain the effectiveness of such Policy as to the

Property and (B) shall otherwise provide the same protection as would a separate policy that complies with the terms of this Agreement as to the Property, notwithstanding the failure of payment of any other portion of the insurance premiums. If no such allocation is available, Lender shall have the right to increase the amount required to be deposited into the Insurance Reserve Account in an amount sufficient to purchase a nonblanket Policy covering the Property from insurance companies which qualify under this Agreement.

(b) Borrower shall deliver to Lender on or prior to the Closing Date certificates setting forth in reasonable detail the material terms (including any applicable notice requirements) of all Policies from the respective insurance companies (or their authorized agents) that issued the Policies, including that such Policies may not be canceled or modified in any material respect without thirty (30) days' prior notice to Lender, or ten (10) days' notice with respect to nonpayment of premium. Borrower shall deliver to Lender, concurrently with each change in any Policy, a certificate with respect to such changed Policy certified by the insurance company issuing that Policy, in substantially the same form and containing substantially the same information as the certificates required to be delivered by Borrower pursuant to the first sentence of this clause (i) and stating that all premiums then due thereon have been paid to the applicable insurers and that the same are in full force and effect (or if such certificate and/or other information described in this clause (ii) shall not be obtainable by Borrower, Borrower may deliver an Officer's Certificate to such effect in lieu thereof).

(c) Within three (3) Business Days prior to the expiration, termination or cancellation of any Policy, Borrower shall renew such policy or obtain a replacement policy or policies (or a binding commitment for such replacement policy or policies), which shall be effective no later than the date of the expiration, termination or cancellation of the previous policy, and shall deliver to Lender a certificate in respect of such policy or policies (A) containing the same information as the certificates required to be delivered by Borrower pursuant to clause (b) above, or a copy of the binding commitment for such policy or policies and (B) confirming that such policy complies with all requirements hereof.

(d) If Borrower does not furnish to Lender the certificates as required under clause (c) above, upon three (3) Business Days prior notice to Borrower, Lender may procure, but shall not be obligated to procure, such replacement policy or policies and pay the Insurance Premiums therefor, and Borrower agree to reimburse Lender for the cost of such Insurance Premiums promptly on demand.

(e) Concurrently with the delivery of each replacement policy or a binding commitment for the same, Borrower shall deliver to Lender a report or attestation from a duly licensed or authorized insurance broker or from the insurer, setting forth the particulars as to all insurance obtained by Borrower pursuant to this Section 6.1 and then in effect and stating that all Insurance Premiums then due thereon have been paid in full to the applicable insurers, that such insurance policies are in full force and effect and that, in the opinion of such insurance broker or insurer, such insurance otherwise complies with the requirements of this Section 6.1 (or if such report shall not be available after Borrower shall have used reasonable efforts to provide the same, Borrower will deliver to Lender an Officer's Certificate containing the information to be provided in such report).

6.1.15 Separate Insurance . Borrower shall not take out separate insurance contributing in the event of loss with that required to be maintained pursuant to this Section 6.1 unless such insurance complies with this Section 6.1 .

6.1.16 Blanket Policies . The insurance coverage required under this Section 6.1 may be effected under a blanket policy or policies covering the Property and other properties and assets not constituting a part of the Property; provided that any such blanket policy shall specify, except in the case of public liability insurance, the portion of the total coverage of such policy that is allocated to the Property, and any sublimits in such blanket policy applicable to the Property, which amounts shall not be less than the amounts required pursuant to this Section 6.1 and which shall in any case comply in all other respects with the requirements of this Section 6.1 . Upon Lender's request, Borrower shall deliver to Lender an Officer's Certificate setting forth (i) the number of properties covered by such policy, (ii) the location by city (if available, otherwise, county) and state of the properties, (iii) the average square footage of the properties (or the aggregate square footage), (iv) a brief description of the typical construction type included in the blanket policy and (v) such other information as Lender may reasonably request.

6.1.17 Securitization . Following any Securitization, Borrower shall name any trustee, servicer or special servicer designated by Lender as a loss payee, and any trustee, servicer and special servicer as additional insureds, with respect to any Policy for which Lender is to be so named hereunder.

Section 6.2 Condemnation and Insurance Proceeds .

6.2.1 Right to Adjust . (a) If the Property is damaged or destroyed, in whole or in part in any material respect, by a Casualty, Borrower shall give prompt written notice thereof to Lender, generally describing the nature and extent of such Casualty. Following the occurrence of a Casualty, Borrower, regardless of whether proceeds are available, shall in a reasonably prompt manner proceed to restore, repair, replace or rebuild the Property to the extent practicable to be of at least equal value and of substantially the same character as prior to the Casualty, all in accordance with the terms hereof applicable to Alterations.

(b) Subject to clause (e) below, in the event of a Casualty which is not a Material Casualty, Borrower may settle and adjust such claim; provided that such adjustment is carried out in a competent and timely manner. In such case, Borrower is hereby authorized to collect and receipt for Lender any Proceeds.

(c) Subject to clause (e) below, in the event of a Casualty where the loss exceeds the Threshold Amount, Borrower may settle and adjust such claim only with the consent of Lender (which consent shall not be unreasonably withheld, delayed or conditioned) and Lender shall have the opportunity to participate, at Borrower's cost, in any such adjustments.

(d) Except as provided in clause (b) above, the proceeds of any Policy shall be due and payable solely to Lender and held and applied in accordance with the terms hereof (or, if mistakenly paid to the Borrower, shall be held in trust by the Borrower for the benefit of Lender and shall be paid over to Lender by the Borrower within two (2) Business Days of receipt).

(e) Notwithstanding the terms of clauses (a) and (b) above, Lender shall have the sole authority to adjust any claim with respect to a Casualty and to collect all Proceeds if an Event of Default shall have occurred and is continuing.

6.2.2 Right of the Borrower to Apply to Restoration . In the event of (a) a Casualty that does not constitute a Material Casualty, or (b) a Condemnation that does not constitute a Material Condemnation, Lender shall permit the application of the Proceeds (after reimbursement of any expenses incurred by Lender) to reimburse or pay Borrower for the cost of restoring, repairing, replacing or rebuilding or otherwise curing title defects at the Property (the Restoration), in the manner required hereby, provided and on the condition that (1) no Event of Default shall have occurred and be then continuing and (2) in the reasonable judgment of Lender:

(i) the Property can be restored to an economic unit not materially less valuable (taking into account the effect of the termination of any Leases and the proceeds of any rental loss or business interruption insurance which the Borrower receives or is entitled to receive, in each case, due to such Casualty or Condemnation) and not materially less useful than the same was prior to the Casualty or Condemnation,

(ii) the Property, after such Restoration and stabilization, will adequately secure the outstanding balance of the Loan,

(iii) the Restoration can be completed by the earliest to occur of:

(A) the date on which the business interruption insurance carried by Borrower with respect to the Property shall expire;

(B) the 180 th day prior to the Maturity Date (taking into account any extension thereof), and

(C) with respect to a Casualty, the expiration of the payment period on the rental loss or business interruption insurance coverage in respect of such Casualty; and

(iv) after receiving reasonably satisfactory evidence to such effect, during the period of the Restoration, the sum of (A) income derived from the Property, plus (B) proceeds of rental loss insurance or business interruption insurance, if any, payable together with such other monies as Borrower may irrevocably make available for the Restoration, will equal or exceed the sum of (x) 105% of Operating Expenses and (y) the Debt Service.

Notwithstanding the foregoing, if any of the conditions set forth in sub-clauses (1) and (2) of the proviso in this Section 6.2.2 is not satisfied, then, unless Lender shall otherwise elect, at its sole option, the Proceeds shall be applied in the following order of priority: (A) first, to prepay the principal of the Loan; (B) second, to pay the amount of (1) all accrued and unpaid interest in respect of the Principal Amount of the Indebtedness so prepaid through the date which is the

final day of the Interest Period in which such prepayment is made (including, if an Event of Default has occurred and is then continuing, interest owed at the Default Rate), and (2) all other sums (excluding any Prepayment Fee) then due and owing under the Loan Documents and (C) third, to reimburse Lender for any fees and expenses of Lender incurred in connection therewith (it being agreed that, upon satisfaction in full of the entitlements under clauses (A), (B) and (C) of this sentence, Borrower shall be entitled to receive a release of the Lien of the Security Instrument and the other Loan Documents with respect to the Property in accordance with and subject to the terms of Section 2.3.3 hereof and any surplus Proceeds shall be paid over to the Mezzanine Lender to be applied in accordance with the terms of the Mezzanine Loan Agreement. Notwithstanding the foregoing, or anything else to the contrary contained herein, all Proceeds with respect to the insurance determined pursuant to Section 6.1.4 shall be deposited directly into the Collection Account and shall be disbursed in accordance with Article III as if such Proceeds are applied in the manner amounts received from the Manager are applied

6.2.3 Material Casualty or Condemnation and Lender's Right to Apply Proceeds . In the event of a Material Casualty or a Material Condemnation, then Lender shall have the option to (i) apply the Proceeds hereof in the following order of priority: (A) first, to prepay the principal of the Loan; (B) second, to pay the amount of (1) all accrued and unpaid interest in respect of the Principal Amount of the Indebtedness so prepaid through the date which is the final day of the Interest Period in which such prepayment is made (including, if an Event of Default has occurred and is then continuing, interest owed at the Default Rate), and (2) all other sums (excluding any Prepayment Fee) then due and owing under the Loan Documents; (C) third, to reimburse Lender for any fees and expenses of Lender incurred in connection therewith; and (D) fourth, the balance of Proceeds shall then be paid to Mezzanine Lender to be applied pursuant to the terms of the Mezzanine Loan Agreement (it being agreed that, upon satisfaction in full of the entitlements under clauses (A), (B) (C) and (D) of this sentence, Borrower shall be entitled to receive the balance of the Proceeds, if any and a release of the Lien of the Security Instrument and the other Loan Documents with respect to the Property in accordance with and subject to the terms of Section 2.3.3 hereof), or (ii) make such Proceeds available to reimburse Borrower for the cost of any Restoration in the manner set forth below in Section 6.2.4 hereof provided , however , that if the Management Agreement provides that the Operating Lessee or Borrower is required to use the Proceeds to restore the Property and Operating Lessee or Borrower does not have the right to terminate the Management Agreement pursuant to the terms of the Management Agreement as a result of such Casualty or Condemnation or otherwise, then the Lender shall be obligated to make such Proceeds available to the Borrower for the Restoration of such Property pursuant to Section 6.2.4 below. Notwithstanding anything to the contrary contained herein, in the event of a Material Casualty or a Material Condemnation, where Borrower cannot restore, repair, replace or rebuild the Property to be of at least substantially equal value and of substantially the same character as prior to the Material Casualty or Material Condemnation or title defect because the Property is a legally non-conforming use or as a result of any other Legal Requirement, Borrower hereby agrees that Lender may apply the Proceeds payable in connection therewith in accordance with clauses (A), (B) (C) and (D).

6.2.4 Manner of Restoration and Reimbursement . If Borrower is entitled pursuant to Sections 6.2.2 or 6.2.3 above to reimbursement out of Proceeds (and the conditions specified therein shall have been satisfied), such Proceeds shall be disbursed on a

monthly basis upon Lender being furnished with (i) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Lender may reasonably require and approve, and (ii) all plans and specifications for such Restoration, such plans and specifications to be approved by Lender prior to commencement of any work (such approval not to be unreasonably withheld, delayed or conditioned). In addition, no payment made prior to the Final Completion of the Restoration (excluding punch-list items) shall exceed ninety percent (90%) of the aggregate value of the work performed from time to time; funds other than Proceeds shall be disbursed prior to disbursement of such Proceeds; and at all times, the undisbursed balance of such Proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the Restoration, free and clear of all Liens or claims for Lien. Prior to any disbursement, Lender shall have received evidence reasonably satisfactory to it of the estimated cost of completion of the Restoration (such estimate to be made by Borrower's architect or contractor and approved by Lender in its reasonable discretion), and Borrower shall have deposited with Lender Eligible Collateral in an amount equal to the excess (if any) of such estimated cost of completion over the net Proceeds. Any surplus which may remain out of Proceeds received pursuant to a Casualty after payment of such costs of Restoration shall be paid to the Mezzanine Lender to be applied in accordance with the terms of the Mezzanine Loan Agreement. Any surplus which may remain out of Proceeds received pursuant to a Condemnation shall be paid to the Mezzanine Lender to be applied in accordance with the terms of the Mezzanine Loan Agreement.

6.2.5 Condemnation . (a) Borrower shall promptly give Lender written notice of the actual commencement or written threat of commencement of any Condemnation and shall deliver to Lender copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Borrower, regardless of whether Proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with the terms hereof applicable to Alterations.

(b) Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any Proceeds in respect of a Condemnation and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Section. Provided no Event of Default has occurred and is continuing, (x) in the event of a Condemnation which is not a Material Condemnation, Borrower may settle and compromise such Proceeds; provided that the same is effected in a competent and timely manner, and (y) in the event of a Condemnation, where the loss exceeds the Threshold Amount, Borrower may settle and compromise the Proceeds only with the consent of Lender (which consent shall not be unreasonably withheld, delayed or conditioned) and Lender shall have the opportunity to participate, at Borrower' cost, in any litigation and settlement discussions in respect thereof. Notwithstanding any Condemnation by any public or quasi-public authority (including any transfer made in lieu of or in anticipation of such a Condemnation), Borrower shall continue to pay the Indebtedness at the time and in the manner provided for in the Note, this Agreement and the other Loan Documents, and the

Indebtedness shall not be reduced unless and until any Proceeds shall have been actually received and applied by Lender to discharge the Indebtedness, pay required interest and pay any other required amounts, in each case, pursuant to the terms of Sections 6.2.2 or 6.2.3 above. Lender shall not be limited to the interest paid on the Proceeds by the condemning authority but shall be entitled to receive out of the Proceeds interest at the rate or rates provided in the Note. Borrower shall cause any Proceeds that are payable to Borrower to be paid directly to Lender to be held and applied in accordance with the terms hereof.

Section 6.3 Insurance Provisions in Management Agreement . Despite any other provision of this Article VI , if any provision of this Article VI conflicts with or is inconsistent with any insurance provision in the Management Agreement with respect to the Property, the provisions of the Management Agreement will prevail.

VII. IMPOSITIONS, OTHER CHARGES, LIENS AND OTHER ITEMS

Section 7.1 Impositions and Other Charges . Subject to the third sentence of this Section 7.1 , Borrower shall pay, or shall cause Operating Lessee to pay all Impositions now or hereafter levied or assessed or imposed against the Property or any part thereof prior to the imposition of any interest, charges or expenses for the non-payment thereof and shall pay all Other Charges on or before the date they are due. Subject to Borrower's right of contest set forth in Section 7.3 , as set forth in the next two sentences and provided that there are sufficient funds available in the Tax Reserve Account, Lender, on behalf of Borrower, shall pay all Impositions and Other Charges which are attributable to or affect the Property or Borrower, prior to the date such Impositions or Other Charges shall become delinquent or late charges may be imposed thereon, directly to the applicable taxing authority with respect thereto. Lender shall, or Lender shall direct the Cash Management Bank to, pay to the taxing authority such amounts to the extent funds in the Tax Reserve Account are sufficient to pay such Impositions. Nothing contained in this Agreement or the Security Instrument shall be construed to require Borrower to pay any tax, assessment, levy or charge imposed on Lender in the nature of a franchise, capital levy, estate, inheritance, succession, income or net revenue tax.

Section 7.2 No Liens . Subject to its right of contest set forth in Section 7.3 , Borrower shall at all times keep, or cause to be kept, the Property free from all Liens (other than Permitted Encumbrances) and shall pay when due and payable (or bond over) all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a Lien on the Property or any portion thereof and shall in any event cause the prompt, full and unconditional discharge of all Liens imposed on or against the Property or any portion thereof within forty-five (45) days after receiving written notice of the filing (whether from Lender, the lienor or any other Person) thereof. Borrower shall do or cause to be done, at the sole cost of Borrower, everything reasonably necessary to fully preserve the first priority of the Lien of the Security Instrument against the Property, subject to the Permitted Encumbrances. Upon the occurrence and during the continuance of an Event of Default with respect to its Obligations as set forth in this Article VII , Lender may (but shall not be obligated to) make such payment or discharge such Lien, and Borrower shall reimburse Lender within three (3) Business Days following demand for all such advances pursuant to Section 19.12 (together with interest thereon at the Default Rate).

Section 7.3 Contest . Nothing contained herein shall be deemed to require Borrower to pay, or cause to be paid, any Imposition or to satisfy any Lien, or to comply with any Legal Requirement or Insurance Requirement, so long as Borrower is in good faith, and by proper legal proceedings, where appropriate, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) Borrower shall keep Lender informed of the status of such contest at reasonable intervals, (iii) if neither Borrower nor Operating Lessee is providing security as provided in clause (vi) below, adequate reserves with respect thereto are maintained on Borrower's books in accordance with GAAP or in the Tax Reserve Account or Insurance Reserve Account, as applicable, (iv) either such contest operates to suspend collection or enforcement as the case may be, of the contested Imposition, Lien or Legal Requirement and such contest is maintained and prosecuted continuously and with diligence or the Imposition or Lien is bonded, (v) in the case of any Insurance Requirement, the failure of Borrower to comply therewith shall not impair the validity of any insurance required to be maintained by Borrower under Section 6.1 or the right to full payment of any claims thereunder, and (vi) in the case of Impositions and Liens which are not bonded in excess of $1,000,000 individually, or in the aggregate, during such contest, Borrower, shall deposit with or deliver to Lender either Cash and Cash Equivalents or a Letter or Letters of Credit in an amount equal to 125% of (A) the amount of Borrower's obligations being contested plus (B) any additional interest, charge, or penalty arising from such contest. Notwithstanding the foregoing, the creation of any such reserves or the furnishing of any bond or other security, Borrower promptly shall comply with any contested Legal Requirement or Insurance Requirement or shall pay any contested Imposition or Lien, and compliance therewith or payment thereof shall not be deferred, if, at any time the Property or any portion thereof shall be, in Lender's reasonable judgment, in imminent danger of being forfeited or lost or Lender is likely to be subject to civil or criminal damages as a result thereof. If such action or proceeding is terminated or discontinued adversely to Borrower, Borrower shall deliver to Lender reasonable evidence of Borrower's compliance with such contested Imposition, Lien, Legal Requirements or Insurance Requirements, as the case may be.

VIII. TRANSFERS, INDEBTEDNESS AND SUBORDINATE LIENS

Section 8.1 Restrictions on Transfers and Indebtedness . (a) Except in connection with a Permitted Mezzanine Transfer or any Exchange (which shall not require Lender's consent or a Rating Confirmation), unless such action is permitted by the subsequent provisions of this Article VIII , Borrower will not, without Lender's prior written consent and a Rating Agency Confirmation with respect to the transfer or other matter in question, (A), Transfer legal, Beneficial or direct or indirect equitable interests in all or any part of the Property, the Borrower, Operating Lessee or the Mezzanine Borrower, (B) permit or suffer any owner, directly or indirectly, of a legal, Beneficial or equitable interest in the Property, the Borrower or Operating Lessee to Transfer such interest, whether by transfer of stock or other legal, Beneficial or equitable interest in any entity or otherwise, (C) mortgage, hypothecate or otherwise encumber or grant a security interest in all or any part of the legal, Beneficial or equitable interests in all or any part of the Property, the Borrower or the Operating Lessee, or (D) file of record a declaration of condominium with respect to the Property. Notwithstanding any provision herein to the contrary, nothing contained herein shall be deemed to restrict or otherwise interfere with the ability of the holders of direct or indirect legal, Beneficial or equitable interests in the Ultimate Equity Owner to Transfer such interests, whether in connection with an initial public offering of shares in Ultimate Equity Owner or otherwise.

(b) Borrower shall not incur, create or assume any Indebtedness without the consent of Lender; provided , however , Borrower may, without the consent of Lender, incur, create or assume Permitted Debt.

Section 8.2 Sale of Building Equipment . Borrower may Transfer or dispose of Building Equipment which is being replaced or which is no longer necessary in connection with the operation of the Property free from the Lien of the Security Instrument provided that such Transfer or disposal will not have a Material Adverse Effect on the value of the Property taken as a whole, will not materially impair the utility of the Property, and will not result in a reduction or abatement of, or right of offset against, the Rents payable under any Lease, in either case as a result thereof, and provided , further , that any new Building Equipment acquired by Borrower or Operating Lessee(and not so disposed of) shall be subject to the Lien of the Security Instrument. Lender shall, from time to time, upon receipt of an Officer's Certificate requesting the same and confirming satisfaction of the conditions set forth above, execute a written instrument in form reasonably satisfactory to Lender to confirm that such Building Equipment which is to be, or has been, sold or disposed of is free from the Lien of the Security Instrument.

Section 8.3 Immaterial Transfers and Easements, etc . Borrower and Operating Lessee may, without the consent of Lender, (i) make immaterial Transfers of portions of the Property to Governmental Authorities for dedication or public use (subject to the provisions of Section 6.2) or, portions of the Property to third parties for the purpose of erecting and operating additional structures whose use is integrated with the use of the Property, and (ii) grant easements, restrictions, covenants, reservations and rights of way in the ordinary course of business for access, water and sewer lines, telephone and telegraph lines, electric lines or other utilities or for other similar purposes, provided that no such Transfer, conveyance or encumbrance set forth in the foregoing clauses (i) and (ii) shall materially impair the utility and operation of the Property or have a Material Adverse Effect on the value of the Property taken as a whole. In connection with any Transfer permitted pursuant to this Section 8.3 , Lender shall execute and deliver any instrument reasonably necessary or appropriate, in the case of the Transfers referred to in clause (i) above, to release the portion of the Property affected by such Condemnation or such Transfer from the Lien of the Security Instrument or, in the case of clause (ii) above, to subordinate the Lien of the Security Instrument to such easements, restrictions, covenants, reservations and rights of way or other similar grants upon receipt by Lender of:

(a) thirty (30) days prior written notice thereof;

(b) a copy of the instrument or instruments of Transfer;

(c) an Officer's Certificate stating (x) with respect to any Transfer, the consideration, if any, being paid for the Transfer and (y) that such Transfer does not materially impair the utility and operation of the Property, materially reduce the value of the Property or have a Material Adverse Effect; and

(d) reimbursement of all of Lender's reasonable costs and expenses incurred in connection with such Transfer.

Section 8.4 Transfers of Interests in Borrower . In addition to any transfer permitted by any other provision of this Article VIII (including, without limitation, any transfer in connection with an Exchange), each holder of any direct or indirect interest in the Mezzanine Borrower shall have the right to transfer (but not pledge, hypothecate or encumber) its equity interest in the Mezzanine Borrower to any Person who is not a Disqualified Transferee without Lender's consent or a Rating Agency Confirmation if Section 8.6 is complied with and, after giving effect to such transfer:

(a) (i) the Property will be directly owned by a Single Purpose Entity in compliance with the representations, warranties and covenants in Section 4.1.29 hereof (as if the Borrower shall have remade all of such representations, warranties and covenants as of, and after giving effect to, the transfer), and which shall have executed and delivered to Lender an assumption agreement in form and substance acceptable to Lender, evidencing the continuing agreement of the Borrower to abide and be bound by all the terms, covenants and conditions set forth in this Agreement, the Note, the Security Instrument and the other Loan Documents and all other outstanding obligations under the Loan, together with such legal opinions and title insurance endorsements as may be reasonably requested by Lender;

(b) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement;

(c) Any Ultimate Equity Owners or a Close Affiliate of any such entity owns directly or indirectly at least fifty-one percent (51%) of the equity interests in the Borrower and the Person that is the proposed transferee is not a Disqualified Transferee; provided that, after giving effect to any such transfer, in no event shall any Person other than Ultimate Equity Owner or a Close Affiliate of Ultimate Equity Owner exercise Management Control over the Borrower. In the event that Management Control shall be exercisable jointly by any Ultimate Equity Owner or a Close Affiliate of any Ultimate Equity Owner with any other Person or Persons, then the applicable Ultimate Equity Owner or such Close Affiliate shall be deemed to have Management Control only if such Ultimate Equity Owner or such Close Affiliate retains the ultimate right as between such Ultimate Equity Owner or such Close Affiliate and the transferee to unilaterally make all material decisions with respect to the operation, management, financing and disposition of the Property;

(d) if there has been a Transfer of forty-nine percent (49%) or more of the direct membership interests, stock or other direct equity ownership interests in Borrower, Borrower shall have first delivered to Lender (and, after a Securitization, the Rating Agencies) an Officer's Certificate and legal opinion of the types described in Section 8.6 below; and

(e) Borrower shall cause the transferee, if Lender so requests and if such transferee is required to be a Single Purpose Entity pursuant to this Agreement, to deliver to S&P and to any other Rating Agency Lender requests its organizational documents solely for the purpose of Standard & Poor's and such other Rating Agency Lender requests confirming that such organizational documents comply with the single purpose bankruptcy remote entity requirements set forth herein.

Section 8.5 Loan Assumption . Without limiting the foregoing, Borrower, Prime Lessee and Operating Lessee shall have the right to sell, assign, convey or transfer (but not mortgage, hypothecate or otherwise encumber or grant a security interest in) legal or equitable title to all (but not less than all) of the Property only if:

(a) after giving effect to the proposed transaction:

the Property will be owned by a Single Purpose Entity wholly owned (directly or indirectly) by a Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or such other entity (specifically approved in writing by both Lender and each Rating Agency) which will be in compliance with the representations, warranties and covenants contained in Section 4.1.29 hereof (as if such transferee shall have remade all of such representations, warranties and covenants as of, and after giving effect to, the proposed transaction); such Single Purpose Entity shall have executed and delivered to Lender an assumption agreement and such other agreements as Lender may reasonably request (collectively, the**"Assumption Agreement"**) in form and substance acceptable to Lender, evidencing the proposed transferee's agreement to abide and be bound by all the terms, covenants and conditions set forth in this Agreement, the Note, the Security Instrument and the other Loan Documents and all other outstanding obligations under the Loan; the Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or such other approved entity shall assume the obligations of Guarantor under the Loan Documents (and such Single Purpose Entity and the applicable Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or other approved entity shall thereafter be subject to the provisions of this Article VIII), and the transferee shall cause to be delivered to Lender, such legal opinions and title insurance endorsements as may be reasonably requested by Lender;

(i) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement; and

(ii) no Event of Default shall have occurred and be continuing;

(b) the Assumption Agreement shall state the applicable transferee's agreement to abide by and be bound by the terms in the Note (or such other promissory notes to be executed by the transferee, such other promissory note or notes to be on the same terms as the Note), the Security Instrument, this Agreement (or such other loan agreement to be executed by such transferee, which shall contain terms substantially identical to the terms hereof) and such other Loan Documents (or other loan documents to be delivered by such transferee, which shall contain terms substantially identical to the terms of the applicable Loan Documents) whenever arising, and Borrower, and/or such transferee shall deliver such legal opinions and title insurance endorsements as may reasonably be requested by Lender;

(c) following execution of a contract for the sale of the Property and not less than thirty (30) days prior to the expected date of such proposed sale, Borrower shall submit notice of such sale to Lender. Borrower shall submit to Lender, not less than ten (10) days prior to the expected date of such sale, the Assumption Agreement for execution by Lender. Such documents shall be in a form appropriate for the jurisdiction in which the Property is located and shall be reasonably satisfactory to Lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such assumption, together with an Officer's Certificate certifying that (i) the assumption to be effected will be effected in compliance with the terms of this Agreement and (ii) will not impair or otherwise adversely affect the validity or priority of the Lien of the Security Instrument;

(d) prior to any such transaction, the proposed transferee shall deliver to Lender an Officer's Certificate stating that (x) such transferee is not an "employee benefit plan" within the meaning of Section 3(3) of ERISA that is subject Title I of ERISA or any other Similar Law and (y) the underlying assets of the proposed transferee do not constitute assets of any such employee benefit plan for purposes of ERISA or any Similar Law;

(e) if the transfer is to (i) an entity other than a Single Purpose Entity wholly owned directly or indirectly by one or more Pre-approved Transferees, Permitted Borrower Transferees or Permitted Borrower Transferee Alternatives, a Rating Agency Confirmation shall have been received in respect of such proposed transfer (or, if the proposed transfer shall occur prior to a Securitization, such transfer shall be subject to Lender's consent in its sole discretion) and (ii) a Permitted Borrower Transferee Alternative, such transfer shall be subject to Lender's prior written consent in its reasonable discretion;

(f) the terms of Section 8.6 shall be complied with and Borrower shall cause the transferee to deliver to S&P and to any other Rating Agency Lender requests its organizational documents solely for the purpose of S&P and any other Rating Agency Lender requests confirming that such organizational documents comply with the single purpose bankruptcy remote entity requirements set forth herein;

(g) Lender shall have received the payment of, or reimbursement for, all reasonable costs and expenses incurred by Lender and the Rating Agencies (and any servicer in connection with a Securitization) in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements); and

(h) The Mezzanine Borrower shall simultaneously exercise its right to transfer the "Collateral" (as defined in the Mezzanine Loan) pursuant to and in accordance with Section 8.5 of each Mezzanine the Loan Agreement.

Section 8.6 Notice Required; Legal Opinions . Not less than five (5) Business Days prior to the closing of any transaction permitted under the provisions of Sections 8.2 through 8.5 , Borrower shall deliver or cause to be delivered to Lender (A) an Officer's Certificate describing the proposed transaction and stating that such transaction is permitted hereunder and under the other Loan Documents, together with any documents upon which such Officer's Certificate is based, and (B) a legal opinion of counsel to Borrower or the transferee selected by either of them (to the extent approved by Lender and the Rating Agencies),

in form and substance consistent with similar opinions then being required by the Rating Agencies and acceptable to the Rating Agencies, confirming, among other things, that the assets of the Borrower, and of its managing general partner or managing member, as applicable, will not be substantively consolidated with the assets of such owners or Controlling Persons of the Borrower as Lender or the Rating Agencies may specify, in the event of a bankruptcy or similar proceeding involving such owners or Controlling Persons.

Section 8.7 Leases .

8.7.1 New Leases and Lease Modifications . Except as otherwise provided in this Section 8.7 , Borrower shall not and shall not permit Operating Lessee to (i) enter into any Lease on terms other than "market" and rental rates (in Borrower's or Operating Lessee's good faith judgment), or (ii) enter into any Material Lease (a**"New Lease"**), or (iii) consent to the assignment of any Material Lease (unless required to do so by the terms of such Material Lease) that releases the original Tenant from its obligations under the Material Lease, or (iv) modify any Material Lease (including, without limitation, accept a surrender of any portion of the Property subject to a Material Lease (unless otherwise permitted or required by law), allow a reduction in the term of any Material Lease or a reduction in the Rent payable under any Material Lease, change any renewal provisions of any Material Lease, materially increase the obligations of the landlord or materially decrease the obligations of any Tenant) or terminate any Material Lease (any such action referred to in clauses (iii) and (iv) being referred to herein as a **"Lease Modification"**) without the prior written consent of Lender which consent shall not be unreasonably withheld, delayed or conditioned. Any New Lease or Lease Modification that requires Lender's consent shall be delivered to Lender for approval not less than ten (10) Business Days prior to the effective date of such New Lease or Lease Modification.

8.7.2 Leasing Conditions . Subject to terms of this Section 8.7 , provided no Event of Default shall have occurred and be continuing, Borrower may enter into a New Lease or Lease Modification, without Lender's prior written consent, that satisfies each of the following conditions (as evidenced by an Officer's Certificate delivered to Lender prior to Borrower's entry into such New Lease or Lease Modification):

(a) with respect to a New Lease or Lease Modification, the premises demised thereunder is not more than 10,000 net rentable square feet of the Property;

(b) the term of such New Lease or Lease Modification, as applicable, does not exceed 120 months, plus up to two (2) 60-month option terms (or equivalent combination of renewals);

(c) the New Lease or Lease Modification provides for "market" rental rates other terms and does not contain any terms which would adversely affect Lender's rights under the Loan Documents or that would have a Material Adverse Effect;

(d) the New Lease or Lease Modification, as applicable, provides that the premises demised thereby cannot be used for any of the following uses: any pornographic or obscene purposes, any commercial sex establishment, any pornographic, obscene, nude or semi-nude performances, modeling, materials, activities or sexual conduct or any other use that has or could reasonably be expected to have a Material Adverse Effect;

(e) the Tenant under such New Lease or Lease Modification, as applicable, is not an Affiliate of Borrower;

(f) the New Lease or Lease Modification, as applicable, does not prevent Proceeds from being held and disbursed by Lender in accordance with the terms hereof and does not entitle any Tenant to receive and retain Proceeds except those that may be specifically awarded to it in condemnation proceedings because of the Condemnation of its trade fixtures and its leasehold improvements which have not become part of the Property and such business loss as Tenant may specifically and separately establish; and

(g) the New Lease or Lease Modification, as applicable satisfies the requirements of Section 8.7.7 and Section 8.7.8 .

8.7.3 Delivery of New Lease or Lease Modification . Upon the execution of any New Lease or Lease Modification, as applicable, Borrower shall deliver to Lender an executed copy of the Lease.

8.7.4 Lease Amendments . Borrower agrees that it shall not have the right or power, as against Lender without its consent, to cancel, abridge, amend or otherwise modify any Lease unless such modification complies with this Section 8.7 .

8.7.5 Security Deposits . All security or other deposits of Tenants of the Property shall be treated as trust funds and shall, if required by law or the applicable Lease not be commingled with any other funds of Borrower, and such deposits shall be deposited, upon receipt of the same by Borrower in a separate trust account maintained by Borrower expressly for such purpose. Within ten (10) Business Days after written request by Lender, Borrower shall furnish to Lender reasonably satisfactory evidence of compliance with this Section 8.7.5 , together with a statement of all lease securities deposited with Borrower by the Tenants and the location and account number of the account in which such security deposits are held.

8.7.6 No Default Under Leases . Borrower shall (i) promptly perform and observe all of the material terms, covenants and conditions required to be performed and observed by Borrower under the Leases, if the failure to perform or observe the same would have a Material Adverse Effect; (ii) exercise, within ten (10) Business Days after a written request by Lender, any right to request from the Tenant under any Lease a certificate with respect to the status thereof and (iii) not collect any of the Rents, more than one (1) month in advance (except that Borrower may collect such security deposits and last month's Rents as are permitted by Legal Requirements and are commercially reasonable in the prevailing market and collect other charges in accordance with the terms of each Lease).

8.7.7 Subordination . All Lease Modifications and New Leases entered into by Borrower after the date hereof shall by their express terms be subject and subordinate to this Agreement and the Security Instrument (through a subordination provision contained in such Lease or otherwise) and shall provide that, if Lender agrees to a non-disturbance provision pursuant to Section 8.7.9 , the Person holding any rights thereunder shall attorn to Lender or any other Person succeeding to the interests of Lender upon the exercise of its remedies hereunder or any transfer in lieu thereof on the terms set forth in this Section 8.7 .

8.7.8 Attornment . Each Lease Modification and New Lease entered into from and after the date hereof shall provide that in the event of the enforcement by Lender of any remedy under this Agreement or the Security Instrument, if Lender agrees to a non-disturbance provision pursuant to Section 8.7.9 , the Tenant under such Lease shall, at the option of Lender or of any other Person succeeding to the interest of Lender as a result of such enforcement, attorn to Lender or to such Person and shall recognize Lender or such successor in the interest as lessor under such Lease without change in the provisions thereof; provided , however , Lender or such successor in interest shall not be liable for or bound by (i) any payment of an installment of rent or additional rent made more than thirty (30) days before the due date of such installment, (ii) any act or omission of or default by Borrower under any such Lease (but the Lender, or such successor, shall be subject to the continuing obligations of the landlord to the extent arising from and after such succession to the extent of Lender's, or such successor's, interest in the Property), (iii) any credits, claims, setoffs or defenses which any Tenant may have against Borrower, (iv) any obligation on Borrower's part, pursuant to such Lease, to perform any tenant improvement work or (v) any obligation on Borrower's part, pursuant to such Lease, to pay any sum of money to any Tenant. Each such New Lease shall also provide that, upon the reasonable request by Lender or such successor in interest, the Tenant shall execute and deliver an instrument or instruments confirming such attornment.

8.7.9 Non-Disturbance Agreements . Lender shall enter into, and, if required by applicable law to provide constructive notice or requested by a Tenant, record in the county where the subject Property is located, a subordination, attornment and non-disturbance agreement, substantially in form and substance substantially similar to the form attached hereto as **Exhibit K** (a**"Non-Disturbance Agreement"**), with any Tenant (other than an Affiliate of Borrower) entering into a New Lease permitted hereunder or otherwise consented to by Lender within ten (10) Business Days after written request therefor by Borrower, provided that, such request is accompanied by an Officer's Certificate stating that such Lease complies in all material respects with this Section 8.7 . All reasonable third party costs and expenses incurred by Lender in connection with the negotiation, preparation, execution and delivery of any Non-Disturbance Agreement, including, without limitation, reasonable attorneys' fees and disbursements, shall be paid by Borrower (in advance, if requested by Lender).

Section 8.8 Exchange . Notwithstanding anything to the contrary herein contained or in any other Loan Document, any sale or transfer of any or all of the indirect interests in Borrower owned by Qualified Intermediary to Guarantor or one or more entities (i) controlled directly or indirectly by Guarantor, and (ii) in which Guarantor owns, directly or indirectly, not less than 85% equity, is permitted provided the following conditions have been satisfied:

(a) in the event that in connection with such sale or conveyance, Manager will not thereafter continue to manage the Property, then the Person who will manage the Property following such sale or conveyance must be an Acceptable Manager;

(b) such sale or transfer occurs not later than one hundred eighty (180) days after the Closing Date;

(c) Lender shall have received not less than ten (10) days' prior written notice of such sale or transfer;

(d) after giving effect to such sale or transfer, Borrower will be in compliance with the requirements of this Agreement and the Security Instrument;

(e) after giving effect to such sale or transfer, any subsidiary of any of the Co-Borrowers or Prime Lessees or Operating Lessee must be a Single Purpose Entity.

(f) Lender shall have received such other documents, instruments, certificates and legal opinions (including, without limitation, Non-Consolidation Opinions) as Lender may reasonably require so as to confirm the requirements of Section 8.8 have been satisfied;

(g) Borrower agrees to bear and shall reimburse Lender on demand all reasonable out-of-pocket expenses incurred by Lender in connection with any transaction described in this Section 8.8 ; and

(h) Simultaneously with the consummation of the Exchange, the Prime Lease shall be terminated.

IX. INTEREST RATE CAP AGREEMENT

Section 9.1 Interest Rate Cap Agreement . Borrower shall maintain the Interest Rate Cap Agreement with an Acceptable Counterparty in effect and having a term extending through the last day of the accrual period in which the applicable Maturity Date occurs, and an initial notional amount equal to the Loan Amount. The Interest Rate Cap Agreement shall have a strike rate equal to the LIBOR Cap Strike Rate. The notional amount of the Interest Rate Cap Agreement may be reduced from time to time in amounts equal to any prepayment of the principal of the Loan made in accordance with the Loan Documents, provided that the strike rate shall be equal to the LIBOR Cap Strike Rate.

Section 9.2 Pledge and Collateral Assignment . Borrower hereby pledges, assigns, transfers, delivers and grants a continuing first priority lien to Lender, as security for payment of all sums due in respect of the Loan and the performance of all other terms, conditions and covenants of this Agreement and any other Loan Document on Borrower's part to be paid and performed, in, to and under all of Borrower's right, title and interest whether now owned or hereafter acquired and whether now existing or hereafter arising (collectively, the**"Rate Cap Collateral"**): (i) in the Interest Rate Cap Agreement (as soon as such agreement is effective or when and if any replacement agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement); (ii) to receive any and all payments under the Interest Rate Cap Agreement (or, when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), whether as contractual obligations, damages or otherwise; and (iii) to all claims, rights, powers, privileges, authority, options, security interests, liens and remedies, if any, under or arising out of the Interest Rate Cap Agreement (as soon as such

agreement is effective or when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), in each case including all accessions and additions to, substitutions for and replacements, products and proceeds of any of the foregoing. Borrower shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be made directly to Lender) and notify the Counterparty of such assignment (either in such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement or by separate instrument). Borrower shall not, without obtaining the prior written consent of Lender, further pledge, transfer, deliver, assign or grant any security interest in the Interest Rate Cap Agreement (or, when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), or permit any Lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements or any other notice or instrument as may be required under the UCC, as appropriate, except those naming Lender as the secured party, to be filed with respect thereto.

Section 9.3 Covenants . (a) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be deposited immediately into the Holding Account pursuant to Section 3.1 . Borrower shall take all actions reasonably requested by Lender to enforce Borrower's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty thereunder and shall not waive, amend or otherwise modify any of its rights thereunder.

(b) Borrower shall defend Lender's right, title and interest in and to the Rate Cap Collateral pledged by Borrower pursuant hereto or in which it has granted a security interest pursuant hereto against the claims and demands of all other Persons.

In the event of (x) any downgrade, withdrawal or qualification (each, a**"Downgrade "**) of the rating of the Counterparty such that, thereafter, the Counterparty shall cease to be an Acceptable Counterparty and (y) the Counterparty shall fail to comply with the requirements contained in the Interest Rate Cap Agreement which are described in**"Exhibit I"**upon such occurrence, the Borrower shall either (i) obtain a Rating Agency Confirmation with respect to the Counterparty or (ii) replace the Interest Rate Cap Agreement with a Replacement Interest Cap Agreement, (x) having a term extending through the end of the Interest Period in which the Maturity Date occurs, (y) in a notional amount at least equal to the Principal Amount of the Loan then outstanding, and (z) having a strike rate equal to the LIBOR Cap Strike Rate.

(c) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement as and when required hereunder, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing the Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is paid by Borrower to Lender.

(d) Borrower shall not (i) without the prior written consent of Lender, modify, amend or supplement the terms of the Interest Rate Cap Agreement, (ii) without the prior written consent of Lender, except in accordance with the terms of the Interest Rate Cap Agreement,

cause the termination of the Interest Rate Cap Agreement prior to its stated maturity date, (iii) without the prior written consent of Lender, except as aforesaid, waive or release any obligation of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) under the Interest Rate Cap Agreement, (iv) without the prior written consent of Lender, consent or agree to any act or omission to act on the part of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) which, without such consent or agreement, would constitute a default under the Interest Rate Cap Agreement, (v) fail to exercise promptly and diligently each and every material right which it may have under the Interest Rate Cap Agreement, (vi) take or intentionally omit to take any action or intentionally suffer or permit any action to be omitted or taken, the taking or omission of which would result in any right of offset against sums payable under the Interest Rate Cap Agreement or any defense by the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) to payment or (vii) fail to give prompt notice to Lender of any notice of default given by or to Borrower under or with respect to the Interest Rate Cap Agreement, together with a complete copy of such notice. If Borrower shall have received written notice that the Securitization shall have occurred, no consent by Lender provided for in this Section 9.3(e) shall be given by Lender unless Lender shall have received a Rating Agency Confirmation.

In connection with an Interest Rate Cap Agreement, Borrower shall obtain and deliver to Lender an Opinion of Counsel from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty upon which Lender and its successors and assigns may rely (the **"Counterparty Opinion"**), under New York law and, if the Counterparty is a non-U.S. entity, the applicable foreign law, substantially in compliance with the requirements set forth in **Exhibit F** or in such other form approved by the Lender.

Section 9.4 Representations and Warranties . Borrower hereby covenants with, and represents and warrants to, Lender as follows:

(a) The Interest Rate Cap Agreement constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(b) The Rate Cap Collateral is free and clear of all claims or security interests of every nature whatsoever, except such as are created pursuant to this Agreement and the other Loan Documents, and Borrower has the right to pledge and grant a security interest in the same as herein provided without the consent of any other Person other than any such consent that has been obtained and is in full force and effect.

(c) The Rate Cap Collateral has been duly and validly pledged hereunder. All consents and approvals required to be obtained by Borrower for the consummation of the transactions contemplated by this Agreement have been obtained.

(d) Giving effect to the aforesaid grant and assignment to Lender, Lender has, as of the date of this Agreement, and as to Rate Cap Collateral acquired from time to time after such date, shall have, a valid, and upon proper filing, perfected and continuing first priority lien

upon and security interest in the Rate Cap Collateral; provided that no representation or warranty is made with respect to the perfected status of the security interest of Lender in the proceeds of Rate Cap Collateral consisting of "cash proceeds" or "non-cash proceeds" as defined in the UCC except if, and to the extent, the provisions of Section 9-306 of the UCC shall be complied with.

(e) Except for financing statements filed or to be filed in favor of Lender as secured party, there are no financing statements under the UCC covering any or all of the Rate Cap Collateral and Borrower shall not, without the prior written consent of Lender, until payment in full of all of the Obligations, execute and file in any public office, any enforceable financing statement or statements covering any or all of the Rate Cap Collateral, except financing statements filed or to be filed in favor of Lender as secured party.

Section 9.5 Payments . If Borrower at any time shall be entitled to receive any payments with respect to the Interest Rate Cap Agreement, such amounts shall, immediately upon becoming payable to Borrower, be deposited by Counterparty into the Holding Account.

Section 9.6 Remedies . Subject to the provisions of the Interest Rate Cap Agreement, if an Event of Default shall occur and then be continuing:

(a) Lender, without obligation to resort to any other security, right or remedy granted under any other agreement or instrument, shall have the right to, in addition to all rights, powers and remedies of a secured party pursuant to the UCC, at any time and from time to time, sell, resell, assign and deliver, in its sole discretion, any or all of the Rate Cap Collateral (in one or more parcels and at the same or different times) and all right, title and interest, claim and demand therein and right of redemption thereof, at public or private sale, for cash, upon credit or for future delivery, and in connection therewith Lender may grant options and may impose reasonable conditions such as requiring any purchaser to represent that any "securities" constituting any part of the Rate Cap Collateral are being purchased for investment only, Borrower hereby waiving and releasing any and all equity or right of redemption to the fullest extent permitted by the UCC or applicable law. If all or any of the Rate Cap Collateral is sold by Lender upon credit or for future delivery, Lender shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, Lender may resell such Rate Cap Collateral. It is expressly agreed that Lender may exercise its rights with respect to less than all of the Rate Cap Collateral, leaving unexercised its rights with respect to the remainder of the Rate Cap Collateral, provided , however , that such partial exercise shall in no way restrict or jeopardize Lender's right to exercise its rights with respect to all or any other portion of the Rate Cap Collateral at a later time or times.

(b) Lender may exercise, either by itself or by its nominee or designee, in the name of Borrower, all of Lender's rights, powers and remedies in respect of the Rate Cap Collateral, hereunder and under law.

(c) Borrower hereby irrevocably, in the name of Borrower or otherwise, authorizes and empowers Lender and assigns and transfers unto Lender, and constitutes and appoints Lender its true and lawful attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Borrower and in the name of Borrower, upon the occurrence and during the continuance of an Event of Default, (i) to exercise and enforce every right, power, remedy,

authority, option and privilege of Borrower under the Interest Rate Cap Agreement, including any power to subordinate or modify the Interest Rate Cap Agreement (but not, unless an Event of Default exists and is continuing, the right to terminate or cancel the Interest Rate Cap Agreement), or to give any notices, or to take any action resulting in such subordination, termination, cancellation or modification and (ii) in order to more fully vest in Lender the rights and remedies provided for herein, to exercise all of the rights, remedies and powers granted to Lender in this Agreement, and Borrower further authorizes and empowers Lender, as Borrower's attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Borrower and in the name of Borrower, upon the occurrence and during the continuance of an Event of Default, to give any authorization, to furnish any information, to make any demands, to execute any instruments and to take any and all other action on behalf of and in the name of Borrower which in the opinion of Lender may be necessary or appropriate to be given, furnished, made, exercised or taken under the Interest Rate Cap Agreement, in order to comply therewith, to perform the conditions thereof or to prevent or remedy any default by Borrower thereunder or to enforce any of the rights of Borrower thereunder. These powers-of-attorney are irrevocable and coupled with an interest, and any similar or dissimilar powers heretofore given by Borrower in respect of the Rate Cap Collateral to any other Person are hereby revoked.

(d) Upon the occurrence and during the continuance of an Event of Default, Lender may, without notice to, or assent by, Borrower or any other Person (to the extent permitted by law), but without affecting any of the Obligations, in the name of Borrower or in the name of Lender, notify the Counterparty, or if applicable, any other counterparty to the Interest Rate Cap Agreement, to make payment and performance directly to Lender; extend the time of payment and performance of, compromise or settle for cash, credit or otherwise, and upon any terms and conditions, any obligations owing to Borrower, or claims of Borrower, under the Interest Rate Cap Agreement; file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by Lender necessary or advisable for the purpose of collecting upon or enforcing the Interest Rate Cap Agreement; and execute any instrument and do all other things deemed necessary and proper by Lender to protect and preserve and realize upon the Rate Cap Collateral and the other rights contemplated hereby.

(e) Pursuant to the powers-of-attorney provided for above, Lender may take any action and exercise and execute any instrument which it may deem necessary or advisable to accomplish the purposes hereof; provided , however , that Lender shall not be permitted to take any action pursuant to said power-of-attorney that would conflict with any limitation on Lender's rights with respect to the Rate Cap Collateral. Without limiting the generality of the foregoing, Lender, after the occurrence of an Event of Default, shall have the right and power to receive, endorse and collect all checks and other orders for the payment of money made payable to Borrower representing: (i) any payment of obligations owed pursuant to the Interest Rate Cap Agreement, (ii) interest accruing on any of the Rate Cap Collateral or (iii) any other payment or distribution payable in respect of the Rate Cap Collateral or any part thereof, and for and in the name, place and stead of Borrower, to execute endorsements, assignments or other instruments of conveyance or transfer in respect of any property which is or may become a part of the Rate Cap Collateral hereunder.

(f) Lender may exercise all of the rights and remedies of a secured party under the UCC.

(g) Without limiting any other provision of this Agreement or any of Borrower's rights hereunder, and without waiving or releasing Borrower from any obligation or default hereunder, Lender shall have the right, but not the obligation, to perform any act or take any appropriate action, as it, in its reasonable judgment, may deem necessary to protect the security of this Agreement, to cure such Event of Default or to cause any term, covenant, condition or obligation required under this Agreement or the Interest Rate Cap Agreement to be performed or observed by Borrower to be promptly performed or observed on behalf of Borrower. All amounts advanced by, or on behalf of, Lender in exercising its rights under this Section 9.7(g) (including, but not limited to, reasonable legal expenses and disbursements incurred in connection therewith), together with interest thereon at the Default Rate from the date of each such advance, shall be payable by Borrower to Lender upon demand and shall be secured by this Agreement.

Section 9.7 Sales of Rate Cap Collateral . No demand, advertisement or notice, all of which are, to the fullest extent permitted by law, hereby expressly waived by Borrower, shall be required in connection with any sale or other disposition of all or any part of the Rate Cap Collateral, except that Lender shall give Borrower at least thirty (30) Business Days' prior written notice of the time and place of any public sale or of the time when and the place where any private sale or other disposition is to be made, which notice Borrower hereby agrees is reasonable, all other demands, advertisements and notices being hereby waived. To the extent permitted by law, Lender shall not be obligated to make any sale of the Rate Cap Collateral if it shall determine not to do so, regardless of the fact that notice of sale may have been given, and Lender may without notice or publication adjourn any public or private sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Upon each private sale of the Rate Cap Collateral of a type customarily sold in a recognized market and upon each public sale, unless prohibited by any applicable statute which cannot be waived, Lender (or its nominee or designee) may purchase any or all of the Rate Cap Collateral being sold, free and discharged from any trusts, claims, equity or right of redemption of Borrower, all of which are hereby waived and released to the extent permitted by law, and may make payment therefor by credit against any of the Obligations in lieu of cash or any other obligations. In the case of all sales of the Rate Cap Collateral, public or private, Borrower shall pay all reasonable costs and expenses of every kind for sale or delivery, including brokers' and attorneys' fees and disbursements and any tax imposed thereon. However, the proceeds of sale of Rate Cap Collateral shall be available to cover such costs and expenses, and, after deducting such costs and expenses from the proceeds of sale, Lender shall apply any residue to the payment of the Obligations in the order of priority as set forth in Section 11 of the Security Instrument.

Section 9.8 Public Sales Not Possible . Borrower acknowledges that the terms of the Interest Rate Cap Agreement may prohibit public sales, that the Rate Cap Collateral may not be of the type appropriately sold at public sales, and that such sales may be prohibited by law. In light of these considerations, Borrower agrees that private sales of the Rate Cap Collateral shall not be deemed to have been made in a commercially unreasonably manner by mere virtue of having been made privately.

Section 9.9 Receipt of Sale Proceeds . Upon any sale of the Rate Cap Collateral by Lender hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt by Lender or the officer making the sale or

the proceeds of such sale shall be a sufficient discharge to the purchaser or purchasers of the Rate Cap Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Lender or such officer or be answerable in any way for the misapplication or non-application thereof.

Section 9.10 Extension Interest Rate Cap Agreement . If Borrower exercises any of its options to extend the Maturity Date pursuant to Section 5 of the Note, then, on or prior to the Maturity Date being extended, the Borrower shall obtain or have in place an Extension Interest Rate Cap Agreement (i) having a term through the end of the Interest Period in which the extended Maturity Date occurs, (ii) in a notional amount at least equal to the Principal Amount of the Loan as of the Maturity Date being extended, and (iii) having a strike rate equal to an amount such that the maximum interest rate paid by the Borrower after giving effect to payments made under such Extension Interest Rate Cap Agreement shall equal no more than the LIBOR Cap Strike Rate.

Section 9.11 Filing of Financing Statements Authorized . Borrower and Operating Lessee hereby authorize the filing of a form UCC-1 financing statement naming the Borrower and the Operating Lessee as debtors and the Lender as secured party in any office (including the office of the Secretary of State of the State of Delaware) covering all property of the Borrower and the Operating Lessee (including, but not limited to, the Account Collateral and the Rate Cap Collateral, but excluding Excess Cash Flow).

X. MAINTENANCE OF PROPERTY; ALTERATIONS

Section 10.1 Maintenance of Property . Borrower shall keep and maintain, or cause to be kept and maintained, the Property and every part thereof in good condition and repair, subject to ordinary wear and tear, and, subject to Excusable Delays and the provisions of this Agreement with respect to damage or destruction caused by a Casualty or Condemnation, shall not permit or commit any waste, impairment, or deterioration of any portion of the Property in any material respect. Borrower further covenants to do all other acts which from the character or use of the Property may be reasonably necessary to protect the security hereof, the specific enumerations herein not excluding the general. Borrower shall not demolish any Improvement on the Property except as the same may be necessary in connection with an Alteration or a restoration in connection with a Condemnation or Casualty, or as otherwise permitted herein, in each case in accordance with the terms and conditions hereof.

Section 10.2 Alterations and Expansions . Borrower shall not perform or undertake or consent to the performance or undertaking of any Alteration or Expansion, except in accordance with the following terms and conditions:

(a) The Alteration or Expansion shall be undertaken in accordance with the applicable provisions of this Agreement, the other Loan Documents, the Leases and all Legal Requirements.

(b) No Event of Default shall have occurred and be continuing or shall occur as a result of such action.

(c) A Material Alteration or Material Expansion, to the extent architects are customarily used for alterations or expansions of those types, but including any structural change to any of the Property or the Improvements, shall be conducted under the supervision of an Independent Architect and shall not be undertaken until ten (10) Business Days after there shall have been filed with Lender, for information purposes only and not for approval by Lender, detailed plans and specifications and cost estimates therefor, prepared and approved in writing by such Independent Architect. Such plans and specifications may be revised at any time and from time to time, provided that revisions of such plans and specifications shall be filed with Lender, for information purposes only.

(d) The Alteration or Expansion may not in and of itself, either during the Alteration or Expansion or upon completion, be reasonably expected to have a Material Adverse Effect with respect to the Property.

(e) All work done in connection with any Alteration or Expansion shall be performed with due diligence to Final Completion in a good and workmanlike manner, all materials used in connection with any Alteration or Expansion shall be not less than the standard of quality of the materials generally used at the Property as of the date hereof (or, if greater, the then-current customary quality in the sub-market in which the Property is located) and all work shall be performed and all materials used in accordance with all applicable Legal Requirements and Insurance Requirements.

(f) The cost of any Alteration or Expansion shall be promptly and fully paid for by Borrower, subject to the next succeeding sentence. No payment made prior to the Final Completion (excluding punch-list items) of an Alteration or Expansion or Restoration to any contractor, subcontractor, materialman, supplier, engineer, architect, project manager or other Person who renders services or furnishes materials in connection with such Alteration shall exceed ninety percent (90%) of the aggregate value of the work performed by such Person from time to time and materials furnished and incorporated into the Improvements.

(g) **Intentionally Deleted.**

(h) With respect to any Material Alteration or Material Expansion:

(i) Borrower shall have delivered to Lender Eligible Collateral in an amount equal to at least the total estimated remaining unpaid costs of such Material Alteration or Material Expansion which is in excess of the Threshold Amount, which Eligible Collateral shall be held by Lender as security for the Indebtedness and released to Borrower as such work progresses in accordance with Section 10.2(h)(iii) ; provided , however , in the event that any Material Alteration or Material Expansion shall be made in conjunction with any Restoration with respect to which Borrower shall be entitled to use or apply Proceeds pursuant to Section 6.2 hereof (including any Proceeds remaining after completion of such Restoration), the amount of the Eligible Collateral to be furnished pursuant hereto need not exceed the aggregate cost of such Restoration and such Material Alteration or Material Expansion (in either case, as estimated by the Independent Architect) less the sum of the amount of any Proceeds which the Borrower is entitled to withdraw pursuant to Section 6.2 hereof and the Threshold Amount;

(ii) Prior to commencement of construction of such Material Alteration or Material Expansion, Borrower shall deliver to Lender a schedule (with the concurrence of the Independent Architect) setting forth the projected stages of completion of such Alteration or Expansion and the corresponding amounts expected to be due and payable by or on behalf of Borrower in connection with such completion, such schedule to be updated quarterly by Borrower (and with the concurrence of the Independent Architect) during the performance of such Alteration or Expansion.

(iii) Any Eligible Collateral that a Borrower delivers to Lender pursuant hereto (and the proceeds of any such Eligible Collateral) shall be invested (to the extent such Eligible Collateral can be invested) by Lender in Permitted Investments for a period of time consistent with the date on which the Borrower notifies Lender that the Borrower expects to request a release of such Eligible Collateral in accordance with the next succeeding sentence. From time to time as the Alteration or Expansion progresses, the amount of any Eligible Collateral so furnished may, upon the written request of Borrower to Lender, be withdrawn by Borrower and paid or otherwise applied by or returned to Borrower in an amount equal to the amount Borrower would be entitled to so withdraw if Section 6.2.4 were applicable, and any Eligible Collateral so furnished which is a Letter of Credit may be reduced by Borrower in an amount equal to the amount Borrower would be entitled to so reduce if Section 6.2.4 hereof were applicable, subject, in each case, to the satisfaction of the conditions precedent to withdrawal of funds or reduction of the Letter of Credit set forth in Section 6.2.4 hereof. In connection with the above-described quarterly update of the projected stages of completion of the Material Alteration or Material Expansion (as concurred with by an Independent Architect), Borrower shall increase (or be permitted to decrease, as applicable) the Eligible Collateral then deposited with Lender as necessary to comply with Section 10.2(h)(i) hereof.

(iv) At any time after Final Completion of such Material Alterations or Material Expansions, the whole balance of any Cash deposited with Lender pursuant to Section 10.2(h) hereof then remaining on deposit may be withdrawn by Borrower and shall be paid by Lender to Borrower, and any Eligible Collateral so deposited shall, to the extent it has not been called upon, reduced or theretofore released, be released by Lender to Borrower, within ten (10) days after receipt by Lender of an application for such withdrawal and/or release together with an Officer's Certificate, and as to the following clauses (A) and (B) of this clause also a certificate of the Independent Architect, setting forth in substance as follows:

(A) that such Material Alteration(s) or Material Expansion(s) has been completed in all material respects in accordance with any plans and specifications therefor previously filed with Lender under Section 10.2(c) hereof;

(B) that to the knowledge of the certifying Person, (x) such Material Alteration(s) or Material Expansion (s) has been completed in compliance with all Legal Requirements, and (y) to the extent required for the legal use or occupancy of the portion of the Property affected by such Alteration(s) or Expansion(s), the applicable Borrower has obtained a temporary or permanent certificate of occupancy (or similar certificate) or, if no such certificate is required, a statement to that effect;

(C) that to the knowledge of the certifying Person, all amounts that a Borrower is or may become liable to pay in respect of such Material Alteration(s) or Material Expansion(s) through the date of the certification have been paid in full or adequately provided for and, to the extent that such are customary and reasonably obtainable by prudent property owners in the area where the applicable Property is located, that Lien waivers have been obtained from the general contractor and subcontractors performing such Alteration(s) or Expansion(s) or at its sole cost and expense, Borrower shall cause a nationally recognized title insurance company to deliver to Lender an endorsement to the Title Policy, updating such policy and insuring over such Liens without further exceptions to such policy other than Permitted Encumbrances, or shall, at its sole cost and expense, cause a reputable title insurance company to deliver a lender's title insurance policy, in such form, in such amounts and with such endorsements as the Title Policy, which policy shall be dated the date of completion of the Material Alteration and shall contain no exceptions other than Permitted Encumbrances; provided , however , that if, for any reason, Borrower are unable to deliver the certification required by this clause (C) with respect to any costs or expenses relating to the Alteration(s) or Expansion(s), then, assuming Borrower are able to satisfy each of the other requirements set forth in clauses (A) and (B) above, Borrower shall be entitled to the release of the difference between the whole balance of such Eligible Collateral and the total of all costs and expenses to which Borrower are unable to certify; and

(D) that to the knowledge of the certifying Person, no Event of Default has occurred and is continuing.

XI. BOOKS AND RECORDS, FINANCIAL STATEMENTS, REPORTS AND OTHER INFORMATION

Section 11.1 Books and Records . Borrower shall keep and maintain on a fiscal year basis proper books and records separate from any other Person, in which accurate and complete entries shall be made of all dealings or transactions of or in relation to the Note, the Property and the business and affairs of Borrower relating to the Property which shall reflect all items of income and expense in connection with the operation on an individual basis of the Property and in connection with any services, equipment or furnishings provided in connection with the operation of the Property, in accordance with GAAP. Lender and its authorized representatives shall have the right at reasonable times and upon reasonable notice to examine the books and records of Borrower relating to the operation of the Property and to make such copies or extracts thereof as Lender may reasonably require.

Section 11.2 Financial Statements .

11.2.1 Monthly Reports . At the request of Lender, Borrower shall furnish to Lender, within thirty (30) days after the end of each calendar month, unaudited operating statements, aged accounts receivable reports, rent rolls, STAR Reports and PACE Reports; occupancy and ADR reports for the Property, in each case accompanied by an Officer's Certificate certifying (i) with respect to the operating statements, that to the Best of Borrower's Knowledge and the best of such officer's knowledge such statements are true, correct, accurate and complete and fairly present the results of the operations of Borrower and the Property, and (ii) with respect to the aged accounts receivable reports, rent rolls, occupancy and ADR reports,

that such items are to the Best of Borrower's Knowledge and the best of such officer's knowledge true, correct and accurate and fairly present the results of the operations of Borrower and the Property. Borrower will also provide Lender copies of all flash reports within its possession as to monthly revenues of the Property upon request.

11.2.2 Quarterly Reports . Borrower will furnish, or cause to be furnished, to Lender on or before the forty-fifth (45th) day after the end of each Fiscal Quarter, the following items, accompanied by an Officer's Certificate, certifying that to the Best of Borrower's Knowledge and the best of such officer's knowledge such items are true, correct, accurate and complete and fairly present the financial condition and results of the operations of Borrower and the Property in a manner consistent with GAAP (subject to normal periodic adjustments) to the extent applicable:

(a) quarterly and year to date financial statements prepared for such fiscal quarter with respect to the Borrower, including a balance sheet and operating statement for such quarter for the Borrower for such quarter;

(b) occupancy levels at the Property for such period, including average daily room rates and the average revenue per available room;

(c) concurrently with the provision of such reports, Borrower shall also furnish a report of Operating Income and Operating Expenses (as well as a calculation of Net Operating Income based thereon) with respect to the Borrower and the Property for the most recently completed quarter;

(d) a STAR Report and to the extent provided by Manager a PACE Report for the most recently completed quarter;

(e) a calculation of DSCR for the trailing four (4) Fiscal Quarters (beginning with the trailing four (4) quarters ending September 30, 2007); and

(f) to the extent provided by Manager a report of aged accounts receivable relating to the Property as of the most recently completed quarter and a list of Security Deposits and the aggregate amount of all Security Deposits.

11.2.3 Annual Reports . Borrower shall furnish to Lender within ninety (90) days following the end of each Fiscal Year a complete copy of the annual financial statements of the Borrower, audited by a "Big Four" accounting firm or another independent certified public accounting firm acceptable to Lender in accordance with GAAP for such Fiscal Year and containing a balance sheet, a statement of operations and a statement of cash flows. The annual financial statements of the Borrower shall be accompanied by (i) an Officer's Certificate certifying that each such annual financial statement presents fairly, in all material respects, the financial condition and results of operation of the Property and has been prepared in accordance with GAAP and (ii) a management report, in form and substance reasonably satisfactory to Lender, discussing the reconciliation between the financial statements for such Fiscal Year and the most recent Budget. Together with the Borrower's annual financial statements, the Borrower shall furnish to Lender (A) an Officer's Certificate certifying as of the date thereof whether, to Borrower's knowledge, there exists a Default or Event of Default, and if

such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same; and (B) an annual report, for the most recently completed fiscal year, containing:

(1) Capital Expenditures (including for this purpose any and all additions to, and replacements of, FF&E,) made in respect of the Property, including separate line items with respect to any project costing in excess of $500,000;

(2) occupancy levels for the Property for such period; and

(3) average daily room rates at the Property for such period.

11.2.4 Leasing Reports . Not later than forty-five (45) days after the end of each fiscal quarter of Borrower's operations, Borrower shall deliver to Lender a true and complete rent roll for the Property, dated as of the last month of such fiscal quarter, showing the percentage of gross leasable area of the Property, if any, leased as of the last day of the preceding calendar quarter, the current annual rent for the Property, the expiration date of each Lease, whether to Borrower's knowledge any portion of the Property has been sublet, and if it has, the name of the subtenant, and such rent roll shall be accompanied by an Officer's Certificate certifying that such rent roll is true, correct and complete in all material respects as of its date and stating whether Borrower, within the past three (3) months, has issued a notice of default with respect to any Lease which has not been cured and the nature of such default.

11.2.5 Management Agreement . Borrower shall deliver to Lender, within ten (10) Business Days of the receipt thereof by Borrower, a copy of all reports prepared by Manager pursuant to the Management Agreement, including, without limitation, the Budget and any inspection reports.

11.2.6 Budget . Not later than March 1 st of each Fiscal Year hereafter, Borrower shall prepare or cause to be prepared and deliver to Lender, for informational purposes only, a Budget in respect of the Property for the Fiscal Year in which such delivery date falls. If Borrower subsequently amends the Budget, Borrower shall promptly deliver the amended Budget to Lender.

11.2.7 Other Information . Borrower shall, promptly after written request by Lender or, if a Securitization shall have occurred, the Rating Agencies, furnish or cause to be furnished to Lender, in such manner and in such detail as may be reasonably requested by Lender, such reasonable additional information as may be reasonably requested with respect to the Property. The information required to be furnished by Borrower to Lender under this Section 11.2 shall be provided in both hard copy format and electronic format; provided that Borrower shall only be required to provide the information required under this Section 11.2.7 in electronic format if such information is so available in the ordinary course of the operations of the Borrower and Manager and without significant expense.

XII. ENVIRONMENTAL MATTERS

Section 12.1 Representations . Borrower hereby represents and warrants that except as set forth in the environmental reports and studies delivered to Lender (the **"Environmental Reports"**), (i) Borrower has not engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (ii) to the Best of Borrower's Knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (iii) to the Best of Borrower's Knowledge, no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (iv) to the Best of Borrower's Knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Borrower; and (v) to the Best of Borrower's Knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Borrower.

Section 12.2 Covenants. Compliance with Environmental Laws . Subject to Borrower's right to contest under Section 7.3 , Borrower covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument, a Governmental Authority having jurisdiction over the Property requires remedial action to correct the presence of Hazardous Materials in, around, or under the Property (an **"Environmental Event"**), Borrower shall deliver prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Borrower has knowledge of the occurrence of an Environmental Event, Borrower shall deliver to Lender an Officer's Certificate (an **"Environmental Certificate"**) explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Borrower shall promptly provide Lender with copies of all notices from any Governmental Authority which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Borrower in connection with any Environmental Law. For purposes of this paragraph, the term "notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials provided by any Governmental Entity pertinent to compliance of the Property and Borrower with such Environmental Laws.

Section 12.3 Environmental Reports . Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or an Event of Default, Lender shall have the right to direct Borrower to obtain consultants reasonably approved by Lender to perform a comprehensive environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. Borrower grants Lender, its agents, consultants and contractors the right to enter the Property as reasonable or appropriate for the circumstances for the purposes of performing such studies and the reasonable cost of such studies shall be due and payable by Borrower to Lender upon demand and shall be secured by the Lien of the Security Instrument. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Borrower's or any Tenant's, other occupant's or Manager's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 12.3 , Lender shall not be deemed to be exercising any control over the operations of Borrower or the handling of any environmental matter or hazardous wastes or substances of Borrower for purposes of incurring or being subject to liability therefor.

Section 12.4 Environmental Indemnification . Borrower shall protect, indemnify, save, defend, and hold harmless the Indemnified Parties from and against any and all liability, loss, damage, actions, causes of action, costs or expenses whatsoever (including reasonable attorneys' fees and expenses) and any and all claims, suits and judgments which any Indemnified Party may suffer, as a result of or with respect to: (a) any Environmental Claim relating to or arising from the Property; (b) the violation of any Environmental Law in connection with the Property; (c) any release, spill, or the presence of any Hazardous Materials affecting the Property; and (d) the presence at, in, on or under, or the release, escape, seepage, leakage, discharge or migration at or from, the Property of any Hazardous Materials, whether or not such condition was known or unknown to Borrower; provided that, in each case, Borrower shall be relieved of its obligation under this subsection if any of the matters referred to in clauses (a) through (d) above did not occur (but need not have been discovered) prior to (1) the foreclosure of the Security Instrument, (2) the delivery by Borrower to Lender or its designee of a deed-in-lieu of foreclosure with respect to the Property, or (3) Lender's or its designee's taking possession and control of the Property after the occurrence of an Event of Default hereunder. If any such action or other proceeding shall be brought against Lender, upon written notice from Borrower to Lender (given reasonably promptly following Lender's notice to Borrower of such action or proceeding), Borrower shall be entitled to assume the defense thereof, at Borrower's expense, with counsel reasonably acceptable to Lender; provided , however , Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Borrower expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Borrower's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Borrower that would make such separate representation advisable. Borrower shall have no obligation to indemnify an Indemnified Party for damage or loss resulting from such Indemnified Party's gross negligence or willful misconduct.

Section 12.5 Recourse Nature of Certain Indemnifications . Notwithstanding anything to the contrary provided in this Agreement or in any other Loan Document, the indemnification provided in Section 12.4 shall be fully recourse to Borrower (but not its constituent parties) and shall be independent of, and shall survive, the discharge of the Indebtedness, the release of the Lien created by the Security Instrument, and/or the conveyance of title to the Property to Lender or any purchaser or designee in connection with a foreclosure of the Security Instrument or conveyance in lieu of foreclosure.

XIII. RESERVED

XIV. SECURITIZATION AND PARTICIPATION

Section 14.1 Sale of Note and Securitization . At the request of Lender and, to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to satisfy the market standards which may be reasonably required in the marketplace or by the Rating Agencies in connection with the sale of the Note or participation therein as part of the first successful securitization (such sale and/or securitization, the **"Securitization"**) of rated single or multi-class securities (the **"Securities"**) secured by or evidencing ownership interests in the Note and this Agreement, including using reasonable efforts to do (or cause to be done) the following (but Borrower shall not in any event be required to incur, suffer or accept (except to a de minimis extent)) (i) any lesser rights or greater obligations or liability than as currently set forth in the Loan Documents and (ii) except as set forth in this Article XIV and other than payment by Borrower of any legal fees of Borrower and Guarantor, any expense or any liability:

14.1.1 Provided Information . (i) Provide, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Guarantor), such non-confidential financial and other information (but not projections) with respect to the Property and Borrower and Manager to the extent such information is reasonably available to Borrower or Manager, (ii) provide, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Guarantor), business plans (but not projections) and budgets relating to the Property, to the extent prepared by the Borrower or Manager and (iii) cooperate with the holder of the Note (and its representatives) in obtaining, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Guarantor), such site inspection, appraisals, market studies, environmental reviews and reports, engineering reports and other due diligence investigations of the Property, as may be reasonably requested by the holder of the Note or reasonably requested by the Rating Agencies (all information provided pursuant to this Section 14.1 together with all other information heretofore provided to Lender in connection with the Loan, as such may be updated, at Borrower's request, in connection with a Securitization, or hereafter provided to Lender in connection with the Loan or a Securitization, being herein collectively called the **"Provided Information"**);

14.1.2 Opinions of Counsel . Use reasonable efforts to cause to be rendered such customary updates or customary modifications to the Opinions of

Counsel delivered at the closing of the Loan as may be reasonably requested by the holder of the Note or the Rating Agencies in connection with the Securitization. Borrower's failure to use reasonable efforts to deliver or cause to be delivered the opinion updates or modifications required hereby within twenty (20) Business Days after written request therefor shall constitute an "**Event of Default**" hereunder. To the extent any of the foregoing Opinions of Counsel were required to be delivered in connection with the closing of the Loan, any update thereof shall be at the expense of Lender and without cost to Borrower. Any such Opinions of Counsel that Borrower is reasonably required to cause to be delivered in connection with a Securitization (which the parties agree shall consist of a "Review Letter" and bring downs of the Opinions of Counsel delivered as of the date hereof which Borrower acknowledges will be required to be delivered by Borrower's counsel in connection with a Securitization taking into account the due diligence Borrower's counsel deems reasonably necessary to deliver such "Review Letter"). Borrower shall not be required to pay the cost of any reliance letters or new opinions to permit successor holders of the Loan or any interest therein to rely on the opinions delivered at Closing in connection with Securitization or assignments of the Loan.

14.1.3 Modifications to Loan Documents . Without cost to the Borrower (other than legal fees of counsel to the Borrower and Guarantor), execute such amendments to the organizational documents of Borrower, Security Instrument and Loan Documents as may be reasonably requested by Lender or the Rating Agencies in order to achieve the required rating or to effect the Securitization (including, without limitation, modifying the Payment Date, as defined in the Note, to a date other than as originally set forth in the Note), provided , that nothing contained in this Section 14.1.3 shall result in any economic or other adverse change in the transaction contemplated by the Security Instrument or the Loan Documents (unless Borrower is made whole by the holder of Note) or result in any operational changes that are burdensome to the Property, Operating Lessee, Manager or Borrower.

Section 14.2 Cooperation with Rating Agencies . Borrower shall, at Lender's expense (other than legal fees of counsel to the Borrower and Guarantor), (i) at Lender's request, meet with representatives of the Rating Agencies at reasonable times to discuss the business and operations of the Property, and (ii) cooperate with the reasonable requests of the Rating Agencies in connection with the Property. Until the Obligations are paid in full, Borrower shall provide the Rating Agencies with all financial reports required hereunder and such other information as they shall reasonably request, including copies of any default notices or other material notices delivered to and received from Lender hereunder, to enable them to continuously monitor the creditworthiness of Borrower and to permit an annual surveillance of the implied credit rating of the Securities.

Section 14.3 Securitization Financial Statements . Borrower acknowledges that all such financial information delivered by Borrower to Lender pursuant to Article XI may, at Lender's option, be delivered to the Rating Agencies.

Section 14.4 Securitization Indemnification .

14.4.1 Disclosure Documents . Borrower understands that certain of the Provided Information may be included in disclosure documents in connection with the Securitization, including a prospectus or private placement memorandum or a public registration

statement (each, a**" Disclosure Document"**) and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the**"Securities Act"**) or the Securities and Exchange Act of 1934, as amended (the**"Exchange Act"**), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, upon request, Borrower shall reasonably cooperate with the holder of the Note in updating the Provided Information for inclusion or summary in the Disclosure Document by providing all current information pertaining to Borrower and the Property reasonably requested by Lender.

14.4.2 Indemnification Certificate . In connection with each of (x) a preliminary and a private placement memorandum, or (y) a preliminary and final prospectus, as applicable, Borrower agrees to provide, at Lender's reasonable request, an indemnification certificate (at no cost to Borrower other than legal fees of counsel to the Borrower and Guarantor):

(a) certifying that Borrower has carefully examined those portions of such memorandum or prospectus, as applicable, reasonably designated in writing by Lender for Borrower's review pertaining to Borrower, the Property, the Loan and/or the Provided Information and insofar as such sections or portions thereof specifically pertain to Borrower, the Property, the Provided Information or the Loan (such portions, the **"Relevant Portions"**), the Relevant Portions do not (except to the extent specified by Borrower if Borrower does not agree with the statements therein), as of the date of such certificate, to the Best of Borrower's Knowledge, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(b) indemnifying Lender and the Affiliates of Citigroup Global Markets Inc. (collectively,**"CGM"**) that have prepared the Disclosure Document relating to the Securitization, each of its directors, each of its officers who have signed the Disclosure Document and each person or entity who controls CGM within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the**"CGM Group"**), and CGM, together with the CGM Group, each of their respective directors and each person who controls CGM or the CGM Group, within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act (collectively, the**"Underwriter Group"**) for any actual, out-of-pocket losses, third party claims, damages (excluding lost profits, diminution in value and other consequential damages) or liabilities arising out of third party claims (the**"Liabilities"**) to which any member of the Underwriter Group may become subject to the extent such Liabilities arise out of or are based upon any untrue statement of any material fact contained in the Relevant Portions and in the Provided Information or arise out of or are based upon the omission by Borrower to state therein a material fact required to be stated in the Relevant Portions in order to make the statements in the Relevant Portions in light of the circumstances under which they were made, not misleading (except that (x) Borrower's obligation to indemnify in respect of any information contained in a preliminary or final registration statement, private placement memorandum or preliminary or final prospectus shall be limited to any untrue statement or omission of material fact therein known to Borrower to the extent in breach of Borrower's certification made pursuant to clause (a) above and (y) Borrower shall have no responsibility for the failure of any member of the Underwriting Group to accurately transcribe written information supplied by Borrower or to include such portions of the Provided Information).

(c) Borrower's liability under clauses (a) and (b) above shall be limited to Liabilities arising out of or based upon any such untrue statement or omission made in a Disclosure Document in reliance upon and in conformity with information furnished to Lender by, or furnished at the direction and on behalf of, Borrower in connection with the preparation of those portions of the registration statement, memorandum or prospectus pertaining to Borrower, the Property or the Loan, including financial statements of Borrower and operating statements with respect to the Property. This indemnity agreement will be in addition to any liability which Borrower may otherwise have.

(d) Promptly after receipt by an indemnified party under this Article XIV of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Article XIV , notify the indemnifying party in writing of the commencement thereof, but the omission to so notify the indemnifying party will not relieve the indemnifying party from any liability which the indemnifying party may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the indemnifying party. In the event that any action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party under this Article XIV of its assumption of such defense, the indemnifying party shall not be liable for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof; provided , however , if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or in conflict with those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties at the expense of the indemnifying party. The indemnifying party shall not be liable for the expenses of separate counsel unless an indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or in conflict with those available to another indemnified party.

(e) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Article XIV is for any reason held to be unenforceable by an indemnified party in respect of any actual, out-of-pocket losses, claims, damages or liabilities relating to third party claims (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Article XIV , the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such actual, out of pocket losses, third party claims, damages or liabilities (or action in respect thereof) (but excluding damages for lost profits, diminution in value of the Property and consequential damages); provided , however , that no person guilty of fraudulent misrepresentation (within the

meaning of Section 11(f) of the Securities Act) shall be entitled to contribution for Liabilities arising therefrom from any person who was not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the CGM Group's and Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; (iii) the limited responsibilities and obligations of Borrower as specified herein; and (iv) any other equitable considerations appropriate in the circumstances.

Section 14.5 Retention of Servicer . Lender reserves the right to retain the Servicer. Lender has advised Borrower that the Servicer initially retained by Lender shall be Gemsa Loan Services, L.P. Borrower shall pay any reasonable servicing fees, special servicing fees, trustee fees and any administrative fees and expenses of the Servicer, including, without limitation, reasonable attorney and other third-party fees and disbursements in connection with a prepayment, release of the Property, assumption or modification of the Loan or enforcement of the Loan Documents. Borrower shall also pay the ongoing standard monthly servicing fee.

XV. ASSIGNMENTS AND PARTICIPATIONS

Section 15.1 Assignment and Acceptance . At no incremental cost or liability to Borrower, Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Note); provided that the parties to each such assignment shall execute and deliver to Lender, for its acceptance and recording in the Register (as hereinafter defined), an Assignment and Acceptance. In addition, at no incremental cost to Borrower, Lender may participate to one or more Persons all or any portion of its rights and obligations under this Agreement and the other Loan Documents (including without limitation, all or a portion of the Note) utilizing such documentation to evidence such participation and the parties' respective rights thereunder as Lender, in its sole discretion, shall elect.

Section 15.2 Effect of Assignment and Acceptance . Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Assignment and Acceptance, (i) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of Lender, as the case may be, hereunder and such assignee shall be deemed to have assumed such rights and obligations, and (ii) Lender shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement and the other Loan Documents (and, in the case of an Assignment and Acceptance covering all or the remaining portion of Lender's rights and obligations under this Agreement and the other Loan Documents, Lender shall cease to be a party hereto) accruing from and after the effective date of the Assignment and Acceptance, except with respect to (A) any payments made by Borrower to Lender pursuant to the terms of the Loan Documents after the effective date of the Assignment and Acceptance and (B) any letter of credit, cash deposit or other deposits or security (other than the Lien of the Security Instrument and the other Loan Documents) delivered to or for the benefit of or deposited with Citigroup Global Markets Realty Corp., as Lender, for which Citigroup Global Markets Realty

Corp. shall remain responsible for the proper disposition thereof until such items are delivered to a party who is qualified as an Approved Bank and agrees to hold the same in accordance with the terms and provisions of the agreement pursuant to which such items were deposited.

Section 15.3 Content . By executing and delivering an Assignment and Acceptance, Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, this Agreement or any other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (ii) Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Documents or any other instrument or document furnished pursuant thereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes Lender to take such action as agent on its behalf and to exercise such powers and discretion under the Loan Documents as are delegated to Lender by the terms hereof together with such powers and discretion as are reasonably incidental thereto; and (vi) such assignee agrees that it will perform, in accordance with their terms, all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by Lender.

Section 15.4 Register . Borrower shall maintain a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of Lender and each assignee pursuant to this Article XV and the Principal Amount of the Loan owing to each such assignee from time to time (the **"Register"**). The entries in the Register shall, with respect to such assignees, be conclusive and binding for all purposes, absent manifest error. The Register shall be available for inspection by Lender or any assignee pursuant to this Article XV at any reasonable time and from time to time upon reasonable prior written notice.

Section 15.5 Substitute Notes . Upon its receipt of an Assignment and Acceptance executed by an assignee, together with any Note or Notes subject to such assignment, Lender shall, if such Assignment and Acceptance has been completed and is in substantially the form of **Exhibit J** hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register, and (iii) give prompt written notice thereof to Borrower. Within five (5) Business Days after its receipt of such notice, Borrower, at Lender's own expense, shall execute and deliver to Lender in exchange and substitution for the surrendered Note or Notes a new Note to the order of such assignee in an amount equal to

the portion of the Loan assigned to it and a new Note to the order of Lender in an amount equal to the portion of the Loan retained by it hereunder. Such new Note or Notes shall be in an aggregate Principal Amount equal to the aggregate then outstanding principal amount of such surrendered Note or Notes, shall be dated the effective date of such Assignment and Acceptance and shall otherwise be in substantially the form of the Note (modified, however, to the extent necessary so as not to impose duplicative or increased obligations on Borrower and to delete obligations previously satisfied by Borrower). Notwithstanding the provisions of this Article XV , Borrower and Operating Lessee shall not be responsible or liable for any additional taxes, reserves, adjustments or other costs and expenses that are related to, or arise as a result of, any transfer of the Loan or any interest or participation therein that arise solely and exclusively from the transfer of the Loan or any interest or participation therein or from the execution of the new Note contemplated by this Section 15.5 , including, without limitation, any mortgage tax. Lender and/or the assignees, as the case may be, shall from time to time designate one agent through which Borrower shall request all approvals and consents required or contemplated by this Agreement and on whose statements Borrower, Operating Lessee and Guarantor may rely.

Section 15.6 Participations . Each assignee pursuant to this Article XV may sell participations to one or more Persons (other than Borrower or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Note held by it); provided , however , that (i) such assignee's obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) such assignee shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such assignee shall remain the holder of any such Note for all purposes of this Agreement and the other Loan Documents, and (iv) Borrower, Lender and the assignees pursuant to this Article XV shall continue to deal solely and directly with such assignee in connection with such assignee's rights and obligations under this Agreement and the other Loan Documents. In the event that more than one (1) party comprises Lender, Lender shall designate one party to act on the behalf of all parties comprising Lender in providing approvals and all other necessary consents under the Loan Documents and on whose statements Borrower, Operating Lessee and Guarantor may rely.

Section 15.7 Disclosure of Information . Any assignee pursuant to this Article XV may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Article XV , disclose to the assignee or participant or proposed assignee or participant, any information relating to Borrower furnished to such assignee by or on behalf of Borrower; provided , however , that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree in writing for the benefit of Borrower to preserve the confidentiality of any confidential information received by it.

Section 15.8 Security Interest in Favor of Federal Reserve Bank . Notwithstanding any other provision set forth in this Agreement or any other Loan Document, any assignee pursuant to this Article XV may at any time create a security interest in all or any portion of its rights under this Agreement or the other Loan Documents (including, without limitation, the amounts owing to it and the Note or Notes held by it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

XVI. RESERVE ACCOUNTS

Section 16.1 Tax Reserve Account . In accordance with the time periods set forth in Section 3.1 , if an Event of Default shall have occurred and be continuing, if required under Section 3.1 , Borrower shall deposit into the Tax Reserve Account an amount equal to (a) one-twelfth of the annual Impositions that Lender reasonably estimates, based on the most recent tax bill for the Property, will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Impositions at least twenty (20) days prior to the imposition of any interest, charges or expenses for the non-payment thereof and (b) one-twelfth of the annual Other Charges that Lender reasonably estimates will be payable during the next ensuing twelve (12) months (said monthly amounts in (a) and (b) above hereinafter called the**" Monthly Tax Reserve Amount"**, and the aggregate amount of funds held in the Tax Reserve Account being the**"Tax Reserve Amount"**). As of the Closing Date, the Monthly Tax Reserve Amount is $0.00, but such amount is subject to adjustment by Lender in accordance with the provisions of Section 3.1 and this Section 16.1 . The Monthly Tax Reserve Amount shall be paid by Borrower to Lender on each Payment Date during the continuance of an Event of Default to the extent required to be paid hereunder. Lender will apply the Monthly Tax Reserve Amount to payments of Impositions and Other Charges required to be made by Borrower pursuant to Article V and Article VII and under the Security Instrument, subject to Borrower's right to contest Impositions in accordance with Section 7.3 . In making any payment relating to the Tax Reserve Account, Lender may do so according to any bill, statement or estimate procured from the appropriate public office, without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of funds in the Tax Reserve Account shall exceed the amounts due for Impositions and Other Charges pursuant to Article V and Article VII , Lender shall credit such excess against future payments to be made to the Tax Reserve Account. If at any time Lender reasonably determines that the Tax Reserve Amount is not or will not be sufficient to pay Impositions and Other Charges by the dates set forth above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to the imposition of any interest, charges or expenses for the non-payment of the Impositions and Other Charges. Upon payment of the Impositions and Other Charges, Lender shall reassess the amount necessary to be deposited in the Tax Reserve Account for the succeeding period, which calculation shall take into account any excess amounts remaining in the Tax Reserve Account.

Section 16.2 Insurance Reserve Account . If required as provided in Section 3.1 hereof, Borrower will immediately pay to Lender for transfer by Lender to the Holding Account (or if Borrower fails to so pay Lender, Lender will transfer from the Holding Account) an amount (the**" Insurance Reserve Amount**") equal to payments of insurance premiums required to be made by Borrower to pay (or to reimburse Borrower or Operating Lessee for) the insurance required pursuant to Article VI and under the Security Instrument in accordance with the time periods set forth in Section 3.1 , an amount equal to one-twelfth of the insurance premiums that Lender reasonably estimates based on the most recent bill, will be payable for the renewal of the coverage afforded by the insurance policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such insurance premiums at least twenty (20) days prior to the expiration of the policies required to be maintained by Borrower pursuant to the

terms hereof (said monthly amounts hereinafter called the **"Monthly Insurance Reserve Amount"**); provided , however , that immediately following an Insurance Reserve Trigger, Borrower will pay to Lender for transfer by Lender to the Insurance Reserve Account (or if Borrower fails to so pay Lender, Lender will transfer from the Holding Account) an amount equal to payments of insurance premiums required to be made by Borrower to pay (or to reimburse Borrower or Operating Lessee) for the insurance required pursuant to Article VI and under the Security Instrument. As of the Closing Date, the Monthly Insurance Reserve Amount is $0.00. The Monthly Insurance Reserve Amount, if same is payable pursuant to Section 3.1 and this Section 16.2 , shall be paid by Borrower to Lender on each Payment Date. Lender will apply the Monthly Insurance Reserve Amount to payments of insurance premiums required to be made by Borrower to pay for the insurance required pursuant to Article VI and under the Security Instrument. In making any payment relating to the Insurance Reserve Account, Lender may do so according to any bill, statement or estimate procured from the insurer or agent, without inquiry into the accuracy of such bill, statement or estimate or into the validity thereof. If at any time Lender reasonably determines that the Insurance Reserve Amount is not or will not be sufficient to pay insurance premiums (up to a maximum amount equal to the aggregate annual insurance premium required hereunder), Lender shall notify Borrower of such determination and Borrower shall increase the Insurance Reserve Amount by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to expiration of the applicable insurance policies. Upon payment of such insurance premiums, Lender shall reassess the amount necessary to be deposited in the Insurance Reserve Account for the succeeding period, which calculation shall take into account any excess amounts remaining in the Insurance Reserve Account.

Section 16.3 Intentionally Deleted .

Section 16.4 FF&E Reserve Account . In accordance with Section 3.1 , and during any period when Manager is not reserving for FF&E pursuant to the terms of the Management Agreement, upon the request of Borrower, Lender will, within fifteen (15) Business Days (or such shorter time as may be appropriate in Lender's reasonable discretion during emergency situations identified to Lender by Borrower in writing) after the receipt of such request and the satisfaction of the other conditions set forth in this Section, cause disbursements to Operating Lessee from the FF&E Reserve Account to pay or to reimburse Operating Lessee or Manager for actual costs incurred in connection with capital expenditures relating to FF&E at the Property (to the extent such expenditures are permitted hereunder), provided that (A) Lender has received invoices evidencing that the costs for which such disbursements are requested are due and payable and are in respect of capital expenditures relating to FF&E at the property, (B) Operating Lessee has applied any amounts previously received by it in accordance with this Section for the expenses to which specific draws made hereunder relate and received any Lien waivers or other releases which would customarily be obtained with respect to the work in question and (C) Lender has received an Officer's Certificate confirming that the conditions in the foregoing clauses (A) and (B) have been satisfied and that the copies of invoices and evidence of Lien waivers (to the extent required above) attached to such Officer's Certificate are true, complete and correct.

Section 16.5 Letter of Credit Provisions .

16.5.1 Delivery of Letter of Credit . In lieu of maintaining on deposit all or any portion of the funds in the Low Debt Service Reserve Account with Lender pursuant to Section 16.4 , Borrower shall have the right to deliver a Letter of Credit in the amount of all or any portion of the amounts on deposit with Lender from time to time under Sections 16.4 .

16.5.2 Reduction of Letter of Credit . In the event that Borrower elects to deliver the Letter of Credit to Lender under the terms of Section 16.4.1 , Lender agrees to permit the reduction from time to time of the outstanding amount of the Letter of Credit by (i) the amount of cash funds delivered to Lender as reserve funds by Borrower in place of such Letter of Credit, and (ii) the amount that Borrower would otherwise be entitled to receive as a disbursement from the applicable reserve account pursuant to Section 16.4 .

16.5.3 Security for Debt . Each Letter of Credit delivered under this Agreement shall be additional security for the payment of the Indebtedness. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, at its option, to draw on any Letter of Credit and to apply all or any part thereof to the payment of the items for which such Letter of Credit was established or to apply each such Letter of Credit to payment of the Indebtedness in such order, proportion or priority as Lender may determine.

16.5.4 Additional Rights of Lender . In addition to any other right Lender may have to draw upon a Letter of Credit pursuant to the terms and conditions of this Agreement, Lender shall have the additional rights to draw in full any Letter of Credit: (a) if Lender has received a notice from the issuing bank that the Letter of Credit will not be renewed and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (b) upon receipt of notice from the issuing bank that the Letter of Credit will be terminated (except if a substitute Letter of Credit is provided); or (c) if Lender has received notice that the bank issuing the Letter of Credit shall cease to be an Approved Bank (unless an alternative Approved Bank issues an equivalent Letter of Credit within fifteen (15) days of Borrower's receipt of notice of same). Notwithstanding anything to the contrary contained in the above, Lender is not obligated to draw any Letter of Credit upon the happening of an event specified in (a), (b) or (c) above and shall not be liable for any losses sustained by Borrower due to the insolvency of the bank issuing the Letter of Credit if Lender has not drawn the Letter of Credit.

XVII. DEFAULTS

Section 17.1 Event of Default . (a) Each of the following events shall constitute an event of default hereunder (an "**Event of Default**"):

(i) if (A) the Indebtedness is not paid in full on the Maturity Date (subject to the last sentence of Section 3.1.5(b)), (B) any Debt Service is not paid in full on the applicable Payment Date (subject to the last sentence of Section 3.1.5(b)), (C) any prepayment of principal due under this Agreement or the Note is not paid when due, (D) the Prepayment Fee is not paid when due, (E) any deposit to the Deposit Account or any of the other Collateral Accounts is not made on the required deposit date therefor; or (F) except as to any amount included in (A), (B), (C), (D), and/or (E) of this clause (i), any other amount payable pursuant to this Agreement, the Note or any other Loan Document is not paid in full when due and payable

in accordance with the provisions of the applicable Loan Document, with such failure as described in subclauses (A), (B), (C), (D), and (E) continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(ii) subject to Borrower's right to contest as set forth in Section 7.3 , if any of the Impositions or Other Charges are not paid prior to the imposition of any interest, penalty, charge or expense for the non-payment thereof;

(iii) if the insurance policies required by Section 6.1 are not kept in full force and effect, or if certificates of any of such insurance policies are not delivered to Lender within ten (10) Business Days following Lender's request therefor;

(iv) if, except as permitted pursuant to Article VIII , (a) any Transfer of any direct or indirect legal, beneficial or equitable interest in all or any portion of the Property, (b) any Transfer of any direct or indirect interest in Borrower or other Person restricted by the terms of Article VIII , (c) any Lien or encumbrance on all or any portion of the Property, (d) any pledge, hypothecation, creation of a security interest in or other encumbrance of any direct or indirect interests in Borrower or other Person restricted by the terms of Article VIII or (e) the filing of a declaration of condominium with respect to the Property other than as allowed hereunder;

(v) if (i) any representation or warranty made by Borrower in Section 4.1.23 shall have been false or misleading in any material respect as of the date the representation or warranty was made which incorrect, false or misleading statement is not cured within thirty (30) days after receipt by Borrower of notice from Lender in writing of such breach or (ii) if any other representation or warranty made by Borrower herein by Borrower, any Guarantor, or any Affiliate of Borrower in any other Loan Document, or in any report, certificate (including, but not limited to, any certificate by Borrower delivered in connection with the issuance of the Non-Consolidation Opinion), financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made; provided , however , that if such representation or warranty which was false or misleading in any material respect is, by its nature, curable and is not reasonably likely to have a Material Adverse Effect, and such representation or warranty was not, to the Best of Borrower's Knowledge, false or misleading in any material respect which made, then same shall not constitute an Event of Default unless Borrower has not cured same within five (5) Business Days after receipt by Borrower of notice from Lender in writing of such breach;

(vi) if Borrower or Guarantor shall make an assignment for the benefit of creditors provided , however , if such assignment was with respect to any Guarantor such Event of Default may be cured by the delivery to Lender by any other Guarantor that is not subject to such assignment, of an executed counterpart to the Recourse Guaranty assuming the several liability of the Guarantor with respect to which such assignment within five (5) days after such assignment;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Operating Lessee, or Guarantor or if Borrower, Operating Lessee or Guarantor shall be

adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Operating Lessee or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Operating Lessee, or Guarantor shall be instituted; provided , however , if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Operating Lessee, or Guarantor upon the same not being discharged, stayed or dismissed within ninety (90) days; provided , further , if such appointment, adjudication, petition or proceeding was with respect to Guarantor such Event of Default may be cured by the delivery to Lender by Guarantor that, not subject to such appointment, adjudication, petition or proceeding, of an executed counterpart to the Recourse Guaranty assuming the several liability of the Guarantor with respect to which such appointment, adjudication, petition or proceeding occurred within five (5) days after such occurrence;

(viii) if Borrower, Operating Lessee or Guarantor, as applicable, Transfers its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) with respect to any term, covenant or provision set forth herein (other than the other subsections of this Section 17.1) which specifically contains a notice requirement or grace period, if Borrower, Operating Lessee or Guarantor shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(x) if Borrower, having notified Lender of its election to extend the Maturity Date as set forth in Section 5 of the Note, fails to deliver the Replacement Interest Rate Cap Agreement to Lender prior to the first day of the extended term of the Loan and Borrower has not prepaid the Loan pursuant to the terms of the Note prior to such first day of the extended term;

(xi) if Borrower or Operating Lessee shall fail to comply with any covenants set forth in Article V or Section XI with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(xii) if Borrower shall fail to comply with any covenants set forth in Section 4 or Section 3(d) or Section 8 of the Security Instrument with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(xiii) Borrower, Operating Lessee or any Affiliate of any such Person shall fail to deposit any sums required to be deposited in the Holding Account or any Sub-Accounts thereof are not made pursuant to the requirements herein when due;

(xiv) if this Agreement or any other Loan Document or any Lien granted hereunder or thereunder, in whole or in part, shall terminate or shall cease to be effective or shall cease to be a legally valid, binding and enforceable obligation of Borrower or Guarantor, or any Lien securing the Loan shall, in whole or in part, cease to be a perfected first priority Lien, subject to the Permitted Encumbrances (except in any of the foregoing cases in accordance with the terms hereof or under any other Loan Document or by reason of any affirmative act of Lender);

(xv) if the Management Agreement is terminated and an Acceptable Manager is not appointed as a replacement manager pursuant to the provisions of Section 5.2.14 within sixty (60) days after such termination;

(xvi) if Borrower shall default beyond the expiration of any applicable cure period under any existing easement, covenant or restriction which affects the Property, the default of which shall have a Material Adverse Effect;

(xvii) There exists any fact or circumstance that reasonably could be expected to result in the (a) imposition of a Lien or security interest under Section 412(n) of the Code or under ERISA or (b) the complete or partial withdrawal by Borrower or any ERISA Affiliate from any "multiemployer plan" that is reasonably expected to result in any material liability to Borrower; provided , however that the existence of such fact or circumstance under clause (xvii)(b) shall not constitute an Event of Default if such material withdrawal liability (x) in the case of a withdrawal by an ERISA Affiliate that is reasonably expected to cause a Material Adverse Effect or any withdrawal by Borrower, is paid within thirty (30) days after the date incurred or is contested in accordance with Section 7.3 hereof or (y) in the case of a withdrawal by an ERISA Affiliate that is not reasonably expected to cause a Material Adverse Effect, is paid within the period required under applicable ERISA statutes or is contested in accordance with Section 7.3 hereof;

(xviii) if (A) Borrower shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by the Ground Lease as and when such rent or other charge is payable (unless waived by the ground lessor under the Ground Lease), (B) there shall occur any default by Borrower, as ground lessee under the Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Borrower, to be observed or performed (unless waived by the ground lessor under the Ground Lease), (C) if any one or more of the events referred to in the Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the ground lessor under the Ground Lease or which would entitle the ground lessor to terminate the Ground Lease and the term thereof by giving notice to Borrower, as tenant thereunder (unless waived by the ground lessor under the Ground Lease), (D) if the leasehold estate created by the Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever or (E) if any of the terms, covenants or conditions of the Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Lender except as otherwise permitted by this Agreement;

(xix) if Borrower amends, modifies, waives, discharges or terminates the TIC agreement is, in each instance, such action is not permitted hereunder or without the prior written consent of Lender, which consent shall not be unreasonably withheld;

(xx) if, not later than one hundred eighty-five (185) days from the Closing Date, Qualified Intermediary shall not have sold or transferred to Strategic Hotel Funding, L.L.C. 100% of the indirect interests in the Borrower owned by Qualified Intermediary; or

(xxi) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement or of any Loan Document not specified in subsections (i) to (xx) above, for thirty (30) days after notice from Lender; provided , however , that if such Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided , further , that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days.

(b) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in clauses (a)(vi), (vii) or (viii) above) Lender may, without notice or demand, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action that Lender deems advisable to protect and enforce its rights against Borrower and in the Property, including, without limitation, (i) declaring immediately due and payable the entire Principal Amount together with interest thereon and all other sums due by Borrower under the Loan Documents, (ii) collecting interest on the Principal Amount at the Default Rate whether or not Lender elects to accelerate the Note and (iii) enforcing or availing itself of any or all rights or remedies set forth in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in subsections (a)(vi) or (a)(vii) above, the Indebtedness and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding. The foregoing provisions shall not be construed as a waiver by Lender of its right to pursue any other remedies available to it under this Agreement, the Security Instrument or any other Loan Document. Any payment hereunder may be enforced and recovered in whole or in part at such time by one or more of the remedies provided to Lender in the Loan Documents.

Section 17.2 Remedies . (a) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Indebtedness shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting

the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be subject to any one action or election of remedies law or rule and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Indebtedness or the Indebtedness has been paid in full.

(b) Upon the occurrence and during the continuance of an Event of Default, with respect to the Account Collateral, the Lender may:

(i) subject to the terms of the Assignment of Management Agreement, without notice to Borrower, except as required by law, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Account Collateral against the Obligations, Operating Expenses and/or Capital Expenditures for the Property or any part thereof;

(ii) in Lender's sole discretion, at any time and from time to time, exercise any and all rights and remedies available to it under this Agreement, and/or as a secured party under the UCC;

(iii) subject to the terms of the Assignment of Management Agreement, demand, collect, take possession of or receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Account Collateral (or any portion thereof) as Lender may determine in its sole discretion; and

(iv) take all other actions provided in, or contemplated by, this Agreement.

(c) With respect to Borrower, the Account Collateral, the Rate Cap Collateral and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Indebtedness, and Lender may seek satisfaction out of the Property or any part thereof, in its absolute discretion in respect of the Indebtedness. In addition, Lender shall have the right from time to time to partially foreclose this Agreement and the Security Instrument in any manner and for any amounts secured by this Agreement or the Security Instrument then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal or interest, Lender may foreclose this Agreement and the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose this Agreement and the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by this Agreement or the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to this Agreement and the Security Instrument to secure payment of sums secured by this Agreement and the Security Instrument and not previously recovered.

Section 17.3 Remedies Cumulative; Waivers . The rights, powers and remedies of Lender under this Agreement and the Security Instrument shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower or any Guarantor shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or any Guarantor or to impair any remedy, right or power consequent thereon.

Section 17.4 Costs of Collection . In the event that after an Event of Default: (i) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (ii) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents; or (iii) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Security Instrument or any of the Loan Documents; then Borrower shall pay to Lender all reasonable attorney's fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

XVIII. SPECIAL PROVISIONS

Section 18.1 Exculpation .

18.1.1 Exculpated Parties . Except as set forth in this Section 18.1 , the Recourse Guaranty and the Environmental Indemnity, no personal liability shall be asserted, sought or obtained by Lender or enforceable against (i) Borrower, Prime Lessee or Operating Lessee, (ii) any Affiliate of Borrower, Prime Lessee or Operating Lessee including any managing member, (iii) any Person owning, directly or indirectly, any legal or beneficial interest in Borrower, Prime Lessee, Operating Lessee or managing member or any Affiliate of Borrower, Prime Lessee, Operating Lessee or managing member, or (iv) any current or former direct or indirect partner, member, principal, officer, Controlling Person, beneficiary, trustee, advisor, shareholder, employee, agent, manager, Affiliate or director of any Persons described in clauses (i) through (iii) above (collectively, the **"Exculpated Parties"**) and none of the Exculpated Parties shall have any personal liability (whether by suit, deficiency, judgment or otherwise) in respect of the Obligations, this Agreement, the Security Instrument, the Note, the Property or any other Loan Document, or the making, issuance or transfer thereof, all such liability, if any, being expressly waived by Lender. The foregoing limitation shall not in any way limit or affect Lender's right to any of the following and Lender shall not be deemed to have waived any of the following:

(a) Foreclosure of the lien of this Agreement and the Security Instrument in accordance with the terms and provisions set forth herein and in the Security Instrument;

(b) Action against any other security at any time given to secure the payment of the Note and the other Obligations;

(c) Exercise of any other remedy set forth in this Agreement or in any other Loan Document which is not inconsistent with the terms of this Section 18.1 ;

(d) Any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness secured by this Agreement and the Security Instrument or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents; or

(e) The liability of any given Exculpated Party with respect to any separate written guaranty or agreement given by any such Exculpated Party in connection with the Loan (including, without limitation, the Recourse Guaranty and the Environmental Indemnity).

18.1.2 Carveouts From Non-Recourse Limitations . Notwithstanding the foregoing or anything in this Agreement or any of the Loan Documents to the contrary, there shall at no time be any limitation on Borrower's or Guarantor's liability for the payment, in accordance with the terms of this Agreement, the Note, the Security Instrument and the other Loan Documents, to Lender of:

(a) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of (i) the fraudulent acts of or intentional misrepresentations by Borrower or any Affiliate of Borrower and/or (ii) the failure of Borrower and/or Operating Lessee (as applicable) to have a valid and subsisting certificate of occupancy(s) for all or any portion of the Property if and to the extent such certificate of occupancy(s) is required to comply with all Legal Requirements;

(b) Proceeds which Borrower or any Affiliate of Borrower has received and to which Lender is entitled pursuant to the terms of this Agreement or any of the Loan Documents to the extent the same have not been applied toward payment of the Indebtedness, or used for the repair or replacement of the Property in accordance with the provisions of this Agreement;

(c) any membership deposits and any security deposits and advance deposits which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such deposits were applied or refunded in accordance with the terms and conditions of any of the Leases or membership agreement, as applicable, prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(d) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of all or any part of the Property, the Account Collateral or the Rate Cap Collateral being encumbered by a Lien (other than this Agreement and the Security Instrument) in violation of the Loan Documents;

(e) after the occurrence and during the continuance of an Event of Default, any Rents, issues, profits and/or income collected by Borrower, Operating Lessee or any Affiliate of Borrower or Operating Lessee (other than Rents and credit card receivables sent to the applicable Deposit Account or paid directly to Lender pursuant to any notice of direction

delivered to tenants of the Property or credit card companies) and not applied to payment of the Obligations or used to pay normal and verifiable Operating Expenses of the Property or otherwise applied in a manner permitted under the Loan Documents;

(f) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of physical damage to the Property from intentional waste committed by Borrower or any Affiliate of Borrower;

(g) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity or in the Security Instrument concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(h) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of the failure of Borrower to comply with any of the provisions of Article XIV ;

(i) if Borrower fails to obtain Lender's prior written consent to any Transfer, if and as required by the Loan Agreement or the Security Instrument;

(j) any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, causes of action, suits, claims, demands and adjustments of any nature or description whatsoever) which may at any time be imposed upon, incurred by or awarded against Lender, in the event (and arising out of such circumstances) that (x) Borrower should raise any defense, counterclaim and/or allegation in any foreclosure action by Lender relative to the Property, the Account Collateral or the Rate Cap Collateral or any part thereof which is found by a court to have been raised by Borrower in bad faith or to be without basis in fact or law, or (y) an involuntary case is commenced against Borrower under the Bankruptcy Code with the collusion of Borrower or any of its Affiliates or (z) an order for relief is entered with respect to the Borrower under the Bankruptcy Code through the actions of the Borrower or any of its Affiliates at a time when the Borrower is able to pay its debts as they become due unless Borrower and Guarantor shall have received an opinion of independent counsel that the directors of Borrower has a fiduciary duty to seek such an order for relief;

(k) any actual loss, damage, cost, or expense incurred by or on behalf of Lender by reason of Borrower, Operating Lessee, or their respective general partners failing to be and have been since the date of its respective formation, a Single Purpose Entity; and

(l) reasonable attorney's fees and expenses incurred by Lender in connection with any successful suit filed on account of any of the foregoing clauses (a) through (k).

XIX. MISCELLANEOUS

Section 19.1 Survival . This Agreement and all covenants, indemnifications, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Indebtedness is

outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the successors and assigns of Lender.

Section 19.2 Lender's Discretion . Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided or as is otherwise required by law) be in the sole discretion of Lender and shall be final and conclusive.

Section 19.3 Governing Law . (A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTE, AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND EACH OF BORROWER AND LENDER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH OF BORROWER AND LENDER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

CORPORATION SERVICE COMPANY
80 STATE STREET
ALBANY, NEW YORK 12207-2543

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 19.4 Modification, Waiver in Writing . No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Borrower shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 19.5 Delay Not a Waiver . Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 19.6 Notices . All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Citigroup Global Markets Realty Corp.
388 Greenwich Street, 11th Floor
New York, New York 10013
Attention: Amir Kornblum
Telecopy No.: (212) 816-8307

With a copy to: Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: Fredric L. Altschuler, Esq.
Telecopy: (212) 504-6666

If to Borrower: Strategic Hotel Funding, L.L.C
77 West Wacker Drive
Suite 4600
Chicago, Illinois, 60601
Attention: Chief Financial Officer and General Counsel
Telefax No.: (312) 658-5799

With a copy to: Perkins Coie LLP
131 South Dearborn Street, Suite 1700
Chicago, IL 60603-5559
Attention: Bruce A. Bonjour, Esq.
Telefax No.: (312) 324-9400

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, or (iii) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

Section 19.7 TRIAL BY JURY . EACH OF BORROWER, LENDER AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, THE SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, THE SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE

TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND BORROWER HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. BORROWER ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

Section 19.8 Headings . The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 19.9 Severability . Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 19.10 Preferences . To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 19.11 Waiver of Notice . Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 19.12 Expenses; Indemnity . (a) Except as may be otherwise expressly set forth in the Loan Documents, Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender pursuant to this Agreement); (ii) Lender's ongoing

performance of and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters as required herein or under the other Loan Documents; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (v) the filing and recording fees and expenses, mortgage recording taxes, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a work-out or of any insolvency or bankruptcy proceedings and (viii) procuring insurance policies pursuant to Section 6.1.11 ; provided , however , that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise (A) by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender or (B) in connection with any action taken under Article IV or a Securitization, other than the Borrower's internal administrative costs. Any cost and expenses due and payable to Lender may be paid from any amounts in the Deposit Accounts or the Holding Account if same are not paid by Borrower within ten (10) Business Days after receipt of written notice from Lender.

(b) Subject to the non-recourse provisions of Section 18.1 , Borrower shall protect, indemnify and save harmless Lender, and all officers, directors, stockholders, members, partners, employees, agents, successors and assigns thereof (collectively, the Indemnified Parties) from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including all reasonable attorneys' fees and expenses actually incurred) imposed upon or incurred by or asserted against the Indemnified Parties or the Property or any part of its interest therein, by reason of the occurrence or existence of any of the following (to the extent Proceeds payable on account of the following shall be inadequate; it being understood that in no event will the Indemnified Parties be required to actually pay or incur any costs or expenses as a condition to the effectiveness of the foregoing indemnity) prior to (i) the acceptance by Lender or its designee of a deed-in-lieu of foreclosure with respect to the Property, or (ii) an Indemnified Party or its designee taking possession or control of the Property or (iii) the foreclosure of the Security Instrument, except to the extent caused by the willful misconduct or gross negligence of the Indemnified Parties (other than such willful misconduct or gross negligence imputed to the Indemnified Parties because of their interest in the Property): (1) ownership of Borrower's interest in the Property, or any interest therein, or receipt of any Rents or other sum therefrom, (2) any accident, injury to or death of any persons or loss of or damage to property occurring on or about the Property or any Appurtenances thereto, (3) any design, construction, operation, repair, maintenance, use, non-use or condition of the Property or Appurtenances thereto, including claims or penalties arising from violation of any Legal Requirement or Insurance Requirement, as well as any claim based on any patent or latent defect, whether or not discoverable by Lender, any claim the insurance as to which is inadequate,

and any Environmental Claim, (4) any Default under this Agreement or any of the other Loan Documents or any failure on the part of Borrower to perform or comply with any of the terms of any Lease within the applicable notice or grace periods, (5) any performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (6) any negligence or tortious act or omission on the part of Borrower or any of its agents, contractors, servants, employees, sublessees, licensees or invitees, (7) any contest referred to in Section 7.3 hereof, (8) any obligation or undertaking relating to the performance or discharge of any of the terms, covenants and conditions of the landlord contained in the Leases, or (9) except as may be expressly limited herein, the presence at, in or under the Property or the Improvements of any Hazardous Materials in violation of any Environmental Law. Any amounts the Indemnified Parties are legally entitled to receive under this Section which are not paid within fifteen (15) Business Days after written demand therefor by the Indemnified Parties or Lender, setting forth in reasonable detail the amount of such demand and the basis therefor, shall bear interest from the date of demand at the Default Rate, and shall, together with such interest, be part of the Indebtedness and secured by the Security Instrument. In case any action, suit or proceeding is brought against the Indemnified Parties by reason of any such occurrence, Borrower shall at Borrower's expense resist and defend such action, suit or proceeding or will cause the same to be resisted and defended by counsel at Borrower's reasonable expense for the insurer of the liability or by counsel designated by Borrower (unless reasonably disapproved by Lender promptly after Lender has been notified of such counsel); provided , however , that nothing herein shall compromise the right of Lender (or any Indemnified Party) to appoint its own counsel at Borrower's expense for its defense with respect to any action which in its reasonable opinion presents a conflict or potential conflict between Lender and Borrower that would make such separate representation advisable; provided , further , that if Lender shall have appointed separate counsel pursuant to the foregoing, Borrower shall not be responsible for the expense of additional separate counsel of any Indemnified Party unless in the reasonable opinion of Lender a conflict or potential conflict exists between such Indemnified Party and Lender. So long as Borrower is resisting and defending such action, suit or proceeding as provided above in a prudent and commercially reasonable manner, Lender and the Indemnified Parties shall not be entitled to settle such action, suit or proceeding without Borrower's consent which shall not be unreasonably withheld, delayed or conditioned, and claim the benefit of this Section with respect to such action, suit or proceeding and Lender agrees that it will not settle any such action, suit or proceeding without the consent of Borrower; provided , however , that if Borrower is not diligently defending such action, suit or proceeding in a prudent and commercially reasonable manner as provided above, and Lender has provided Borrower with thirty (30) days' prior written notice, or shorter period if mandated by the requirements of applicable law, and opportunity to correct such determination, Lender may settle such action, suit or proceeding and claim the benefit of this Section 19.12 with respect to settlement of such action, suit or proceeding. Any Indemnified Party will give Borrower prompt notice after such Indemnified Party obtains actual knowledge of any potential claim by such Indemnified Party for indemnification hereunder. The Indemnified Parties shall not settle or compromise any action, proceeding or claim as to which it is indemnified hereunder without notice to Borrower.

Section 19.13 Exhibits and Schedules Incorporated . The Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 19.14 Offsets, Counterclaims and Defenses . Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 19.15 Liability of Assignees of Lender . No assignee of Lender shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any other Loan Document or any amendment or amendments hereto made at any time or times, heretofore or hereafter, any different than the liability of Lender hereunder. In addition, no assignee shall have at any time or times hereafter any personal liability, directly or indirectly, under or in connection with or secured by any agreement, lease, instrument, encumbrance, claim or right affecting or relating to the Property or to which the Property is now or hereafter subject any different than the liability of Lender hereunder. The limitation of liability provided in this Section 19.15 is (i) in addition to, and not in limitation of, any limitation of liability applicable to the assignee provided by law or by any other contract, agreement or instrument, and (ii) shall not apply to any assignee's gross negligence or willful misconduct.

Section 19.16 No Joint Venture or Partnership; No Third Party Beneficiaries . (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein provided , however , that it is hereby agreed by Lender and Borrower that the provisions of Section 3.1.5 and the provisions of Sections 6.2.2 and 6.2.5 (to the extent they relate to disbursement of funds to the Mezzanine Account and/or to pay amounts owed in connection with the Mezzanine Loan) are intended to confer upon Mezzanine Lender the right to insist upon and enforce the performance and observance of the obligation expressly set forth therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 19.17 Publicity . All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, or any of its Affiliates shall be subject to the prior written approval of Lender.

Section 19.18 Waiver of Marshalling of Assets . To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's shareholders and others with interests in Borrower and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Indebtedness without any prior or different resort for collection or of the right of Lender to the payment of the Indebtedness out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 19.19 Waiver of Counterclaim and Other Actions . Borrower hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, the Note, the Security Instrument or any Loan Document, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement, the Note, the Security Instrument or any Loan Document and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

Section 19.20 Conflict; Construction of Documents; Reliance . In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 19.21 Prior Agreements . This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Agreement and the other Loan Documents and unless specifically set forth in a writing contemporaneous herewith the terms, conditions and provisions of any and all such prior agreements do not survive execution of this Agreement.

Section 19.22 Counterparts . This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 19.23 Joint and Several Liability . If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder and under the other Loan Documents shall be joint and several.

Section 19.24 Contribution Among Co-Borrowers .

(a) *Contribution* . To provide for the just and equitable contribution among the Co-Borrowers on a several basis owing to the different equity each Co-Borrower owns in their tenancy in common ownership of the Property, if any payment is made by a Co-Borrower hereunder or under the Note or any other Loan Document in respect of the Obligations, such Co-Borrower shall be entitled to a contribution from the other Co-Borrower for all payments, damages and expenses incurred by such Co-Borrower under or in connection with such Obligations, such contributions to be made in the manner and to the extent set forth below. Any amount payable as a contribution under this Agreement shall be determined as of the date on which the related payment is made by a Co-Borrower.

(b) *Calculation of Contributions* . Each Co-Borrower shall be liable for contribution to the other Co-Borrower in respect of all payments, damages and expenses incurred by the other Co-Borrower hereunder or under the Note or any other Loan Document in an aggregate amount, equal to (i) the ratio of (x) the equity in the tenancy in common ownership of the Property owned by the contributing Co-Borrower to (y) the aggregate equity tenancy in common ownership of the Property, multiplied by (ii) the aggregate amount of such payments, damages and expenses incurred by the other Co-Borrower under or in connection with the Obligations.

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IN WITNESS WHEREOF , the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER :

SHR SCOTTSDALE X, L.L.C., a Delaware limited liability company

By: /s/ Ryan M. Bowie
Name: Ryan M. Bowie
Title: Assistant Treasurer

SHR SCOTTSDALE Y, L.L.C., a Delaware limited liability company

By: /s/ Ryan M. Bowie
Name: Ryan M. Bowie
Title: Assistant Treasurer

By signing below, Operating Lessee agrees that in consideration of the substantial benefit that it will receive from Lender making the Loan to Borrower, to comply with all of the terms, conditions, obligations and restrictions affecting Operating Lessee set forth herein:

OPERATING LESSEE :

DTRS SCOTTSDALE, L.L.C, a Delaware limited liability company

By: /s/ Ryan M. Bowie
Name: Ryan M. Bowie
Title: Assistant Treasurer

[Lender's signature appears on following page]

LENDER :

CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation

By: /s/ Amir Kornblum
Name: Amir Kornblum
Title: Authorized Signatory

EXHIBIT A

TITLE INSURANCE REQUIREMENTS, ENDORSEMENTS AND AFFIRMATIVE COVERAGES

1. General . Borrower and/or its counsel is responsible for ordering or updating any title insurance work. Lender requires a lender's title insurance policy insuring "Citigroup Global Markets Realty Corp., and its successors and assigns". The approved title underwriters, type and amount of insurance and required endorsements are described below. The list of endorsements is subject to review by Lender's counsel, local counsel and additional specific coverages may be required after review of the related title commitment.

2. Title Insurer . The Title Company or Title Companies must be approved by Lender and licensed to do business in the jurisdiction in which the Property is located._____has been pre-approved by Lender as a Title Company.

3. Title Agent . Unless Lender otherwise agrees, all title work shall be ordered and coordinated, and the closing of the Loan shall be conducted through_____contact_____Tel:_____.

4. Primary Title Insurance Requirements .

(a) Amount of Coverage : Not less than the Principal Amount of the Loan on the Closing Date.

(b) Effective Date : The later of the date of recording of the Security Instrument or the date of funding of the Loan. Borrower shall be required to provide a customary "gap" indemnity in order to enable the Title Company to provide "gap" coverage.

(c) Insured : "Citigroup Global Markets Realty Corp. and its successors and assigns".

(d) Legal Description : Metes and bounds description to be provided which must conform to that shown on the Survey, the Security Instrument and any other Loan Documents that require a legal description of the Property. A lot and block description shall be acceptable in place of a metes and bounds description in exceptional cases.

(e) Policy Form : An ALTA (or equivalent) lender's policy of title insurance in form and substance acceptable to Lender. Without limiting Lender's right to require specific coverages, endorsements or other title work, the Title Policy shall (i) be in the 1970 ALTA (as amended 84) form or, if not available, ALTA 1992 form (deleting arbitration and creditor rights exclusions) or, if not available, the form commonly used in the state where the Property is located, (ii) to the extent available, include the "extended coverage" provisions described in paragraph 5 below, (iii) include all applicable endorsements described in paragraph 6 below, and (iv) include Schedule B exceptions in a form and to the extent acceptable to Lender's counsel.

5. Extended Coverage Requirements . The Title Policy shall:

(a) not contain any exception for filed or unfilled mechanic, materialmen or similar liens;

(b) limit any general exception for real estate taxes and other charges to real estate or other similar taxes or assessments that are not yet due and payable or delinquent and are not a current lien on the Property;

(c) limit any general exception for the rights of persons in possession to the rights of specified tenants, as tenants only with no right or option to purchase, set forth on the rent roll for the Property and attached to the Title Policy; and

(d) not contain any general exception as to matters that an accurate Survey of the Property would disclose, but may contain specific exceptions to matters disclosed on the Survey to be delivered on the Closing Date, subject to review by Lender's counsel.

6. Required Endorsements . The following endorsements are required, to the extent available in the jurisdiction in which the Property is located:

- Restrictions, Encroachments, Minerals Endorsement ALTA Form 9 or equivalent.
- (If not available, the Title Policy must insure by way of affirmative coverage statements that there are no encroachments by any of the improvements onto easements, rights of way or other exceptions to streets or adjacent property, or insure against loss or damage resulting therefrom.)
- Deletion of Creditors Rights Exclusion Endorsement.
- Environmental Protection Lien Endorsement.
- (The Title Policy may make an exception only for specific state statutes that provide for potential subsequent liens that could take priority over the lien securing the Loan.)
- Direct Access to Public Road Endorsement.
- Usury Endorsement.
- Land Same As Survey/Legal Description Endorsement.
- Zoning Endorsement - ALTA 3.1 with coverage for number/type of parking spaces.

In lieu of an ALTA 3.1 zoning endorsement, Lender may accept an unambiguous, clean letter from the appropriate zoning authority which satisfies the following :

Zoning District . Confirms the applicable zoning district for the Property under the laws or ordinances of the applicable jurisdiction and that such zoning is the proper zoning for the improvements located on the Property.

Use Restrictions . Confirms that the current use of the Property is permitted under the zoning ordinance and that the Property is not a non-conforming use.

Dimensional Requirements . Confirms that the Property is in compliance with all dimensional requirements of the zoning code, including minimum lot area, maximum building height, maximum floor area ratio and setback or buffer requirements.

Parking Requirements . Confirms that the Property is in compliance with all parking and loading requirements, including the number of spaces and dimensional requirements for the parking spaces.

Rebuildability . If Property involves legal non-conforming use, confirms that, in the event of casualty, the Property may be rebuilt substantially in its current form (i.e., no loss of square footage, same building footprint) upon satisfaction of stated conditions and/or limitations.

- Subdivision Endorsement.
- Doing Business Endorsement.
- Deletion of Arbitration Endorsement.
- Separate Tax Lot Endorsement.
- Street Address Endorsement.
- Contiguity Endorsement.
- Variable Rate Endorsement.
- Mortgage Recording Tax Endorsement.
- Any of the following endorsements customary in the state in which the Property is located or as required by the nature of the transaction:

  Tie-In Endorsement for Multiple Policies
  Mortgage Assignment Endorsement
  First Loss / Last Dollar Endorsement
  Non-Imputation Endorsement
  Blanket Un-located Easements Endorsement
  Closure Endorsement

EXHIBIT B

CITIGROUP GLOBAL MARKETS REALTY CORP.
SURVEY REQUIREMENTS

The survey shall contain the following:

- The legal description of the Property;
- The courses and measured distances of the exterior boundary lines of the Property and the identification of owners of abutting parcels;
- The total acreage of the Property to the nearest tenth of an acre;
- The location of any existing improvements, the dimensions thereof at the ground surface level and their relationship to the facing exterior property lines, streets and set-back lines of the Property;
- The location, lines and widths of adjoining publicly dedicated and accepted streets showing the number and location of existing curb cuts, driveways, and fences;
- The location and dimensions of encroachments, if any, upon the Property;
- The location of all set-back lines, restrictions of record, other restrictions established by zoning or building code ordinance, utilities, easements, rights-of-way and other matters affecting title to the Property which are to be shown in Schedule B-2 of the Title Policy identifying each by reference to its recording data, where applicable;
- Evidence that adequate means of ingress and egress to and from the Property exist and that the Property does not serve any adjoining property for ingress, egress or any other purpose;
- If the Property is described as being on a recorded map or plat, a legend relating the survey to such map or plat;
- The street address of the Property;
- Parking areas at the Property and, if striped, the striping and type (e.g., handicapped, motorcycle, regular, etc.) and number of parking spaces at the Property;
- A statement as to whether the Property is located in a special flood or mudslide hazard area as determined by a review of a stated and identified Flood Hazard Boundary Map published by the Federal Insurance Administration of the U.S. Department of Housing and Urban Development;

- A vicinity map showing the property in reference to nearby highways or major street intersections.
- The exterior dimensions of all buildings at ground level and the square footage of the exterior footprint of all buildings, or gross floor area of all buildings, at ground level.
- The location of utilities serving or existing on the property as evidenced by on-site observation or as determined by records provided by client, utility companies and other appropriate sources (with reference as to the source of information) (for example)
  - railroad tracks and sidings;
  - manholes, catch basins, valve vaults or other surface indications of subterranean uses;
  - wire and cables (including their function) crossing the surveyed premises, all poles on or within ten feet of the surveyed premises, and the dimensions of all crosswires or overhangs affecting the surveyed premises; and
  - utility company installations on the surveyed premises.
- A certificate in substantially the following form:

  The undersigned being a registered surveyor of the State of [State] hereby certifies to CITIGROUP GLOBAL MARKETS REALTY CORP., [NAME OF BORROWING ENTITY] and [INSERT NAME OF TITLE COMPANY], and each of their respective successors and assigns, as of the date below, as follows:

  This print of survey actually was made on the ground on [INSERT DATE SURVEY WAS MADE] in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by American Land Title Association (" ALTA") and American Congress on Surveying & Mapping ("ACSM ") and National Society of Professional Surveyors ("NSPS") in 1999, contains Items 1,2,3,4,6,7(a), 7(b)(l), 8, 9, 10, 11, 13, 14 and 16 of Table A thereto, and correctly shows: (i) a fixed and determinable position and location of the land described herein (together with the buildings and improvements thereon, the "Mortgaged Property"), including the position of the point of beginning; (ii) the location of all buildings, structures and other improvements situated on the land; (iii) all driveways or other curb cuts along any street or alley upon which the land abuts; (iv) the location and name of all public and private streets or alleys located thereon or adjacent thereto, all of which are public unless otherwise noted; (v) the location,

dimension and recording data of all easements, rights-of-way and other matters of record thereon or with respect to which the undersigned has knowledge; (vi) the location and dimension of all unrecorded easements, paths, rights-of-way and party walls to the extent visible thereon or with respect to which the undersigned has knowledge; (vii) the location of applicable building restriction and setback lines required by local ordinances and regulations; and (viii) the location of all encroachments or overhangs onto or from the Mortgaged Property. Except as shown on this survey, there are no visible discrepancies, conflicts, shortages in area or boundary line conflicts. Except as shown on the survey, the Mortgaged Property does not serve any adjoining property for drainage, utilities or ingress or egress. The Mortgaged Property has access to and from a duly dedicated and accepted public roadway. This survey reflects boundary lines of the land, which "close" by engineering calculations. All utility services to the Mortgaged Property either enter the Mortgaged Property through adjoining public streets, or this survey shows the point of entry and location of any utilities which pass through or are located on adjoining private land to the extent visible or known to the undersigned. The Mortgaged Property does not lie within an area designated as a flood hazard area by any map or publication of the U.S. Department of Housing and Urban Development or the Federal Emergency Management Agency. The Mortgaged Property and only the Mortgaged Property constitutes one tax lot. All zoning use and density classifications are properly shown hereon. The undersigned has received and examined a copy of the Commitment for Title Insurance No._____ , dated_____, issued by _____, with respect to the Mortgaged Property, as well as a copy of each instrument listed therein. The location of each exception set forth in such Commitment, to the extent it can be located, has (with recording reference and reference to the exception number of the Commitment) been shown hereon. The undersigned further certifies that this survey meets the Accuracy Standards (as adopted by ALTA, ACSM and NSPS and in effect on the date of this certification) and [SELECT ONE OF THE FOLLOWING TWO PHRASES]:

[the Positional Uncertainties resulting from the survey measurements made on the survey do not exceed the allowable Positional Tolerance.]

[the survey measurements were made in accordance with the "Minimum Angle, Distance and Closure Requirements for Survey Measurements Which Control Land Boundaries for ALTA/ACSM Land Title Surveys."]

_____

, Licensed Surveyor

Date: _____

[seal]

EXHIBIT C

SINGLE PURPOSE ENTITY PROVISIONS

It is a requirement that the borrower be a bankruptcy remote, special purpose entity. A bankruptcy remote, special purpose entity is an entity which is unlikely to become insolvent as a result of its own activities and which is adequately insulated from the consequences of any other party's insolvency. Set forth below is language to be included in the organizational documents of corporations, limited partnerships and limited liability companies to evidence such entities' existence as bankruptcy remote, special purpose entities.

I. CORPORATION

If the Single Purpose Entity is a corporation, its certificate of incorporation will have to have the following provisions to be considered a special purpose entity:

A. Purpose

The corporation's purpose should be limited to owning and operating the mortgaged property (or interests in the Borrower).

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____, State of_____[_____interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the [General Corporation Law] of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

B. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's assets, transfer of ownership assets, incurrence of additional debt and amendment of the corporation's articles of incorporation.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Corporation shall not incur, assume, or guaranty any other indebtedness. The Corporation shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Corporation substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article___ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Corporation will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (ii) no amendment to this certificate of incorporation or to the Corporation's By Laws may be made without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary] and (ii) the Corporation shall not dissolve, terminate or liquidate."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

C. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to

the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

D. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an " Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purpose of this Article __ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for

administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

II. LIMITED PARTNERSHIP

If the Single Purpose Entity is a limited partnership, to be a special purpose entity, all of its general partners shall be special purpose entities. If such limited partnership has more than one general partner, then such limited partnership shall continue (and not dissolve) for so long as a solvent general partner exists. Consequently, both the limited partnership's partnership agreement and the certificate of incorporation of its general partner(s) will have to meet certain requirements to be considered special purpose entities. Such requirements are as follows:

A. Limited Partnership Agreement

a. Purpose

The limited partnership's purpose should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Partnership, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____ , State of_____ [_____ interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the Uniform Limited Partnership Act of_____ necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The partnership shall be prohibited, except in certain circumstances, from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the partnership's assets, transfer of partnership interests, incurrence of additional debt and amendment of the partnership agreement.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The Partnership shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Partnership shall not incur, assume, or guaranty any other indebtedness. The Partnership shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Partnership) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Partnership substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Partnership's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this partnership and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Partnership will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the partners of the Partnership. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (i) no amendment to this partnership agreement may be made and (ii) the partnership shall not dissolve, liquidate or terminate without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary] ."

c. Indemnification

Indemnification of a partnership's partners should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Partnership in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the partnership must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in this partnership agreement, the Partnership shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate partnership records and books of account from those of any affiliate.

3. It shall not commingle assets with those of any affiliate.

4. It shall conduct its own business in its own name.

5. It shall observe all partnership formalities.

6. It shall maintain financial statements separate from any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

8. It shall maintain an arm's length relationship with any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity.

16. At all times have all of its general partners shall be special purpose corporate entities with at least two (2) Independent Directors."

For purposes of this Article____ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Partnership including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Partnership, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this partnership, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Independent Director " shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Partnership or any of its respective partners, members,

shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Partnership or managing member of the Partnership or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Partnership or of the managing member of the Partnership. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Dissolution

The limited partnership agreement should provide that the partnership will continue (and not dissolve) so long as a solvent general partner exists.

"Notwithstanding any provision or of any other document governing the formation, management or operation of the Partnership hereof to the contrary, the following shall govern: The Partnership shall not terminate solely as a consequence of the [Bankruptcy] of one or more of the general partners of the Partnership so long as there remains a solvent general partner of the Partnership."

In addition, dissolution of the partnership must not occur so long as the partnership remains mortgagor of the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Subject to applicable law, dissolution of the Partnership shall not occur so long as the Partnership remains mortgagor of the [Property] [use other term for the real estate if necessary]."

B. Corporate General Partner

a. Purpose

The corporation's purpose should be limited to acting as general partner of the limited partnership whose purpose, as set forth above, generally should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as a general partner of a limited partnership (the "Partnership") whose purpose is to acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____ , State of_____ (the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the General Corporation Law of_____ necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in or causing the partnership to engage in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's or partnership's assets, transfer of ownership assets, transfer of partnership interests, incurrence of additional debt, amendment of the corporation's articles of incorporation and amendment of the partnership agreement.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur or cause the Partnership to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Corporation shall not and shall not cause the Partnership to incur, assume, or guaranty any other indebtedness. For so long as the Partnership remains mortgagor of the Property, the Corporation shall not cause the Partnership to dissolve. The Corporation shall not and shall not cause the Partnership to consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Partnership) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Corporation or Partnership substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article_____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall

have been committed by this corporation or the Partnership and be continuing. For so long as a mortgage lien exists on the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Partnership to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the Property, (i) no amendment to this certificate of incorporation or to the Corporation's By Laws nor to the Partnership agreement of the Partnership may be made and (ii) neither the Corporation nor the Partnership shall be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the Property."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

c. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Partnership or the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the Corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an "Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or, except to the extent of its liability for the debt secured by such mortgage lien, become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purposes of this Article_____, the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

III. LIMITED LIABILITY COMPANY

If the Single Purpose Entity is a limited liability company, to be a special purpose entity, each managing member shall be a special purpose corporation. If such limited liability company has more than one managing member, then such limited liability company shall continue (and not dissolve) for so long as a solvent managing member exists. Consequently, both the Limited Liability Company's articles of organization and the certificate of incorporation of its outside member will have to meet certain requirements to be considered special purpose entities. Such requirements are as follows:

A. Articles of Organization

a. Purpose

The limited liability company's purpose should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Limited Liability Company, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____State of_____[_____interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the Limited Liability Company Act_____of necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The limited liability company shall be prohibited, except in certain circumstances from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the limited liability company's assets, transfer of limited liability company interests, incurrence of additional debt and amendment of the articles of organization.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: The Limited Liability Company shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Limited Liability Company shall not incur, assume, or guaranty any other indebtedness. The Limited Liability Company shall not consolidate or merge with or into any other entity or convey or transfer its properties and

assets substantially as an entirety to any entity unless (i) the entity (if other than the Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article_____and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Limited Liability Company's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this limited liability company and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Limited Liability Company will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the members of the Limited Liability Company. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (i) no amendment to these articles of organization may be made and (ii) the Limited Liability Company shall not be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]."

c. Indemnification

Indemnification of a limited liability company's partners should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Limited Liability Company in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the limited liability company must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in these articles of organization, the Limited Liability Company shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliates and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate records and books of account from those of any affiliate.

3. It shall not commingle assets with those of any affiliate.

4. It shall conduct its own business in its own name.

5. It shall maintain financial statements separate from any affiliate.

6. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

7. It shall maintain an arm's length relationship with any affiliate.

8. It shall maintain adequate capital in light of its contemplated business operations.

9. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

10. It shall not acquire obligations or securities of its partners, members or shareholders.

11. It shall use stationery, invoices and checks separate from any affiliate.

12. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.

13. It shall hold itself out as an entity separate from any affiliate.

14. It shall correct any known misunderstanding regarding its separate identity.

15. At all times all managing members shall be a special purpose corporate member with at least two (2) Independent Directors."

For purposes of this Article___ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Limited Liability Company including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Limited Liability Company, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this limited liability company, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Independent Director " shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Limited Liability Company or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Limited Liability Company or managing member of the Limited Liability Company or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Limited Liability Company or of the managing member of the Limited Liability Company. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Dissolution

To the extent permitted by tax law the articles of organization should provide that the vote of a majority in interest of the remaining members is sufficient to continue the life of the limited liability company. If such vote is not obtained, for so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary] the limited liability company may not be permitted to liquidate the [Property] [use other term for the real estate if necessary] without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage lien has been paid in full or otherwise completely discharged. "

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: To the extent permissible under applicable federal and state tax law, the vote of a majority in interest of the remaining members is sufficient to continue the life of the Limited Liability Company. If such vote is not obtained, for so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary] the Limited Liability Company shall not liquidate the [Property] [use other term for the real estate if necessary] without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage liens has been paid in full or otherwise completely discharged.

f. Voting

When acting on matters subject to the vote of the members, notwithstanding that the limited liability company is not then insolvent, the members and the outside member must take into account the interest of the Limited Liability Company's creditors, as well as those of the members.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: When acting on matters subject to the vote of the members, notwithstanding that the Limited Liability Company is not then insolvent, all of the members shall take into account the interest of the Limited Liability Company's creditors, as well as those of the members."

B. Outside Corporate Member

a. Purpose

The outside corporate member's purpose should be limited to acting as corporate member of the limited liability company whose purpose, as set forth above, generally should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as the outside member of a limited liability company (the "Limited Liability Company") whose purpose is to acquire that certain parcel of real property, together with all improvements located thereon, in the City of _____, State of_____(the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the General Corporation Law of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in or causing the limited liability company to engage in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's or the limited liability company's assets, transfer of ownership assets, transfer of limited liability company interests, incurrence of additional debt, amendment of the corporation's articles of incorporation and amendment of the articles of organization.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur or cause the Limited Liability Company to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Corporation shall not and shall not cause the Limited Liability Company to incur, assume, or guaranty any other indebtedness. The Corporation shall not and shall not cause the Limited Liability Company to consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer of the

properties and assets of the Corporation or Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article _____and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation or the Limited Liability Company and be continuing. For so long as a mortgage lien exists on the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Limited Liability Company to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the Property, without first obtaining approval of the mortgagee holding a first mortgage lien on the Property (i) no material amendment to this certificate of incorporation or to the Corporation's By Laws nor to the articles of organization of the Limited Liability Company may be made and (ii) neither the Corporation nor the Limited Liability Company shall dissolve, liquidate or terminate without first obtaining approval of the mortgagee holding a first mortgage lien on the Property."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

c. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Limited Liability Company or the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an " Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6 . It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purpose of this Article __ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Voting

When voting on matters concerning the limited liability company, notwithstanding that the limited liability company is not then insolvent, the Corporation must take into account the interest of the Limited Liability Company's creditors, as well as those of its members.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: When voting on matters concerning the Limited Liability Company, notwithstanding that the Limited Liability Company is not then insolvent, the Corporation shall take into account the interest of the Limited Liability Company's creditors, as well as those of its members."

IV. OTHER STRUCTURES

The foregoing provisions do not exhaustively contemplate all ownership structures for a mortgaged property. Situations involving ownership structures not specifically contemplated by the provisions set forth on this Exhibit C shall nevertheless require Single Purpose Entities substantively to comply with the requirements to these provisions, modified as appropriate to accommodate the ownership structure in question.

EXHIBIT D

ENFORCEABILITY OPINION REQUIREMENTS

1. The Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Opinion shall be given by a professional law firm selected by Borrower and reasonably acceptable to Lender.

3. The Opinion shall be in form and substance acceptable to Lender and shall be given in relation to Borrower, Guarantor, Manager and any other relevant party to the Loan (each a " Loan Party"). Depending on the nature of the transaction, the Opinion shall address the applicable law of the State of New York, the State where the Property is located and each State where any Loan Party is organized (collectively, the "Relevant States"). To the extent that the Property is located in a jurisdiction outside of the State of New York and/or any Loan Party is organized under a jurisdiction outside the States of New York or Delaware, the appropriate opinions below should be given by local counsel. The Opinion shall be given on the basis of an examination of an executed original of each completed Loan Document in addition to such other documents or instruments counsel deems relevant.

4. The Opinion shall contain the following opinions:

Opinions with respect to the law of the State of Formation or Organization of the Loan Parties

(a) Each Loan Party is a [*Describe Legal Form*] duly organized, validly existing and in good standing under the laws of the State of [*State of Organization*] and is authorized to do business and in good standing in the State of [*State of Organization*].

(b) Each Loan Party has the requisite power to own its properties and to carry on its business as now being conducted and to enter into the transactions covered by the Loan Documents.

(c) The execution and delivery by each Loan Party of each Loan Document to which it is a party has been duly authorized by all necessary partnership, company and/or corporate action, as applicable. To the extent a party thereto, the Loan Documents have been duly executed and delivered by each Loan Party.

(d) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party does not:

(i) conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, the partnership agreement, partnership certificate, articles of incorporation, by-laws, trust agreement or trust certificate, as applicable, of such Loan Party;

(ii) contravene any law, statute or regulation of the United States of America or the [*State of Organization*] or any agency or political subdivision of either thereof;

(iii) violate any order, writ, injunction, or decree of which, after due inquiry, counsel has actual knowledge, issued by any court or governmental authority of the United States of America or the [*State of Organization*] or any agency or political subdivision of either thereof to which such Loan Party is subject; or

(iv) conflict with or result in any breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien other than the lien of the Loan Documents upon any of the assets or properties of such Loan Party pursuant to the terms of any material indenture, mortgage, deed of trust, agreement, contract or instrument to which such Loan Party is a party or by which it or any of its assets or properties is bound.

(e) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of [*Relevant State*] or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(f) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(g) To the extent the State of [*State of Organization*] UCC is applicable to the authorization of the Financing Statement, pursuant to the provisions of the Loan Agreement and the Security Instrument, Borrower has authorized the filing of the Financing Statement for purposes of Section 9-509 of the State of [*State of Organization*] UCC.

(h) To the extent the State of [*State of Organization*] UCC is applicable, the financing Statement includes not only all of the types of information required by Section 9-502(a) of the State of [*State of Organization*] UCC but also the types of information without which the Filing Office may refuse to accept the Financing Statement pursuant to Section 9-516 of the State of [*State of Organization*] UCC.

(i) To the extent the State of [*State of Organization*] UCC is applicable, the security interest of the Secured Party will be perfected in Borrower's rights in all UCC Collateral upon the later of the attachment of the security interest and the filing of the Financing Statement in the Filing Office; provided, however, we express no opinion with respect to (i) money, (ii) deposit accounts, (iii) letter of credit rights, (iv) goods covered by a certificate of title statute,

(v) as-extracted collateral, timber to be cut, or (vi) any property subject to a statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-3 10(a) of the State of [*State of Organization*]. "UCC Collateral" means the portion of the Property (as defined in the Security Instrument), the Rate Cap Collateral, the Account Collateral (as defined in the Loan Agreement) and the Collateral Accounts (as defined in the Account Agreement) to the extent the UCC governs a security interest in such collateral.

(j) You have asked whether Borrower is a "registered organization" as such term is defined in Section 9-1 02(a)(70) of the State of [*State of Organization*] UCC. Pursuant to Section 9-102(a)(70) of the State of [*State of Organization*] UCC, a "registered organization" must be (i) organized solely under the laws of a single State (or the United States) and (ii) the State (or the United States) must maintain a public record showing the organization to have been organized.

Opinions with respect to New York Law

(a) To the extent governed by New York law and to the extent a party thereto, the Loan Documents are the legal, valid and binding obligations of each Loan Party, enforceable against such Loan Party in accordance with their terms.

(b) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party does not:

(i) contravene any law, statute or regulation of the United States of America or the State of New York or any agency or political subdivision of either thereof;

(ii) violate any order, writ, injunction, or decree of which, after due inquiry, counsel has actual knowledge, issued by any court or governmental authority of the United States of America or the State of New York or any agency or political subdivision of either thereof to which such Loan Party is subject; or

(iii) conflict with or result in any breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien other than the lien of the Loan Documents upon any of the assets or properties of such Loan Party pursuant to the terms of any material indenture, mortgage, deed of trust, agreement, contract or instrument to which such Loan Party is a party or by which it or any of its assets or properties is bound.

(c) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of New York or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(d) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual

knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(e) The payment by Borrower and receipt by Lender of all principal and interest will not violate the usury laws of the State of New York or otherwise constitute unlawful interest.

(f) The provisions of the Loan Agreement and the Security Instrument are effective to create, in favor of Lender to secure the obligations purported to be secured thereby, a valid security interest in Borrower's rights in the UCC Collateral.

(g) Under New York UCC, the provisions of the Account Agreement are effective to perfect the security interest of Lender in Borrower's rights in the Collateral Accounts (as defined in the Account Agreement).

Opinions with respect to the law of States in which the Property is located

(a) Each Loan Party is authorized to do business and in good standing in the State of [*Relevant State*].

(b) To the extent governed by the laws of the State of [*Relevant States*], the Security Instrument and the Assignment of Leases are the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms.

(c) The Security Instrument is in proper form so as to comply with recording requirements of the State of [*Relevant State*]. The Security Instrument creates in favor of Lender valid liens on the portion of the Property that are located in the State of [*Relevant States*], securing payment of the Obligations (as defined in the Security Instrument), and no further action will be required for the valid creation of such liens. Upon recordation in the office of the [*Recording Office*] the Security Instrument will provide constructive notice of the terms thereof and the liens created thereby to third parties acquiring interests in the portion of the Property that are located in the State of [*Relevant States*] subsequent to such recordation.

(d) The Assignment of Leases is in proper form so as to comply with the recording requirements of the State of [*Relevant States*]. At the time the Assignment of Leases is delivered to the Recording Office for recording, it will take effect as to all creditors and subsequent purchasers for a valuable consideration without notice, and it shall be entitled to priority over any other similar instrument delivered to said Recording Office for recording after that time, in the absence of actual notice.

(e) Pursuant to the provisions of the Security Instrument Borrower has authorized the filing of the Fixture Financing Statement identifying the Fixture Collateral for purposes of Section 9-509 of the [*Relevant States*] UCC. "Fixture Collateral " means that portion of the UCC Collateral which consists of "fixtures" (as defined in Article 9 of the UCC) to the extent the UCC governs a security interest in such collateral.

(f) The Fixture Financing Statement includes not only all the types of information required by Section 9-502(a) and 9-502(b) of the [*Relevant States*] UCC but also the types of information without which the Fixture Filing Office may refuse to accept the Fixture Financing Statement pursuant to Section 9-516 of the State of [*Relevant States*] UCC.

(g) Under the [*Relevant States*] UCC, the security interest of the Secured Party will be perfected in Borrower's rights in any Fixture Collateral located on the real property described on Schedule 1 to the Fixture Financing Statement upon the later of the attachment of the security interest and the filing of the Fixture Financing Statement in the Fixture Filing Office.

(h) Borrower has paid all recording tax due in connection with the recording of the Security Instrument and the Assignment of Leases. No additional deed of trust recording, intangibles tax, documentary stamp tax or similar taxes or charges, other than nominal recordation or filing fees, are required to be paid as a condition of the legality of enforceability of the Security Instrument or the Assignment of Leases.

(i) The State of [*Relevant States*] has no law pursuant to which a lien against any assets or properties of Borrower (whether real, personal, mixed, tangible or intangible) superior to the lien created by the Security Instrument could arise as a result of a violation of environmental laws or regulations of such State. No environmental law or regulation of the State of [*Relevant States*] would require any remedial or removal action or certification of nonapplicability as a condition to the granting of the Security Instrument, the foreclosure or other enforcement of the Loan Documents or the sale of any assets or properties of Borrower (whether real, personal, mixed, tangible or intangible) located in the State of [*Relevant States*].

(j) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of [*Relevant States*] or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(k) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(l) If the Obligations (as defined in the Security Instrument) were to be governed by the laws of the State of [*Relevant States*], the payment by Borrower and receipt by Lender of all principal and interest will not violate the usury laws of the State of [*Relevant States*] or otherwise constitute unlawful interest.

(m) A federal court sitting in the State of [*Relevant States*] and applying the conflict of law rules of the State of [*Relevant States*], and the state courts in the State of [*Relevant States*], would give effect to the choice of law provisions contained in the Loan Documents. If counsel is not able to give this opinion as an unqualified opinion, an opinion that the Loan Agreement and Note would be enforceable under the law of the State of [*Relevant States*] if such law were held to apply will be required.

(n) The operation of any term of the Loan Documents, including, without limitation, the terms regarding late charges, default interest or prepayment premiums, or the lawful exercise of any right thereunder, shall not render the Loan Documents unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense.

5. The Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any servicer of the Loan, (iii) any purchaser of the Loan or any portion thereof in any Securitization, (iv) any Rating Agency involved in a Securitization of the Loan, (v) the issuer of securities in a Securitization of the Loan, and (vi) any trustee or servicer appointed in connection with a Securitization of the Loan.

EXHIBIT E

NON-CONSOLIDATION OPINION REQUIREMENTS

1. The Nonconsolidation Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Nonconsolidation Opinion shall be given by a professional law firm selected by Borrower and reasonably acceptable to Lender.

3. The Nonconsolidation Opinion shall be in form and substance acceptable to Lender and shall be given in relation to both Borrower and any other SPE Entity relevant to the Loan. The Nonconsolidation Opinion shall identify each entity (a "Relevant Entity") which owns more than a 49% direct or indirect interest in either Borrower and/or such SPE Entity. Depending on the circumstances and nature of the transaction structure, a non-affiliated entity, such as a third party property manager, shall be included as a Relevant Entity if required by the Rating Agencies.

4. The Nonconsolidation Opinion shall state that, in the event that any Relevant Entity were to be a debtor in a case under the Bankruptcy Code, it is counsel's opinion that, under present reported decisional authority and statutes applicable to federal bankruptcy cases, in a properly presented and argued case, a court would not, in the proper exercise of its equitable discretion, disregard the separate existence of Borrower or any SPE Entity so as to order substantive consolidation under the Bankruptcy Code of the assets and liabilities of such Relevant Entity with the assets and liabilities of either Borrower or any SPE Entity and treat such assets and liabilities as though either Borrower and such Relevant Entity or any SPE Entity and such Relevant Entity were one entity.

5. The Nonconsolidation Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any participant of Lender's interest in the Loan, (iii) any servicer of the Loan, (iv) any purchaser of the Loan or any portion thereof in any Securitization, (v) any Rating Agency involved in a Securitization of the Loan, (vi) the issuer of securities in a Securitization of the Loan, and (vii) any trustee or servicer appointed in connection with a Securitization of the Loan.

DELAWARE BANKRUPTCY OPINIONS

As a general rule, the following opinions are required with respect to any single-member Delaware limited liability companies (having independent members/managers) in the organizational structure:

1. An opinion of Delaware counsel that federal bankruptcy court would hold that Delaware law, and not federal law, governs the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of the limited liability company.

2. Opinions of Delaware counsel as follows:

a. The limited liability company agreement constitutes a legal, valid and binding agreement of its member, and is enforceable against such member, in accordance with its terms.

b. In order for a voluntary bankruptcy petition to be filed on behalf of the Company, the unanimous consent of all of the independent managers/members is required and the provision requiring such unanimous consent in the limited liability company agreement constitutes a legal, valid and binding agreement of the member, enforceable against the member, in accordance with its terms.

c. The bankruptcy or dissolution of the limited liability company's sole member will not, by itself, cause the limited liability company to be dissolved or its affairs to be wound up.

d. A judgment creditor of the member may not satisfy its claims against the member by asserting a claim against the assets of the limited liability company.

e. The limited liability company is a separate legal entity, and shall continue as such until the cancellation of the limited liability company certificate.

Contact information for a Delaware firm frequently retained by borrowers to obtain such opinions is set forth below:

RICHARDS, LAYTON & FINGER

One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
Telephone: 302-658-6541
Facsimile: 302-658-6548
Fax Confirmation: 302-651-7796

Bernard J. Kelley

Telephone: 302-651-7674
Facsimile: 302-658-6548
E-mail: kelley@rlf. com

EXHIBIT F

COUNTERPARTY OPINION REQUIREMENTS

1. The Counterparty Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Counterparty Opinion may be given by a professional law firm selected by Counterparty and reasonably acceptable to Lender or by in-house counsel for Counterparty.

3. The Counterparty Opinion shall be in form and substance acceptable to Lender and shall contain the following opinions:

(a) Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under the Interest Rate Cap Agreement and the Acknowledgment.

(b) The execution and delivery of the Interest Rate Cap Agreement and the Acknowledgment by Counterparty, and any other agreement which Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its Property.

(c) All consents, authorizations and approvals required for the execution and delivery by Counterparty of the Interest Rate Cap Agreement, the Acknowledgment and any other agreement which the Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance.

(d) The Interest Rate Cap Agreement, the Acknowledgment and any other agreement which Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by Counterparty and constitutes the legal, valid and binding obligation of Counterparty, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4. If a Interest Rate Cap Guaranty is delivered in connection with the Interest Rate Cap Agreement, the Counterparty Opinion shall contain the following additional opinions:

(a) Interest Rate Cap Guarantor is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under, the Interest Rate Cap Guaranty.

(b) The execution and delivery of the Interest Rate Cap Guaranty by Interest Rate Cap Guarantor, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or bylaws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property.

(c) All consents, authorizations and approvals required for the execution and delivery by Interest Rate Cap Guarantor of the Interest Rate Cap Guaranty, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance.

(d) The Interest Rate Cap Guaranty, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, has been duly executed and delivered by Interest Rate Cap Guarantor and constitutes the legal, valid and binding obligation of Interest Rate Cap Guarantor, enforceable against Interest Rate Cap Guarantor in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

5. Depending on the nature of the transaction, the Counterparty Opinion shall contain such additional opinions on such other matters relating to the Interest Rate Cap Agreement, the Interest Rate Cap Guaranty and/or the Acknowledgment as Lender shall reasonably require, including, without limitation, the following additional opinions if the Counterparty or Interest Rate Cap Guarantor is a foreign entity:

(a) Jurisdiction where Counterparty and/or Interest Rate Cap Guarantor, as applicable, is located will respect and give effect to the choice of law provisions of the Interest Rate Cap Agreement and the Acknowledgment.

(b) A judgment obtained in the courts of the State of New York is enforceable in the jurisdiction where Counterparty and/or Interest Rate Cap Guarantor, as applicable, is located.

6. The Counterparty Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any participant of Lender's interest in the Loan, (iii) any servicer of the Loan, (iv) any purchaser of the Loan or any portion thereof in any Securitization, (v) any Rating Agency involved in a Securitization of the Loan, (vi) the issuer of securities in a Securitization of the Loan, and (vii) any trustee or servicer appointed in connection with a Securitization of the Loan.

EXHIBIT G

FORM OF TENANT ESTOPPEL LETTER

_____ , 20__

Citigroup Global Markets Realty Corp.,
its successors and assigns
388 Greenwich Street
New York, New York 10013

Re:

Ladies and Gentlemen:

It is our understanding that you are about to make a loan to [_____], a [_____], the landlord, or successor-in-interest to the landlord under our lease, as evidenced by a loan agreement and secured by a mortgage on the captioned premises and, as a condition precedent thereof, you have required this certification by the undersigned.

The undersigned, as tenant under that certain lease made with_____, as landlord, dated_____[, which lease has been modified or amended as follows (list all modifications or amendments or, if none, so indicate)_____] (the "Lease"), hereby ratifies the Lease and certifies that:

1. the undersigned entered into occupancy of the premises described in the Lease on or about_____;

2. the lease commencement date was_____;

3. the square footage of the premises described in the Lease is_____;

4. the fixed rental in the monthly amount of $_____was payable from_____;

5. the percentage rental payable monthly is $_____;

6. there are no rent abatements or free rent periods now or in the future [other than_____];

7. the amount of the current monthly expense reimbursements due under the Lease is equal to $_____;

8. the Lease is in full force and effect and, except as indicated above, has not been assigned, modified, supplemented or amended in any way and the undersigned has no notice of any assignment, pledge or hypothecation by the landlord of the Lease or of the rentals thereunder;

9. a true and complete copy of the Lease (including all amendments, modifications, supplements, side letters, surrender, space reduction or rent abatement agreements applicable to such Lease) is attached hereto as Exhibit A;

10. the Lease represents the entire agreement between the parties with respect to the above space in the above-mentioned building;

11. the term of the Lease [, as currently extended by means of the exercise of certain options contained therein,] expires on_____;

12. all construction and other obligations of a material nature to be performed by the landlord under the Lease have been satisfied, except as follows: (if none, so indicate);

13. any payments by the landlord to the undersigned for tenant improvements which are required under the Lease have been made;

14. on this date there are no existing defenses or offsets which the undersigned has against the enforcement of the Lease by the Landlord and the undersigned has no knowledge of any event which with the giving of notice, the passage of time or both would constitute a default under said Lease;

15. the undersigned is not entitled to any offsets, abatements, deductions or otherwise against the rent payable under the Lease from and after the date hereof, except as follows: (if none, so indicate);

16. no rental (including expense reimbursements), other than for the current month, has been paid in advance;

17. the amount of the security deposit presently held under the Lease is $_____(if none, so indicate);

18. the rentals (including expense reimbursements) under the Lease have been paid through the month of _____.

This estoppel certificate is binding upon the undersigned and its successors and assigns and may be relied upon by you and your successors and assigns and, if the mortgage loan becomes the subject of a securitization, may also be relied upon by the credit rating agency, if any, rating the securities collateralized by the mortgage loan as well as any issuer of such securities, and any servicer and/or trustee acting in respect of such securitization.

Very truly yours,

_____

[INSERT NAME OF TENANT]

By: _____

Title:

EXHIBIT A

LEASE

G-4

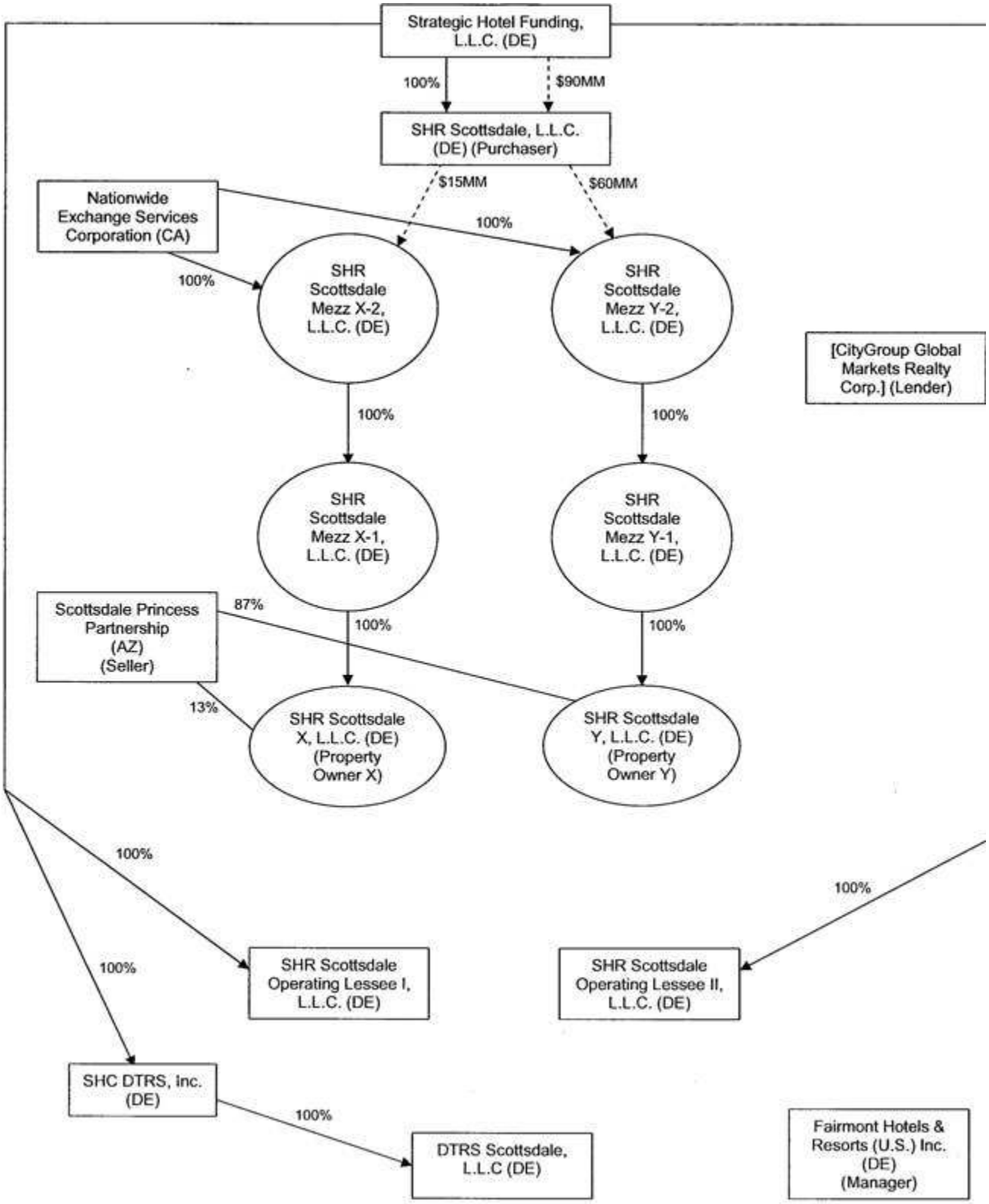
EXHIBIT H-1

BORROWER ORGANIZATIONAL STRUCTURE AT CLOSING

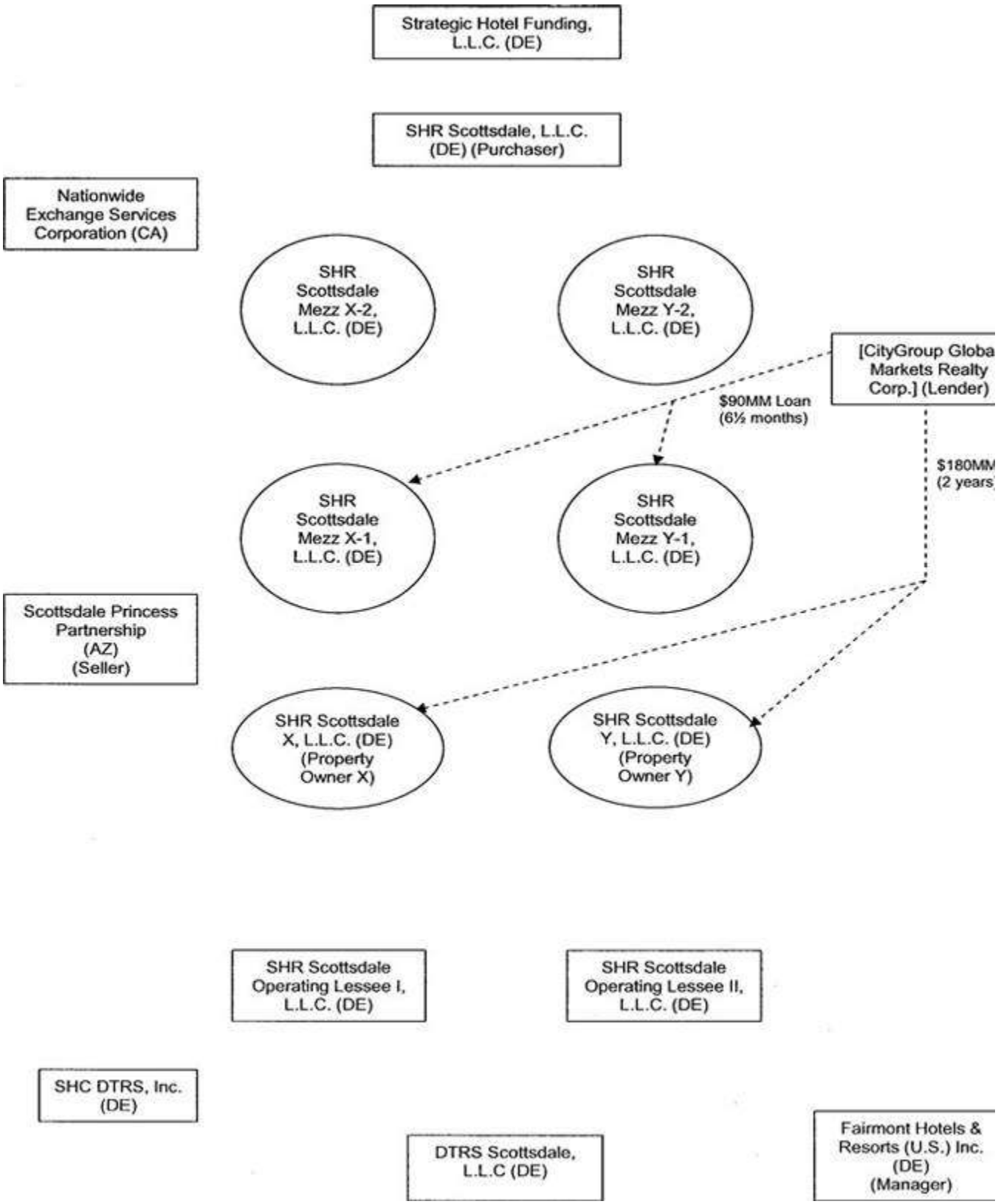
(ATTACHED HERETO)

H-1-1

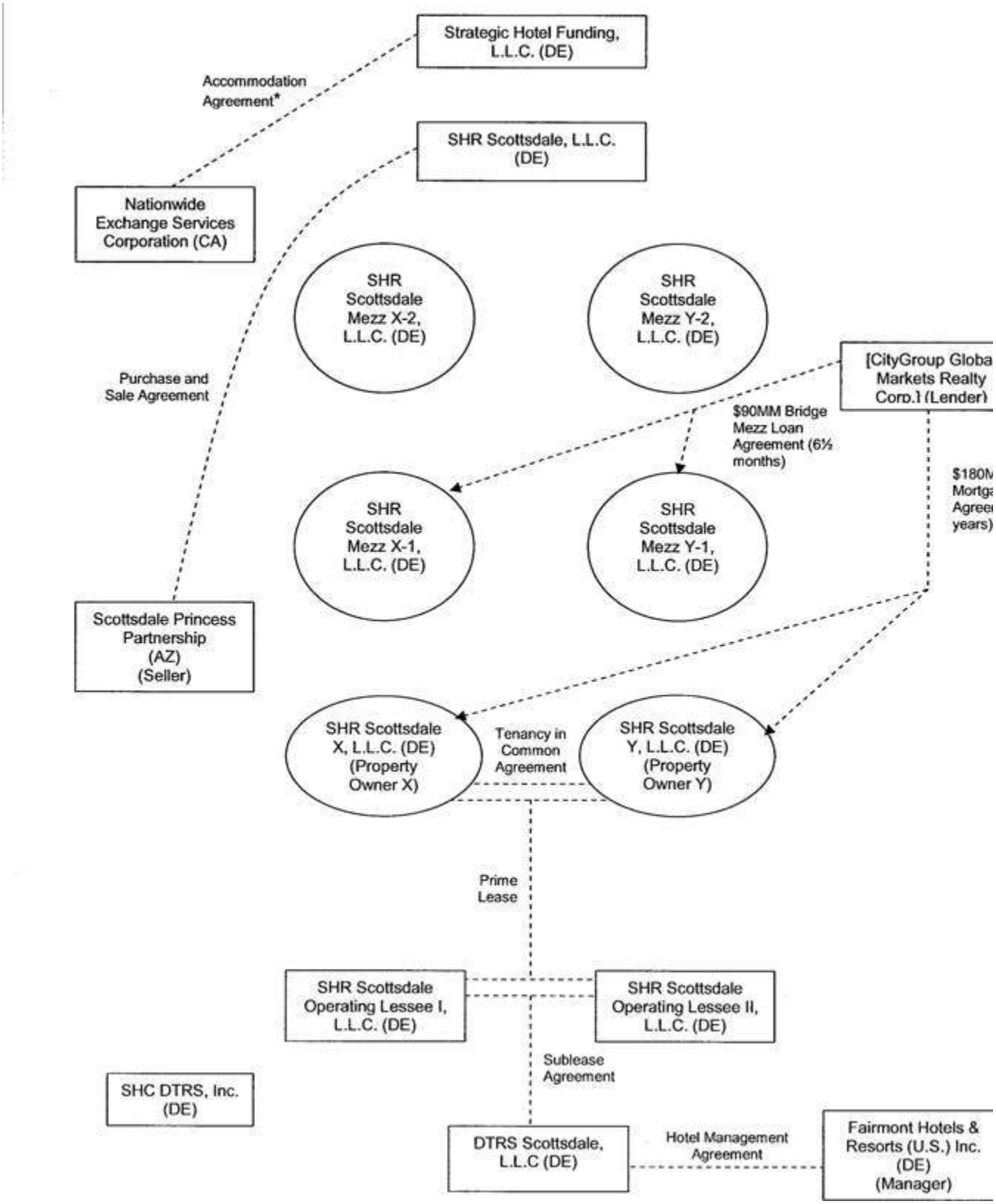
Strategic Fairmont Scottsdale Princess
1. Ownership and Strategic Loan to Nationwide



Strategic Fairmont Scottsdale Princess
2. Third Party Debt



Strategic Fairmont Scottsdale Princess
3. Primary Financing Agreements at Closing



*Actual structure will probably be a bit more complicated; there will likely be three different Accomodation Agreements

between SH Funding and the Mezz A2 and B2 subsidiaries of Nationwide.

EXHIBIT H-2

INTENTIONALLY DELETED

H-2-1

EXHIBIT I

INTEREST RATE CAP AGREEMENT REQUIREMENTS

- The form of cap agreement should be the 1992 ISDA Agreement (Multicurrency Cross Border or Local Currency Single Jurisdiction) subject to the 2000 Definitions.
- Once the cap premium is paid by Borrower, it cannot default. (Paragraph 4 of the May 1989 ISDA Addendum to Schedule to Interest Rate and Currency Exchange Agreement or similar language must be incorporated by reference).
- "Cross Default" provision of Section 5(a)(vi) of the ISDA Master Agreement will not apply. Grace and cure periods in Section 5 of the ISDA Master Agreement will either (i) not apply or (ii) if applicable, any grace or cure periods must expire in time to ensure the availability of cap payments by cap provider on a timely basis for distribution to the holders of the rated securities.
- "Credit Event Upon Merger" provisions of Section 5(b)(iv) of the ISDA Master Agreement will not apply.
- "Automatic Early Termination" provision in Section 6(a) of the ISDA Master Agreement will not apply.
- Termination Events under Sections 5(b)(ii) and 5(b)(iii) of the ISDA Master Agreement either (i) will only constitute termination events exercisable by Borrower against cap provider or (ii) if exercisable by both parties, at the time of any event triggering a termination event under Sections 5(b)(ii) and/or 5(b)(iii), cap provider must either (a) transfer the cap to a replacement cap provider acceptable to each Rating Agency at cap provider's sole cost and expense, or (b) continue to perform its obligations under the cap agreement including, without limitation, the obligation to unconditionally "gross up" in the event that a withholding tax is imposed on payments being made by the cap provider.
- Borrower shall be precluded from payment of any out of pocket expenses required under Section 11 of the ISDA Master Agreement and incurred by cap provider related to the enforcement and protection of cap provider's rights under the cap agreement.
- Market Quotation and Second Method will be used for the purpose of computing amounts payable on early termination with a provision for loss if Market Quotation is not available.
- The parties shall be deemed to have no Affiliates for purposes of the ISDA Master Agreement.
- "Specified Entities" will not apply for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(iv) of the ISDA Master Agreement.
- Transaction will be governed by New York law.
- For the purposes of Section 6(e) of the ISDA Master Agreement, set off and counterclaim will not apply and all payments by cap provider shall be made without set off or counterclaim.

- If this transaction will be guaranteed by a parent to provide a required rating, the guarantee must be unconditional, irrevocable, continuing and a guarantee of payment, not collection, and otherwise satisfy Rating Agency requirements. Any act or omission of such guarantor that would constitute an event of default by the cap provider (other than a cross default) under Section 5 of the ISDA Master Agreement will constitute an event of default under the ISDA Master Agreement.
- The definition of LIBOR will be USD LIBOR BBA and must match the definition of LIBOR in the loan agreement.
- The definition of Business Day must match the definition of Business Day in the loan agreement. LIBOR must be determined on the LIBOR Determination Date.
- Payments must be made by the cap provider on or prior to the applicable Payment Date in respect of a period corresponding to the applicable Interest Period.
- The Termination Date of the cap must be no earlier than the last day of the Interest Period in which the Maturity Date under the loan agreement occurs.
- The Day Count Fraction in the cap must match that contained in the loan agreement.
- The Notional Amount in the cap must match the principal amount of the loan as of the date of the loan agreement.
- US Dollars are selected as the Termination Currency under the cap.
- Section 2(c)(ii) of the ISDA Master Agreement will apply to the Transaction.
- Cap provider and Borrower will represent that it is not a multi branch party.
- Cap provider will covenant that it will not petition Borrower into bankruptcy (or join in any such petition) for 365 days after all outstanding rated securities have been paid in full.
- If the ISDA Master Agreement (Multicurrency Cross Border) ("Cross Border Agreement") is utilized, additional scheduled items and provisions to address "indemnifiable taxes" and other related issues present in cross border transactions must be incorporated:
    - Section 2(d)(i)(4) of the Cross Border Agreement must be amended to require the cap provider to unconditionally "gross up" in the event that a withholding tax is imposed on payments being made by the cap provider.
    - The definition of "indemnifiable tax" must cover any and all withholding tax.
    - Section 2(d)(i)(4) of the Cross Border Agreement will be deleted such that cap provider is not excused from having to "gross up" due to Borrower's breach of a tax representation or failure to notify cap provider of a breach of a tax representation and (ii) Borrower makes no tax representations in the cap agreement or schedule.
    - Section 2(d)(ii) of the Cross Border Agreement must be amended to provide that there is no obligation by Borrower to make payments to the cap provider for any payments made by the cap provider without deduction for taxes (for which there is no obligation to gross up).

- Section 4(e) of the Cross Border Agreement must be amended to provide that there are no payment obligations by Borrower to cap provider for any indemnification resulting from stamp registration or other documentary tax levied by Borrower's taxing authority on the cap provider.

- Cap provider and any guarantor must provide a New York opinion of counsel satisfactory to the Rating Agencies regarding the cap. If cap provider or its guarantor is a non U.S. entity, a foreign opinion must be provided as well. The opinion(s) must include customary legal opinions including, without limitation, an opinion delivered by outside counsel opining that the cap agreement (including the confirmation, ISDA Master Agreement, schedule and collateral assignment agreement) is legal/valid/binding and enforceable against the cap provider and any guarantor.]

EXHIBIT J

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

Reference is made to that certain Loan and Security Agreement, dated as of_____200__ (as amended, supplemented or otherwise modified from time to time, the **Loan Agreement**) between [_____] (**Borrower**), and Citigroup Global Markets Realty Corp., a New York corporation (**Lender**), and that certain Note, dated as of_____, 200__ (the **Note**), made by Borrower in favor of Lender. Terms defined in the Loan Agreement and not otherwise defined herein are used herein with the same meaning.

The **Assignor** and the **Assignee** referred to on Schedule 1 attached hereto agree as follows:

1. The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, an interest in and to the Assignor's rights and obligations under the Note and the Loan Agreement as of the date hereof equal to the percentage interest specified on Schedule 1 attached hereto. After giving effect to such sale and assignment, the amount of the Loan and the Note owing to the Assignee will be as set forth on Schedule 1 attached hereto.

2. The Assignor (i) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with the Loan Documents or any other instrument or document furnished pursuant thereto; (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Document or any other instrument or document furnished pursuant thereto; and (iv) attaches the Note or notes held by the Assignor and requests that the Lender exchange such Note or notes for a new note or notes payable to the order of the Assignee in an amount equal to the principal amount of the Loan assumed by the Assignee pursuant hereto or new notes payable to the order of the Assignee in an amount equal to the principal amount of the Loan assumed by the Assignee pursuant hereto and the Assignor in an amount equal to the principal amount of the Loan retained by the Assignor under the Note and the Loan Agreement, respectively, as specified on Schedule 1 attached hereto.

3. The Assignee (i) confirms that it has received a copy of the Note and the Loan Agreement, together with such financial statements and other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (ii) agrees that it will, independently and without reliance upon Lender or the Assignor based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Agreement or the Note; (iii) appoints and authorizes Lender to take such action as agent on its

behalf and to exercise such powers and discretion under the Loan Documents as are delegated to Lender by the terms thereof, together with such powers and discretion as are reasonably incidental thereto; and (iv) agrees that it will perform in accordance with their terms all of the obligations that by the terms of the Loan Agreement and the Note are required to be performed by it as an assignee of an interest therein.

4. Following the execution of this Assignment and Acceptance, it will be delivered to Lender for acceptance and recording. The effective date for this Assignment and Acceptance (the **Effective Date**) shall be the date of acceptance hereof by the Lender, unless otherwise specified on Schedule 1 attached hereto.

5. Upon such acceptance and recording by Lender, as of the Effective Date, (i) the Assignee shall be a party to the Loan Agreement and the Note and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of an assignee thereof, and (ii) the Assignor shall, to the extent provided in the Loan Agreement and this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Agreement and the Note.

6. Upon such acceptance and recording by Lender, from and after the Effective Date, Lender shall make all payments under the Loan Agreement and the Note or notes in respect of the interest assigned hereby (including, without limitation, all payments of principal, interest and commitment fees with respect thereto) to the Assignee. The Assignor and Assignee shall make all appropriate adjustments in payments under the Loan Agreement and the Note or notes for periods prior to the Effective Date directly between themselves.

7. This Assignment and Acceptance shall be governed by, and construed in accordance with, the laws of the State of New York.

8. This Assignment and Acceptance may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of Schedule 1 to this Assignment and Acceptance by telecopier shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance.

***

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment and Acceptance and Schedule 1 to this Assignment and Acceptance to be executed by their officers thereunto duly authorized as of the date specified on Schedule 1 .

Schedule 1

As to the Loan in respect of which an interest is being assigned:

Percentage interest assigned: ____ %

Aggregate outstanding principal amount of the Loan assigned: $ ____

Principal amount of Note payable to Assignee: $ ____

Principal amount of Note payable to Assignor: $ ____

Effective Date (if other than date of acceptance by Lender): _____ , ____

[NAME OF ASSIGNOR], as Assignor

By: _____
Name:
Title:

Dated: _____ , ____

[NAME OF ASSIGNOR], as Assignor

By: _____
Name:
Title:

Dated: _____ , ____

Accepted this ___ day of _____, ____
[NAME OF LENDER]

By: _____
Name:
Title:

EXHIBIT K

FORM OF
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

_____,
Tenant

AND

CITIGROUP GLOBAL MARKETS REALTY CORP.,
Lender

County: [_____]
Section: [_____]
Block: [_____]
Lot: [_____]

Premises:

Dated: as of_____,____

Record and return by mail to:
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
Attention: Frederic L. Altschuler, Esq.

SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made as of this___ day of_____, 200__ , between CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation, having an address at 388 Greenwich Street, New York, New York 10013 (hereinafter called "Lender"), and_____, a_____, having an address at_____(hereinafter called "Tenant").

W I T N E S S E T H :

WHEREAS, by a lease (the " Original Lease") dated_____, 200__ between_____(hereinafter called "Landlord"), as landlord, and Tenant, as tenant, as amended by lease amendment[s] dated_____, 200__ , [_____, 200__ and_____, 200__] (the Original Lease, as so amended, is hereinafter the "Lease"), a memorandum of which Lease was dated_____and was recorded in_____in Reel____ , Page___ , [add recording data for memoranda of amendments, if applicable], Landlord leased to Tenant certain premises located in_____(the "Premises") on the property described in Schedule "A" annexed hereto and made a part hereof (the "Property"); and

WHEREAS, Lender is about to make a loan to Landlord, which loan shall be secured by, among other things, a mortgage or deed of trust (which mortgage or deed of trust, and all amendments, renewals, increases, modifications, replacements, substitutions, extensions, spreaders and consolidations thereof and all re-advances thereunder and addictions thereto, is referred to as the "Security Instrument") encumbering the Property; and

WHEREAS, Lender and Tenant desire to confirm their understanding and agreement with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. The Lease, and all of the terms, covenants, provisions and conditions thereof (including, without limitation, any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Property, or any portion thereof) is, shall be and shall at all times remain and continue to be subject and subordinate in all respects to the lien, terms, covenants, provisions and conditions of the Security Instrument and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Tenant shall execute and deliver any additional instruments which Lender may reasonably require to effect such subordination.

2. So long as (i) Tenant is not in default (beyond any period given in the Lease to Tenant to cure such default) in the payment of rent, percentage rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions

of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this Agreement and (iii) the Lease is in full force and effect: (a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease (except to the extent required so that Tenant's right to receive or set-off any monies or obligations owed or to be performed by any of Lender's predecessors-in-interest shall not be enforceable thereafter against Lender or any of Lender's successors-in-interest). Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Lender not to name or join Tenant as a party in a foreclosure proceeding with respect to the Security Instrument, Lender may so name or join Tenant without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

3. (A) After notice is given by Lender that the Security Instrument is in default and that the rentals under the Lease should be paid to Lender, Tenant will attorn to Lender and pay to Lender, or pay in accordance with the directions of Lender, all rentals and other monies due and to become due to Landlord under the Lease or otherwise in respect of the Premises. Such payments shall be made regardless of any right of set-off, counterclaim or other defense which Tenant may have against Landlord, whether as the tenant under the Lease or otherwise.

(B) In addition, if Lender (or its nominee or designee) shall succeed to the rights of Landlord under the Lease through possession or foreclosure action, delivery of a deed or otherwise, or another person purchases the Property or the portion thereof containing the Premises upon or following foreclosure of the Security Instrument or in connection with any bankruptcy case commenced by or against Landlord, then at the request of Lender (or its nominee or designee) or such purchaser (Lender, its nominees and designees, and such purchaser, and their respective successors and assigns, each being a " Successor-Landlord"), Tenant shall attorn to and recognize Successor-Landlord as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument that Successor-Landlord may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor-Landlord and Tenant upon all terms, conditions and covenants as are set forth in the Lease. If the Lease shall have terminated by operation of law or otherwise as a result of or in connection with a bankruptcy case commenced by or against Landlord or a foreclosure action or proceeding or delivery of a deed in lieu, upon request of Successor-Landlord, Tenant shall promptly execute and deliver a direct lease with Successor-Landlord which direct lease shall be on substantially the same terms and conditions as the Lease (subject, however, to the provisions of clauses (i)-(v) of this paragraph 3(B)) and shall be effective as of the day the Lease shall have terminated as aforesaid. Notwithstanding the continuation of the Lease, the attornment of Tenant thereunder or the execution of a direct lease between Successor-Landlord and Tenant as aforesaid, Successor-Landlord shall not:

(i) be liable for any previous act or omission of Landlord under the Lease;

(ii) be subject to any off-set, defense or counterclaim which shall have theretofore accrued to Tenant against Landlord;

(iii) be bound by any modification of the Lease or by any previous prepayment of rent or additional rent made more than one (1) month prior to the date same was due which Tenant might have paid to Landlord, unless such modification or prepayment shall have been expressly approved in writing by Lender;

(iv) be liable for any security deposited under the Lease unless such security has been physically delivered to Lender or Successor-Landlord; and

(v) be liable or obligated to comply with or fulfill any of the obligations of the Landlord under the Lease or any agreement relating thereto with respect to the construction of, or payment for, improvements on or above the Premises (or any portion thereof), leasehold improvements, tenant work letters and/or similar items.

4. Tenant agrees that without the prior written consent of Lender, it shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, (b) tender a surrender of the Lease, (c) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (d) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such consent shall be void as against the holder of the Security Instrument.

5. (A) Tenant shall promptly notify Lender of any default by Landlord under the Lease and of any act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction.

(B) In the event of a default by Landlord under the Lease which would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or to claim a partial or total eviction, or in the event of any other act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease, Tenant shall not exercise such right (i) until Tenant has given written notice of such default, act or omission to Lender and (ii) unless Lender has failed, within sixty (60) days after Lender receives such notice, to cure or remedy the default, act or omission or, if such default, act or omission shall be one which is not reasonably capable of being remedied by Lender within such sixty (60) day period, until a reasonable period for remedying such default, act or omission shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Security Instrument to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under the Lease or otherwise, after similar notice, to effect such remedy), provided that Lender shall with due diligence give Tenant written notice of its intention to and shall commence and continue to, remedy such default, act or omission. If Lender cannot reasonably remedy a default, act or omission of Landlord until after Lender obtains possession of the Premises, Tenant may not terminate or cancel the Lease or claim a partial or total eviction by reason of such default, act or omission

until the expiration of a reasonable period necessary for the remedy after Lender secures possession of the Premises. To the extent Lender incurs any expenses or other costs in curing or remedying such default, act or omission, including, without limitation, attorneys' fees and disbursements, Lender shall be subrogated to Tenant's rights against Landlord.

(C) Notwithstanding the foregoing, Lender shall have no obligation hereunder to remedy such default, act or omission.

6. To the extent that the Lease shall entitle Tenant to notice of the existence of any mortgage and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Lender.

7. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges and remedies of Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Lender were named therein as Landlord.

8. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor-Landlord shall acquire title to the Property or the portion thereof containing the Premises, Successor-Landlord shall have no obligation, nor incur any liability, beyond Successor-Landlord's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor-Landlord in the Property for the payment and discharge of any obligations imposed upon Successor-Landlord hereunder or under the Lease, and Successor-Landlord is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgement which may be obtained or secured by Tenant against Successor-Landlord, Tenant shall look solely to the estate or interest owned by Successor-Landlord in the Property, and Tenant will not collect or attempt to collect any such judgement out of any other assets of Successor-Landlord.

9. Notwithstanding anything to the contrary in the Lease, Tenant agrees for the benefit of Landlord and Lender that, except as permitted by, and fully in accordance with, applicable law, Tenant shall not generate, store, handle, discharge or maintain in, on or about any portion of the Property, any asbestos, polychlorinated biphenyls, or any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such (including, but not limited to, pesticides and petroleum products if they are defined, determined or identified as such) in any federal, state or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of any thereof, including any judicial or administrative interpretation of any thereof, including any judicial or administrative orders or judgments.

10. If the Lease provides that Tenant is entitled to expansion space, Successor-Landlord shall have no obligation nor any liability for failure to provide such expansion space if a prior landlord (including, without limitation, Landlord), by reason of a lease or leases entered into by such prior landlord with other tenants of the Property, has precluded the availability of such expansion space.

11. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.

12. (A) Tenant acknowledges and agrees that this Agreement satisfies and complies in all respects with the provisions of Article___ of the Lease and that this Agreement supersedes (but only to the extent inconsistent with) the provisions of such Article and any other provision of the Lease relating to the priority or subordination of the Lease and the interests or estates created thereby to the Security Instrument.

(B) Tenant agrees to enter into a subordination, non-disturbance and attornment agreement with any lender which shall succeed Lender as lender with respect to the Property, or any portion thereof, provided such agreement is substantially similar to this Agreement. Tenant does herewith irrevocably appoint and constitute Lender as its true and lawful attorney-in-fact in its name, place and stead to execute such subordination, non-disturbance and attornment agreement, without any obligation on the part of Lender to do so. This power, being coupled with an interest, shall be irrevocable as long as the Indebtedness secured by the Security Instrument remains unpaid. Lender agrees not to exercise its rights under the preceding two sentences if Tenant promptly enters into the subordination, non-disturbance and attornment agreement as required pursuant to the first sentence of this subparagraph (B).

13. (A) Any notice required or permitted to be given by Tenant to Landlord shall be simultaneously given also to Lender, and any right to Tenant dependent upon notice shall take effect only after notice is so given. Performance by Lender shall satisfy any conditions of the Lease requiring performance by Landlord, and Lender shall have a reasonable time to complete such performance as provided in Paragraph 5 hereof.

(B) All notices or other communications required or permitted to be given to Tenant or to Lender pursuant to the provisions of this Agreement shall be in writing and shall be deemed given only if mailed by United States registered mail, postage prepaid, or if sent by nationally recognized overnight delivery service (such as Federal Express or United States Postal Service Express Mail), addressed as follows: to Tenant, at the address first set forth above, Attention:_____; to Lender, at the address first set forth above, Attention:_____and General Counsel, with a copy to Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, New York 10281, Attention: Frederic L. Altschuler, Esq.; or to such other address or number as such party may hereafter designate by notice delivered in accordance herewith. All such notices shall be deemed given three (3) business days after delivery to the United States Post office registry clerk if given by registered mail, or on the next business day after delivery to an overnight delivery courier.

14. This Agreement may be modified only by an agreement in writing signed by the parties hereto, or their respective successors-in-interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The term "Lender" shall mean the then holder of the Security Instrument. The term "Landlord" shall mean the then holder of the landlord's interest in the Lease. The term " person" shall mean

an individual, joint venture, corporation, partnership, trust, limited liability company, unincorporated association or other entity. All references herein to the Lease shall mean the Lease as modified by this Agreement and to any amendments or modifications to the Lease which are consented to in writing by Lender. Any inconsistency between the Lease and the provisions of this Agreement shall be resolved, to the extent of such inconsistency, in favor of this Agreement.

15. Tenant hereby represents to Lender as follows:

(a) The Lease is in full force and effect and has not been further amended.

(b) There has been no assignment of the Lease or subletting of any portion of the premises demised under the Lease.

(c) There are no oral or written agreements or understandings between Landlord and Tenant relating to the premises demised under the Lease or the Lease transaction except as set forth in the Lease.

(d) The execution of the Lease was duly authorized and the Lease is in full force and effect and to the best of Tenant's knowledge there exists no default (beyond any applicable grace period) on the part of either Tenant or Landlord under the Lease.

(e) There has not been filed by or against nor to the best of the knowledge and belief of Tenant is there threatened against Tenant, any petition under the bankruptcy laws of the United States.

(f) To the best of Tenant's knowledge, there is no present assignment, hypothecation or pledge of the Lease or rents accruing under the Lease by Landlord, other than pursuant to the Security Instrument.

16. Whenever, from time to time, reasonably requested by Lender (but not more than three (3) times during any calendar year), Tenant shall execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications, in a form acceptable to Tenant, of all of the matters set forth in Paragraph 15 above, and any other information the Lender may reasonably require to confirm the current status of the Lease.

17. BOTH TENANT AND LENDER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

18. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation

By: _____
Name:
Title:

[TENANT]

By: _____
Name:
Title:

AGREED AND CONSENTED TO:

LANDLORD:

[_____]

By: _____
Name:
Title:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the_____ day of_____in the year 200__ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

__ day of_____in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the_____ day of_____in the year 200__ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the_____ day of_____in the year 200__ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

SCHEDULE A

Legal Description of Property

K-11

EXHIBIT L

INTENTIONALLY DELETED

L-1

EXHIBIT M

COUNTERPARTY ACKNOWLEDGMENT

_____**(Counterparty)** has entered into a Confirmation and Agreement (together with the confirmation and schedules relating thereto, collectively, the **Interest Rate Cap Agreement)** , dated as of_____200__ , between the Counterparty Interest Rate Cap transaction with_____**(Borrower)** . Attached hereto, is a true, correct and complete copy of the Interest Rate Cap Agreement. Counterparty acknowledges that it has been informed that Borrower, pursuant to a Loan and Security Agreement, dated_____(the **Loan Agreement**) has pledged and collaterally assigned its rights under the Interest Rate Cap Agreement to Citigroup Global Markets Realty Corp., a New York corporation (together with its successors and assigns, **Lender**). Counterparty hereby consents to such pledge and assignment and agrees that it will make any payments to become payable under or pursuant to the Interest Rate Cap Agreement directly to an account at_____ entitled " _____f/b/o Citigroup Global Markets Realty Corp., as secured party, Collection Account" (Account Number _____), ABA #_____or to such other account designated in writing by Lender. Counterparty further agrees that all such payments shall be made without set-off, deduction, defense or counterclaim. Counterparty acknowledges that in the event it shall fail to make such payments directly to such account, it shall be deemed to have not made such payment pursuant to the Interest Rate Cap Agreement. Counterparty also agrees that it will not modify, amend or terminate the Interest Rate Cap Agreement without Lender's consent.

[ ]

By: _____
Name:
Title:

EXHIBIT N

INTENTIONALLY DELETED

N-1

EXHIBIT O

CERTIFICATE OF INDEPENDENT MANAGER/MEMBER/DIRECTOR*

THE UNDERSIGNED,_____, hereby certifies as follows:

1. I have been elected to serve as an independent member/manager/director and independent member/manager/director of_____, a_____limited liability company/corporation (the "Company"). [The Company's sole purpose is to serve as_____(the "Borrower")].

2. I am aware that under its Limited Liability Company Agreement/Articles of Incorporation and By Laws, the Company is required to have at least two so-called ["Independent Managers " and "Independent Members"] ["Independent Directors"].

3. I hereby certify that I am aware of the definition of and requirement for [Independent Managers and Independent Members] [Independent Directors] as set forth in the [Limited Liability Company Agreement] [Articles of Incorporation and By Laws] of the Company, including but not limited to, the requirement that when voting on a matter put to the vote of [the membership or board of managers] [board of directors], that notwithstanding that the Company [or the Borrower] may be insolvent, an Independent Manager/Independent Director shall, to the extent permitted by law, take into account the interest of the creditors of the Company [and the Borrower] as well as the interest of the Company [and the Borrower]. As an [Independent Manager and Independent Member] [Independent Director] of the Company, I will vote in accordance with my fiduciary duties under applicable law.

4. I hereby certify that I meet the requirements of [an Independent Manager and Independent Member as set forth in the Operating Agreement] [an Independent Director as set forth in the Articles of Incorporation and the By Laws].

* Following are contacts for independent directors/managers/members appointed by borrowers on prior transaction:

CT Corporation System
Attention: Corporate Staffing Division
The Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801
Attention: Domenic Borriello
Telephone: (302) 777-0240

Mark A. Ferrucci (no longer employed by CT Corporation System)
212 Mangum Drive
Bear, DE 19701
(302) 836-9162 (telephone)
(302) 8376-836-9182 (fax)

5. I certify that, subject to my fiduciary duties as an [Independent Manager and Independent Member] [Independent Director], it is my intention as a so-called ["Independent Manager" and "Independent Member"] ["Independent Director"] to take into account, to the extent permitted by law, the interest of all creditors of the Company [and the Borrower] as well as the Company [and the Borrower] in fulfilling my duties as an [Independent Manager and Independent Member] [Independent Director] of the Company.

6. I understand that Citigroup Global Markets Realty Corp. and its successors, participants, transferees and assigns, will rely on this Certificate in conjunction with loans to be made to the Borrower.

Executed as of this_____ day of_____, 200__ .

_____

Print Name:

EXHIBIT P

INTENTIONALLY OMITTED

P-1

EXHIBIT Q

FORM OF TRADEMARK SECURITY AGREEMENT

TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT (this "Agreement"), dated as of December__ , 2003, is entered into between [_____], a Delaware corporation (**Assignor**), having an office at [_____], to CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation (together with its successors and assigns, **Assignee**), having an address at 388 Greenwich Street, New York, New York 10013. Capitalized terms not otherwise defined herein have the meanings set forth in the Loan and Security Agreement, dated of even date herewith, between Assignor and Assignee.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and the Assignee hereby agree as follows:

1. Grant of Security Interest . Assignor hereby pledges, assigns, transfers, delivers and grants to Assignee a security interest in, and continuing lien on, all of Assignor's right, title, and interest into, and under the following, in each case, whether now owned or existing, or hereafter acquired or arising, and whenever located (all of which being hereafter referred to as the "Trademarks Collateral") as security for payment of all sums due in respect of the Loan and the performance of all other terms, conditions and covenants of this Agreement and any other Loan Document on Borrower's part to be paid and performed:

all United States, state and foreign trademarks, service marks, certification marks, collective marks, trade names, corporate names, d/b/as, business names, fictitious business names, internet domain names, trade styles, logos, other source or business identifiers, designs and general intangibles of a like nature, rights of publicity and privacy pertaining to the names, likeness, signature and biographical data of natural persons, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, but not limited to, the registrations and applications referred to in **Schedule A** hereto, (ii) the goodwill of the business symbolized thereby, (iii) all rights corresponding thereto throughout the world, (iv) all rights to sue for past, present and future infringement or dilution thereof or for any injury to goodwill, (v) all licenses, claims, damages, and proceeds of suit arising therefrom, and (vi) all payments and rights to payments arising out of the sale, lease, license assignment or other disposition thereof.

2. Representations and Warranties . Assignor hereby represents and warrants to Assignee that:

(a) Upon the filing of a UCC financing statements naming the Assignor as "debtor" and the Assignee as "secured party" and describing the Trademark Collateral in the Delaware Secretary of State's Office and the recording of the Trademark Security Agreement in the form set forth in Exhibit Q in the U.S. Patent and Trademark Office within three (3) months of the date hereof, against the Trademarks, registrations, and applications included in the Trademark Collateral, the security interests granted to the Assignee hereunder constitute valid and perfected first priority Liens;

(b) Schedule A sets forth a true and complete list of all United States, states registrations of and applications for Trademarks owned by Assignor; and

(c) Assignor it is the sole and exclusive owner of the entire right, title, and interest in and to all Trademarks on Schedule A, free and clear of all Liens, claims, encumbrances and material licenses, granted by Assignor.

3. Covenants and Agreements . Assignor hereby covenants and agrees as follows:

(a) Assignor shall not do any act or omit to do any act whereby any of the Trademarks may lapse, or become abandoned, dedicated to the public, or unenforceable.

(b) upon written demand from the Assignee, Assignor shall assign, convey or otherwise transfer to the Assignee all of Assignor's right, title and interest in and to the Trademarks and shall execute and deliver to the Assignee such documents as are necessary to effectuate and record such assignment, conveyance, or transfer of, or other evidence of foreclosure upon, such Trademarks;

(c) in the event of any assignment, conveyance or other transfer of any of the Trademarks, the goodwill symbolized by any such Trademarks shall be included in such sale or transfer.

4. Termination of Agreement . When the Obligations have been paid in full, and the commitments and any other contingent obligations included in the Obligations have been cancelled or terminated, the security interest and continuing lien granted hereby shall terminate, and all rights, title, and interest in, to, and under the Trademark Collateral shall revert and be deemed reassigned to Assignor. Upon any such termination, the Assignor shall, at the Assignee's request and expense, execute and deliver to Assignor such documents as Assignor shall reasonably request to evidence such termination, reversion and/or reassignment, without recourse, representation, or warranty of any kind.

5. Remedies . The remedies set forth in Sections 9.6 through 9.9 of the Loan Agreement with respect to the Rate Cap Collateral are incorporated herein by reference with respect to the Trademark Collateral as if restated herein in full.

6. Governing Law . **THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN A DIFFERENT GOVERNING LAW.**

7. Counterparts . This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have caused this TRADEMARK SECURITY AGREEMENT to be duly executed and delivered by their respective officers duly authorized as of the date first above written.

[_____], a Delaware corporation

By: _____
Name:
Title:

CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation

By: _____
Name:
Title:

[FOR ASSIGNOR ONLY]

STATE OF)
) ss:
COUNTY OF)

On December___ , 2003 before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

SCHEDULE A
TO TRADEMARK
SECURITY AGREEMENT

TRADEMARKS

MARK	APP. NO.	FILING DATE	REGIST. NO.	REG. DATE	JURISDICTION	STATUS

EXHIBIT R

ARTICLE 8 "OPT IN" LANGUAGE

Section ___ . Shares and Share Certificates

a. Shares . A [Member's limited liability company interest in the Company] [Partner's limited partnership interest in the Partnership] shall be represented by the Shares issued to such [Member by the Company] [Partner of the Partnership]. All of a [Member's][Partner's] Shares, in the aggregate, represent such [Member's] [Partner's] entire [Partner by the Partnership] [limited liability company interest in the Company [limited partnership interest in the Partnership]. The [Member][Partner] hereby agrees that its interest in the [Company] [Partnership] and in its Shares shall for all purposes be personal property. A [Member] [Partner] has no interest in specific [Company] [Partnership] property. "Share" means a [limited liability company interest][limited partnership interest] in the [Company] [Partnership] held by a [Member] [Partner].

b. Share Certificates .

i. Upon the issuance of Shares to any [Member] [Partner] in accordance with the provisions of this Agreement, the [Company][Partnership] shall issue one or more Share Certificates in the name of such [Member][Partner]. Each such Share Certificate shall be denominated in terms of the number of Shares evidenced by such Share Certificate and shall be signed by the [Member] [Partner] on behalf of the [Company] [Partnership]. "Share Certificate" means a non-negotiable certificate issued by the [Company] [Partnership] substantially in the form of Schedule hereto, which evidences the ownership of one or more Shares. Each Share Certificate shall bear the following legend: "This certificate evidences an interest in_____and shall be a security interest for purposes of Article 8 of the Uniform commercial Code of the State of Delaware and the Uniform Commercial Code of any other Jurisdiction." This provision shall not be amended, and no such purported amendment to this provision shall be effective until all outstanding certificates have been surrendered for cancellation.

ii. The [Company] [Partnership] shall issue a new Share Certificate in place of any Share Certificate previously issued if the holder of the Shares represented by such Share Certificate, as reflected on the books and records of the [Company] [Partnership].

(1) makes proof by affidavit, in form and substance satisfactory to the [Company] [Partnership], that such previously issued Share Certificate has been lost, stolen or destroyed.

(2) requests the issuance of a new Share Certificate before the [Company] [Partnership] has notice that such previously issued Share Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(3) if requested by the [Company] [Partnership], delivers to the [Company][Partnership] a bond, in form and substance satisfactory to the [Company] [Partnership], with such surety or sureties as the [Company] [Partnership] may direct, to indemnify the [Company] [Partnership] against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Share Certificate; and

(4) satisfies any other reasonable requirements imposed by the [Company] [Partnership].

iii. Subject to the restrictions set forth in [describe Loan Agreement/Mezzanine Loan Agreement restrictions] upon a [Member's] [Partner's]'s Transfer in accordance with the provisions of this Agreement of any or all Shares represented by a Share Certificate, the Transferee of such Shares shall deliver such Share Certificate to the [Company] [Partnership] for cancellation, and the [Company] [Partnership] shall thereupon issue a new Share Certificate to such Transferee for the number of Shares being Transferred and, if applicable, cause to be issued to such [Member][Partner] a new Share Certificate for that number of Shares that were represented by the canceled Share Certificate and that are not being Transferred. "Transfer" means, with respect to any Shares, and when used as a verb, to sell or assign such Shares, and, when used as a noun, shall have a meaning that correlates to the foregoing. "Transferee" means an assignee or transferee. "Transferor" means the Person making a Transfer.

c. Free Transferability . Except as limited by the [describe Loan Agreement/Mezzanine Loan Agreement restrictions], to the fullest extent permitted by the Act, any [Member] [Partner] may, at any time or from time to time, without the consent of any other Person, Transfer, pledge or encumber any or all of its Shares. Subject to the restrictions of the [describe Loan Agreement/Mezzanine Loan Agreement restrictions], the Transferee of any Shares shall be admitted to the [Company] [Partnership] as a substitute member of the [Company] [Partnership] on the effective date of such Transfer upon (i) such Transferee's written acceptance of the terms and provisions of this Agreement and its written assumption of the obligations hereunder of the Transferor of such Shares, which shall be evidenced by such Transferee's execution and delivery to the [Company] [Partnership] of an Application for Transfer of Shares on the reverse side of the Share Certificate representing the Shares being transferred, and (ii) the recording of such Transferee's name as a Substitute [Member] [Partner] on the books and records of the [Company] [Partnership]. Any Transfer of any Shares pursuant to this Section___ shall be effective as of the later of (i) the close of business on the day on which such Transfer occurs, or (ii) the effective date and time of such Transfer that is designated in the Application for Transfer of Shares delivered by the Transferee to the [Company] [Partnership].

SCHEDULE I

LITIGATION SCHEDULE

Plaintiff(s)	Defendant(s)	Date of Incident
Louie & Vensa Ajic and Joe & Pamela Sparks	CP Hotels (US) 1998 Inc.	December 2001
Equal Employment Opportunity Commission (Re: Amy Ferrin)	CP Hotels (US) 1998 Inc. FHRUSI	May 29, 2003
Dorothy Halbrecht	Fairmont Scottsdale Princess Hotel	November 28, 2002
Duncan & Elaine Owles	FHRI, dba The Fairmont Scottsdale Princess Hotel	March 11, 2005
Laura Simon & Jack Simon	CP Hotels Inc. dba the Fairmont Scottsdale Princess, et al.	February 20, 2004

SCHEDULE II

LIST OF EXCHANGE DOCUMENTS

1) X(SHR) EXCHANGE AGT. & DOCS

2) Y(SHR) EXCHANGE AGT. & DOCS

3) Y(CIMS) EXCHANGE AGT. & DOCS

4) Z(SHR) EXCHANGE AGT. & DOCS

SCHEDULE III

PRE-APPROVED TRANSFEREES

Strategic Hotel Funding, Inc.
Bass PLC
CNL Hotels & Resorts, Inc.
KSL II Management Operations, LLC/KSL Recreation Corp.
Kohlberg Kravis Roberts & Co.
Hilton Hotels Corporation
FelCor Lodging Trust, Inc.
Rosewood Hotels & Resorts
Whitehall Street Real Estate Limited Partnership Funds
Host Marriott Corporation
Hilton Group, PLC
Fairmont Hotels & Resorts
Four Seasons Hotel Inc.
The Blackstone Group, LP
Millennium and Copthorne Hotels, PLC
MeriStar Hotels
LaSalle Hotel Properties
Marriott International, Inc.
Starwood Hotels and Resorts Worldwide, Inc.
Government of Singapore Investment Corporation
Maritz Wolf LLC)
HRH Prince Alwaleed Bin Talal Bin Abdulaziz Al Saud)
Six Continents
Morgan Stanley Real Estate Fund (MSREF)
Walton Street Real Estate Fund
The Carlyle Group Real Estate Fund
Lehman Brothers Real Estate Fund
The Equitable Life Assurance and Annuity Association
Orient Express
Accor
Benchmark Hospitality)
NH Hotels
Mandarin
Peninsula
Raffles
Shangrila
Hyatt
Strategic Hotel Capital
Boca Resorts
Vail Reports)
Destination Resorts
Westbrook Real Estate Fund

Lowe Hospitality
State of Ohio Pension Fund
Highland Hospitality

Schedule III-2

SCHEDULE IV

PRE-APPROVED MANAGERS

KSL or any Affiliate
One & Only / Kerzner
Gaylord Entertainment
Loews Hotels
Hilton Hotels Corporation
Hilton Group, PLC
Fairmont Hotels & Resorts
Millennium and Copthorne Hotels, PLC
Marriott International, Inc.
Four Seasons Hotels, Inc.
Six Continents
Orient Express
Mandarin
Peninsula
Raffles
Shangri-La
Hyatt
Omni
Boca Resorts
Destination Resorts
Lowe Hospitality
Montage Hotels
Intercontinental Hotel Group

SCHEDULE V

RELEASE PARCELS AND RELEASE PRICES

Parcels (being the Parcels more particularly described in Exhibit A to the Security Instrument)	**Release Price**
1. Parcel 1 (Main Resort)	N/A
2. Parcel 2 (Casita Site)	$49,574,283
3. Parcel 3 (Villa Site)	$31,329,279
4. Parcel 4 (Northeast Parking)	$2,293,658
5. Parcel *5* (North Parking)	$1,668,115

6. Parcel 6 (North Parking)

$886,186

SCHEDULE VI

INTENTIONALLY DELETED

Schedule VI-1

SCHEDULE VII

INTENTIONALLY DELETED

Schedule VII-1

Exhibit 10.78

MEZZANINE LOAN AND SECURITY AGREEMENT

Dated as of September 1, 2006

Between

SHR SCOTTSDALE MEZZ X-1, L.L.C. and **SHR SCOTTSDALE MEZZ Y-1, L.L.C.**
as Mezzanine Borrower

and

CITIGROUP GLOBAL MARKETS REALTY CORP.,
as Mezzanine Lender

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MEZZANINE LOAN AND SECURITY AGREEMENT

THIS MEZZANINE LOAN AND SECURITY AGREEMENT, dated as of September 1, 2006 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this " **Agreement**"), between SHR SCOTTSDALE MEZZ X-1, L.L.C., a Delaware limited liability company and SHR SCOTTSDALE MEZZ Y-1, L.L.C., a Delaware limited liability company, (each a "**Co-Mezzanine Borrower**" and collectively, on a joint and several liability basis, the "**Mezzanine Borrower**") having an office c/o Strategic Hotel Funding, L.L.C., 77 West Wacker, Suite 4600, Chicago, Illinois 60601 and CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation, having an address at 388 Greenwich Street, New York, New York 10013 (together with its successors and assigns, "**Mezzanine Lender**").

W I T N E S S E T H :

WHEREAS, Mezzanine Borrower desires to obtain the Loan (as hereinafter defined) from Mezzanine Lender;

WHEREAS, Mezzanine Lender is willing to make the Loan to Mezzanine Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (Mezzanine) (as hereinafter defined).

NOW, THEREFORE, in consideration of the making of the Loan by Mezzanine Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions . For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"Acceptable Counterparty"shall mean a bank or other financial institution which has a long-term unsecured debt or counterparty rating of "AA-" (long term) and "A-1+" (short term) or higher by S&P and its equivalent by Moody's and, if the counterparty is rated by Fitch, by Fitch.

"Acceptable Management Agreement"shall mean, with respect to the Property, a new or amended management agreement with the Manager which agreement shall be upon terms and conditions entered into by Mortgage Borrower, Operating Lessee, and/or Manager with respect to the Property in accordance with the terms of Section 5.2.14 hereof.

"Acceptable Manager" shall mean (i) the current Manager as of the Closing Date or any wholly owned Affiliate (whether direct or indirect) of said current Manager, (ii) at any time after the Closing Date, any Pre-approved Manager listed on **Schedule IV** hereto, provided each such property manager continues to be Controlled by substantially the same Persons

Controlling such property manager as of the Closing Date (or if such Manager is a publicly traded company, such Manager continues to be publicly traded on an established securities market), (iii) any other hotel management company that manages a system of at least six (6) hotels or resorts of a class and quality at least as comparable to the Property (as reasonably determined by Manager and Operating Lessee; provided, however Operating Lessee shall obtain Mortgage Lender's prior approval of such determination, not to be unreasonably withheld), and containing not fewer than 1,500 hotel rooms in the aggregate (including condominium units under management) in the aggregate, (iv) any Close Affiliate of any of the foregoing Persons or (v) any other reputable and experienced professional hotel management company with respect to which a Rating Agency Confirmation has been obtained.

"Account Agreement (Mezzanine)"shall mean the Account and Control Agreement (Mezzanine), dated the date hereof, among Mezzanine Lender, Mezzanine Borrower and Cash Management Bank (Mezzanine).

"Account Agreement (Mortgage)"shall mean the Account and Control Agreement, dated as of the date hereof, among Mortgage Lender, Mortgage Borrower and Cash Management Bank (Mortgage).

"Account Collateral (Mezzanine)"shall have the meaning set forth in Section 3.1.2 .

"Acknowledgment" shall mean the Acknowledgment, dated on or about the date hereof made by Counterparty, or as applicable, Acceptable Counterparty in the form of **Exhibit M** .

"Additional Non-Consolidation Opinion"shall have the meaning set forth in Section 4.1.20(b) .

"Affiliate"shall mean, with respect to any specified Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with, or any general partner or managing member in, such specified Person.

"Agreement"shall mean this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Approved Bank"shall have the meaning set forth in the Account Agreement (Mezzanine).

"Assignment and Acceptance"shall mean an assignment and acceptance entered into by Mezzanine Lender and an assignee, and accepted by Mezzanine Lender in accordance with Article XV and in substantially the form of **Exhibit J** or such other form customarily used by Mezzanine Lender in connection with the participation or syndication of mortgage or mezzanine loans at the time of such assignment.

"Assignment of Management Agreement (Mortgage)"shall mean that certain Manager's Consent, Subordination of Management Agreement, and Non-disturbance Agreement, dated the date hereof, among Mortgage Lender, Mortgage Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Bankruptcy Code" shall mean Title 11, U.S.C.A., as amended from time to time and any successor statute thereto.

"Beneficial"when used in the context of beneficial ownership has the analogous meaning to that specified in Rule 13d-3 under the Securities Exchange Act of 1934, as amended.

"Best of Mezzanine Borrower's Knowledge"shall mean the actual (as opposed to imputed or constructive) present knowledge of: Cory Warning and Ryan Bowie after due inquiry, and without creating any personal liability on the part of any said individuals. In the case where the term "Best of Mezzanine Borrower's Knowledge" is used in the context of representations or warranties of Borrower to be made after the date hereof, the term shall include the Person or Persons, as applicable, that occupy the capacities of said individuals on the date such representation or warranty is made to the extent that one or more of such individuals no longer occupy their current capacities.

"Budget"shall have the meaning set forth in the Loan Agreement (Mortgage).

"Building Equipment" shall have the meaning set forth in the Security Instrument.

"Business Day"shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, Arizona or in the state in which Servicer is located are not open for business. When used with respect to an Interest Determination Date, Business Day shall mean any day on which dealings in deposits in U.S. Dollars are transacted in the London interbank market.

"Capital Expenditures" shall mean any amount incurred in respect of capital items which in accordance with GAAP would not be included in Mortgage Borrower's annual financial statements for an applicable period as an operating expense of the Property.

"Cash Management Bank (Mezzanine)"shall mean LaSalle Bank National Association or any successor Approved Bank acting as Cash Management Bank (Mezzanine) under the Account Agreement (Mezzanine) or other financial institution approved by the Mezzanine Lender.

"Cash Management Bank (Mortgage)"shall have the meaning set forth in the Loan Agreement (Mortgage).

"Close Affiliate" shall mean with respect to any Person (the**"First Person"**) any other Person (each, a**"Second Person"**) which is an Affiliate of the First Person and in respect of which any of the following are true: (a) the Second Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in such First Person, (b) the First Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in such Second Person, or (c) a third Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in both the First Person and the Second Person.

"Closing Date"shall mean the date of this Agreement set forth in the first paragraph hereof.

"Code"shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Collateral"shall mean collectively (i) all of the Pledged Collateral and all proceeds thereof, (ii) all Receipts, (iii) any stock certificates or other certificates, membership interest certificates or instruments evidencing any of the foregoing property described in clauses (i) and (ii) above, (iv) the Rate Cap Collateral (Mezzanine), (v) the Account Collateral (Mezzanine) and (vi) all other rights appurtenant to the property described in clauses (i) through (v) above.

"Collateral Accounts" shall have the meaning set forth in the Loan Agreement (Mortgage).

"Collateral Accounts (Mezzanine)"shall have the meaning set forth in Section 3.1.1 .

"Control"shall mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise and (ii) the ownership, direct or indirect, of no less than 51% of the voting securities of such Person, and the terms Controlled, Controlling and Common Control shall have correlative meanings.

"Counterparty"shall mean the counterparty to the Interest Rate Cap Agreement (Mezzanine) and any counterparty under a Replacement Interest Rate Cap Agreement (Mezzanine) or Extension Interest Rate Cap Agreement and, if applicable, any credit support provider identified in the Interest Rate Cap Agreement (Mezzanine), Replacement Interest Rate Cap Agreement (Mezzanine) or Extension Interest Rate Cap Agreement.

"Counterparty Opinion" shall have the meaning set forth in Section 9.3(f) .

"Debt"shall mean, with respect to any Person at any time, (a) indebtedness or liability of such Person for borrowed money whether or not evidenced by bonds, debentures, notes or other instruments, or for the deferred purchase price of property or services; (b) obligations of such Person as lessee under leases which should have been or should be, in accordance with GAAP, recorded as capital leases; (c) current liabilities of such Person in respect of unfunded vested benefits under plans covered by Title IV of ERISA; (d) obligations issued for, or liabilities incurred on the account of, such Person; (e) obligations or liabilities of such Person arising under letters of credit, credit facilities or other acceptance facilities; (f) obligations of such Person under any guarantees or other agreement to become secondarily liable for any obligation of any other Person, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds

for payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss; (g) obligations of such Person secured by any Lien on any property of such Person, whether or not the obligations have been assumed by such Person; or (h) obligations of such Person under any interest rate or currency exchange agreement.

"Debt Service (Mezzanine)"shall mean, with respect to any particular period of time, scheduled interest payments under the Mezzanine Note.

"Default"shall mean the occurrence of any event hereunder or under any other Loan Document (Mezzanine) which, but for the giving of notice or passage of time, or both, would be an Event of Default.

"Default Rate"shall have the meaning set forth in the Note.

"Disqualified Transferee"shall mean any Person or its Close Affiliate that, (i) has (within the past five (5) years) defaulted, or is now in default, beyond any applicable cure period, of its material obligations, under any material written agreement with Mezzanine Lender, any Affiliate of Mezzanine Lender, or, unless approved by the Mezzanine Lender, any other financial institution or other person providing or arranging financing; (ii) has been convicted in a criminal proceeding for a felony or a crime involving moral turpitude or that is an organized crime figure or is reputed (as determined by Mezzanine Lender in its sole discretion) to have substantial business or other affiliations with an organized crime figure; (iii) has at any time filed a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (iv) as to which an involuntary petition (which was not subsequently dismissed within one hundred twenty (120) days) has at any time been filed under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (v) has at any time filed an answer consenting to or acquiescing in any involuntary petition filed against it by any other person under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (vi) has at any time consented to or acquiesced in or joined in an application for the appointment of a custodian, receiver, trustee or examiner for itself or any of its property; (vii) has at any time made an assignment for the benefit of creditors, or has at any time admitted its insolvency or inability to pay its debts as they become due; or (viii) has been found by a court of competent jurisdiction or other governmental authority in a comparable proceeding to have violated any federal or state securities laws or regulations promulgated thereunder.

"DSCR" shall have the meaning set forth in the Loan Agreement (Mortgage).

"Downgrade"shall have the meaning as set forth in Section 9.3(c) hereof.

"Eligibility Requirements"means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of $600,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of $250,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial properties.

"Eligible Account"has the meaning set forth in the Account Agreement (Mezzanine).

"Environmental Certificate"shall have the meaning set forth in Section 12.2.1 .

"Environmental Claim" shall have the meaning set forth in the Loan Agreement (Mortgage).

"Environmental Event"shall have the meaning set forth in Section 12.2.1 .

"Environmental Indemnity (Mezzanine)"shall mean the Environmental Indemnity, dated the date hereof, made by Guarantor in favor of Mezzanine Lender.

"Environmental Law" shall have the meaning provided in the Environmental Indemnity (Mezzanine).

"Environmental Reports" shall have the meaning set forth in Section 12.1 .

"ERISA"shall mean the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

"ERISA Affiliate" shall have the meaning set forth in Section 4.1.9 .

"Event of Default"shall have the meaning set forth in Section 17.1(a) .

"Excess Cash Flow" shall mean "Excess Cash Flow" as defined in the Loan Agreement (Mortgage).

"**Exchange**" shall mean either (i) one or more "reverse exchange" under Section 1031 of the Internal Revenue Code of 1986, as amended, and Revenue Procedure 2000-37 promulgated thereunder, pursuant to which one or more Qualified Intermediaries shall acquire and hold 100% of the indirect interests in Mezzanine Borrower and, upon consummation of the sales or transfers of one or more other properties in connection with the Exchange, transfer, or cause to be transferred, 100% of the indirect interests in Mezzanine Borrower to Strategic Hotel Funding, L.L.C., CIMS Limited Partnership, an Illinois limited partnership (provided Strategic Hotel Funding, L.L.C. owns directly or indirectly, not less than 85% equity interest in CIMS Limited Partnership or other Affiliates of Strategic Hotel Funding, L.L.C. or (ii) one or more transfers of up to 100% of the indirect interests in Mezzanine Borrower to Strategic Hotel Funding, L.L.C. or Affiliates of Strategic Hotel Funding, L.L.C. If, for any reason, the transaction fails to qualify as a "reverse exchange" under Section 1031 of the Internal Revenue Code of 1986, as amended, all as generally contemplated by the Exchange Documents and in accordance with the terms of Section 8.8 of this Agreement, which establishment of the exchange at the closing of the Loan shall be pursuant to those certain initial agreements, documents and instruments in the form reviewed and approved by Mezzanine Lender prior to the closing of the Loan, a list of which is attached hereto as Schedule V ; provided , the ultimate control of the Mezzanine Borrower is transferred only as otherwise permitted by this Agreement, the Prime Lease and Operating Lease initially entered into, and the parties thereto, may be restructured, merged, terminated, modified or replaced without restriction so long as such leases or replacements thereof remain subordinate to the rights of the holder of the Loan.

"Exchange Documents" shall mean the documents identified on Schedule V.

"Exculpated Parties" shall have the meaning set forth in Section 18.1.1 .

"Excusable Delay"shall men a delay due to acts of god, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Mezzanine Borrower or Mortgage Borrower, but Mezzanine Borrower's or Mortgage Borrower's lack of funds in and of itself shall not be deemed a cause beyond the control of Mezzanine Borrower or Mortgage Borrower, as applicable.

"Extension Interest Rate Cap Agreement"shall mean, following the Mezzanine Borrower's exercise of its option to extend the Maturity Date pursuant to Section 5 of the Mezzanine Note, an Interest Rate Cap Agreement or Agreements (together with the confirmations and schedules relating thereto), each from an Acceptable Counterparty and satisfying the requirements set forth on **Exhibit I** hereto; provided that, to the extent any such interest rate cap agreement does not meet the foregoing requirements, an "Extension Interest Rate Cap Agreement" shall be such interest rate cap agreement as may be approved by each of the Mezzanine Lender in its sole discretion).

"Extension Option" shall have the meaning set forth in the Mezzanine Note.

"Extension Term" shall mean the term of the Extension Option.

"Fiscal Year"shall mean the period commencing on the Closing Date and ending on and including December 31 of the calendar year in which the Closing Date occurs and thereafter each twelve month period commencing on January 1 and ending on December 31 until the Debt is repaid in full, or such other common fiscal year of Borrower as Borrower may select from time to time with the prior consent of Lender, such consent not to be unreasonably withheld.

"GAAP"shall mean the generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination, as appropriately modified by the Uniform System.

"Governmental Authority" shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Ground Lease"shall have the meaning set forth in the Loan Agreement (Mortgage).

"Group Services Fee" shall mean the expenses payable to Manager or any Affiliate as permitted under Section 9.5 of the Management Agreement or any similar provision in a replacement Management Agreement.

"Guarantor"shall mean, Strategic Hotel Funding, L.L.C., a Delaware limited liability company, which shall execute and deliver the Recourse Guaranty (Mortgage) and Recourse Guaranty on the Closing Date.

"Hazardous Materials" shall have the meaning provided in the Environmental Indemnity (Mezzanine).

"Holding Account" shall mean the "Holding Account" and various sub-accounts to the Holding Account established pursuant to the Loan Agreement (Mortgage) as in effect on the date hereof.

"Impositions"shall have the meaning set forth in the Loan Agreement (Mortgage).

"Increased Costs" shall have the meaning set forth in Section 2.4.1 .

"Indebtedness"shall mean, at any given time, the Principal Amount, together with all accrued and unpaid interest thereon and all other obligations and liabilities due or to become due to Mezzanine Lender pursuant hereto, under the Mezzanine Note or in accordance with the other Loan Documents (Mezzanine) and all other amounts, sums and expenses paid by or payable to Mezzanine Lender hereunder or pursuant to the Mezzanine Note or the other Loan Documents (Mezzanine).

"Indemnified Parties" shall have the meaning set forth in Section 19.12(b) .

"Independent"shall mean, when used with respect to any Person, a Person who: (i) does not have any direct financial interest or any material indirect financial interest in Mortgage Borrower, Mezzanine Borrower, or in any of their Affiliates, (ii) is not connected with Mortgage Borrower, Mezzanine Borrower, or any of their Affiliates, as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, supplier, customer or person performing similar functions and (iii) is not a member of the immediate family of a Person defined in (i) or (ii) above.

"Independent Architect" shall mean an architect, engineer or construction consultant selected by Mezzanine Borrower or Mortgage Borrower, as applicable, which is Independent, licensed to practice in the State and has at least five (5) years of architectural experience and which is reasonably acceptable to Mezzanine Lender.

"Independent Director" , "**Independent Manager**", or "**Independent Member**" shall mean a Person who is not and will not be while serving and has never been (i) a member (other than an Independent Member), manager (other than an Independent Manager), director, (other than an Independent Director), employee, attorney, or counsel of Mortgage Borrower, Mezzanine Borrower, or their Affiliates (provided that Mortgage Borrower, Mezzanine Borrower, and each of their respective general partners, may not have the same Independent

Directors, Independent Managers or Independent Members), (ii) in the seven (7) years prior to the Closing Date, a customer, supplier or other Person who derives more than 1% of its purchases or revenues from its activities with Mezzanine Borrower, Mortgage Borrower, or their Affiliates, (iii) a direct or indirect legal or beneficial owner in such entity or any of its Affiliates, (iv) a member of the immediate family of any member, manager, employee, attorney, customer, supplier or other Person referred to above, or (v) a person Controlling or under the common Control of anyone listed in (i) through (iv) above. A Person that otherwise satisfies the foregoing shall not be disqualified from serving as an Independent Director or Independent Manager or Independent Member if such individual is at the time of initial appointment, or at any time while serving as such, is an Independent Director or Independent Manager or Independent Member, as applicable, of a Single Purpose Entity affiliated with Mezzanine Borrower, other than the Mortgage Borrower, Mezzanine Borrower, or each of their respective general partners.

"Initial Maturity Date" shall have the meaning set forth in the Mezzanine Note.

"Initial Term"shall mean the term commencing on the Closing Date up to the Initial Maturity Date.

"Insurance Requirements" shall have the meaning set forth in the Loan Agreement (Mortgage).

"Interest Determination Date" shall have the meaning set forth in the Mezzanine Note.

"Interest Period" shall have the meaning set forth in the Mezzanine Note.

"Interest Rate Cap Agreement (Mezzanine)"shall mean an Interest Rate Agreement or Agreements (together with the confirmation and schedules relating thereto), or, with Mezzanine Lender's prior written consent (which shall not be unreasonably withheld, delayed or conditioned), a swap or other interest rate hedging instrument, each between a Counterparty and Mezzanine Borrower obtained by Mezzanine Borrower and collaterally assigned to Mezzanine Lender pursuant to this Agreement, and each satisfying the requirements set forth in **Exhibit I** and, in the case of a swap or other interest rate hedging agreement consented to by Mezzanine Lender, any additional requirements of the Rating Agencies).

"Late Payment Charge" shall have the meaning set forth in Section 2.2.3 .

"Lease"shall have the meaning set forth in the Loan Agreement (Mortgage).

"Legal Requirements" shall have the meaning set forth in the Loan Agreement (Mortgage).

"LIBOR"shall have the meaning set forth in the Mezzanine Note.

"LIBOR Cap Strike Rate" shall mean 7.50%.

"LIBOR Margin"shall have the meaning set forth in the Mezzanine Note.

"LIBOR Rate"shall have the meaning set forth in the Mezzanine Note.

"Lien"shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance or charge on or affecting Mortgage Borrower, Mezzanine Borrower, the Collateral, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and the filing of mechanic's, materialmen's and other similar liens and encumbrances.

"Loan"shall mean the loan in the amount of $90,000,000 made by Mezzanine Lender to Mezzanine Borrower pursuant to this Agreement.

"Loan (Mortgage) or Mortgage Loan"shall mean the loan in the amount of $180,000,000 made by Mortgage Lender to Mortgage Borrower pursuant to the Loan Agreement (Mortgage).

"Loan Agreement (Mortgage)"shall mean the Loan and Security Agreement, dated as of the date hereof, between Mortgage Borrower, as borrower and Mortgage Lender, as lender.

"Loan Documents (Mezzanine)"shall mean, collectively, this Agreement, the Mezzanine Note, the Account Agreement (Mezzanine), the Recourse Guaranty (Mezzanine), the Environmental Indemnity (Mezzanine) and the Pledge and any and all other agreements, instruments or documents executed by Mezzanine Borrower (or another Person) evidencing, securing or delivered in connection with the Loan and the transactions contemplated thereby, including, without limitation, any certificates or representations delivered by or on behalf of Mezzanine Borrower, any Affiliate of Mezzanine Borrower, Manager or any Affiliate of Manager (including, without limitation, any certificates in connection with any legal opinions delivered on the date hereof).

"Loan Documents (Mortgage)"shall mean, collectively, the Loan Agreement (Mortgage), the Mortgage Note, the Security Instrument, the Assignment of Leases, the Trademark Security Agreement (Mortgage), the Environmental Indemnity (Mortgage), the Assignment of Management Agreement (Mortgage), the Account Agreement (Mortgage), the Recourse Guaranty (Mortgage) and all other documents executed and/or delivered by Mortgage Borrower in connection with the Loan (Mortgage) including any certifications or representations delivered by or on behalf of Mortgage Borrower, any Affiliate of Mortgage Borrower, Manager, or any Affiliate of the Manager (including, without limitation, any certificates in connection with any legal opinions delivered on the date hereof), together with all of the Accommodation Security Documents executed by the Operating Lessee.

"Management Agreement"shall have the meaning set forth in the Loan Agreement (Mortgage).

"Management Control" shall mean, with respect to any direct or indirect interest in the Mortgage Borrower or the Property (not including Manager under an Approved Management Agreement), the power and authority to make and implement or cause to be made and implemented all material decisions with respect to the operation, management, financing and disposition of the specified interest.

"Management Fee"shall mean an amount equal to the monthly property management fees payable to the Manager pursuant to the terms of the Management Agreement for management services, the Group Services Fee, incentive management fees and any other fees described in the Management Agreement, and any allocated franchise fees.

"Manager"shall mean, as of the Closing Date, Fairmont Hotels & Resorts (U.S.) Inc., a Delaware corporation, or any replacement "Manager" appointed in accordance with Section 5.2.14 hereof.

"Manager Accounts" shall mean the "Bank Accounts" (as defined in the Management Agreement) maintained by Manager in the name of Mortgage Borrower or Operating Lessee with respect to the Property and in accordance with the terms of each Management Agreement.

"Material Adverse Effect"shall mean any event or condition that has a material adverse effect on (i) the Property taken as a whole, (ii) the use, operation, or value of the Property, (iii) the business, profits, operations or financial condition of Mortgage Borrower or Mezzanine Borrower, (iv) the ability of Mezzanine Borrower to repay the principal and interest of the Loan as it becomes due or to satisfy any of Mezzanine Borrower's obligations under the Loan Documents (Mezzanine), (v) the ability of Mortgage Borrower to repay the principal and interest of the Loan (Mortgage) as it becomes due or to satisfy any of Mortgage Borrower's obligations under the Loan Documents (Mortgage), (vi) the validity or enforceability of any of the Loan Documents (Mezzanine) against any party thereto, (vii) the Collateral taken as a whole or (viii) the priority of the Liens in favor of Mezzanine Lender.

"Material Lease" shall mean any Lease (a) demising a premises within the Property that is more than 10,000 net rentable square feet or (b) that is for a term equal to or greater than sixty (60) months.

"Maturity Date"shall have the meaning set forth in the Mezzanine Note.

"Maturity Date Payment" shall have the meaning set forth in the Mezzanine Note.

"Maximum Legal Rate" shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Mezzanine Note and as provided for herein or the other Loan Documents (Mezzanine), under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

"Mezzanine Account" shall have the meaning set forth in Section 3.1.1 .

"Mezzanine Borrower"has the meaning set forth in the first paragraph of this Agreement.

"Mezzanine Borrower's Account"shall mean an account with any Person subsequently identified in a written notice from Mezzanine Borrower to Mezzanine Lender, which Mezzanine Borrower's Account shall be under the sole dominion and control of Mezzanine Borrower:

"Mezzanine Debt Service Reserve Account"shall have the meaning set forth in Section 3.1.1 .

"Mezzanine Lender" shall have the meaning set forth in the first paragraph of this Agreement.

"Mezzanine Lender Monthly Debt Service Notice Letter"shall have the meaning set forth in Section 3.1.6(e) .

"Mezzanine Note" shall mean that certain Mezzanine Note, dated as of the date hereof in the principal amount of NINETY MILLION DOLLARS ($90,000,000), made by Mezzanine Borrower in favor of Mezzanine Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Mortgage Borrower"shall mean SHR Scottsdale X, L.L.C., a Delaware limited liability company and SHR Scottsdale Y, L.L.C., a Delaware limited liability company as co-borrowers on a joint and several liability basis.

"Mortgage Default" shall have the meaning ascribed to "Default" in the Loan Agreement (Mortgage).

"Mortgage Event of Default"shall have the meaning ascribed to "Event of Default" in the Loan Agreement (Mortgage).

"Mortgage Lender" shall mean Citigroup Global Markets Realty Corp., its successors and assigns.

"Mortgage Loan"shall mean the loan in the amount of $180,000,000 made by Mortgage Lender to Mortgage Borrower pursuant to the Loan Agreement (Mortgage).

"Mortgage Note"shall have the meaning ascribed to "Note" in the Loan Agreement (Mortgage).

"Net Excess Cash Flow"shall have the meaning set forth in Section 3.1.6(a) .

"Net Excess Cash Flow Commencement Date"shall have the meaning set forth in Section 3.1.6(a) .

"Net Operating Income" shall mean, for any specified period, the excess of Operating Income over Operating Expenses for the trailing twelve (12) month period.

"Non-Consolidation Opinion"shall have the meaning provided in Section 2.5.5 .

"OFAC List"means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and accessible through the internet website www.treas.gov/ofac/ t11sdn.pdf .

"Notes"shall mean, collectively, the Mortgage Note and the Mezzanine Note.

"Obligations"shall mean, collectively, the Obligations (Mortgage) and Obligations (Mezzanine).

"Obligations (Mortgage)" shall have the meaning ascribed to "Obligations" in the Loan Agreement (Mortgage).

"Obligations (Mezzanine)"shall mean all indebtedness, obligations and liabilities of Mezzanine Borrower and Guarantor, under this Agreement or any of the other Loan Documents (Mezzanine) or in respect of the Loan or the Mezzanine Note, or other instrument at any time evidencing any of the foregoing, whether existing on the date of this Agreement or arising or incurred hereafter, direct or indirect, joint or several, absolute or continent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise.

"Officer's Certificate" shall mean a certificate executed by an authorized signatory of Mezzanine Borrower that is familiar with the financial condition of Mezzanine Borrower, the Mortgage Borrower and the operation of the Property or the particular matter which is the subject of such Officer's Certificate.

"Operating Expenses" shall have the meaning set forth in the Loan Agreement (Mortgage).

"Operating Income"shall have the meaning set forth in the Loan Agreement (Mortgage).

"**Operating Lease**" means that certain Sublease Agreement dated as of the date hereof between SHR Scottsdale Operating Lessee I, L.L.C. and SHR Scottsdale Operating Lessee II, L.L.C. as co-sublessor and the Operating Lessee, as sublessee.

"**Operating Lessee**" means DTRS Scottsdale, L.L.C., a Delaware limited liability company, as sublessee under the Operating Lease.

"Opinion of Counsel"shall mean opinions of counsel of law firm(s) licensed to practice in Arizona, New York, and Delaware selected by Mezzanine Borrower and reasonably acceptable to Mezzanine Lender.

"Other Charges" shall mean maintenance charges, impositions other than Impositions, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof by any Governmental Authority, other than those required to be paid by a Tenant pursuant to its respective Lease.

"Other Taxes" shall have the meaning set forth in Section 2.4.3 .

"Payment Date" shall have the meaning set forth in the Mezzanine Note.

"Permitted Borrower Transferee" shall mean any entity (i) that is experienced in owning and operating (including acting as asset manager of) properties similar to the Property, (ii) (a) with a net worth together with its Close Affiliates, as of a date no more than six (6) months prior to the date of the transfer of at least $1 Billion (exclusive of the Property) and (b) who immediately prior to such transfer, controls, together with its Close Affiliates real estate equity assets of at least $1 Billion or (iii) together with its Close Affiliates owns or has under management or acts as the exclusive fund manager or investment advisor, at the time of the transfer, not fewer than 20 first class full service resort hotels or business hotel properties (excluding the Property) containing not fewer than 5,000 hotel rooms in the aggregate and (iv) that is not a Disqualified Transferee.

"Permitted Borrower Transferee Alternative" shall mean any entity (i) that is experienced in owning and operating (including acting as asset manager of) properties similar to the Property, (ii) that either (a) has a net worth together with its Close Affiliates, as of a date no more than six (6) months prior to the date of the transfer of at least $300 Million (exclusive of the Property) and, immediately prior to such transfer, controls, together with its Close Affiliates real estate equity assets of at least $1 Billion or (b) together with its Close Affiliates owns or has under management or acts as the exclusive fund manager or investment advisor, at the time of the transfer, not fewer than 6 luxury resort hotels (excluding the Property) containing not fewer than 3,000 hotel rooms in the aggregate and (iii) that is not a Disqualified Transferee.

"Permitted Debt" shall have the meaning set forth in the Loan Agreement (Mortgage).

"Permitted Debt (Mezzanine)" shall mean the Mezzanine Note and other obligations, indebtedness and liabilities specifically provided for in any Loan Document (Mezzanine) and secured by this Agreement and the Pledge and the other Loan Documents (Mezzanine).

"Permitted Encumbrances" shall have the meaning set forth in the Loan Agreement (Mortgage).

"Permitted Fund Manager" means any Person that on the date of determination is (i) a nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (ii) investing through a fund with committed capital of at least $250,000,000 and (iii) not subject to a bankruptcy proceeding.

"Permitted Investments"shall have the meaning set forth in the Account Agreement (Mezzanine).

"Permitted Loan Amendment"shall have the meaning set forth in Section 5.1.18(b) .

"Permitted Mezzanine Transfer"shall mean (a) a pledge of direct or indirect equity interests in Mortgage Borrower or Mezzanine Borrower to secure the Loan, and (b) any foreclosure (or transfer in lieu thereof) in respect of the Loan, provided that the acquirer at foreclosure (or transfer in lieu thereof) (i) shall be a Qualified Transferee or (ii) shall have received Mezzanine Lender's prior written consent prior to such foreclosure (or such transfer in lieu of foreclosure), subject in the case of each of clauses (i) and (ii) to the requirement that the Mezzanine Borrower deliver to Mezzanine Lender, the Mortgage Lender and the Rating Agencies a nonconsolidation opinion satisfactory to the Rating Agencies with respect to any Person having more than a 49% direct or indirect equity interest (either individually or together with any interests held by an affiliate of such Person) in Mezzanine Borrower.

"Person"shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Physical Conditions Report"shall mean with respect to the Property, collectively, the (i) seismic report and (ii) structural engineering report (prepared by an Independent Architect), both of which have been (a) addressed to Mezzanine Lender, (b) prepared based on a scope of work determined by Mortgage Lender in Mortgage Lender's reasonable discretion, and (c) in form and content acceptable to Mortgage Lender in Mortgage Lender's reasonable discretion, together with any amendments or supplements thereto.

"Plan"shall have the meaning set forth in Section 4.1.9(a) .

"Pledge"shall mean that certain Pledge and Security Agreement (Mezzanine), dated as of the date hereof, from Mezzanine Borrower to Mezzanine Lender pledging Mezzanine Borrower's 100% direct membership interest in Mortgage Borrower.

"Pledged Collateral"shall have the meaning set forth in the Pledge.

"Pre-approved Manager" shall mean any entity set forth on **Schedule IV** hereof (which schedule is identical to the schedule of "Qualified Managers" contained in the Management Agreement).

"Pre-approved Transferee"shall mean any of the entities set forth on **Schedule III** hereof, or any Close Affiliates thereof, provided any of the foregoing entities or their Close Affiliates shall only be a "Pre-approved Transferee" if (i) such entity continues to be Controlled by substantially the same Persons Controlling such entity as of the Closing Date or if such Pre-approved Transferee is a publicly traded company, such Pre-approved Transferee continues to be publicly traded on an established securities market, (ii) there has been no material adverse change in the financial condition or results of operations of such entity since the Closing

Date, (iii) such entity is not a Disqualified Transferee and (iv) if such entity as of the Closing Date is rated (a) "Investment Grade," there has been no deterioration in such entity's long-term or short-term credit rating (if any) since the Closing Date below "BBB-" or (b) below "Investment Grade", there has been no deterioration in such entity's long-term or short-term credit rating (if any) since the Closing Date.

"Prepayment Fee" shall have the meaning set forth in the Mezzanine Note.

"Prime Lease" means that certain Lease Agreement dated as of the date hereof between the Mortgage Borrower, as lessor, and SHR Scottsdale Operating Lessee I, L.L.C. and SHR Scottsdale Operating Lessee II, L.L.C., as co-lessees.

"**Prime Lessee**" shall mean SHR Scottsdale Operating Lessee I, L.L.C. and SHR Scottsdale Operating Lessee II, L.L.C., each a Delaware limited liability company.

"Principal Amount"shall have the meaning set forth in the Mezzanine Note.

"Proceeds"shall have the meaning set forth in the Loan Agreement (Mortgage)

"Prohibited Loan Amendment"shall have the meaning specified in Section 5.1.18(b) .

"Prohibited Person" means any Person identified on the OFAC List or any other Person with whom a U.S. Person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States of America.

"Property"shall have the meaning set forth in the Loan Agreement (Mortgage).

"Purchase Agreement" shall mean that certain Purchase and Sale Agreement in respect of the Property, dated June 30, 2006, between Scottsdale Princess Partnership, as seller and SHR Scottsdale, L.L.C., as purchaser, as the same have been assigned, amended or supplemented as of the date hereof.

"**Qualified Intermediary**" shall mean Nationwide Exchange Services Corporation, a California corporation, in its capacity as an "Exchange Accommodation Titleholder," as defined in Revenue Procedure 2000-37, 2000-2 C.B. 308 promulgated under the Internal Revenue Code of 1986, as amended, and, in such capacity, the owner of one hundred percent (100%) of the indirect ownership interests in Mezzanine Borrower as of the Closing Date, or any other entity engaged in a similar line of business and reasonably acceptable to Mezzanine Lender.

"Qualified Transferee" shall mean one or more of the following:

(i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan that satisfies the Eligibility Requirements;

(ii) an investment company, money management firm or "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended, that satisfies the Eligibility Requirements;

(iii) an institution substantially similar to any of the foregoing entities described in clauses (i) or (ii) that satisfies the Eligibility Requirements;

(iv) any entity Controlled (and only so long as such entity continues at all times to be Controlled) by any of the entities described in clauses (i) or (iii) above;

(v) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (i), (ii), (iii) or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (i), (ii), (iii) or (iv) of this definition.

"Rate Cap Collateral (Mezzanine)"shall have the meaning set forth in Section 9.2 .

"Rating Agencies" shall have the meaning set forth in the Loan Agreement (Mortgage).

"Rating Agency Confirmation" shall have the meaning set forth in the Loan Agreement (Mortgage).

"Recourse Guaranty (Mortgage)" shall mean that certain Guaranty of Recourse Obligations, dated as of the date hereof, by Guarantor in favor of Mortgage Lender, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"Recourse Guaranty (Mezzanine)"shall mean that certain Guaranty of Recourse Obligations (Mezzanine) of Mezzanine Borrower, dated as of the date hereof, by Guarantor in favor of Mezzanine Lender, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"Register"shall have the meaning set forth in Section 15.4 .

"Regulatory Change" shall mean any change after the date of this Agreement in federal, state or foreign laws or regulations or the adoption or the making, after such date, of any interpretations, directives or requests applying to Mezzanine Lender, or any Person Controlling Mezzanine Lender or to a class of banks or companies Controlling banks of or under any federal, state or foreign laws or regulations (whether or not having the force of law) by any court or Governmental Authority or monetary authority charged with the interpretation or administration thereof.

"Replacement Interest Rate Cap Agreement (Mezzanine)"shall mean, in connection with a replacement of an Interest Rate Cap Agreement following a Downgrade of the Counterparty thereto, an interest rate cap agreement (together with the confirmation and schedules relating thereto) from an Acceptable Counterparty and satisfying the requirements set forth on **Exhibit I** hereto; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements a "Replacement Interest Cap Agreement (Mezzanine)" shall be such interest rate cap agreement approved in writing by Mezzanine Lender.

"S&P"shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"Securitization" shall have the meaning set forth in the Loan Agreement (Mortgage).

"Servicer"shall mean such Person designated in writing with an address for such Person by Mezzanine Lender, in its sole discretion, to act as Mezzanine Lender's agent hereunder with such powers as are specifically delegated to the Servicer by Mezzanine Lender, whether pursuant to the terms of this Agreement, the Account Agreement (Mezzanine) or otherwise, together with such other powers as are reasonably incidental thereto.

"Single Purpose Entity" shall mean a Person, other than an individual, which (i) is formed or organized solely for the purpose of owning, leasing, managing, holding, developing, using, operating and financing the Property, (ii) does not engage in any business unrelated to the Property and the ownership, development, use, operation and financing thereof, (iii) does not have any assets other than those related to its interest in the Property or the operation, management and financing thereof or any indebtedness other than the Permitted Debt, (iv) maintains its own separate books and records and its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person, (v) holds itself out as being a Person, separate and apart from any other Person, (vi) does not and will not commingle its funds or assets with those of any other Person except as provided in this Agreement with regards to the Co-Mezzanine Borrowers, Co-Mortgage Borrowers (as defined under the Loan Agreement (Mortgage)) or the Prime Lessees under the Prime Lease, (vii) conducts its own business in its own name; (viii) maintains separate financial statements; provided, however, that any consolidated financial statements contain a note indicating that it and its Affiliates are separate legal entities and maintain records, books of account, and accounts separate and apart from any other Person, (ix) pays its own liabilities out of its own funds, (x) observes all partnership, corporate or limited liability company formalities, as applicable, (xi) pays the salaries of its own employees, if any, and maintains a sufficient number of employees, if any, in light of its contemplated business operations, (xii) does not pledge its assets or guarantee or otherwise obligate itself with respect to the debts of any other Person or hold out itself or its credit as being available to satisfy the obligations of any other Person, (xiii) does not acquire obligations or securities of its partners, members or shareholders, (xiv) allocates fairly and reasonably shared expenses, including, without limitation, any overhead for shared office space, if any, (xv) uses separate stationary, invoices, and checks bearing its own name, (xvi) maintains an arms-length relationship with its Affiliates, (xvii) except as provided in this Agreement with regards to the Co-Mezzanine Borrowers, Co-Mortgage Borrowers or the Prime Lessees under the Prime Lease, does not

pledge its assets for the benefit of any other Person (other than as permitted under clauses (a) and (d) of the definition of Permitted Encumbrances) or make any cash loans or advances to any other Person, (xviii) uses commercially reasonable efforts to correct any known misunderstanding regarding its separate identity and (xix) maintains adequate capital in light of its contemplated business operations. In addition, if such Person is a partnership, (1) all general partners of such Person shall be Single Purpose Entities; and (2) if such Person has more than one general partner, then the organizational documents shall provide that such Person shall continue (and not dissolve) for so long as a solvent general partner exists. In addition, if such Person is a corporation, then, at all times: (a) such Person shall have at least two (2) Independent Directors and (b) the board of directors of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including the Independent Directors, shall have participated in such vote. In addition, if such Person is a limited liability company, (a) such Person shall have at least two (2) Independent Managers or Independent Members, (b) if such Person is managed by a board of managers, the board of managers of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of managers unless all of the managers, including the Independent Managers, shall have participated in such vote, (c) if such Person is not managed by a board of managers, the members of such Person may not take any action requiring the affirmative vote of 100% of the members of such Person unless all of the members, including the Independent Members, shall have participated in such vote, (d) each managing member shall be a Single Purpose Entity and (e) its articles of organization, certificate of formation and/or operating agreement, as applicable, shall provide that until all of the Indebtedness and Obligations are paid in full such entity will not dissolve. In addition, the organizational documents of such Person shall provide that such Person (1) without the unanimous consent of all of the partners, directors or members, as applicable, shall not with respect to itself or to any other Person in which it has a direct or indirect legal or beneficial interest (a) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or other similar official for the benefit of the creditors of such Person or all or any portion of such Person's properties, or (b) take any action that might cause such Person to become insolvent, petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (2) will maintain its books, records, resolutions and agreements as official records, (3) will hold its assets in its own name, (4) will maintain its financial statements, accounting records and other organizational documents, books and records separate and apart from any other Person, (5) will not identify its partners, members or shareholders, or any Affiliates of any of them as a division or part of it, (6) will maintain an arms-length relationship with its Affiliates, and (7) except for capital contributions or capital distributions will not enter into or be a party to any transaction with its partners, members, shareholders, or its Affiliates except in the ordinary course of business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arms-length transaction with a third party, (8) will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities); (9) except as permitted by the Loan Documents (Mezzanine), will not form, acquire or hold any subsidiary (whether corporation, partnership, limited liability company or other) or own any equity interest in any other entity other than the Property.

For purposes of the foregoing definition, it is agreed and understood that entities which are tenants-in-common such as the Co-Mezzanine Borrowers, the entities which comprise

the Operating Lessee and Prime Lessee and the Co-Mortgage Borrowers are Single Purpose Entities notwithstanding the relationship and affiliated transactions among and between some or all of such entities as contemplated by the Loan Documents.

"SPE Entity"shall mean Mezzanine Borrower, Mortgage Borrower, Prime Lessee and Operating Lessee which are each required to be a Single Purpose Entity.

"Special Taxes"shall mean any and all present or future taxes, levies, imposts, deductions, charges or withholdings, or any liabilities with respect thereto, including those arising after the date hereof as result of the adoption of or any change in law, treaty, rule, regulation, guideline or determination of a Governmental Authority or any change in the interpretation or application thereof by a Governmental Authority but excluding, in the case of Mezzanine Lender, such taxes (including income taxes, franchise taxes and branch profit taxes) as are imposed on or measured by Mezzanine Lender's net income by the United States of America or any Governmental Authority of the jurisdiction under the laws under which Mezzanine Lender is organized or maintains a lending office.

"State"shall mean the State in which the Property or any part thereof is located.

"Sub-Account(s)"shall have the meaning set forth in Section 3.1.1 .

"Taking"shall have the meaning set forth in Loan Agreement (Mortgage).

"Tenant"shall have the meaning set forth in the Loan Agreement (Mortgage).

"Threshold Amount" shall have the meaning set forth in Loan Agreement (Mortgage).

"TIC Agreement"shall have the meaning set forth in the Loan Agreement (Mortgage).

"Title Company"shall have the meaning set forth in the Loan Agreement (Mortgage).

"Title Policy (Mortgage)"shall have the meaning ascribed to "Title Policy" in the Loan Agreement (Mortgage).

"Transfer"shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise.

"UCC"or "**Uniform Commercial Code**" shall mean the Uniform Commercial Code as in effect in the State.

"Ultimate Equity Owner" shall mean, Strategic Hotel Funding, L.L.C., a Delaware limited liability company.

"Uniform System" shall have the meaning set forth in the Loan Agreement (Mortgage).

Section 1.2 Principles of Construction . All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All accounting terms not specifically defined herein shall be construed in accordance with GAAP as modified by the Uniform System. When used herein, the term "financial statements" shall include the notes and schedules thereto. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the definitions given them in this Agreement when used in any other Loan Document (Mezzanine) or in any certificate or other document made or delivered pursuant thereto. All uses of the word "including" shall mean including, without limitation unless the context shall indicate otherwise. Unless otherwise specified, the words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

II. GENERAL TERMS

Section 2.1 Loan; Disbursement to Mezzanine Borrower .

2.1.1 The Loan . Subject to and upon the terms and conditions set forth herein, Mezzanine Lender hereby agrees to make and Mezzanine Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2 Disbursement to Borrower . Mezzanine Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed. Mezzanine Borrower acknowledges and agrees that the full proceeds of the Loan have been disbursed by Mezzanine Lender to Mezzanine Borrower on the Closing Date.

2.1.3 The Mezzanine Note, Pledge and Loan Documents . The Loan shall be evidenced by the Mezzanine Note and secured by the Pledge, this Agreement and the other Loan Documents (Mezzanine).

2.1.4 Use of Proceeds . Mezzanine Borrower shall use the proceeds of the Loan as an equity contribution to Mortgage Borrower, to be used by Mortgage Borrower solely to acquire the Property and/or repay and discharge any existing mezzanine loans and mortgage loans secured by the Property, to make cash distributions to its partners and as otherwise set forth on the closing statement executed by Mortgage Borrower, and Mezzanine Borrower at closing.

Section 2.2 Interest; Loan Payments; Late Payment Charge .

2.2.1 Payment of Principal and Interest .

(i) Except as set forth in Section 2.2.1(ii) , interest shall accrue on the Principal Amount as set forth in the Mezzanine Note.

(ii) Upon the occurrence and during the continuance of an Event of Default and from and after the Maturity Date if the entire Principal Amount is not repaid on the Maturity Date, interest on the outstanding principal balance of the Loan and, to the extent permitted by law, overdue interest and other amounts due in respect of the Loan shall accrue at the Default Rate calculated from the date such payment was due without regard to any grace or cure periods contained herein. Interest at the Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Indebtedness (or that portion thereof that is then due). To the extent permitted by applicable law, interest at the Default Rate shall be added to the Indebtedness, shall itself accrue interest at the same rate as the Loan and shall be secured by this Agreement and the Pledge. This paragraph shall not be construed as an agreement or privilege to extend the date of the payment of the Indebtedness, nor as a waiver of any other right or remedy accruing to Mezzanine Lender by reason of the occurrence of any Event of Default, and Mezzanine Lender retains its rights under the Mezzanine Note to accelerate and to continue to demand payment of the Indebtedness upon the happening of any Event of Default.

2.2.2 Method and Place of Payment . (a) On each Payment Date, Mezzanine Borrower shall pay or cause to be paid to Mezzanine Lender interest accruing pursuant to the Mezzanine Note for the entire Interest Period during which said Payment Date shall occur.

(b) All amounts advanced by Mezzanine Lender pursuant to the applicable provisions of the Loan Documents (Mezzanine), other than the Principal Amount, together with any interest at the Default Rate or other charges as provided therein, shall be due and payable hereunder as provided in the Loan Documents (Mezzanine). In the event any such advance or charge is not so repaid by Mezzanine Borrower, Mezzanine Lender may, at its option and upon notice to Mezzanine Borrower, first apply any payments received under the Mezzanine Note to repay such advances, together with any interest thereon, or other charges as provided in the Loan Documents (Mezzanine), and the balance, if any, shall be applied in payment of any installment of interest or principal then due and payable.

(c) The Maturity Date Payment shall be due and payable in full on the Maturity Date.

2.2.3 Late Payment Charge . If any interest payment due under the Loan Documents (Mezzanine) is not paid by Mezzanine Borrower within five (5) days after the date on which it is due (or, if such fifth (5th) day is not a Business Day, then the Business Day immediately preceding such day) on or prior to the date on which it is due, Mezzanine Borrower shall pay to Mezzanine Lender upon demand an amount equal to the lesser of three percent (3%) of such unpaid sum or the Maximum Legal Rate (the " **Late Payment Charge**") in order to defray the expense incurred by Mezzanine Lender in handling and processing such delinquent payment and to compensate Mezzanine Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by this Agreement, the Pledge and the other Loan Documents (Mezzanine) to the extent permitted by applicable law. Mezzanine Borrower

acknowledges and agrees that the five day grace period with respect to the applicability of the Late Payment Charge (i) shall only apply to Mezzanine Borrower's first failure to make a monthly interest payment in any calendar year and (ii) shall not constitute a payment grace period and shall in no way limit Mezzanine Lender's rights under Article XVII .

2.2.4 Usury Savings . This Agreement and the Mezzanine Note are subject to the express condition that at no time shall Mezzanine Borrower be obligated or required to pay interest on the Principal Amount of the Loan at a rate which could subject Mezzanine Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents (Mezzanine), Mezzanine Borrower is at any time required or obligated to pay interest on the Principal Amount due under the Mezzanine Note at a rate in excess of the Maximum Legal Rate, then the LIBOR Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due under the Mezzanine Note. All sums paid or agreed to be paid to Mezzanine Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Prepayments . No prepayments of the Indebtedness shall be permitted except as set forth in Section 2.3.1 hereof and Section 4 of the Mezzanine Note. Mezzanine Borrower agrees and acknowledges after the closing of the Loan that prior to a material Event of Default (as determined by Mezzanine Lender in its sole and absolute discretion) (x) in the case of prepayments of the Loan in connection with a casualty or Taking, principal will be applied (to the extent not used for restoration pursuant to the terms of the Mortgage Loan Agreement) to the Mezzanine Note, any substitute or component notes (as applicable) and the Mortgage Note sequentially starting with the most senior tranche and (y) in the case of all prepayments of the Loan other than in accordance with the preceding clause (x), such prepayments will be applied to the Mezzanine Note, any substitute or component notes (as applicable) and the Mortgage Note pro-rata (on the basis of their respective principal balances) among the securitized and any non-securitized portions of the loans (and pro-rata within the securitized portions of the loans). Notwithstanding the foregoing, upon the occurrence and during the continuance of a material Event of Default (as determined by Mezzanine Lender in its sole and absolute discretion), Mezzanine Borrower agrees and acknowledges that any principal prepayments of the Loan will be applied to the Mezzanine Note, any substitute or component notes (as applicable) and the Mortgage Note sequentially, starting with the most senior tranche (it being acknowledged that during the continuance of a material Event of Default all securitized portions of the loans shall be paid in full prior to the payment of any non-securitized portions of the loans).

2.3.1 Mandatory Prepayment . (a) Except as described in Section 2.3.1(b) below, Mezzanine Borrower shall repay the Mezzanine Note, in full, together with the Prepayment Fee (if applicable), in accordance with Section 4(b) of the Mezzanine Note upon the occurrence of any of the following events:

(i) if any Transfer is made or effectuated in violation of the provisions of Article VIII ; or

(ii) if the Loan (Mortgage) is repaid or refinanced.

(b) If there shall occur a casualty or Taking in respect of the Property and as a result thereof the Loan (Mortgage) is prepaid in whole or in part, then, to the extent that there shall be excess proceeds or awards available following the application of the proceeds or awards to reconstruct or repair the Property or to the payment of all or any portion of the Loan (Mortgage) pursuant to the terms of the Loan Documents (Mortgage) (the "**Excess Proceeds**"), Mezzanine Borrower shall repay the Mezzanine Note, or a portion thereof, in the amount of such available Excess Proceeds. All Excess Proceeds shall be deposited directly into the Mezzanine Account.

2.3.2 Prepayments After Event of Default . If, following an Event of Default, Mezzanine Lender shall accelerate the Indebtedness and Mezzanine Borrower thereafter tenders payment of all or any part of the Indebtedness, or if all or any portion of the Indebtedness is recovered by Mezzanine Lender after such Event of Default, (a) such payment may be made only on the next occurring Payment Date together with all unpaid interest thereon as calculated through the end of the Interest Period during which such Payment Date occurs (even if such period extends beyond such Payment Date and calculated as if such payment had not been made on such Payment Date), and all other fees and sums payable hereunder or under the Loan Documents (Mezzanine), including without limitation, interest that has accrued at the Default Rate and any Late Payment Charges), (b) such payment shall be deemed a voluntary prepayment by Mezzanine Borrower, and (c) Mezzanine Borrower shall pay, in addition to the Indebtedness, an amount equal to the Prepayment Fee, if applicable.

2.3.3 Release of Collateral . Mezzanine Lender shall, upon the written request and at the reasonable expense of Mezzanine Borrower, upon payment in full of the Principal Amount and interest on the Loan and all other amounts due and payable under the Loan Documents (Mezzanine) in accordance with the terms and provisions of the Mezzanine Note and this Agreement, release the Lien of (i) this Agreement upon the Account Collateral (Mezzanine) and the Rate Cap Collateral (Mezzanine) and (ii) the Pledge on the Collateral or assign it, in whole or in part, to a new lender. In such event, Mezzanine Borrower shall submit to Mezzanine Lender, on a date prior to the date of such release or assignment sufficient to provide a reasonable period for review thereof, a release of lien or assignment of lien, as applicable, for such Collateral for execution by Lender. Such release or assignment, as applicable, shall be in a form satisfactory to Mezzanine Lender in its reasonable discretion. In addition, Mezzanine Borrower shall provide all other documentation Mezzanine Lender reasonably requires to be delivered by Mezzanine Borrower in connection with such release or assignment, as applicable.

Section 2.4 Regulatory Change; Taxes .

2.4.1 Increased Costs . If, as a result of any Regulatory Change or compliance of Mezzanine Lender therewith, the basis of taxation of payments to Mezzanine Lender or any company Controlling Mezzanine Lender of the principal of or interest on the Loan is changed or Mezzanine Lender or the company Controlling Mezzanine Lender shall be subject to (i) any tax,

duty, charge or withholding of any kind with respect to this Agreement (excluding federal taxation of the overall net income of Mezzanine Lender or the company Controlling Mezzanine Lender); or (ii) any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities, of Mezzanine Lender or any company Controlling Mezzanine Lender is imposed, modified or deemed applicable; or (iii) any other condition affecting loans to borrowers subject to LIBOR-based interest rates is imposed on Mezzanine Lender or any company Controlling Mezzanine Lender and Mezzanine Lender determines that, by reason thereof, the cost to Mezzanine Lender or any company Controlling Mezzanine Lender of making, maintaining or extending the Loan to Mezzanine Borrower is increased, or any amount receivable by Mezzanine Lender or any company Controlling Mezzanine Lender hereunder in respect of any portion of the Loan to Mezzanine Borrower is reduced, in each case by an amount deemed by Mezzanine Lender in good faith to be material (such increases in cost and reductions in amounts receivable being herein called "**Increased Costs**"), then Mezzanine Lender shall provide notice thereof to Mezzanine Borrower and Mezzanine Borrower agrees that it will pay to Mezzanine Lender upon Mezzanine Lender's written request such additional amount or amounts as will compensate Mezzanine Lender or any company Controlling Mezzanine Lender for such Increased Costs to the extent Mezzanine Lender determines that such Increased Costs are allocable to the Loan and provided that Mezzanine Lender is generally exercising rights similar to those set forth in this Section 2.4.1 against other borrowers similarly situated to Mezzanine Borrower. Mezzanine Lender will notify Mezzanine Borrower of any event occurring after the date hereof which will entitle Mezzanine Lender to compensation pursuant to this Section 2.4.1 as promptly as practicable after it obtains knowledge thereof and determines to request such compensation; provided, however, that, if Mezzanine Lender fails to deliver a notice within 90 days after the date on which an officer of Mezzanine Lender responsible for overseeing this Agreement knows or has reason to know of its right to additional compensation under this Section 2.4.1 , Mezzanine Lender shall only be entitled to additional compensation for any such Increased Costs incurred from and after the date that is 90 days prior to the date Mezzanine Borrower received such notice. If Mezzanine Lender requests compensation under this Section 2.4.1 , Mezzanine Borrower may, by notice to Mezzanine Lender, require that Mezzanine Lender furnish to Mezzanine Borrower a statement setting forth the basis for requesting such compensation and the method for determining the amount thereof, and a description as to why Section 2.4.1 is not applicable.

2.4.2 Special Taxes . Mezzanine Borrower shall make all payments hereunder free and clear of and without deduction for Special Taxes. If Mezzanine Borrower shall be required by law to deduct any Special Taxes from or in respect of any sum payable hereunder or under any other Loan Document (Mezzanine) to Mezzanine Lender, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.4.2) Mezzanine Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Mezzanine Borrower shall make such deductions, and (iii) Mezzanine Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

2.4.3 Other Taxes . In addition, Mezzanine Borrower agrees to pay any present or future stamp or documentary taxes or other excise or property taxes, charges, or similar levies which arise from any payment made hereunder, or from the execution, delivery or registration of, or otherwise with respect to, this Agreement, the other Loan Documents (Mezzanine), or the Loan (hereinafter referred to as "**Other Taxes**").

2.4.4 Indemnity . Mezzanine Borrower shall indemnify Mezzanine Lender for the full amount of Special Taxes and Other Taxes (including any Special Taxes or Other Taxes imposed by any Governmental Authority on amounts payable under this Section 2.4.4) paid by Mezzanine Lender and any liability (including penalties, interest, and expenses) arising therefrom or with respect thereto, whether or not such Special Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within thirty (30) days after the date Mezzanine Lender makes written demand therefor.

2.4.5 Change of Office . To the extent that changing the jurisdiction of Mezzanine Lender's applicable office would have the effect of minimizing Special Taxes, Other Taxes or Increased Costs, Mezzanine Lender shall use reasonable efforts to make such a change, provided that same would not otherwise be disadvantageous to Mezzanine Lender.

2.4.6 Survival . Without prejudice to the survival of any other agreement of Mezzanine Borrower hereunder, the agreements and obligations of Mezzanine Borrower contained in this Section 2.4 shall survive the payment in full of principal and interest hereunder, and the termination of this Agreement.

Section 2.5 Conditions Precedent to Closing . The obligation of Mezzanine Lender to make the Loan hereunder is subject to the fulfillment by, or on behalf of, Mezzanine Borrower or waiver by Mezzanine Lender of the following conditions precedent no later than the Closing Date; provided, however, that unless a condition precedent shall expressly survive the Closing Date pursuant to a separate agreement, by funding the Loan, Mezzanine Lender shall be deemed to have waived any such conditions not theretofore fulfilled or satisfied:

2.5.1 Representations and Warranties; Compliance with Conditions . (a) The representations and warranties of Mezzanine Borrower contained in this Agreement and the other Loan Documents (Mezzanine) shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or Event of Default shall have occurred and be continuing; and Mezzanine Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document (Mezzanine) on its part to be observed or performed; and

(b) The representations and warranties of Mortgage Borrower contained in the Loan Agreement (Mortgage) and the other Loan Documents (Mortgage) shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or Event of Default shall have occurred and be continuing under the Mortgage Loan; and Mortgage Borrower and Guarantor shall be in compliance in all material respects with all terms and conditions set forth in the Loan Agreement (Mortgage) and in each other Loan Document (Mortgage) on its part to be observed or performed, as applicable.

2.5.2 Delivery of Loan Documents (Mezzanine); Title Policy; Reports; Leases .

(a) **Loan Documents (Mezzanine)** . Mezzanine Lender shall have received an original copy of this Agreement, the Mezzanine Note and all of the other Loan Documents (Mezzanine), in each case, duly executed (and to the extent required, acknowledged) and delivered on behalf of Mezzanine Borrower and any other parties thereto.

(b) **Certificates** . Mezzanine Lender shall have received originals of the Certificates together with a partnership and membership power (as applicable) endorsed in blank.

(c) **UCC Financing Statements** . Mezzanine Lender shall have received evidence that the UCC financing statements relating to the Pledge and this Agreement have been delivered for filing in the applicable jurisdictions.

(d) **Intentionally Deleted** .

(e) **Account Agreement (Mezzanine)** . Mezzanine Lender shall have received the original of the Account Agreement (Mezzanine) executed by each of Cash Management Bank (Mezzanine) and Mezzanine Borrower.

(f) **Title Insurance** . Mezzanine Lender shall have received a copy of the Title Policy (Mortgage) or a marked-up and signed commitment having the force and effect of a title policy, marked "paid" by an authorized representatives of the Title Company issued by the Title Company with respect to the Loan (Mortgage) and dated as of the Closing Date, together with a copy of the mezzanine loan endorsement to the owner's title insurance policy obtained by Mortgage Borrower, in favor of Mezzanine Lender, its successors and assigns, dated as of the Closing Date, and reinsurance and direct access agreements in form and substance acceptable to Mezzanine Lender. Mezzanine Lender shall also have received evidence that all premiums in respect of the Title Policy (Mortgage) have been paid.

(g) **Survey** . Mezzanine Lender shall have received a current Survey for the Property, containing the survey certification required by the Loan Agreement (Mortgage).

(h) **Insurance** . Mezzanine Lender shall have received valid certificates of insurance for the policies of insurance required by the Loan Agreement (Mortgage) naming Mezzanine Lender as an additional insured and containing a cross liability/severability endorsement, satisfactory to Mezzanine Lender in its reasonable discretion, and evidence of the payment of all insurance premiums currently due and payable for the existing policy period.

(i) **Environmental Reports** . Mezzanine Lender shall have received an Environmental Report in respect of the Property satisfactory to Mezzanine Lender.

(j) **Zoning** . Mezzanine Lender shall have received an ALTA 3.1 zoning endorsement for the Title Policy (Mortgage).

(k) **Certificate of Occupancy** . Mezzanine Lender shall have received a copy of the valid certificates of occupancy for the Property or evidence acceptable to Mezzanine Lender that a certificate of occupancy is not required by applicable law.

(l) **Encumbrances** . Mezzanine Borrower shall have taken or caused to be taken such actions in such a manner so that Mezzanine Lender has a valid and perfected first Lien as of the Closing Date on the Collateral and Mezzanine Lender shall have received satisfactory evidence thereof.

(m) Intentionally Omitted.

(n) **Intentionally Deleted** ;

(o) **Pledgor Acknowledgments** . Mezzanine Lender shall have received an original of the Acknowledgment in the form of **Exhibit B** executed by Mortgage Borrower, and dated as of the Closing Date.

2.5.3 Related Documents . Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall have been duly authorized, executed and delivered by all parties thereto and Mezzanine Lender shall have received and approved certified copies thereof.

2.5.4 Delivery of Organizational Documents . On or before the Closing Date, Mezzanine Borrower shall deliver, or cause to be delivered, to Mezzanine Lender copies certified by an Officer's Certificate, of all organizational documentation related to Mortgage Borrower, Operating Lessee, Prime Lessee, Mezzanine Borrower, Guarantor, each SPE Entity, and certain Affiliates as have been requested by Mezzanine Lender and/or the formation, structure, existence, good standing and/or qualification to do business of Mortgage Borrower, Operating Lessee, Prime Lessee, Mezzanine Borrower, Guarantor, each SPE Entity and such Affiliates, as Mezzanine Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Mezzanine Lender. Each of the organizational documents of any SPE Entity shall contain provisions having a substantive effect materially similar to that of the language set forth in **Exhibit C** or such other language as approved by Mezzanine Lender. Mezzanine Lender hereby approves the organizational documents delivered to Mezzanine Borrower pursuant to this Section 2.5.4 .

2.5.5 Intentionally Deleted .

2.5.6 Budgets . Mezzanine Borrower shall have delivered the Budget for the current Fiscal Year, which Budget shall be certified by an Officer's Certificate.

2.5.7 Completion of Proceedings . All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents (Mezzanine) and all documents incidental thereto shall be satisfactory in form and substance to Mezzanine Lender, and Mezzanine Lender shall have received all such counterpart originals or certified copies of such documents as Mezzanine Lender may reasonably request.

2.5.8 Intentionally Deleted.

2.5.9 Material Adverse Effect . No event or condition shall have occurred since the date of Mortgage Borrower's and Mezzanine Borrower's most recent financial statements previously delivered to Mezzanine Lender which has or could reasonably be expected to have a Material Adverse Effect. The Operating Income and Operating Expenses of the Property and all other features of the transaction shall be as represented to Mezzanine Lender without material adverse change. None of Mezzanine Borrower, Mortgage Borrower, Guarantor nor any of their constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

2.5.10 Intentionally Deleted .

2.5.11 Reserved .

2.5.12 Tax Lot . Mezzanine Lender shall have received evidence that the Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Mezzanine Lender.

2.5.13 Physical Conditions Report . Mezzanine Lender shall have received a Physical Conditions Report (or re-certified Physical Conditions Report) with respect to the Property, which report shall be satisfactory in form and substance to Mezzanine Lender.

2.5.14 Management Agreement . Mezzanine Lender shall have received a certified copy of the Management Agreement which shall be satisfactory in form and substance to Mezzanine Lender.

2.5.15 Appraisal . Mezzanine Lender shall have received an appraisal of the Property, which shall be satisfactory in form and substance to Mezzanine Lender.

2.5.16 Transaction Costs . Mezzanine Borrower shall have paid or reimbursed Mezzanine Lender for filing fees, costs of reports, appraisals, reasonable fees and costs of Mezzanine Lender's counsel, and all other third party out-of-pocket expenses incurred in connection with the origination of the Loan.

2.5.17 Further Documents . Mezzanine Lender or its counsel shall have received such other and further approvals, opinions, documents and information as Mezzanine Lender or its counsel may have reasonably requested including the Loan Documents (Mezzanine) in form and substance satisfactory to Mezzanine Lender and its counsel.

Section 2.6 Filing of Financing Statements Authorized . Mezzanine Borrower hereby authorizes the filing of a form UCC-1 financing statement naming the Mezzanine Borrower as debtor and the Mezzanine Lender as secured party in any office (including the office of the Secretary of State of the State of Delaware) covering all property of the Mezzanine Borrower (including, but not limited to, the Account Collateral (Mezzanine) and the Rate Cap Collateral (Mezzanine).

III. CASH MANAGEMENT

Section 3.1 Cash Management .

3.1.1 Establishment of Account . Mezzanine Borrower hereby confirms that, simultaneously with the execution of this Agreement, pursuant to the Account Agreement (Mezzanine), it has established with Cash Management Bank (Mezzanine), in the name of Mezzanine Borrower for the benefit of Mezzanine Lender, as secured party, one (1) segregated account (the "**Mezzanine Account**"), which has been established as a securities account. The Mezzanine Account and the funds deposited therein and securities and other assets credited thereto shall serve as additional security for the Loan. Pursuant to the Account Agreement (Mezzanine), Mezzanine Borrower shall irrevocably instruct and authorize Cash Management Bank (Mezzanine) to disregard any and all orders for withdrawal from the Mezzanine Account made by, or at the direction of, Mezzanine Borrower. Mezzanine Borrower agrees that, prior to the payment in full of the Indebtedness, the terms and conditions of the Account Agreement (Mezzanine) shall not be amended or modified without the prior written consent of Mezzanine Lender (which consent Mezzanine Lender may grant or withhold in its sole discretion). In recognition of Mezzanine Lender's security interest in the funds deposited into the Mezzanine Account, Mezzanine Borrower shall identify the Mezzanine Account with the name of Mezzanine Lender, as secured party. The Mezzanine Account shall be named as follows: "Fairmont Scottsdale Princess f/b/o Citigroup Global Markets Realty Corp., as secured party, Mezzanine Account" (Account Number 724043.1). Mezzanine Borrower confirms that it has established with Cash Management Bank (Mezzanine) a sub-account for the retention of Account Collateral (Mezzanine) in respect of Debt Service (Mezzanine) on the Loan with the account number 724043.1 (the "**Mezzanine Debt Service Reserve Account** "or the "**Sub-Account**" and, together with the Mezzanine Account, the " **Collateral Accounts (Mezzanine)**"), which (i) may be a ledger or book entry sub-account and need not be an actual sub-account, (ii) shall be linked to the Mezzanine Account, (iii) shall be a "Securities Account" pursuant to Article 8 of the UCC, and (iv) shall be an Eligible Account to which certain funds shall be allocated and from which disbursements shall be made pursuant to the terms of this Agreement.

3.1.2 Pledge of Account Collateral (Mezzanine) . To secure the full and punctual payment and performance of the Obligations (Mezzanine), Mezzanine Borrower hereby collaterally assigns, grants a security interest in and pledges to Mezzanine Lender, to the extent not prohibited by applicable law, a first priority continuing security interest in and to the following property of Mezzanine Borrower, whether now owned or existing or hereafter acquired or arising and regardless of where located (all of the same, collectively, the "**Account Collateral (Mezzanine)**"):

(a) any and all Excess Cash Flow from time to time available in the Collection Account (as defined in the Loan Agreement (Mortgage)) and required, by the terms of the Loan Agreement (Mortgage) as now in effect or amended with the consent of Mezzanine Lender, to be deposited by the Mortgage Lender or the Cash Management Bank (Mortgage) into the Mezzanine Account;

(b) the Collateral Accounts (Mezzanine) and all cash, checks, drafts, securities entitlements, certificates, instruments and other property, including, without limitation, all deposits and/or wire transfers from time to time deposited or held in, credited to or made to Collateral Accounts (Mezzanine);

(c) any and all amounts invested in Permitted Investments;

(d) all interest, dividends, cash, instruments, securities entitlements and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing or purchased with funds from the Collateral Accounts (Mezzanine); and

(e) to the extent not covered by clauses (a), (b), (c) or (d) above, all proceeds (as defined under the UCC) of any or all of the foregoing.

In addition to the rights and remedies herein set forth, Mezzanine Lender shall have all of the rights and remedies with respect to the Account Collateral (Mezzanine) available to a secured party at law or in equity, including, without limitation, the rights of a secured party under the UCC, as if such rights and remedies were fully set forth herein.

This Agreement shall constitute a security agreement for purposes of the Uniform Commercial Code and other applicable law.

3.1.3 Maintenance of Collateral Accounts . Mezzanine Borrower agrees that the Collateral Accounts (Mezzanine) are and shall each be maintained (i) as a "securities account" (as such term is defined in Section 8-501(a) of the UCC), (ii) in such a manner that Mezzanine Lender shall have control (within the meaning of Section 8-106(d)(2) of the UCC) over the Collateral Accounts (Mezzanine) thereof, (iii) such that Mezzanine Borrower, and Manager shall have no right of withdrawal from the Collateral Accounts (Mezzanine) and, except as provided herein, no Account Collateral (Mezzanine) shall be released to Mezzanine Borrower or Manager from the Collateral Accounts (Mezzanine). Without limiting the Mezzanine Borrower's obligations under the immediately preceding sentence, Mezzanine Borrower shall only establish and maintain the Mezzanine Account with a financial institution that has executed an agreement substantially in the form of the Account Agreement (Mezzanine) or in such other form acceptable to Mezzanine Lender in its sole discretion.

3.1.4 Eligible Accounts . The Collateral Accounts (Mezzanine) shall be Eligible Accounts. The Collateral Accounts (Mezzanine) shall be subject to such applicable laws, and such applicable regulations of the Board of Governors of the Federal Reserve System and of any other banking or governmental authority, as may now or hereafter be in effect. Income and interest accruing on the Collateral Accounts (Mezzanine) or any investments held in such accounts shall be periodically added to the principal amount of such account and shall be held, disbursed and applied in accordance with the provisions of this Agreement and the Account Agreement (Mezzanine). Mezzanine Borrower shall be the beneficial owner of the Collateral Accounts (Mezzanine) for federal income tax purposes and shall report all income on the Collateral Accounts (Mezzanine).

3.1.5 Deposits into Sub-Accounts . On the date hereof, Mezzanine Borrower has deposited the following amounts into the Sub-Accounts:

(i) $0.00 into the Mezzanine Debt Service Reserve Account.

3.1.6 Monthly Funding . (a) Mezzanine Borrower hereby instructs Mezzanine Lender to transfer (and pursuant to the Account Agreement (Mezzanine) shall irrevocably authorize Cash Management Bank (Mezzanine) to execute any corresponding instructions of Mezzanine Lender), and Mezzanine Lender shall transfer (or cause Cash Management Bank to transfer pursuant to disbursement instructions from Mezzanine Lender) to the Mezzanine Debt Service Reserve Account, from the Mezzanine Account by 11:00 am New York time on the first (1st) calendar day of each calendar month (and if such day is not a Business Day then on the immediately preceding Business Day) or as soon thereafter as there shall be sufficient collected funds on deposit in the Mezzanine Account, and from time to time (but no less frequently than weekly thereafter) funds in an amount equal to the sum of any Protective Advances which may have been advanced by (and not previously reimbursed to) the Mezzanine Lender pursuant to the terms of the Loan Documents (Mezzanine) to cure any Default or Event of Default, any Mortgage Default or Mortgage Event of Default, or to protect the Collateral together with any interest payable on such amounts pursuant to the Loan Documents (Mezzanine), plus (x) the unpaid Debt Service (Mezzanine) for the next occurring Payment Date, plus (y) an amount equal to such payments for any prior month(s), to the extent not previously paid, plus (z) an amount equal to the amount, if any, deducted from the Mezzanine Account in any preceding month to pay any other amounts then due under the Loan Documents (Mezzanine) (other than any Debt Service (Mezzanine)). Mezzanine Borrower acknowledges that Mezzanine Lender shall not be required to make such withdrawal and deposit until such time as Mezzanine Lender is able to calculate the amount of the Debt Service (Mezzanine) for the next occurring Payment Date. As used herein, the term **"Net Excess Cash Flow"** means the amount available in the Mezzanine Account after the transfers to the Mezzanine Debt Service Reserve Account required under this Section 3.1.6 have been made and the term **"Net Excess Cash Flow Commencement Date"** shall mean the date such amounts have been fully funded or reserved within the Mezzanine Account in any given calendar month.

(b) If for any reason there will be insufficient amounts in the Mezzanine Debt Service Reserve Account on any Payment Date to pay the Debt Service (Mezzanine) due on such Payment Date, Mezzanine Borrower shall immediately deposit into the Mezzanine Account an amount equal to the shortfall of available funds in the Mezzanine Debt Service Reserve Account. Any failure by Mezzanine Borrower to deposit the full amount required by the preceding sentence shall constitute an Event of Default hereunder. If Mezzanine Lender shall reasonably determine that there will be insufficient amounts in the Mezzanine Account to pay any Protective Advances as and when the same are due and payable, Mezzanine Lender shall provide written notice of same to Mezzanine Borrower setting forth the basis for such determination. Within five (5) Business Days of receipt of said notice, Mezzanine Borrower shall deposit into the Mezzanine Account an amount equal to the shortfall of available funds in the Mezzanine Account. Any failure by Mezzanine Borrower to deposit the full amount required by the preceding sentence within said five (5) Business Day period shall constitute an Event of Default hereunder.

(c) Provided that (i) no Event of Default shall have occurred and be continuing hereunder or under the other Loan Documents (Mezzanine), (ii) no Mortgage Event of Default shall have occurred and be continuing, (iii) Mezzanine Borrower shall have delivered to Mezzanine Lender an Officer's Certificate (which Mezzanine Borrower shall not be obligated to deliver more frequently than once per calendar month) certifying that the signatories know of no Event of Default or Mortgage Event of Default (as applicable) that has occurred and is then outstanding hereunder or under any of the other Loan Documents (Mezzanine) or under any of the Loan Documents (Mortgage), and (iv) Mezzanine Borrower shall have deposited into the Mezzanine Account all funds then required to have been so deposited, then Mezzanine Lender shall transfer the Net Excess Cash Flow from the Mezzanine Account to Mezzanine Borrower's Account (or a third party account as directed by Mezzanine Borrower).

(d) In the event that an Event of Default shall have occurred and is then continuing, then, without notice from Mezzanine Lender, all Net Excess Cash Flow shall be applied to reduce the outstanding Principal Amount of the Mezzanine Note. At such time that the Event of Default shall no longer be continuing and provided none of the event set forth in subsection c(i) through (iii) shall have occurred and is then continuing, then all Net Excess Cash Flow shall be distributed in accordance with the provision of subsection (c) above.

(e) Whether or not an Event of Default has then occurred and is continuing under the Loan Documents (Mezzanine), Mezzanine Lender (so long as Mezzanine Lender is not the same entity as Mortgage Lender) agrees to deliver to Mortgage Lender a monthly notice letter (the**"Mezzanine Lender Monthly Debt Service Notice Letter"**) at least five (5) Business Days prior to each Payment Date setting forth the Debt Service (Mezzanine) payable by Mezzanine Borrower on the first Payment Date occurring after the date such notice is delivered.

(f) Mezzanine Borrower hereby acknowledges that, pursuant to Section 3.1.5 of the Loan Agreement (Mortgage), (i) to the extent the Mortgage Lender has received notice from Mezzanine Lender that an Event of Default has occurred and is continuing under the Loan Documents (Mezzanine) (a**"Mezzanine Loan Default Notice"**) and until such time as Mortgage Lender receives a notice from Mezzanine Lender that such Event of Default is no longer continuing (a **"Mezzanine Loan Default Revocation Notice"**) and provided there is no Event of Default under the Mortgage Loan, the Mortgage Borrower has irrevocably directed that all Excess Cash Flow is to be deposited directly into the Mezzanine Account for application as provided in this Agreement (in lieu of transferring such funds to such accounts of the Mortgage Borrower or as the Mortgage Borrower may have so directed if the Mortgage Lender had not received such notice from Mezzanine Lender) and (ii) the directions described in the preceding clause shall not be changed or terminated without the written consent of the Mezzanine Lender. Notwithstanding any provision herein to the contrary, provided no Event of Default has occurred or is continuing, there shall be disbursed to Mezzanine Borrower the Proceeds of a Condemnation or Casualty remaining after payment of all amounts to which Mortgage Lender and Mezzanine Lender are entitled. Mezzanine Borrower agrees that Mezzanine Lender shall not be required to deliver to Mortgage Lender a Mezzanine Loan Default Notice prior to the deposit of Proceeds into the Mezzanine Account.

3.1.7 Cash Management Bank . (a) For the purposes of this Agreement, the Cash Management Bank (Mezzanine) named herein shall be deemed to be an Approved Bank;

provided , however , that the term "Approved Bank" shall be applicable for all other purposes and shall be applicable to any successor or assign of Cash Management Bank (Mezzanine). Mezzanine Lender shall have the right at Mezzanine Borrower's sole cost and expense to replace the Cash Management Bank (Mezzanine) with a financial institution reasonably satisfactory to Mezzanine Borrower in the event that (i) the Cash Management Bank (Mezzanine) fails, in any material respect, to comply with the Account Agreement (Mezzanine), (ii) the Cash Management Bank (Mezzanine) named herein is no longer the Cash Management Bank (Mezzanine) or (iii) the Cash Management Bank (Mezzanine) is no longer an Approved Bank.

(b) During the term of the Loan, so long as no Event of Default shall have occurred and is continuing, Mezzanine Borrower, at its sole cost and expense, shall have the right to replace the Cash Management Bank (Mezzanine) with a financial institution that is an Approved Bank provided such institution shall execute and deliver to Mezzanine Lender (with a copy to Mortgage Lender) the Account Agreement (Mezzanine) (and Mezzanine Lender shall reasonably cooperate with Mezzanine Borrower in connection with such transfer). Upon the occurrence and during the continuance of an Event of Default, Mezzanine Lender shall have the right at Mezzanine Borrower's sole cost and expense to replace Cash Management Bank at any time, without notice to Mezzanine Borrower. Mezzanine Borrower shall cooperate with Mezzanine Lender in connection with the appointment of any replacement Cash Management Bank and the execution by the Cash Management Bank and the Mezzanine Borrower of an Account Agreement and delivery of same to Mezzanine Lender.

(c) So long as no Event of Default shall have occurred and be continuing, Mezzanine Borrower shall have the right at its sole cost and expense to replace the Cash Management Bank (Mezzanine) with a financial institution that is an Approved Bank provided that such financial institution and Mezzanine Borrower shall execute and deliver to Mezzanine Lender an Account Agreement substantially similar to the Account Agreement (Mezzanine) executed as of the Closing Date.

3.1.8 Mezzanine Borrower's Account Representations, Warranties and Covenants . Mezzanine Borrower represents, warrants and covenants that:

(a) Pursuant to the Loan Documents (Mortgage), Mortgage Borrower has directed that, after Mortgage Lender receives notice of a Default hereunder (and provided no Event of Default exists under the Mortgage Loan), all Excess Cash Flow is to be deposited into the Mezzanine Account;

(b) Neither Mortgage Borrower nor Mezzanine Borrower nor any other Person will have any right, title or interest in or to any Excess Cash Flow from and after the time at which the Mortgage Lender becomes obligated under the Mortgage Loan Documents to transfer such Excess Cash Flow to the Mezzanine Account, except any rights Mezzanine Borrower shall have to allocations of such funds following the disbursement to Mezzanine Borrower of any Net Excess Cash Flow as provided in Section 3.1.5(a) ;

(c) There are no accounts other than the Collateral Accounts and Collateral Accounts (Mezzanine) maintained by Mortgage Borrower or any other Person with respect to the collection of rents, revenues, proceeds or other income from the Property or for the collection of

Receipts, except for the Collection Account (as defined in the Loan Agreement (Mortgage)), the Holding Account (as defined in the Loan Agreement (Mortgage)) the Manager Accounts, and the Mezzanine Account in which they are permitted to receive transfers of Net Excess Cash Flow as provided in Section 3.1.5(c) ;

(d) Mezzanine Borrower shall cause Mortgage Borrower to deposit or cause to be deposited all Distributions into the Mezzanine Account as required by the Pledge and this Agreement or any other Loan Document (Mezzanine); and

(e) so long as the Loan shall be outstanding, neither Mortgage Borrower, Operating Lessee, Prime Lessee, Manager, Mezzanine Borrower, nor any of their Affiliates shall open any other operating accounts with respect to the collection of rents, revenues, proceeds or other income from the Property or for the collection of Receipts.

3.1.9 Account Collateral (Mezzanine) and Remedies . (a) Upon the occurrence and during the continuance of an Event of Default, without additional notice from Mezzanine Lender to Mezzanine Borrower, (i) Mezzanine Lender may, in addition to and not in limitation of Mezzanine Lender's other rights, make any and all withdrawals from, and transfers between and among, the Collateral Accounts (Mezzanine) as Mezzanine Lender shall determine in its sole and absolute discretion to pay any Obligations (Mezzanine), Operating Expenses and/or Capital Expenditures for the Property; (ii) all Excess Cash Flow shall be retained in the Mezzanine Account or Sub-Account, (iii) all payments to the Mezzanine Borrower's Account pursuant to Section 3.1.5 shall immediately cease and (iv) Mezzanine Lender may liquidate and transfer any amounts then invested in Permitted Investments to the Collateral Accounts (Mezzanine) to which they relate or reinvest such amounts in other Permitted Investments as Mezzanine Lender may reasonably determine is necessary to perfect or protect any security interest granted or purported to be granted hereby or to enable Mezzanine Lender to exercise and enforce Mezzanine Lender's rights and remedies hereunder with respect to any Account Collateral (Mezzanine) or to preserve the value of the Account Collateral (Mezzanine).

(b) Upon the occurrence and during the continuance of an Event of Default, Mezzanine Borrower hereby irrevocably constitutes and appoints Mezzanine Lender as Mezzanine Borrower's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of Mezzanine Borrower with respect to the Account Collateral (Mezzanine), and do in the name, place and stead of Mezzanine Borrower, all such acts, things and deeds for and on behalf of and in the name of Mezzanine Borrower, which Mezzanine Borrower could or might do or which Mezzanine Lender may deem necessary or desirable to more fully vest in Mezzanine Lender the rights and remedies provided for herein and to accomplish the purposes of this Agreement. The foregoing powers of attorney are irrevocable and coupled with an interest. Upon the occurrence and during the continuance of an Event of Default, Mezzanine Lender may perform or cause performance of any such agreement, and any reasonable expenses of Mezzanine Lender incurred in connection therewith shall be paid by Mezzanine Borrower as provided in Section 5.1.12 .

(c) Mezzanine Borrower hereby expressly waives, to the fullest extent permitted by law, presentment, demand, protest or any notice of any kind (except as expressly

required under the Loan Documents (Mezzanine)) in connection with this Agreement or the Account Collateral (Mezzanine). Mezzanine Borrower acknowledges and agrees that ten (10) Business Days' prior written notice of the time and place of any public sale of the Account Collateral (Mezzanine) or any other intended disposition thereof shall be reasonable and sufficient notice to Mezzanine Borrower within the meaning of the UCC.

3.1.10 Transfers and Other Liens . Mezzanine Borrower agrees that it will not (i) sell or otherwise dispose of any of the Account Collateral (Mezzanine) except as may be expressly permitted under the Loan Documents (Mezzanine), or (ii) create or permit to exist any Lien upon or with respect to all or any of the Account Collateral (Mezzanine), except for the Lien granted to Mezzanine Lender under this Agreement.

3.1.11 Reasonable Care . Beyond the exercise of reasonable care in the custody thereof, Mezzanine Lender shall have no duty as to any Account Collateral (Mezzanine) in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any person or otherwise with respect thereto. Mezzanine Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Account Collateral (Mezzanine) in its possession if the Account Collateral (Mezzanine) is accorded treatment substantially equal to that which Mezzanine Lender accords its own property, it being understood that Mezzanine Lender shall not be liable or responsible for any loss or damage to any of the Account Collateral (Mezzanine), or for any diminution in value thereof, by reason of the act or omission of Mezzanine Lender, its Affiliates, agents, employees or bailees, except to the extent that such loss or damage results from Mezzanine Lender's gross negligence or willful misconduct. In no event shall Mezzanine Lender be liable either directly or indirectly for losses or delays resulting from any event which may be the basis of an Excusable Delay, computer malfunctions, interruption of communication facilities, labor difficulties or other causes beyond Mezzanine Lender's reasonable control or for indirect, special or consequential damages except to the extent of Mezzanine Lender's gross negligence or willful misconduct. Notwithstanding the foregoing, Mezzanine Borrower acknowledges and agrees that (i) Mezzanine Lender does not have custody of the Account Collateral (Mezzanine), (ii) Cash Management Bank (Mezzanine) has custody of the Account Collateral (Mezzanine), (iii) the initial Cash Management Bank (Mezzanine) was chosen by Mezzanine Borrower, and (iv) Mezzanine Lender has no obligation or duty to supervise Cash Management Bank (Mezzanine) or to see to the safe custody of the Account Collateral (Mezzanine).

3.1.12 Mezzanine Lender's Liability . (a) Mezzanine Lender shall be responsible for the performance only of such duties with respect to the Account Collateral (Mezzanine) as are specifically set forth in this Section 3.1 or elsewhere in the Loan Documents (Mezzanine), and no other duty shall be implied from any provision hereof. Mezzanine Lender shall not be under any obligation or duty to perform any act with respect to the Account Collateral (Mezzanine) which would cause it to incur any expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Mezzanine Borrower shall indemnify and hold Mezzanine Lender, its employees and officers harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Mezzanine Lender in connection with the transactions contemplated hereby with respect to the Account Collateral (Mezzanine) (excluding losses on Permitted Investments) except as such may be caused by the gross negligence or willful misconduct of Mezzanine Lender, its employees, officers or agents.

(b) Mezzanine Lender shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature believed by it in good faith to be genuine, and, in so acting, it may be assumed that any person purporting to give any of the foregoing in connection with the provisions hereof has been duly authorized to do so. Mezzanine Lender may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder and in good faith in accordance therewith.

3.1.13 Continuing Security Interest . This Agreement shall create a continuing security interest in the Account Collateral (Mezzanine) and shall remain in full force and effect until payment in full of the Indebtedness; provided, however, such security interest shall automatically terminate with respect to funds which were duly deposited into Mezzanine Borrower's Account in accordance with the terms hereof. Upon payment in full of the Indebtedness, this security interest shall automatically terminate without further notice from any party and Mezzanine Borrower shall be entitled to the return, upon its request, of such of the Account Collateral (Mezzanine) as shall not have been sold or otherwise applied pursuant to the terms hereof and Mezzanine Lender shall execute such instruments and documents as may be reasonably requested by Mezzanine Borrower to evidence such termination and the release of the Account Collateral (Mezzanine).

IV. REPRESENTATIONS AND WARRANTIES

Section 4.1 Mezzanine Borrower Representations . Mezzanine Borrower represents and warrants as of the Closing Date that:

4.1.1 Organization . Each Co-Mezzanine Borrower, Co-Mortgage Borrower, Prime Lessee and Operating Lessee is a limited liability company that has been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Guarantor is a limited liability company and has been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Each of Mortgage Borrower and Operating Lessee has duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Collectively, Mortgage Borrower, Prime Lessee and Operating Lessee possess all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which each is now engaged, and the sole business of Mortgage Borrower is the ownership of the Property. The organizational structure of Mortgage Borrower, Mezzanine Borrower, and their Affiliates upon the closing of the Loan is accurately depicted by the schematic diagram attached hereto as **Exhibit H-1** . Mezzanine Borrower shall not itself, and shall not permit Mortgage Borrower or any SPE Entity, Prime Lessee or Operating Lessee to, change its name, identity, corporate structure or jurisdiction of organization unless it shall have given Mezzanine Lender seven (7) days prior written notice of any such change and shall have taken all steps reasonably requested by Mezzanine Lender to grant, perfect, protect and/or preserve the security interest granted hereunder to Mezzanine Lender.

4.1.2 Proceedings . Each of Mezzanine Borrower, Guarantor, Prime Lessee and Operating Lessee has full power to and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents (Mezzanine). This Agreement and the other Loan Documents (Mezzanine) have been duly executed and delivered by, or on behalf of, Mezzanine Borrower, Guarantor, Prime Lessee and Operating Lessee, as applicable, and constitute legal, valid and binding obligations of Mezzanine Borrower, Guarantor, Prime Lessee and Operating Lessee, as applicable, enforceable against Mezzanine Borrower, Guarantor, Prime Lessee and Operating Lessee, as applicable, in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts . The execution, delivery and performance of this Agreement and the other Loan Documents (Mezzanine) by Mezzanine Borrower, Guarantor, Prime Lessee and Operating Lessee, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents (Mezzanine)) upon any of the property or assets of Mezzanine Borrower, Guarantor, Prime Lessee and Operating Lessee pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement or other agreement or instrument to which Mezzanine Borrower, Guarantor, Prime Lessee and Operating Lessee is a party or by which any of Mezzanine Borrower's, Guarantor's, Prime Lessee's and Operating Lessee's property or assets is subject (unless consents from all applicable parties thereto have been obtained), nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority, and any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Mezzanine Borrower, Guarantor, Prime Lessee and Operating Lessee of this Agreement or any other Loan Documents (Mezzanine) has been obtained and is in full force and effect.

4.1.4 Litigation . There are no lawsuits, administrative proceedings, arbitration proceedings, or other such legal proceedings that have been filed and served upon Mezzanine Borrower (or with respect to which Mezzanine Borrower has otherwise received proper notice) or, to the Best of Mezzanine Borrower's Knowledge, otherwise pending or threatened against or affecting Mortgage Borrower, Mezzanine Borrower, Prime Lessee, Operating Lessee or the Property whose outcome, if determined against Mortgage Borrower, Mezzanine Borrower,, Prime Lessee, Operating Lessee, or the Property, would have a Material Adverse Effect. To the Best of Mezzanine Borrower's Knowledge, **Schedule I** includes each pending action against Mortgage Borrower, Mezzanine Borrower, Prime Lessee, Operating Lessee or otherwise affecting the Property that involves a claim or claims for either (a) monetary damages exceeding $250,000, or (b) injunctive relief or other equitable remedy that could have a Material Adverse Effect, excluding: (i) actions for monetary damages only that have been tendered to, and accepted without reservation of rights by, the liability insurance carrier for the Property, (ii) worker's compensation claims, and (iii) any proceedings by employees working at the Property where the amount claimed in such proceeding is less than $250,000; to the Best of Mezzanine Borrower's Knowledge, the aggregate amount of such claims described in subclause (iii) of this sentence is less than $1,000,000.

4.1.5 Agreements . Mezzanine Borrower is not a party to any agreement or instrument or subject to any restriction which is reasonably likely to have a Material Adverse Effect. Mezzanine Borrower is not in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Mezzanine Borrower or the Property is bound, which default is reasonably likely to have a Material Adverse Effect. Mezzanine Borrower has no material financial obligation (contingent or otherwise) under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Mezzanine Borrower is a party or by which Mezzanine Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property, including membership programs disclosed in writing to Mezzanine Lender on or prior to the date hereof, and (b) obligations under the Loan Documents (Mezzanine).

4.1.6 Title . Mezzanine Borrower owns all of the assets reflected in the proforma balance sheet of Mezzanine Borrower as of the date of such proforma balance sheet, subject to no rights of others, including any mortgages, leases, conditional sales agreements, title retention agreements, liens or other encumbrances, except for the Permitted Encumbrances.

4.1.7 No Bankruptcy Filing . None of Mezzanine Borrower, Guarantor, Mortgage Borrower, any SPE Entity, Prime Lessee or Operating Lessee is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of such entity's assets or property, and Mezzanine Borrower has no knowledge of any Person contemplating the filing of any such petition against it or against Mezzanine Borrower, Guarantor, Mortgage Borrower, any SPE Entity, Prime Lessee or Operating Lessee.

4.1.8 Full and Accurate Disclosure . To the Best of Mezzanine Borrower's Knowledge, no statement of fact made by Mezzanine Borrower in this Agreement or in any of the other Loan Documents (Mezzanine) contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Mezzanine Borrower which has not been disclosed which has a Material Adverse Effect, or to the Best of Mezzanine Borrower's Knowledge could reasonably be expected to have a Material Adverse Effect.

4.1.9 ERISA . (a) Mezzanine Borrower does not maintain or contribute to and is not required to contribute to, an "employee benefit plan" as defined by Section 3(3) of ERISA, which is subject to Title IV of ERISA (other than a "multiemployer plan" as defined by Section 3(37) of ERISA), and Mezzanine Borrower (i) has no knowledge of any material liability which has been incurred or is expected to be incurred by Mezzanine Borrower which is reasonably likely to result in a Material Adverse Effect and is or remains unsatisfied for any taxes or penalties or unfunded contributions with respect to any "employee benefit plan" or any "plan," within the meaning of Section 4975(e)(1) of the Internal Revenue Code or any other benefit plan (other than a "multiemployer plan") maintained, contributed to, or required to be contributed to by Mezzanine Borrower or by any entity that is under common control with

Mezzanine Borrower within the meaning Section 4001(a)(14) of ERISA (each, an "**ERISA Affiliate** ") (each, a "**Plan**") or any plan that would be a Plan but for the fact that it is a multiemployer plan within the meaning of ERISA Section 3(37); and (ii) has made and shall continue to make when due all required contributions to all such Plans (other than Plans relating to ERISA Affiliates), if any, where the failure to so contribute is reasonably likely to result in a Material Adverse Effect. Each such Plan (other than Plans relating to ERISA Affiliates), if any, has been and will be administered in material compliance with its terms and the applicable provisions of ERISA, the Internal Revenue Code, and any other applicable federal or state law; and no action shall be taken or fail to be taken that would result in the disqualification or loss of tax-exempt status of any such Plan intended to be qualified and/or tax exempt; and

(b) With respect to any "multiemployer plan," (i) Mezzanine Borrower has not, since September 26, 1980, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA, (ii) Mezzanine Borrower has made and shall continue to make when due all required contributions to all such "multiemployer plans" and (iii) no ERISA Affiliate has, since September 26, 1980, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA which withdrawal is reasonably expected to have a Material Adverse Effect.

(c) Mezzanine Borrower is not an employee benefit plan, as defined in Section 3(3) of ERISA, whether or not subject to Title I of ERISA, none of the assets of Mezzanine Borrower, Guarantor or Mortgage Borrower constitutes or will constitute plan assets of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101 and transactions by or with any of Mezzanine Borrower, Guarantor, and Mortgage Borrower are not subject to similar laws regulating investment of, and fiduciary obligations with respect to, plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect which prohibit or otherwise restrict the transactions contemplated by this Agreement.

4.1.10 Compliance . Mezzanine Borrower, Guarantor, Mortgage Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes except where the failure to so comply is not reasonably expected to result in a Material Adverse Effect. To the Best of Mezzanine Borrower's Knowledge, none of Mezzanine Borrower, Guarantor or Mortgage Borrower is in default or in violation of any order, writ, injunction, decree or demand of any Governmental Authority. To the Best of Mezzanine Borrower's Knowledge, there has not been committed by Mezzanine Borrower, Guarantor or Mortgage Borrower any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property, the Collateral or any part thereof or any monies paid in performance of Mezzanine Borrower's obligations under any of the Loan Documents (Mezzanine).

4.1.11 Financial Information . To the Best of Mezzanine Borrower's Knowledge, all financial data of Mezzanine Borrower, Guarantor and Mortgage Borrower, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered by or on behalf of Mezzanine Borrower or Mortgage Borrower to Mezzanine Lender in respect of the Property (i) are true, complete and correct in all material respects, (ii) fairly represent the financial condition of the Property, the Mezzanine Borrower,

Guarantor and Mortgage Borrower as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. None of Mezzanine Borrower, Guarantor or Mortgage Borrower has any material contingent liabilities, liabilities for delinquent taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Mezzanine Borrower and could reasonably be expected to have a Material Adverse Effect, except as referred to or reflected in said financial statements and operating statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operations or business of Mezzanine Borrower, Guarantor or Mortgage Borrower from that set forth in said financial statements.

4.1.12 Absence of UCC Financing Statements, Etc . Except with respect to the Permitted Encumbrances, the Loan Documents (Mortgage) and the Loan Documents (Mezzanine), there is no financing statement, security agreement, chattel mortgage, real estate mortgage or other document filed or recorded with any filing records, registry, or other public office, that purports to cover, affect or give notice of any present or possible future lien on, or security interest or security title in the interest in the Property or any of the Collateral.

4.1.13 Federal Reserve Regulations . None of the proceeds of the Loan will be used for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U, Regulation X or Regulation T or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry "margin stock" or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of Regulation U or Regulation X. As of the Closing Date, Mezzanine Borrower does not own any "margin stock."

4.1.14 Setoff, Etc . The Collateral and the rights of Mezzanine Lender with respect to the Collateral are not subject to any setoff, claims, withholdings or other defenses.

4.1.15 Not a Foreign Person . None of Mezzanine Borrower, Guarantor or Mortgage Borrower is a foreign person within the meaning of § 1445(f)(3) of the Code.

4.1.16 Enforceability . The Loan Documents (Mezzanine) are not subject to any existing right of rescission, set-off, counterclaim or defense by Mezzanine Borrower or Guarantor, as applicable, including the defense of usury, nor would the operation of any of the terms of the Loan Documents (Mezzanine), or the exercise of any right thereunder, render the Loan Documents (Mezzanine) unenforceable (subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law)), and neither Mezzanine Borrower nor Mortgage Borrower has asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.17 Insurance . Mortgage Borrower has obtained and has delivered to Mezzanine Lender certified copies or original certificates of all insurance policies required under this Agreement and the Loan Agreement (Mortgage), reflecting the insurance coverages, amounts and other requirements set forth in this Agreement and the Loan Agreement (Mortgage). Mezzanine Borrower has not, and to the Best of Mezzanine Borrower's Knowledge no Person has, done by act or omission anything which would impair the coverage of any such policy.

4.1.18 Physical Condition . To the Best of Mezzanine Borrower's Knowledge and except as expressly disclosed in the Physical Conditions Report, the Property, including, without limitation, all buildings, Improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; to the Best of Mezzanine Borrower's Knowledge and except as disclosed in the Physical Conditions Report, there exists no structural or other material defects or damages in or to the Property, whether latent or otherwise, and Mezzanine Borrower has not received any written notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

4.1.19 Leases . The Property is not subject to any Leases other than the Prime Lease, the Operating Lease and the Leases described in the certified rent roll delivered in connection with the origination of the Loan. Such certified rent roll is true, complete and correct in all material respects as of the date set forth therein. No Person has any possessory interest in the Property or right to occupy the same (other than typical short-term occupancy rights of hotel guests which are not the subject of a written agreement) except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and to the Best of Mezzanine Borrower's Knowledge, there are no material defaults thereunder by either party (other than as expressly disclosed on the certified rent roll delivered to Mezzanine Lender or the Tenant estoppel certificates delivered to Mezzanine Lender in connection with the closing of the Loan) and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute material defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date, except as disclosed in the Tenant estoppel certificates delivered to Mezzanine Lender in connection with the closing of the Loan. There has been no prior sale, transfer or assignment, hypothecation or pledge by Mortgage Borrower of Mortgage Borrower's interest in any Lease or of the Rents received therein, which will be outstanding following the funding of the Loan, other than those being assigned to Mortgage Lender concurrently herewith. No Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the property of which the leased premises are a part.

4.1.20 Single Purpose Entity/Separateness . (a) Mezzanine Borrower hereby represents, warrants and covenants that each of Mezzanine Borrower, Mortgage Borrower and each SPE Entity is, and has been since the date of its respective formation, a Single Purpose Entity and has not, since the date of its respective formation, conducted any business and owned any property whatsoever, except as specifically described in the Non-Consolidation Opinion.

(b) All of the assumptions made in the Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto and any certificates delivered by Mezzanine Borrower in connection with the issuance of the Non-Consolidation Opinion, are true and correct in all respects and any assumptions made in any subsequent non-consolidation opinion delivered

in connection with the Loan Documents (Mezzanine) (an "**Additional Non-Consolidation Opinion**"), including, but not limited to, any exhibits attached thereto, are true and correct in all material respects. Mezzanine Borrower, Mortgage Borrower and each SPE Entity have complied with all of the assumptions made with respect to it in the Non-Consolidation Opinion. To the Best of Mezzanine Borrower's Knowledge, each entity other than Mezzanine Borrower with respect to which an assumption shall be made in any Additional Non-Consolidation Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Non-Consolidation Opinion.

4.1.21 Management Agreement . The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Manager is not an Affiliate of Mezzanine Borrower.

4.1.22 Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws . (i) None of Mezzanine Borrower, Guarantor or any Person who owns any equity interest in or Controls Mezzanine Borrower or, to the Best of Borrower's Knowledge, Guarantor, currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and Mezzanine Borrower has implemented procedures to ensure that no Person who now or hereafter owns any equity interest in Mezzanine Borrower or Guarantor is a Prohibited Person or Controlled by a Prohibited Person, and (ii) none of Mezzanine Borrower or Guarantor is in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time.

4.1.23 Tax Filings . Mezzanine Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Mezzanine Borrower.

4.1.24 Solvency/Fraudulent Conveyance . Mezzanine Borrower (a) has not entered into the transaction contemplated by this Agreement or any Loan Document (Mezzanine) with the actual intent to hinder, delay, or defraud any creditor and (b) has received reasonably equivalent value in exchange for its obligations under the Loan Documents (Mezzanine). After giving effect to the Loan, the fair saleable value of Mezzanine Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Mezzanine Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Mezzanine Borrower's assets is and will, immediately following the making of the Loan, be greater than Mezzanine Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured. Mezzanine Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Mezzanine Borrower does not intend to, and does not believe that it will, incur Debt and liabilities (including contingent liabilities and other

commitments) beyond its ability to pay such Debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Mezzanine Borrower and the amounts to be payable on or in respect of obligations of Mezzanine Borrower).

4.1.25 Investment Company Act . Mezzanine Borrower is not (a) an investment company or a company Controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended, (b) a holding company or a subsidiary company of a holding company or an affiliate of either a holding company or a subsidiary company within the mean of the Public Utility Holding Company Act of 1935, as amended or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.26 Brokers . Neither Mezzanine Borrower nor, to the Best of Mezzanine Borrower's Knowledge, Mezzanine Lender has dealt with any broker or finder with respect to the transactions contemplated by the Loan Documents (Mezzanine) and neither party has done any acts, had any negotiations or conversations, or made any agreements or promises which will in any way create or give rise to any obligation or liability for the payment by either party of any brokerage fee, charge, commission or other compensation to any Person with respect to the transactions contemplated by the Loan Documents (Mezzanine). Mezzanine Borrower covenants and agrees that it shall pay as and when due any and all brokerage fees, charges, commissions or other compensation or reimbursement due to any broker of Mezzanine Borrower with respect to the transactions contemplated by the Loan Documents (Mezzanine). Mezzanine Borrower and Mezzanine Lender shall each indemnify and hold harmless the other from and against any loss, liability, cost or expense, including any judgments, attorneys' fees, or costs of appeal, incurred by the other party and arising out of or relating to any claim for brokerage commissions or finder's fees alleged to be due as a result of the indemnifying party's agreements or actions. The provisions of this Section 4.1.27 shall survive the expiration and termination of this Agreement and the payment of the Indebtedness.

4.1.27 No Other Debt . Mezzanine Borrower has not borrowed or received debt financing that has not been heretofore repaid in full, other than the Permitted Debt.

4.1.28 Taxpayer Identification Number . Mezzanine Borrower's Federal taxpayer identification numbers are 20-5432672 (SHR Scottsdale Mezz X-1, L.L.C.) and 20-5432795 (SHR Scottsdale Mezz Y-1, L.L.C.).

4.1.29 Knowledge Qualifications . Borrower represents that Cory Warning and Ryan Bowie are in a position to have meaningful knowledge with respect to the matters set forth in the Loan Documents which have been qualified to the knowledge of such Persons.

4.1.30 Representations and Warranties . Mezzanine Borrower represents and warrants that each of the representations and warranties contained in the Loan Documents (Mortgage), including, without limitation, the representations and warranties with respect to the Ground Lease and the TIC Agreement, (which are all hereby incorporated by reference as if fully set forth herein) is true and correct in all material respects, as of the Closing Date and to the best of its knowledge, after reasonable inquiry, there is no Event of Default under the Mortgage Loan.

Section 4.2 Survival of Representations . Mezzanine Borrower agrees that all of the representations and warranties of Mezzanine Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents (Mezzanine) shall be deemed given and made as of the date of the funding of the Loan and survive for so long as any amount remains owing to Mezzanine Lender under this Agreement or any of the other Loan Documents (Mezzanine) by Mezzanine Borrower or Guarantor unless a longer survival period is expressly stated in a Loan Document (Mezzanine) with respect to a specific representation or warranty, in which case, for such longer period. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents (Mezzanine) by Mezzanine Borrower shall be deemed to have been relied upon by Mezzanine Lender notwithstanding any investigation heretofore or hereafter made by Mezzanine Lender or on its behalf.

V. MEZZANINE BORROWER COVENANTS

Section 5.1 Affirmative Covenants . From the Closing Date and until payment and performance in full of all obligations of Mezzanine Borrower under the Loan Documents (Mezzanine) or the earlier release of the lien of this Agreement and the Pledge in accordance with the terms of this Agreement and the other Loan Documents (Mezzanine), Mezzanine Borrower hereby covenants and agrees with Mezzanine Lender that:

5.1.1 Performance by Mezzanine Borrower . (a) Mezzanine Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document (Mezzanine) executed and delivered by, or applicable to, Mezzanine Borrower and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document (Mezzanine) executed and delivered by, or applicable to, Mezzanine Borrower without the prior written consent of Mezzanine Lender.

(b) Mezzanine Borrower shall cause Mortgage Borrower in a timely manner to observe, perform and fulfill each and every covenant, term and provision of each Loan Document (Mortgage) executed and delivered by, or applicable to, Mortgage Borrower.

5.1.2 Existence; Compliance with Legal Requirements; Insurance . Subject to Mortgage Borrower's right of contest pursuant to Section 7.3 of the Loan Agreement (Mortgage), Mezzanine Borrower shall comply and cause the Mortgage Borrower, any SPE Entity and the Property to be in compliance with all Legal Requirements applicable to the Mezzanine Borrower, Mortgage Borrower, any SPE Entity and Manager and the Property and the uses permitted upon the Property. Mezzanine Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises necessary to comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Mezzanine Borrower, and Mezzanine Borrower shall not knowingly permit Mortgage Borrower or any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Mezzanine Borrower's obligations under any of the Loan Documents (Mezzanine). Mezzanine Borrower hereby covenants and agrees not to commit, knowingly permit or suffer to exist any act or omission

affording such right of forfeiture. Mezzanine Borrower shall at all times maintain, preserve and protect (and shall cause Mortgage Borrower to at all times maintain, preserve and protect) all franchises and trade names and preserve all the remainder of its property used in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, as required by the Loan Agreement (Mortgage). Mezzanine Borrower shall keep or shall cause Mortgage Borrower to keep the Property insured at all times to such extent and against such risks, and maintain liability and such other insurance, as is more fully set forth in this Agreement and the Loan Agreement (Mortgage).

5.1.3 Litigation . Mezzanine Borrower shall give prompt written notice to Mezzanine Lender of any litigation or governmental proceedings pending or threatened in writing against Mezzanine Borrower, Mortgage Borrower, the Collateral or the Property which, if determined adversely to Mezzanine Borrower, Mortgage Borrower, the Collateral or the Property would have a Material Adverse Effect.

5.1.4 Single Purpose Entity . (a) Each of Mezzanine Borrower, Mortgage Borrower, and each SPE Entity has been since the date of its respective formation and shall remain a Single Purpose Entity.

(b) Except as permitted by the Loan Documents (Mezzanine), each of Mezzanine Borrower, Mortgage Borrower and each SPE Entity shall continue to maintain its own account or accounts, separate from those of any Affiliate, with commercial banking institutions. None of the funds of Mezzanine Borrower, will be commingled with the funds of any other Affiliate.

(c) To the extent that Mezzanine Borrower, Mortgage Borrower or any SPE Entity shares the same officers or other employees as any of their Affiliates, the salaries of and the expenses related to providing benefits to such officers and other employees shall be fairly allocated among such entities, and each such entity shall bear its fair share of the salary and benefit costs associated with all such common officers and employees.

(d) To the extent that Mezzanine Borrower, Mortgage Borrower or any SPE Entity jointly contracts with any of Mezzanine Borrower, Mortgage Borrower, any SPE Entity or any of their Affiliates, as applicable, to do business with vendors or service providers or to share overhead expenses, the costs incurred in so doing shall be allocated fairly among such entities, and each such entity shall bear its fair share of such costs. To the extent that Mezzanine Borrower, Mortgage Borrower or any SPE Entity contracts or does business with vendors or service providers where the goods and services provided are partially for the benefit of any other Person, the costs incurred in so doing shall be fairly allocated to or among such entities for whose benefit the goods and services are provided, and each such entity shall bear its fair share of such costs. All material transactions between (or among) Mezzanine Borrower, Mortgage Borrower or each SPE Entity and any of their respective Affiliates shall be conducted on substantially the same terms (or on more favorable terms for Mezzanine Borrower, Mortgage Borrower or any SPE Entity, as applicable) as would be conducted with third parties.

(e) To the extent that Mezzanine Borrower, Mortgage Borrower, any SPE Entity or any of their Affiliates have offices in the same location, there shall be a fair and appropriate allocation of overhead costs among them, and each such entity shall bear its fair share of such expenses.

(f) Mezzanine Borrower, Mortgage Borrower and each SPE Entity shall conduct its affairs strictly in accordance with its organizational documents, and observe all necessary, appropriate and customary corporate, limited liability company or partnership formalities, as applicable, including, but not limited to, obtaining any and all members' consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, without limitation, payroll and intercompany transaction accounts.

(g) In addition, Mezzanine Borrower, Mortgage Borrower and each SPE Entity shall each: (i) maintain books and records separate from those of any other Person; (ii) maintain its assets in such a manner that it is not more costly or difficult to segregate, identify or ascertain such assets; (iii) hold regular meetings of its board of directors, shareholders, partners or members, as the case may be, and observe all other corporate, partnership or limited liability company, as the case may be, formalities; (iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; (v) prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group; (vi) transact all business with its Affiliates on an arm's-length basis and pursuant to enforceable agreements; (vii) conduct business in its name and use separate stationery, invoices and checks; (viii) not commingle its assets or funds with those of any other Person; and (ix) not assume, guarantee or pay the debts or obligations of any other Person.

5.1.5 Consents . If Mezzanine Borrower, Mortgage Borrower or any SPE Entity is a corporation, the board of directors of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including the Independent Directors, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Mezzanine Borrower's organizational documents). If Mezzanine Borrower, Mortgage Borrower or any SPE Entity is a limited liability company, (a) if such Person is managed by a board of managers, the board of managers of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of managers unless all of the managers, including the Independent Managers, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Mezzanine Borrower's organizational documents), (b) if such Person is not managed by a board of managers, the members of such Person may not take any action requiring the affirmative vote of 100% of the members of such Person unless all of the members, including the Independent Members, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Mezzanine Borrower's organizational documents). An affirmative vote of 100% of the directors, board of managers or members, as applicable, including without limitation the Independent Directors, of Mezzanine Borrower, Mortgage Borrower and any SPE Entity shall be required to (i) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings or to authorize Mezzanine Borrower, Mortgage Borrower or any SPE Entity to do so or (ii) file an involuntary bankruptcy petition against any Close Affiliate. Furthermore, Mezzanine Borrower's, Mortgage Borrower's or each SPE

Entity's formation documents shall expressly state that for so long as the Loan is outstanding, none of Mezzanine Borrower, Mortgage Borrower nor any SPE Entity shall be permitted to (i) dissolve, liquidate, consolidate, merge or sell all or substantially all of Mezzanine Borrower's, Mortgage Borrower's or any SPE Entity's assets other than in connection with the repayment of the Loan or (ii) engage in any other business activity and such restrictions shall not be modified or violated for so long as the Loan is outstanding.

5.1.6 Notice of Default . Mezzanine Borrower shall promptly advise Mezzanine Lender (a) of any event or condition that has or is likely to have a Material Adverse Effect and (b) of the occurrence of any Default or Event of Default arising under the Loan Documents (Mezzanine) or Default or Event of Default arising under the Mortgage Loan of which Mezzanine Borrower has knowledge.

5.1.7 Cooperate in Legal Proceedings . Mezzanine Borrower shall cooperate (and shall cause Mortgage Borrower to cooperate) fully with Mezzanine Lender with respect to any proceedings before any court, board or other Governmental Authority which would reasonably be expected to affect in any material adverse way the rights of Mezzanine Lender hereunder or under any of the other Loan Documents (Mezzanine) and, in connection therewith, permit Mezzanine Lender, at its election, to participate in any such proceedings which may have a Material Adverse Effect.

5.1.8 Perform Loan Documents (Mezzanine) . Mezzanine Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required, under the Loan Documents (Mezzanine) executed and delivered by, or applicable to, Mezzanine Borrower.

5.1.9 Further Assurances; Separate Notes . (a) If the Loan is extended and the Extension Option is exercised Mezzanine Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Mezzanine Lender all documents, and take all actions, reasonably required by Mezzanine Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement and the other Loan Documents (Mezzanine) and any security interest created or purported to be created thereunder, to protect and further the validity, priority and enforceability of this Agreement and the other Loan Documents (Mezzanine), to subject to the Loan Documents (Mezzanine) any property of Mezzanine Borrower intended by the terms of any one or more of the Loan Documents (Mezzanine) to be encumbered by the Loan Documents (Mezzanine), or otherwise carry out the purposes of the Loan Documents (Mezzanine) and the transactions contemplated thereunder. On or after March 15, 2007, Mezzanine Borrower agrees that it shall, upon request, reasonably cooperate with Mezzanine Lender in connection with any request by Mezzanine Lender to reallocate the LIBOR Margin among the Notes or to sever the Mezzanine Note into two (2) or more separate substitute or component notes in an aggregate principal amount equal to the Principal Amount and to reapportion the Loan among such separate substitute notes, including, without limitation, by executing and delivering to Mezzanine Lender new substitute or component notes to replace the Mezzanine Note, amendments to or replacements of existing Loan Documents (Mezzanine) to reflect such severance and/or Opinions of Counsel with respect to such substitute or component notes, amendments and/or replacements, provided that Mezzanine Borrower shall bear no costs or expenses in connection therewith (other than

administrative costs and expenses of Mezzanine Borrower and legal fees of counsel to the Borrower and Guarantor), and the holders of such substitute or component notes shall designate a lead lender or agent for such holders to whom Mezzanine Borrower may direct all communications with respect to the Loan. Any such substitute or component notes may have varying principal amounts and economic terms, provided, however, that (i) the maturity date of any such substitute or component notes shall be the same as the scheduled Maturity Date of the Mezzanine Note immediately prior to the issuance of such substitute notes, (ii) the substitute notes shall provide for amortization of the Principal Amount on a weighted average basis over a period not less than the amortization period provided under the Mezzanine Note, if any, immediately prior to the issuance of the substitute notes, (iii) the weighted average LIBOR Margin for the term of the substitute notes shall not exceed the LIBOR Margin under the Mezzanine Note immediately prior to the issuance of such substitute notes; and (iv) the economics of the Loan, taken as a whole, shall not change in a manner which is adverse to Mezzanine Borrower. Upon the occurrence and during the continuance of an Event of Default, Mezzanine Lender may apply payment of all sums due under such substitute notes in such order and priority as Mezzanine Lender shall elect in its sole and absolute discretion.

(b) No Securitization shall occur prior to March 15, 2007. Mezzanine Borrower further agrees that if, in connection with the Securitization, it is determined by the Rating Agencies that a portion of the Securitization would not receive an "investment grade" rating unless the principal amount of the Mortgage Loan were to be decreased and, as a result, the principal amount of the Mortgage Loan is decreased, then (i) the Mezzanine Borrower shall take all actions as are necessary to effect the "resizing", including the reallocation of the LIBOR Margin of the Loan and the Mortgage Loan, (ii) the Mezzanine Borrower shall cause the Mortgage Borrower to comply with its agreements to effect a "resizing", and (iii) Mezzanine Lender shall on the date of the "resizing" of the Loan lend to the Mezzanine Borrower (by way of a reallocation of the principal amount of the Mortgage Loan and the Loan) such additional amount equal to the amount of the principal reduction of the Loan (without Prepayment Fee or penalty) provided that Mortgage Borrower and Mezzanine Borrower execute and deliver any and all necessary amendments or modifications to the Loan Documents (Mortgage) and the Loan Documents (Mezzanine). In addition, Mezzanine Borrower and Mezzanine Lender agree that if, in connection with the Securitization, it is determined by the Rating Agencies that, if the principal amount of the Loan were to be decreased and, as a result the principal amount of the Mortgage Loan were increased, more "investment grade" rated securities could be issued, then (i) if "resizing" to increase the size of the Mortgage Loan and decrease the size of the Loan is provided for in the Loan Documents (Mortgage), each of them shall take all actions provided for in the documentation for the Loan as are necessary to effect the "resizing" of the Loan and the Mortgage Loan, (ii) Mezzanine Borrower shall cause the Mortgage Borrower to comply with its agreements to effect a "resizing" and (iii) Mortgage Lender shall on the date of the "resizing" of the Loan lend to the Mortgage Borrower (by way of a reallocation of the principal amount of the Mortgage Loan and the Loan) an additional amount equal to the amount of principal reduction of the Loan, provided that Mortgage Borrower and Mezzanine Borrower execute and deliver any and all necessary modifications to the Loan Documents (Mortgage) and Loan Documents (Mezzanine). In connection with the foregoing, Mezzanine Borrower agrees, at Mezzanine Borrower's sole cost and expense, to execute and deliver such documents and other agreements reasonably required by Mortgage Lender and/or Mezzanine Lender to "re-size" the Loan and the Mortgage Loan, including, without limitation, an amendment to this Agreement, the Mezzanine

Note, the Pledge and the other Loan Documents (Mortgage) and, if the principal amount of the Mortgage Loan is increased, an endorsement to the Title Policy reflecting an increase in the insured amount thereunder. Mezzanine Borrower agrees to reimburse Mezzanine Lender for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Mezzanine Lender in connection with any "resizing" of the Loan and to pay for all reasonable costs and expenses incurred to reallocate the insurance coverage of any "Eagle 9" or other UCC insurance coverage obtained by Mezzanine Lender at Closing (or during the Extension Term) to reflect the new loan amount, and shall deliver opinions of counsel similar to those delivered on the date hereof with respect to Mezzanine Borrower and the Mezzanine Loans. Notwithstanding the foregoing, Mezzanine Lender agrees that any "resizing" of the Mortgage Loan and the Loan shall not change the economics of the Mortgage Loan and the Loan taken as a whole in a manner which is adverse to Mezzanine Borrower.

(c) If securitized after March 15, 2007, in addition, Mezzanine Borrower shall, at Mezzanine Borrower's sole cost and expense:

(i) furnish to Mezzanine Lender, to the extent not otherwise already furnished to Mezzanine Lender and reasonably acceptable to Mezzanine Lender, all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Mortgage Borrower pursuant to the terms of the Loan Documents (Mortgage);

(ii) execute and deliver, from time to time, such further instruments (including, without limitation, delivery of any financing statements under the UCC) as may be reasonably requested by Mezzanine Lender to confirm the lien of the Pledge and this Agreement or any Collateral;

(iii) execute and deliver to Mezzanine Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Mezzanine Borrower under the Loan Documents (Mezzanine), as Mezzanine Lender may reasonably require;

(iv) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the carrying out of the terms and conditions of this Agreement and the other Loan Documents (Mezzanine), as Mezzanine Lender shall reasonably require from time to time; and

(v) cause its New York counsel to re-issue the New York opinion delivered on the date hereof (in identical form and without updating) in favor of any purchaser of the Loan or an interest therein.

5.1.10 Business and Operations . Mortgage Borrower, Mezzanine Borrower, and Operating Lessee shall continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property and the Collateral, as applicable. Mezzanine Borrower shall and shall cause

Mortgage Borrower to, qualify to do business and shall remain in good standing under the laws of all applicable jurisdictions and to the extent required for the ownership, maintenance, management and operation of the Property and, as applicable, the ownership of the Collateral.

5.1.11 Title to the Collateral . Mezzanine Borrower shall warrant and defend (a) its title to the Collateral and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Lien of the Pledge and this Agreement on the Collateral, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Mezzanine Borrower shall reimburse Mezzanine Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Mezzanine Lender if an interest in the Collateral, other than as permitted hereunder, is claimed by another Person.

5.1.12 Costs of Enforcement . In the event (a) that this Agreement or the Pledge is foreclosed upon in whole or in part or that this Agreement or the Pledge is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any security agreement prior to or subsequent to this Agreement or the Pledge in which proceeding Mezzanine Lender is made a party, or a Pledge prior to or subsequent to the Pledge in which proceeding Mezzanine Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Mezzanine Borrower or any of its constituent Persons or an assignment by Mezzanine Borrower or any of its constituent Persons for the benefit of its creditors, Mezzanine Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including reasonable attorneys' fees and costs, incurred by Mezzanine Lender or Mezzanine Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.13 Estoppel Statement . (a) Mezzanine Borrower shall, from time to time, upon thirty (30) days' prior written request from Mezzanine Lender, execute, acknowledge and deliver to the Mezzanine Lender (and shall cause Mortgage Borrower to execute, acknowledge and deliver to Mezzanine Lender), an Officer's Certificate, stating that this Agreement and the other Loan Documents (Mezzanine) (or as applicable, the Loan Documents (Mortgage)) are unmodified and in full force and effect (or, if there have been modifications, that this Agreement and the other Loan Documents (Mezzanine) or, as applicable, Loan Documents (Mortgage) are in full force and effect as modified and setting forth such modifications), stating the amount of accrued and unpaid interest and the outstanding principal amount of the Mezzanine Note (or, as applicable, the Mortgage Note) and containing such other information, qualified to the Best of Mezzanine Borrower's Knowledge, with respect to the Mezzanine Borrower, Guarantor, Mortgage Borrower, the Property, the Loan, the Mortgage Loan as Mezzanine Lender shall reasonably request. The estoppel certificate shall also state either that no Event of Default or Mortgage Event of Default exists hereunder or thereunder or, if any Event of Default or Mortgage Event of Default shall exist hereunder or thereunder, specify such Event of Default or Mortgage Event of Default and the steps being taken to cure such Event of Default or Mortgage Event of Default.

(b) Mezzanine Borrower shall use commercially reasonable efforts to deliver to Mezzanine Lender, within thirty (30) days of Mezzanine Lender's request, tenant estoppel

certificates from each Tenant under Material Leases entered into after the Closing Date in substantially the form and substance of the estoppel certificate set forth in **Exhibit G** provided that Mezzanine Borrower shall not be required to deliver such certificates more frequently than one time in any calendar year; provided, however, that there shall be no limit on the number of times Mezzanine Borrower may be required to obtain such certificates if a Default hereunder or under any of the Loan Documents (Mezzanine) has occurred and is continuing.

5.1.14 Loan Proceeds . Mezzanine Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4 .

5.1.15 No Joint Assessment . Mezzanine Borrower shall not suffer, permit or initiate the joint assessment of the Property (a) with any other real property constituting a tax lot separate from the Property and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.1.16 No Further Encumbrances . Mezzanine Borrower shall do, or cause to be done, all things necessary to keep and protect the Property and the Collateral and all portions thereof unencumbered from any Liens, easements or agreements granting rights in or restricting the use or development of the Property, except for (a) with respect to the Property, Permitted Encumbrances, (b) Liens permitted pursuant to the Loan Documents (Mezzanine), or the Loan Documents (Mortgage), (c) Liens for Impositions prior to the imposition of any interest, charges or expenses for the non-payment thereof and (d) any Liens permitted pursuant to Leases.

5.1.17 Leases . Mezzanine Borrower shall cause Mortgage Borrower, promptly after receipt thereof, to deliver to Mezzanine Lender a copy of any notice received with respect to the Leases claiming that Mortgage Borrower is in default in the performance or observance of any of the material terms, covenants or conditions of any of the Leases.

5.1.18 Loan (Mortgage) Covenants . (a) Mezzanine Borrower hereby covenants that it shall cause Mortgage Borrower to fully keep, perform and comply with (or cause to be kept, performed and complied with) each of the covenants set forth in the Loan Agreement (Mortgage) and the Security Instrument, which are hereby incorporated by reference as if fully set forth herein, notwithstanding any waiver or future amendment of such covenants by Mortgage Lender (other than a Permitted Loan Amendment). Mezzanine Borrower acknowledges that the obligation to comply with such covenants is separate from, and may be enforced independently from, the obligations of the Mortgage Borrower under the Loan Documents (Mortgage).

(b) Mezzanine Borrower shall not, and shall cause Mortgage Borrower not to, (i) amend or modify (by agreement on the part of the Mortgage Borrower or Mezzanine Borrower) or (ii) affirmatively permit the modification or amendment of (by operation of law or otherwise) the Loan Documents (Mortgage) in effect as of the Closing Date that would be a Prohibited Loan Amendment (as hereinafter defined) except for those amendments or modifications ("**Permitted Loan Amendments**") that are (i) required under the Loan Documents (Mortgage), or that Mortgage Borrower is required to consent to thereunder pursuant

to the express terms of the Loan Documents (Mortgage), (ii) which do not constitute a Prohibited Loan Amendment, or (iii) are otherwise consented to by Mezzanine Lender. As used herein, a "**Prohibited Loan Amendment**" shall mean an amendment or modification to the Loan Documents (Mortgage) that (A) is reasonably likely to have a Material Adverse Effect, or (B) which (1) increases the principal amount of the Loan (Mortgage) (exclusive of protective advances), (2) increases the interest rate payable under the Loan (Mortgage), (3) provides for the payment of any additional interest, additional fees, increases the amount of or adds additional reserve payments or increases the amount of or adds additional escrows, or otherwise increases the amount payable under the Loan (Mortgage), (4) increases the frequency or payment amount of the periodic principal installments under the Loan (Mortgage), (5) modifies the recourse carveout obligations under the Loan Documents (Mortgage) in a manner which increases or expands recourse liability, (6) modifies the due-on-sale, due-on-encumbrance, or collateral release provisions of the Loan Documents (Mortgage), (7) modifies the provisions governing requirements with respect to the Independent Managers under the Loan Documents (Mortgage) in a manner materially adverse to Mortgage Lender, (8) adds material additional obligations, liabilities or indemnities on the part of Mortgage Borrower, Guarantor, or Mezzanine Borrower, (9) shortens any default cure periods or adds any additional defaults under the Loan Documents (Mortgage), (10) extends the maturity date of the Loan (Mortgage) beyond the initially scheduled maturity date (except in connection with any work-out or other surrender, compromise, release, renewal, or indulgence relating to the Loan (Mortgage), (11) modifies any provisions related to the Management Agreement, (12) waives or modifies any provisions related to the use of proceeds under the Loan Documents (Mortgage), (13) modifies any provisions of the Loan Documents (Mortgage) related to the funding of escrows or cash management or any provision of the Account Agreement (Mortgage) or (14) decreases or materially modifies any insurance requirements under the Loan Documents (Mortgage). Any amendment or modification to the Loan Documents (Mortgage) in violation of this Section shall be ineffective as between Mezzanine Borrower and Mezzanine Lender, and, if not cured by Mezzanine Borrower within thirty (30) days after written notice from Mezzanine Lender shall constitute an Event of Default hereunder, unless Mezzanine Lender consents thereto in writing in its sole discretion.

(c) In the event the Loan (Mortgage) shall at any time be repaid, or the Liens securing the Loan (Mortgage) at any time be released in full, then unless and until the Mezzanine Note shall have been repaid in full and all obligations of Mezzanine Borrower to Mezzanine Lender hereunder and under the other Loan Documents (Mezzanine) shall have been satisfied, then Mezzanine Borrower and Manager shall nevertheless comply or cause the Mortgage Borrower to comply with each of the terms and provisions of the Loan Documents (Mortgage) (other than payment of principal, interest and premium (if any)) and the Loan Documents (Mortgage) shall nevertheless be deemed to remain in full force and effect as between Mezzanine Borrower and Mezzanine Lender with Mezzanine Lender being deemed in such context to possess exclusively all of the rights and remedies of the Mortgage Lender thereunder including without limitation, all rights of consent and approval, rights to receive and control the disposition of casualty insurance proceeds and condemnation awards, and the right to collect rents through a lockbox and make waterfall distributions (but expressly excluding any rights and remedies relating to payment of the indebtedness under the Loan Documents (Mortgage) and evidenced by the Mortgage Note and Mezzanine Borrower shall nevertheless comply or cause the Mortgage Borrower to comply with each of the terms and provisions of the Loan Documents (Mortgage) (and any Permitted Loan Amendments or amendment or modification consented to in writing by

Mezzanine Lender) (other than the payment of principal, interest and premium, if any). Mezzanine Borrower shall, and shall cause Mortgage Borrower to, execute any and all documents reasonably requested by Mezzanine Lender for the implementation or furtherance of the foregoing provided that the same shall be at Mezzanine Lender's sole cost and expense. Mezzanine Borrower shall deliver to Mezzanine Lender copies of any and all modifications to the Loan Documents (Mortgage) within five (5) Business Days after execution thereof.

(d) Mezzanine Borrower covenants and agrees to cause Mortgage Borrower to deliver any and all financial information delivered or required to be delivered to Mortgage Lender pursuant to the terms of the Loan Documents (Mortgage) to be delivered simultaneously to Mezzanine Lender.

5.1.19 Impositions . Mezzanine Borrower shall cause Mortgage Borrower to pay all Impositions, to timely pay all claims for labor, material or supplies that if unpaid or unbonded might by law become a lien or charge upon any of its property (including the Property), and to keep the Property free from any Lien (other than the lien of the Loan Documents (Mortgage) and the Permitted Encumbrances), and shall in any event cause the prompt, full and unconditional discharge of all Liens imposed upon the Property or any portion thereof within thirty (30) days after receiving written notice (whether from Mezzanine Lender, the lienholder or any other Person) of the filing thereof; subject in each case to Mortgage Borrower's right to contest the same as permitted in but subject to the conditions set forth in the Loan Agreement (Mortgage) so long as no Event of Default has occurred. In the event that Mortgage Borrower elects to commence any contest or similar proceeding with respect to any such Imposition, Lien or other claim described herein, Mezzanine Borrower shall provide prompt written notice thereof to Mezzanine Lender together with such evidence as Mezzanine Lender may reasonably require showing Mortgage Borrower's satisfaction of the requirements set forth in Section 7.3 of the Loan Agreement (Mortgage) to Mortgage Borrower conducting such contest. Notwithstanding the foregoing, Mezzanine Borrower shall cause Mortgage Borrower promptly to pay any contested Imposition, Lien or claim and the payment thereof shall not be deferred, if Mezzanine Lender or Mortgage Borrower may be subject to civil or criminal damages as a result thereof. If such action or proceeding is terminated or discontinued adversely to Mortgage Borrower, then Mezzanine Borrower shall cause Mortgage Borrower to deliver to Mezzanine Lender reasonable evidence of payment of such contested Imposition or Lien.

5.1.20 Article 8 "Opt In" Language . Each organizational document of Mezzanine Borrower, each SPE Entity and Mortgage Borrower shall be modified to include the language set forth on **Exhibit R** and such language shall remain in each such organizational document for so long as the Obligations are outstanding.

5.1.21 Qualified Intermediary . Prior to consummation of the Exchange, Qualified Intermediary shall not pledge its indirect interests in Mezzanine Borrower, except as permitted by the terms of this Agreement and the Exchange Documents. **TIC and Ground Lease .** Mezzanine Borrower hereby covenants that it shall cause Mortgage Borrower to fully keep, perform and comply with (or cause to be kept, performed and complied with) each of the covenants set forth in Section 5.1.26 and Section 5.3 of the Loan Agreement (Mortgage), which are hereby incorporated by reference as if fully set forth herein, notwithstanding any waiver or future amendment of such covenants by Mortgage Lender.

5.1.23 UCC Title Policy . Mezzanine Borrower hereby covenants that if it exercises the Extension Option, at the commencement of the Extension Term, it will deliver to Mezzanine Lender an "Eagle 9" title policy in favor of Mezzanine Lender, its successors and assigns, dated as of the commencement date of the Extension Term and in a form and containing such endorsements and particulars as is acceptable to and required by Mezzanine Lender, acting reasonably. Mezzanine Lender also shall have received evidence that all premiums in respect of the "Eagle 9" title policy have been paid.

Section 5.2 Negative Covenants . From the Closing Date until payment and performance in full of all Obligations of Mezzanine Borrower under the Loan Documents (Mezzanine) or the earlier release of the Lien of this Agreement or the Pledge in accordance with the terms of this Agreement and the other Loan Documents (Mezzanine), Mezzanine Borrower covenants and agrees with Mezzanine Lender that it will not do (and will not permit Prime Lessee or Operating Lessee to do), or permit to be done, directly or indirectly, any of the following (and in such connection, references in this Article V to Mortgage Borrower shall alternatively mean Prime Lessee and/or Operating Lessee, as the context may require):

5.2.1 Incur Debt . Incur, create or assume any Debt other than Permitted Debt (Mezzanine) or Transfer all or any part of the Collateral or any interest therein, except as permitted in the Loan Documents (Mezzanine);

5.2.2 Encumbrances . Other than in connection with the Loan Documents (Mezzanine) and the Loan Documents (Mortgage) and except as permitted pursuant to Article VIII , incur, create or assume or permit the incurrence, creation or assumption of any Debt secured by an interest in Mortgage Borrower, Mezzanine Borrower, Prime Lessee or Operating Lessee, and shall not Transfer or permit the Transfer of any interest in Mortgage Borrower, Mezzanine Borrower, Prime Lessee or Operating Lessee;

5.2.3 Engage in Different Business . Engage, directly or indirectly, in any business other than that of entering into this Agreement and the other Loan Documents (Mezzanine) to which Mezzanine Borrower is a party and ownership of interests in the Mortgage Borrower and activities related thereto;

5.2.4 Make Advances . Make advances or make loans to any Person, or hold any investments, except as expressly permitted pursuant to the terms of this Agreement or any other Loan Document (Mezzanine);

5.2.5 Partition . Permit Mortgage Borrower to partition the Property, except of permitted pursuant to the Loan Documents (Mortgage);

5.2.6 Commingle . Commingle its assets with the assets of any of its Affiliates except as permitted by the definition of "Single Purpose Entity";

5.2.7 Guarantee Obligations . Guarantee any obligations of any Person;

5.2.8 Transfer Assets . Transfer any asset other than in the ordinary course of business or Transfer any interest in the Property except as may be permitted hereby or in the other Loan Documents (Mezzanine);

5.2.9 Amend Organizational Documents . Amend or modify any of its, organizational documents without Mezzanine Lender's consent, other than in connection with any Transfer permitted pursuant to Article VIII or to reflect any change in capital accounts, contributions, distributions, allocations or other provisions that do not and could not reasonably be expected to have a Material Adverse Effect and provided that Mezzanine Borrower and each SPE Entity each remain a Single Purpose Entity;

5.2.10 Dissolve . Dissolve, wind-up, terminate, liquidate, merge with or consolidate into another Person, except following or simultaneously with a repayment of the Loan in full or as expressly permitted pursuant to this Agreement;

5.2.11 Bankruptcy . (i) File a bankruptcy or insolvency petition or otherwise institute insolvency proceedings, (ii) dissolve, liquidate, consolidate, merge or sell all or substantially all of Mezzanine Borrower's assets other than in connection with the repayment of the Loan, (iii) engage in any other business activity or (iv) file or solicit the filing of an involuntary bankruptcy petition against Mezzanine Borrower, Mortgage Borrower or any Close Affiliate of Mezzanine Borrower, without obtaining the prior consent of all of the directors of Mezzanine Borrower, including, without limitation, the Independent Directors;

5.2.12 ERISA . Engage in any activity that would subject it to regulation under ERISA or qualify it as an "employee benefit plan" (within the meaning of Section 3(3) of ERISA) to which ERISA applies and Mezzanine Borrower's assets do not and will not constitute plan assets within the meaning of 29 C.F.R. Section 2510.3-101;

5.2.13 Distributions . From and after the occurrence and during the continuance of an Event of Default, make any distributions to or for the benefit of any of its shareholders, partners or members, as the case may be, or its or their Affiliates;

5.2.14 Manager . (a) Except as provided in this Section 5.2.14 or in connection with a release made in accordance with Section 2.3.4 of the Loan Agreement (Mortgage), Mezzanine Borrower shall not, without the prior written consent of Mezzanine Lender, which consent shall not be unreasonably withheld or delayed, permit Mortgage Borrower to: amend, modify, supplement, alter or waive any right under the Management Agreement without Mezzanine Lender's prior written consent, not to unreasonably withheld. Without the receipt of Mezzanine Lender's prior written consent, Mezzanine Borrower may permit Mortgage Borrower to make any nonmaterial modification, change, supplement, alteration or amendment to the Management Agreement and to waive any nonmaterial rights thereunder, provided that no such modification, change, supplement, alteration, amendment or waiver shall affect the cash management procedures set forth in the Management Agreement or the Loan Documents (Mortgage) or Loan Documents (Mezzanine), decrease the cash flow of the Property, adversely affect the marketability of the Property or the Collateral, change the definitions of "default" or "event of default," change the definitions of "operating expense" or words of similar meaning to add additional items to such definitions, change any definitions or provisions so as to reduce the

payments due the Mortgage Borrower thereunder, change the timing of remittances to the Mortgage Borrower thereunder, increase or decrease reserve requirements, change the term of the Management Agreement or increase any Management Fees payable under the Management Agreement; provided, however, the Group Services Fee may include amounts in addition to the existing Sales and Marketing Group Services Expense if and to the extent such amounts are attributable to services that would otherwise constitute an Operating Expense or fee and such services qualify under the provisions of the Management Agreement;

(b) Mezzanine Borrower may permit Mortgage Borrower to enter into a new Management Agreement with an Acceptable Manager upon receipt of a Rating Agency Confirmation with respect to the Property Management Agreement and delivery of an acceptable Non-Consolidation Opinion covering such replacement Manager if such Person (i) is not covered by the Non-Consolidation Opinion or an Additional Non-Consolidation Opinion, and (ii) is an Affiliate of Mortgage Borrower;

5.2.15 Management Fee . Mezzanine Borrower may not, without the prior written consent of Mezzanine Lender (which may be withheld in its sole and absolute discretion) take or permit Mortgage Borrower to take any action that would increase the percentage amount of the Management Fee, or add a new type of fee (other than a "Group Services Expense" as permitted by Section 5.2.14 above) payable to Manager relating to the Property, including, without limitation, the Management Fee;

5.2.16 Reserved .

5.2.17 Intentionally Deleted .

5.2.18 Modify Account Agreement (Mezzanine) . Without the prior consent of Mezzanine Lender, which shall not be unreasonably withheld, delayed or conditioned, Mezzanine Borrower shall not execute any modification to the Account Agreement (Mezzanine);

5.2.19 Zoning Reclassification . Except as contemplated by Section 2.3.4 of the Loan Agreement (Mortgage), without the prior written consent of Mezzanine Lender, which consent shall not be unreasonably withheld, permit Mortgage Borrower to (a) initiate or consent to any zoning reclassification of any portion of the Property, (b) seek any variance under any existing zoning ordinance that could result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, or (c) allow any portion of the Property to be used in any manner that could result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation;

5.2.20 Change of Principal Place of Business . Change its principal place of business and chief executive office set forth on the first page of this Agreement without first giving Mezzanine Lender thirty (30) days' prior written notice (but in any event, within the period required pursuant to the UCC) and there shall have been taken such action, reasonably satisfactory to Mezzanine Lender, as may be necessary to maintain fully the effect, perfection and priority of the security interest of Mezzanine Lender hereunder in the Account Collateral (Mezzanine) and the Rate Cap Collateral (Mezzanine) at all times;

5.2.21 TIC Agreement . Ensure that the Mortgage Borrower will not terminate, modify, change, supplement, alter, amend or cancel the TIC Agreement without the Mezzanine Lender's prior written consent.

5.2.22 Debt Cancellation . Cancel or otherwise forgive or release any material claim or debt owed to it by any Person, except for adequate consideration or in the ordinary course of its business;

5.2.23 Misapplication of Funds . Distribute any revenue from the Property or any Proceeds in violation of the provisions of this Agreement, fail to remit amounts to the Mezzanine Account, as required by Section 3.1 , or the Pledge, misappropriate any security deposit or portion thereof or apply the proceeds of the Loan in violation of Section 2.1.4 ; or

5.2.24 Single-Purpose Entity . Fail to be a Single-Purpose Entity or take or suffer any action or inaction the result of which would be to cause it or any SPE Entity to cease to be a Single-Purpose Entity.

VI. INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

6.1.1 Insurance Coverage Requirements . (a) Mezzanine Borrower will cause Mortgage Borrower, at its expense, to procure and maintain the insurance policies required by the Loan Documents (Mortgage). Each commercial general liability or umbrella liability policy with respect to the Property shall name Mezzanine Lender as an additional insured and shall contain a cross liability/severability endorsement in form and substance acceptable to Mezzanine Lender.

(b) In the event of any loss or damage to the Property, Mezzanine Borrower shall give prompt written notice to the insurance carrier and Mezzanine Lender. Mezzanine Lender acknowledges that Mortgage Borrower's rights to any insurance proceeds are subject to the terms of the Loan Agreement (Mortgage). Mezzanine Borrower may not and shall not permit Mortgage Borrower to settle, adjust or compromise any claim under such insurance policies without the prior written consent of Mezzanine Lender which shall not be unreasonably withheld, delayed or denied; provided, further, that Mortgage Borrower may make proof of loss and adjust and compromise any claim under casualty insurance policies which is of an amount less than the Threshold Amount (as defined under the Loan Agreement (Mortgage)), so long as no Event of Default has occurred. Any proceeds of such claim which are not used to reconstruct or repair the Property, or applied to the balance of the loan evidenced by the Loan Documents (Mortgage), shall be deposited into the accounts established pursuant to the Loan Agreement (Mortgage) to the extent required thereby, or if such deposit is not required thereunder, then such proceeds shall be paid to Mezzanine Lender and applied to the payment of the Obligations (Mezzanine) whether or not then due.

(c) In the event that Mortgage Borrower is permitted pursuant to the terms of the Loan Agreement (Mortgage) to reconstruct, restore or repair the Property following a casualty to any portion of the Property, Mezzanine Borrower shall cause Mortgage Borrower to promptly and diligently repair and restore the Property in the manner and within the time periods required by the Loan Agreement (Mortgage), the Leases and any other agreements affecting the

Property. In the event that Mortgage Borrower is permitted pursuant to terms of the Loan Agreement (Mortgage) to elect to not reconstruct, restore or repair the Property following a casualty to any portion of the Property, Mezzanine Borrower shall not permit Mortgage Borrower to elect not to reconstruct, restore or repair the Property without the prior written consent of Mezzanine Lender.

(d) Mezzanine Borrower shall comply with all Insurance Requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by any Insurance Requirement, or would invalidate insurance coverage required to be maintained by Mortgage Borrower on or with respect to any part of the Property pursuant to Section 6.1 of the Loan Agreement (Mortgage).

Section 6.2 Condemnation and Insurance Proceeds . In the event that all or any portion of the Property shall be damaged or taken through condemnation (which term shall include any damage or taking by any governmental authority, quasi-governmental authority, any party having the power of condemnation, or any transfer by private sale in lieu thereof), or any such condemnation shall be threatened, Mezzanine Borrower shall give prompt written notice to Mezzanine Lender. Mezzanine Lender acknowledges that Mortgage Borrower's rights to any condemnation award is subject to the terms of the Loan Agreement (Mortgage). Mezzanine Borrower may not and shall not permit Mortgage Borrower to settle or compromise any claim, action or proceeding relating to such damage or condemnation without the prior written consent of Mezzanine Lender, which shall not be unreasonably withheld, delayed or denied; provided, further, that Mortgage Borrower may settle, adjust and compromise any such claim, action or proceeding which is of an amount less than $5,000,000 so long as no Default or Event of Default has occurred. Any Excess Proceeds shall be paid to Mezzanine Lender and applied to the payment of the Obligations (Mezzanine) whether or not then due pursuant to Section 2.3.1(b) . In the event that Mortgage Borrower is permitted pursuant to the terms of the Loan Agreement (Mortgage) to reconstruct, restore or repair the Property following a condemnation of any portion of the Property, Mezzanine Borrower shall cause Mortgage Borrower to promptly and diligently repair and restore the Property in the manner and within the time periods required by the Loan Agreement (Mortgage), the Leases and any other agreements affecting the Property. In the event that Mortgage Borrower is permitted pursuant to the terms of the Loan Agreement (Mortgage) to elect not to reconstruct, restore or repair the Property following a condemnation of any portion of the Property, Mezzanine Borrower shall not permit Mortgage Borrower to elect not to reconstruct, restore or repair the Property without the prior written consent of Mezzanine Lender.

Section 6.3 Certificates . Mezzanine Borrower shall deliver (or cause Mortgage Borrower to deliver) to Mezzanine Lender annually, concurrently with the renewal of the insurance policies required hereunder, a certificate from Mezzanine Borrower's and Mortgage Borrower's insurance agent stating that the insurance policies required to be delivered to Mezzanine Lender pursuant to Section 6.1 and Section 2.5.2(h) are maintained with insurers who comply with the terms of Section 6.1.9 of the Loan Agreement (Mortgage), setting forth a schedule describing all premiums required to be paid by Mezzanine Borrower or Mortgage Borrower, as applicable, to maintain the policies of insurance required under Section 6.1 and Section 2.5.2(h) , and stating that either Mezzanine Borrower or Mortgage Borrower, as

applicable, has paid such premiums. Certificates of insurance with respect to all replacement policies shall be delivered to Mezzanine Lender not less than fifteen (15) Business Days prior to the expiration date of any of the insurance policies required to be maintained hereunder which certificates shall bear notations evidencing payment of applicable premiums. Originals (or certified copies) of such replacement insurance policies shall be delivered to Mezzanine Lender promptly after Mezzanine Borrower's receipt thereof but in any case within thirty (30) days after the effective date thereof (including the insurance certificates delivered pursuant to Section 2.5.2(h)). If Mezzanine Borrower fails to (i) maintain or to deliver to Mezzanine Lender the certificates of insurance required by this Agreement or (ii) maintain and deliver originals (or certificated copies) of such insurance policies within thirty (30) days after the effective date thereof, upon five (5) Business Days' prior notice to Mezzanine Borrower, Mezzanine Lender may procure such insurance, and all costs thereof (and interest thereon at the Default Rate) shall be added to the Indebtedness. Mezzanine Lender shall not, by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and Mezzanine Borrower hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto. Mezzanine Borrower agrees that any replacement insurance policy required hereunder shall not include any so called "terrorist exclusion" or similar exclusion or exception to insurance coverage relating to the acts of terrorist groups or individuals.

Section 6.4 Insurance Provisions in Management Agreement . Despite any other provision of this Article VI , if any provision of this Article VI conflicts with or is inconsistent with any insurance provision in the Management Agreement with respect to the Property, the provisions of the Management Agreement will prevail.

VII. INTENTIONALLY OMITTED

VIII. TRANSFERS, INDEBTEDNESS AND SUBORDINATE LIENS

Section 8.1 Restrictions on Transfers and Indebtedness . (a) Unless such action is a Permitted Mezzanine Transfer or in connection with any Exchange (which will not require Mezzanine Lender's consent or a Rating Confirmation), or is otherwise permitted by the subsequent provisions of this Article VIII, Mezzanine Borrower shall not, and shall not permit Mortgage Borrower or any other Person to, without Mezzanine Lender's prior written consent, (a) Transfer legal, Beneficial or direct or indirect equitable interests in all or any part of the Property, the Mezzanine Borrower, Mortgage Borrower or Operating Lessee, (B) permit or suffer any owner, directly or indirectly, of a legal, Beneficial, or equitable interest in the Property, the Mezzanine Borrower, Mortgage Borrower or Operating Lessee, to Transfer such interest, whether by Transfer of stock or other legal, Beneficial or equitable interest in any entity or otherwise, (C) mortgage, hypothecate or otherwise encumber or grant a security interest in all or any part of the legal, Beneficial or equitable interests in all or any part of the Collateral, the Property, the Mezzanine Borrower, Mortgage Borrower or the Operating Lessee, or (D) file of record a declaration of condominium with respect to the Property. Notwithstanding any provision herein to the contrary, nothing contained herein shall be deemed to restrict or otherwise interfere with the ability of the holders of direct or indirect legal, beneficial or

equitable interests in the Ultimate Equity Owner to Transfer such interests, whether in connection with an initial public offering of shares in the Ultimate Equity Owner or otherwise.

(b) Mezzanine Borrower shall not incur, create or assume any Indebtedness without the consent of Mezzanine Lender; provided, however, Mezzanine Borrower may, without the consent of Mezzanine Lender, incur, create or assume Permitted Debt (Mezzanine).

Section 8.2 Sale of Building Equipment and Immaterial Transfers and Easements by Mortgage Borrower . Mezzanine Borrower may permit Mortgage Borrower to effect any Transfer permitted pursuant to Section 8.2 and 8.3 of the Loan Agreement (Mortgage) without Mezzanine Lender's prior written consent.

Section 8.3 Intentionally Omitted .

Section 8.4 Transfers of Interests in Mezzanine Borrower . In addition to any transfer permitted by any other provision of this Article VIII (including, without limitation, any transfer in connection with any Exchange), each holder of any direct or indirect interest in the Mezzanine Borrower shall have the right to transfer (but not pledge, hypothecate or encumber) its equity interest in the Mezzanine Borrower to any Person who is not a Disqualified Transferee without Mezzanine Lender's consent or a Rating Agency Confirmation if Section 8.6 is complied with and, after giving effect to such transfer:

(a) Mezzanine Borrower and the Property will be directly owned by a Single Purpose Entity in compliance with the representations, warranties and covenants in Section 4.1.20 hereof (as if the Mezzanine Borrower shall have remade all of such representations, warranties and covenants as of, and after giving effect to, the transfer), and which shall have executed and delivered to Mezzanine Lender an assumption agreement in form and substance acceptable to Mezzanine Lender, evidencing the continuing agreement of the Mezzanine Borrower to abide and be bound by all the terms, covenants and conditions set forth in this Agreement, the Mezzanine Note, the Pledge and the other Loan Documents (Mezzanine) and all other outstanding obligations under the Loan, together with such legal opinions and title insurance endorsements as may be reasonably requested by Mortgage Lender and Mezzanine Lender;

(b) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement;

(c) Any Ultimate Equity Owners or a Close Affiliate of any such entities owns directly or indirectly at least fifty-one percent (51%) of the equity interests in the Mezzanine Borrower and Mortgage Borrower and the Person that is the proposed transferee is not a Disqualified Transferee; provided that, after giving effect to any such transfer, in no event shall any Person other than Ultimate Equity Owners or a Close Affiliate of Ultimate Equity Owners exercise Management Control over the Mezzanine Borrower and/or Mortgage Borrower. In the event that Management Control shall be exercisable jointly by any Ultimate Equity Owners or a Close Affiliate of any Ultimate Equity Owners with any other Person or Persons, then the applicable Ultimate Equity Owners or such Close Affiliate shall be deemed to have Management Control only if such Ultimate Equity Owners or such Close Affiliate retains the

ultimate right as between such Ultimate Equity Owners or such Close Affiliate and the transferee to unilaterally make all material decisions with respect to the operation, management, financing and disposition of the Property;

(d) if there has been a Transfer of forty-nine percent (49%) or more of the direct membership interests, stock or other direct equity ownership interests in Mezzanine Borrower, or Mortgage Borrower, Mezzanine Borrower shall have first delivered to Mezzanine Lender an Officer's Certificate and legal opinion of the types described in Section 8.6 below; and

(e) Mezzanine Borrower shall cause the transferee, if Mezzanine Lender so requests and if such transferee is required to be a Single Purpose Entity pursuant to this Agreement, to deliver to Mezzanine Lender its organizational documents solely for the purpose of Mezzanine Lender confirming that such organizational documents comply with the single purpose bankruptcy remote entity requirements set forth herein.

Section 8.5 Loan Assumption . Without limiting the foregoing, Mezzanine Borrower shall have the right to sell, assign, convey or transfer (but not mortgage, hypothecate or otherwise encumber or grant a security interest in) legal or equitable title to all (but not less than all) of the Collateral only if Mortgage Borrower and Operating Lessee simultaneously exercise their right to transfer the Property pursuant to Section 8.5 of the Loan Agreement (Mortgage) and:

(a) after giving effect to the proposed transaction:

(i) Mezzanine Borrower will be owned by a Single Purpose Entity wholly owned (directly or indirectly) by a Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or such other entity (specifically approved in writing by Mezzanine Lender) which will be in compliance with the representations, warranties and covenants contained in Section 4.1.20 hereof (as if such transferee shall have remade all of such representations, warranties and covenants as of, and after giving effect to, the proposed transaction), and which shall have executed and delivered to Mezzanine Lender an assumption agreement and such other agreements as Mezzanine Lender may reasonably request (collectively, the "**Assumption Agreement**") in form and substance acceptable to Mezzanine Lender, evidencing the proposed transferee's agreement to abide and be bound by all the terms, covenants and conditions set forth in this Agreement, the Mezzanine Note and the other Loan Documents (Mezzanine) and all other outstanding obligations under the Loan; the Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-Approved Transferee or such other approved entity shall assume the obligations of Guarantor under the Loan Documents (Mezzanine) (and such Single Purpose Entity and the applicable Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or other approved entity shall thereafter be subject to the provisions of this Article VIII), and the transferee shall cause to be delivered to Mezzanine Lender such legal opinions and title insurance endorsements as may be reasonably requested by Mezzanine Lender;

(ii) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement;

(iii) no Event of Default shall have occurred and be continuing; and

(iv) Mezzanine Borrower shall have caused (i) the transferee to execute and deliver to Mezzanine Lender a fully executed counterpart to the Pledge, pledging all of such transferee's direct equity interests in Mortgage Borrower to Mezzanine Lender as additional collateral for the Loan and (ii) the ultimate parent(s) of such transferee to execute and deliver to Mezzanine Lender a fully executed counterpart to the Recourse Guaranty (Mezzanine) and Environmental Indemnity (Mezzanine), together with a legal opinion from such transferee's counsel reasonably satisfactory to Mezzanine Lender with respect to the due execution, delivery, authority, enforceability and perfection (solely with respect to the Pledge) of the Pledge, Recourse Guaranty (Mezzanine) and Environmental Indemnity (Mezzanine).

(b) the Assumption Agreement shall state the applicable transferee's agreement to abide by and be bound by the terms in the Mezzanine Note (or such other promissory notes to be executed by the transferee, such other promissory note or notes to be on the same terms as the Mezzanine Note), this Agreement (or such other loan agreement to be executed by such transferee, which shall contain terms substantially identical to the terms hereof) and such other Loan Documents (Mezzanine) (or other loan documents to be delivered by such transferee, which shall contain terms substantially identical to the terms of the applicable Loan Documents (Mezzanine)) whenever arising, and Mezzanine Borrower, and/or such transferee shall deliver such legal opinions and title insurance endorsements as may reasonably be requested by Mezzanine Lender;

(c) following execution of a contract for the sale of the Property and not less than thirty (30) days prior to the expected date of such proposed sale, Mezzanine Borrower shall submit notice of such sale to Mezzanine Lender. Mezzanine Borrower shall submit to Mezzanine Lender, not less than ten (10) days prior to the expected date of such sale, the Assumption Agreement for execution by Mezzanine Lender. Such documents shall be in a form appropriate for the jurisdiction in which the Collateral is located and shall be reasonably satisfactory to Mezzanine Lender. In addition, Mezzanine Borrower shall provide all other documentation Mezzanine Lender reasonably requires to be delivered by Mezzanine Borrower in connection with such assumption, together with an Officer's Certificate certifying that (i) the assumption to be effected will be effected in compliance with the terms of this Agreement and (ii) will not impair or otherwise adversely affect the validity or priority of the Lien of the Pledge (or replacement pledge agreements, as applicable);

(d) prior to any such transaction, the proposed transferee shall deliver to Mezzanine Lender an Officer's Certificate stating that (x) such transferee is not an "employee benefit plan" within the meaning of Section 3(3) of ERISA that is subject Title I of ERISA or any other Similar Law and (y) the underlying assets of the proposed transferee do not constitute assets of any such employee benefit plan for purposes of ERISA or any Similar Law;

(e) if the transfer is to (i) an entity other than Single Purpose Entity wholly owned directly or indirectly by one or more Pre-approved Transferees, Permitted Borrower Transferees or Permitted Borrower Transferee Alternatives, such transfer shall be subject to Mezzanine Lender's consent in its sole discretion and (ii) a Permitted Borrower Transferee Alternative, such transfer shall be subject to Mezzanine Lender's prior written consent in its reasonable discretion;

(f) the terms of Section 8.6 shall be complied with and Mezzanine Borrower shall cause the transferee to deliver to Mezzanine Lender its organizational documents solely for the purpose of Mezzanine Lender confirming that such organizational documents comply with the single purpose bankruptcy remote entity requirements set forth herein; and

(g) Mezzanine Lender shall have received the payment of, or reimbursement for, all reasonable costs and expenses incurred by Mezzanine Lender (and any Servicer) in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements).

Section 8.6 Notice Required; Legal Opinions . Not less than five (5) Business Days prior to the closing of any transaction permitted under the provisions of Sections 8.2 through 8.5 , Mezzanine Borrower shall deliver or cause to be delivered to Mezzanine Lender (A) an Officer's Certificate describing the proposed transaction and stating that such transaction is permitted hereunder and under the other Loan Documents (Mezzanine), together with any documents upon which such Officer's Certificate is based, and (B) a legal opinion of counsel to Mezzanine Borrower or the transferee selected by either of them (to the extent approved by Mezzanine Lender), in form and substance consistent with similar opinions then being required by the Mezzanine Lender and acceptable to the Mezzanine Lender, confirming, among other things, that the assets of the Mezzanine Borrower, and of its managing general partner or managing member, as applicable, will not be substantively consolidated with the assets of such owners or Controlling Persons of the Mezzanine Borrower as Mezzanine Lender may specify, in the event of a bankruptcy or similar proceeding involving such owners or Controlling Persons.

Section 8.7 Leases .

8.7.1 New Leases and Lease Modifications . Except as otherwise provided in this Section 8.7 , Mezzanine Borrower shall not permit Operating Lessee to (x) enter into any Lease on terms other than "market" and rental rates (in Mezzanine Borrower's or Operating Lessee's good faith judgment), or enter into any Material Lease (a "**New Lease**") or (y) consent to the assignment of any Material Lease (unless required to do so by the terms of such Material Lease) that releases the original Tenant from its obligations under the Material Lease, or (z) modify any Material Lease (including, without limitation, accept a surrender of any portion of the Property subject to a Material Lease (unless otherwise permitted or required by law), allow a reduction in the term of any Material Lease or a reduction in the Rent payable under any Material Lease, change any renewal provisions of any Material Lease, materially increase the obligations of the landlord or materially decrease the obligations of any Tenant) or terminate any Material Lease (any such action referred to in clauses (y) and (z) being referred to herein as a "**Lease Modification**") without the prior written consent of Mezzanine Lender which consent shall not be unreasonably withheld, delayed or conditioned. Any New Lease or Lease

Modification that requires Mezzanine Lender's consent shall be delivered to Mezzanine Lender for approval not less than ten (10) Business Days prior to the effective date of such New Lease or Lease Modification.

8.7.2 Leasing Conditions . Subject to terms of this Section 8.7 , provided no Event of Default shall have occurred and be continuing, Mortgage Borrower may enter into a New Lease or Lease Modification, without Mezzanine Lender's prior written consent, that satisfies each of the following conditions (as evidenced by an Officer's Certificate delivered to Mezzanine Lender prior to Mortgage Borrower's entry into such New Lease or Lease Modification):

(a) with respect to a New Lease or Lease Modification, the premises demised thereunder is not more than 10,000 net rentable square feet of the Property;

(b) the term of such New Lease or Lease Modification, as applicable, does not exceed 120 months, plus up to two (2) 60-month option terms (or equivalent combination of renewals);

(c) the New Lease or Lease Modification provides for "market" rental rates other terms and does not contain any terms which would adversely affect Mezzanine Lender's rights under the Loan Documents (Mezzanine) or that would have a Material Adverse Effect;

(d) the New Lease or Lease Modification, as applicable, provides that the premises demised thereby cannot be used for any of the following uses; any pornographic or obscene purposes, any commercial sex establishment, any pornographic, obscene, nude or semi-nude performances, modeling, materials, activities or sexual conduct or any other use that has or could reasonably be expected to have a Material Adverse Effect;

(e) the Tenant under such New Lease or Lease Modification, as applicable, is not an Affiliate of Mortgage Borrower; and

(f) the New Lease or Lease Modification, as applicable, does not prevent Proceeds from being held and disbursed by Mezzanine Lender in accordance with the terms of the Loan Documents (Mortgage) and does not entitle any Tenant to receive and retain Proceeds except those that may be specifically awarded to it in condemnation proceedings because of the Condemnation of its trade fixtures and its leasehold improvements which have not become part of the Property and such business loss as Tenant may specifically and separately establish.

8.7.3 Delivery of New Lease or Lease Modification . Upon the execution of any New Lease or Lease Modification, as applicable, Mezzanine Borrower shall cause Mortgage Borrower to deliver to Mezzanine Lender an executed copy of the Lease.

8.7.4 Lease Amendments . Mezzanine Borrower shall cause Mortgage Borrower to agree that it shall not have the right or power, as against Mezzanine Lender without its consent, to cancel, abridge, amend or otherwise modify any Lease unless such modification complies with this Section 8.7 .

8.7.5 Security Deposits . All security or other deposits of Tenants of the Property shall be treated as trust funds and shall, if required by law or the applicable Lease, not be commingled with any other funds of Mortgage Borrower, and such deposits shall be deposited, upon receipt of the same by Mortgage Borrower in a separate trust account maintained by Mortgage Borrower expressly for such purpose. Within ten (10) Business Days after written request by Mezzanine Lender, Mezzanine Borrower shall cause Mortgage Borrower to furnish to Mezzanine Lender reasonably satisfactory evidence of compliance with this Section 8.7.5 , together with a statement of all lease securities deposited with Mortgage Borrower by the Tenants and the location and account number of the account in which such security deposits are held.

8.7.6 No Default Under Leases . Mezzanine Borrower shall cause Mortgage Borrower to (i) promptly perform and observe all of the material terms, covenants and conditions required to be performed and observed by Mortgage Borrower under the Leases, if the failure to perform or observe the same would have a Material Adverse Effect; (ii) exercise, within ten (10) Business Days after a written request by Mezzanine Lender, any right to request from the Tenant under any Lease, a certificate with respect to the status thereof and (iii) not collect any of the Rents, more than one (1) month in advance (except that Mortgage Borrower may collect such security deposits and last month's Rents as are permitted by Legal Requirements and are commercially reasonable in the prevailing market and collect other charges in accordance with the terms of each Lease).

Section 8.8 Exchange . Notwithstanding anything to the contrary herein contained, or in any other Loan Document, any sale or transfer of any or all of the indirect interests in Mezzanine Borrower and Mortgage Borrower owned by Qualified Intermediary to Guarantor or one or more entities (i) controlled directly or indirectly by Guarantor, and (ii) in which Guarantor owns, directly or indirectly, not less than 85% equity, is permitted provided the following conditions have been satisfied

(a) in the event that in connection with such sale or conveyance, Manager will not thereafter continue to manage the Property, then the Person who will manage the Property following such sale or conveyance must be an Acceptable Manager;

(b) such sale or transfer occurs not later than one hundred eighty (180) days after the Closing Date;

(c) Mezzanine Lender shall have received not less than ten (10) days' prior written notice of such sale or transfer;

(d) after giving effect to such sale or transfer, Mezzanine Borrower will be in compliance with the requirements of this Agreement and the Pledge, and the Mortgage Borrower will be in compliance with the Loan Agreement (Mortgage) and the Security Instrument (as defined under the Loan Agreement (Mortgage));

(e) after giving effect to such sale or transfer, any subsidiary of any of the Co-Mezzanine Borrowers or Co-Mortgage Borrowers, or Prime Lessee or Operating Lessees must be a Single Purpose Entity.

(f) Mezzanine Lender shall have received such other documents, instruments, certificates and legal opinions (including, without limitation, Non-Consolidation Opinions) as Mezzanine Lender may reasonably require so as to confirm the requirements of Section 8.8 have been satisfied;

(g) Mezzanine Borrower agrees to bear and shall reimburse Mezzanine Lender on demand all reasonable out-of-pocket expenses incurred by Mezzanine Lender in connection with any transaction described in this Section 8.8 ; and

(h) Simultaneously with the consummation of the Exchange, the Prime Lease shall be terminated.

IX. INTEREST RATE CAP AGREEMENT

Section 9.1 Interest Rate Cap Agreement . During (i) the Initial Term, only if LIBOR exceeds 6.50% upon which Mezzanine Lender shall require Mezzanine Borrower, and (ii) the Extension Term, Mezzanine Borrower shall maintain the Interest Rate Cap Agreement with an Acceptable Counterparty in effect and having a term extending through the last day of the accrual period in which the applicable Maturity Date occurs, and an initial notional amount equal to the Loan Amount. The Interest Rate Cap Agreement during both the Initial Term (if required) and the Extension Term shall have a strike rate equal to the LIBOR Cap Strike Rate. The notional amount of the Interest Rate Cap Agreement may be reduced from time to time in amounts equal to any prepayment of the principal of the Loan made in accordance with the Loan Documents (Mezzanine), provided that the strike rate shall be equal to the LIBOR Cap Strike Rate.

Section 9.2 Pledge and Collateral Assignment . Mezzanine Borrower hereby pledges, assigns, transfers, delivers and grants a continuing first priority lien to Mezzanine Lender, as security for payment of all sums due in respect of the Loan and the performance of all other terms, conditions and covenants of this Agreement and any other Loan Documents (Mezzanine) on Mezzanine Borrower's part to be paid and performed, in, to and under all of Mezzanine Borrower's right, title and interest whether now owned or hereafter acquired and whether now existing or hereafter arising (collectively, the "**Rate Cap Collateral (Mezzanine)**"): (i) in the Interest Rate Cap Agreement (as soon as such agreement is effective or when and if any replacement agreement becomes effective, any Replacement Interest Rate Cap Agreement (Mezzanine) or Extension Interest Rate Cap Agreement); (ii) to receive any and all payments under the Interest Rate Cap Agreement (or, when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement (Mezzanine) or Extension Interest Rate Cap Agreement), whether as contractual obligations, damages or otherwise; and (iii) to all claims, rights, powers, privileges, authority, options, security interests, liens and remedies, if any, under or arising out of the Interest Rate Cap Agreement (as soon as such agreement is effective or when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement (Mezzanine) or Extension Interest Rate Cap Agreement), in each case including all accessions and additions to, substitutions for and replacements, products and proceeds of any of the foregoing. Mezzanine Borrower shall deliver to Mezzanine Lender an executed counterpart of such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement (Mezzanine) or Extension Interest Rate Cap Agreement (Mezzanine) (which shall, by

its terms, authorize the assignment to Mezzanine Lender and require that payments be made directly to Mezzanine Lender) and notify the Counterparty of such assignment (either in such Interest Rate Cap Agreement (Mezzanine), Replacement Interest Rate Cap Agreement (Mezzanine) or Extension Interest Rate Cap Agreement or by separate instrument). Mezzanine Borrower shall not, without obtaining the prior written consent of Mezzanine Lender, further pledge, transfer, deliver, assign or grant any security interest in the Interest Rate Cap Agreement (Mezzanine)(or, when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement (Mezzanine) or Extension Interest Rate Cap Agreement), or permit any Lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements or any other notice or instrument as may be required under the UCC, as appropriate, except those naming Mezzanine Lender as the secured party, to be filed with respect thereto.

Section 9.3 Covenants . (a) Mezzanine Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement (Mezzanine). All amounts paid by the Counterparty under the Interest Rate Cap Agreement (Mezzanine) to Mezzanine Borrower or Mezzanine Lender shall be deposited immediately into the Mezzanine Account pursuant to Section 3.1 . Mezzanine Borrower shall take all actions reasonably requested by Mezzanine Lender to enforce Mezzanine Borrower's rights under the Interest Rate Cap Agreement (Mezzanine) in the event of a default by the Counterparty thereunder and shall not waive, amend or otherwise modify any of its rights thereunder.

(b) Mezzanine Borrower shall defend Mezzanine Lender's right, title and interest in and to the Rate Cap Collateral (Mezzanine) pledged by Mezzanine Borrower pursuant hereto or in which it has granted a security interest pursuant hereto against the claims and demands of all other Persons.

(c) In the event of (x) any downgrade, withdrawal or qualification (each, a "**Downgrade**") of the rating of the Counterparty such that, thereafter, the Counterparty shall cease to be an Acceptable Counterparty and (y) the Counterparty shall fail to comply with the requirements contained in the Interest Rate Cap Agreement (Mezzanine) which are described in **Exhibit I** upon such occurrence, the Mezzanine Borrower shall either (i) obtain Lender's prior written consent to retain such Counterparty or (ii) replace the Interest Rate Cap Agreement (Mezzanine) with a Replacement Interest Cap Agreement, (x) having a term extending through the end of the Interest Period in which the Maturity Date occurs, (y) in a notional amount at least equal to the Principal Amount of the Loan then outstanding, and (z) having a strike rate equal to the LIBOR Cap Strike Rate.

(d) In the event that Mezzanine Borrower fails to purchase and deliver to Mezzanine Lender the Interest Rate Cap Agreement (Mezzanine) as and when required hereunder, Mezzanine Lender may purchase the Interest Rate Cap Agreement (Mezzanine) and the cost incurred by Mezzanine Lender in purchasing the Interest Rate Cap Agreement (Mezzanine) shall be paid by Mezzanine Borrower to Mezzanine Lender with interest thereon at the Default Rate from the date such cost was incurred by Mezzanine Lender until such cost is paid by Mezzanine Borrower to Mezzanine Lender.

(e) Mezzanine Borrower shall not (i) without the prior written consent of Mezzanine Lender, modify, amend or supplement the terms of the Interest Rate Cap Agreement

(Mezzanine), (ii) without the prior written consent of Mezzanine Lender, except in accordance with the terms of the Interest Rate Cap Agreement (Mezzanine), cause the termination of the Interest Rate Cap Agreement (Mezzanine) prior to its stated maturity date, (iii) without the prior written consent of Mezzanine Lender, except as aforesaid, waive or release any obligation of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement (Mezzanine)) under the Interest Rate Cap Agreement (Mezzanine), (iv) without the prior written consent of Mezzanine Lender, consent or agree to any act or omission to act on the part of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement (Mezzanine)) which, without such consent or agreement, would constitute a default under the Interest Rate Cap Agreement (Mezzanine), (v) fail to exercise promptly and diligently each and every material right which it may have under the Interest Rate Cap Agreement (Mezzanine), (vi) take or intentionally omit to take any action or intentionally suffer or permit any action to be omitted or taken, the taking or omission of which would result in any right of offset against sums payable under the Interest Rate Cap Agreement (Mezzanine) or any defense by the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement (Mezzanine)) to payment or (vii) fail to give prompt notice to Mezzanine Lender of any notice of default given by or to Mezzanine Borrower under or with respect to the Interest Rate Cap Agreement (Mezzanine), together with a complete copy of such notice.

(f) In connection with an Interest Rate Cap Agreement (Mezzanine), Mezzanine Borrower shall obtain and deliver to Mezzanine Lender an Opinion of Counsel from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty upon which Mezzanine Lender and its successors and assigns may rely (the "**Counterparty Opinion**"), under New York law and, if the Counterparty is a non-U.S. entity, the applicable foreign law, substantially in compliance with the requirements set forth in **Exhibit F** or in such other form approved by the Mezzanine Lender.

Section 9.4 Representations and Warranties . If Mezzanine Borrower is obligated to maintain an Interest Rate Cap Agreement pursuant to this Article IX , Mezzanine Borrower shall covenant with, and represent and warrant to, Mezzanine Lender as follows:

(a) The Interest Rate Cap Agreement (Mezzanine) constitutes the legal, valid and binding obligation of Mezzanine Borrower, enforceable against Mezzanine Borrower in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(b) The Rate Cap Collateral (Mezzanine) is free and clear of all claims or security interests of every nature whatsoever, except such as are created pursuant to this Agreement and the other Loan Documents (Mezzanine), and Mezzanine Borrower has the right to pledge and grant a security interest in the same as herein provided without the consent of any other Person other than any such consent that has been obtained and is in full force and effect.

(c) The Rate Cap Collateral (Mezzanine) has been duly and validly pledged hereunder. All consents and approvals required to be obtained by Mezzanine Borrower for the consummation of the transactions contemplated by this Agreement have been obtained.

(d) Giving effect to the aforesaid grant and assignment to Mezzanine Lender, Mezzanine Lender has, as of the date of this Agreement, and as to Rate Cap Collateral (Mezzanine) acquired from time to time after such date, shall have, a valid, and upon proper filing, perfected and continuing first priority lien upon and security interest in the Rate Cap Collateral (Mezzanine); provided that no representation or warranty is made with respect to the perfected status of the security interest of Mezzanine Lender in the proceeds of Rate Cap Collateral (Mezzanine) consisting of "cash proceeds" or "non-cash proceeds" as defined in the UCC except if, and to the extent, the provisions of Section 9-306 of the UCC shall be complied with.

(e) Except for financing statements filed or to be filed in favor of Mezzanine Lender as secured party, there are no financing statements under the UCC covering any or all of the Rate Cap Collateral (Mezzanine) and Mezzanine Borrower shall not, without the prior written consent of Mezzanine Lender, until payment in full of all of the Obligations (Mezzanine), execute and file in any public office, any enforceable financing statement or statements covering any or all of the Rate Cap Collateral (Mezzanine), except financing statements filed or to be filed in favor of Mezzanine Lender as secured party.

Section 9.5 Payments . If Mezzanine Borrower at any time shall be entitled to receive any payments with respect to the Interest Rate Cap Agreement (Mezzanine), such amounts shall, immediately upon becoming payable to Mezzanine Borrower, be deposited by Counterparty into the Mezzanine Account.

Section 9.6 Remedies . Subject to the provisions of the Interest Rate Cap Agreement (Mezzanine), if an Event of Default shall occur and then be continuing:

(a) Mezzanine Lender, without obligation to resort to any other security, right or remedy granted under any other agreement or instrument, shall have the right to, in addition to all rights, powers and remedies of a secured party pursuant to the UCC, at any time and from time to time, sell, resell, assign and deliver, in its sole discretion, any or all of the Rate Cap Collateral (Mezzanine) (in one or more parcels and at the same or different times) and all right, title and interest, claim and demand therein and right of redemption thereof, at public or private sale, for cash, upon credit or for future delivery, and in connection therewith Mezzanine Lender may grant options and may impose reasonable conditions such as requiring any purchaser to represent that any "securities" constituting any part of the Rate Cap Collateral (Mezzanine) are being purchased for investment only, Mezzanine Borrower hereby waiving and releasing any and all equity or right of redemption to the fullest extent permitted by the UCC or applicable law. If all or any of the Rate Cap Collateral (Mezzanine) is sold by Mezzanine Lender upon credit or for future delivery, Mezzanine Lender shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, Mezzanine Lender may resell such Rate Cap Collateral (Mezzanine). It is expressly agreed that Mezzanine Lender may exercise its rights with respect to less than all of the Rate Cap Collateral (Mezzanine), leaving unexercised its rights with respect to the remainder of the Rate Cap Collateral (Mezzanine), provided, however, that such partial exercise shall in no way restrict or jeopardize Mezzanine Lender's right to exercise its rights with respect to all or any other portion of the Rate Cap Collateral (Mezzanine) at a later time or times.

(b) Mezzanine Lender may exercise, either by itself or by its nominee or designee, in the name of Mezzanine Borrower, all of Mezzanine Lender's rights, powers and remedies in respect of the Rate Cap Collateral (Mezzanine), hereunder and under law.

(c) Mezzanine Borrower hereby irrevocably, in the name of Mezzanine Borrower or otherwise, authorizes and empowers Mezzanine Lender and assigns and transfers unto Mezzanine Lender, and constitutes and appoints Mezzanine Lender its true and lawful attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Mezzanine Borrower and in the name of Mezzanine Borrower, upon the occurrence and during the continuance of an Event of Default, (i) to exercise and enforce every right, power, remedy, authority, option and privilege of Mezzanine Borrower under the Interest Rate Cap Agreement (Mezzanine), including any power to subordinate or modify the Interest Rate Cap Agreement (Mezzanine) (but not, unless an Event of Default exists and is continuing, the right to terminate or cancel the Interest Rate Cap Agreement (Mezzanine)), or to give any notices, or to take any action resulting in such subordination, termination, cancellation or modification and (ii) in order to more fully vest in Mezzanine Lender the rights and remedies provided for herein, to exercise all of the rights, remedies and powers granted to Mezzanine Lender in this Agreement, and Mezzanine Borrower further authorizes and empowers Mezzanine Lender, as Mezzanine Borrower's attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Mezzanine Borrower and in the name of Mezzanine Borrower, upon the occurrence and during the continuance of an Event of Default, to give any authorization, to furnish any information, to make any demands, to execute any instruments and to take any and all other action on behalf of and in the name of Mezzanine Borrower which in the opinion of Mezzanine Lender may be necessary or appropriate to be given, furnished, made, exercised or taken under the Interest Rate Cap Agreement (Mezzanine), in order to comply therewith, to perform the conditions thereof or to prevent or remedy any default by Mezzanine Borrower thereunder or to enforce any of the rights of Mezzanine Borrower thereunder. These powers-of-attorney are irrevocable and coupled with an interest, and any similar or dissimilar powers heretofore given by Mezzanine Borrower in respect of the Rate Cap Collateral (Mezzanine) to any other Person are hereby revoked.

(d) Upon the occurrence and during the continuance of an Event of Default, Mezzanine Lender may, without notice to, or assent by, Mezzanine Borrower or any other Person (to the extent permitted by law), but without affecting any of the Obligations (Mezzanine), in the name of Mezzanine Borrower or in the name of Mezzanine Lender, notify the Counterparty, or if applicable, any other counterparty to the Interest Rate Cap Agreement (Mezzanine), to make payment and performance directly to Mezzanine Lender; extend the time of payment and performance of, compromise or settle for cash, credit or otherwise, and upon any terms and conditions, any obligations owing to Mezzanine Borrower, or claims of Mezzanine Borrower, under the Interest Rate Cap Agreement (Mezzanine); file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by Mezzanine Lender necessary or advisable for the purpose of collecting upon or enforcing the Interest Rate Cap Agreement (Mezzanine); and execute any instrument and do all other things deemed necessary and proper by Mezzanine Lender to protect and preserve and realize upon the Rate Cap Collateral (Mezzanine) and the other rights contemplated hereby.

(e) Pursuant to the powers-of-attorney provided for above, Mezzanine Lender may take any action and exercise and execute any instrument which it may deem necessary or

advisable to accomplish the purposes hereof; provided, however, that Mezzanine Lender shall not be permitted to take any action pursuant to said power-of-attorney that would conflict with any limitation on Mezzanine Lender's rights with respect to the Rate Cap Collateral (Mezzanine). Without limiting the generality of the foregoing, Mezzanine Lender, after the occurrence of an Event of Default, shall have the right and power to receive, endorse and collect all checks and other orders for the payment of money made payable to Mezzanine Borrower representing: (i) any payment of obligations owed pursuant to the Interest Rate Cap Agreement (Mezzanine), (ii) interest accruing on any of the Rate Cap Collateral (Mezzanine) or (iii) any other payment or distribution payable in respect of the Rate Cap Collateral (Mezzanine) or any part thereof, and for and in the name, place and stead of Mezzanine Borrower, to execute endorsements, assignments or other instruments of conveyance or transfer in respect of any property which is or may become a part of the Rate Cap Collateral (Mezzanine) hereunder.

(f) Mezzanine Lender may exercise all of the rights and remedies of a secured party under the UCC.

(g) Without limiting any other provision of this Agreement or any of Mezzanine Borrower's rights hereunder, and without waiving or releasing Mezzanine Borrower from any obligation or default hereunder, Mezzanine Lender shall have the right, but not the obligation, to perform any act or take any appropriate action, as it, in its reasonable judgment, may deem necessary to protect the security of this Agreement, to cure such Event of Default or to cause any term, covenant, condition or obligation required under this Agreement or the Interest Rate Cap Agreement (Mezzanine) to be performed or observed by Mezzanine Borrower to be promptly performed or observed on behalf of Mezzanine Borrower. All amounts advanced by, or on behalf of, Mezzanine Lender in exercising its rights under this Section 9.7(g) (including, but not limited to, reasonable legal expenses and disbursements incurred in connection therewith), together with interest thereon at the Default Rate from the date of each such advance, shall be payable by Mezzanine Borrower to Mezzanine Lender upon demand and shall be secured by this Agreement.

Section 9.7 Sales of Rate Cap Collateral (Mezzanine) . No demand, advertisement or notice, all of which are, to the fullest extent permitted by law, hereby expressly waived by Mezzanine Borrower, shall be required in connection with any sale or other disposition of all or any part of the Rate Cap Collateral (Mezzanine), except that Mezzanine Lender shall give Mezzanine Borrower at least thirty (30) Business Days' prior written notice of the time and place of any public sale or of the time when and the place where any private sale or other disposition is to be made, which notice Mezzanine Borrower hereby agrees is reasonable, all other demands, advertisements and notices being hereby waived. To the extent permitted by law, Mezzanine Lender shall not be obligated to make any sale of the Rate Cap Collateral (Mezzanine) if it shall determine not to do so, regardless of the fact that notice of sale may have been given, and Mezzanine Lender may without notice or publication adjourn any public or private sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Upon each private sale of the Rate Cap Collateral (Mezzanine) of a type customarily sold in a recognized market and upon each public sale, unless prohibited by any applicable statute which cannot be waived, Mezzanine Lender (or its nominee or designee) may purchase any or all of the Rate Cap Collateral (Mezzanine) being sold, free and discharged from any trusts, claims, equity or right of redemption of Mezzanine Borrower, all of which are hereby

waived and released to the extent permitted by law, and may make payment therefor by credit against any of the Obligations (Mezzanine) in lieu of cash or any other obligations. In the case of all sales of the Rate Cap Collateral (Mezzanine), public or private, Mezzanine Borrower shall pay all reasonable costs and expenses of every kind for sale or delivery, including brokers' and attorneys' fees and disbursements and any tax imposed thereon. However, the proceeds of sale of Rate Cap Collateral (Mezzanine) shall be available to cover such costs and expenses, and, after deducting such costs and expenses from the proceeds of sale, Mezzanine Lender shall apply any residue to the payment of the Obligations (Mezzanine) in the order of priority as set forth in Section 17.5 .

Section 9.8 Public Sales Not Possible . Mezzanine Borrower acknowledges that the terms of the Interest Rate Cap Agreement (Mezzanine) may prohibit public sales, that the Rate Cap Collateral (Mezzanine) may not be of the type appropriately sold at public sales, and that such sales may be prohibited by law. In light of these considerations, Mezzanine Borrower agrees that private sales of the Rate Cap Collateral (Mezzanine) shall not be deemed to have been made in a commercially unreasonably manner by mere virtue of having been made privately.

Section 9.9 Receipt of Sale Proceeds . Upon any sale of the Rate Cap Collateral (Mezzanine) by Mezzanine Lender hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt by Mezzanine Lender or the officer making the sale or the proceeds of such sale shall be a sufficient discharge to the purchaser or purchasers of the Rate Cap Collateral (Mezzanine) so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Mezzanine Lender or such officer or be answerable in any way for the misapplication or non-application thereof.

Section 9.10 Extension Interest Rate Cap Agreement (Mezzanine) . If Mezzanine Borrower exercises any of its options to extend the Maturity Date pursuant to Section 5 of the Note, then, on or prior to the Maturity Date being extended, the Mezzanine Borrower shall obtain or have in place an Extension Interest Rate Cap Agreement (i) having a term through the end of the Interest Period in which the extended Maturity Date occurs, (ii) in a notional amount at least equal to the Principal Amount of the Loan as of the Maturity Date being extended, and (iii) having a strike rate equal to an amount such that the maximum interest rate paid by the Mezzanine Borrower after giving effect to payments made under such Extension Interest Rate Cap Agreement shall equal no more than the LIBOR Pay Rate.

Section 9.11 Filing of Financing Statements Authorized . Mezzanine Borrower hereby authorizes the filing of a form UCC-1 financing statement naming Mezzanine Borrower as debtor and Mezzanine Lender as secured party in any office (including the office of the Secretary of State of the State of Delaware) covering all property of Mezzanine Borrower (including, but not limited to, the Account Collateral (Mezzanine) and the Rate Cap Collateral (Mezzanine), but excluding Net Excess Cash Flow).

X. RESERVED

XI. BOOKS AND RECORDS, FINANCIAL STATEMENTS, REPORTS AND OTHER INFORMATION

Section 11.1 Books and Records . Mezzanine Borrower shall cause Mortgage Borrower to keep and maintain on a fiscal year basis proper books and records separate from any other Person, in which accurate and complete entries shall be made of all dealings or transactions of or in relation to the Mortgage Note, the Mezzanine Note, the Property and the business and affairs of Mortgage Borrower and Mezzanine Borrower relating to the Property which shall reflect all items of income and expense in connection with the operation on an individual basis of the Property and in connection with any services, equipment or furnishings provided in connection with the operation of the Property, in accordance with GAAP. Mezzanine Lender and its authorized representatives shall have the right at reasonable times and upon reasonable notice to examine the books and records of Mortgage Borrower and Mezzanine Borrower relating to the operation of the Property and to make such copies or extracts thereof as Mezzanine Lender may reasonably require. Mezzanine Borrower shall simultaneously furnish (or cause Mortgage Borrower to furnish) to Mezzanine Lender copies of all financial statements, reports and information required to be submitted by Mortgage Borrower to Mortgage Lender pursuant to the Loan Agreement (Mortgage).

Section 11.2 Financial Statements .

11.2.1 Budget . Promptly, upon receipt and approval, for informational purposes only, a Budget in respect of the Property for the Fiscal Year in which such delivery date falls. If Mezzanine Borrower or Mortgage Borrower subsequently amends the Budget, Mezzanine Borrower shall promptly deliver the amended Budget to Mezzanine Lender.

11.2.2 Other Information . Mezzanine Borrower shall, promptly after written request by Mezzanine Lender, furnish or cause to be furnished to Mezzanine Lender, in such manner and in such detail as may be reasonably requested by Mezzanine Lender, such reasonable additional information as may be reasonably requested with respect to the Property and/or the Collateral. The information required to be furnished by Mezzanine Borrower to Mezzanine Lender under this Section 11.2 shall be provided in both hard copy format and electronic format; provided that Mezzanine Borrower shall only be required to provide the information required under this Section 11.2.7 in electronic format if such information is so available in the ordinary course of the operations of the Mezzanine Borrower and Manager, and without significant expense.

XII. ENVIRONMENTAL MATTERS

Section 12.1 Representations . Mezzanine Borrower hereby represents and warrants that except as set forth in the environmental reports and studies delivered to Mezzanine Lender (the "**Environmental Reports**"), (i) neither Mezzanine Borrower nor Mortgage Borrower has engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance

with Environmental Laws and only in the course of legitimate business operations at the Property; (ii) to the Best of Mezzanine Borrower's Knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (iii) to the Best of Mezzanine Borrower's Knowledge, no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (iv) to the Best of Mezzanine Borrower's Knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Mezzanine Borrower or Mortgage Borrower; and (v) to the Best of Mezzanine Borrower's Knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Mezzanine Borrower or Mortgage Borrower.

Section 12.2 Covenants. Compliance with Environmental Laws . Subject to Mortgage Borrower's right to contest under Section 7.3 of the Loan Agreement (Mortgage), Mezzanine Borrower covenants and agrees with Mezzanine Lender that it shall comply and shall cause Mortgage Borrower to comply in all material respects with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument and/or Pledge, a Governmental Authority having jurisdiction over the Property requires remedial action to correct the presence of Hazardous Materials in, around, or under the Property (an "**Environmental Event**"), Mezzanine Borrower shall deliver prompt notice of the occurrence of such Environmental Event to Mezzanine Lender. Within thirty (30) days after Mezzanine Borrower has knowledge of the occurrence of an Environmental Event, Mezzanine Borrower shall deliver to Mezzanine Lender an Officer's Certificate (an "**Environmental Certificate**") explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Mezzanine Borrower shall promptly provide Mezzanine Lender with copies of all notices from any Governmental Authority which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Mezzanine Borrower in connection with any Environmental Law. For purposes of this paragraph, the term "notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials provided by any Governmental Authority pertinent to compliance of the Property and Mezzanine Borrower with such Environmental Laws.

12.2.1 Reserved .

Section 12.3 Environmental Reports . Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or an Event of Default, Mezzanine Lender shall have the right to direct Mezzanine Borrower to obtain consultants reasonably approved by Mezzanine Lender to perform a comprehensive environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Mezzanine Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the

Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Mezzanine Lender may reasonably require due to the results obtained from the foregoing. Mezzanine Borrower grants (and shall cause Mortgage Borrower to grant) to Mezzanine Lender, its agents, consultants and contractors the right to enter the Property as reasonable or appropriate for the circumstances for the purposes of performing such studies and the reasonable cost of such studies shall be due and payable by Mezzanine Borrower to Mezzanine Lender upon demand and shall be secured by the Lien of this Agreement and the Pledge. Mezzanine Lender shall not unreasonably interfere with (and shall cause Mortgage Borrower not to unreasonably interfere with), and Mezzanine Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Mortgage Borrower's or any Tenant's, other occupant's or Manager's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 12.3 , Mezzanine Lender shall not be deemed to be exercising any control over the operations of Mezzanine Borrower or Mortgage Borrower or the handling of any environmental matter or hazardous wastes or substances of Mezzanine Borrower or Mortgage Borrower for purposes of incurring or being subject to liability therefor.

Section 12.4 Environmental Indemnification . Mezzanine Borrower shall protect, indemnify, save, defend, and hold harmless the Indemnified Parties from and against any and all liability, loss, damage, actions, causes of action, costs or expenses whatsoever (including reasonable attorneys' fees and expenses) and any and all claims, suits and judgments which any Indemnified Party may suffer, as a result of or with respect to: (a) any Environmental Claim relating to or arising from the Property; (b) the violation of any Environmental Law in connection with the Property; (c) any release, spill, or the presence of any Hazardous Materials affecting the Property; and (d) the presence at, in, on or under, or the release, escape, seepage, leakage, discharge or migration at or from, the Property of any Hazardous Materials, whether or not such condition was known or unknown to Mezzanine Borrower; provided that, in each case, Mezzanine Borrower shall be relieved of its obligation under this subsection if any of the matters referred to in clauses (a) through (d) above did not occur (but need not have been discovered) prior to the foreclosure of the Pledge. If any such action or other proceeding shall be brought against Mezzanine Lender, upon written notice from Mezzanine Borrower to Mezzanine Lender (given reasonably promptly following Mezzanine Lender's notice to Mezzanine Borrower of such action or proceeding), Mezzanine Borrower shall be entitled to assume the defense thereof, at Mezzanine Borrower's expense, with counsel reasonably acceptable to Mezzanine Lender; provided , however , Mezzanine Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Mezzanine Lender a right to control such defense, which right Mezzanine Borrower expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Mezzanine Borrower's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Mezzanine Borrower that would make such separate representation advisable. Mezzanine Borrower shall have no obligation to indemnify an Indemnified Party for damage or loss resulting from such Indemnified Party's gross negligence or willful misconduct.

Section 12.5 Recourse Nature of Certain Indemnifications . Notwithstanding anything to the contrary provided in this Agreement or in any other Loan Document (Mezzanine), the indemnification provided in Section 12.4 shall be fully recourse to Mezzanine

Borrower (but not its constituent parties) and shall be independent of, and shall survive, the discharge of the Indebtedness, the release of the Lien created by the Pledge, and/or the conveyance of title to the Collateral to Mezzanine Lender or any purchaser or designee in connection with a foreclosure of the Pledge or conveyance in lieu of foreclosure.

XIII. RESERVED

XIV. RESERVED

XV. ASSIGNMENTS AND PARTICIPATIONS

Section 15.1 Assignment and Acceptance . At no incremental cost or liability to Mezzanine Borrower, and only on or after March 15, 2007, Mezzanine Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement and the other Loan Documents (Mezzanine) (including, without limitation, all or a portion of the Mezzanine Note); provided that the parties to each such assignment shall execute and deliver to Mezzanine Lender, for its acceptance and recording in the Register (as hereinafter defined), an Assignment and Acceptance. In addition, at no incremental cost to Mezzanine Borrower, Mezzanine Lender may participate to one or more Persons all or any portion of its rights and obligations under this Agreement and the other Loan Documents (Mezzanine) (including without limitation, all or a portion of the Mezzanine Note) utilizing such documentation to evidence such participation and the parties' respective rights thereunder as Mezzanine Lender, in its sole discretion, shall elect.

Section 15.2 Effect of Assignment and Acceptance . Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Assignment and Acceptance, (i) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of Mezzanine Lender, as the case may be, hereunder and such assignee shall be deemed to have assumed such rights and obligations, and (ii) Mezzanine Lender shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement and the other Loan Documents (Mezzanine) (and, in the case of an Assignment and Acceptance covering all or the remaining portion of Mezzanine Lender's rights and obligations under this Agreement and the other Loan Documents (Mezzanine), Mezzanine Lender shall cease to be a party hereto) accruing from and after the effective date of the Assignment and Acceptance, except with respect to (A) any payments made by Mezzanine Borrower to Mezzanine Lender pursuant to the terms of the Loan Documents (Mezzanine) after the effective date of the Assignment and Acceptance and (B) any letter of credit, cash deposit or other deposits or security (other than the Liens of this Agreement and the Pledge and the other Loan Documents (Mezzanine)) delivered to or for the benefit of or deposited with Citigroup Global Markets Realty Corp., as Mezzanine Lender, for which Citigroup Global Markets Realty Corp. shall remain responsible for the proper disposition thereof until such items are delivered to a party who is qualified as an Approved Bank and agrees to hold the same in accordance with the terms and provisions of the agreement pursuant to which such items were deposited.

Section 15.3 Content . By executing and delivering an Assignment and Acceptance, Mezzanine Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, Mezzanine Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Documents (Mezzanine) or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, this Agreement or any other Loan Documents (Mezzanine) or any other instrument or document furnished pursuant hereto or thereto; (ii) Mezzanine Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Mezzanine Borrower or the performance or observance by Mezzanine Borrower of any of its obligations under any Loan Documents (Mezzanine) or any other instrument or document furnished pursuant thereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon Mezzanine Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents (Mezzanine); (v) such assignee appoints and authorizes Mezzanine Lender to take such action as agent on its behalf and to exercise such powers and discretion under the Loan Documents (Mezzanine) as are delegated to Mezzanine Lender by the terms hereof together with such powers and discretion as are reasonably incidental thereto; and (vi) such assignee agrees that it will perform, in accordance with their terms, all of the obligations which by the terms of this Agreement and the other Loan Documents (Mezzanine) are required to be performed by Mezzanine Lender.

Section 15.4 Register . Mezzanine Borrower shall maintain a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of Mezzanine Lender and each assignee pursuant to this Article XV and the Principal Amount of the Loan owing to each such assignee from time to time (the "Register"). The entries in the Register shall, with respect to such assignees, be conclusive and binding for all purposes, absent manifest error. The Register shall be available for inspection by Mezzanine Lender or any assignee pursuant to this Article XV at any reasonable time and from time to time upon reasonable prior written notice.

Section 15.5 Substitute Notes . Upon its receipt of an Assignment and Acceptance executed by an assignee, together with any Mezzanine Note or Mezzanine Notes subject to such assignment, Mezzanine Lender shall, if such Assignment and Acceptance has been completed and is in substantially the form of **Exhibit J** hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register, and (iii) give prompt written notice thereof to Mezzanine Borrower. Within five (5) Business Days after its receipt of such notice, Mezzanine Borrower, at Mezzanine Lender's own expense, shall execute and deliver to Mezzanine Lender in exchange and substitution for the surrendered Mezzanine Note or Mezzanine Notes a new Mezzanine Note to the order of such assignee in an amount equal to the portion of the Loan assigned to it and a new Mezzanine Note to the order of Mezzanine Lender in an amount equal to the portion of the Loan retained by it hereunder. Such new Mezzanine Note or Mezzanine Notes shall be in an aggregate Principal Amount equal to the

aggregate then outstanding principal amount of such surrendered Mezzanine Note or Mezzanine Notes, shall be dated the effective date of such Assignment and Acceptance and shall otherwise be in substantially the form of the Mezzanine Note (modified, however, to the extent necessary so as not to impose duplicative or increased obligations on Mezzanine Borrower and to delete obligations previously satisfied by Mezzanine Borrower). Notwithstanding the provisions of this Article XV , Mezzanine Borrower shall not be responsible or liable for any additional taxes, reserves, adjustments or other costs and expenses that are related to, or arise as a result of, any transfer of the Loan or any interest or participation therein that arise solely and exclusively from the transfer of the Loan or any interest or participation therein or from the execution of the new Mezzanine Note contemplated by this Section 15.5 , including, without limitation, any mortgage tax. Mezzanine Lender and/or the assignees, as the case may be, shall from time to time designate one agent through which Mezzanine Borrower shall request all approvals and consents required or contemplated by this Agreement and on whose statements Mezzanine Borrower may rely.

Section 15.6 Participations . Each assignee pursuant to this Article XV may sell participations to one or more Persons (other than Mezzanine Borrower or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (Mezzanine) (including, without limitation, all or a portion of the Mezzanine Note held by it); provided , however , that (i) such assignee's obligations under this Agreement and the other Loan Documents (Mezzanine) shall remain unchanged, (ii) such assignee shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such assignee shall remain the holder of any such Mezzanine Note for all purposes of this Agreement and the other Loan Documents (Mezzanine), and (iv) Mezzanine Borrower, Mezzanine Lender and the assignees pursuant to this Article XV shall continue to deal solely and directly with such assignee in connection with such assignee's rights and obligations under this Agreement and the other Loan Documents (Mezzanine). In the event that more than one (1) party comprises Mezzanine Lender, Mezzanine Lender shall designate one party to act on the behalf of all parties comprising Mezzanine Lender in providing approvals and all other necessary consents under the Loan Documents (Mezzanine) and on whose statements Mezzanine Borrower may rely.

Section 15.7 Disclosure of Information . Any assignee pursuant to this Article XV may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Article XV , disclose to the assignee or participant or proposed assignee or participant, any information relating to Mezzanine Borrower furnished to such assignee by or on behalf of Mezzanine Borrower; provided, however, that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree in writing for the benefit of Mezzanine Borrower to preserve the confidentiality of any confidential information received by it.

Section 15.8 Security Interest in Favor of Federal Reserve Bank . Notwithstanding any other provision set forth in this Agreement or any other Loan Document (Mezzanine), any assignee pursuant to this Article XV may at any time create a security interest in all or any portion of its rights under this Agreement or the other Loan Documents (Mezzanine) (including, without limitation, the amounts owing to it and the Mezzanine Note or Mezzanine Notes held by it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

XVI. RESERVED

XVII. DEFAULTS

Section 17.1 Event of Default . (a) Each of the following events shall constitute an event of default hereunder (an "**Event of Default**"):

(i) if (A) the Indebtedness is not paid in full on the Maturity Date, (B) any Debt Service is not paid in full on the applicable Payment Date, (C) any prepayment of principal due under this Agreement or the Mezzanine Note is not paid when due, (D) the Prepayment Fee is not paid when due, (E) any deposit to the Mezzanine Account or any of the other Collateral Accounts is not made on the required deposit date therefor; or (F) except as to any amount included in (A), (B), (C), (D), and/or (E) of this clause (i), any other amount payable pursuant to this Agreement, the Mezzanine Note or any other Loan Document (Mezzanine) is not paid in full when due and payable in accordance with the provisions of the applicable Loan Document (Mezzanine), with such failure as described in subclauses (A), (B), (C), (D), and (E) continuing for ten (10) Business Days after Mezzanine Lender delivers written notice thereof to Mezzanine Borrower;

(ii) subject to Mortgage Borrower's right to contest as set forth in Section 7.3 of the Loan Agreement (Mortgage), if any of the Impositions or Other Charges are not paid prior to the imposition of any interest, penalty, charge or expense for the non-payment thereof;

(iii) if the insurance policies required by Section 6.1 are not kept in full force and effect, or if certificates of any of such insurance policies are not delivered to Mezzanine Lender within ten (10) Business Days following Mezzanine Lender's request therefor;

(iv) if, except as permitted pursuant to Article VIII , (a) any Transfer of any direct or indirect legal, beneficial or equitable interest in all or any portion of the Collateral, (b) any Transfer of any direct or indirect interest in Mortgage Borrower, Mezzanine Borrower or other Person restricted by the terms of Article VIII , (c) any Lien or encumbrance on all or any portion of the Collateral, (d) any pledge, hypothecation, creation of a security interest in or other encumbrance of any direct or indirect interests in Mezzanine Borrower, Mortgage Borrower or other Person restricted by the terms of Article VIII , or (e) the filing of a declaration of condominium with respect to the Property other than as allowed under the Loan Agreement (Mortgage); provided the foregoing does not apply to transfers of equity in Guarantor or the Qualified Intermediary;

(v) if any representation or warranty made by Mezzanine Borrower herein by Mezzanine Borrower, Guarantor or any Affiliate of Mezzanine Borrower in any other Loan Document (Mezzanine), or in any report, certificate (including, but not limited to, any certificate by Mezzanine Borrower delivered in connection with the issuance of the

Non-Consolidation Opinion), financial statement or other instrument, agreement or document furnished to Mezzanine Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made; provided , however , that if such representation or warranty which was false or misleading in any material respect is, by its nature, curable and is not reasonably likely to have a Material Adverse Effect, and such representation or warranty was not, to the Best of Mezzanine Borrower's Knowledge, false or misleading in any material respect which made, then same shall not constitute an Event of Default unless Mezzanine Borrower has not cured same within five (5) Business Days after receipt by Mezzanine Borrower of notice from Mezzanine Lender in writing of such breach;

(vi) if Mezzanine Borrower, Mortgage Borrower, any SPE Entity, or any Guarantor shall make an assignment for the benefit of creditors; provided , however , if such assignment was with respect to any Guarantor upon any other Guarantor, not subject to such assignment, not delivering to Mezzanine Lender an executed counterpart to the Recourse Guaranty (Mezzanine) assuming the several liability of the Guarantor with respect to which such assignment within five (5) days after such assignment;

(vii) if Mezzanine Borrower, Mortgage Borrower, any SPE Entity, or any Guarantor shall make an assignment for the benefit of creditors; provided , however , if such assignment was with respect to any Guarantor such Event of Default may be cured by the delivery to Mezzanine Lender by any other Guarantor that is not subject to such assignment of an executed counterpart to the Recourse Guaranty (Mezzanine) assuming the several liability of the Guarantor with respect to which such assignment within five (5) days after such assignment;

(viii) if a receiver, liquidator or trustee shall be appointed for Mezzanine Borrower, Mortgage Borrower, any SPE Entity, or Guarantor or if Mezzanine Borrower, Mortgage Borrower, any SPE Entity, or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mezzanine Borrower, Mortgage Borrower, any SPE Entity, or Guarantor, or if any proceeding for the dissolution or liquidation of Mezzanine Borrower, Mortgage Borrower, any SPE Entity, or Guarantor shall be instituted; provided , however , if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mezzanine Borrower, Mortgage Borrower, any SPE Entity, or Guarantor upon the same not being discharged, stayed or dismissed within ninety (90) days; provided , further , if such appointment, adjudication, petition or proceeding was with respect to Guarantor such Event of Default may be cured by the delivery to Mezzanine Lender by Guarantor that is not subject to such appointment, adjudication, petition or proceeding of an executed counterpart to the Recourse Guaranty (Mezzanine) assuming the several liability of the Guarantor with respect to which such appointment, adjudication, petition or proceeding occurred within five (5) days after such occurrence;

(ix) if Mezzanine Borrower, any SPE Entity, or any Guarantor, as applicable, Transfers its rights under this Agreement or any of the other Loan Documents (Mezzanine) or any interest herein or therein in contravention of the Loan Documents (Mezzanine);

(x) the occurrence of a Mortgage Default or Mortgage Event of Default (including without limitation, Mortgage Events of Default in respect of the Ground Lease and the TIC Agreement);

(xi) with respect to any term, covenant or provision set forth herein (other than the other subsections of this Section 17.l) which specifically contains a notice requirement or grace period, if Mezzanine Borrower, any SPE Entity, or any Guarantor shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) if Mezzanine Borrower, having notified Mezzanine Lender of its election to extend the Maturity Date as set forth in Section 5 of the Mezzanine Note, fails to deliver the Replacement Interest Rate Cap Agreement (Mezzanine) to Mezzanine Lender prior to the first day of the extended term of the Loan and Mezzanine Borrower has not prepaid the Loan pursuant to the terms of the Mezzanine Note prior to such first day of the extended term;

(xiii) if Mezzanine Borrower shall fail to comply with any covenants set forth in Article V or Section XI with such failure continuing for ten (10) Business Days after Mezzanine Lender delivers written notice thereof to Mezzanine Borrower;

(xiv) if Mortgage Borrower shall fail to comply with any covenants set forth in Section 4 or Section 3(d) or Section 8 of the Security Instrument (Mortgage) with such failure continuing for ten (10) Business Days after Mortgage Lender delivers written notice thereof to Mortgage Borrower;

(xv) Mezzanine Borrower shall fail to deposit any sums required to be deposited in the Mezzanine Account or any Sub-Account thereof pursuant to Article III when due;

(xvi) if this Agreement or any other Loan Document (Mezzanine) or any Lien granted hereunder or thereunder, in whole or in part, shall terminate or shall cease to be effective or shall cease to be a legally valid, binding and enforceable obligation of Mezzanine Borrower or any Guarantor, or any Lien securing the Indebtedness shall, in whole or in part, cease to be a perfected first priority Lien, subject to the Permitted Encumbrances (except in any of the foregoing cases in accordance with the terms hereof or under any other Loan Document (Mezzanine) or by reason of any affirmative act of Mezzanine Lender);

(xvii) if, not later than one hundred eighty-five (185) days from the Closing Date Qualified Intermediary shall not have sold or transferred to Strategic Hotel Funding, L.L.C. 100% of the indirect interests in the Mezzanine Borrower and the Mortgage Borrower owned by Qualified Intermediary; or

(xviii) if Mezzanine Borrower, any SPE Entity or Guarantor shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement or of any Loan Document (Mezzanine) not specified in subsections (i) to (xvii) above, for thirty (30) days after notice from Mezzanine Lender; provided , however , that if such Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Mezzanine Borrower, any SPE Entity or Guarantor shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Mezzanine Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days.

(b) Unless waived in writing by Mezzanine Lender, upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in clauses (a)(vi), (vii) or (viii) above) Mezzanine Lender may, without notice or demand, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents (Mezzanine) or at law or in equity, take such action that Mezzanine Lender deems advisable to protect and enforce its rights against Mezzanine Borrower and in the Collateral, including, without limitation, (i) declaring immediately due and payable the entire Principal Amount together with interest thereon and all other sums due by Mezzanine Borrower under the Loan Documents (Mezzanine), (ii) collecting interest on the Principal Amount at the Default Rate whether or not Mezzanine Lender elects to accelerate the Mezzanine Note and (iii) enforcing or availing itself of any or all rights or remedies set forth in the Loan Documents (Mezzanine) against Mezzanine Borrower and the Collateral, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in subsections (a)(vi) or (a)(vii) above, the Indebtedness and all other obligations of Mezzanine Borrower hereunder and under the other Loan Documents (Mezzanine) shall immediately and automatically become due and payable, without notice or demand, and Mezzanine Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document (Mezzanine) to the contrary notwithstanding. The foregoing provisions shall not be construed as a waiver by Mezzanine Lender of its right to pursue any other remedies available to it under this Agreement, the Pledge or any other Loan Document (Mezzanine). Any payment hereunder may be enforced and recovered in whole or in part at such time by one or more of the remedies provided to Mezzanine Lender in the Loan Documents (Mezzanine).

(c) Upon the occurrence of an Event of Default pursuant to Section 17.1(a)(ix) , Mezzanine Borrower shall cause Mortgage Borrower to deliver to Mezzanine Lender within five (5) Business Days after the first to occur of (a) receipt by Mortgage Borrower of notice of such Default or Event of Default from Mortgage Lender or (b) the date Mortgage Borrower obtains actual knowledge of the occurrence of such Default or Event of Default, a detailed description of the actions to be taken by Mortgage Borrower to cure such Default or Event of Default and the dates by which each such action shall occur. Such schedule shall be subject to the approval of Mezzanine Lender. Mezzanine Borrower shall cause Mortgage Borrower to take all such actions as are necessary to cure such Default or Event of Default by the date approved by Mezzanine Lender and shall deliver to Mezzanine Lender not less frequently than weekly thereafter written updates concerning the status of Mortgage Borrower's efforts to cure such Default or Event of Default. Mezzanine Lender shall have the right, but not the obligation, to pay any sums or to take any action which Mezzanine Lender deems necessary or

advisable to cure any default or alleged default under the Loan Documents (Mortgage) (whether or not Mortgage Borrower is undertaking efforts to cure such default), and such payment or such action is hereby authorized by Mezzanine Borrower, and any sum so paid and any expense incurred by Mezzanine Lender in taking any such action shall be evidenced by this Agreement and secured by this Agreement and the Pledge and shall be immediately due and payable by Mezzanine Borrower to Mezzanine Lender with interest at the Default Rate until paid. Mezzanine Borrower shall cause Mortgage Borrower to permit Mezzanine Lender to enter upon the Collateral for the purpose of curing any default or alleged default under the Loan Documents (Mortgage) or hereunder. Mezzanine Borrower hereby transfers and assigns any excess proceeds arising from any foreclosure or sale under power pursuant to the Loan Documents (Mortgage) or any instrument evidencing the indebtedness secured thereby, and Mezzanine Borrower hereby authorizes and directs the holder or holders of the Loan Documents (Mortgage) to pay such excess proceeds directly to Mezzanine Lender up to the amount of the Obligations (Mezzanine).

Section 17.2 Remedies . (a) Unless waived in writing by Mezzanine Lender, upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Mezzanine Lender against Mezzanine Borrower and Guarantor under this Agreement or any of the other Loan Documents (Mezzanine) executed and delivered by, or applicable to, Mezzanine Borrower or at law or in equity may be exercised by Mezzanine Lender at any time and from time to time, whether or not all or any of the Indebtedness shall be declared due and payable, and whether or not Mezzanine Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents (Mezzanine) with respect to the Collateral. Any such actions taken by Mezzanine Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Mezzanine Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Mezzanine Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents (Mezzanine). Without limiting the generality of the foregoing, Mezzanine Borrower agrees that if an Event of Default is continuing (i) Mezzanine Lender shall not be subject to any one action or election of remedies law or rule and (ii) all liens and other rights, remedies or privileges provided to Mezzanine Lender shall remain in full force and effect until Mezzanine Lender has exhausted all of its remedies against the Collateral and this Agreement and the Pledge have been foreclosed, sold and/or otherwise realized upon in satisfaction of the Indebtedness or the Indebtedness has been paid in full.

(b) Upon the occurrence of any Event of Default, Mezzanine Lender may, but without any obligation to do so and without notice to or demand on Mezzanine Borrower and without releasing Mezzanine Borrower from any obligation hereunder, take any action to cure such Event of Default. Mezzanine Lender may appear in, defend, or bring any action or proceeding to protect its interests in the Collateral or to foreclose its security interest under this Agreement and the Pledge or under any of the other Loan Documents (Mezzanine) or collect the Indebtedness.

(c) Upon the occurrence and during the continuance of an Event of Default, with respect to the Account Collateral (Mezzanine), the Mezzanine Lender may:

(i) without notice to Mezzanine Borrower, except as required by law, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Account Collateral (Mezzanine) against the Obligations (Mezzanine) or any part thereof;

(ii) in Mezzanine Lender's sole discretion, at any time and from time to time, exercise any and all rights and remedies available to it under this Agreement, and/or as a secured party under the UCC;

(iii) demand, collect, take possession of or receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Account Collateral (Mezzanine) (or any portion thereof) as Mezzanine Lender may determine in its sole discretion; and

(iv) take all other actions provided in, or contemplated by, this Agreement.

(d) With respect to Mezzanine Borrower, the Account Collateral (Mezzanine), the Rate Cap Collateral (Mezzanine) and the Collateral, nothing contained herein or in any other Loan Document (Mezzanine) shall be construed as requiring Mezzanine Lender to resort to the Collateral for the satisfaction of any of the Indebtedness, and Mezzanine Lender may seek satisfaction out of the Collateral or any part thereof, in its absolute discretion in respect of the Indebtedness. In addition, Mezzanine Lender shall have the right from time to time to partially foreclose this Agreement and the Pledge in any manner and for any amounts secured by this Agreement or the Pledge then due and payable as determined by Mezzanine Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Mezzanine Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal or interest, Mezzanine Lender may foreclose this Agreement and the Pledge to recover such delinquent payments, or (ii) in the event Mezzanine Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Mezzanine Lender may foreclose this Agreement and the Pledge to recover so much of the principal balance of the Loan as Mezzanine Lender may accelerate and such other sums secured by this Agreement or the Pledge as Mezzanine Lender may elect. Notwithstanding one or more partial foreclosures, the Collateral shall remain subject to this Agreement and the Pledge to secure payment of sums secured by this Agreement and the Pledge and not previously recovered.

Section 17.3 Remedies Cumulative; Waivers . The rights, powers and remedies of Mezzanine Lender under this Agreement and the Loan Documents (Mezzanine) shall be cumulative and not exclusive of any other right, power or remedy which Mezzanine Lender may have against Mezzanine Borrower pursuant to this Agreement or the other Loan Documents (Mezzanine), or existing at law or in equity or otherwise. Mezzanine Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Mezzanine Lender may determine in Mezzanine Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Mezzanine Borrower or

any Guarantor shall not be construed to be a waiver of any subsequent Default or Event of Default by Mezzanine Borrower or any Guarantor or to impair any remedy, right or power consequent thereon.

Section 17.4 Costs of Collection . In the event that after an Event of Default: (i) the Mezzanine Note or any of the Loan Documents (Mezzanine) is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (ii) an attorney is retained to represent Mezzanine Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Agreement, the Mezzanine Note or any of the Loan Documents (Mezzanine); or (iii) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Pledge or any of the Loan Documents (Mezzanine); then Mezzanine Borrower shall pay to Mezzanine Lender all reasonable attorney's fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Mezzanine Lender at the Default Rate.

Section 17.5 Distribution of Collateral Proceeds . In the event that, following the occurrence and during the continuance of any Event of Default, any monies are received in connection with the enforcement of any of the Loan Documents (Mezzanine), or otherwise with respect to the realization upon any of the Collateral, such monies shall be distributed for application as follows:

(a) First, to the payment of, or (as the case may be) the reimbursement of, Mezzanine Lender for or in respect of all reasonable costs, expenses, disbursements and losses which shall have been incurred or sustained by Mezzanine Lender to protect or preserve the Collateral or in connection with the collection of such monies by Mezzanine Lender (including without limitation, enforcement costs), for the exercise, protection or enforcement by Mezzanine Lender of all or any of the rights, remedies, powers and privileges of Mezzanine Lender under this Agreement or any of the other Loan Documents (Mezzanine) or in respect of the Collateral or in support of any provision of adequate indemnity to Mezzanine Lender against any taxes or liens which by law shall have, or may have, priority over the rights of Mezzanine Lender to such monies;

(b) Second, to all other Obligations (Mezzanine) in such order or preference as Mezzanine Lender shall determine in its sole and absolute discretion;

(c) Third, the excess, if any, shall be deposited in Mezzanine Borrower's Account.

XVIII. SPECIAL PROVISIONS

Section 18.1 Exculpation .

18.1.1 Exculpated Parties . Except as set forth in this Section 18.1 , the Recourse Guaranty (Mezzanine) and the Environmental Indemnity (Mezzanine), no personal liability shall be asserted, sought or obtained by Mezzanine Lender or enforceable against (i) Mezzanine Borrower, Prime Lessee or Operating Lessee, (ii) any Affiliate of Mezzanine Borrower, Prime

Lessee, or Operating Lessee including any managing member, (iii) any Person owning, directly or indirectly, any legal or beneficial interest in Mezzanine Borrower, Prime Lessee, Operating Lessee or managing member or any Affiliate of Mezzanine Borrower, Prime Lessee, Operating Lessee or managed member, or (iv) any current or former direct or indirect partner, member, principal, officer, Controlling Person, beneficiary, trustee, advisor, shareholder, employee, agent, manager, Affiliate or director of any Persons described in clauses (i) through (iii) above (collectively, the Exculpated Parties) and none of the Exculpated Parties shall have any personal liability (whether by suit, deficiency, judgment or otherwise) in respect of the Obligations (Mezzanine), this Agreement, the Pledge, the Mezzanine Note, the Collateral or any other Loan Document (Mezzanine), or the making, issuance or transfer thereof, all such liability, if any, being expressly waived by Mezzanine Lender. The foregoing limitation shall not in any way limit or affect Mezzanine Lender's right to any of the following and Mezzanine Lender shall not be deemed to have waived any of the following:

(a) Foreclosure of the lien of this Agreement and the Pledge in accordance with the terms and provisions set forth herein and in the Pledge;

(b) Action against any other security at any time given to secure the payment of the Mezzanine Note and the other Obligations (Mezzanine);

(c) Exercise of any other remedy set forth in this Agreement or in any other Loan Document (Mezzanine) which is not inconsistent with the terms of this Section 18.1 ;

(d) Any right which Mezzanine Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness secured by this Agreement and the Pledge or to require that all collateral shall continue to secure all of the Indebtedness owing to Mezzanine Lender in accordance with the Loan Documents (Mezzanine); or

(e) The liability of any given Exculpated Party with respect to any separate written guaranty or agreement given by any such Exculpated Party in connection with the Loan (including, without limitation, the Recourse Guaranty and the Environmental Indemnity).

18.1.2 Carveouts From Non-Recourse Limitations . Notwithstanding the foregoing or anything in this Agreement or any of the Loan Documents (Mezzanine) to the contrary, there shall at no time be any limitation on Mezzanine Borrower's or Guarantor's liability for the payment, in accordance with the terms of this Agreement, the Mezzanine Note, the Pledge and the other Loan Documents (Mezzanine), to Mezzanine Lender of:

(a) any loss, damage, cost or expense incurred by or on behalf of Mezzanine Lender by reason of (i) the fraudulent acts of Mezzanine Borrower or intentional misrepresentations by Mezzanine Borrower or any Affiliate of Mezzanine Borrower and/or (ii) the failure of Mortgage Borrower and/or Operating Lessee (as applicable) to have a valid and subsisting certificate of occupancy(s) for all or any portion of the Property if and to the extent such certificate of occupancy(s) is required to comply with all Legal Requirements;

(b) Proceeds which Mortgage Borrower, any Affiliate of Mortgage Borrower, Mezzanine Borrower or any Affiliate of Mezzanine Borrower has received and to which

Mezzanine Lender is entitled pursuant to the terms of this Agreement or any of the Loan Documents (Mezzanine) to the extent the same have not been applied toward payment of the Indebtedness, or used for the repair or replacement of the Property in accordance with the Loan Agreement (Mortgage);

(c) any membership deposits and any security deposits and advance deposits which are not delivered to Mortgage Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such deposits were applied or refunded in accordance with the terms and conditions of any of the Leases or membership agreement, as applicable, prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(d) any loss, damage, cost or expense incurred by or on behalf of Mezzanine Lender by reason of all or any part of the Collateral, the Account Collateral (Mezzanine) or the Rate Cap Collateral (Mezzanine) being encumbered by a Lien (other than this Agreement and the Pledge) in violation of the Loan Documents (Mezzanine);

(e) after the occurrence and during the continuance of an Event of Default, any Rents, issues, profits and/or income collected by Mortgage Borrower, Operating Lessee, Mezzanine Borrower or any Affiliate of Mortgage Borrower, Mezzanine Borrower, or Operating Lessee (other than Rents and credit card receivables sent to the Collection Account pursuant to the Loan Agreement (Mortgage) or paid directly to Mortgage Lender pursuant to any notice of direction delivered to tenants of the Property or credit card companies) and not applied to payment of the Obligations or used to pay normal and verifiable Operating Expenses of the Property or otherwise applied in a manner permitted under the Loan Documents (Mortgage) and Loan Documents (Mezzanine);

(f) any loss, damage, cost or expense incurred by or on behalf of Mezzanine Lender by reason of physical damage to the Property from intentional waste committed by Mortgage Borrower, any Affiliate of Mortgage Borrower, Mezzanine Borrower or any Affiliate of Mezzanine Borrower;

(g) any loss, damage, cost or expense incurred by or on behalf of Mezzanine Lender by reason of the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity (Mezzanine) concerning environmental laws, hazardous substances and asbestos and any indemnification of Mezzanine Lender with respect thereto;

(h) Intentionally Omitted;

(i) if Mezzanine Borrower fails to obtain Mezzanine Lender's prior written consent to any Transfer, if and as required by this Agreement or the Pledge;

(j) any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, causes of action, suits, claims, demands and adjustments of any nature or description whatsoever) which may at any time be imposed upon, incurred by or awarded against Mezzanine Lender, in the event (and arising out of such circumstances) that (x) Mezzanine Borrower should raise any defense, counterclaim and/or allegation in any foreclosure action by Mezzanine Lender relative to the Property, the

Account Collateral (Mezzanine) or the Rate Cap Collateral (Mezzanine) or any part thereof which is found by a court to have been raised by Mezzanine Borrower in bad faith or to be without basis in fact or law, or (y) an involuntary case is commenced against Mezzanine Borrower under the Bankruptcy Code with the collusion of Mezzanine Borrower or any of its Affiliates or (z) an order for relief is entered with respect to the Mezzanine Borrower under the Bankruptcy Code through the actions of the Mezzanine Borrower or any of its Affiliates at a time when the Mezzanine Borrower is able to pay its debts as they become due unless Mezzanine Borrower and Guarantor shall have received an opinion of independent counsel that the directors of Mezzanine Borrower has a fiduciary duty to seek such an order for relief;

(k) any actual loss, damage, cost, or expense incurred by or on behalf of Lender by reason of Mezzanine Borrower failing to be since the date of its formation, a Single Purpose Entity; and

(l) reasonable attorney's fees and expenses incurred by Mezzanine Lender in connection with any successful suit filed on account of any of the foregoing clauses (a) through (l).

XIX. MISCELLANEOUS

Section 19.1 Survival . This Agreement and all covenants, indemnifications, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Mezzanine Lender of the Loan and the execution and delivery to Mezzanine Lender of the Mezzanine Note, and shall continue in full force and effect so long as all or any of the Indebtedness is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents (Mezzanine). Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Mezzanine Borrower, shall inure to the benefit of the successors and assigns of Mezzanine Lender.

Section 19.2 Mezzanine Lender's Discretion . Whenever pursuant to this Agreement, Mezzanine Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mezzanine Lender, the decision of Mezzanine Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided or as is otherwise required by law) be in the sole discretion of Mezzanine Lender and shall be final and conclusive.

Section 19.3 Governing Law .

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY MEZZANINE LENDER AND ACCEPTED BY MEZZANINE BORROWER IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE,

THIS AGREEMENT AND THE OBLIGATIONS (MEZZANINE) ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, MEZZANINE BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE MEZZANINE NOTE AND THE OTHER LOAN DOCUMENTS (MEZZANINE), AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST MEZZANINE LENDER OR MEZZANINE BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND EACH OF MEZZANINE BORROWER AND MEZZANINE LENDER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH OF MEZZANINE BORROWER AND MEZZANINE LENDER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. MEZZANINE BORROWER DOES HEREBY DESIGNATE AND APPOINT:

CORPORATION SERVICE COMPANY
80 STATE STREET
ALBANY, NEW YORK 12207-2543

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO MEZZANINE BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON MEZZANINE BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. MEZZANINE BORROWER (I) SHALL GIVE PROMPT NOTICE TO MEZZANINE LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 19.4 Modification, Waiver in Writing . No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Mezzanine Note, or of any other Loan Document (Mezzanine), or consent to any departure therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Mezzanine Borrower shall entitle Mezzanine Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 19.5 Delay Not a Waiver . Neither any failure nor any delay on the part of Mezzanine Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Mezzanine Note or under any other Loan Document (Mezzanine), or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Mezzanine Note or any other Loan Document (Mezzanine), Mezzanine Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Mezzanine Note or the other Loan Documents (Mezzanine), or to declare a default for failure to effect prompt payment of any such other amount.

Section 19.6 Notices . All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document (Mezzanine) shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender:

Citigroup Global Markets Realty Corp.
388 Greenwich Street, 11 th Floor
New York, New York 10013
Attention: Amir Kornblum
Telecopy No.: (212) 816-8307

With a copy to:

Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: Fredric L. Altschuler, Esq.
Telecopy: (212) 504-6666

If to Borrower:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive
Suite 4600
Chicago, Illinois 60601
Attention: Chief Financial Officer and General Counsel
Telefax No.: (312) 658-5799

With a copy to:

Perkins Core LLP
131 South Dearborn Street, Suite 1700
Chicago, IL 60603-5559
Attention: Bruce A. Bonjour, Esq.
Telefax No.: (312) 324-9650

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, or (iii) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

Section 19.7 TRIAL BY JURY . EACH OF MEZZANINE BORROWER, MEZZANINE LENDER AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, THE PLEDGE, THE MEZZANINE NOTE OR ANY OTHER LOAN DOCUMENT (MEZZANINE), INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, THE PLEDGE, THE MEZZANINE NOTE OR ANY OTHER LOAN DOCUMENT (MEZZANINE) (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND MEZZANINE BORROWER HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY.

MEZZANINE BORROWER ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

Section 19.8 Headings . The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 19.9 Severability . Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 19.10 Preferences . To the extent Mezzanine Borrower makes a payment or payments to Mezzanine Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Mezzanine Lender.

Section 19.11 Waiver of Notice . Mezzanine Borrower shall not be entitled to any notices of any nature whatsoever from Mezzanine Lender except with respect to matters for which this Agreement or the other Loan Documents (Mezzanine) specifically and expressly provide for the giving of notice by Mezzanine Lender to Mezzanine Borrower and except with respect to matters for which Mezzanine Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Mezzanine Borrower hereby expressly waives the right to receive any notice from Mezzanine Lender with respect to any matter for which this Agreement or the other Loan Documents (Mezzanine) do not specifically and expressly provide for the giving of notice by Mezzanine Lender to Mezzanine Borrower.

Section 19.12 Expenses; Indemnity . (a) Except as may be otherwise expressly set forth in the Loan Documents (Mezzanine), Mezzanine Borrower covenants and agrees to pay or, if Mezzanine Borrower fails to pay, to reimburse, Mezzanine Lender upon receipt of written notice from Mezzanine Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Mezzanine Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents (Mezzanine) and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Mezzanine Borrower (including without limitation any opinions requested by Mezzanine Lender pursuant to this Agreement); (ii) Mezzanine Lender's ongoing performance of and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents (Mezzanine) on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments,

waivers or other modifications to this Agreement and the other Loan Documents (Mezzanine) and any other documents or matters as required herein or under the other Loan Documents (Mezzanine); (iv) securing Mezzanine Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (v) the filing and recording fees and expenses, mortgage recording taxes, title insurance and reasonable fees and expenses of counsel for providing to Mezzanine Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Mezzanine Lender pursuant to this Agreement and the other Loan Documents (Mezzanine); (vi) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Mezzanine Borrower, this Agreement, the other Loan Documents (Mezzanine), the Property, or any other security given for the Loan; (vii) enforcing any obligations of or collecting any payments due from Mezzanine Borrower under this Agreement, the other Loan Documents (Mezzanine) or with respect to the Collateral or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a work-out or of any insolvency or bankruptcy proceedings and (viii) procuring insurance policies pursuant to Section 6.1.11 ; provided , however , that Mezzanine Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise (A) by reason of the gross negligence, illegal acts, fraud or willful misconduct of Mezzanine Lender or (B) in connection with any action taken under Article IV , other than the Mezzanine Borrower's internal administrative costs. Any cost and expenses due and payable to Mezzanine Lender may be paid from any amounts in the Mezzanine Account if same are not paid by Mezzanine Borrower within ten (10) Business Days after receipt of written notice from Mezzanine Lender.

(b) Subject to the non-recourse provisions of Section 18.1 , Mezzanine Borrower shall protect, indemnify and save harmless Mezzanine Lender, and all officers, directors, stockholders, members, partners, employees, agents, successors and assigns thereof (collectively, the **"Indemnified Parties"**) from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including all reasonable attorneys' fees and expenses actually incurred) imposed upon or incurred by or asserted against the Indemnified Parties, the Collateral or the Property or any part of its interest therein, by reason of the occurrence or existence of any of the following (to the extent Proceeds payable on account of the following shall be inadequate; it being understood that in no event will the Indemnified Parties be required to actually pay or incur any costs or expenses as a condition to the effectiveness of the foregoing indemnity) prior to (i) the acceptance by Mezzanine Lender or its designee of a deed-in-lieu of foreclosure with respect to the Collateral, or (ii) an Indemnified Party or its designee taking possession or control of the Collateral or (iii) the foreclosure of the Pledge, except to the extent caused by the willful misconduct or gross negligence of the Indemnified Parties (other than such willful misconduct or gross negligence imputed to the Indemnified Parties because of their interest in the Property): (1) ownership of Mezzanine Borrower's interest in the Property, or any interest therein, or receipt of any Rents or other sum therefrom, (2) any accident, injury to or death of any persons or loss of or damage to Property occurring on or about the Property or any Appurtenances thereto, (3) any design, construction, operation, repair, maintenance, use, non-use or condition of the Property or Appurtenances thereto, including claims or penalties arising from violation of any Legal Requirement or Insurance Requirement, as well as any claim based on any patent or latent defect, whether or not discoverable by Mezzanine Lender, any claim the insurance as to which is inadequate, and any Environmental Claim, (4) any Default under this Agreement or any of the other Loan Documents

(Mezzanine) or any failure on the part of Mezzanine Borrower to perform or comply or to cause Mortgage Borrower to perform or comply with any of the terms of any Lease within the applicable notice or grace periods, (5) any performance of any labor or services or the furnishing of any materials or other Property in respect of the Property or any part thereof, (6) any negligence or tortious act or omission on the part of Mezzanine Borrower or any of its agents, contractors, servants, employees, sublessees, licensees or invitees, (7) any contest referred to in Section 7.3 of the Loan Agreement (Mortgage), (8) any obligation or undertaking relating to the performance or discharge of any of the terms, covenants and conditions of the landlord contained in the Leases, or (9) except as may be expressly limited herein, the presence at, in or under the Property or the Improvements of any Hazardous Materials in violation of any Environmental Law. Any amounts the Indemnified Parties are legally entitled to receive under this Section which are not paid within fifteen (15) Business Days after written demand therefor by the Indemnified Parties or Mezzanine Lender, setting forth in reasonable detail the amount of such demand and the basis therefor, shall bear interest from the date of demand at the Default Rate, and shall, together with such interest, be part of the Indebtedness and secured by this Agreement and the Pledge. In case any action, suit or proceeding is brought against the Indemnified Parties by reason of any such occurrence, Mezzanine Borrower shall at Mezzanine Borrower's expense resist and defend such action, suit or proceeding or will cause the same to be resisted and defended by counsel at Mezzanine Borrower's reasonable expense for the insurer of the liability or by counsel designated by Mezzanine Borrower (unless reasonably disapproved by Mezzanine Lender promptly after Mezzanine Lender has been notified of such counsel); provided , however , that nothing herein shall compromise the right of Mezzanine Lender (or any Indemnified Party) to appoint its own counsel at Mezzanine Borrower's expense for its defense with respect to any action which in its reasonable opinion presents a conflict or potential conflict between Mezzanine Lender and Mezzanine Borrower that would make such separate representation advisable; provided further that if Mezzanine Lender shall have appointed separate counsel pursuant to the foregoing, Mezzanine Borrower shall not be responsible for the expense of additional separate counsel of any Indemnified Party unless in the reasonable opinion of Mezzanine Lender a conflict or potential conflict exists between such Indemnified Party and Mezzanine Lender. So long as Mezzanine Borrower is resisting and defending such action, suit or proceeding as provided above in a prudent and commercially reasonable manner, Mezzanine Lender and the Indemnified Parties shall not be entitled to settle such action, suit or proceeding without Mezzanine Borrower's consent which shall not be unreasonably withheld or delayed, and claim the benefit of this Section with respect to such action, suit or proceeding and Mezzanine Lender agrees that it will not settle any such action, suit or proceeding without the consent of Mezzanine Borrower; provided , however , that if Mezzanine Borrower is not diligently defending such action, suit or proceeding in a prudent and commercially reasonable manner as provided above, and Mezzanine Lender has provided Mezzanine Borrower with thirty (30) days' prior written notice, or shorter period if mandated by the requirements of applicable law, and opportunity to correct such determination, Mezzanine Lender may settle such action, suit or proceeding and claim the benefit of this Section 19.12 with respect to settlement of such action, suit or proceeding. Any Indemnified Party will give Mezzanine Borrower prompt notice after such Indemnified Party obtains actual knowledge of any potential claim by such Indemnified Party for indemnification hereunder. The Indemnified Parties shall not settle or compromise any action, proceeding or claim as to which it is indemnified hereunder without notice to Mezzanine Borrower.

Section 19.13 Exhibits and Schedules Incorporated . The Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 19.14 Offsets, Counterclaims and Defenses . Any assignee of Mezzanine Lender's interest in and to this Agreement, the Mezzanine Note and the other Loan Documents (Mezzanine) shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Mezzanine Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Mezzanine Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Mezzanine Borrower.

Section 19.15 Liability of Assignees of Mezzanine Lender . No assignee of Mezzanine Lender shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any other Loan Document (Mezzanine) or any amendment or amendments hereto made at any time or times, heretofore or hereafter, any different than the liability of Mezzanine Lender hereunder. In addition, no assignee shall have at any time or times hereafter any personal liability, directly or indirectly, under or in connection with or secured by any agreement, lease, instrument, encumbrance, claim or right affecting or relating to the Property or to which the Property is now or hereafter subject any different than the liability of Mezzanine Lender hereunder. The limitation of liability provided in this Section 19.15 is (i) in addition to, and not in limitation of, any limitation of liability applicable to the assignee provided by law or by any other contract, agreement or instrument, and (ii) shall not apply to any assignee's gross negligence or willful misconduct.

Section 19.16 No Joint Venture or Partnership; No Third Party Beneficiaries . (a) Mezzanine Borrower and Mezzanine Lender intend that the relationships created hereunder and under the other Loan Documents (Mezzanine) be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Mezzanine Borrower and Mezzanine Lender nor to grant Mezzanine Lender any interest in the Collateral other than that of Mezzanine Lender.

(b) This Agreement and the other Loan Documents (Mezzanine) are solely for the benefit of Mezzanine Lender and Mezzanine Borrower and nothing contained in this Agreement or the other Loan Documents (Mezzanine) shall be deemed to confer upon anyone other than Mezzanine Lender and Mezzanine Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Mezzanine Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Mezzanine Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Mezzanine Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Mezzanine Lender if, in Mezzanine Lender's sole discretion, Mezzanine Lender deems it advisable or desirable to do so.

Section 19.17 Publicity . All news releases, publicity or advertising by Mezzanine Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents (Mezzanine) or the financing evidenced by the Loan Documents (Mezzanine), to Mezzanine Lender, or any of its Affiliates shall be subject to the prior written approval of Mezzanine Lender.

Section 19.18 Waiver of Marshalling of Assets . To the fullest extent permitted by law, Mezzanine Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Mezzanine Borrower, Mezzanine Borrower's shareholders and others with interests in Mezzanine Borrower and of the Collateral, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Mezzanine Lender under the Loan Documents (Mezzanine) to a sale of the Collateral for the collection of the Indebtedness without any prior or different resort for collection or of the right of Mezzanine Lender to the payment of the Indebtedness out of the net proceeds of the Collateral in preference to every other claimant whatsoever.

Section 19.19 Waiver of Counterclaim and other Actions . Mezzanine Borrower hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Mezzanine Lender on this Agreement, the Mezzanine Note, the Pledge or any Loan Document (Mezzanine), any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Mezzanine Lender on this Agreement, the Mezzanine Note, the Pledge or any Loan Document (Mezzanine) and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

Section 19.20 Conflict; Construction of Documents; Reliance . In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents (Mezzanine), the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents (Mezzanine) and that such Loan Documents (Mezzanine) shall not be subject to the principle of construing their meaning against the party which drafted same. Mezzanine Borrower acknowledges that, with respect to the Loan, Mezzanine Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Mezzanine Lender or any parent, subsidiary or Affiliate of Mezzanine Lender. Mezzanine Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents (Mezzanine) or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Mezzanine Lender of any equity interest any of them may acquire in Mezzanine Borrower, and Mezzanine Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Mezzanine Lender's exercise of any such rights or remedies.

Mezzanine Borrower acknowledges that Mezzanine Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Mezzanine Borrower or its Affiliates.

Section 19.21 Prior Agreements . This Agreement and the other Loan Documents (Mezzanine) contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Agreement and the other Loan Documents (Mezzanine) and unless specifically set forth in a writing contemporaneous herewith the terms, conditions and provisions of any and all such prior agreements do not survive execution of this Agreement.

Section 19.22 Counterparts . This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 19.23 Joint and Several Liability . If Mezzanine Borrower consists of more than one person, the obligations and liabilities of each such person hereunder and under the other Loan Documents (Mezzanine) shall be joint and several.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF , the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

MEZZANINE BORROWER :

SHR SCOTTSDALE MEZZ X-1, L.L.C., a Delaware limited liability company

By: /s/ Ryan M. Bowie
Name: Ryan M. Bowie
Title: Assistant Treasurer

SHR SCOTTSDALE MEZZ Y-1, L.L.C., a Delaware limited liability company

By: /s/ Ryan M. Bowie
Name: Ryan M. Bowie
Title: Assistant Treasurer

MEZZANINE LENDER :

CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation

By: /s/ Amir Kornblum
Name: Amir Kornblum
Title: Authorized Signatory

EXHIBIT A

TITLE INSURANCE REQUIREMENTS, ENDORSEMENTS AND AFFIRMATIVE COVERAGES

1. General . Borrower and/or its counsel is responsible for ordering or updating any title insurance work. Lender requires a lender's title insurance policy insuring "Citigroup Global Markets Realty Corp., and its successors and assigns". The approved title underwriters, type and amount of insurance and required endorsements are described below. The list of endorsements is subject to review by Lender's counsel, local counsel and additional specific coverages may be required after review of the related title commitment.

2. Title Insurer . The Title Company or Title Companies must be approved by Lender and licensed to do business in the jurisdiction in which the Property is located._____has been pre-approved by Lender as a Title Company.

3. Title Agent . Unless Lender otherwise agrees, all title work shall be ordered and coordinated, and the closing of the Loan shall be conducted through_____contact_____Tel:_____.

4. Primary Title Insurance Requirements .

(a) Amount of Coverage : Not less than the Principal Amount of the Loan on the Closing Date.

(b) Effective Date : The later of the date of recording of the Security Instrument or the date of funding of the Loan. Borrower shall be required to provide a customary "gap" indemnity in order to enable the Title Company to provide "gap" coverage.

(c) Insured : "Citigroup Global Markets Realty Corp. and its successors and assigns".

(d) Legal Description : Metes and bounds description to be provided which must conform to that shown on the Survey, the Security Instrument and any other Loan Documents that require a legal description of the Property. A lot and block description shall be acceptable in place of a metes and bounds description in exceptional cases.

(e) Policy Form : An ALTA (or equivalent) lender's policy of title insurance in form and substance acceptable to Lender. Without limiting Lender's right to require specific coverages, endorsements or other title work, the Title Policy shall (i) be in the 1970 ALTA (as amended 84) form or, if not available, ALTA 1992 form (deleting arbitration and creditor rights exclusions) or, if not available, the form commonly used in the state where the Property is located, (ii) to the extent available, include the "extended coverage" provisions described in paragraph 5 below, (iii) include all applicable endorsements described in paragraph 6 below, and (iv) include Schedule B exceptions in a form and to the extent acceptable to Lender's counsel.

5. Extended Coverage Requirements . The Title Policy shall:

(a) not contain any exception for filed or unfilled mechanic, materialmen or similar liens;

(b) limit any general exception for real estate taxes and other charges to real estate or other similar taxes or assessments that are not yet due and payable or delinquent and are not a current lien on the Property;

(c) limit any general exception for the rights of persons in possession to the rights of specified tenants, as tenants only with no right or option to purchase, set forth on the rent roll for the Property and attached to the Title Policy; and

(d) not contain any general exception as to matters that an accurate Survey of the Property would disclose, but may contain specific exceptions to matters disclosed on the Survey to be delivered on the Closing Date, subject to review by Lender's counsel.

6. Required Endorsements . The following endorsements are required, to the extent available in the jurisdiction in which the Property is located:

- Restrictions, Encroachments, Minerals Endorsement ALTA Form 9 or equivalent.
- (If not available, the Title Policy must insure by way of affirmative coverage statements that there are no encroachments by any of the improvements onto easements, rights of way or other exceptions to streets or adjacent property, or insure against loss or damage resulting therefrom.)
- Deletion of Creditors Rights Exclusion Endorsement.
- Environmental Protection Lien Endorsement.
- (The Title Policy may make an exception only for specific state statutes that provide for potential subsequent liens that could take priority over the lien securing the Loan.)
- Direct Access to Public Road Endorsement.
- Usury Endorsement.
- Land Same As Survey/Legal Description Endorsement.
- Zoning Endorsement - ALTA 3.1 with coverage for number/type of parking spaces.

  In lieu of an ALTA 3.1 zoning endorsement, Lender may accept an unambiguous, clean letter from the appropriate zoning authority which satisfies the following :

  Zoning District . Confirms the applicable zoning district for the Property under the laws or ordinances of the applicable jurisdiction and that such zoning is the proper zoning for the improvements located on the Property.

Use Restrictions . Confirms that the current use of the Property is permitted under the zoning ordinance and that the Property is not a nonconforming use.

Dimensional Requirements . Confirms that the Property is in compliance with all dimensional requirements of the zoning code, including minimum lot area, maximum building height, maximum floor area ratio and setback or buffer requirements.

Parking Requirements . Confirms that the Property is in compliance with all parking and loading requirements, including the number of spaces and dimensional requirements for the parking spaces.

Rebuildability . If Property involves legal non-conforming use, confirms that, in the event of casualty, the Property may be rebuilt substantially in its current form (i.e., no loss of square footage, same building footprint) upon satisfaction of stated conditions and/or limitations.

- Subdivision Endorsement.
- Doing Business Endorsement.
- Deletion of Arbitration Endorsement.
- Separate Tax Lot Endorsement.
- Street Address Endorsement
- Contiguity Endorsement.
- Variable Rate Endorsement.
- Mortgage Recording Tax Endorsement.
- Any of the following endorsements customary in the state in which the Property is located or as required by the nature of the transaction:

  Tie-In Endorsement for Multiple Policies
  Mortgage Assignment Endorsement
  First Loss / Last Dollar Endorsement
  Non-Imputation Endorsement
  Blanket Un-located Easements Endorsement
  Closure Endorsement

EXHIBIT B

CITIGROUP GLOBAL MARKETS REALTY CORP.
SURVEY REQUIREMENTS

The survey shall contain the following:

- The legal description of the Property;
- The courses and measured distances of the exterior boundary lines of the Property and the identification of owners of abutting parcels;
- The total acreage of the Property to the nearest tenth of an acre;
- The location of any existing improvements, the dimensions thereof at the ground surface level and their relationship to the facing exterior property lines, streets and set-back lines of the Property;
- The location, lines and widths of adjoining publicly dedicated and accepted streets showing the number and location of existing curb cuts, driveways, and fences;
- The location and dimensions of encroachments, if any, upon the Property;
- The location of all set-back lines, restrictions of record, other restrictions established by zoning or building code ordinance, utilities, easements, rights-of-way and other matters affecting title to the Property which are to be shown in Schedule B-2 of the Title Policy identifying each by reference to its recording data, where applicable;
- Evidence that adequate means of ingress and egress to and from the Property exist and that the Property does not serve any adjoining property for ingress, egress or any other purpose;
- If the Property is described as being on a recorded map or plat, a legend relating the survey to such map or plat;
- The street address of the Property;
- Parking areas at the Property and, if striped, the striping and type (e.g., handicapped, motorcycle, regular, etc.) and number of parking spaces at the Property;
- A statement as to whether the Property is located in a special flood or mudslide hazard area as determined by a review of a stated and identified Flood Hazard Boundary Map published by the Federal Insurance Administration of the U.S. Department of Housing and Urban Development;

- A vicinity map showing the property in reference to nearby highways or major street intersections.
- The exterior dimensions of all buildings at ground level and the square footage of the exterior footprint of all buildings, or gross floor area of all buildings, at ground level.
- The location of utilities serving or existing on the property as evidenced by on-site observation or as determined by records provided by client, utility companies and other appropriate sources (with reference as to the source of information) (for example)
  - railroad tracks and sidings;
  - manholes, catch basins, valve vaults or other surface indications of subterranean uses;
  - wire and cables (including their function) crossing the surveyed premises, all poles on or within ten feet of the surveyed premises, and the dimensions of all crosswires or overhangs affecting the surveyed premises; and
  - utility company installations on the surveyed premises.
- A certificate in substantially the following form:

  The undersigned being a registered surveyor of the State of [State] hereby certifies to CITIGROUP GLOBAL MARKETS REALTY CORP., [NAME OF BORROWING ENTITY] and [INSERT NAME OF TITLE COMPANY], and each of their respective successors and assigns, as of the date below, as follows:

  This print of survey actually was made on the ground on [INSERT DATE SURVEY WAS MADE] in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by American Land Title Association (" ALTA") and American Congress on Surveying & Mapping ("ACSM ") and National Society of Professional Surveyors ("NSPS") in 1999, contains Items 1,2,3,4, 6,7(a), 7(b)(1), 8, 9,10,11, 13, 14 and 16 of Table A thereto, and correctly shows: (i) a fixed and determinable position and location of the land described herein (together with the buildings and improvements thereon, the "Mortgaged Property"), including the position of the point of beginning; (ii) the location of all buildings, structures and other improvements situated on the land; (iii) all driveways or other curb cuts along any street or alley upon which the land abuts; (iv) the location and name of all public and private streets or alleys located thereon or adjacent thereto, all of which are public unless otherwise noted; (v) the location,

dimension and recording data of all easements, rights-of-way and other matters of record thereon or with respect to which the undersigned has knowledge; (vi) the location and dimension of all unrecorded easements, paths, rights-of-way and party walls to the extent visible thereon or with respect to which the undersigned has knowledge; (vii) the location of applicable building restriction and setback lines required by local ordinances and regulations; and (viii) the location of all encroachments or overhangs onto or from the Mortgaged Property. Except as shown on this survey, there are no visible discrepancies, conflicts, shortages in area or boundary line conflicts. Except as shown on the survey, the Mortgaged Property does not serve any adjoining property for drainage, utilities or ingress or egress. The Mortgaged Property has access to and from a duly dedicated and accepted public roadway. This survey reflects boundary lines of the land, which "close" by engineering calculations. All utility services to the Mortgaged Property either enter the Mortgaged Property through adjoining public streets, or this survey shows the point of entry and location of any utilities which pass through or are located on adjoining private land to the extent visible or known to the undersigned. The Mortgaged Property does not lie within an area designated as a flood hazard area by any map or publication of the U.S. Department of Housing and Urban Development or the Federal Emergency Management Agency: The Mortgaged Property and only the Mortgaged Property constitutes one tax lot. All zoning use and density classifications are properly shown hereon. The undersigned has received and examined a copy of the Commitment for Title Insurance No._____, dated_____, issued by _____, with respect to the Mortgaged Property, as well as a copy of each instrument listed therein. The location of each exception set forth in such Commitment, to the extent it can be located, has (with recording reference and reference to the exception number of the Commitment) been shown hereon. The undersigned further certifies that this survey meets the Accuracy Standards (as adopted by ALTA, ACSM and NSPS and in effect on the date of this certification) and [SELECT ONE OF THE FOLLOWING TWO PHRASES]:

[the Positional Uncertainties resulting from the survey measurements made on the survey do not exceed the allowable Positional Tolerance.]

[the survey measurements were made in accordance with the "Minimum Angle, Distance and Closure Requirements for Survey Measurements Which Control Land Boundaries for ALTA/ACSM Land Title Surveys."]

_____

, Licensed Surveyor

Date: _____

[seal]

EXHIBITC

SINGLE PURPOSE ENTITY PROVISIONS

It is a requirement that the borrower be a bankruptcy remote, special purpose entity. A bankruptcy remote, special purpose entity is an entity which is unlikely to become insolvent as a result of its own activities and which is adequately insulated from the consequences of any other party's insolvency. Set forth below is language to be included in the organizational documents of corporations, limited partnerships and limited liability companies to evidence such entities' existence as bankruptcy remote, special purpose entities.

I. CORPORATION

If the Single Purpose Entity is a corporation, its certificate of incorporation will have to have the following provisions to be considered a special purpose entity:

A. Purpose

The corporation's purpose should be limited to owning and operating the mortgaged property (or interests in the Borrower).

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____, State of_____[_____interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the [General Corporation Law] of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

B. Certain Prohibited Activities

The corporation shall be prohibited. except in certain circumstances, from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's assets, transfer of ownership assets, incurrence of additional debt and amendment of the corporation's articles of incorporation.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Corporation shall not incur, assume, or guaranty any other indebtedness. The Corporation shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Corporation substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article___ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Corporation will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (ii) no amendment to this certificate of incorporation or to the Corporation's By Laws may be made without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary] and (ii) the Corporation shall not dissolve, terminate or liquidate."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

C. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to

the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

D. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an " Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

I5. It shall correct any known misunderstanding regarding its separate identity."

For purpose of this Article , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for

administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

II. LIMITED PARTNERSHIP

If the Single Purpose Entity is a limited partnership, to be a special purpose entity, all of its general partners shall be special purpose entities. If such limited partnership has more than one general partner, then such limited partnership shall continue (and not dissolve) for so long as a solvent general partner exists. Consequently, both the limited partnership's partnership agreement and the certificate of incorporation of its general partner(s) will have to meet certain requirements to be considered special purpose entities. Such requirements are as follows:

A. Limited Partnership Agreement

a. Purpose

The limited partnership's purpose should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Partnership, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____, State of_____[_____interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the Uniform Limited Partnership Act of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The partnership shall be prohibited, except in certain circumstances, from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the partnership's assets, transfer of partnership interests, incurrence of additional debt and amendment of the partnership agreement.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The Partnership shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Partnership shall not incur, assume, or guaranty any other indebtedness. The Partnership shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Partnership) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Partnership substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Partnership's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this partnership and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Partnership will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the partners of the Partnership. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (i) no amendment to this partnership agreement may be made and (ii) the partnership shall not dissolve, liquidate or terminate without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary] ."

c. Indemnification

Indemnification of a partnership's partners should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Partnership in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the partnership must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary] , in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in this partnership agreement, the Partnership shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate partnership records and books of account from those of any affiliate.

3. It shall not commingle assets with those of any affiliate.

4. It shall conduct its own business in its own name.

5. It shall observe all partnership formalities.

6. It shall maintain financial statements separate from any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

8. It shall maintain an arm's length relationship with any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity.

16. At all times have all of its general partners shall be special purpose corporate entities with at least two (2) Independent Directors."

For purposes of this Article , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Partnership including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Partnership, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this partnership, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Independent Director " shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Partnership or any of its respective partners, members,

shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Partnership or managing member of the Partnership or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Partnership or of the managing member of the Partnership. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Dissolution

The limited partnership agreement should provide that the partnership will continue (and not dissolve) so long as a solvent general partner exists.

"Notwithstanding any provision or of any other document governing the formation, management or operation of the Partnership hereof to the contrary, the following shall govern: The Partnership shall not terminate solely as a consequence of the [Bankruptcy] of one or more of the general partners of the Partnership so long as there remains a solvent general partner of the Partnership."

In addition, dissolution of the partnership must not occur so long as the partnership remains mortgagor of the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Subject to applicable law, dissolution of the Partnership shall not occur so long as the Partnership remains mortgagor of the [Property] [use other term for the real estate if necessary] ."

B. Corporate General Partner

a. Purpose

The corporation's purpose should be limited to acting as general partner of the limited partnership whose purpose, as set forth above, generally should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as a general partner of a limited partnership (the "Partnership") whose purpose is to acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____, State of _____(the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the General Corporation Law of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in or causing the partnership to engage in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's or partnership's assets, transfer of ownership assets, transfer of partnership interests, incurrence of additional debt, amendment of the corporation's articles of incorporation and amendment of the partnership agreement.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur or cause the Partnership to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Corporation shall not and shall not cause the Partnership to incur, assume, or guaranty any other indebtedness. For so long as the Partnership remains mortgagor of the Property, the Corporation shall not cause the Partnership to dissolve. The Corporation shall not and shall not cause the Partnership to consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Partnership) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Corporation or Partnership substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article_____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall

have been committed by this corporation or the Partnership and be continuing. For so long as a mortgage lien exists on the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Partnership to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the Property, (i) no amendment to this certificate of incorporation or to the Corporation's By Laws nor to the Partnership agreement of the Partnership may be made and (ii) neither the Corporation nor the Partnership shall be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the Property."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

c. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Partnership or the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the Corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an "Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or, except to the extent of its liability for the debt secured by such mortgage lien, become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purposes of this Article____ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

III. LIMITED LIABILITY COMPANY

If the Single Purpose Entity is a limited liability company, to be a special purpose entity, each managing member shall be a special purpose corporation. If such limited liability company has more than one managing member, then such limited liability company shall continue (and not dissolve) for so long as a solvent managing member exists. Consequently, both the Limited Liability Company's articles of organization and the certificate of incorporation of its outside member will have to meet certain requirements to be considered special purpose entities. Such requirements are as follows:

A. Articles of Organization

a. Purpose

The limited liability company's purpose should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Limited Liability Company, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____State of_____**[**_____interests in [insert Borrower or other applicable entity's name]] (the "Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the Limited Liability Company Act of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The limited liability company shall be prohibited, except in certain circumstances from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the limited liability company's assets, transfer of limited liability company interests, incurrence of additional debt and amendment of the articles of organization.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: The Limited Liability Company shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Limited Liability Company shall not incur, assume, or guaranty any other indebtedness. The Limited Liability Company shall not consolidate or merge with or into any other entity or convey or transfer its properties and

assets substantially as an entirety to any entity unless (i) the entity (if other than the Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article_____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Limited Liability Company's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this limited liability company and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Limited Liability Company will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the members of the Limited Liability Company. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (i) no amendment to these articles of organization may be made and (ii) the Limited Liability Company shall not be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]."

c. Indemnification

Indemnification of a limited liability company's partners should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Limited Liability Company in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the limited liability company must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in these articles of organization, the Limited Liability Company shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliates and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate records and books of account from those of any affiliate.

3. It shall not commingle assets with those of any affiliate.

4. It shall conduct its own business in its own name.

5. It shall maintain financial statements separate from any affiliate.

6. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

7. It shall maintain an arm's length relationship with any affiliate.

8. It shall maintain adequate capital in light of its contemplated business operations.

9. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

10. It shall not acquire obligations or securities of its partners, members or shareholders.

11. It shall use stationery, invoices and checks separate from any affiliate.

12. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.

13. It shall hold itself out as an entity separate from any affiliate.

14. It shall correct any known misunderstanding regarding its separate identity.

15. At all times all managing members shall be a special purpose corporate member with at least two (2) Independent Directors."

For purposes of this Article , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Limited Liability Company including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Limited Liability Company, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this limited liability company, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Independent Director " shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Limited Liability Company or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Limited Liability Company or managing member of the Limited Liability Company or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Limited Liability Company or of the managing member of the Limited Liability Company. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Dissolution

To the extent permitted by tax law the articles of organization should provide that the vote of a majority in interest of the remaining members is sufficient to continue the life of the limited liability company. If such vote is not obtained, for so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary] the limited liability company may not be permitted to liquidate the [Property] [use other term for the real estate if necessary] without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage lien has been paid in full or otherwise completely discharged."

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: To the extent permissible under applicable federal and state tax law, the vote of a majority in interest of the remaining members is sufficient to continue the life of the Limited Liability Company. If such vote is not obtained, for so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary] the Limited Liability Company shall not liquidate the [Property] [use other term for the real estate if necessary] without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage liens has been paid in full or otherwise completely discharged.

f. Voting

When acting on matters subject to the vote of the members, notwithstanding that the limited liability company is not then insolvent, the members and the outside member must take into account the interest of the Limited Liability Company's creditors, as well as those of the members.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: When acting on matters subject to the vote of the members, notwithstanding that the Limited Liability Company is not then insolvent, all of the members shall take into account the interest of the Limited Liability Company's creditors, as well as those of the members."

B. Outside Corporate Member

a. Purpose

The outside corporate member's purpose should be limited to acting as corporate member of the limited liability company whose purpose, as set forth above, generally should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as the outside member of a limited liability company (the "Limited Liability Company") whose purpose is to acquire that certain parcel of real property, together with all improvements located thereon, in the City of , State of (the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the General Corporation Law of necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in or causing the limited liability company to engage in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's or the limited liability company's assets, transfer of ownership assets, transfer of limited liability company interests, incurrence of additional debt, amendment of the corporation's articles of incorporation and amendment of the articles of organization.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur or cause the Limited Liability Company to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Corporation shall not and shall not cause the Limited Liability Company to incur, assume, or guaranty any other indebtedness. The Corporation shall not and shall not cause the Limited Liability Company to consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer of the

properties and assets of the Corporation or Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation or the Limited Liability Company and be continuing. For so long as a mortgage lien exists on the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Limited Liability Company to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the Property, without first obtaining approval of the mortgagee holding a first mortgage lien on the Property (i) no material amendment to this certificate of incorporation or to the Corporation's By Laws nor to the articles of organization of the Limited Liability Company may be made and (ii) neither the Corporation nor the Limited Liability Company shall dissolve, liquidate or terminate without first obtaining approval of the mortgagee holding a first mortgage lien on the Property."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

c. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Limited Liability Company or the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an " Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purpose of this Article ____ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Voting

When voting on matters concerning the limited liability company, notwithstanding that the limited liability company is not then insolvent, the Corporation must take into account the interest of the Limited Liability Company's creditors, as well as those of its members.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: When voting on matters concerning the Limited Liability Company, notwithstanding that the Limited Liability Company is not then insolvent, the Corporation shall take into account the interest of the Limited Liability Company's creditors, as well as those of its members."

IV. OTHER STRUCTURES

The foregoing provisions do not exhaustively contemplate all ownership structures for a mortgaged property. Situations involving ownership structures not specifically contemplated by the provisions set forth on this Exhibit C shall nevertheless require Single Purpose Entities substantively to comply with the requirements to these provisions, modified as appropriate to accommodate the ownership structure in question.

EXHIBIT D

ENFORCEABILITY OPINION REQUIREMENTS

1. The Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Opinion shall be given by a professional law firm selected by Borrower and reasonably acceptable to Lender.

3. The Opinion shall be in form and substance acceptable to Lender and shall be given in relation to Borrower, Guarantor, Manager and any other relevant party to the Loan (each a " Loan Party"). Depending on the nature of the transaction, the Opinion shall address the applicable law of the State of New York, the State where the Property is located and each State where any Loan Party is organized (collectively, the "Relevant States"). To the extent that the Property is located in a jurisdiction outside of the State of New York and/or any Loan Party is organized under a jurisdiction outside the States of New York or Delaware, the appropriate opinions below should be given by local counsel. The Opinion shall be given on the basis of an examination of an executed original of each completed Loan Document in addition to such other documents or instruments counsel deems relevant.

4. The Opinion shall contain the following opinions:

Opinions with respect to the law of the State of Formation or Organization of the Loan Parties

(a) Each Loan Party is a [*Describe Legal Form*] duly organized, validly existing and in good standing under the laws of the State of [*State of Organization*] and is authorized to do business and in good standing in the State of [*State of Organization*].

(b) Each Loan Party has the requisite power to own its properties and to carry on its business as now being conducted and to enter into the transactions covered by the Loan Documents.

(c) The execution and delivery by each Loan Party of each Loan Document to which it is a party has been duly authorized by all necessary partnership, company and/or corporate action, as applicable. To the extent a party thereto, the Loan Documents have been duly executed and delivered by each Loan Party.

(d) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party does not:

(i) conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, the partnership agreement, partnership certificate, articles of incorporation, by-laws, trust agreement or trust certificate, as applicable, of such Loan Party;

(ii) contravene any law, statute or regulation of the United States of America or the [*State of Organization*] or any agency or political subdivision of either thereof;

(iii) violate any order, writ, injunction, or decree of which, after due inquiry, counsel has actual knowledge, issued by any court or governmental authority of the United States of America or the [*State of Organization*] or any agency or political subdivision of either thereof to which such Loan Party is subject; or

(iv) conflict with or result in any breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien other than the lien of the Loan Documents upon any of the assets or properties of such Loan Party pursuant to the terms of any material indenture, mortgage, deed of trust, agreement, contract or instrument to which such Loan Party is a party or by which it or any of its assets or properties is bound.

(e) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of [*Relevant State*] or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(f) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(g) To the extent the State of [*State of Organization*] UCC is applicable to the authorization of the Financing Statement, pursuant to the provisions of the Loan Agreement and the Security Instrument, Borrower has authorized the filing of the Financing Statement for purposes of Section 9-509 of the State of [*State of Organization*] UCC.

(h) To the extent the State of [*State of Organization*] UCC is applicable, the financing Statement includes not only all of the types of information required by Section 9-502(a) of the State of [*State of Organization*] UCC but also the types of information without which the Filing Office may refuse to accept the Financing Statement pursuant to Section 9-516 of the State of [*State of Organization*] UCC.

(i) To the extent the State of [*State of Organization*] UCC is applicable, the security interest of the Secured Party will be perfected in Borrower's rights in all UCC Collateral upon the later of the attachment of the security interest and the filing of the Financing Statement in the Filing Office; provided, however, we express no opinion with respect to (i) money, (ii) deposit accounts, (iii) letter of credit rights, (iv) goods covered by a certificate of title statute,

(v) as-extracted collateral, timber to be cut, or (vi) any property subject to a statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-3 l0(a) of the State of [*State of Organization*]. "UCC Collateral" means the portion of the Property (as defined in the Security Instrument), the Rate Cap Collateral, the Account Collateral (as defined in the Loan Agreement) and the Collateral Accounts (as defined in the Account Agreement) to the extent the UCC governs a security interest in such collateral.

(j) You have asked whether Borrower is a "registered organization" as such term is defined in Section 9-1 02(a)(70) of the State of [*State of Organization*] UCC. Pursuant to Section 9-1 02(a)(70) of the State of [*State of Organization*] UCC, a "registered organization" must be (i) organized solely under the laws of a single State (or the United States) and (ii) the State (or the United States) must maintain a public record showing the organization to have been organized.

Opinions with respect to New York Law

(a) To the extent governed by New York law and to the extent a party thereto, the Loan Documents are the legal, valid and binding obligations of each Loan Party, enforceable against such Loan Party in accordance with their terms.

(b) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party does not:

(i) contravene any law, statute or regulation of the United States of America or the State of New York or any agency or political subdivision of either thereof;

(ii) violate any order, writ, injunction, or decree of which, after due inquiry, counsel has actual knowledge, issued by any court or governmental authority of the United States of America or the State of New York or any agency or political subdivision of either thereof to which such Loan Party is subject; or

(iii) conflict with or result in any breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien other than the lien of the Loan Documents upon any of the assets or properties of such Loan Party pursuant to the terms of any material indenture, mortgage, deed of trust, agreement, contract or instrument to which such Loan Party is a party or by which it or any of its assets or properties is bound.

(c) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of New York or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(d) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual

knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(e) The payment by Borrower and receipt by Lender of all principal and interest will not violate the usury laws of the State of New York or otherwise constitute unlawful interest.

(f) The provisions of the Loan Agreement and the Security Instrument are effective to create, in favor of Lender to secure the obligations purported to be secured thereby, a valid security interest in Borrower's rights in the UCC Collateral.

(g) Under New York UCC, the provisions of the Account Agreement are effective to perfect the security interest of Lender in Borrower's rights in the Collateral Accounts (as defined in the Account Agreement).

Opinions with respect to the law of States in which the Property is located

(a) Each Loan Party is authorized to do business and in good standing in the State of [*Relevant State*].

(b) To the extent governed by the laws of the State of [*Relevant States*], the Security Instrument and the Assignment of Leases are the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms.

(c) The Security Instrument is in proper form so as to comply with recording requirements of the State of [*Relevant State*]. The Security Instrument creates in favor of Lender valid liens on the portion of the Property that are located in the State of [*Relevant States*], securing payment of the Obligations (as defined in the Security Instrument), and no further action will be required for the valid creation of such liens. Upon recordation in the office of the [*Recording Office*] the Security Instrument will provide constructive notice of the terms thereof and the liens created thereby to third parties acquiring interests in the portion of the Property that are located in the State of [*Relevant States*] subsequent to such recordation.

(d) The Assignment of Leases is in proper form so as to comply with the recording requirements of the State of [*Relevant States*]. At the time the Assignment of Leases is delivered to the Recording Office for recording, it will take effect as to all creditors and subsequent purchasers for a valuable consideration without notice, and it shall be entitled to priority over any other similar instrument delivered to said Recording Office for recording after that time, in the absence of actual notice.

(e) Pursuant to the provisions of the Security Instrument Borrower has authorized the filing of the Fixture Financing Statement identifying the Fixture Collateral for purposes of Section 9-509 of the [*Relevant States*] UCC. "Fixture Collateral " means that portion of the UCC Collateral which consists of "fixtures" (as defined in Article 9 of the UCC) to the extent the UCC governs a security interest in such collateral.

(f) The Fixture Financing Statement includes not only all the types of information required by Section 9-502(a) and 9-502(b) of the *[Relevant States]* UCC but also the types of information without which the Fixture Filing Office may refuse to accept the Fixture Financing Statement pursuant to Section 9-516 of the State of *[Relevant States]* UCC.

(g) Under the *[Relevant States]* UCC, the security interest of the Secured Party will be perfected in Borrower's rights in any Fixture Collateral located on the real property described on Schedule 1 to the Fixture Financing Statement upon the later of the attachment of the security interest and the filing of the Fixture Financing Statement in the Fixture Filing Office.

(h) Borrower has paid all recording tax due in connection with the recording of the Security Instrument and the Assignment of Leases. No additional deed of trust recording, intangibles tax, documentary stamp tax or similar taxes or charges, other than nominal recordation or filing fees, are required to be paid as a condition of the legality of enforceability of the Security Instrument or the Assignment of Leases.

(i) The State of [*Relevant States*] has no law pursuant to which a lien against any assets or properties of Borrower (whether real, personal, mixed, tangible or intangible) superior to the lien created by the Security Instrument could arise as a result of a violation of environmental laws or regulations of such State. No environmental law or regulation of the State of [Relevant States] would require any remedial or removal action or certification of nonapplicability as a condition to the granting of the Security Instrument, the foreclosure or other enforcement of the Loan Documents or the sale of any assets or properties of Borrower (whether real, personal, mixed, tangible or intangible) located in the State of [*Relevant States*].

(j) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of *[Relevant States]* or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(k) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(l) If the Obligations (as defined in the Security Instrument) were to be governed by the laws of the State of *[Relevant States],* the payment by Borrower and receipt by Lender of all principal and interest will not violate the usury laws of the State of *[Relevant States]* or otherwise constitute unlawful interest.

(m) A federal court sitting in the State of *[Relevant States]* and applying the conflict of law rules of the State of *[Relevant States],* and the state courts in the State of *[Relevant States],* would give effect to the choice of law provisions contained in the Loan Documents. If counsel is not able to give this opinion as an unqualified opinion, an opinion that the Loan Agreement and Note would be enforceable under the law of the State of *[Relevant States]* if such law were held to apply will be required.

(n) The operation of any term of the Loan Documents, including, without limitation, the terms regarding late charges, default interest or prepayment premiums, or the lawful exercise of any right thereunder, shall not render the Loan Documents unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense.

5. The Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any servicer of the Loan, (iii) any purchaser of the Loan or any portion thereof in any Securitization, (iv) any Rating Agency involved in a Securitization of the Loan, (v) the issuer of securities in a Securitization of the Loan, and (vi) any trustee or servicer appointed in connection with a Securitization of the Loan.

EXHIBIT E

NON-CONSOLIDATION OPINION REQUIREMENTS

1. The Nonconsolidation Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Nonconsolidation Opinion shall be given by a professional law firm selected by Borrower and reasonably acceptable to Lender.

3. The Nonconsolidation Opinion shall be in form and substance acceptable to Lender and shall be given in relation to both Borrower and any other SPE Entity relevant to the Loan. The Nonconsolidation Opinion shall identify each entity (a "Relevant Entity") which owns more than a 49% direct or indirect interest in either Borrower and/or such SPE Entity. Depending on the circumstances and nature of the transaction structure, a non-affiliated entity, such as a third party property manager, shall be included as a Relevant Entity if required by the Rating Agencies.

4. The Nonconsolidation Opinion shall state that, in the event that any Relevant Entity were to be a debtor in a case under the Bankruptcy Code, it is counsel's opinion that, under present reported decisional authority and statutes applicable to federal bankruptcy cases, in a properly presented and argued case, a court would not, in the proper exercise of its equitable discretion, disregard the separate existence of Borrower or any SPE Entity so as to order substantive consolidation under the Bankruptcy Code of the assets and liabilities of such Relevant Entity with the assets and liabilities of either Borrower or any SPE Entity and treat such assets and liabilities as though either Borrower and such Relevant Entity or any SPE Entity and such Relevant Entity were one entity.

5. The Nonconsolidation Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any participant of Lender's interest in the Loan, (iii) any servicer of the Loan, (iv) any purchaser of the Loan or any portion thereof in any Securitization, (v) any Rating Agency involved in a Securitization of the Loan, (vi) the issuer of securities in a Securitization of the Loan, and (vii) any trustee or servicer appointed in connection with a Securitization of the Loan.

DELAWARE BANKRUPTCY OPINIONS

As a general rule, the following opinions are required with respect to any single-member Delaware limited liability companies (having independent members/managers) in the organizational structure:

1. An opinion of Delaware counsel that federal bankruptcy court would hold that Delaware law, and not federal law, governs the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of the limited liability company.

2. Opinions of Delaware counsel as follows:

a. The limited liability company agreement constitutes a legal, valid and binding agreement of its member, and is enforceable against such member, in accordance with its terms.

b. In order for a voluntary bankruptcy petition to be filed on behalf of the Company, the unanimous consent of all of the independent managers/members is required and the provision requiring such unanimous consent in the limited liability company agreement constitutes a legal, valid and binding agreement of the member, enforceable against the member, in accordance with its terms.

c. The bankruptcy or dissolution of the limited liability company's sole member will not, by itself, cause the limited liability company to be dissolved or its affairs to be wound up.

d. A judgment creditor of the member may not satisfy its claims against the member by asserting a claim against the assets of the limited liability company.

e. The limited liability company is a separate legal entity, and shall continue as such until the cancellation of the limited liability company certificate.

Contact information for a Delaware firm frequently retained by borrowers to obtain such opinions is set forth below:

RICHARDS, LAYTON & FINGER
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
Telephone: 302-658-6541
Facsimile: 302-658-6548
Fax Confirmation: 302-651-7796

Bernard J. Kelley
Telephone: 302-651-7674
Facsimile: 302-658-6548
E-mail: kelley@rlf.com

EXHIBIT F

COUNTERPARTY OPINION REQUIREMENTS

1. The Counterparty Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Counterparty Opinion may be given by a professional law firm selected by Counterparty and reasonably acceptable to Lender or by in-house counsel for Counterparty.

3. The Counterparty Opinion shall be in form and substance acceptable to Lender and shall contain the following opinions:

(a) Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under the Interest Rate Cap Agreement and the Acknowledgment.

(b) The execution and delivery of the Interest Rate Cap Agreement and the Acknowledgment by Counterparty, and any other agreement which Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its Property.

(c) All consents, authorizations and approvals required for the execution and delivery by Counterparty of the Interest Rate Cap Agreement, the Acknowledgment and any other agreement which the Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance.

(d) The Interest Rate Cap Agreement, the Acknowledgment and any other agreement which Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by Counterparty and constitutes the legal, valid and binding obligation of Counterparty, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4. If a Interest Rate Cap Guaranty is delivered in connection with the Interest Rate Cap Agreement, the Counterparty Opinion shall contain the following additional opinions:

(a) Interest Rate Cap Guarantor is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under, the Interest Rate Cap Guaranty.

(b) The execution and delivery of the Interest Rate Cap Guaranty by Interest Rate Cap Guarantor, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or bylaws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property.

(c) All consents, authorizations and approvals required for the execution and delivery by Interest Rate Cap Guarantor of the Interest Rate Cap Guaranty, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance.

(d) The Interest Rate Cap Guaranty, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, has been duly executed and delivered by Interest Rate Cap Guarantor and constitutes the legal, valid and binding obligation of Interest Rate Cap Guarantor, enforceable against Interest Rate Cap Guarantor in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

5. Depending on the nature of the transaction, the Counterparty Opinion shall contain such additional opinions on such other matters relating to the Interest Rate Cap Agreement, the Interest Rate Cap Guaranty and/or the Acknowledgment as Lender shall reasonably require, including, without limitation, the following additional opinions if the Counterparty or Interest Rate Cap Guarantor is a foreign entity:

(a) Jurisdiction where Counterparty and/or Interest Rate Cap Guarantor, as applicable, is located will respect and give effect to the choice of law provisions of the Interest Rate Cap Agreement and the Acknowledgment.

(b) A judgment obtained in the courts of the State of New York is enforceable in the jurisdiction where Counterparty and/or Interest Rate Cap Guarantor, as applicable, is located.

6. The Counterparty Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any participant of Lender's interest in the Loan, (iii) any servicer of the Loan, (iv) any purchaser of the Loan or any portion thereof in any Securitization, (v) any Rating Agency involved in a Securitization of the Loan, (vi) the issuer of securities in a Securitization of the Loan, and (vii) any trustee or servicer appointed in connection with a Securitization of the Loan.

EXHIBIT G

FORM OF TENANT ESTOPPEL LETTER

_____ , 20__

Citigroup Global Markets Realty Corp.,
its successors and assigns
388 Greenwich Street
New York, New York 10013

Re:

Ladies and Gentlemen:

It is our understanding that you are about to make a loan to [_____], a [_____], the landlord, or successor-in-interest to the landlord under our lease, as evidenced by a loan agreement and secured by a mortgage on the captioned premises and, as a condition precedent thereof, you have required this certification by the undersigned.

The undersigned, as tenant under that certain lease made with_____, as landlord, dated_____[, which lease has been modified or amended as follows (list all modifications or amendments or, if none, so indicate)_____] (the"Lease"), hereby ratifies the Lease and certifies that:

1. the undersigned entered into occupancy of the premises described in the Lease on or about_____;

2. the lease commencement date was_____;

3. the square footage of the premises described in the Lease is_____;

4. the fixed rental in the monthly amount of $_____was payable from_____;

5. the percentage rental payable monthly is $_____;

6. there are no rent abatements or free rent periods now or in the future [other than_____];

7. the amount of the current monthly expense reimbursements due under the Lease is equal to $_____;

8. the Lease is in full force and effect and, except as indicated above, has not been assigned, modified, supplemented or amended in any way and the undersigned has no notice of any assignment, pledge or hypothecation by the landlord of the Lease or of the rentals thereunder;

9. a true and complete copy of the Lease (including all amendments, modifications, supplements, side letters, surrender, space reduction or rent abatement agreements applicable to such Lease) is attached hereto as Exhibit A;

10. the Lease represents the entire agreement between the parties with respect to the above space in the above-mentioned building;

11. the term of the Lease [, as currently extended by means of the exercise of certain options contained therein,] expires on_____;

12. all construction and other obligations of a material nature to be performed by the landlord under the Lease have been satisfied, except as follows: (if none, so indicate);

13. any payments by the landlord to the undersigned for tenant improvements which are required under the Lease have been made;

14. on this date there are no existing defenses or offsets which the undersigned has against the enforcement of the Lease by the Landlord and the undersigned has no knowledge of any event which with the giving of notice, the passage of time or both would constitute a default under said Lease;

15. the undersigned is not entitled to any offsets, abatements, deductions or otherwise against the rent payable under the Lease from and after the date hereof, except as follows: (if none, so indicate);

16. no rental (including expense reimbursements), other than for the current month, has been paid in advance;

17. the amount of the security deposit presently held under the Lease is $_____(if none, so indicate);

18. the rentals (including expense reimbursements) under the Lease have been paid through the month of _____.

This estoppel certificate is binding upon the undersigned and its successors and assigns and may be relied upon by you and your successors and assigns and, if the mortgage loan becomes the subject of a securitization, may also be relied upon by the credit rating agency, if any, rating the securities collateralized by the mortgage loan as well as any issuer of such securities, and any servicer and/or trustee acting in respect of such securitization.

Very truly yours,

_____

[INSERT NAME OF TENANT]

By: _____

Title:

EXHIBIT A

LEASE

G-4

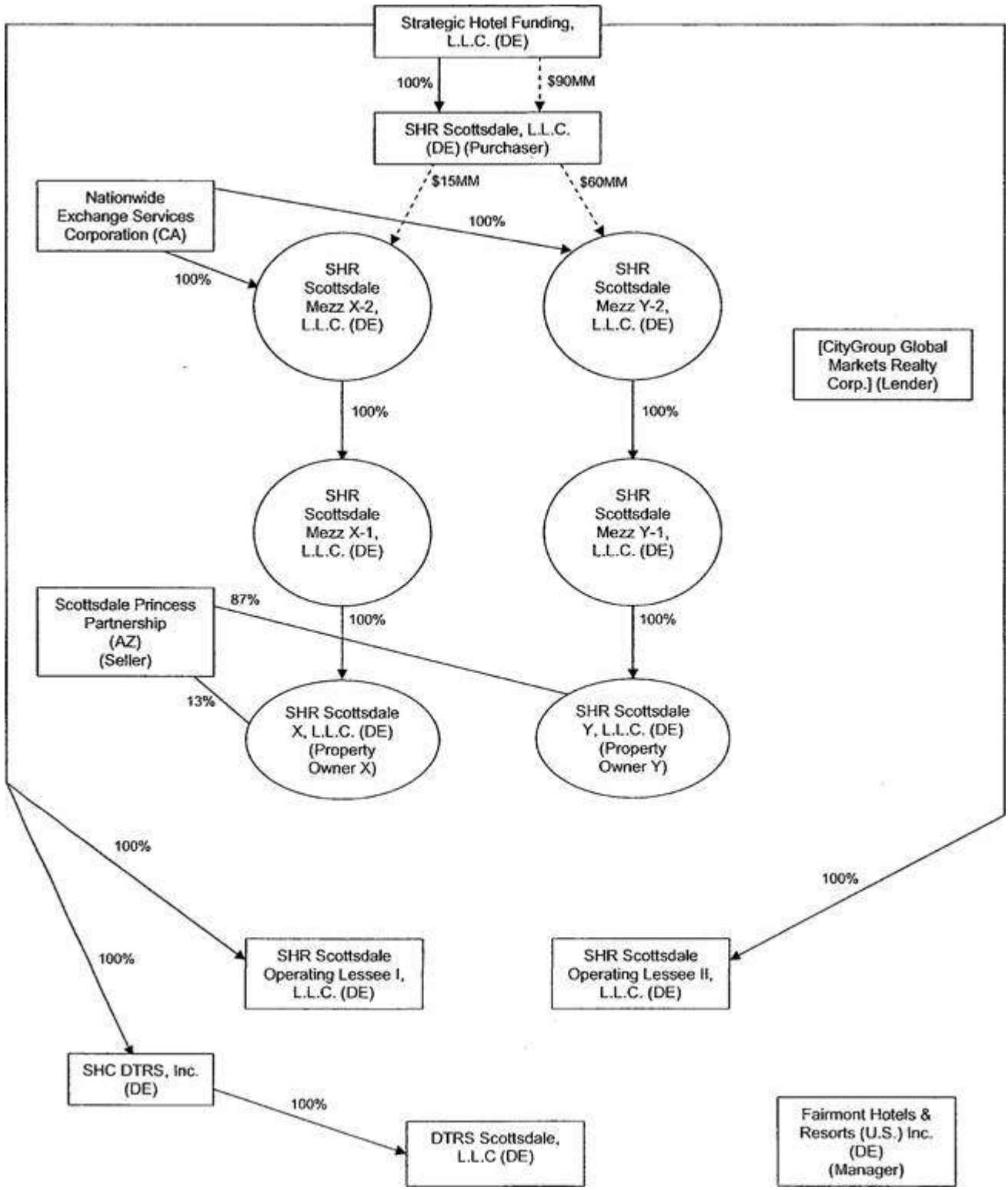
EXHIBIT H-l

BORROWER ORGANIZATIONAL STRUCTURE AT CLOSING

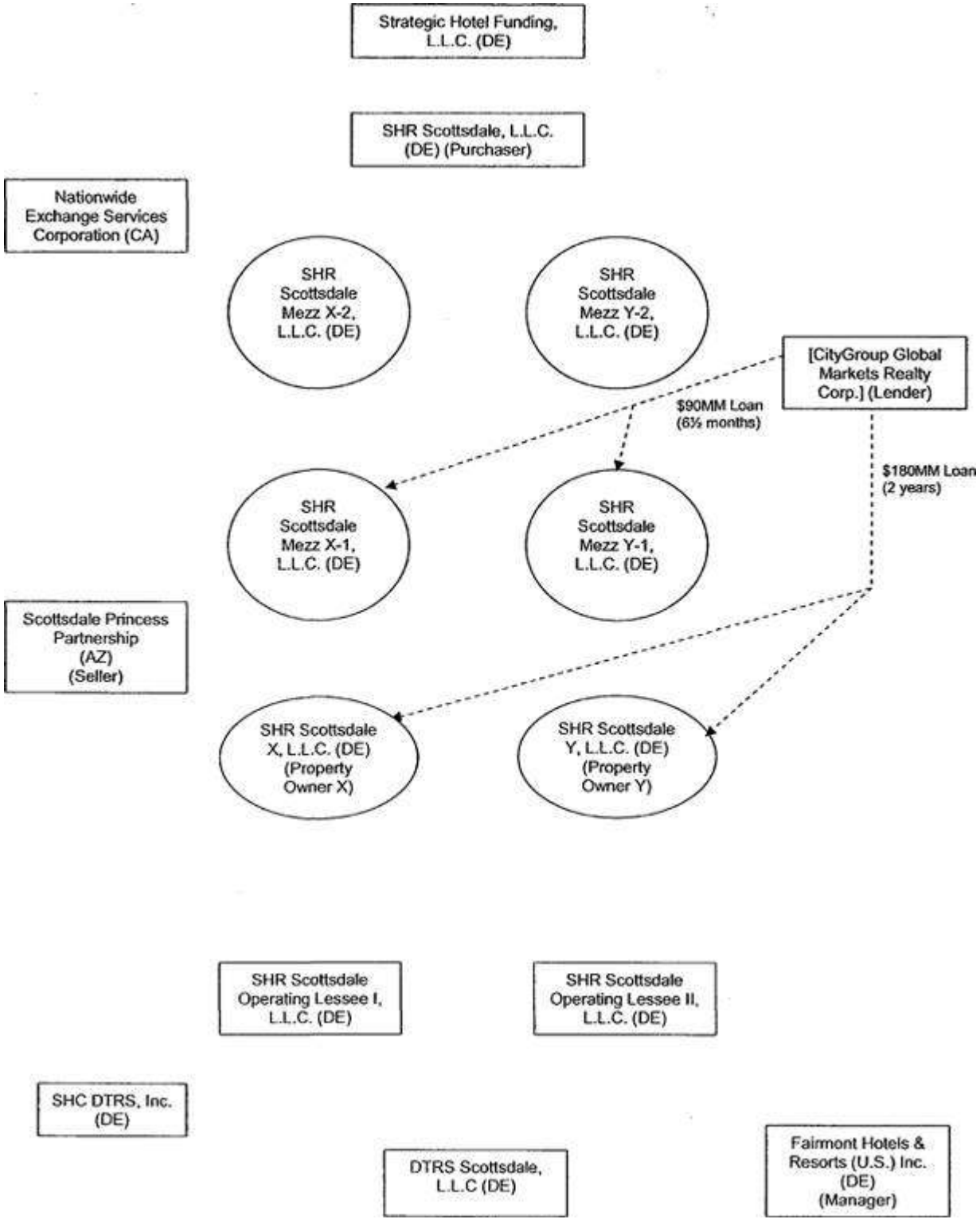
(ATTACHED HERETO)

H-1-1

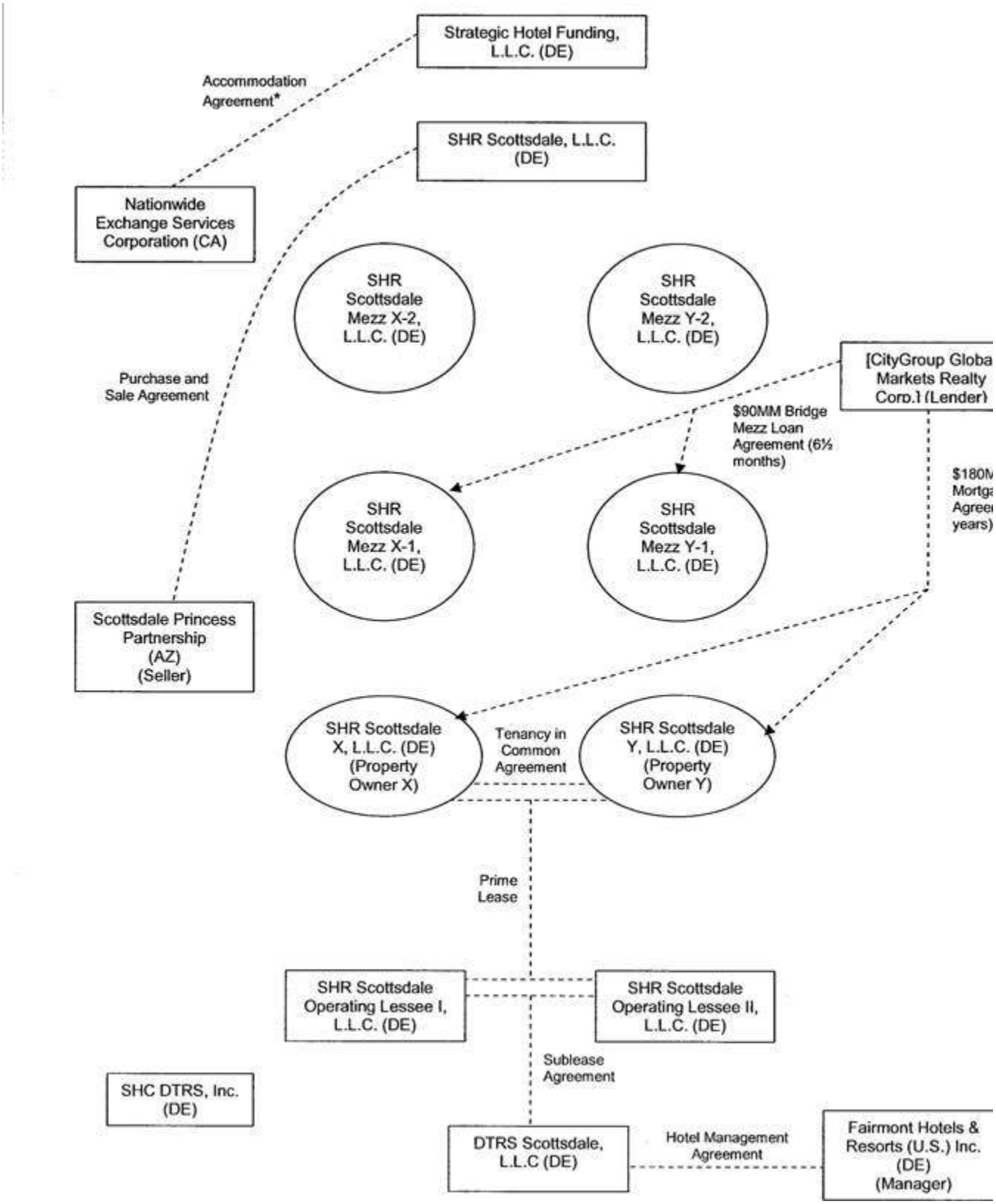
Strategic Fairmont Scottsdale Princess
1. Ownership and Strategic Loan to Nationwide



Strategic Fairmont Scottsdale Princess
2. Third Party Debt



Strategic Fairmont Scottsdale Princess
3. Primary Financing Agreements at Closing



* Actual structure will probably be a bit more complicated; there will likely be three different Accomodation Agreements

between SH Funding and the Mezz A2 and B2 subsidiaries of Nationwide.

EXHIBITH-2

INTENTIONALLY DELETED

H-2-1

EXHIBIT 1

INTEREST RATE CAP AGREEMENT REQUIREMENTS

- The form of cap agreement should be the 1992 ISDA Agreement (Multicurrency Cross Border or Local Currency Single Jurisdiction) subject to the 2000 Definitions.
- Once the cap premium is paid by Borrower, it cannot default. (Paragraph 4 of the May 1989 ISDA Addendum to Schedule to Interest Rate and Currency Exchange Agreement or similar language must be incorporated by reference).
- "Cross Default" provision of Section 5(a)(vi) of the ISDA Master Agreement will not apply. Grace and cure periods in Section 5 of the ISDA Master Agreement will either (i) not apply or (ii) if applicable, any grace or cure periods must expire in time to ensure the availability of cap payments by cap provider on a timely basis for distribution to the holders of the rated securities.
- "Credit Event Upon Merger" provisions of Section 5(b)(iv) of the ISDA Master Agreement will not apply.
- "Automatic Early Termination" provision in Section 6(a) of the ISDA Master Agreement will not apply.
- Termination Events under Sections 5(b)(ii) and 5(b)(iii) of the ISDA Master Agreement either (i) will only constitute termination events exercisable by Borrower against cap provider or (ii) if exercisable by both parties, at the time of any event triggering a termination event under Sections 5(b)(ii) and/or 5(b)(iii), cap provider must either (a) transfer the cap to a replacement cap provider acceptable to each Rating Agency at cap provider's sole cost and expense, or (b) continue to perform its obligations under the cap agreement including, without limitation, the obligation to unconditionally "gross up" in the event that a withholding tax is imposed on payments being made by the cap provider.
- Borrower shall be precluded from payment of any out of pocket expenses required under Section 11 of the ISDA Master Agreement and incurred by cap provider related to the enforcement and protection of cap provider's rights under the cap agreement.
- Market Quotation and Second Method will be used for the purpose of computing amounts payable on early termination with a provision for loss if Market Quotation is not available.
- The parties shall be deemed to have no Affiliates for purposes of the ISDA Master Agreement.
- "Specified Entities" will not apply for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(iv) of the ISDA Master Agreement.
- Transaction will be governed by New York law.
- For the purposes of Section 6(e) of the ISDA Master Agreement, set off and counterclaim will not apply and all payments by cap provider shall be made without set off or counterclaim.

- If this transaction will be guaranteed by a parent to provide a required rating, the guarantee must be unconditional, irrevocable, continuing and a guarantee of payment, not collection, and otherwise satisfy Rating Agency requirements. Any act or omission of such guarantor that would constitute an event of default by the cap provider (other than a cross default) under Section 5 of the ISDA Master Agreement will constitute an event of default under the ISDA Master Agreement.

- The definition of LIBOR will be USD LIBOR BBA and must match the definition of LIBOR in the loan agreement.

- The definition of Business Day must match the definition of Business Day in the loan agreement. LIBOR must be determined on the LIBOR Determination Date.

- Payments must be made by the cap provider on or prior to the applicable Payment Date in respect of a period corresponding to the applicable Interest Period.

- The Termination Date of the cap must be no earlier than the last day of the Interest Period in which the Maturity Date under the loan agreement occurs.

- The Day Count Fraction in the cap must match that contained in the loan agreement.

- The Notional Amount in the cap must match the principal amount of the loan as of the date of the loan agreement.

- US Dollars are selected as the Termination Currency under the cap.

- Section 2(c)(ii) of the ISDA Master Agreement will apply to the Transaction.

- Cap provider and Borrower will represent that it is not a multi branch party.

- Cap provider will covenant that it will not petition Borrower into bankruptcy (or join in any such petition) for 365 days after all outstanding rated securities have been paid in full.

- If the ISDA Master Agreement (Multicurrency Cross Border) ("Cross Border Agreement") is utilized, additional scheduled items and provisions to address "indemnifiable taxes" and other related issues present in cross border transactions must be incorporated:

    - Section 2(d)(i)(4) of the Cross Border Agreement must be amended to require the cap provider to unconditionally "gross up" in the event that a withholding tax is imposed on payments being made by the cap provider.

    - The definition of "indemnifiable tax" must cover any and all withholding tax.

    - Section 2(d)(i)(4) of the Cross Border Agreement will be deleted such that cap provider is not excused from having to "gross up" due to Borrower's breach of a tax representation or failure to notify cap provider of a breach of a tax representation and (ii) Borrower makes no tax representations in the cap agreement or schedule.

    - Section 2(d)(ii) of the Cross Border Agreement must be amended to provide that there is no obligation by Borrower to make payments to the cap provider for any payments made by the cap provider without deduction for taxes (for which there is no obligation to gross up).

- Section 4(e) of the Cross Border Agreement must be amended to provide that there are no payment obligations by Borrower to cap provider for any indemnification resulting from stamp registration or other documentary tax levied by Borrower's taxing authority on the cap provider.

- Cap provider and any guarantor must provide a New York opinion of counsel satisfactory to the Rating Agencies regarding the cap. If cap provider or its guarantor is a non U.S. entity, a foreign opinion must be provided as well. The opinion(s) must include customary legal opinions including, without limitation, an opinion delivered by outside counsel opining that the cap agreement (including the confirmation, ISDA Master Agreement, schedule and collateral assignment agreement) is legal/valid/binding and enforceable against the cap provider and any guarantor.]

EXHIBIT J

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

Reference is made to that certain Loan and Security Agreement, dated as of_____ 200__ (as amended, supplemented or otherwise modified from time to time, the **Loan Agreement**) between [_____] (**Borrower**), and Citigroup Global Markets Realty Corp., a New York corporation (**Lender**), and that certain Note, dated as of_____ , 200__ (the **Note**), made by Borrower in favor of Lender. Terms defined in the Loan Agreement and not otherwise defined herein are used herein with the same meaning.

The **Assignor** and the **Assignee** referred to on Schedule 1 attached hereto agree as follows:

1. The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, an interest in and to the Assignor's rights and obligations under the Note and the Loan Agreement as of the date hereof equal to the percentage interest specified on Schedule 1 attached hereto. After giving effect to such sale and assignment, the amount of the Loan and the Note owing to the Assignee will be as set forth on Schedule 1 attached hereto.

2. The Assignor (i) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with the Loan Documents or any other instrument or document furnished pursuant thereto; (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Document or any other instrument or document furnished pursuant thereto; and (iv) attaches the Note or notes held by the Assignor and requests that the Lender exchange such Note or notes for a new note or notes payable to the order of the Assignee in an amount equal to the principal amount of the Loan assumed by the Assignee pursuant hereto or new notes payable to the order of the Assignee in an amount equal to the principal amount of the Loan assumed by the Assignee pursuant hereto and the Assignor in an amount equal to the principal amount of the Loan retained by the Assignor under the Note and the Loan Agreement, respectively, as specified on Schedule 1 attached hereto.

3. The Assignee (i) confirms that it has received a copy of the Note and the Loan Agreement, together with such financial statements and other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (ii) agrees that it will, independently and without reliance upon Lender or the Assignor based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Agreement or the Note; (iii) appoints and authorizes Lender to take such action as agent on its

behalf and to exercise such powers and discretion under the Loan Documents as are delegated to Lender by the terms thereof, together with such powers and discretion as are reasonably incidental thereto; and (iv) agrees that it will perform in accordance with their terms all of the obligations that by the terms of the Loan Agreement and the Note are required to be performed by it as an assignee of an interest therein.

4. Following the execution of this Assignment and Acceptance, it will be delivered to Lender for acceptance and recording. The effective date for this Assignment and Acceptance (the **Effective Date**) shall be the date of acceptance hereof by the Lender, unless otherwise specified on Schedule 1 attached hereto.

5. Upon such acceptance and recording by Lender, as of the Effective Date, (i) the Assignee shall be a party to the Loan Agreement and the Note and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of an assignee thereof, and (ii) the Assignor shall, to the extent provided in the Loan Agreement and this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Agreement and the Note.

6. Upon such acceptance and recording by Lender, from and after the Effective Date, Lender shall make all payments under the Loan Agreement and the Note or notes in respect of the interest assigned hereby (including, without limitation, all payments of principal, interest and commitment fees with respect thereto) to the Assignee. The Assignor and Assignee shall make all appropriate adjustments in payments under the Loan Agreement and the Note or notes for periods prior to the Effective Date directly between themselves.

7. This Assignment and Acceptance shall be governed by, and construed in accordance with, the laws of the State of New York.

8. This Assignment and Acceptance may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of Schedule 1 to this Assignment and Acceptance by telecopier shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance.

***

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment and Acceptance and Schedule 1 to this Assignment and Acceptance to be executed by their officers thereunto duly authorized as of the date specified on Schedule 1 .

Schedule 1

As to the Loan in respect of which an interest is being assigned:

Percentage interest assigned: _____%

Aggregate outstanding principal amount of the Loan assigned: $_____

Principal amount of Note payable to Assignee: $_____

Principal amount of Note payable to Assignor: $_____

Effective Date (if other than date of acceptance by Lender):_____ ,____

[NAME OF ASSIGNOR], as Assignor

By: _____
Name:
Title:

Dated:____ __ ,____

[NAME OF ASSIGNOR], as Assignor

By: _____
Name:
Title:

Dated:____ __ ,____

Accepted this___ day of____ ,____
[NAME OF LENDER]

By: _____
Name:
Title:

EXHIBIT K

FORM OF
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

_____ ,
Tenant

AND

CITIGROUP GLOBAL MARKETS REALTY CORP.,
Lender

County: [ ]
Section: [ ]
Block: [ ]
Lot: [ ]

Premises:

Dated: as of_____,____

Record and return by mail to:
Cadwalader, Wickersham & Taft LLP
One WorId Financial Center
New York, NY 10281
Attention: Frederic L. Altschuler, Esq.

K-1

SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made as of this___ day of_____ , 200___ , between CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation, having an address at 388 Greenwich Street, New York, New York 10013 (hereinafter called "Lender"), and_____, a_____, having an address at_____(hereinafter called "Tenant").

W I T N E S S E T H :

WHEREAS, by a lease (the " Original Lease") dated_____ , 200___ between_____(hereinafter called "Landlord"), as landlord, and Tenant, as tenant, as amended by lease amendment[s] dated_____ , 200___ , [_____ , 200___ and_____ , 200___] (the Original Lease, as so amended, is hereinafter the "Lease"), a memorandum of which Lease was dated_____and was recorded in_____in Reel___ , Page___, [add recording data for memoranda of amendments, if applicable], Landlord leased to Tenant certain premises located in_____ (the "Premises") on the property described in Schedule "A" annexed hereto and made a part hereof (the "Property"); and

WHEREAS, Lender is about to make a loan to Landlord, which loan shall be secured by, among other things, a mortgage or deed of trust (which mortgage or deed of trust, and all amendments, renewals, increases, modifications, replacements, substitutions, extensions, spreaders and consolidations thereof and all re-advances thereunder and addictions thereto, is referred to as the "Security Instrument") encumbering the Property; and

WHEREAS, Lender and Tenant desire to confirm their understanding and agreement with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. The Lease, and all of the terms, covenants, provisions and conditions thereof (including, without limitation, any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Property, or any portion thereof) is, shall be and shall at all times remain and continue to be subject and subordinate in all respects to the lien, terms, covenants, provisions and conditions of the Security Instrument and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Tenant shall execute and deliver any additional instruments which Lender may reasonably require to effect such subordination.

2. So long as (i) Tenant is not in default (beyond any period given in the Lease to Tenant to cure such default) in the payment of rent, percentage rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions

of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this Agreement and (iii) the Lease is in full force and effect: (a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease (except to the extent required so that Tenant's right to receive or set-off any monies or obligations owed or to be performed by any of Lender's predecessors-in-interest shall not be enforceable thereafter against Lender or any of Lender's successors-in-interest). Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Lender not to name or join Tenant as a party in a foreclosure proceeding with respect to the Security Instrument, Lender may so name or join Tenant without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

3. (A) After notice is given by Lender that the Security Instrument is in default and that the rentals under the Lease should be paid to Lender, Tenant will attorn to Lender and pay to Lender, or pay in accordance with the directions of Lender, all rentals and other monies due and to become due to Landlord under the Lease or otherwise in respect of the Premises. Such payments shall be made regardless of any right of set-off, counterclaim or other defense which Tenant may have against Landlord, whether as the tenant under the Lease or otherwise.

(B) In addition, if Lender (or its nominee or designee) shall succeed to the rights of Landlord under the Lease through possession or foreclosure action, delivery of a deed or otherwise, or another person purchases the Property or the portion thereof containing the Premises upon or following foreclosure of the Security Instrument or in connection with any bankruptcy case commenced by or against Landlord, then at the request of Lender (or its nominee or designee) or such purchaser (Lender, its nominees and designees, and such purchaser, and their respective successors and assigns, each being a " Successor-Landlord"), Tenant shall attorn to and recognize Successor-Landlord as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument that Successor-Landlord may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor-Landlord and Tenant upon all terms, conditions and covenants as are set forth in the Lease. If the Lease shall have terminated by operation of law or otherwise as a result of or in connection with a bankruptcy case commenced by or against Landlord or a foreclosure action or proceeding or delivery of a deed in lieu, upon request of Successor-Landlord, Tenant shall promptly execute and deliver a direct lease with Successor-Landlord which direct lease shall be on substantially the same terms and conditions as the Lease (subject, however, to the provisions of clauses (i)-(v) of this paragraph 3(B)) and shall be effective as of the day the Lease shall have terminated as aforesaid. Notwithstanding the continuation of the Lease, the attornment of Tenant thereunder or the execution of a direct lease between Successor-Landlord and Tenant as aforesaid, Successor-Landlord shall not:

(i) be liable for any previous act or omission of Landlord under the Lease;

(ii) be subject to any off-set, defense or counterclaim which shall have theretofore accrued to Tenant against Landlord;

(iii) be bound by any modification of the Lease or by any previous prepayment of rent or additional rent made more than one (1) month prior to the date same was due which Tenant might have paid to Landlord, unless such modification or prepayment shall have been expressly approved in writing by Lender;

(iv) be liable for any security deposited under the Lease unless such security has been physically delivered to Lender or Successor-Landlord; and

(v) be liable or obligated to comply with or fulfill any of the obligations of the Landlord under the Lease or any agreement relating thereto with respect to the construction of, or payment for, improvements on or above the Premises (or any portion thereof), leasehold improvements, tenant work letters and/or similar items.

4. Tenant agrees that without the prior written consent of Lender, it shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, (b) tender a surrender of the Lease, (c) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (d) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such consent shall be void as against the holder of the Security Instrument.

5. (A) Tenant shall promptly notify Lender of any default by Landlord under the Lease and of any act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction.

(B) In the event of a default by Landlord under the Lease which would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or to claim a partial or total eviction, or in the event of any other act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease, Tenant shall not exercise such right (i) until Tenant has given written notice of such default, act or omission to Lender and (ii) unless Lender has failed, within sixty (60) days after Lender receives such notice, to cure or remedy the default, act or omission or, if such default, act or omission shall be one which is not reasonably capable of being remedied by Lender within such sixty (60) day period, until a reasonable period for remedying such default, act or omission shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Security Instrument to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under the Lease or otherwise, after similar notice, to effect such remedy), provided that Lender shall with due diligence give Tenant written notice of its intention to and shall commence and continue to, remedy such default, act or omission. If Lender cannot reasonably remedy a default, act or omission of Landlord until after Lender obtains possession of the Premises, Tenant may not terminate or cancel the Lease or claim a partial or total eviction by reason of such default, act or omission

until the expiration of a reasonable period necessary for the remedy after Lender secures possession of the Premises. To the extent Lender incurs any expenses or other costs in curing or remedying such default, act or omission, including, without limitation, attorneys' fees and disbursements, Lender shall be subrogated to Tenant's rights against Landlord.

(C) Notwithstanding the foregoing, Lender shall have no obligation hereunder to remedy such default, act or omission.

6. To the extent that the Lease shall entitle Tenant to notice of the existence of any mortgage and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Lender.

7. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges and remedies of Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Lender were named therein as Landlord.

8. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor-Landlord shall acquire title to the Property or the portion thereof containing the Premises, Successor-Landlord shall have no obligation, nor incur any liability, beyond Successor-Landlord's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor-Landlord in the Property for the payment and discharge of any obligations imposed upon Successor-Landlord hereunder or under the Lease, and Successor-Landlord is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgement which may be obtained or secured by Tenant against Successor-Landlord, Tenant shall look solely to the estate or interest owned by Successor-Landlord in the Property, and Tenant will not collect or attempt to collect any such judgement out of any other assets of Successor-Landlord.

9. Notwithstanding anything to the contrary in the Lease, Tenant agrees for the benefit of Landlord and Lender that, except as permitted by, and fully in accordance with, applicable law, Tenant shall not generate, store, handle, discharge or maintain in, on or about any portion of the Property, any asbestos, polychlorinated biphenyls, or any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such (including, but not limited to, pesticides and petroleum products if they are defined, determined or identified as such) in any federal, state or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of any thereof, including any judicial or administrative interpretation of any thereof, including any judicial or administrative orders or judgments.

10. If the Lease provides that Tenant is entitled to expansion space, Successor-Landlord shall have no obligation nor any liability for failure to provide such expansion space if a prior landlord (including, without limitation, Landlord), by reason of a lease or leases entered into by such prior landlord with other tenants of the Property, has precluded the availability of such expansion space.

11. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.

12. (A) Tenant acknowledges and agrees that this Agreement satisfies and complies in all respects with the provisions of Article of the Lease and that this Agreement supersedes (but only to the extent inconsistent with) the provisions of such Article and any other provision of the Lease relating to the priority or subordination of the Lease and the interests or estates created thereby to the Security Instrument.

(B) Tenant agrees to enter into a subordination, non-disturbance and attornment agreement with any lender which shall succeed Lender as lender with respect to the Property, or any portion thereof, provided such agreement is substantially similar to this Agreement. Tenant does herewith irrevocably appoint and constitute Lender as its true and lawful attorney-in-fact in its name, place and stead to execute such subordination, non-disturbance and attornment agreement, without any obligation on the part of Lender to do so. This power, being coupled with an interest, shall be irrevocable as long as the Indebtedness secured by the Security Instrument remains unpaid. Lender agrees not to exercise its rights under the preceding two sentences if Tenant promptly enters into the subordination, non-disturbance and attornment agreement as required pursuant to the first sentence of this subparagraph (B).

13. (A) Any notice required or permitted to be given by Tenant to Landlord shall be simultaneously given also to Lender, and any right to Tenant dependent upon notice shall take effect only after notice is so given. Performance by Lender shall satisfy any conditions of the Lease requiring performance by Landlord, and Lender shall have a reasonable time to complete such performance as provided in Paragraph 5 hereof.

(B) All notices or other communications required or permitted to be given to Tenant or to Lender pursuant to the provisions of this Agreement shall be in writing and shall be deemed given only if mailed by United States registered mail, postage prepaid, or if sent by nationally recognized overnight delivery service (such as Federal Express or United States Postal Service Express Mail), addressed as follows: to Tenant, at the address first set forth above, Attention: _____; to Lender, at the address first set forth above, Attention:_____and General Counsel, with a copy to Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, New York 10281, Attention: Frederic L. Altschuler, Esq.; or to such other address or number as such party may hereafter designate by notice delivered in accordance herewith. All such notices shall be deemed given three (3) business days after delivery to the United States Post office registry clerk if given by registered mail, or on the next business day after delivery to an overnight delivery courier.

14. This Agreement may be modified only by an agreement in writing signed by the parties hereto, or their respective successors-in-interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The term "Lender" shall mean the then holder of the Security Instrument. The term "Landlord" shall mean the then holder of the landlord's interest in the Lease. The term " person" shall mean

an individual, joint venture, corporation, partnership, trust, limited liability company, unincorporated association or other entity. All references herein to the Lease shall mean the Lease as modified by this Agreement and to any amendments or modifications to the Lease which are consented to in writing by Lender. Any inconsistency between the Lease and the provisions of this Agreement shall be resolved, to the extent of such inconsistency, in favor of this Agreement.

15. Tenant hereby represents to Lender as follows:

(a) The Lease is in full force and effect and has not been further amended.

(b) There has been no assignment of the Lease or subletting of any portion of the premises demised under the Lease.

(c) There are no oral or written agreements or understandings between Landlord and Tenant relating to the premises demised under the Lease or the Lease transaction except as set forth in the Lease.

(d) The execution of the Lease was duly authorized and the Lease is in full force and effect and to the best of Tenant's knowledge there exists no default (beyond any applicable grace period) on the part of either Tenant or Landlord under the Lease.

(e) There has not been filed by or against nor to the best of the knowledge and belief of Tenant is there threatened against Tenant, any petition under the bankruptcy laws of the United States.

(f) To the best of Tenant's knowledge, there is no present assignment, hypothecation or pledge of the Lease or rents accruing under the Lease by Landlord, other than pursuant to the Security Instrument.

16. Whenever, from time to time, reasonably requested by Lender (but not more than three (3) times during any calendar year), Tenant shall execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications, in a form acceptable to Tenant, of all of the matters set forth in Paragraph 15 above, and any other information the Lender may reasonably require to confirm the current status of the Lease.

17. BOTH TENANT AND LENDER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

18. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation

By:_____
Name:
Title:

[TENANT]

By:_____
Name:
Title:

AGREED AND CONSENTED TO:

LANDLORD:

[ ]

By: _____
Name:
Title:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____ in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____ in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____ in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____ in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

SCHEDULE A

Legal Description of Property

K-11

EXHIBIT L

INTENTIONALLY DELETED

L-1

EXHIBIT M

COUNTERPARTY ACKNOWLEDGMENT

_____ (**Counterparty**) has entered into a Confirmation and Agreement (together with the confirmation and schedules relating thereto, collectively, the **Interest Rate Cap Agreement**), dated as of_____ 200__ , between the Counterparty Interest Rate Cap transaction with_____(**Borrower**). Attached hereto, is a true, correct and complete copy of the Interest Rate Cap Agreement. Counterparty acknowledges that it has been informed that Borrower, pursuant to a Loan and Security Agreement, dated_____(the **Loan Agreement**) has pledged and collaterally assigned its rights under the Interest Rate Cap Agreement to Citigroup Global Markets Realty Corp., a New York corporation (together with its successors and assigns, **Lender**). Counterparty hereby consents to such pledge and assignment and agrees that it will make any payments to become payable under or pursuant to the Interest Rate Cap Agreement directly to an account at_____entitled " _____f/b/o Citigroup Global Markets Realty Corp., as secured party, Collection Account" (Account Number_____), ABA #_____or to such other account designated in writing by Lender. Counterparty further agrees that all such payments shall be made without set-off, deduction, defense or counterclaim. Counterparty acknowledges that in the event it shall fail to make such payments directly to such account, it shall be deemed to have not made such payment pursuant to the Interest Rate Cap Agreement. Counterparty also agrees that it will not modify, amend or terminate the Interest Rate Cap Agreement without Lender's consent.

[_____]

By: _____
Name:
Title:

EXHIBIT N

INTENTIONALLY DELETED

N-1

EXHIBIT O

CERTIFICATE OF INDEPENDENT MANAGER/MEMBER/DIRECTOR*

THE UNDERSIGNED,_____, hereby certifies as follows:

I. I have been elected to serve as an independent member/manager/director and independent member/manager/director of_____, a_____limited liability company/corporation (the "Company"). [The Company's sole purpose is to serve as_____(the "Borrower")].

2. I am aware that under its Limited Liability Company Agreement/Articles of Incorporation and By Laws, the Company is required to have at least two so-called ["Independent Managers " and "Independent Members"]["Independent Directors"].

3. I hereby certify that I am aware of the definition of and requirement for [Independent Managers and Independent Members] [Independent Directors] as set forth in the [Limited Liability Company Agreement][Articles of Incorporation and By Laws] of the Company, including but not limited to, the requirement that when voting on a matter put to the vote of [the membership or board of managers] [board of directors], that notwithstanding that the Company [or the Borrower] may be insolvent, an Independent Manager/Independent Director shall, to the extent permitted by law, take into account the interest of the creditors of the Company [and the Borrower] as well as the interest of the Company [and the Borrower]. As an [Independent Manager and Independent Member] [Independent Director] of the Company, I will vote in accordance with my fiduciary duties under applicable law.

4. I hereby certify that I meet the requirements of [an Independent Manager and Independent Member as set forth in the Operating Agreement] [an Independent Director as set forth in the Articles of Incorporation and the By Laws].

* Following are contacts for independent directors/managers/members appointed by borrowers on prior transaction:

CT Corporation System
Attention: Corporate Staffing Division
The Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801
Attention: Domenic Borriello
Telephone: (302) 777-0240

Mark A. Ferrucci (no longer employed by CT Corporation System)
212 Mangum Drive
Bear, DE 19701
(302) 836-9162 (telephone)
(302) 8376-836-9182 (fax)

5. I certify that, subject to my fiduciary duties as an [Independent Manager and Independent Member][Independent Director], it is my intention as a so-called [" Independent Manager" and "Independent Member"] ["Independent Director"] to take into account, to the extent permitted by law, the interest of all creditors of the Company [and the Borrower] as well as the Company [and the Borrower] in fulfilling my duties as an [Independent Manager and Independent Member][Independent Director] of the Company.

6. I understand that Citigroup Global Markets Realty Corp. and its successors, participants, transferees and assigns, will rely on this Certificate in conjunction with loans to be made to the Borrower.

Executed as of this day of , 200 .

Print Name:

EXHIBIT P

INTENTIONALLY OMITTED

P-1

EXHIBIT Q

FORM OF TRADEMARK SECURITY AGREEMENT

TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT (this "Agreement"), dated as of December__ , 2003, is entered into between [_____], a Delaware corporation (**Assignor**), having an office at [_____], to CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation (together with its successors and assigns, **Assignee**), having an address at 388 Greenwich Street, New York, New York 10013. Capitalized terms not otherwise defined herein have the meanings set forth in the Loan and Security Agreement, dated of even date herewith, between Assignor and Assignee.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and the Assignee hereby agree as follows:

1. Grant of Security Interest . Assignor hereby pledges, assigns, transfers, delivers and grants to Assignee a security interest in, and continuing lien on, all of Assignor's right, title, and interest into, and under the following, in each case, whether now owned or existing, or hereafter acquired or arising, and whenever located (all of which being hereafter referred to as the "Trademarks Collateral") as security for payment of all sums due in respect of the Loan and the performance of all other terms, conditions and covenants of this Agreement and any other Loan Document on Borrower's part to be paid and performed:

all United States, state and foreign trademarks, service marks, certification marks, collective marks, trade names, corporate names, d/b/as, business names, fictitious business names, internet domain names, trade styles, logos, other source or business identifiers, designs and general intangibles of a like nature, rights of publicity and privacy pertaining to the names, likeness, signature and biographical data of natural persons, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, but not limited to, the registrations and applications referred to in **Schedule A** hereto, (ii) the goodwill of the business symbolized thereby, (iii) all rights corresponding thereto throughout the world, (iv) all rights to sue for past, present and future infringement or dilution thereof or for any injury to goodwill, (v) all licenses, claims, damages, and proceeds of suit arising therefrom, and (vi) all payments and rights to payments arising out of the sale, lease, license assignment or other disposition thereof.

2. Representations and Warranties . Assignor hereby represents and warrants to Assignee that:

(a) Upon the filing of a UCC financing statements naming the Assignor as "debtor" and the Assignee as "secured party" and describing the Trademark Collateral in the Delaware Secretary of State's Office and the recording of the Trademark Security Agreement in the form set forth in Exhibit Q in the U.S. Patent and Trademark Office within three (3) months of the date hereof, against the Trademarks, registrations, and applications included in the Trademark Collateral, the security interests granted to the Assignee hereunder constitute valid and perfected first priority Liens;

(b) Schedule A sets forth a true and complete list of all United States, states registrations of and applications for Trademarks owned by Assignor; and

(c) Assignor it is the sole and exclusive owner of the entire right, title, and interest in and to all Trademarks on Schedule A, free and clear of all Liens, claims, encumbrances and material licenses, granted by Assignor.

3. Covenants and Agreements . Assignor hereby covenants and agrees as follows:

(a) Assignor shall not do any act or omit to do any act whereby any of the Trademarks may lapse, or become abandoned, dedicated to the public, or unenforceable.

(b) upon written demand from the Assignee, Assignor shall assign, convey or otherwise transfer to the Assignee all of Assignor's right, title and interest in and to the Trademarks and shall execute and deliver to the Assignee such documents as are necessary to effectuate and record such assignment, conveyance, or transfer of, or other evidence of foreclosure upon, such Trademarks;

(c) in the event of any assignment, conveyance or other transfer of any of the Trademarks, the goodwill symbolized by any such Trademarks shall be included in such sale or transfer.

4. Termination of Agreement . When the Obligations have been paid in full, and the commitments and any other contingent obligations included in the Obligations have been cancelled or terminated, the security interest and continuing lien granted hereby shall terminate, and all rights, title, and interest in, to, and under the Trademark Collateral shall revert and be deemed reassigned to Assignor. Upon any such termination, the Assignor shall, at the Assignee's request and expense, execute and deliver to Assignor such documents as Assignor shall reasonably request to evidence such termination, reversion and/or reassignment, without recourse, representation, or warranty of any kind.

5. Remedies . The remedies set forth in Sections 9.6 through 9.9 of the Loan Agreement with respect to the Rate Cap Collateral are incorporated herein by reference with respect to the Trademark Collateral as if restated herein in full.

6. Governing Law . **THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN A DIFFERENT GOVERNING LAW.**

7. Counterparts . This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have caused this TRADEMARK SECURITY AGREEMENT to be duly executed and delivered by their respective officers duly authorized as of the date first above written.

[_____], a Delaware corporation

By: _____
Name:
Title:

CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation

By: _____
Name:
Title:

[FOR ASSIGNOR ONLY]

STATE OF)
) ss:
COUNTY OF)

On December___ , 2003 before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal]

My commission expires:

SCHEDULE A
TO TRADEMARK
SECURITY AGREEMENT

TRADEMARKS

MARK	APP. NO.	FILING DATE	REGIST. NO.	REG. DATE	JURISDICTION	STATUS

EXHIBIT R

ARTICLE 8 "OPT IN" LANGUAGE

Section ___ . Shares and Share Certificates

a. Shares . A [Member's limited liability company interest in the Company] [Partner's limited partnership interest in the Partnership] shall be represented by the Shares issued to such [Member by the Company] [Partner of the Partnership]. All of a [Member's][Partner's] Shares, in the aggregate, represent such [Member's] [Partner's] entire [Partner by the Partnership] [limited liability company interest in the Company [limited partnership interest in the Partnership]. The [Member][Partner] hereby agrees that its interest in the [Company] [Partnership] and in its Shares shall for all purposes be personal property. A [Member] [Partner] has no interest in specific [Company] [Partnership] property. "Share" means a [limited liability company interest][limited partnership interest] in the [Company] [Partnership] held by a [Member] [Partner].

b. Share Certificates .

i. Upon the issuance of Shares to any [Member] [Partner] in accordance with the provisions of this Agreement, the [Company][Partnership] shall issue one or more Share Certificates in the name of such [Member][Partner]. Each such Share Certificate shall be denominated in terms of the number of Shares evidenced by such Share Certificate and shall be signed by the [Member] [Partner] on behalf of the [Company] [Partnership]. "Share Certificate" means a non-negotiable certificate issued by the [Company] [Partnership] substantially in the form of Schedule hereto, which evidences the ownership of one or more Shares. Each Share Certificate shall bear the following legend: "This certificate evidences an interest in _____ and shall be a security interest for purposes of Article 8 of the Uniform commercial Code of the State of Delaware and the Uniform Commercial Code of any other Jurisdiction." This provision shall not be amended, and no such purported amendment to this provision shall be effective until all outstanding certificates have been surrendered for cancellation.

ii. The [Company] [Partnership] shall issue a new Share Certificate in place of any Share Certificate previously issued if the holder of the Shares represented by such Share Certificate, as reflected on the books and records of the [Company] [Partnership].

(1) makes proof by affidavit, in form and substance satisfactory to the [Company] [Partnership], that such previously issued Share Certificate has been lost, stolen or destroyed.

(2) requests the issuance of a new Share Certificate before the [Company] [Partnership] has notice that such previously issued Share Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(3) if requested by the [Company] [Partnership], delivers to the [Company][Partnership] a bond, in form and substance satisfactory to the [Company] [Partnership], with such surety or sureties as the [Company] [Partnership] may direct, to indemnify the [Company] [Partnership] against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Share Certificate; and

(4) satisfies any other reasonable requirements imposed by the [Company] [Partnership].

iii. Subject to the restrictions set forth in [describe Loan Agreement/Mezzanine Loan Agreement restrictions] upon a [Member's] [Partner's]'s Transfer in accordance with the provisions of this Agreement of any or all Shares represented by a Share Certificate, the Transferee of such Shares shall deliver such Share Certificate to the [Company] [Partnership] for cancellation, and the [Company] [Partnership] shall thereupon issue a new Share Certificate to such Transferee for the number of Shares being Transferred and, if applicable, cause to be issued to such [Member][Partner] a new Share Certificate for that number of Shares that were represented by the canceled Share Certificate and that are not being Transferred. "Transfer" means, with respect to any Shares, and when used as a verb, to sell or assign such Shares, and, when used as a noun, shall have a meaning that correlates to the foregoing. "Transferee" means an assignee or transferee. "Transferor" means the Person making a Transfer.

c. Free Transferability . Except as limited by the [describe Loan Agreement/Mezzanine Loan Agreement restrictions], to the fullest extent permitted by the Act, any [Member] [Partner] may, at any time or from time to time, without the consent of any other Person, Transfer, pledge or encumber any or all of its Shares. Subject to the restrictions of the [describe Loan Agreement/Mezzanine Loan Agreement restrictions], the Transferee of any Shares shall be admitted to the [Company] [Partnership] as a substitute member of the [Company] [Partnership] on the effective date of such Transfer upon (i) such Transferee's written acceptance of the terms and provisions of this Agreement and its written assumption of the obligations hereunder of the Transferor of such Shares, which shall be evidenced by such Transferee's execution and delivery to the [Company] [Partnership] of an Application for Transfer of Shares on the reverse side of the Share Certificate representing the Shares being transferred, and (ii) the recording of such Transferee's name as a Substitute [Member] [Partner] on the books and records of the [Company] [Partnership]. Any Transfer of any Shares pursuant to this Section shall be effective as of the later of (i) the close of business on the day on which such Transfer occurs, or (ii) the effective date and time of such Transfer that is designated in the Application for Transfer of Shares delivered by the Transferee to the [Company] [Partnership].

SCHEDULE I

LITIGATION SCHEDULE

Plaintiff(s)	Defendant(s)	Date of Incident
Louie & Vensa Ajic and Joe & Pamela Sparks	CP Hotels (US) 1998 Inc.	December 2001
Equal Employment Opportunity Commission (Re: Amy Ferrin)	CP Hotels (US) 1998 Inc. FHRUSI	May 29, 2003
Dorothy Halbrecht	Fairmont Scottsdale Princess Hotel	November 28, 2002
Duncan & Elaine Owles	FHRI, dba The Fairmont Scottsdale Princess Hotel	March 11, 2005
Laura Simon & Jack Simon	CP Hotels Inc. dba the Fairmont Scottsdale Princess, et al.	February 20, 2004

SCHEDULE II

LIST OF EXCHANGE DOCUMENTS

1) X(SHR) EXCHANGE AGT. & DOCS

2) Y(SHR) EXCHANGE AGT. & DOCS

3) Y(CIMS) EXCHANGE AGT. & DOCS

4) Z(SHR) EXCHANGE AGT. & DOCS

SCHEDULE III

PRE-APPROVED TRANSFEREES

Strategic Hotel Funding, Inc.
Bass PLC
CNL Hotels & Resorts, Inc.
KSL II Management Operations, LLC/KSL Recreation Corp.
Kohlberg Kravis Roberts & Co.
Hilton Hotels Corporation
FelCor Lodging Trust, Inc.
Rosewood Hotels & Resorts
Whitehall Street Real Estate Limited Partnership Funds
Host Marriott Corporation
Hilton Group, PLC
Fairmont Hotels & Resorts
Four Seasons Hotel Inc.
The Blackstone Group, LP
Millennium and Copthorne Hotels, PLC
MeriStar Hotels
LaSalle Hotel Properties
Marriott International, Inc.
Starwood Hotels and Resorts Worldwide, Inc.
Government of Singapore Investment Corporation
Maritz Wolf LLC)
HRH Prince Alwaleed Bin Talal Bin Abdulaziz Al Saud)
Six Continents
Morgan Stanley Real Estate Fund (MSREF)
Walton Street Real Estate Fund
The Carlyle Group Real Estate Fund
Lehman Brothers Real Estate Fund
The Equitable Life Assurance and Annuity Association
Orient Express
Accor
Benchmark Hospitality)
NH Hotels
Mandarin
Peninsula
Raffles
Shangrila
Hyatt
Strategic Hotel Capital
Boca Resorts
Vail Reports)
Destination Resorts
Westbrook Real Estate Fund

Lowe Hospitality
State of Ohio Pension Fund
Highland Hospitality

Schedule III-2

SCHEDULE IV

PRE-APPROVED MANAGERS

KSL or any Affiliate
One & Only / Kerzner
Gaylord Entertainment
Loews Hotels
Hilton Hotels Corporation
Hilton Group, PLC
Fairmont Hotels & Resorts
Millennium and Copthorne Hotels, PLC
Marriott International, Inc.
Four Seasons Hotels, Inc.
Six Continents
Orient Express
Mandarin
Peninsula
Raffles
Shangri-La
Hyatt
Omni
Boca Resorts
Destination Resorts
Lowe Hospitality
Montage Hotels
Intercontinental Hotel Group

SCHEDULE V

RELEASE PARCELS AND RELEASE PRICES

Parcels (being the Parcels more particularly described in Exhibit A to the Security Instrument)	**Release Price**
1. Parcel 1 (Main Resort)	N/A
2. Parcel 2 (Casita Site)	$49,574,283
3. Parcel 3 (Villa Site)	$31,329,279
4. Parcel 4 (Northeast Parking)	$ 2,293,658
5. Parcel 5 (North Parking)	$ 1,668,115
6. Parcel 6 (North Parking)	$ 886,186

SCHEDULE VI

INTENTIONALLY DELETED

Schedule VI-1

SCHEDULE VII

INTENTIONALLY DELETED

Schedule VII-1

Exhibit 10.82

LOAN AND SECURITY AGREEMENT

Dated as of October 6, 2006

Between

SHC MICHIGAN AVENUE, LLC
as Borrower

and

CITIGROUP GLOBAL MARKETS REALTY CORP.,
as Lender

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SCHEDULE VI	INTENTIONALLY DELETED
SCHEDULE VII	INTENTIONALLY DELETED

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT dated as of October 6, 2006 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement** "), between SHC MICHIGAN AVENUE, LLC, a Delaware limited liability company, (the "**Borrower**") having an office at c/o Strategic Hotel Funding, L.L.C., 77 West Wacker Drive, Suite 4600, Chicago, Illinois 60601, and CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation, having an address at 388 Greenwich Street, New York, New York 10013 (together with its successors and assigns, "**Lender**").

W I T N E S S E T H :

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW, THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions . For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"**Acceptable Counterparty**" shall mean a bank or other financial institution which has a long-term unsecured debt or counterparty rating of "AA-" (long term) and "A-1+" (short term) or higher by S&P and its equivalent by Moody's and, if the counterparty is rated by Fitch, by Fitch.

"**Acceptable Management Agreement**" shall mean, with respect to the Property, a new or amended management agreement with the Manager which agreement (as applicable) shall be upon terms and conditions entered into by Borrower, Operating Lessee, and/or Manager with respect to the Property in accordance with the terms of Section 5.2.14 hereof.

"**Acceptable Manager** " shall mean (i) the current Manager as of the Closing Date or any wholly-owned Affiliate (whether direct or indirect) of said current Manager, (ii) at any time after the Closing Date, any Pre-approved Manager listed on **Schedule IV** hereto, provided each such property manager continues to be Controlled by substantially the same Persons Controlling such property manager as of the Closing Date (or if such Manager is a publicly traded company, such Manager continues to be publicly traded on an established securities market), (iii) any other hotel management company that manages a system of at least six (6) hotels or resorts of a class and quality of at least as comparable to the Property (as reasonably

determined by Manager and Operating Lessee; provided , however , Operating Lessee shall obtain Lender's prior approval of such determination, not to be unreasonably withheld) and containing not fewer than 1,500 hotel rooms in the aggregate (including hotel/condominium units under management) in the aggregate, (iv) any Close Affiliate of any of the foregoing Persons or (v) any other reputable and experienced professional hotel management company with respect to which a Rating Agency Confirmation has been obtained.

"**Accommodation Security Documents**" shall mean the Security Instrument, the Assignment of Leases and UCC-1 Financing Statements which have been executed by Borrower and Operating Lessee in favor of Lender to secure Borrower's obligations under the Loan Documents.

"**Account Agreement** " shall mean the Account and Control Agreement, dated the date hereof, among Lender, Borrower and Cash Management Bank.

"**Account Collateral** " shall have the meaning set forth in Section 3.1.2 .

"**Acknowledgment**" shall mean the Acknowledgment, dated on or about the date hereof made by Counterparty, or as applicable, Acceptable Counterparty in the form of **Exhibit M** .

"**Additional Non-Consolidation Opinion**" shall have the meaning set forth in Section 4.1.29(b) .

"**Affiliate**" shall mean, with respect to any specified Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with, or any general partner or managing member in, such specified Person.

"**Agreement**" shall mean this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**ALTA** "shall mean American Land Title Association, or any successor thereto.

"**Alteration**" shall mean any demolition, alteration, installation, improvement or decoration of or to the Property or any part thereof or the Improvements (including FF&E) thereon (other than any of the foregoing that (i) is permitted to be done and actually is done by or on behalf of the Manager without the consent of the Borrower (it being the intent of the parties that for this purpose amounts expended by Manager in respect of FF&E in the ordinary course of business from amounts reserved for FF&E under the Management Agreement shall be deemed not to be an Alteration), or (ii) is paid for out of any reserve account described in Article XVI.

"**Approved Bank** " shall have the meaning set forth in the Account Agreement.

"**Assignment and Acceptance**" shall mean an assignment and acceptance entered into by Lender and an assignee, and accepted by Lender in accordance with Article XV and in substantially the form of **Exhibit J** or such other form customarily used by Lender in connection with the participation or syndication of mortgage loans at the time of such assignment.

"**Assignment of Leases** " shall mean that certain first priority Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated as of the date hereof, from Borrower and Operating Lessee, as assignor, to Lender, as assignee, assigning to Lender all of Borrower's and Operating Lessee's interest in and to the Leases, Rents, Hotel Revenue and Security Deposits as security for the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Bankruptcy Code** " shall mean Title 11, U.S.C.A., as amended from time to time and any successor statute thereto.

"**Beneficial**" when used in the context of beneficial ownership has the analogous meaning to that specified in Rule 13d-3 under the Securities Exchange Act of 1934, as amended.

"**Best of Borrower's Knowledge**", shall mean the actual (as opposed to imputed or constructive) present knowledge of: Cory Warning and Ryan Bowie after due inquiry, and without creating any personal liability on the part of any said individuals. In the case where the term "Best of Borrower's Knowledge" is used in the context of representations or warranties of Borrower to be made after the date hereof, the term shall include the Person or Persons, as applicable, that occupy the capacities of said individuals on the date such representation or warranty to the extent that one or more of such individuals no longer occupy their current capacities.

"**Borrower**" has the meaning set forth in the first paragraph of this Agreement.

"**Borrower's Account**" shall mean an account with any Person subsequently identified in a written notice from Borrower to Lender, which Borrower's Account shall be under the sole dominion and control of Borrower.

"**Budget**" shall mean the operating budget for the Property prepared by Manager on Borrower's behalf, pursuant to the Management Agreement, for the applicable Fiscal Year or other period setting forth, in reasonable detail, Manager's estimates, consistent with the Management Agreement, of the anticipated results of operations of the Property, including revenues from all sources, all Operating Expenses, Management Fees and Capital Expenditures.

"**Building Equipment**" shall have the meaning set forth in the Security Instrument.

"**Business Day** " shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, Illinois or in the state in which Servicer is located are not open for business. When used with respect to an Interest Determination Date, Business Day shall mean any day on which dealings in deposits in U.S. Dollars are transacted in the London interbank market.

"**Capital Expenditures** " shall mean any amount incurred in respect of capital items which in accordance with GAAP would not be included in Borrower's annual financial statements for an applicable period as an operating expense of the Property.

"**Cash**" shall mean the legal tender of the United States of America.

"**Cash and Cash Equivalents**" shall mean any one or a combination of the following: (i) Cash, and (ii) U.S. Government Obligations.

"**Cash Management Bank** " shall mean LaSalle Bank National Association or any successor Approved Bank acting as Cash Management Bank under the Account Agreement or other financial institution approved by the Lender and, if a Securitization has occurred, the Rating Agencies.

"**Casualty**" shall mean a fire, explosion, flood, collapse, earthquake or other casualty affecting the Property.

"**CGM**" shall have the meaning set forth in Section 14.4.2(b) .

"**CGM Group**" shall have the meaning set forth in Section 14.4.2(b) .

"**Close Affiliate** " shall mean with respect to any Person (the "First Person") any other Person (each, a "Second Person") which is an Affiliate of the First Person and in respect of which any of the following are true: (a) the Second Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in such First Person, (b) the First Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in such Second Person, or (c) a third Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in both the First Person and the Second Person.

"**Closing Date**" shall mean the date of this Agreement set forth in the first paragraph hereof.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"**Collateral Accounts**" shall have the meaning set forth in Section 3.1.1 .

"**Collection Account** " shall have the meaning set forth in Section 3.1.1 .

"**Condemnation**" shall mean a taking or voluntary conveyance during the term hereof of all or any part of the Property or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority, whether or not the same shall have actually been commenced.

"**Consumer Price Index** " or "**CPI**" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York – Northern New Jersey – Long Island, NY – NJ – CT – PA; All Items; 1982-84 = 100. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made by Lender in the revised index which would produce results equivalent, as nearly as possible, to those which would be obtained if the CPI had not been so revised. If the CPI becomes unavailable to the public because publication is

discontinued, or otherwise, Lender shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by any other governmental agency reasonably acceptable to Borrower or, if no such index is available, then, subject to reasonable approval of Borrower, a comparable index published by a major bank, other financial institution, university or recognized financial publication shall be substituted.

"**CPI Increase**" shall mean the relevant figure multiplied by a fraction, the numerator of which shall be the CPI on each anniversary of the Closing Date and the denominator of which shall be the CPI on the Closing Date, which CPI Increase is calculated on each anniversary of the Closing Date.

"**Control**" shall mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise and (ii) the ownership, direct or indirect, of no less than 51% of the voting securities of such Person, and the terms Controlled, Controlling and Common Control shall have correlative meanings.

"**Counterparty** " shall mean the counterparty to the Interest Rate Cap Agreement and any counterparty under a Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement and, if applicable, any credit support provider identified in the Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement.

"**Counterparty Opinion** " shall have the meaning set forth in Section 9.3(f) .

"**Current Debt Service Reserve Account**" shall have the meaning set forth in Section 3.1.1 .

"**Debt**" shall mean, with respect to any Person at any time, (a) indebtedness or liability of such Person for borrowed money whether or not evidenced by bonds, debentures, notes or other instruments, or for the deferred purchase price of property or services; (b) obligations of such Person as lessee under leases which should have been or should be, in accordance with GAAP, recorded as capital leases; (c) current liabilities of such Person in respect of unfunded vested benefits under plans covered by Title IV of ERISA; (d) obligations issued for, or liabilities incurred on the account of, such Person; (e) obligations or liabilities of such Person arising under letters of credit, credit facilities or other acceptance facilities; (f) obligations of such Person under any guarantees or other agreement to become secondarily liable for any obligation of any other Person, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss; (g) obligations of such Person secured by any Lien on any property of such Person, whether or not the obligations have been assumed by such Person; or (h) obligations of such Person under any interest rate or currency exchange agreement.

"**Debt Service** " shall mean, with respect to any particular period of time, scheduled interest payments under the Note.

"**Default**" shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

"**Default Rate** " shall have the meaning set forth in the Note.

"**Disclosure Documents** " shall have the meaning set forth in Section 14.4.1 .

"**Disqualified Transferee**" shall mean any Person or its Close Affiliate that, (i) has (within the past five (5) years) defaulted, or is now in default, beyond any applicable cure period, of its material obligations, under any material written agreement with Lender, any Affiliate of Lender, or, unless approved by the Rating Agencies, any other financial institution or other person providing or arranging financing; (ii) has been convicted in a criminal proceeding for a felony or a crime involving moral turpitude or that is an organized crime figure or is reputed (as determined by Lender in its sole discretion) to have substantial business or other affiliations with an organized crime figure; (iii) has at any time filed a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (iv) as to which an involuntary petition (which was not subsequently dismissed within one hundred twenty (120) days) has at any time been filed under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (v) has at any time filed an answer consenting to or acquiescing in any involuntary petition filed against it by any other person under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (vi) has at any time consented to or acquiesced in or joined in an application for the appointment of a custodian, receiver, trustee or examiner for itself or any of its property; (vii) has at any time made an assignment for the benefit of creditors, or has at any time admitted its insolvency or inability to pay its debts as they become due; or (viii) has been found by a court of competent jurisdiction or other governmental authority in a comparable proceeding to have violated any federal or state securities laws or regulations promulgated thereunder.

"**Downgrade**" shall have the meaning as set forth in Section 9.3(c) hereof.

"**DSCR**" shall mean, with respect to a particular period, the ratio of Net Operating Income to the aggregate amount of Debt Service that is payable in respect of such period, as computed by Lender from time to time pursuant to the terms hereof, using in all cases, an assumed loan constant (instead of actual debt service payable under such loan) per annum equal to the strike price of the Interest Rate Cap Agreement in effect on the date of such determination (which constant shall be calculated at all times using an actual/360 accrual convention). If no such period is specified, then the period shall be deemed to be the immediately preceding four (4) Fiscal Quarters.

"**Eligible Account** " has the meaning set forth in the Account Agreement.

"**Eligible Collateral** " shall mean U.S. Government Obligations, Letters of Credit or Cash and Cash Equivalents, or any combination thereof.

"**Environmental Certificate**" shall have the meaning set forth in Section 12.2.1 .

"**Environmental Claim** " shall mean any claim, action, cause of action, investigation or written notice by any Person alleging potential liability (including potential liability for investigatory costs, cleanup costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based upon or resulting from (a) the presence, threatened presence, release or threatened release into the environment of any Hazardous Materials from or at the Property, or (b) the violation, or alleged violation, of any Environmental Law relating to the Property.

"**Environmental Event** " shall have the meaning set forth in Section 12.2.1 .

"**Environmental Indemnity**" shall mean the Environmental Indemnity, dated the date hereof, made by Sponsor in favor of Lender.

"**Environmental Law** " shall have the meaning provided in the Environmental Indemnity.

"**Environmental Reports** " shall have the meaning set forth in Section 12.1 .

"**ERISA**" shall mean the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

"**Event of Default** " shall have the meaning set forth in Section 17.1(a) .

"**Excess Cash Flow**" shall have the meaning set forth in Section 3.1.5 .

"**Exchange Act**" shall have the meaning set forth in Section 14.4.1 .

"**Exculpated Parties** " shall have the meaning set forth in Section 18.1.1 .

"**Excusable Delay** " shall mean a delay due to acts of god, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Borrower, but Borrower's lack of funds in and of itself shall not be deemed a cause beyond the control of Borrower.

"**Expansion**" shall mean any expansion or reduction of the Property or any portion thereof or the Improvements thereon.

"**Extension Interest Rate Cap Agreement**" shall mean, following the Borrower's exercise of its option to extend the Maturity Date pursuant to Section 5 of the Note, an Interest Rate Cap Agreement or Agreements (together with the confirmations and schedules relating thereto), each from an Acceptable Counterparty and satisfying the requirements set forth on **Exhibit I** hereto; provided that, to the extent any such interest rate cap agreement does not meet the foregoing requirements, an "Extension Interest Rate Cap Agreement" shall be such interest rate cap agreement as may be approved by each of the Rating Agencies (such approval to be evidenced by the receipt of a Rating Agency Confirmation).

"**FF&E**" shall mean furniture, fixtures and equipment of the type customarily utilized in hotel properties in Illinois similar to the Property.

"**FF&E Reserve Account**" shall have the meaning set forth in Section 3.1.1 .

"**Final Completion** " shall mean, with respect to any specified work, the final completion of all such work, including the performance of all "punch list" items, as confirmed by an Officer's Certificate and, with respect to any Material Alteration or Material Expansion, a certificate of the Independent Architect, if applicable.

"**Fiscal Quarter** " shall mean each quarter within a Fiscal Year in accordance with GAAP.

"**Fiscal Year**" shall mean the period commencing on the Closing Date and ending on and including December 31 of the calendar year in which the Closing Date occurs and thereafter each twelve month period commencing on January 1 and ending on December 31 until the Debt is repaid in full, or such other common fiscal year of Borrower as Borrower may select from time to time with the prior consent of Lender, such consent not to be unreasonably withheld.

"**Fitch**" shall mean Fitch Ratings Inc.

"**GAAP**" shall mean the generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination, as appropriately modified by the Uniform System.

"**Gift Shop Lease** " shall mean the Lease Agreement, dated August 1999, by and between CIMS Limited Partnership d/b/a Hotel InterContinental Chicago and WH Smith Hotels Stores, as assigned to TravelTraders, LLC as of November 17, 2003.

"**Governmental Authority** " shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"**Group Services Fee** " shall mean the expenses payable to Manager or any Affiliate as permitted under Article 7 of the Management Agreement or any similar provision in a replacement Management Agreement.

"**Hazardous Materials** " shall have the meaning provided in the Environmental Indemnity.

"**Holding Account**" shall have the meaning set forth in Section 3.1.1 .

"**Hotel Revenue**" shall mean all revenues, income, Rents, issues, profits, termination or surrender fees, penalties and other amounts arising from the use or enjoyment of all or any portion of the Property, including, without limitation, the rental or surrender of any office space, retail space, parking space, halls, stores, and offices of every kind, the rental or licensing of signs, sign space or advertising space and all membership fees and dues, rentals, revenues, receipts, income, accounts, accounts receivable, cancellation fees, penalties, credit card receipts and other receivables relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, conference and banquet rooms, food and beverage facilities, health clubs, spas, vending machines, parking facilities, telecommunication and television systems, guest laundry, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System.

"**Impositions**" shall mean all taxes (including all ad valorem, sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible transaction, privilege or license or similar taxes), governmental assessments (including all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not commenced or completed within the term of this Agreement), water, sewer or other rents and charges, excises, levies, fees (including license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Property and/or any Rents and Hotel Revenue (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a Lien upon (a) Borrower (including all income, franchise, single business or other taxes imposed on Borrower for the privilege of doing business in the jurisdiction in which the Property is located), (b) the Property, or any other collateral delivered or pledged to Lender in connection with the Loan, or any part thereof, or any Rents or Hotel Revenue therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Property or the leasing or use of all or any part thereof. Nothing contained in this Agreement shall be construed to require Borrower to pay any tax, assessment, levy or charge imposed on (i) any tenant occupying any portion of the Property, (ii) any manager of the Property, including any Manager, or (iii) Servicer, Lender or any other third party in the nature of a capital levy, estate, inheritance, succession, income or net revenue tax.

"**Improvements**" shall have the meaning set forth in the Security Instrument.

"**Increased Costs** " shall have the meaning set forth in Section 2.4.1 .

"**Indebtedness**" shall mean, at any given time, the Principal Amount, together with all accrued and unpaid interest thereon and all other obligations and liabilities due or to become due to Lender pursuant hereto, under the Note or in accordance with the other Loan Documents and all other amounts, sums and expenses paid by or payable to Lender hereunder or pursuant to the Note or the other Loan Documents.

"**Indemnified Parties** " shall have the meaning set forth in Section 19.12(b) .

"**Independent**" shall mean, when used with respect to any Person, a Person who: (i) does not have any direct financial interest or any material indirect financial interest in Borrower or in any Affiliate of Borrower, (ii) is not connected with Borrower or any Affiliate of Borrower as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, supplier, customer or person performing similar functions and (iii) is not a member of the immediate family of a Person defined in (i) or (ii) above.

"**Independent Architect**" shall mean an architect, engineer or construction consultant selected by Borrower which is Independent, licensed to practice in the State and has at least five (5) years of architectural experience and which is reasonably acceptable to Lender.

"**Independent Director** ", "**Independent Manager**", or "**Independent Member** " shall mean a Person who is not and will not be while serving and has never been (i) a member (other than an Independent Member), manager (other than an Independent Manager), director, (other than an Independent Director), employee, attorney, or counsel of Borrower or its Affiliates, (ii) in the seven (7) years prior to the Closing Date, a customer, supplier or other Person who derives more than 1% of its purchases or revenues from its activities with Borrower or its Affiliates, (iii) a direct or indirect legal or beneficial owner in such entity or any of its Affiliates, (iv) a member of the immediate family of any member, manager, employee, attorney, customer, supplier or other Person referred to above, or (v) a person Controlling or under the common Control of anyone listed in (i) through (iv) above. A Person that otherwise satisfies the foregoing shall not be disqualified from serving as an Independent Director or Independent Manager or Independent Member if such individual is at the time of initial appointment, or at any time while serving as such, is an Independent Director or Independent Manager or Independent Member, as applicable, of a Single Purpose Entity affiliated with Borrower.

"**Insurance Requirements**" shall mean, collectively, (i) all material terms of any insurance policy required pursuant to this Agreement and (ii) all material regulations and then-current standards applicable to or affecting the Property or any part thereof or any use or condition thereof, which may, at any time, be recommended by the Board of Fire Underwriters, if any, having jurisdiction over the Property, or such other body exercising similar functions.

"**Insurance Reserve Account**" shall have the meaning set forth in Section 3.1.1(b) .

"**Insurance Reserve Amount**" shall have the meaning set forth in Section 16.2 .

"**Insurance Reserve Trigger**" shall mean Borrower's failure to deliver to Lender not less than five Business Days prior to each Payment Date (unless the prior notice to Lender provided evidence reasonably satisfactory to Lender that Borrower had prepaid such insurance premiums through a future Payment Date), evidence that all insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement have been paid in full.

"**Intangible**" shall have the meaning set forth in the Security Instrument.

"**Interest Determination Date**" shall have the meaning set forth in the Note.

"**Interest Period** " shall have the meaning set forth in the Note.

"**Interest Rate Cap Agreement**" shall mean an Interest Rate Agreement or Agreements (together with the confirmation and schedules relating thereto), or, with Lender's prior written consent (which shall not be unreasonably withheld, delayed or conditioned), a swap or other interest rate hedging instrument, each between a Counterparty and Borrower obtained by Borrower and collaterally assigned to Lender pursuant to this Agreement, and each satisfying the requirements set forth in **Exhibit I** and, in the case of a swap or other interest rate hedging agreement consented to by Lender, any additional requirements of the Rating Agencies).

"**Land**" shall have the meaning set forth in the Security Instrument.

"**Late Payment Charge** " shall have the meaning set forth in Section 2.2.3 .

"**Lease**" shall mean any lease (other than the Operating Lease), sublease or subsublease, letting, license, concession, or other agreement (whether written or oral and whether now or hereafter in effect) (excluding club membership programs now or hereafter in effect entitling Persons to preferential access to the Property) pursuant to which any Person is granted by the Borrower or Operating Lessee a possessory interest in, or right to use or occupy all or any portion of any space in the Property or any facilities at the Property (other than typical short-term occupancy rights of hotel guests which are not the subject of a written agreement), and every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"**Lease Modification** " shall have the meaning set forth in Section 8.8.1 .

"**Legal Requirements** " shall mean all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, and irrespective of the nature of the work to be done, of every Governmental Authority including, without limitation, Environmental Laws and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Borrower or to the Property and the Improvements and the Building Equipment thereon, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Property and the Improvements and the Building Equipment thereon including, without limitation, building and zoning codes and ordinances and laws relating to handicapped accessibility.

"**Lender**" shall have the meaning set forth in the first paragraph of this Agreement.

"**Letter of Credit** " shall mean an irrevocable, unconditional, transferable (without the imposition of any fee except any fees which are expressly payable by the Borrower), clean sight draft letter of credit (either an evergreen letter of credit or one which does not expire until at least sixty (60) days after the Maturity Date (the "**LC Expiration Date**"), in favor of Lender and entitling Lender to draw thereon in New York, New York, based solely on a statement executed by an officer or authorized signatory of Lender and issued by an Approved Bank. If at any time (a) the institution issuing any such Letter of Credit shall cease to be an

Approved Bank or (b) the Letter of Credit is due to expire prior to the LC Expiration Date, Lender shall have the right immediately to draw down the same in full and hold the proceeds thereof in accordance with the provisions of this Agreement, unless Borrower shall deliver a replacement Letter of Credit from an Approved Bank within (i) as to (a) above, twenty (20) days after Lender delivers written notice to Borrower that the institution issuing the Letter of Credit has ceased to be an Approved Bank or (ii) as to (b) above, at least twenty (20) days prior to the expiration date of said Letter of Credit.

"**Liabilities**" shall have the meaning set forth in Section 14.4.2(b) .

"**LIBOR**" shall have the meaning set forth in the Note.

"**LIBOR Cap Strike Rate**" shall mean 7.50%.

"**LIBOR Margin** " shall mean "LIBOR Margin" as defined in the Note.

"**LIBOR Rate**" shall have the meaning set forth in the Note.

"**License**" shall have the meaning set forth in Section 4.1.23 .

"**Lien**" shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance or charge on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and the filing of mechanic's, materialmen's and other similar liens and encumbrances.

"**Loan**" shall mean the loan in the amount of $120,000,000 made by Lender to Borrower pursuant to this Agreement.

"**Loan Documents** " shall mean, collectively, this Agreement, the Note, the Security Instrument, the Assignment of Leases, the Environmental Indemnity, the Subordination of Operating Lease, the Account Agreement, the Sponsor Indemnity, the Manager Subordination Agreements and all other documents executed and/or delivered by Borrower in connection with the Loan including any certifications or representations delivered by or on behalf of Borrower, any Affiliate of Borrower, the Manager, or any Affiliate of the Manager (including, without limitation, any certificates in connection with any legal opinions delivered on the date hereof), together with all of the Accommodation Security Documents executed by the Operating Lessee.

"**Loan to Value Ratio** " shall mean the ratio, as of a particular date, in which the numerator is equal to the outstanding principal balance of the Loan and the denominator is equal to the appraised value of the Property as determined by Lender in its reasonable discretion.

"**Management Agreement** " shall mean that certain Hotel Management Agreement dated April 1, 2005 between IHG Management (Maryland), LLC and DTRS Michigan Avenue/Chopin Plaza Sub, LLC and recorded as Document No. 0509727142 in the Cook County Records, as further assigned to the Operating Lessee pursuant to that Assignment and Assumption of Management Agreement and Manager Consent dated the date hereof, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"**Management Control** " shall mean, with respect to any direct or indirect interest in the Borrower or the Property (not including Manager under an Approved Management Agreement), the power and authority to make and implement or cause to be made and implemented all material decisions with respect to the operation, management, financing and disposition of the specified interest.

"**Management Fee**" shall mean an amount equal to the management fees payable to the Manager pursuant to the terms of the Management Agreement for management services, the Group Services Fee, incentive management fees and any other fees described in the Management Agreement, and any allocated franchise fees.

"**Manager**" shall mean, as of the Closing Date, IHG Management (Maryland), LLC, a Maryland corporation, or any replacement "Manager" appointed in accordance with Section 5.2.14 hereof.

"**Manager Accounts** " shall mean the "Bank Accounts" (as defined in the Management Agreement) maintained by Manager in the name of Borrower or Operating Lessee with respect to the Property and in accordance with the terms of the Management Agreement.

"**Manager FF&E Reserve Account**" shall mean the "Reserve Account" as defined in the Management Agreement.

"**Manager Reimbursable Expenses**" shall mean the "Reimbursable Expenses" as defined in Section 5.09 of the Management Agreement.

"**Manager Subordination Agreements**" shall mean that certain Consent to Assignment, Agreement and Estoppel and Subordination, Non-Disturbance and Attornment Agreement dated the date hereof, among Lender, Borrower, Operating Lessee, and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Material Adverse Effect**" shall mean any event or condition that has a material adverse effect on (i) the Property taken as a whole, (ii) the use, operation, or value of the Property, (iii) the business, profits, operations or financial condition of the Borrower or (iv) the ability of Borrower to repay the principal and interest of the Loan as it becomes due or to satisfy any of Borrower's obligations under the Loan Documents.

"**Material Alteration** " shall mean any Alteration (other than with respect to replacements of FF&E that are funded from reserves for FF&E reserved for hereunder or under the Management Agreement by the Manager) to be performed by or on behalf of Borrower at the Property, the total cost of which (including, without limitation, construction costs and costs of architects, engineers and other professionals), as reasonably estimated by an Independent Architect, exceeds the Threshold Amount.

"**Material Casualty** " shall mean a Casualty where the loss (i) is in an aggregate amount equal to or in excess of thirty percent (30%) of the outstanding Principal Amount of the Loan or (ii) has caused thirty percent (30%) or more of the hotel rooms or common areas (including banquet and conference facilities) in the Property to be unavailable for its applicable use.

"**Material Condemnation** " shall mean a Condemnation where the loss (i) is in an aggregate amount equal to or in excess of thirty percent (30%) of the outstanding Principal Amount of the Loan or (ii) has caused thirty percent (30%) or more of the hotel rooms or common areas (including banquet and conference facilities) in the Property to be unavailable for its applicable use.

"**Material Expansion**" shall mean any Expansion to be performed by or on behalf of the Borrower at the Property, the total cost of which, as reasonably estimated by an Independent Architect, exceeds the Threshold Amount.

"**Material Lease** " shall mean any Lease (a) demising a premises within the Property that is more than 10,000 net rentable square feet or (b) that is for a term equal to or greater than sixty (60) months.

"**Maturity Date** " shall have the meaning set forth in the Note.

"**Maturity Date Payment**" shall have the meaning set forth in the Note.

"**Maximum Legal Rate**" shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

"**Monetary Default** " shall mean a Default (i) that can be cured with the payment of money or (ii) arising pursuant to Section 17.1(a)(vi) or (vii) .

"**Monthly FF&E Reserve Amount**" shall mean an amount determined by Lender (based upon the most recent monthly operating statements delivered pursuant hereto) equal to 4% of Hotel Revenue.

"**Monthly Insurance Reserve Amount**" shall have the meaning set forth in Section 16.2 .

"**Monthly Tax Reserve Amount**" shall have the meaning set forth in Section 16.1 .

"**Moody's**" shall mean Moody's Investors Service, Inc.

"**Net Operating Income** " shall mean, for any specified period, the excess of Operating Income over Operating Expenses for the trailing twelve (12) month period.

"**New Lease**" shall have the meaning set forth in Section 8.8.1 .

"**Non-Consolidation Opinion**" shall have the meaning provided in Section 2.5.5 .

"**Non-Disturbance Agreement**" shall have the meaning set forth in Section 8.8.9 .

"**Note**" shall mean that certain Note in the principal amount of One Hundred and Twenty Million Dollars ($120,000,000), made by Borrower in favor of Lender as of the date hereof, as the same may be amended, restated, replaced, substituted (including any components or subcomponents) or supplemented or otherwise modified from time to time.

"**Obligations**" shall have meaning set forth in the recitals of the Security Instrument.

"**OFAC List**" means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office Foreign Assets Control and accessible through the internet website www.treas.gov/ofac/t11sdn.pdf.

"**Officer's Certificate**" shall mean a certificate executed by an authorized signatory of Borrower that is familiar with the financial condition of Borrower and the operation of the Property or the particular matter which is the subject of such Officer's Certificate.

"**Operating Asset** " shall have the meaning set forth in the Security Instrument.

"**Operating Expenses**" shall mean, for any specified period, without duplication, all expenses of Borrower or Operating Lessee (or by Manager for the account of Borrower or Operating Lessee) during such period in connection with the ownership or operation of the Property, including costs (including labor) of providing services including rooms, food and beverage, telecommunications, garage and parking and other operating departments, as well as real estate and other business taxes, other rental expenses, insurance premiums, utilities costs, administrative and general costs, repairs and maintenance costs, Management Fees under the Management Agreement, other costs and expenses relating to the Property, required FF&E reserves, and legal expenses incurred in connection with the operation of the Property, determined, in each case on an accrual basis, in accordance with GAAP. "Operating Expenses" shall not include (i) depreciation or amortization or other noncash items, (ii) the principal of and interest on the Note, (iii) income taxes or other taxes in the nature of income taxes, (iv) any expenses (including legal, accounting and other professional fees, expenses and disbursements) incurred in connection with and allocable to the issuance of the Note, (v) the cost of any FF&E expenditures (other than amounts deposited into the applicable hotel operating account for FF&E expenditures, which shall be considered an "Operating Expense" as used herein) or any other capital expenditures, or (vi) the excess of insurance premiums over the Maximum Premium Amount (per annum) incurred by Borrower solely in connection with the purchase of terrorism insurance pursuant to Section 6.1(xi) distributions to the shareholders of the Borrower. Expenses that are accrued as Operating Expenses during any period shall not be included in Operating Expenses when paid during any subsequent period.

"**Operating Lease** " means that certain lease agreement dated the date hereof between the Borrower, as lessor and the Operating Lessee, as lessee.

"**Operating Lessee** " means DTRS InterContinental Chicago, LLC, a Delaware limited liability company, as lessee under the Operating Lease.

"**Operating Income** " shall mean for any specified period, all income received by Borrower or Operating Lessee (or by Manager for the account of Borrower or Operating Lessee) from any Person during such period in connection with the ownership or operation of the Property, determined on an accrual basis of accounting determined in accordance with GAAP, including the following:

(i) all amounts payable to Borrower, Operating Lessee or to Manager for the account of Borrower or Operating Lessee by any Person as Rent and/or Hotel Revenue;

(ii) all amounts payable to Borrower or Operating Lessee (or to Manager for the account of Borrower or Operating Lessee) pursuant to any reciprocal easement and/or operating agreements, covenants, conditions and restrictions, condominium documents and similar agreements affecting the Property and binding upon and/or benefiting Borrower and other third parties, but specifically excluding the Management Agreement;

(iii) condemnation awards to the extent that such awards are compensation for lost rent allocable to such specified period;

(iv) business interruption and loss of "rental value" insurance proceeds to the extent such proceeds are allocable to such specified period; and

(v) all investment income with respect to the Collateral Accounts.

Notwithstanding the foregoing clauses (i) through (v), Operating Income shall not include (A) any Proceeds (other than of the types described in clauses (iii) and (iv) above), (B) any proceeds resulting from the sale, exchange, transfer, financing or refinancing of all or any part of the Property (other than of the types described in clause (i) and (iii) above), (C) any repayments received from Tenants of principal loaned or advanced to Tenants by Borrower, (D) any type of income that would otherwise be considered Operating Income pursuant to the provisions above but is paid directly by any Tenant to a Person other than Borrower or Manager or its agent and (E) any fees or other amounts payable by a Tenant or another Person to Borrower that are reimbursable to Tenant or such other Person.

"**Opinion of Counsel**" shall mean opinions of counsel of law firm(s) licensed to practice in Illinois and New York selected by Borrower and reasonably acceptable to Lender.

"**Other Charges** " shall mean maintenance charges, impositions other than Impositions, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof by any Governmental Authority, other than those required to be paid by a Tenant pursuant to its respective Lease.

"**Other Taxes**" shall have the meaning set forth in Section 2.4.3 .

"**Payment Date**" shall have the meaning set forth in the Note.

"**Permitted Borrower Transferee**" shall mean any entity (i) that is experienced in owning and operating (including acting as asset manager) properties similar to the Property, (ii) (a) with a net worth together with its Close Affiliates, as of a date no more than six (6) months prior to the date of the transfer of at least $1 Billion (exclusive of the Property) and (b) who, immediately prior to such transfer, controls, together with its Close Affiliates real estate equity assets of at least $1 Billion, (iii) which, together with its Close Affiliates owns or has under management or acts as the exclusive fund manager or investment advisor, at the time of the transfer, not fewer than 20 first class full service resort hotels or business hotel properties (excluding the Property) containing not fewer than 5,000 hotel rooms in the aggregate and (iv) that is not a Disqualified Transferee..

"**Permitted Borrower Transferee Alternative**" shall mean any entity (i) that is experienced in owning and operating (including acting as asset manager of) properties similar to the Property, (ii) that either (a) has a net worth together with its Close Affiliates, as of a date no more than six (6) months prior to the date of the transfer of at least $300 Million (exclusive of the Property) and, immediately prior to such transfer, controls, together with its Close Affiliates real estate equity assets of at least $1 Billion or (b) together with its Close Affiliates owns or has under management or acts as the exclusive fund manager or investment advisor, at the time of the transfer, not fewer than 6 luxury resort hotels (excluding the Property) containing not fewer than 3,000 hotel rooms in the aggregate and (iii) that is not a Disqualified Transferee.

"**Permitted Debt** " shall mean collectively, (a) the Note and the other obligations, indebtedness and liabilities specifically provided for in any Loan Document and secured by this Agreement, the Security Instrument and the other Loan Documents, (b) trade payables and other liabilities incurred in the ordinary course of Borrower's business and payable by or on behalf of Borrower in respect of the operation of the Property, not secured by Liens on the Property (other than liens being properly contested in accordance with the provisions of this Agreement or the Security Instrument), such payables and liabilities (which shall not include taxes, accrued payroll and benefits, customer, membership and security deposits and deferred income), not to exceed at any one time outstanding two percent (2%) of the Principal Amount of the Loan, provided that (but subject to the remaining terms of this definition) each such amount shall be paid within sixty (60) days following the date on which each such amount is incurred, provided, that such two percent (2.0%) limitation shall not include normal and customary retainages related to Alterations that are reserved for by Borrower, (c) purchase money indebtedness and capital lease obligations incurred in the ordinary course of Borrower's business, having scheduled annual debt service not to exceed $600,000, (d) contingent obligations to repay customer, membership and security deposits held in the ordinary course of Borrower's business, (e) obligations incurred in the ordinary course of Borrower's business for the financing of any applicable portfolio insurance premiums, (f) any Management Fees not yet due and payable under the Management Agreement, (g) taxes or other charges not yet due and payable or delinquent or which are being diligently contested in good faith in accordance with Section 5.1(b)(ii) hereof, (h) indebtedness relating to Liens in respect of property or assets imposed by law which were incurred in the ordinary course of business, such as carriers', warehousemen's, landlord's, mechanic's,

materialmen's, repairmen's and other similar Liens arising in the ordinary course of business, and Liens for workers' compensation, unemployment insurance and similar programs, in each case arising in the ordinary course of business which are either not yet due and payable or being diligently contested in good faith in accordance with the requirements of the Loan Documents, (i) the Revolver Loan and (j) such other unsecured indebtedness approved by Lender in its sole discretion and with respect to which Borrower has received a Rating Confirmation. Nothing contained herein shall be deemed to require Borrower to pay any amount, so long as Borrower is in good faith, and by proper legal proceedings, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) adequate reserves with respect thereto are maintained on the books of Borrower in accordance with GAAP, and (iii) such contest operates to suspend collection or enforcement, as the case may be, of the contested amount and such contest is maintained and prosecuted continuously and with diligence. Notwithstanding anything set forth herein, in no event shall Borrower be permitted under this provision to enter into a note (other than the Note and the other Loan Documents) or other instrument for borrowed money other than permitted purchase money indebtedness as described in this definition.

"**Permitted Encumbrances**" shall mean collectively, (a) the Liens and security interests created or permitted by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Policy, (c) Liens, if any, for Impositions imposed by any Governmental Authority not yet due or delinquent (other than any such Lien imposed pursuant to Section 401(a)(29) of the Code or by ERISA), and (d) Liens on personal property items that are the subject of clause (c) of the definition of Permitted Debt.

"**Permitted Investments**" shall have the meaning set forth in the Account Agreement.

"**Person**" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"**Physical Conditions Report**" shall mean, with respect to the Property, collectively, the (i) seismic report and (ii) structural engineering report (prepared by an Independent Architect), both of which have been (a) addressed to Lender (b) prepared based on a scope of work determined by Lender in Lender's reasonable discretion, and (c) in form and content acceptable to Lender in Lender's reasonable discretion, together with any amendments or supplements thereto.

"**Plan**" shall have the meaning set forth in Section 4.1.10 .

"**Pre-approved Manager** " shall mean any entity set forth on **Schedule IV** .

"**Pre-approved Transferee**" shall mean any of the entities set forth on **Schedule III** hereof, or any Close Affiliates thereof, provided any of the foregoing entities or their Close Affiliates shall only be a "Pre-approved Transferee" if (i) such entity continues to be

Controlled by substantially the same Persons Controlling such entity as of the Closing Date or if such Pre-approved Transferee is a publicly traded company, such Pre-approved Transferee continues to be publicly traded on an established securities market, (ii) there has been no material adverse change in the financial condition or results of operations of such entity since the Closing Date, (iii) such entity is not a Disqualified Transferee and (iv) if such entity as of the Closing Date is rated (a) "Investment Grade", there has been no deterioration in such entity's long-term or short-term credit rating (if any) since the Closing Date below "BBB-" or (b) below "Investment Grade", there has been no deterioration in such entity's long-term or short-term credit rating (if any) since the Closing Date.

"**Prepayment Fee** " shall have the meaning set forth in the Note.

"**Principal Amount** " shall have the meaning set forth in the Note.

"**Proceeds**" shall mean amounts, awards or payments payable to Borrower (including, without limitation, amounts payable under any title insurance policies covering Borrower's ownership interest in the Property) or Lender with respect to any Condemnation or Casualty and specifically including insurance required to be maintained hereunder (after the deduction therefrom and payment to Borrower and Lender, respectively, of any and all reasonable expenses incurred by Borrower and Lender in the recovery thereof, including all attorneys' fees and disbursements, the fees of insurance experts and adjusters and the costs incurred in any litigation or arbitration with respect to any claim under such insurance policies or with respect to such Condemnation or Casualty).

"**Prohibited Person**" means any Person identified on the OFAC List or any other Person with whom a U.S. Person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States of America.

"**Property**" shall have the meaning set forth in the Security Instrument.

"**Provided Information** " shall have the meaning set forth in Section 14.1.1 .

"**Rate Cap Collateral** " shall have the meaning set forth in Section 9.2 .

"**Rating Agencies**" shall mean (a) prior to a Securitization, each of S&P, Moody's and Fitch and any other nationally-recognized statistical rating agency which has been approved by Lender and (b) after a Securitization has occurred, each such Rating Agency which has rated the Securities in the Securitization.

"**Rating Agency Confirmation** " shall mean, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency's sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

"**Real Property** " shall mean, collectively, the Land, the Improvements and the Appurtenances (as defined in the Security Instrument).

"**Register**" shall have the meaning set forth in Section 15.4 .

"**Regulatory Change**" shall mean any change after the date of this Agreement in federal, state or foreign laws or regulations or the adoption or the making, after such date, of any interpretations, directives or requests applying to Lender, or any Person Controlling Lender or to a class of banks or companies Controlling banks of or under any federal, state or foreign laws or regulations (whether or not having the force of law) by any court or Governmental Authority or monetary authority charged with the interpretation or administration thereof.

"**Relevant Portions** " shall have the meaning set forth in Section 14.4.2(a) .

"**Rents**" shall mean all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower and/or Operating Lessee from any and all sources arising from or attributable to the Property and Proceeds, if any, from business interruption or other loss of income insurance.

"**Restoration**" shall have the meaning provided in Section 6.2.2 .

"**Retail/Service Facilities**" shall have the meaning provided in Section 8.7.10 .

"**Replacement Interest Rate Cap Agreement**" shall mean, in connection with a replacement of an Interest Rate Cap Agreement following a Downgrade of the Counterparty thereto, an interest rate cap agreement (together with the confirmation and schedules relating thereto) from an Acceptable Counterparty and satisfying the requirements set forth on **Exhibit I** hereto; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements a "Replacement Interest Cap Agreement" shall be such interest rate cap agreement approved by each of the Rating Agencies, such approval to be evidenced by the receipt of a Rating Agency Confirmation.

"**Revolver Loan** " shall mean that certain revolving credit facility from Deutsche Bank Trust Company Americas to Strategic Hotel Funding, L.L.C., evidenced by that certain Revolving Credit Agreement, dated as of November 5, 2006, hereof, between Deutsche Bank Trust Company Americas, Wachovia Bank National Association, as lender, various financial institutions, as lenders specified therein and Strategic Hotel Funding, L.L.C., as the same has heretofore and may hereafter be amended, restated, supplemented or otherwise modified or replaced, from time to time.

"**S&P**" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"**Securities**" shall have the meaning set forth in Section 14.1 .

"**Securities Act**" shall have the meaning set forth in Section 14.4.1 .

"**Securitization** " shall have the meaning set forth in Section 14.1 .

"**Security Instrument**" shall mean that certain first priority Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated the date hereof, executed and delivered by Borrower and certain of its affiliates to Lender and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Servicer**" shall mean such Person designated in writing with an address for such Person by Lender, in its sole discretion, to act as Lender's agent hereunder with such powers as are specifically delegated to the Servicer by Lender, whether pursuant to the terms of this Agreement, the Account Agreement or otherwise, together with such other powers as are reasonably incidental thereto.

"**Single Purpose Entity**" shall mean a Person, other than an individual, which (i) is formed or organized solely for the purpose of owning, leasing, managing, holding, developing, using, operating and financing the Property, (ii) does not engage in any business unrelated to the Property and the ownership, development, use, operation and financing thereof, (iii) does not have any assets other than those related to its interest in the Property or the operation, management and financing thereof or any indebtedness other than the Permitted Debt, (iv) maintains its own separate books and records and its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person (however the presentation of combined or consolidated financial condition or results of operation for purposes of financial statements prepared for the ultimate equity owners of multiple Single Purpose Entities shall be allowed), (v) holds itself out as being a Person, separate and apart from any other Person, (vi) does not and will not commingle its funds or assets with those of any other Person, (vii) conducts its own business in its own name; (viii) maintains separate financial statements; provided, however, that any consolidated financial statements contain a note indicating that it and its Affiliates are separate legal entities and maintain records, books of account, and accounts separate and apart from any other Person, (ix) pays its own liabilities out of its own funds, (x) observes all partnership, corporate or limited liability company formalities, as applicable, (xi) pays the salaries of its own employees, if any, and maintains a sufficient number of employees, if any, in light of its contemplated business operations, (xii) does not pledge its assets or guarantee or otherwise obligate itself with respect to the debts of any other Person or hold out itself or its credit as being available to satisfy the obligations of any other Person, (xiii) does not acquire obligations or securities of its partners, members or shareholders, (xiv) allocates fairly and reasonably shared expenses, including, without limitation, any overhead for shared office space, if any, (xv) uses separate stationary, invoices, and checks bearing its own name, (xvi) maintains an arms-length relationship with its Affiliates, (xvii) does not pledge its assets for the benefit of any other Person (other than as permitted under clauses (a) and (d) of the

definition of Permitted Encumbrances) or make any cash loans or advances to any other Person, (xviii) uses commercially reasonable efforts to correct any known misunderstanding regarding its separate identity and (xix) maintains adequate capital in light of its contemplated business operations. In addition, if such Person is a partnership, (1) all general partners of such Person shall be Single Purpose Entities; and (2) if such Person has more than one general partner, then the organizational documents shall provide that such Person shall continue (and not dissolve) for so long as a solvent general partner exists. In addition, if such Person is a corporation, then, at all times: (a) such Person shall have at least two (2) Independent Directors and (b) the board of directors of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including the Independent Directors, shall have participated in such vote. In addition, if such Person is a limited liability company, (a) such Person shall have at least two (2) Independent Managers or Independent Members, (b) if such Person is managed by a board of managers, the board of managers of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of managers unless all of the managers, including the Independent Managers, shall have participated in such vote, (c) if such Person is not managed by a board of managers, the members of such Person may not take any action requiring the affirmative vote of 100% of the members of such Person unless all of the members, including the Independent Members, shall have participated in such vote, (d) each managing member shall be a Single Purpose Entity and (e) its articles of organization, certificate of formation and/or operating agreement, as applicable, shall provide that until all of the Indebtedness and Obligations are paid in full such entity will not dissolve. In addition, the organizational documents of such Person shall provide that such Person (1) without the unanimous consent of all of the partners, directors or members, as applicable, shall not with respect to itself or to any other Person in which it has a direct or indirect legal or beneficial interest (a) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or other similar official for the benefit of the creditors of such Person or all or any portion of such Person's properties, or (b) take any action that might cause such Person to become insolvent, petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (2) will maintain its books, records, resolutions and agreements as official records, (3) will hold its assets in its own name, (4) will maintain its financial statements, accounting records and other organizational documents, books and records separate and apart from any other Person, (5) will not identify its partners, members or shareholders, or any Affiliates of any of them as a division or part of it, (6) will maintain an arms-length relationship with its Affiliates, (7) except for capital contributions or capital distributions will not enter into or be a party to any transaction with its partners, members, shareholders, or its Affiliates except in the ordinary course of business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arms-length transaction with a third party; (8) will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities); and (9) except as permitted by the Loan Documents, will not form, acquire or hold any subsidiary (whether corporation, partnership, limited liability company or other) or own any equity interest in any other entity other than the Property.

"**Special Taxes** " shall mean any and all present or future taxes, levies, imposts, deductions, charges or withholdings, or any liabilities with respect thereto, including those arising after the date hereof as result of the adoption of or any change in law, treaty, rule,

regulation, guideline or determination of a Governmental Authority or any change in the interpretation or application thereof by a Governmental Authority but excluding, in the case of Lender, such taxes (including income taxes, franchise taxes and branch profit taxes) as are imposed on or measured by Lender's net income by the United States of America or any Governmental Authority of the jurisdiction under the laws under which Lender is organized or maintains a lending office.

"**Sponsor**" shall mean, DTRS MICHIGAN AVENUE/CHOPIN PLAZA, LP, a Delaware limited partnership, INTERCONTINENTAL FLORIDA LIMITED PARTNERSHIP, a Delaware limited partnership, and CIMS LIMITED PARTNERSHIP, an Illinois limited partnership on a joint and several liability basis, all of which shall execute and deliver the Sponsor Indemnity on the Closing Date.

"**Sponsor Indemnity** " shall mean that certain Sponsor Indemnity Agreement of Borrower, dated as of the date hereof, by Sponsor in favor of Lender, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"**State**" shall mean the State in which the Property or any part thereof is located.

"**Sub-Account(s)**" shall have the meaning set forth in Section 3.1.1 .

"**Subordination of Operating Lease**" shall mean that certain Operating Lease Subordination Agreement, dated the date hereof, among Lender, Borrower, Operating Lessee, and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Survey**" shall mean a survey of the Property prepared by a surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Policy, and containing a certification of such surveyor satisfactory to Lender.

"**Tax Reserve Account** " shall have the meaning set forth in Section 3.1.1 .

"**Tax Reserve Amount** " shall have the meaning set forth in Section 16.1 .

"**Tenant**" shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property or permitted to use any portion of the facilities at the Property, other than the Manager and its employees, agents and assigns.

"**Terrorism Coverage Required Amount**" shall mean an aggregate amount equal to the full replacement cost of the Property and the Improvements (without deduction for physical depreciation) from time to time, or such lesser amounts approved by Lender in its sole discretion (or after a Securitization, upon receipt of a Rating Agency Confirmation).

"**Threshold Amount** " shall mean an amount equal to 10% of the Principal Amount of the Loan, being $12,000,000 as of the date of this Agreement.

"**Title Company** " shall mean, Lawyers Title Insurance Corporation and Land America Title Insurance Company.

"**Title Policy** " shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued by the Title Company with respect to the Property and insuring the lien of the Security Instrument.

"**Transfer**" shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise.

"**UCC**" or " **Uniform Commercial Code**" shall mean the Uniform Commercial Code as in effect in the State.

"**Ultimate Equity Owner**" shall mean Strategic Hotel Funding, L.L.C., a Delaware limited liability company.

"**Underwriter Group** " shall have the meaning set forth in Section 14.4.2(b) .

"**Uniform System** " shall mean the Uniform System of Accounts for Hotels, 9th Edition, International Association of Hospitality Accountants (1996), as from time to time amended.

"**U.S. Government Obligations**" shall mean any direct obligations of, or obligations guaranteed as to principal and interest by, the United States Government or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States. Any such obligation must be limited to instruments that have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change. If any such obligation is rated by S&P, it shall not have an "r" highlighter affixed to its rating. Interest must be fixed or tied to a single interest rate index plus a single fixed spread (if any), and move proportionately with said index. U.S. Government Obligations include, but are not limited to: U.S. Treasury direct or fully guaranteed obligations, Farmers Home Administration certificates of beneficial ownership, General Services Administration participation certificates, U.S. Maritime Administration guaranteed Title XI financing, Small Business Administration guaranteed participation certificates or guaranteed pool certificates, U.S. Department of Housing and Urban Development local authority bonds, and Washington Metropolitan Area Transit Authority guaranteed transit bonds. In no event shall any such obligation have a maturity in excess of 365 days.

Section 1.2 Principles of Construction . All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All accounting terms not specifically defined herein shall be construed in accordance with GAAP as modified by the Uniform System. When used herein, the term "financial statements" shall include the notes and schedules thereto. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the definitions given them in this Agreement when used in any other Loan Document or in any certificate or other document made or delivered pursuant

thereto. All uses of the word "including" shall mean including, without limitation unless the context shall indicate otherwise. Unless otherwise specified, the words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

II. GENERAL TERMS

Section 2.1 Loan; Disbursement to Borrower .

2.1.1 The Loan . Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2 Disbursement to Borrower . Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed. Borrower acknowledges and agrees that the full proceeds of the Loan have been disbursed by Lender to Borrower on the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents . The Loan shall be evidenced by the Note and secured by the Security Instrument, the Assignment of Leases, this Agreement and the other Loan Documents.

2.1.4 Use of Proceeds . Borrower shall use the proceeds of the Loan to repay and discharge any existing mortgage loans secured by the Property, to provide any necessary or appropriate reserves, to make cash distributions to its members for, among other things, repayment of any existing mezzanine loans secured by direct or indirect interests in Borrower, and as may be otherwise set forth on the Loan closing statement executed by Borrower at closing.

Section 2.2 Interest; Loan Payments; Late Payment Charge .

2.2.1 Payment of Principal and Interest .

(i) Except as set forth in Section 2.2.1(ii) , interest shall accrue on the Principal Amount as set forth in the Note.

(ii) Upon the occurrence and during the continuance of an Event of Default and from and after the Maturity Date if the entire Principal Amount is not repaid on the Maturity Date, interest on the outstanding principal balance of the Loan and, to the extent permitted by law, overdue interest and other amounts due in respect of the Loan shall accrue at the Default Rate calculated from the date such payment was due without regard to any grace or cure periods contained herein. Interest at the Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Indebtedness (or that portion thereof that is then due). To the extent permitted by applicable law, interest at the Default Rate shall be added to the Indebtedness, shall itself accrue interest at the same rate as the

Loan and shall be secured by the Security Instrument. This paragraph shall not be construed as an agreement or privilege to extend the date of the payment of the Indebtedness, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default, and Lender retains its rights under the Note to accelerate and to continue to demand payment of the Indebtedness upon the happening of any Event of Default.

2.2.2 Method and Place of Payment .

(a) On each Payment Date, Borrower shall pay or cause to be paid to Lender interest accruing pursuant to the Note for the entire Interest Period during which said Payment Date shall occur.

(b) All amounts advanced by Lender pursuant to the applicable provisions of the Loan Documents, other than the Principal Amount, together with any interest at the Default Rate or other charges as provided therein, shall be due and payable hereunder as provided in the Loan Documents. In the event any such advance or charge is not so repaid by Borrower, Lender may, at its option and upon notice to Borrower, first apply any payments received under the Note to repay such advances, together with any interest thereon, or other charges as provided in the Loan Documents, and the balance, if any, shall be applied in payment of any installment of interest or principal then due and payable.

(c) The Maturity Date Payment shall be due and payable in full on the Maturity Date.

2.2.3 Late Payment Charge . If any interest payment due under the Loan Documents is not paid by Borrower within five (5) days after to the date on which it is due (or, if such fifth (5th) day is not a Business Day, then the Business Day immediately preceding such day) on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of three percent (3%) of such unpaid sum or the Maximum Legal Rate (the "**Late Payment Charge**") in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by this Agreement, the Security Instrument and the other Loan Documents to the extent permitted by applicable law. Borrower acknowledges and agrees that the five day grace period with respect to the applicability of the Late Payment Charge (i) shall only apply to Borrower's first failure to make a monthly interest payment in any calendar year and (ii) shall not constitute a payment grace period and shall in no way limit Lender's rights under Article XVII .

2.2.4 Usury Savings . This Agreement and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Principal Amount of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the Principal Amount due under the Note at a rate in excess of the Maximum Legal Rate, then the LIBOR Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not

on account of the interest due under the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Prepayments .

2.3.1 Prepayments . No prepayments of the Indebtedness shall be permitted except as set forth in Section 4 of the Note. Borrower agrees and acknowledges after the closing of the Loan that prior to a material Event of Default (as determined by Lender in its sole and absolute discretion) (x) in the case of prepayments of the Loan in connection with a Casualty or Condemnation, principal will be applied (to the extent not used for restoration pursuant to the terms hereof) to the Note, any substitute or component notes (as applicable) sequentially starting with the most senior securitized tranche and (y) in the case of all prepayments of the Loan other than in accordance with the preceding clause (x), such prepayments will be applied to the Note, any substitute or component notes (as applicable) pro-rata (on the basis of their respective principal balances) among the securitized and any non-securitized portions of the Loan (and pro-rata within the securitized portions of the Loan). Notwithstanding the foregoing, upon the occurrence and during the continuance of a material Event of Default (as determined by Lender in its sole and absolute discretion), Borrower agrees and acknowledges that any principal prepayments of the Loan will be applied to the Note, any substitute or component notes (as applicable) sequentially, starting with the most senior securitized tranche (it being acknowledged that during the continuance of a material Event of Default all securitized portions of the Loan shall be paid in full prior to the payment of any non-securitized portions of the Loan).

2.3.2 Prepayments after Event of Default . If, following an Event of Default, Lender shall accelerate the Indebtedness and Borrower thereafter tenders payment of all or any part of the Indebtedness, or if all or any portion of the Indebtedness is recovered by Lender after such Event of Default, (a) such payment may be made only on the next occurring Payment Date together with all unpaid interest thereon as calculated through the end of the Interest Period during which such Payment Date occurs (even if such period extends beyond such Payment Date and calculated as if such payment had not been made on such Payment Date), and all other fees and sums payable hereunder or under the Loan Documents, including without limitation, interest that has accrued at the Default Rate and any Late Payment Charges), (b) such payment shall be deemed a voluntary prepayment by Borrower, and (c) Borrower shall pay, in addition to the Indebtedness, an amount equal to the Prepayment Fee, if applicable.

2.3.3 Release of Property . Lender shall, at the reasonable expense of Borrower, upon payment in full of the Principal Amount and interest on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of (i) this Agreement upon the Account Collateral and the Rate Cap Collateral and (ii) the Security Instrument on the Property or assign it, in whole or in part, to a new lender. In such event, Borrower shall submit to Lender, on a date prior to the date of such release or assignment sufficient to provide a reasonable period

for review thereof, a release of lien or assignment of lien, as applicable, for such property for execution by Lender. Such release or assignment, as applicable, shall be in a form appropriate in each jurisdiction in which the Property is located and satisfactory to Lender in its reasonable discretion. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release or assignment, as applicable.

Section 2.4 Regulatory Change; Taxes .

2.4.1 Increased Costs . If, at any time prior to the first Securitization of the Loan, as a result of any Regulatory Change or compliance of Lender therewith, the basis of taxation of payments to Lender of the principal of or interest on the Loan is changed or Lender or the company Controlling Lender shall be subject to (i) any tax, duty, charge or withholding of any kind with respect to this Agreement (excluding federal taxation of the overall net income of Lender); or (ii) any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities, of Lender or any company Controlling Lender is imposed, modified or deemed applicable; or (iii) any other condition affecting loans to borrowers subject to LIBOR-based interest rates is imposed on Lender or any company Controlling Lender and Lender determines that, by reason thereof, the cost to Lender or any company Controlling Lender of making, maintaining or extending the Loan to Borrower is increased, or any amount receivable by Lender or any company Controlling Lender hereunder in respect of any portion of the Loan to Borrower is reduced, in each case by an amount deemed by Lender in good faith to be material (such increases in cost and reductions in amounts receivable being herein called "**Increased Costs**"), then Lender shall provide notice thereof to Borrower and Borrower agrees that it will pay to Lender upon Lender's written request such additional amount or amounts as will compensate Lender or any company Controlling Lender for such Increased Costs to the extent Lender determines that such Increased Costs are allocable to the Loan and provided that Lender is generally exercising rights similar to those set forth in this Section 2.4.1 against other borrowers similarly situated to Borrower. Lender will notify Borrower of any event occurring after the date hereof which will entitle Lender to compensation pursuant to this Section 2.4.1 as promptly as practicable after it obtains knowledge thereof and determines to request such compensation; provided , however , that, if Lender fails to deliver a notice within 90 days after the date on which an officer of Lender responsible for overseeing this Agreement knows or has reason to know of its right to additional compensation under this Section 2.4.1 , Lender shall only be entitled to additional compensation for any such Increased Costs incurred from and after the date that is 90 days prior to the date Borrower received such notice. If Lender requests compensation under this Section 2.4.1 , Borrower may, by notice to Lender, require that Lender furnish to Borrower a statement setting forth the basis for requesting such compensation and the method for determining the amount thereof, and a description as to why Section 2.4.5 is not applicable.

2.4.2 Special Taxes . At all times prior to the first Securitization of the Loan, Borrower shall make all payments hereunder free and clear of and without deduction for Special Taxes. If, at any time prior to the first Securitization of the Loan, Borrower shall be required by law to deduct any Special Taxes from or in respect of any sum payable hereunder or under any other Loan Document to Lender, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to

additional sums payable under this Section 2.4.2) Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions, and (iii) Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

2.4.3 Other Taxes . In addition, for all periods prior to the first Securitization of the Loan, Borrower agrees to pay any present or future stamp or documentary taxes or other excise or property taxes, charges, or similar levies which arise from any payment made hereunder, or from the execution, delivery or registration of, or otherwise with respect to, this Agreement, the other Loan Documents, or the Loan (hereinafter referred to as "**Other Taxes**").

2.4.4 Indemnity . Borrower shall indemnify Lender for all periods prior to the first Securitization of the Loan, for the full amount of Special Taxes and Other Taxes (including any Special Taxes or Other Taxes imposed by any Governmental Authority on amounts payable under this Section 2.4.4) paid by Lender and any liability (including penalties, interest, and expenses) arising therefrom or with respect thereto, whether or not such Special Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within thirty (30) days after the date Lender makes written demand therefor.

2.4.5 Change of Office . To the extent that changing the jurisdiction of Lender's applicable office would have the effect of minimizing Special Taxes, Other Taxes or Increased Costs, Lender shall use reasonable efforts to make such a change, provided that same would not otherwise be disadvantageous to Lender.

2.4.6 Survival . Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this Section 2.4 shall survive the payment in full of principal and interest hereunder, and the termination of this Agreement.

Section 2.5 Conditions Precedent to Closing . The obligation of Lender to make the Loan hereunder is subject to the fulfillment by, or on behalf of, Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date; provided , however , that unless a condition precedent shall expressly survive the Closing Date pursuant to a separate agreement, by funding the Loan, Lender shall be deemed to have waived any such conditions not theretofore fulfilled or satisfied:

2.5.1 Representations and Warranties; Compliance with Conditions . The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

2.5.2 Delivery of Loan Documents; Title Policy; Reports; Leases .

(a) **Loan Documents** . Lender shall have received an original copy of this Agreement, the Note and all of the other Loan Documents, in each case, duly executed (and to the extent required, acknowledged) and delivered on behalf of Borrower and any other parties thereto.

(b) **Security Instrument, Assignment of Leases** . Lender shall have received evidence that original counterparts of the Security Instrument and Assignment of Leases, in proper form for recordation, have been delivered to the Title Company for recording, so as effectively to create, in the reasonable judgment of Lender, upon such recording valid and enforceable first priority Liens upon the Property, in favor of Lender (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents.

(c) **UCC Financing Statements** . Lender shall have received evidence that the UCC financing statements relating to the Security Instrument and this Agreement have been delivered to the Title Company for filing in the applicable jurisdictions.

(d) **Title Insurance** . Lender shall have received a pro forma Title Policy or a Title Policy issued by the Title Company and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such Title Policy shall (i) provide coverage in the amount of the Loan, (ii) insure Lender that the Security Instrument creates a valid, first priority Lien on the Property, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain the endorsements and affirmative coverages set forth on **Exhibit A** (or such other endorsements and affirmative coverages approved by Lender) and such additional endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The Title Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Policy have been paid.

(e) **Survey** . Lender shall have received a current or rectified Survey for the Property, containing the survey certification substantially in the form attached hereto as **Exhibit B** or such other form as approved by Lender. Such Survey shall reflect the same legal description contained in the Title Policy referred to in clause (d) above. The surveyor's seal shall be affixed to the Survey and the surveyor shall provide a certification for such Survey in form and substance acceptable to Lender.

(f) **Insurance** . Lender shall have received valid certificates of insurance for the policies of insurance required hereunder, satisfactory to Lender in its reasonable discretion, and evidence of the payment of all insurance premiums currently due and payable for the existing policy period.

(g) **Environmental Reports** . Lender shall have received an Environmental Report in respect of the Property satisfactory to Lender.

(h) **Zoning** . Lender shall have received an ALTA 3.1 zoning endorsement for the Title Policy.

(i) **Certificate of Occupancy** . Lender shall have received a copy of the valid certificates of occupancy for the Property or evidence acceptable to Lender that a certificate of occupancy is not required by applicable law.

(j) **Encumbrances** . Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first Lien as of the Closing Date on the Property (including extinguishing all existing mezzanine debt and Liens in connection with such debt), subject only to Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

2.5.3 Related Documents . Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

2.5.4 Delivery of Organizational Documents . On or before the Closing Date, Borrower shall deliver, or cause to be delivered, to Lender copies certified by an Officer's Certificate, of all organizational documentation related to Borrower, Operating Lessee and Sponsor and certain Affiliates of the foregoing as have been requested by Lender and/or the formation, structure, existence, good standing and/or qualification to do business of Borrower, Operating Lessee and Sponsor and such Affiliates, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender. Each of the organizational documents of Borrower shall contain provisions having a substantive effect materially similar to that of the language set forth in **Exhibit C** or such other language as approved by Lender. Lender hereby approves the organizational documents of Borrower delivered to Lender on the date hereof.

2.5.5 Opinions . Lender shall have received:

(a) a Non-Consolidation Opinion substantially in compliance with the requirements set forth in **Exhibit E** or in such other form approved by the Lender (the "**Non-Consolidation Opinion** ");

(b) the Opinion of Counsel substantially in compliance with the requirements set forth in **Exhibit D** or in such other form approved by the Lender; and

(c) from Counterparty the Counterparty Opinion substantially in compliance with the requirements set forth in **Exhibit F** or in such other form approved by the Lender.

2.5.6 Budgets . Borrower shall have delivered the Budget for the current Fiscal Year, which Budget shall be certified by an Officer's Certificate.

2.5.7 Completion of Proceedings . All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

2.5.8 Payments . All payments, deposits or escrows, if any, required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

2.5.9 Interest Rate Cap Agreement . Lender shall have received the original Interest Rate Cap Agreement which shall be in form and substance satisfactory to Lender and an original counterpart of the Acknowledgment executed and delivered by the Counterparty.

2.5.10 Account Agreement . Lender shall have received the original of the Account Agreement executed by each of Cash Management Bank, Operating Lessee, and Borrower.

2.5.11 Intentionally Deleted .

2.5.12 Leases and Rent Roll . Lender shall have received copies of all Leases, certified as requested by Lender. Lender shall have received a certified rent roll of the Property dated within thirty (30) days prior to the Closing Date.

2.5.13 Transaction Costs . Borrower shall have paid or reimbursed Lender for all title insurance premiums, recording and filing fees, costs of Environmental Reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses incurred in connection with the origination of the Loan.

2.5.14 Material Adverse Effect . No event or condition shall have occurred since the date of Borrower's most recent financial statements previously delivered to Lender which has or could reasonably be expected to have a Material Adverse Effect. The Operating Income and Operating Expenses of the Property and all other features of the transaction shall be as represented to Lender without material adverse change. Neither Borrower nor any of its constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

2.5.15 Tax Lot . Lender shall have received evidence that the Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

2.5.16 Physical Conditions Report . Lender shall have received a Physical Conditions Report (or re-certified Physical Conditions Report) with respect to the Property, which report shall be satisfactory in form and substance to Lender.

2.5.17 Appraisal . Lender shall have received an appraisal of the Property, which shall be satisfactory in form and substance to Lender.

2.5.18 Operating Lease . Lender shall have received the originals of the Operating Lease, executed by Operating Lessee and Borrower and the Subordination of Operating Lease, executed by Operating Lessee.

2.5.19 Management Agreement . Lender shall have received a certified copy of the Management Agreement which shall be satisfactory in form and substance to Lender.

2.5.20 Financial Statements . Lender shall have received certified copies of financial statements with respect to the Property for the three most recent Fiscal Years, each in form and substance satisfactory to Lender.

2.5.21 Further Documents . Lender or its counsel shall have received such other and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested including the Loan Documents in form and substance satisfactory to Lender and its counsel.

III. CASH MANAGEMENT

Section 3.1 Cash Management .

3.1.1 Establishment of Accounts . Borrower hereby confirms that, simultaneously with the execution of this Agreement, pursuant to the Account Agreement, Operating Lessee has established with Cash Management Bank, in the name of Borrower for the benefit of Lender, as secured party, a collection amount (the "**Collection Account**"), which has been established as an interest-bearing deposit account, and a holding account (the "**Holding Account**"), which has been established as a securities account. Both the Collection and the Holding Account and each sub-account of either such account and the funds deposited therein and the securities and other assets credited thereto shall serve as additional security for the Loan. Pursuant to the Account Agreement, Borrower shall irrevocably instruct and authorize Cash Management Bank to disregard any and all orders for withdrawal from the Collection Account or the Holding Account made by, or at the direction of, Borrower or Operating Lessee other than to transfer all amounts on deposit in the Collection Account on a daily basis to the Holding Account. Borrower agrees that, prior to the payment in full of the Indebtedness, the terms and conditions of the Account Agreement shall not be amended or modified without the prior written consent of Lender (which consent Lender may grant or withhold in its sole discretion), and if a Securitization has occurred, the delivery by Borrower of a Rating Agency Confirmation. In recognition of Lender's security interest in the funds deposited into the Collection Account and the Holding Account, Borrower shall identify both the Collection Account and the Holding Account with the name of Lender, as secured party. The Collection Account shall be named as follows: "Intercontinental Chicago f/b/o Citigroup Global Markets Realty Corp., as secured party Collection Account," account number 724140.1. The Holding Account shall be named as follows: "Intercontinental Chicago f/b/o Citigroup Global Markets Realty Corp., as secured party Holding Account," account number 724140.2. Borrower confirms that it has established with Cash Management Bank the following sub-accounts of the Holding Account (each, a "**Sub-Account**" and, collectively, the "**Sub-Accounts**" and together with the Holding Account and the Collection Account, the "**Collateral Accounts**"), which (i) may be ledger or book entry sub-accounts and need not be actual sub-accounts, (ii) shall each be linked to the Holding

Account, (iii) shall each be a "Securities Account" pursuant to Article 8 of the UCC and (iv) shall each be an Eligible Account to which certain funds shall be allocated and from which disbursements shall be made pursuant to the terms of this Agreement:

(a) a sub-account for the retention of Account Collateral in respect of Impositions and Other Charges for the Property with the account number 724140.2 (the "**Tax Reserve Account** ");

(b) a sub-account for the retention of Account Collateral in respect of insurance premiums for the Property with the account number 724140.2 (the "**Insurance Reserve Account** ");

(c) a sub-account for the retention of Account Collateral in respect of FF&E with the account number 724140.2 (the "**FF&E Reserve Account**"); and

(d) a sub-account for the retention of Account Collateral in respect of current Debt Service on the Loan with the account number 724140.2 (the "**Current Debt Service Reserve Account**").

3.1.2 Pledge of Account Collateral . To secure the full and punctual payment and performance of the Obligations, Borrower and Operating Lessee hereby collaterally assigns, grants a security interest in and pledges to Lender, to the extent not prohibited by applicable law (and shall cause Operating Lessee to execute the Accommodation Security Documents with respect thereto), a first priority continuing security interest in and to the following property of Borrower and/or Operating Lessee, as applicable, whether now owned or existing or hereafter acquired or arising and regardless of where located (all of the same, collectively, the "**Account Collateral**"):

(a) the Collateral Accounts and Manager Accounts and all cash, checks, drafts, securities entitlements, certificates, instruments and other property, including, without limitation, all deposits and/or wire transfers from time to time deposited or held in, credited to or made to Collateral Accounts;

(b) any and all amounts invested in Permitted Investments;

(c) all interest, dividends, cash, instruments, securities entitlements and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing or purchased with funds from the Collateral Accounts; and

(d) to the extent not covered by clauses (a), (b) or (c) above, all proceeds (as defined under the UCC) of any or all of the foregoing.

In addition to the rights and remedies herein set forth, Lender shall have all of the rights and remedies with respect to the Account Collateral available to a secured party at law or in equity, including, without limitation, the rights of a secured party under the UCC, as if such rights and remedies were fully set forth herein.

This Agreement shall constitute a security agreement for purposes of the Uniform Commercial Code and other applicable law.

3.1.3 Maintenance of Collateral Accounts . (a) Borrower agrees that the Collection Account is and shall be maintained (i) as a "deposit account" (as such term is defined in Section 9-102(a) of the UCC), (ii) in such a manner that Lender shall have control (within the meaning of Section 9-104(a) of the UCC) over the Collection Account and (iii) such that neither the Borrower, Operating Lessee, nor Manager shall have any right of withdrawal from the Account and, except as provided herein, no Account Collateral shall be released to the Borrower, Operating Lessee, or Manager from the Collection Account. Without limiting the Borrower's obligations under the immediately preceding sentence, Borrower shall only establish and maintain the Collection Account with a financial institution that has executed an agreement substantially in the form of the Account Agreement or in such other form acceptable to Lender in its sole discretion.

(b) Borrower agrees that each of the Holding Account and the Sub-Accounts is and shall be maintained (i) as a "securities account" (as such term is defined in Section 8-501(a) of the UCC), (ii) in such a manner that Lender shall have control (within the meaning of Section 8-106(d)(2) of the UCC) over the Holding Account and any Sub-Account, (iii) such that neither Borrower, Operating Lessee, nor Manager shall have any right of withdrawal from the Holding Account or the Sub-Accounts and, except as provided herein, no Account Collateral shall be released to Borrower from the Holding Account or the Sub-Accounts, (iv) in such a manner that the Cash Management Bank shall agree to treat all property credited to the Holding Account or the Sub-Accounts as "financial assets" and (v) such that all securities or other property underlying any financial assets credited to the Accounts shall be registered in the name of Cash Management Bank, indorsed to Cash Management Bank or in blank or credited to another securities account maintained in the name of Cash Management Bank and in no case will any financial asset credited to any of the Collateral Accounts be registered in the name of Borrower, payable to the order of Borrower or specially indorsed to Borrower except to the extent the foregoing have been specially indorsed to Cash Management Bank or in blank. Without limiting Borrower's obligations under the immediately preceding sentence, Borrower shall only establish and maintain the Holding Account with a financial institution that has executed an agreement substantially in the form of the Account Agreement or in such other form acceptable to Lender in its sole discretion.

(c) The Collateral Accounts shall be Eligible Accounts. The Collateral Accounts shall be subject to such applicable laws, and such applicable regulations of the Board of Governors of the Federal Reserve System and of any other banking or governmental authority, as may now or hereafter be in effect. Income and interest accruing on the Collateral Accounts or any investments held in such accounts shall be periodically added to the principal amount of such account and shall be held, disbursed and applied in accordance with the provisions of this Agreement and the Account Agreement. Borrower shall be the beneficial owner of the Collateral Accounts for federal income tax purposes and shall report all income on the Collateral Accounts.

3.1.4 Deposits into Sub-Accounts . On the date hereof, Borrower has deposited the following amounts into the Sub-Accounts:

(i) $0.00 into the Tax Reserve Account;

(ii) $0.00 into the Insurance Reserve Account;

(iii) $0.00 into the Current Debt Service Reserve Account; and

(iv) $0.00 into the FF&E Reserve Account.

3.1.5 Monthly Funding of Sub-Accounts . (a) Borrower hereby irrevocably authorizes Lender to transfer (and, pursuant to the Account Agreement shall irrevocably authorize Cash Management Bank to execute any corresponding instructions of Lender), and Lender shall transfer (or cause Cash Management Bank to transfer pursuant to disbursement instructions from Lender), from the Holding Account by 11:00 a.m. New York time on each Business Day, or as soon thereafter as sufficient funds are in the Holding Account to make the applicable transfers, funds in the following amounts and in the following order of priority:

(i) during the continuance of an Event of Default and at any such time that Manager does not reserve for or otherwise set aside and pay Impositions and Other Charges directly, funds in an amount equal to the Monthly Tax Reserve Amount and any other amounts required pursuant to Section 16.1 for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Tax Reserve Account;

(ii) during the continuance of an Event of Default and at any time when the insurance required to be maintained pursuant to this Agreement is provided under a blanket policy in accordance with Article VI hereof and the premiums in respect of such blanket policy are not paid or caused to be paid before such premiums become due and payable or at any time that Manager does not pay, reserve for or otherwise set aside and pay, premiums with respect to the Insurance Requirements, funds in an amount equal to the Monthly Insurance Reserve Amount for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Insurance Reserve Account, or following an Event of Default or an Insurance Reserve Trigger, funds sufficient (calculated on a monthly basis from the Insurance Reserve Trigger until the month in which the premium is due) to permit Lender to pay insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement and the Security Instrument on the respective due dates therefor (up to a maximum amount equal to the aggregate annual insurance premium required hereunder), and Lender shall so pay such funds to the insurance company having the right to receive such funds;

(iii) funds in an amount equal to the amount of Debt Service due on the Payment Date for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Current Debt Service Reserve Account;

(iv) at any such time that Manager does not reserve or otherwise set aside for FF&E in accordance with the terms of the Management Agreement, funds in an amount equal to the Monthly FF&E Reserve Amount for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the FF&E Reserve Account; and

(v) provided no Event of Default shall have occurred and is then continuing and subject to the provisions of Section 3.1.5(b) , funds in an amount equal to the balance (if any) remaining or deposited in the Holding Account after the foregoing deposits (such remainder being hereinafter referred to as "**Excess Cash Flow** ") and transfer the same to the Borrower's Account (or a third party account as directed by Borrower), free of any Lien or continuing security interest.

(b) Notwithstanding anything to the contrary contained herein or in the Security Instrument, but subject to Section 7.3 , to the extent that Borrower shall fail to pay any mortgage recording tax, costs, expenses or other amounts pursuant to Section 19.12 of this Agreement within the time period set forth therein, Lender shall have the right, at any time, upon five (5) Business Days' notice to Borrower, to withdraw from the Holding Account, an amount equal to such unpaid taxes, costs, expenses and/or other amounts and pay such amounts to the Person(s) entitled thereto.

3.1.6 Payments from Sub-Accounts . Borrower irrevocably authorizes Lender to make and, provided no Event of Default shall have occurred and be continuing, Lender hereby agrees to make, the following payments from the Sub-Accounts to the extent of the monies on deposit therefor:

(i) if notified (timely) by Borrower or otherwise determined by Lender in its reasonable discretion that Manager will not pay Impositions or Other Charges, funds from the Tax Reserve Account to Lender sufficient to permit Lender to pay (or otherwise to Borrower to reimburse Borrower for) (A) Impositions and (B) Other Charges, on the respective due dates therefor, and Lender shall so pay such funds to the Governmental Authority having the right to receive such funds (or shall reimburse Borrower or Operating Lessee upon confirmation of payment);

(ii) at any time when the insurance required to be maintained pursuant to this Agreement is provided under a blanket policy in accordance with Article VI hereof and the premiums in respect of such blanket policy are not paid or caused to be paid before such premiums become due and payable or at any time that Manager does not pay, reserve for or otherwise set aside and pay, premiums with respect to the Insurance Requirements and otherwise following an Insurance Reserve Trigger, funds from the Insurance Reserve Account to Lender sufficient to permit Lender to pay insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement and the Security Instrument, on the respective due dates therefor, and Lender shall so pay such funds to the insurance company having the right to receive such funds;

(iii) funds from the Current Debt Service Reserve Account to Lender sufficient to pay Debt Service on each Payment Date, and Lender, on each Payment Date, shall apply such funds to the payment of the Debt Service payable on such Payment Date; and

(iv) if notified (timely) by Borrower or otherwise determined by Lender in its reasonable discretion that Manager will not reserve for FF&E as required under the Management Agreement, and provided Borrower shall have complied with the procedures set forth in Section 16.6 , funds from the FF&E Reserve Account to the Borrower's Account to pay for FF&E.

If and to the extent any Sponsor or any Close Affiliate (other than Borrower or Operating Lessee) makes a payment of any Imposition, any insurance premium under a blanket policy or capital expenditure or overhead charge which qualifies as an Operating Expense, with respect to the Property and such expense is provided for in the Budget, provided no Event of Default has occurred and is continuing, such Sponsor or Close Affiliate will be entitled to receive reimbursement from the Manager, Lender, or the applicable Sub-Account established under hereunder or under the Management Agreement and such payment shall not be required to be re-deposited into the Collection Account.

3.1.7 Cash Management Bank . (a) Lender shall have the right to replace the Cash Management Bank with a financial institution reasonably satisfactory to Borrower in the event that (i) the Cash Management Bank fails, in any material respect, to comply with the Account Agreement, (ii) the Cash Management Bank named herein is no longer the Cash Management Bank or (iii) the Cash Management Bank is no longer an Approved Bank. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right at Borrower's sole cost and expense to replace Cash Management Bank at any time, without notice to Borrower. Borrower shall cooperate with Lender in connection with the appointment of any replacement Cash Management Bank and the execution by the Cash Management Bank and the Borrower of an Account Agreement and delivery of same to Lender.

(b) So long as no Event of Default shall have occurred and be continuing, Borrower shall have the right at its sole cost and expense to replace the Cash Management Bank with a financial institution that is an Approved Bank, provided that such financial institution and Borrower shall execute and deliver to Lender an Account Agreement substantially similar to the Account Agreement executed as of the Closing Date.

3.1.8 Borrower's Account Representations, Warranties and Covenants . Borrower represents, warrants and covenants that (i) as of the date hereof, Borrower has caused Operating Lessee to direct all Tenants under the Leases to mail all checks and wire all funds with respect to any payments due under such Leases directly to Manager, (ii) Borrower shall cause Manager and Operating Lessee to deposit all amounts payable to Borrower or Operating Lessee pursuant to the Management Agreement directly into the Collection Account, (iii) Borrower and Operating Lessee shall pay or cause to be paid all Rents, Cash and Cash Equivalents or other items of Operating Income not otherwise collected by Manager within two Business Days after receipt thereof by Borrower, Operating Lessee or its Affiliates directly into the Collection Account and, until so deposited, any such amounts held by Borrower or Operating Lessee, shall be deemed to be Account Collateral and shall be held in trust by it for the benefit, and as the property, of Lender and shall not be commingled with any other funds or property of Borrower or Operating Lessee, (iv) other than the Manager Accounts, there are no accounts other than the Collateral Accounts maintained by Borrower or Operating Lessee with respect to the Property or the collection of Rents and credit card company receivables with respect to the

Property and (v) so long as the Loan shall be outstanding, neither Borrower, Operating Lessee, nor any other Person shall open any other operating accounts with respect to the Property or the collection of Rents or credit card company receivables with respect to the Property, except for the Collateral Accounts and the Manager Accounts; provided that, Borrower and Manager shall not be prohibited from utilizing one or more separate accounts for the disbursement or retention of funds that have been transferred to the Borrower's Account pursuant to Section 3.1.5 .

3.1.9 Account Collateral and Remedies . (a) Upon the occurrence and during the continuance of an Event of Default, without additional notice from Lender to Borrower, (i) Lender may, in addition to and not in limitation of Lender's other rights, make any and all withdrawals from, and transfers between and among, the Collateral Accounts as Lender shall determine in its sole and absolute discretion to pay any Obligations; (ii) all Excess Cash Flow shall be retained in the Holding Account or applicable Sub-Accounts and (iii) Lender may liquidate and transfer any amounts then invested in Permitted Investments to the Collateral Accounts to which they relate or reinvest such amounts in other Permitted Investments as Lender may reasonably determine is necessary to perfect or protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce Lender's rights and remedies hereunder with respect to any Account Collateral or to preserve the value of the Account Collateral.

(b) Upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of Borrower with respect to the Account Collateral, and do in the name, place and stead of Borrower, all such acts, things and deeds for and on behalf of and in the name of Borrower, which Borrower could or might do or which Lender may deem necessary or desirable to more fully vest in Lender the rights and remedies provided for herein and to accomplish the purposes of this Agreement. The foregoing powers of attorney are irrevocable and coupled with an interest. Upon the occurrence and during the continuance of an Event of Default, Lender may perform or cause performance of any such agreement, and any reasonable expenses of Lender incurred in connection therewith shall be paid by Borrower as provided in Section 5.1.16 .

(c) Borrower hereby expressly waives, to the fullest extent permitted by law, presentment, demand, protest or any notice of any kind (except as expressly required under the Loan Documents) in connection with this Agreement or the Account Collateral. Borrower acknowledges and agrees that ten (10) Business Days' prior written notice of the time and place of any public sale of the Account Collateral or any other intended disposition thereof shall be reasonable and sufficient notice to Borrower within the meaning of the UCC.

3.1.10 Transfers and Other Liens . Borrower agrees that it will not (i) sell or otherwise dispose of any of the Account Collateral except as may be expressly permitted under the Loan Documents, or (ii) create or permit to exist any Lien upon or with respect to all or any of the Account Collateral, except for the Lien granted to Lender under this Agreement.

3.1.11 Reasonable Care . Beyond the exercise of reasonable care in the custody thereof, Lender shall have no duty as to any Account Collateral in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any person or otherwise with respect thereto. Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Account Collateral in its possession if the Account Collateral is accorded treatment substantially equal to that which Lender accords its own property, it being understood that Lender shall not be liable or responsible for any loss or damage to any of the Account Collateral, or for any diminution in value thereof, by reason of the act or omission of Lender, its Affiliates, agents, employees or bailees, except to the extent that such loss or damage results from Lender's gross negligence or willful misconduct. In no event shall Lender be liable either directly or indirectly for losses or delays resulting from any event which may be the basis of an Excusable Delay, computer malfunctions, interruption of communication facilities, labor difficulties or other causes beyond Lender's reasonable control or for indirect, special or consequential damages except to the extent of Lender's gross negligence or willful misconduct. Notwithstanding the foregoing, Borrower acknowledges and agrees that (i) Lender does not have custody of the Account Collateral, (ii) Cash Management Bank has custody of the Account Collateral, (iii) the initial Cash Management Bank was chosen by Borrower and (iv) Lender has no obligation or duty to supervise Cash Management Bank or to see to the safe custody of the Account Collateral.

3.1.12 Lender's Liability . (a) Lender shall be responsible for the performance only of such duties with respect to the Account Collateral as are specifically set forth in this Section 3.1 or elsewhere in the Loan Documents, and no other duty shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act with respect to the Account Collateral which would cause it to incur any expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Borrower shall indemnify and hold Lender, its employees and officers harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender in connection with the transactions contemplated hereby with respect to the Account Collateral (excluding losses on Permitted Investments) except as such may be caused by the gross negligence or willful misconduct of Lender, its employees, officers or agents.

(b) Lender shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature believed by it in good faith to be genuine, and, in so acting, it may be assumed that any person purporting to give any of the foregoing in connection with the provisions hereof has been duly authorized to do so. Lender may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder and in good faith in accordance therewith.

3.1.13 Continuing Security Interest . This Agreement shall create a continuing security interest in the Account Collateral and shall remain in full force and effect until payment in full of the Indebtedness; provided , however , such security interest shall automatically terminate with respect to funds which were duly deposited into Borrower's Account in accordance with the terms hereof. Upon payment in full of the Indebtedness, this security interest shall automatically terminate without further notice from any party and Borrower shall be entitled to the return, upon its request, of such of the Account Collateral as

shall not have been sold or otherwise applied pursuant to the terms hereof and Lender shall execute such instruments and documents as may be reasonably requested by Borrower to evidence such termination and the release of the Account Collateral.

IV. REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations . Borrower represents and warrants as of the Closing Date that:

4.1.1 Organization . Each of Borrower and Operating Lessee is a limited liability company, and have been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Each Sponsor entity is a limited partnership, and each such entity has been duly organized and is validly existing and in good standing pursuant to the laws of the relevant State where formed with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Each of Borrower and Operating Lessee has duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Collectively, Borrower and Operating Lessee possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which each is now engaged, and the sole business of Borrower is the ownership of the Property. The organizational structure of Borrower upon the closing is accurately depicted by the schematic diagram attached hereto as **Exhibit H-1** . Borrower shall not itself, and shall not permit Operating Lessee to, change its name, identity, corporate structure or jurisdiction of organization unless it shall have given Lender seven (7) days prior written notice of any such change and shall have taken all steps reasonably requested by Lender to grant, perfect, protect and/or preserve the security interest granted hereunder to Lender.

4.1.2 Proceedings . Each of Borrower, Operating Lessee, and Sponsor, has full power to and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents have been duly executed and delivered by, or on behalf of, each of Borrower, Operating Lessee, and Sponsor, as applicable, and constitute legal, valid and binding obligations of Borrower, Operating Lessee, and Sponsor, as applicable, enforceable against Borrower, Operating Lessee, and Sponsor, as applicable, in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts . The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower, Operating Lessee, and Sponsor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower, Operating Lessee, and Sponsor, pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement or other agreement or instrument to which

Borrower, Operating Lessee, and Sponsor, is a party or by which any of Borrower's, Operating Lessee's, and Sponsor's, property or assets is subject (unless consents from all applicable parties thereto have been obtained), nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority, and any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Borrower, Operating Lessee, and Sponsor, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4 Litigation . There are no lawsuits, administrative proceedings, arbitration proceedings, or other such legal proceedings that have been filed and served upon Borrower (or with respect to which Borrower has otherwise received proper notice) or, to the Best of Borrower's Knowledge, otherwise pending or threatened against or affecting Borrower, Operating Lessee, or the Property whose outcome, if determined against Borrower, Operating Lessee, or the Property, would have a Material Adverse Effect. To the Best of Borrower's Knowledge, **Schedule I** includes each pending action against Borrower, Operating Lessee, or otherwise affecting the Property that involves a claim or claims for either (a) monetary damages exceeding $250,000, or (b) injunctive relief or other equitable remedy that could have a Material Adverse Effect, excluding: (i) actions for monetary damages only that have been tendered to, and accepted without reservation of rights by, the liability insurance carrier for the Property, (ii) worker's compensation claims, and (iii) any proceedings by employees working at the Property where the amount claimed in such proceeding is less than $250,000; to the Best of Borrower's Knowledge, the aggregate amount of such claims described in subclause (iii) of this sentence is less than $1,000,000.

4.1.5 Agreements . Neither Borrower nor Operating Lessee is a party to any agreement or instrument or subject to any restriction which is reasonably likely to have a Material Adverse Effect. Neither Borrower nor Operating Lessee is in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower, Operating Lessee, or the Property is bound, which default is reasonably likely to have a Material Adverse Effect. Neither Borrower nor Operating Lessee has any material financial obligation (contingent or otherwise) under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower or Operating Lessee is a party or by which Borrower, Operating Lessee, or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property, including membership programs disclosed in writing to Lender on or prior to the date hereof, and (b) obligations under the Loan Documents.

4.1.6 Title . Borrower has good, marketable and insurable fee simple title to the Land and the Improvements, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Borrower or Operating Lessee, as applicable, has good and marketable title to the remainder of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, and Accommodation Security Documents, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first mortgage lien on the Land and the Improvements, subject only to

Permitted Encumbrances and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. Except as may be indicated in and insured over by the Title Policy, to the Best of Borrower's Knowledge, there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents. Borrower represents and warrants that none of the Permitted Encumbrances will have a Material Adverse Effect. Borrower shall preserve its right, title and interest in and to the Property for so long as the Note remains outstanding and will warrant and defend same and the validity and priority of the Lien hereof from and against any and all claims whatsoever other than the Permitted Encumbrances.

4.1.7 No Bankruptcy Filing . None of Borrower, Operating Lessee, or Sponsor, is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of such entity's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against Borrower or against Operating Lessee or any Sponsor.

4.1.8 Full and Accurate Disclosure . To the Best of Borrower's Knowledge, no statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower which has not been disclosed which has a Material Adverse Effect, or to the Best of Borrower's Knowledge could reasonably be expected to have a Material Adverse Effect.

4.1.9 All Property . The Property constitutes all of the real property, personal property, equipment and fixtures currently (i) owned or leased by Borrower or Operating Lessee or (ii) used in the operation of the business located on the Property, other than items owned by Manager or any Tenants (excluding items owned by Operating Lessee).

4.1.10 ERISA . (A) Borrower does not maintain or contribute to and is not required to contribute to, an "employee benefit plan" as defined by Section 3(3) of ERISA, which is subject to Title IV of ERISA (other than a "multiemployer plan" as defined by Section 3(37) of ERISA), and Borrower (i) has no knowledge of any material liability which has been incurred or is expected to be incurred by Borrower which is reasonably likely to result in a Material Adverse Effect and is or remains unsatisfied for any taxes or penalties or unfunded contributions with respect to any "employee benefit plan" or any "plan," within the meaning of Section 4975(e)(1) of the Internal Revenue Code or any other benefit plan (other than a "multiemployer plan") maintained, contributed to, or required to be contributed to by Borrower or by any entity that is under common control with Borrower within the meaning Section 4001(a)(14) of ERISA (each, an "**ERISA Affiliate**") (each, a "**Plan**") or any plan that would be a Plan but for the fact that it is a multiemployer plan within the meaning of ERISA Section 3(37); and (ii) has made and shall continue to make when due all required contributions to all such Plans (other than Plans relating to ERISA Affiliates), if any, where the failure to so contribute is reasonably likely to result in a Material Adverse Effect. Each such Plan (other than Plans relating to ERISA Affiliates), if any, has been and will be administered in material

compliance with its terms and the applicable provisions of ERISA, the Internal Revenue Code, and any other applicable federal or state law; and no action shall be taken or fail to be taken that would result in the disqualification or loss of tax-exempt status of any such Plan intended to be qualified and/or tax exempt; and

(a) With respect to any "multiemployer plan," (i) Borrower has not, since September 26, 1980, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA, (ii) Borrower has made and shall continue to make when due all required contributions to all such "multiemployer plans" and (iii) no ERISA Affiliate has, since September 26, 1980, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA which withdrawal is reasonably expected to have a Material Adverse Effect.

(b) Borrower is not an employee benefit plan, as defined in Section 3(3) of ERISA, whether or not subject to Title I of ERISA, none of the assets of Borrower constitutes or will constitute plan assets of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101 and transactions by or with Borrower is not subject to similar laws regulating investment of, and fiduciary obligations with respect to, plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect ("**Similar Laws**"), which prohibit or otherwise restrict the transactions contemplated by this Agreement.

4.1.11 Compliance . Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes except where the failure to so comply is not reasonably expected to result in a Material Adverse Effect. To the Best of Borrower's Knowledge, neither Borrower nor Operating Lessee is in default or in violation of any order, writ, injunction, decree or demand of any Governmental Authority. To the Best of Borrower's Knowledge, there has not been committed by Borrower or Operating Lessee any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

4.1.12 Financial Information . To the Best of Borrower's Knowledge, all financial data including, without limitation, the statements of cash flow and income and operating expense, that have been delivered by or on behalf of Borrower to Lender in respect of the Property (i) are true, complete and correct in all material respects, (ii) fairly represent the financial condition of the Property as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Neither Borrower nor Operating Lessee has any material contingent liabilities, liabilities for delinquent taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and could reasonably be expected to have a Material Adverse Effect, except as referred to or reflected in said financial statements and operating statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operations or business of Borrower or Operating Lessee from that set forth in said financial statements.

4.1.13 Condemnation . No Condemnation has been commenced or, to the Best of Borrower's Knowledge, is contemplated with respect to all or any portion of the Property.

4.1.14 Federal Reserve Regulations . None of the proceeds of the Loan will be used for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U, Regulation X or Regulation T or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry "margin stock" or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of Regulation U or Regulation X. As of the Closing Date, Borrower does not own any "margin stock."

4.1.15 Utilities and Public Access . The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. To the Best of Borrower's Knowledge, all utilities necessary to the existing use of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property. All roads necessary for the use of the Property for its current purposes have been completed and, if necessary, dedicated to public use.

4.1.16 Not a Foreign Person . Borrower is not a foreign person within the meaning of § 1445(f)(3) of the Code.

4.1.17 Separate Lots . The Property is comprised of one (1) or more contiguous parcels which constitute a separate tax lot or lots and does not constitute or include a portion of any other tax lot not a part of the Property.

4.1.18 Assessments . To the Best of Borrower's Knowledge, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

4.1.19 Enforceability . The Loan Documents are not subject to any existing right of rescission, set-off, counterclaim or defense by Borrower, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law)), and Borrower has not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.20 No Prior Assignment . There are no prior sales, transfers or assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding following the funding of the Loan, other than those being terminated or assigned to Lender concurrently herewith.

4.1.21 Insurance . Borrower has obtained and has delivered to Lender certified copies or certificates of all insurance policies required under this Agreement, reflecting

the insurance coverages, amounts and other requirements set forth in this Agreement. Borrower has not, and to the Best of Borrower's Knowledge no Person has, done by act or omission anything which would impair the coverage of any such policy.

4.1.22 Use of Property . The Property is used exclusively for hotel purposes and other appurtenant and related uses.

4.1.23 Certificate of Occupancy; Licenses . To the Best of Borrower's Knowledge, all material certifications, permits, licenses (including, without limitation, a license to serve alcohol on the Property) and approvals, including without limitation, certificates of completion and occupancy permits required of Borrower for the legal use, occupancy and operation of the Property for hotel purposes (collectively, the "Licenses"), have been obtained and are in full force and effect. Borrower shall keep and maintain all Licenses necessary for the operation of the Property for hotel purposes. The use being made of the Property is in conformity with the certificate of occupancy issued for the Property.

4.1.24 Flood Zone . Except as may be shown on the Survey with respect to portions of the Improvements other than buildings and enclosed structures, none of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards.

4.1.25 Physical Condition . To the Best of Borrower's Knowledge and except as expressly disclosed in the Physical Conditions Report, the Property, including, without limitation, all buildings, Improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; to the Best of Borrower's Knowledge and except as disclosed in the Physical Conditions Report, there exists no structural or other material defects or damages in or to the Property, whether latent or otherwise, and Borrower has not received any written notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

4.1.26 Boundaries . To the Best of Borrower's Knowledge and except as disclosed on the Survey, all of the Improvements lie wholly within the boundaries and building restriction lines of the Real Property, and no improvements on adjoining properties encroach upon the Real Property, and no easements or other encumbrances upon the Real Property encroach upon any of the Improvements, so as to have a Material Adverse Effect on the value or marketability of the Real Property except those which are insured against by the Title Policy.

4.1.27 Leases . The Property is not subject to any Leases other than the Leases described in the certified rent roll delivered in connection with the origination of the Loan. Such certified rent roll is true, complete and correct in all material respects as of the date set forth therein. No Person has any possessory interest in the Property or right to occupy the same (other than typical short-term occupancy rights of hotel guests which are not the subject of

a written agreement) except under and pursuant to the provisions of the Leases. The Gift Shop Lease will terminate on October 1, 2006. All other current Leases are in full force and effect and to the Best of Borrower's Knowledge, there are no material defaults thereunder by either party (other than as expressly disclosed on the certified rent roll delivered to Lender or the Tenant estoppel certificates delivered to Lender in connection with the closing of the Loan) and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute material defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date, except as disclosed in the Tenant estoppel certificates delivered to Lender in connection with the closing of the Loan. There has been no prior sale, transfer or assignment, hypothecation or pledge by Borrower of any Lease or of the Rents received therein, which will be outstanding following the funding of the Loan, other than those being assigned to Lender concurrently herewith. No Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the property of which the leased premises are a part.

4.1.28 Filing and Recording Taxes . All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid and the granting and recording of the Security Instrument and the UCC financing statements required to be filed in connection with the Loan. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid, and, under current Legal Requirements, the Security Instrument is enforceable against Borrower in accordance with its terms by Lender (or any subsequent holder thereof) subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law.

4.1.29 Single Purpose Entity/Separateness . (a) Borrower hereby represents, warrants and covenants that each of Operating Lessee and Borrower is and always has been, since the date of its respective formation, a Single Purpose Entity and has not, since the date of its respective formation, conducted any business and owned any property whatsoever, except as specifically described in the Non-Consolidation Opinion.

All of the assumptions made in the Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto and any certificates delivered by Borrower in connection with the issuance of the Non-Consolidation Opinion, are true and correct in all respects and any assumptions made in any subsequent non-consolidation opinion delivered in connection with the Loan Documents (an " **Additional Non-Consolidation Opinion**"), including, but not limited to, any exhibits attached thereto, are true and correct in all material respects. Borrower has complied with all of the assumptions made with respect to it in the Non-Consolidation Opinion. To the Best of Borrower's Knowledge, each entity other than Borrower with respect to which an assumption shall be made in any Additional Non-Consolidation Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Non-Consolidation Opinion.

4.1.30 Management Agreement . The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Manager is not an Affiliate of Borrower.

4.1.31 Illegal Activity . No portion of the Property has been or will be purchased with proceeds of any illegal activity.

4.1.32 Intentionally Deleted .

4.1.33 Tax Filings . Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower.

4.1.34 Solvency/Fraudulent Conveyance . Borrower (a) has not entered into the transaction contemplated by this Agreement or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) has received reasonably equivalent value in exchange for its obligations under the Loan Documents. After giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

4.1.35 Investment Company Act . Borrower is not (a) an investment company or a company Controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended, (b) a holding company or a subsidiary company of a holding company or an affiliate of either a holding company or a subsidiary company within the mean of the Public Utility Holding Company Act of 1935, as amended or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.36 Interest Rate Cap Agreement . The Interest Rate Cap Agreement is in full force and effect and enforceable against Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws generally affecting the enforcement of creditors' rights and subject as to enforceability to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.37 Labor . Except as described on **Schedule I** , no work stoppage, labor strike, slowdown or lockout is pending or threatened by employees and other laborers at the Property. Except as described on **Schedule I** , neither Borrower, Manager nor Operating Lessee (i) is involved in or, to the Best of Borrower's Knowledge, threatened with any material labor dispute, material grievance or litigation relating to labor matters involving any employees and other laborers at the Property, including, without limitation, violation of any federal, state or local labor, safety or employment laws (domestic or foreign) and/or charges of unfair labor practices or discrimination complaints, (ii) to the Best of Borrower's Knowledge, has engaged with respect to the Property, in any unfair labor practices within the meaning of the National Labor Relations Act or the Railway Labor Act, or (iii) is a party to, or bound by, any existing collective bargaining agreement or union contract with respect to employees and other laborers at the Property.

4.1.38 Brokers . Neither Borrower nor, to the Best of Borrower's Knowledge, Lender has dealt with any broker or finder with respect to the loan transactions contemplated by the Loan Documents and neither party has done any acts, had any negotiations or conversations, or made any agreements or promises which will in any way create or give rise to any obligation or liability for the payment by either party of any brokerage fee, charge, commission or other compensation to any Person with respect to the transactions contemplated by the Loan Documents. Borrower covenants and agrees that it shall pay as and when due any and all brokerage fees, charges, commissions or other compensation or reimbursement due to any broker of Borrower with respect to the transactions contemplated by the Loan Documents. Borrower and Lender shall each indemnify and hold harmless the other from and against any loss, liability, cost or expense, including any judgments, attorneys' fees, or costs of appeal, incurred by the other party and arising out of or relating to any claim for brokerage commissions or finder's fees alleged to be due as a result of the indemnifying party's agreements or actions. The provisions of this Section 4.1.38 shall survive the expiration and termination of this Agreement and the payment of the Indebtedness.

4.1.39 No Other Debt . Borrower has not borrowed or received debt financing that has not heretofore or contemporaneously herewith been repaid in full, other than the Permitted Debt.

4.1.40 Taxpayer Identification Number . Borrower's Federal taxpayer identification number is 20-2520272.

4.1.41 Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws . (i) None of Borrower or any Person who owns any equity interest in or Controls Borrower or, to the Best of Borrower's Knowledge, Sponsor or Ultimate Equity Owners, currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and Borrower has implemented procedures to ensure that no Person who now or hereafter owns any equity interest in Borrower, Ultimate Equity Owners or Sponsor is a Prohibited Person or Controlled by a Prohibited Person, and (ii) none of Borrower, Ultimate Equity Owners or Sponsor is in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time.

4.1.42 Knowledge Qualifications . Borrower represents that Ryan Bowie and Cory Warning are in a position to have meaningful knowledge with respect to the matters set forth in the Loan Documents which have been qualified to the knowledge of such Persons.

4.1.43 Leases . Borrower represents that it has heretofore delivered to Lender true and complete copies of all Leases and any and all amendments or modifications thereof.

4.1.44 FF&E . Manager is reserving for FF&E on a monthly basis not less than an amount equal to four percent (4%) of adjusted gross revenues with respect to the Property; such reserves are maintained in the Manager FF&E Reserve Account (subject to disbursements therefrom as permitted by the Management Agreement).

4.1.45 Survival of Representations . Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall be deemed given and made as of the date of the funding of the Loan and survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower or Sponsor unless a longer survival period is expressly stated in a Loan Document with respect to a specific representation or warranty, in which case, for such longer period. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

V. BORROWER COVENANTS

Section 5.1 Affirmative Covenants . From the Closing Date and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of this Agreement and the Security Instrument in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender to comply with and to cause Operating Lessee to comply with, the following covenants, and in such connection, references in this Article V to Borrower shall alternatively mean Operating Lessee, as the context may require:

5.1.1 Performance by Borrower . Borrower shall observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, in accordance with the provisions of each Loan Document, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower, as applicable, without the prior written consent of Lender.

5.1.2 Existence; Compliance with Legal Requirements; Insurance . Subject to Borrower's right of contest pursuant to Section 7.3 , Borrower shall comply and cause the Property to be in compliance with all Legal Requirements applicable to the Borrower, Manager and the Property and the uses permitted upon the Property. Borrower shall do or cause

to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises necessary to comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall not knowingly permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, knowingly permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all material franchises and trade names and preserve all the remainder of its property used in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully set forth in the Security Instrument. Borrower shall keep the Property insured at all times to such extent and against such risks, and maintain liability and such other insurance, as set forth in this Agreement.

5.1.3 Litigation . Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower which, if determined adversely to Borrower, would have a Material Adverse Effect.

5.1.4 Single Purpose Entity . (a) Borrower shall remain a Single Purpose Entity.

(b) Except as permitted by the Loan Documents, Borrower shall continue to maintain its own deposit account or accounts, separate from those of any Affiliate, with commercial banking institutions. None of the funds of Borrower will be commingled with the funds of any other Affiliate.

(c) To the extent that Borrower shares the same officers or other employees as any of its Affiliates, the salaries of and the expenses related to providing benefits to such officers and other employees shall be fairly allocated among such entities, and each such entity shall bear its fair share of the salary and benefit costs associated with all such common officers and employees.

(d) To the extent that Borrower jointly contracts with any of its Affiliates to do business with vendors or service providers or to share overhead expenses, the costs incurred in so doing shall be allocated fairly among such entities, and each such entity shall bear its fair share of such costs. To the extent that Borrower contracts or does business with vendors or service providers where the goods and services provided are partially for the benefit of any other Person, the costs incurred in so doing shall be fairly allocated to or among such entities for whose benefit the goods and services are provided, and each such entity shall bear its fair share of such costs. All material transactions between (or among) Borrower and any of its Affiliates shall be conducted on substantially the same terms (or on more favorable terms for Borrower) as would be conducted with third parties.

(e) To the extent that Borrower or any of its Affiliates have offices in the same location, there shall be a fair and appropriate allocation of overhead costs among them, and each such entity shall bear its fair share of such expenses.

(f) Borrower shall conduct its affairs strictly in accordance with its organizational documents, and observe all necessary, appropriate and customary corporate, limited liability company or partnership formalities, as applicable, including, but not limited to, obtaining any and all consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, without limitation, payroll and intercompany transaction accounts.

(g) In addition, Borrower shall: (i) maintain books and records separate from those of any other Person; (ii) maintain its assets in such a manner that it is not more costly or difficult to segregate, identify or ascertain such assets; (iii) hold regular meetings of its board of directors, shareholders, partners or members, as the case may be, and observe all other corporate, partnership or limited liability company, as the case may be, formalities; (iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; (v) prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group; (vi) transact all business with its Affiliates on an arm's-length basis and pursuant to enforceable agreements; (vii) conduct business in its name and use separate stationery, invoices and checks; (viii) not commingle its assets or funds with those of any other Person; and (ix) not assume, guarantee or pay the debts or obligations of any other Person (however the presentation of combined or consolidated financial condition or results of operation for purposes of financial statements prepared for the ultimate equity owners of multiple Single Purpose Entities shall be allowed).

5.1.5 Consents . If Borrower is a corporation, the board of directors of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including the Independent Directors, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents). If Borrower is a limited liability company, (a) if such Person is managed by a board of managers, the board of managers of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of managers unless all of the managers, including the Independent Managers, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents), (b) if such Person is not managed by a board of managers, the members of such Person may not take any action requiring the affirmative vote of 100% of the members of such Person unless all of the members, including the Independent Members, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents). An affirmative vote of 100% of the directors, board of managers or members, as applicable, including without limitation the Independent Directors, of Borrower shall be required to (i) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings or to authorize Borrower to do so or (ii) file an involuntary bankruptcy petition against any Close Affiliate. Furthermore, Borrower's formation documents shall expressly state that for so long as the Loan is outstanding, Borrower shall not be permitted to (i) dissolve, liquidate, consolidate, merge or sell all or substantially all of Borrower's assets other than in connection with the repayment of the Loan or (ii) engage in any other business activity and such restrictions shall not be modified or violated for so long as the Loan is outstanding.

5.1.6 Access to Property . Borrower shall permit agents, representatives and employees of Lender and the Rating Agencies to inspect the Property or any part thereof during normal business hours on Business Days upon reasonable advance notice.

5.1.7 Notice of Default . Borrower shall promptly advise Lender (a) of any event or condition that has or is likely to have a Material Adverse Effect and (b) of the occurrence of any Default or Event of Default of which Borrower has knowledge.

5.1.8 Cooperate in Legal Proceedings . Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which would reasonably be expected to affect in any material adverse way the rights of Lender hereunder or under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings which may have a Material Adverse Effect.

5.1.9 Perform Loan Documents . Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required, under the Loan Documents executed and delivered by, or applicable to, Borrower.

5.1.10 Insurance . (a) Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any expenses incurred in connection therewith (including reasonable attorneys' fees and disbursements) out of such Proceeds.

(b) Borrower shall comply with all Insurance Requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by any Insurance Requirement, or would invalidate insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to Section 6.1 .

5.1.11 Further Assurances; Separate Notes . (a) Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement and the other Loan Documents and any security interest created or purported to be created thereunder, to protect and further the validity, priority and enforceability of this Agreement and the other Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder. At any time after the Closing Date, Borrower agrees that it shall, upon request, reasonably cooperate with Lender in connection with any request by Lender to reallocate the LIBOR Margin among the Notes or to sever the Note into two (2) or more separate substitute or component notes in an aggregate principal amount equal to the Principal Amount and to reapportion the Loan among

such separate substitute notes, including, without limitation, by executing and delivering to Lender new substitute or component notes to replace the Note, amendments to or replacements of existing Loan Documents to reflect such severance and/or Opinions of Counsel with respect to such substitute or component notes, amendments and/or replacements, provided that Borrower shall bear no costs or expenses in connection therewith (other than administrative costs and expenses of Borrower and legal fees of counsel to the Borrower and Sponsor), and the holders of such substitute or component notes shall designate a lead lender or agent for such holders to whom Borrower may direct all communications with respect to the Loan. Any such substitute or component notes may have varying principal amounts and economic terms, provided, however, that (i) the maturity date of any such substitute or component notes shall be the same as the scheduled Maturity Date of the Note immediately prior to the issuance of such substitute notes, (ii) the substitute notes shall provide for amortization of the Principal Amount on a weighted average basis over a period not less than the amortization period provided under the Note, if any, immediately prior to the issuance of the substitute notes, (iii) the weighted average LIBOR Margin for the term of the substitute notes shall not exceed the LIBOR Margin under the Note immediately prior to the issuance of such substitute notes; and (iv) the economics of the Loan, taken as a whole, shall not change in a manner which is adverse to Borrower. Upon the occurrence and during the continuance of an Event of Default, Lender may apply payment of all sums due under such substitute notes in such order and priority as Lender shall elect in its sole and absolute discretion.

(b) No Securitization shall occur prior to April 9, 2007. Borrower further agrees that if, in connection with the Securitization, it is determined by the Rating Agencies that a portion of the Securitization would not receive an "investment grade" rating unless the principal amount of the Loan were to be decreased and, as a result, the principal amount of the Loan is decreased, then the Borrower shall take all actions as are necessary to effect the "resizing", including the reallocation of the LIBOR Margin of the Loan, and Borrower shall execute and deliver any and all necessary amendments or modifications to the Loan Documents. In connection with the foregoing, Borrower agrees, at Lender's sole cost and expense other than with respect to (1) Borrower's, Operating Lessee's, the Sponsor's, each Ultimate Equity Owners' and their Affiliate's counsel fees and (2) if the principal amount of the Loan is increased, an endorsement to the Title Policy reflecting an increase in the insured amount thereunder which shall be at Borrower's sole cost and expense, to execute and deliver such documents and other agreements reasonably required by Lender to "re-size" the Loan, including, without limitation, an amendment to this Agreement, the Note, the Security Instrument and the other Loan Documents. Borrower agrees to reimburse Lender for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Lender in connection with any "resizing" of the Loan. Notwithstanding the foregoing, Lender agrees that any "resizing" of the Loan shall not change the economics of the Loan in a manner which is adverse to Borrower .

(c) In addition, Borrower shall, at Borrower's sole cost and expense:

(i) furnish to Lender, to the extent not otherwise already furnished to Lender and reasonably acceptable to Lender, all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents;

(ii) execute and deliver, from time to time, such further instruments (including, without limitation, delivery of any financing statements under the UCC) as may be reasonably requested by Lender to confirm the Lien of the Security Instrument on any Building Equipment, Operating Asset or any Intangible;

(iii) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require;

(iv) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the carrying out of the terms and conditions of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time; and

(v) cause its New York counsel to re-issue the New York opinion delivered on the date hereof (in identical form and without updating) in favor of a trustee in a Securitization if such trustee is different that the trustee currently listed in such opinion.

5.1.12 Mortgage Taxes . Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender.

5.1.13 Operation . Borrower shall, and shall cause Manager to, (i) promptly perform and/or observe all of the covenants and agreements required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any "event of default" under the Management Agreement of which it is aware; (iii) enforce in a commercially reasonable manner the performance and observance of all of the covenants and agreements required to be performed and/or observed by the Manager under the Management Agreement.

5.1.14 Business and Operations . Borrower shall continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower shall qualify to do business and shall remain in good standing under the laws of the State in which the Property is located and as and to the extent required for the ownership, maintenance, management and operation of the Property.

5.1.15 Title to the Property . Borrower shall warrant and defend (a) its title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Security Instrument, the Assignment of Leases and this Agreement on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.16 Costs of Enforcement . In the event (a) that this Agreement or the Security Instrument is foreclosed upon in whole or in part or that this Agreement or the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any security agreement prior to or subsequent to this Agreement in which proceeding Lender is made a party, or a mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including reasonable attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.17 Estoppel Statement . (a) Borrower shall, from time to time, upon thirty (30) days' prior written request from Lender, execute, acknowledge and deliver to the Lender, an Officer's Certificate, stating that this Agreement and the other Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that this Agreement and the other Loan Documents are in full force and effect as modified and setting forth such modifications), stating the amount of accrued and unpaid interest and the outstanding principal amount of the Note and containing such other information, qualified to the Best of Borrower's Knowledge, with respect to the Borrower, the Property and the Loan as Lender shall reasonably request. The estoppel certificate shall also state either that no Default exists hereunder or, if any Default shall exist hereunder, specify such Default and the steps being taken to cure such Default.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender, within thirty (30) days of Lender's request, tenant estoppel certificates from each Tenant under any Material Lease entered into after the Closing Date in substantially the form and substance of the estoppel certificate set forth in **Exhibit G** provided that Borrower shall not be required to deliver such certificates more frequently than one time in any calendar year; provided , however , that there shall be no limit on the number of times Borrower may be required to obtain such certificates if a Default hereunder or under any of the Loan Documents has occurred and is continuing.

5.1.18 Loan Proceeds . Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4 .

5.1.19 No Joint Assessment . Borrower shall not suffer, permit or initiate the joint assessment of the Property (a) with any other real property constituting a tax lot separate from the Property and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.1.20 No Further Encumbrances . Borrower shall do, or cause to be done, all things necessary to keep and protect the Property and all portions thereof unencumbered from any Liens, easements or agreements granting rights in or restricting the use

or development of the Property, except for (a) Permitted Encumbrances, (b) Liens permitted pursuant to the Loan Documents, (c) Liens for Impositions prior to the imposition of any interest, charges or expenses for the non-payment thereof and (d) any Liens permitted pursuant to Leases.

5.1.21 Leases . Borrower shall promptly after receipt thereof deliver to Lender a copy of any notice received with respect to any Material Lease claiming that Borrower is in default in the performance or observance of any of the material terms, covenants or conditions of any of the Material Leases, if such default is reasonably likely to have a Material Adverse Effect.

5.1.22 Article 8 "Opt In" Language . Each organizational document of Borrower and each of the other entities identified in Section 4.1.29 hereof shall be modified to include the language set forth on **Exhibit R** .

5.1.23 FF&E . Borrower shall cause Manager to reserve for FF&E on a monthly basis in accordance with the Management Agreement not less than an amount equal to four percent (4%) of adjusted gross revenues with respect to the Property, such reserves to be maintained in the Manager FF&E Reserve Account.

Section 5.2 Negative Covenants . From the Closing Date until payment and performance in full of all Obligations of Borrower under the Loan Documents or the earlier release of the Lien of this Agreement or the Security Instrument in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that it will not do (and will not permit Operating Lessee to do), or permit to be done, directly or indirectly, any of the following (and in such connection, references in this Article V to Borrower shall alternatively mean Operating Lessee, as the context may require):

5.2.1 Incur Debt . Incur, create or assume (or permit Operating Lessee to incur, create or assume) any Indebtedness other than Permitted Debt or Transfer all or any part of the Property or any interest therein, except as permitted in the Loan Documents;

5.2.2 Encumbrances . Except as permitted pursuant to Article VIII , (a) incur, create or assume or permit the incurrence, creation or assumption of any Indebtedness other than Permitted Debt secured by an interest in Borrower or Operating Lessee and (b) Transfer or permit the Transfer of any interest in such Persons;

5.2.3 Engage in Different Business . Engage, or permit Operating Lessee to engage, directly or indirectly, in any business other than that of entering into this Agreement and the other Loan Documents to which Borrower is a party and the use, ownership, management, leasing, renovation, financing, development, operation and maintenance of the Property and activities related thereto;

5.2.4 Make Advances . Make or permit Operating Lessee to make advances or make loans to any Person, or hold any investments, except as expressly permitted pursuant to the terms of this Agreement or any other Loan Document;

5.2.5 Partition . Partition or permit the partition of the Property, except as permitted hereunder;

5.2.6 Commingle . Commingle its assets or permit Operating Lessee to commingle its assets with the assets of any of Borrower's and/or Operating Lessee's Affiliates except as permitted by the definition of "Single Purpose Entity";

5.2.7 Guarantee Obligations . Guarantee or permit Operating Lessee to guarantee any obligations of any Person;

5.2.8 Transfer Assets . Transfer or permit Operating Lessee to transfer any asset other than in the ordinary course of business or Transfer any interest in the Property except as may be permitted hereby or in the other Loan Documents;

5.2.9 Amend Organizational Documents . Amend or modify any of its or Operating Lessee's organizational documents without Lender's consent, other than in connection with any Transfer permitted pursuant to Article VIII or to reflect any change in capital accounts, contributions, distributions, allocations or other provisions that do not and could not reasonably be expected to have a Material Adverse Effect and provided that each such Person remain a Single Purpose Entity;

5.2.10 Dissolve . Dissolve, wind-up, terminate, liquidate, merge with or consolidate into another Person, except following or simultaneously with a repayment of the Loan in full or as expressly permitted pursuant to this Agreement;

5.2.11 Bankruptcy . (i) File (or permit Operating Lessee to file) a bankruptcy or insolvency petition or otherwise institute insolvency proceedings, (ii) dissolve, liquidate, consolidate, merge or sell all or substantially all of Borrower's assets other than in connection with the repayment of the Loan, (iii) engage (or permit Operating Lessee to engage) in any other business activity or (iv) file or solicit the filing (or permit Operating Lessee to file or solicit the filing) of an involuntary bankruptcy petition against Borrower, or Operating Lessee, or any Close Affiliate of any such Person without obtaining the prior consent of all of the directors of Borrower, including, without limitation, the Independent Directors;

5.2.12 ERISA . Engage in any activity that would subject it to regulation under ERISA or qualify it as an "employee benefit plan" (within the meaning of Section 3(3) of ERISA) to which ERISA applies and Borrower's assets do not and will not constitute plan assets within the meaning of 29 C.F.R. Section 2510.3-101;

5.2.13 Distributions . From and after the occurrence and during the continuance of an Event of Default, make (or permit Operating Lessee to make) any distributions to or for the benefit of any of Borrower's, or Operating Lessee's shareholders, partners or members, as the case may be, or its or their Affiliates;

5.2.14 Manager . (a) Borrower represents, warrants and covenants on behalf of itself and Operating Lessee that the Property shall at all times be managed by an Acceptable Manager pursuant to an Acceptable Management Agreement.

(b) Notwithstanding any provision to the contrary contained herein or in the other Loan Documents, except as provided in this Section 5.2.14 or in connection with a release made in accordance with Section 2.3.4 , Borrower may not amend, modify, supplement, alter or

waive any right under the Management Agreement (or permit any such action) without the receipt of a Rating Agency Confirmation. Without the receipt of a Rating Agency Confirmation, Borrower shall be permitted to make any nonmaterial modification, change, supplement, alteration or amendment to the Management Agreement and to waive any nonmaterial rights thereunder, provided that no such modification, change, supplement, alteration, amendment or waiver shall affect the cash management procedures set forth in the Management Agreement or the Loan Documents, decrease the cash flow of the Property, adversely affect the marketability of the Property, change the definitions of "default" or "event of default," change the definitions of "operating expense" or words of similar meaning to add additional items to such definitions, change any definitions or provisions so as to reduce the payments due the Borrower thereunder, change the timing of remittances to the Borrower thereunder, increase or decrease reserve requirements, change the term of the Management Agreement or increase any Management Fees payable under the Management Agreement.

(c) Borrower may enter into a new Management Agreement with an Acceptable Manager upon receipt of a Rating Agency Confirmation with respect to the Management Agreement and delivery of an acceptable Non-Consolidation Opinion covering such replacement manager if such Person (i) is not covered by the Non-Consolidation Opinion or an Additional Non-Consolidation Opinion, and (ii) is an Affiliate of Borrower.

(d) Notwithstanding anything contained herein (i) approvals will not be required to enter into management agreements for Retail/Service Facilities that are not expected to have a Material Adverse Effect, and (ii) amendments to the Management Agreement relating to the Retail/Service Facilities will be deemed to be nonmaterial modifications permitted by Section 5.2.14(b) provided they are not expected to have a Material Adverse Effect.

5.2.15 Management Fee . Borrower may not, without the prior written consent of Lender (which may be withheld in its sole and absolute discretion) take or permit to be taken any action that would increase the percentage amount of the Management Fee, or add a new type of fee (other than a "Group Services Expense" as permitted by Section 5.2.14 above) payable to Manager relating to the Property, including, without limitation, the Management Fee.

5.2.16 Operating Lease . Without the prior written consent of Lender surrender or terminate the Operating Lease unless the other party thereto is in material default and the termination of such agreement would be commercially reasonable.

5.2.17 Modify Account Agreement . Without the prior consent of Lender, which shall not be unreasonably withheld, delayed or conditioned (and if a Securitization shall have occurred, a Rating Agency Confirmation obtained by Borrower), Borrower shall not execute any modification to the Account Agreement;

5.2.18 Zoning Reclassification . Except as contemplated by Section 2.3.4 , without the prior written consent of Lender, which consent shall not be unreasonably withheld, (a) initiate or consent to any zoning reclassification of any portion of the Property, (b) seek any variance under any existing zoning ordinance that would result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, or (c) allow any portion of the Property to be used in any manner that could result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation;

5.2.19 Intentionally Deleted .

5.2.20 Debt Cancellation . Cancel or otherwise forgive or release any material claim or debt owed to it by any Person, except for adequate consideration or in the ordinary course of its business and except for termination of a Lease as permitted by Section 8.8 ;

5.2.21 Misapplication of Funds . Distribute any revenue from the Property or any Proceeds in violation of the provisions of this Agreement, fail to remit amounts to the Collection Accounts or Holding Account, as applicable, as required by Section 3.1 , misappropriate any security deposit or portion thereof or apply the proceeds of the Loan in violation of Section 2.1.4 ; or

5.2.22 Single-Purpose Entity . Fail to be (or permit Operating Lessee) to fail to be a Single-Purpose Entity or take or suffer any action or inaction the result of which would be to cause such Person to cease to be a Single-Purpose Entity.

VI. INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

Section 6.1 Insurance Coverage Requirements . Borrower shall, at its sole cost and expense, during the term of this Agreement, comply with the following insurance obligations:

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall keep or cause to be kept the Property insured and obtain and maintain policies of insurance insuring against loss or damage by standard perils included within the classification "All Risks of Physical Loss." Such insurance (i) shall be in an aggregate amount equal to the then full replacement cost of the Property and the Improvements (without deduction for physical depreciation), or such lesser amounts approved by Lender in its sole discretion (or after a Securitization, upon receipt of a Rating Agency Confirmation), and (ii) shall have deductibles no greater than $500,000 (as escalated by the CPI Increase) (or, with respect to windstorm insurance, deductibles no greater than 10% of the full replacement cost of the Property. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" with a waiver of depreciation.

(b) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall also obtain and maintain or cause to be obtained and maintained the following policies of insurance:

(i) Flood insurance if any part of the Property is located in an area identified by the Federal Emergency Management Agency as an area federally designated a "100 year flood plain" (an " **Affected Property**" and collectively the "**Affected Properties** ") and (A) flood insurance is generally available at reasonable premiums and in such amount as generally required by institutional lenders for similar properties or (B) if not so available from a private carrier, from the federal government at commercially reasonable premiums to the extent available. In either case, the flood insurance shall be in an amount at least equal to the aggregate

principal amount of the Loan outstanding from time to time or the maximum limit of coverage available with respect to the Property under said program, whichever is less; provided, however, notwithstanding the foregoing, Borrower hereby agrees to maintain at all times flood insurance in an amount equal to at least $50,000,000 in the aggregate and shared with all other properties covered by the blanket policy (if any) for the Affected Properties;

(ii) Commercial general liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages and containing minimum limits per occurrence of $1,000,000 with a $2,000,000 general aggregate for any policy year. In addition, at least $50,000,000 excess and/or umbrella liability insurance shall be obtained and maintained for claims, including legal liability imposed upon Borrower and all related court costs and attorneys' fees and disbursements;

(iii) Rental loss and/or business interruption insurance in an amount sufficient to avoid any co-insurance penalty and equal to the greater of (A) the estimated gross revenues from the operation of the Property (including (x) the total payable under the Leases and all Rents and (y) the total of all other amounts to be received by Borrower or third parties that are the legal obligation of the Tenants), net of non-recurring expenses, for a period of up to the next succeeding eighteen (18) months, or (B) the projected Operating Expenses (including debt service) for the maintenance and operation of the Property for a period of up to the next succeeding eighteen (18) months as the same may be reduced or increased from time to time due to changes in such Operating Expenses and shall include an endorsement providing 12 months extended period of indemnity. The amount of such insurance shall be increased from time to time as and when the Rents increase or the estimates of (or the actual) gross revenue, as may be applicable, increases or decreases to the extent Rents or the estimates of gross revenue decrease;

(iv) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in any of the Improvements (without exclusion for explosions) and insurance against loss of occupancy or use arising from any breakdown, in such amounts as are generally available at reasonable premiums and are generally required by institutional lenders for properties comparable to the Property;

(v) Worker's compensation insurance with respect to all employees of Borrower as and to the extent required by any Governmental Authority or Legal Requirement and employer's liability coverage of at least $2,000,000 which is scheduled to the excess and/or umbrella liability insurance as referenced in clause (ii) above;

(vi) During any period of repair or restoration, completed value (non-reporting) builder's "all risk" insurance in an amount equal to not less than the full insurable value of the Property against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as Lender may request, in form and substance acceptable to Lender;

(vii) Coverage to compensate for the cost of demolition and the increased cost of construction for the Property;

(viii) Intentionally Deleted;

(ix) Windstorm insurance in an amount equal to the probable maximum loss (as determined by Lender in its sole discretion) of the Property per occurrence and in the aggregate and shared with other properties covered by the blanket insurance (if any) provided , that any credit enhancement proposed to be provided by or on behalf of Borrower in connection with the deductible on such windstorm insurance shall be subject to the prior receipt of a Rating Agency Confirmation;

(x) Law and ordinance insurance coverage in an amount no less than that set forth in the insurance policies covering the Property as of the date hereof;

(xi) Provided that insurance coverage relating to the acts of terrorist groups or individuals is either (a) available at commercially reasonable rates, (b) commonly obtained by owners of commercial properties in the same geographic area and which are similar to the Property or (c) maintained for another hotel property in the same geographic area which is at least 51% owned directly or indirectly by Strategic Hotel Funding, LLC, Borrower shall be required to carry terrorism insurance throughout the term of the Loan (including any extension terms) in an amount equal to, with respect to "certified" and "non-certified" acts of terrorism, an amount equal to the Terrorism Coverage Required Amount (per occurrence) (collectively, the "**Initial Terrorism Coverage Amount** "). Lender agrees that terrorism insurance coverage may be provided under a blanket policy that is acceptable to Lender. Notwithstanding the foregoing, Borrower agrees at all times to maintain terrorism insurance coverage throughout the term of the Loan (including extension terms) in an amount not less than that which can be purchased for a sum equal to $190,000 (the "**Maximum Premium Amount**") in any single policy year, provided, that under no circumstance shall terrorism coverage in excess of the Initial Terrorism Coverage Amount (per occurrence) of coverage be required hereunder;

(xii) Such other insurance as may from time to time be reasonably required by Lender in order to protect its interests; and

(xiii) All insurance required under this Section 6.1 may be provided by or on behalf of Borrower in a blanket policy covering the Property and other properties.

(c) All policies of insurance (the "**Policies**") required pursuant to this Section 6.1 shall be issued by companies approved by Lender and licensed or authorized to do business in the state where the Property is located. Further, unless otherwise approved by Lender in its reasonable discretion (prior to a Securitization) and the Rating Agencies in writing, the issuer(s) of the Policies required under this Section 6.1 shall have a claims paying ability rating of "A" or better by Standard & Poor's and "Aa2" or better by Moody's, except that the issuer(s) of the Policies required under Section 6.1(b)(viii) hereof shall have a claims paying ability rating of "A" or better by Standard & Poor's and "A2" or better by Moody's; provided, however, if the insurance provided hereunder is procured by a syndication of more then five (5) insurers then the foregoing requirements shall not be violated if at least (i) sixty percent (60%) of the coverage is with carriers having a claims paying ability rating of "A" or better by Standard & Poor's and "Aa2" or better by Moody's and (ii) each other carrier providing coverage has a claims paying ability rating of "BBB-" or better by Standard & Poor's and Fitch Ratings and

"Baa3" or better by Moody's. The Policies (i) shall name Lender (or an agent on Lender's behalf) and its successors and/or assigns as their interest may appear as an additional insured or as a loss payee (except that in the case of general liability insurance, Lender (or an agent on Lender's behalf) shall be named an additional insured and not a loss payee); (ii) shall contain a Non-Contributory Standard Lender Clause and, except with respect to general liability insurance, a Lender's Loss Payable Endorsement, or their equivalents, naming Lender as the Person to which all payments made by such insurance company shall be paid; (iii) shall include effective waivers by the insurer of all claims for insurance premiums against all loss payees, additional insureds and named insureds (other than Borrower) and all rights of subrogation against any loss payee, additional insured or named insured; (iv) shall be assigned to Lender; (v) except as otherwise provided above, shall be subject to a deductible, if any, not greater in any material respect than the deductible for such coverage on the date hereof; (vi) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest, including endorsements providing that neither Borrower, Lender nor any other party shall be a Contributor-insurer (except deductibles) under said Policies and that no material modification, reduction, cancellation or termination in amount of, or material change (other than an increase) in, coverage of any of the Policies shall be effective until at least thirty (30) days after receipt by each named insured, additional insured and loss payee of written notice thereof or ten (10) days after receipt of such notice with respect to nonpayment of premium; (vii) shall permit Lender to pay the premiums and continue any insurance upon failure of Borrower to pay premiums when due, upon the insolvency of Borrower or through foreclosure or other transfer of title to the Property (it being understood that Borrower's rights to coverage under such policies may not be assignable without the consent of the insurer); and (viii) shall provide that any proceeds shall be payable to Lender and that the insurance shall not be impaired or invalidated by virtue of (A) any act, failure to act, negligence of, or violation of declarations, warranties or conditions contained in such policy by Borrower, Lender or any other named insured, additional insured or loss payee, except for the willful misconduct of Lender knowingly in violation of the conditions of such policy, (B) the occupation, use, operation or maintenance of the Property for purposes more hazardous than permitted by the terms of the Policy, (C) any foreclosure or other proceeding or notice of sale relating to the Property, or (D) any change in the possession of the Property without a change in the identity of the holder of actual title to the Property (provided that with respect to items (C) and (D), any notice requirements of the applicable Policies are satisfied). Notwithstanding the foregoing, for purposes of this Section 6.1 hereof, Lender hereby approves the existing blanket insurance policies.

(d) **Insurance Premiums; Certificates of Insurance.**

(i) Borrower shall pay the premiums for such Policies (the "**Insurance Premiums**") as the same become due and payable and shall furnish to Lender the receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided , however , that Borrower is not required to furnish such evidence of payment to Lender if such Insurance Premiums are to be paid by Lender pursuant to the terms of this Agreement). Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested in writing by Lender or as may be requested in writing by the Rating Agencies, (except with respect to the Terrorism Insurance), taking into consideration changes in liability laws, changes in prudent customs and practices, and the like. In the event Borrower

satisfy the requirements under this Section 6.1 through the use of a Policy covering properties in addition to the Property (a"**Blanket Policy** "), then (unless such policy is provided in substantially the same manner as it is as of the date hereof), Borrower shall provide evidence satisfactory to Lender that the Insurance Premiums for the Property is separately allocated under such Policy to the Property and that payment of such allocated amount (A) shall maintain the effectiveness of such Policy as to the Property and (B) shall otherwise provide the same protection as would a separate policy that complies with the terms of this Agreement as to the Property, notwithstanding the failure of payment of any other portion of the insurance premiums. If no such allocation is available, Lender shall have the right to increase the amount required to be deposited into the Insurance Reserve Account in an amount sufficient to purchase a non-blanket Policy covering the Property from insurance companies which qualify under this Agreement.

(ii) Borrower shall deliver to Lender on or prior to the Closing Date certificates setting forth in reasonable detail the material terms (including any applicable notice requirements) of all Policies from the respective insurance companies (or their authorized agents) that issued the Policies, including that such Policies may not be canceled or modified in any material respect without thirty (30) days' prior notice to Lender, or ten (10) days' notice with respect to nonpayment of premium. Borrower shall deliver to Lender, concurrently with each change in any Policy, a certificate with respect to such changed Policy certified by the insurance company issuing that Policy, in substantially the same form and containing substantially the same information as the certificates required to be delivered by Borrower pursuant to the first sentence of this clause (d)(ii) and stating that all premiums then due thereon have been paid to the applicable insurers and that the same are in full force and effect (or if such certificate and/or other information described in clause (d)(ii) shall not be obtainable by Borrower, Borrower may deliver an Officer's Certificate to such effect in lieu thereof).

(e) **Renewal and Replacement of Policies.**

(i) Not less than three (3) Business Days prior to the expiration, termination or cancellation of any Policy, Borrower shall renew such policy or obtain a replacement policy or policies (or a binding commitment for such replacement policy or policies), which shall be effective no later than the date of the expiration, termination or cancellation of the previous policy, and shall deliver to Lender a certificate in respect of such policy or policies (A) containing the same information as the certificates required to be delivered by Borrower pursuant to clause (d)(ii) above, or a copy of the binding commitment for such policy or policies and (B) confirming that such policy complies with all requirements hereof.

(ii) If Borrower does not furnish to Lender the certificates as required under clause (e)(i) above, Lender may procure, but shall not be obligated to procure, such replacement policy or policies and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender for the cost of such Insurance Premiums promptly on demand.

(iii) Concurrently with the delivery of each replacement policy or a binding commitment for the same pursuant to this clause (e) , Borrower shall deliver to Lender a report or attestation from a duly licensed or authorized insurance broker or from the insurer, setting forth the particulars as to all insurance obtained by Borrower pursuant to this Section 6.1

and then in effect and stating that all Insurance Premiums then due thereon have been paid in full to the applicable insurers, that such insurance policies are in full force and effect and that, in the opinion of such insurance broker or insurer, such insurance otherwise complies with the requirements of this Section 6.1 (or if such report shall not be available after Borrower shall have used reasonable efforts to provide the same, Borrower will deliver to Lender an Officer's Certificate containing the information to be provided in such report).

(f) **Separate Insurance .** Borrower will not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to this Section 6.1 unless such insurance complies with clause (c) above.

(g) **Securitization .** Following any Securitization, Borrower shall name any trustee, servicer or special servicer designated by Lender as a loss payee, and any trustee, servicer and special servicer as additional insureds, with respect to any Policy for which Lender is to be so named hereunder.

Section 6.2 Condemnation and Insurance Proceeds .

6.2.1 Right to Adjust . (a) If the Property is damaged or destroyed, in whole or in part in any material respect, by a Casualty, Borrower shall give prompt written notice thereof to Lender, generally describing the nature and extent of such Casualty. Following the occurrence of a Casualty, Borrower, regardless of whether proceeds are available, shall in a reasonably prompt manner proceed to restore, repair, replace or rebuild the Property to the extent practicable to be of at least equal value and of substantially the same character as prior to the Casualty, all in accordance with the terms hereof applicable to Alterations.

(b) Subject to clause (e) below, in the event of a Casualty which is not a Material Casualty, Borrower may settle and adjust such claim; provided that such adjustment is carried out in a competent and timely manner. In such case, Borrower is hereby authorized to collect and receipt for Lender any Proceeds.

(c) Subject to clause (e) below, in the event of a Casualty where the loss exceeds the Threshold Amount, Borrower may settle and adjust such claim only with the consent of Lender (which consent shall not be unreasonably withheld, delayed or conditioned) and Lender shall have the opportunity to participate, at Borrower's cost, in any such adjustments.

(d) Except as provided in clause (b) above, the proceeds of any Policy shall be due and payable solely to Lender and held and applied in accordance with the terms hereof (or, if mistakenly paid to the Borrower, shall be held in trust by the Borrower for the benefit of Lender and shall be paid over to Lender by the Borrower within two (2) Business Days of receipt).

(e) Notwithstanding the terms of clauses (a) and (b) above, Lender shall have the sole authority to adjust any claim with respect to a Casualty and to collect all Proceeds if an Event of Default shall have occurred and is continuing.

6.2.2 Right of the Borrower to Apply to Restoration . In the event of (a) a Casualty that does not constitute a Material Casualty, or (b) a Condemnation that does not

constitute a Material Condemnation, Lender shall permit the application of the Proceeds (after reimbursement of any expenses incurred by Lender) to reimburse or pay Borrower for the cost of restoring, repairing, replacing or rebuilding or otherwise curing title defects at the Property (the "**Restoration**"), in the manner required hereby, provided and on the condition that (1) no Event of Default shall have occurred and be then continuing and (2) in the reasonable judgment of Lender:

(i) the Property can be restored to an economic unit not materially less valuable (taking into account the effect of the termination of any Leases and the proceeds of any rental loss or business interruption insurance which the Borrower receives or is entitled to receive, in each case, due to such Casualty or Condemnation) and not materially less useful than the same was prior to the Casualty or Condemnation,

(ii) the Property, after such Restoration and stabilization, will adequately secure the outstanding balance of the Loan,

(iii) the Restoration can be completed by the earliest to occur of:

(A) the date on which the business interruption insurance carried by Borrower with respect to the Property shall expire;

(B) the 180th day prior to the Maturity Date (taking into account any extension thereof), and

(C) with respect to a Casualty, the expiration of the payment period on the rental loss or business interruption insurance coverage in respect of such Casualty; and

(iv) after receiving reasonably satisfactory evidence to such effect, during the period of the Restoration, the sum of (A) income derived from the Property, plus (B) proceeds of rental loss insurance or business interruption insurance, if any, payable together with such other monies as Borrower may irrevocably make available for the Restoration, will equal or exceed the sum of (x) 105% of Operating Expenses and (y) the Debt Service.

Notwithstanding the foregoing, if any of the conditions set forth in sub-clauses (1) and (2) of the proviso in this Section 6.2.2 is not satisfied, then, unless Lender shall otherwise elect, at its sole option, the Proceeds shall be applied in the following order of priority: (A) first, to prepay the principal of the Loan; (B) second, to pay the amount of (1) all accrued and unpaid interest in respect of the Principal Amount of the Indebtedness so prepaid through the date which is the final day of the Interest Period in which such prepayment is made (including, if an Event of Default has occurred and is then continuing, interest owed at the Default Rate), and (2) all other sums (excluding any Prepayment Fee) then due and owing under the Loan Documents and (C) third, to reimburse Lender for any fees and expenses of Lender incurred in connection therewith (it being agreed that, upon satisfaction in full of the entitlements under clauses (A), (B) and (C) of this sentence, Borrower shall be entitled to receive a release of the Lien of the Security Instrument and the other Loan Documents with respect to the Property in accordance with and subject to the terms of Section 2.3.3 hereof and any surplus Proceeds shall be paid over to the Borrower or as the Borrower directs. Notwithstanding the foregoing, or anything else to

the contrary contained herein, all Proceeds with respect to the insurance determined pursuant to Section 6.1.4 shall be deposited directly into the Collection Account and shall be disbursed in accordance with Article III as if such Proceeds are applied in the manner amounts received from the Manager are applied

6.2.3 Material Casualty or Condemnation and Lender's Right to Apply Proceeds . In the event of a Material Casualty or a Material Condemnation, then Lender shall have the option to (i) apply the Proceeds hereof in the following order of priority: (A) first, to prepay the principal of the Loan; (B) second, to pay the amount of (1) all accrued and unpaid interest in respect of the Principal Amount of the Indebtedness so prepaid through the date which is the final day of the Interest Period in which such prepayment is made (including, if an Event of Default has occurred and is then continuing, interest owed at the Default Rate), and (2) all other sums (excluding any Prepayment Fee) then due and owing under the Loan Documents; (C) third, to reimburse Lender for any fees and expenses of Lender incurred in connection therewith; and (D) fourth, it being agreed that, upon satisfaction in full of the entitlements under clauses (A), (B) and (C) of this sentence, Borrower shall be entitled to receive the balance of the Proceeds, if any and a release of the Lien of the Security Instrument and the other Loan Documents with respect to the Property in accordance with and subject to the terms of Section 2.3.3 hereof), or (ii) make such Proceeds available to reimburse Borrower for the cost of any Restoration in the manner set forth below in Section 6.2.4 hereof provided , however , that if the Management Agreement provides that the Operating Lessee or Borrower is required to use the Proceeds to restore the Property and Operating Lessee or Borrower does not have the right to terminate the Management Agreement pursuant to the terms of the Management Agreement as a result of such Casualty or Condemnation or otherwise, then the Lender shall be obligated to make such Proceeds available to the Borrower for the Restoration of such Property pursuant to Section 6.2.4 below. Notwithstanding anything to the contrary contained herein, in the event of a Material Casualty or a Material Condemnation, where Borrower cannot restore, repair, replace or rebuild the Property to be of at least substantially equal value and of substantially the same character as prior to the Material Casualty or Material Condemnation or title defect because the Property is a legally non-conforming use or as a result of any other Legal Requirement, Borrower hereby agrees that Lender may apply the Proceeds payable in connection therewith in accordance with clauses (A), (B) (C) and (D).

6.2.4 Manner of Restoration and Reimbursement . If Borrower is entitled pursuant to Sections 6.2.2 or 6.2.3 above to reimbursement out of Proceeds (and the conditions specified therein shall have been satisfied), such Proceeds shall be disbursed on a monthly basis upon Lender being furnished with (i) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Lender may reasonably require and approve, and (ii) all plans and specifications for such Restoration, such plans and specifications to be approved by Lender prior to commencement of any work (such approval not to be unreasonably withheld, delayed or conditioned). In addition, no payment made prior to the Final Completion of the Restoration (excluding punch-list items) shall exceed ninety percent (90%) of the aggregate value of the work performed from time to time; funds other than Proceeds shall be disbursed prior to disbursement of such Proceeds; and at all times, the undisbursed balance of such Proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that

purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the Restoration, free and clear of all Liens or claims for Lien. Prior to any disbursement, Lender shall have received evidence reasonably satisfactory to it of the estimated cost of completion of the Restoration (such estimate to be made by Borrower's architect or contractor and approved by Lender in its reasonable discretion), and Borrower shall have deposited with Lender Eligible Collateral in an amount equal to the excess (if any) of such estimated cost of completion over the net Proceeds. Any surplus which may remain out of Proceeds received pursuant to a Casualty after payment of such costs of Restoration shall be paid to the Borrower or as the Borrower directs . Any surplus which may remain out of Proceeds received pursuant to a Condemnation shall be paid to the Borrower or as the Borrower directs.

6.2.5 Condemnation . (a) Borrower shall promptly give Lender written notice of the actual commencement or written threat of commencement of any Condemnation and shall deliver to Lender copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Borrower, regardless of whether Proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with the terms hereof applicable to Alterations.

(b) Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any Proceeds in respect of a Condemnation and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Section. Provided no Event of Default has occurred and is continuing, (x) in the event of a Condemnation which is not a Material Condemnation, Borrower may settle and compromise such Proceeds; provided that the same is effected in a competent and timely manner, and (y) in the event of a Condemnation, where the loss exceeds the Threshold Amount, Borrower may settle and compromise the Proceeds only with the consent of Lender (which consent shall not be unreasonably withheld, delayed or conditioned) and Lender shall have the opportunity to participate, at Borrower' cost, in any litigation and settlement discussions in respect thereof. Notwithstanding any Condemnation by any public or quasi-public authority (including any transfer made in lieu of or in anticipation of such a Condemnation), Borrower shall continue to pay the Indebtedness at the time and in the manner provided for in the Note, this Agreement and the other Loan Documents, and the Indebtedness shall not be reduced unless and until any Proceeds shall have been actually received and applied by Lender to discharge the Indebtedness, pay required interest and pay any other required amounts, in each case, pursuant to the terms of Sections 6.2.2 or 6.2.3 above. Lender shall not be limited to the interest paid on the Proceeds by the condemning authority but shall be entitled to receive out of the Proceeds interest at the rate or rates provided in the Note. Borrower shall cause any Proceeds that are payable to Borrower to be paid directly to Lender to be held and applied in accordance with the terms hereof.

VII. IMPOSITIONS, OTHER CHARGES, LIENS AND OTHER ITEMS

Section 7.1 Impositions and Other Charges . Subject to the third sentence of this Section 7.1 , Borrower shall pay, or shall cause Operating Lessee to pay all Impositions now or hereafter levied or assessed or imposed against the Property or any part thereof prior to the

imposition of any interest, charges or expenses for the non-payment thereof and shall pay all Other Charges on or before the date they are due. Subject to Borrower's right of contest set forth in Section 7.3 , as set forth in the next two sentences and provided that there are sufficient funds available in the Tax Reserve Account, Lender, on behalf of Borrower, shall pay all Impositions and Other Charges which are attributable to or affect the Property or Borrower, prior to the date such Impositions or Other Charges shall become delinquent or late charges may be imposed thereon, directly to the applicable taxing authority with respect thereto. Lender shall, or Lender shall direct the Cash Management Bank to, pay to the taxing authority such amounts to the extent funds in the Tax Reserve Account are sufficient to pay such Impositions. Nothing contained in this Agreement or the Security Instrument shall be construed to require Borrower to pay any tax, assessment, levy or charge imposed on Lender in the nature of a franchise, capital levy, estate, inheritance, succession, income or net revenue tax.

Section 7.2 No Liens . Subject to its right of contest set forth in Section 7.3 , Borrower shall at all times keep, or cause to be kept, the Property free from all Liens (other than Permitted Encumbrances) and shall pay when due and payable (or bond over) all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a Lien on the Property or any portion thereof and shall in any event cause the prompt, full and unconditional discharge of all Liens imposed on or against the Property or any portion thereof within forty-five (45) days after receiving written notice of the filing (whether from Lender, the lienor or any other Person) thereof. Borrower shall do or cause to be done, at the sole cost of Borrower, everything reasonably necessary to fully preserve the first priority of the Lien of the Security Instrument against the Property, subject to the Permitted Encumbrances. Upon the occurrence and during the continuance of an Event of Default with respect to its Obligations as set forth in this Article VII , Lender may (but shall not be obligated to) make such payment or discharge such Lien, and Borrower shall reimburse Lender within three (3) Business Days following demand for all such advances pursuant to Section 19.12 (together with interest thereon at the Default Rate).

Section 7.3 Contest . Nothing contained herein shall be deemed to require Borrower to pay, or cause to be paid, any Imposition or to satisfy any Lien, or to comply with any Legal Requirement or Insurance Requirement, so long as Borrower is in good faith, and by proper legal proceedings, where appropriate, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) Borrower shall keep Lender informed of the status of such contest at reasonable intervals, (iii) if neither Borrower nor Operating Lessee is providing security as provided in clause (vi) below, adequate reserves with respect thereto are maintained on Borrower's books in accordance with GAAP or in the Tax Reserve Account or Insurance Reserve Account, as applicable, (iv) either such contest operates to suspend collection or enforcement as the case may be, of the contested Imposition, Lien or Legal Requirement and such contest is maintained and prosecuted continuously and with diligence or the Imposition or Lien is bonded, (v) in the case of any Insurance Requirement, the failure of Borrower to comply therewith shall not impair the validity of any insurance required to be maintained by Borrower under Section 6.1 or the right to full payment of any claims thereunder, and (vi) in the case of Impositions and Liens which are not bonded in excess of $1,000,000 individually, or in the aggregate, during such contest, Borrower, shall deposit with or deliver to Lender either Cash and

Cash Equivalents or a Letter or Letters of Credit in an amount equal to 125% of (A) the amount of Borrower's obligations being contested plus (B) any additional interest, charge, or penalty arising from such contest. Notwithstanding the foregoing, the creation of any such reserves or the furnishing of any bond or other security, Borrower promptly shall comply with any contested Legal Requirement or Insurance Requirement or shall pay any contested Imposition or Lien, and compliance therewith or payment thereof shall not be deferred, if, at any time the Property or any portion thereof shall be, in Lender's reasonable judgment, in imminent danger of being forfeited or lost or Lender is likely to be subject to civil or criminal damages as a result thereof. If such action or proceeding is terminated or discontinued adversely to Borrower, Borrower shall deliver to Lender reasonable evidence of Borrower's compliance with such contested Imposition, Lien, Legal Requirements or Insurance Requirements, as the case may be.

VIII. TRANSFERS, INDEBTEDNESS AND SUBORDINATE LIENS

Section 8.1 Restrictions on Transfers and Indebtedness . (a) Except in connection with such action as is permitted by the subsequent provisions of this Article VIII , Borrower will not, without Lender's prior written consent and a Rating Agency Confirmation with respect to the transfer or other matter in question, (A), Transfer legal, Beneficial or direct or indirect equitable interests in all or any part of the Property, the Borrower or Operating Lessee, (B) permit or suffer any owner, directly or indirectly, of a legal, Beneficial or equitable interest in the Property, the Borrower or Operating Lessee to Transfer such interest, whether by transfer of stock or other legal, Beneficial or equitable interest in any entity or otherwise, (C) mortgage, hypothecate or otherwise encumber or grant a security interest in all or any part of the legal, Beneficial or equitable interests in all or any part of the Property, the Borrower or the Operating Lessee, or (D) file of record a declaration of condominium with respect to the Property. Notwithstanding any provision herein to the contrary, nothing contained herein shall be deemed to restrict or otherwise interfere with the ability of the holders of direct or indirect legal, Beneficial or equitable interests in the Ultimate Equity Owner to Transfer such interests, whether in connection with an initial public offering of shares in Ultimate Equity Owner or otherwise or any pledge to secure the Revolver Loan or the enforcement or foreclosure thereof pursuant to such pledge.

(b) Borrower shall not incur, create or assume any Indebtedness without the consent of Lender; provided , however , Borrower may, without the consent of Lender, incur, create or assume Permitted Debt or allow or suffer such Permitted Debt to be incurred, created or assumed.

(c) Notwithstanding the foregoing, nothing herein shall prevent Borrower or any direct or indirect owner of any legal or Beneficial or equitable interest therein, to enter into a purchase and sale agreement or other similar arrangements to Transfer any interest in connection with any sale of the Property or other interest so long as a condition precedent to such Transfer is the payment, in full, of the Indebtedness.

Section 8.2 Sale of Building Equipment . Borrower may Transfer or dispose of Building Equipment which is being replaced or which is no longer necessary in connection with the operation of the Property free from the Lien of the Security Instrument provided that such Transfer or disposal will not have a Material Adverse Effect on the value of the Property

taken as a whole, will not materially impair the utility of the Property, and will not result in a reduction or abatement of, or right of offset against, the Rents payable under any Lease, in either case as a result thereof, and provided , further , that any new Building Equipment acquired by Borrower or Operating Lessee (and not so disposed of) shall be subject to the Lien of the Security Instrument. Lender shall, from time to time, upon receipt of an Officer's Certificate requesting the same and confirming satisfaction of the conditions set forth above, execute a written instrument in form reasonably satisfactory to Lender to confirm that such Building Equipment which is to be, or has been, sold or disposed of is free from the Lien of the Security Instrument.

Section 8.3 Immaterial Transfers and Easements, etc. Borrower and Operating Lessee may, without the consent of Lender, (i) make immaterial Transfers of portions of the Property to Governmental Authorities for dedication or public use (subject to the provisions of Section 6.2) or, portions of the Property to third parties for the purpose of erecting and operating additional structures whose use is integrated with the use of the Property, and (ii) grant easements, restrictions, covenants, reservations and rights of way in the ordinary course of business for access, water and sewer lines, telephone and telegraph lines, electric lines or other utilities or for other similar purposes, provided that no such Transfer, conveyance or encumbrance set forth in the foregoing clauses (i) and (ii) shall materially impair the utility and operation of the Property or have a Material Adverse Effect on the value of the Property taken as a whole. In connection with any Transfer permitted pursuant to this Section 8.3 , Lender shall execute and deliver any instrument reasonably necessary or appropriate, in the case of the Transfers referred to in clause (i) above, to release the portion of the Property affected by such Condemnation or such Transfer from the Lien of the Security Instrument or, in the case of clause (ii) above, to subordinate the Lien of the Security Instrument to such easements, restrictions, covenants, reservations and rights of way or other similar grants upon receipt by Lender of:

(a) thirty (30) days prior written notice thereof;

(b) a copy of the instrument or instruments of Transfer;

(c) an Officer's Certificate stating (x) with respect to any Transfer, the consideration, if any, being paid for the Transfer and (y) that such Transfer does not materially impair the utility and operation of the Property, materially reduce the value of the Property or have a Material Adverse Effect; and

(d) reimbursement of all of Lender's reasonable costs and expenses incurred in connection with such Transfer.

Section 8.4 Transfers of Interests in Borrower . In addition to any transfer permitted by any other provision of this Article VIII , each holder of any direct or indirect interest in the Borrower shall have the right to transfer (but not pledge, hypothecate or encumber) its equity interest in the Borrower to any Person who is not a Disqualified Transferee without Lender's consent or a Rating Agency Confirmation if Section 8.6 is complied with and, after giving effect to such transfer:

(a) (i) the Property will be directly owned by a Single Purpose Entity in compliance with the representations, warranties and covenants in Section 4.1.29 hereof (as if the Borrower shall have remade all of such representations, warranties and covenants as of, and after giving effect to, the transfer), and which shall have executed and delivered to Lender an assumption agreement in form and substance acceptable to Lender, evidencing the continuing agreement of the Borrower to abide and be bound by all the terms, covenants and conditions set forth in this Agreement, the Note, the Security Instrument and the other Loan Documents and all other outstanding obligations under the Loan, together with such legal opinions and title insurance endorsements as may be reasonably requested by Lender;

(b) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement;

(c) Any Ultimate Equity Owners or a Close Affiliate of any such entity owns directly or indirectly at least fifty-one percent (51%) of the equity interests in the Borrower and the Person that is the proposed transferee is not a Disqualified Transferee; provided that, after giving effect to any such transfer, in no event shall any Person other than Ultimate Equity Owner or a Close Affiliate of Ultimate Equity Owner exercise Management Control over the Borrower. In the event that Management Control shall be exercisable jointly by any Ultimate Equity Owner or a Close Affiliate of any Ultimate Equity Owner with any other Person or Persons, then the applicable Ultimate Equity Owner or such Close Affiliate shall be deemed to have Management Control only if such Ultimate Equity Owner or such Close Affiliate retains the ultimate right as between such Ultimate Equity Owner or such Close Affiliate and the transferee to unilaterally make all material decisions with respect to the operation, management, financing and disposition of the Property;

(d) if there has been a Transfer of forty-nine percent (49%) or more of the direct membership interests, stock or other direct equity ownership interests in Borrower, Borrower shall have first delivered to Lender (and, after a Securitization, the Rating Agencies) an Officer's Certificate and legal opinion of the types described in Section 8.6 below; and

(e) Borrower shall cause the transferee, if Lender so requests and if such transferee is required to be a Single Purpose Entity pursuant to this Agreement, to deliver to S&P and to any other Rating Agency Lender requests its organizational documents solely for the purpose of Standard & Poor's and such other Rating Agency Lender requests confirming that such organizational documents comply with the single purpose bankruptcy remote entity requirements set forth herein.

Section 8.5 Loan Assumption . Without limiting the foregoing, Borrower and Operating Lessee shall have the right to sell, assign, convey or transfer (but not mortgage, hypothecate or otherwise encumber or grant a security interest in) legal or equitable title to all (but not less than all) of the Property only if:

(a) after giving effect to the proposed transaction:

the Property will be owned by a Single Purpose Entity wholly owned (directly or indirectly) by a Permitted Borrower Transferee, Permitted Borrower Transferee Alternative,

Pre-approved Transferee or such other entity (specifically approved in writing by both Lender and each Rating Agency) which will be in compliance with the representations, warranties and covenants contained in Section 4.1.29 hereof (as if such transferee shall have remade all of such representations, warranties and covenants as of, and after giving effect to, the proposed transaction); such Single Purpose Entity shall have executed and delivered to Lender an assumption agreement and such other agreements as Lender may reasonably request (collectively, the "**Assumption Agreement** ") in form and substance acceptable to Lender, evidencing the proposed transferee's agreement to abide and be bound by all the terms, covenants and conditions set forth in this Agreement, the Note, the Security Instrument and the other Loan Documents and all other outstanding obligations under the Loan; the Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or such other approved entity shall assume the obligations of Sponsor under the Loan Documents (and such Single Purpose Entity and the applicable Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or other approved entity shall thereafter be subject to the provisions of this Article VIII), and the transferee shall cause to be delivered to Lender, such legal opinions and title insurance endorsements as may be reasonably requested by Lender;

(i) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement; and

(ii) no Event of Default shall have occurred and be continuing;

(b) the Assumption Agreement shall state the applicable transferee's agreement to abide by and be bound by the terms in the Note (or such other promissory notes to be executed by the transferee, such other promissory note or notes to be on the same terms as the Note), the Security Instrument, this Agreement (or such other loan agreement to be executed by such transferee, which shall contain terms substantially identical to the terms hereof) and such other Loan Documents (or other loan documents to be delivered by such transferee, which shall contain terms substantially identical to the terms of the applicable Loan Documents) whenever arising, and Borrower, and/or such transferee shall deliver such legal opinions and title insurance endorsements as may reasonably be requested by Lender;

(c) following execution of a contract for the sale of the Property and not less than thirty (30) days prior to the expected date of such proposed sale, Borrower shall submit notice of such sale to Lender. Borrower shall submit to Lender, not less than ten (10) days prior to the expected date of such sale, the Assumption Agreement for execution by Lender. Such documents shall be in a form appropriate for the jurisdiction in which the Property is located and shall be reasonably satisfactory to Lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such assumption, together with an Officer's Certificate certifying that (i) the assumption to be effected will be effected in compliance with the terms of this Agreement and (ii) will not impair or otherwise adversely affect the validity or priority of the Lien of the Security Instrument;

(d) prior to any such transaction, the proposed transferee shall deliver to Lender an Officer's Certificate stating that (x) such transferee is not an "employee benefit plan"

within the meaning of Section 3(3) of ERISA that is subject Title I of ERISA or any other Similar Law and (y) the underlying assets of the proposed transferee do not constitute assets of any such employee benefit plan for purposes of ERISA or any Similar Law;

(e) if the transfer is to (i) an entity other than a Single Purpose Entity wholly owned directly or indirectly by one or more Pre-approved Transferees, Permitted Borrower Transferees or Permitted Borrower Transferee Alternatives, a Rating Agency Confirmation shall have been received in respect of such proposed transfer (or, if the proposed transfer shall occur prior to a Securitization, such transfer shall be subject to Lender's consent in its sole discretion) and (ii) a Permitted Borrower Transferee Alternative, such transfer shall be subject to Lender's prior written consent in its reasonable discretion;

(f) the terms of Section 8.6 shall be complied with and Borrower shall cause the transferee to deliver to S&P and to any other Rating Agency Lender requests its organizational documents solely for the purpose of S&P and any other Rating Agency Lender requests confirming that such organizational documents comply with the single purpose bankruptcy remote entity requirements set forth herein; and

(g) Lender shall have received the payment of, or reimbursement for, all reasonable costs and expenses incurred by Lender and the Rating Agencies (and any servicer in connection with a Securitization) in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements).

Section 8.6 Notice Required; Legal Opinions . Not less than five (5) Business Days prior to the closing of any transaction permitted under the provisions of Sections 8.2 through 8.5 , Borrower shall deliver or cause to be delivered to Lender (A) an Officer's Certificate describing the proposed transaction and stating that such transaction is permitted hereunder and under the other Loan Documents, together with any documents upon which such Officer's Certificate is based, and (B) a legal opinion of counsel to Borrower or the transferee selected by either of them (to the extent approved by Lender and the Rating Agencies), in form and substance consistent with similar opinions then being required by the Rating Agencies and acceptable to the Rating Agencies, confirming, among other things, that the assets of the Borrower, and of its managing general partner or managing member, as applicable, will not be substantively consolidated with the assets of such owners or Controlling Persons of the Borrower as Lender or the Rating Agencies may specify, in the event of a bankruptcy or similar proceeding involving such owners or Controlling Persons.

Section 8.7 Leases .

8.7.1 New Leases and Lease Modifications . Except as otherwise provided in this Section 8.7 , Borrower shall not and shall not permit Operating Lessee to (i) enter into any Lease on terms other than "market" and rental rates (in Borrower's or Operating Lessee's good faith judgment), or (ii) enter into any Material Lease (a "**New Lease**"), or (iii) consent to the assignment of any Material Lease (unless required to do so by the terms of such Material Lease) that releases the original Tenant from its obligations under the Material Lease, or (iv) modify any Material Lease (including, without limitation, accept a surrender of any portion of the Property subject to a Material Lease (unless otherwise permitted or required

by law), allow a reduction in the term of any Material Lease or a reduction in the Rent payable under any Material Lease, change any renewal provisions of any Material Lease, materially increase the obligations of the landlord or materially decrease the obligations of any Tenant) or terminate any Material Lease (any such action referred to in clauses (iii) and (iv) being referred to herein as a **" Lease Modification"**) without the prior written consent of Lender which consent shall not be unreasonably withheld, delayed or conditioned. Any New Lease or Lease Modification that requires Lender's consent shall be delivered to Lender for approval not less than ten (10) Business Days prior to the effective date of such New Lease or Lease Modification. Lender acknowledges and consents to the termination of the Gift Shop Lease effective on or about October 1, 2006.

8.7.2 Leasing Conditions . Subject to terms of this Section 8.7 , provided no Event of Default shall have occurred and be continuing, Borrower may enter into a New Lease or Lease Modification, without Lender's prior written consent, that satisfies each of the following conditions (as evidenced by an Officer's Certificate delivered to Lender prior to Borrower's entry into such New Lease or Lease Modification):

(a) with respect to a New Lease or Lease Modification, the premises demised thereunder is not more than 10,000 net rentable square feet of the Property;

(b) the term of such New Lease or Lease Modification, as applicable, does not exceed 120 months, plus up to two (2) 60-month option terms (or equivalent combination of renewals);

(c) the New Lease or Lease Modification provides for "market" rental rates other terms and does not contain any terms which would adversely affect Lender's rights under the Loan Documents or that would have a Material Adverse Effect;

(d) the New Lease or Lease Modification, as applicable, provides that the premises demised thereby cannot be used for any of the following uses: any pornographic or obscene purposes, any commercial sex establishment, any pornographic, obscene, nude or semi-nude performances, modeling, materials, activities or sexual conduct or any other use that has or could reasonably be expected to have a Material Adverse Effect;

(e) the Tenant under such New Lease or Lease Modification, as applicable, is not an Affiliate of Borrower;

(f) the New Lease or Lease Modification, as applicable, does not prevent Proceeds from being held and disbursed by Lender in accordance with the terms hereof and does not entitle any Tenant to receive and retain Proceeds except those that may be specifically awarded to it in condemnation proceedings because of the Condemnation of its trade fixtures and its leasehold improvements which have not become part of the Property and such business loss as Tenant may specifically and separately establish; and

(g) the New Lease or Lease Modification, as applicable satisfies the requirements of Section 8.7.7 and Section 8.7.8 .

8.7.3. Delivery of New Lease or Lease Modification . Upon the execution of any New Lease or Lease Modification, as applicable, Borrower shall deliver to Lender an executed copy of the Lease.

8.7.4 Lease Amendments . Borrower agrees that it shall not have the right or power, as against Lender without its consent, to cancel, abridge, amend or otherwise modify any Lease unless such modification complies with this Section 8.7 .

8.7.5 Security Deposits . All security or other deposits of Tenants of the Property shall be treated as trust funds and shall, if required by law or the applicable Lease not be commingled with any other funds of Borrower, and such deposits shall be deposited, upon receipt of the same by Borrower in a separate trust account maintained by Borrower expressly for such purpose. Within ten (10) Business Days after written request by Lender, Borrower shall furnish to Lender reasonably satisfactory evidence of compliance with this Section 8.7.5 , together with a statement of all lease securities deposited with Borrower by the Tenants and the location and account number of the account in which such security deposits are held.

8.7.6 No Default Under Leases . Borrower shall (i) promptly perform and observe all of the material terms, covenants and conditions required to be performed and observed by Borrower under the Leases, if the failure to perform or observe the same would have a Material Adverse Effect; (ii) exercise, within ten (10) Business Days after a written request by Lender, any right to request from the Tenant under any Lease a certificate with respect to the status thereof and (iii) not collect any of the Rents, more than one (1) month in advance (except that Borrower may collect such security deposits and last month's Rents as are permitted by Legal Requirements and are commercially reasonable in the prevailing market and collect other charges in accordance with the terms of each Lease).

8.7.7 Subordination . All Lease Modifications and New Leases entered into by Borrower after the date hereof shall by their express terms be subject and subordinate to this Agreement and the Security Instrument (through a subordination provision contained in such Lease or otherwise) and shall provide that, if Lender agrees to a non-disturbance provision pursuant to Section 8.7.9 , the Person holding any rights thereunder shall attorn to Lender or any other Person succeeding to the interests of Lender upon the exercise of its remedies hereunder or any transfer in lieu thereof on the terms set forth in this Section 8.7 .

8.7.8 Attornment . Each Lease Modification and New Lease entered into from and after the date hereof shall provide that in the event of the enforcement by Lender of any remedy under this Agreement or the Security Instrument, if Lender agrees to a non-disturbance provision pursuant to Section 8.7.9 , the Tenant under such Lease shall, at the option of Lender or of any other Person succeeding to the interest of Lender as a result of such enforcement, attorn to Lender or to such Person and shall recognize Lender or such successor in the interest as lessor under such Lease without change in the provisions thereof; provided , however , Lender or such successor in interest shall not be liable for or bound by (i) any payment of an installment of rent or additional rent made more than thirty (30) days before the due date of such installment, (ii) any act or omission of or default by Borrower under any such Lease (but the Lender, or such successor, shall be subject to the continuing obligations of the landlord to the extent arising from and after such succession to the extent of Lender's, or such successor's,

interest in the Property), (iii) any credits, claims, setoffs or defenses which any Tenant may have against Borrower, (iv) any obligation on Borrower's part, pursuant to such Lease, to perform any tenant improvement work or (v) any obligation on Borrower's part, pursuant to such Lease, to pay any sum of money to any Tenant. Each such New Lease shall also provide that, upon the reasonable request by Lender or such successor in interest, the Tenant shall execute and deliver an instrument or instruments confirming such attornment.

8.7.9 Non-Disturbance Agreements . Lender shall enter into, and, if required by applicable law to provide constructive notice or requested by a Tenant, record in the county where the subject Property is located, a subordination, attornment and non-disturbance agreement, substantially in form and substance substantially similar to the form attached hereto as **Exhibit K** (a "**Non-Disturbance Agreement**"), with any Tenant (other than an Affiliate of Borrower) entering into a New Lease permitted hereunder or otherwise consented to by Lender within ten (10) Business Days after written request therefor by Borrower, provided that, such request is accompanied by an Officer's Certificate stating that such Lease complies in all material respects with this Section 8.7 . All reasonable third party costs and expenses incurred by Lender in connection with the negotiation, preparation, execution and delivery of any Non-Disturbance Agreement, including, without limitation, reasonable attorneys' fees and disbursements, shall be paid by Borrower (in advance, if requested by Lender).

8.7.10 Approvals for Retail/service Facilities . Notwithstanding anything contained herein (i) approvals will not be required for termination of the Gift Shop Lease and any similar gift shop or other miscellaneous space in lobby or similar locations, and (ii) provided the other requirements of Section 8.7.2 on New Leases and Lease Modifications are otherwise satisfied, the restriction therein on New Leases or Lease Modifications with Affiliates will not apply to New Leases or Lease Modifications relating to portions of the Property used for retail or service facilities (" **Retail/Service Facilities**").

IX. INTEREST RATE CAP AGREEMENT

Section 9.1 Interest Rate Cap Agreement . Borrower shall maintain the Interest Rate Cap Agreement with an Acceptable Counterparty in effect and having a term extending through the last day of the accrual period in which the applicable Maturity Date occurs, and an initial notional amount equal to the Loan Amount. The Interest Rate Cap Agreement shall have a strike rate equal to the LIBOR Cap Strike Rate. The notional amount of the Interest Rate Cap Agreement may be reduced from time to time in amounts equal to any prepayment of the principal of the Loan made in accordance with the Loan Documents, provided that the strike rate shall be equal to the LIBOR Cap Strike Rate.

Section 9.2 Pledge and Collateral Assignment . Borrower hereby pledges, assigns, transfers, delivers and grants a continuing first priority lien to Lender, as security for payment of all sums due in respect of the Loan and the performance of all other terms, conditions and covenants of this Agreement and any other Loan Document on Borrower's part to be paid and performed, in, to and under all of Borrower's right, title and interest whether now owned or hereafter acquired and whether now existing or hereafter arising (collectively, the "**Rate Cap Collateral** "): (i) in the Interest Rate Cap Agreement (as soon as such agreement is effective or when and if any replacement agreement becomes effective, any Replacement Interest Rate Cap

Agreement or Extension Interest Rate Cap Agreement); (ii) to receive any and all payments under the Interest Rate Cap Agreement (or, when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), whether as contractual obligations, damages or otherwise; and (iii) to all claims, rights, powers, privileges, authority, options, security interests, liens and remedies, if any, under or arising out of the Interest Rate Cap Agreement (as soon as such agreement is effective or when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), in each case including all accessions and additions to, substitutions for and replacements, products and proceeds of any of the foregoing. Borrower shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be made directly to Lender) and notify the Counterparty of such assignment (either in such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement or by separate instrument). Borrower shall not, without obtaining the prior written consent of Lender, further pledge, transfer, deliver, assign or grant any security interest in the Interest Rate Cap Agreement (or, when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), or permit any Lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements or any other notice or instrument as may be required under the UCC, as appropriate, except those naming Lender as the secured party, to be filed with respect thereto.

Section 9.3 Covenants . (a) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be deposited immediately into the Holding Account pursuant to Section 3.1 . Borrower shall take all actions reasonably requested by Lender to enforce Borrower's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty thereunder and shall not waive, amend or otherwise modify any of its rights thereunder.

(b) Borrower shall defend Lender's right, title and interest in and to the Rate Cap Collateral pledged by Borrower pursuant hereto or in which it has granted a security interest pursuant hereto against the claims and demands of all other Persons.

In the event of (x) any downgrade, withdrawal or qualification (each, a "**Downgrade** ") of the rating of the Counterparty such that, thereafter, the Counterparty shall cease to be an Acceptable Counterparty and (y) the Counterparty shall fail to comply with the requirements contained in the Interest Rate Cap Agreement which are described in "**Exhibit I** " upon such occurrence, the Borrower shall either (i) obtain a Rating Agency Confirmation with respect to the Counterparty or (ii) replace the Interest Rate Cap Agreement with a Replacement Interest Cap Agreement, (x) having a term extending through the end of the Interest Period in which the Maturity Date occurs, (y) in a notional amount at least equal to the Principal Amount of the Loan then outstanding, and (z) having a strike rate equal to the LIBOR Cap Strike Rate.

(c) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement as and when required hereunder, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing the Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is paid by Borrower to Lender.

(d) Borrower shall not (i) without the prior written consent of Lender, modify, amend or supplement the terms of the Interest Rate Cap Agreement, (ii) without the prior written consent of Lender, except in accordance with the terms of the Interest Rate Cap Agreement, cause the termination of the Interest Rate Cap Agreement prior to its stated maturity date, (iii) without the prior written consent of Lender, except as aforesaid, waive or release any obligation of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) under the Interest Rate Cap Agreement, (iv) without the prior written consent of Lender, consent or agree to any act or omission to act on the part of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) which, without such consent or agreement, would constitute a default under the Interest Rate Cap Agreement, (v) fail to exercise promptly and diligently each and every material right which it may have under the Interest Rate Cap Agreement, (vi) take or intentionally omit to take any action or intentionally suffer or permit any action to be omitted or taken, the taking or omission of which would result in any right of offset against sums payable under the Interest Rate Cap Agreement or any defense by the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) to payment or (vii) fail to give prompt notice to Lender of any notice of default given by or to Borrower under or with respect to the Interest Rate Cap Agreement, together with a complete copy of such notice. If Borrower shall have received written notice that the Securitization shall have occurred, no consent by Lender provided for in this Section 9.3(e) shall be given by Lender unless Lender shall have received a Rating Agency Confirmation.

In connection with an Interest Rate Cap Agreement, Borrower shall obtain and deliver to Lender an Opinion of Counsel from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty upon which Lender and its successors and assigns may rely (the **"Counterparty Opinion"**), under New York law and, if the Counterparty is a non-U.S. entity, the applicable foreign law, substantially in compliance with the requirements set forth in **Exhibit F** or in such other form approved by the Lender.

Section 9.4 Representations and Warranties . Borrower hereby covenants with, and represents and warrants to, Lender as follows:

(a) The Interest Rate Cap Agreement constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(b) The Rate Cap Collateral is free and clear of all claims or security interests of every nature whatsoever, except such as are created pursuant to this Agreement and the other Loan Documents, and Borrower has the right to pledge and grant a security interest in the same as herein provided without the consent of any other Person other than any such consent that has been obtained and is in full force and effect.

(c) The Rate Cap Collateral has been duly and validly pledged hereunder. All consents and approvals required to be obtained by Borrower for the consummation of the transactions contemplated by this Agreement have been obtained.

(d) Giving effect to the aforesaid grant and assignment to Lender, Lender has, as of the date of this Agreement, and as to Rate Cap Collateral acquired from time to time after such date, shall have, a valid, and upon proper filing, perfected and continuing first priority lien upon and security interest in the Rate Cap Collateral; provided that no representation or warranty is made with respect to the perfected status of the security interest of Lender in the proceeds of Rate Cap Collateral consisting of "cash proceeds" or "non-cash proceeds" as defined in the UCC except if, and to the extent, the provisions of Section 9-306 of the UCC shall be complied with.

(e) Except for financing statements filed or to be filed in favor of Lender as secured party, there are no financing statements under the UCC covering any or all of the Rate Cap Collateral and Borrower shall not, without the prior written consent of Lender, until payment in full of all of the Obligations, execute and file in any public office, any enforceable financing statement or statements covering any or all of the Rate Cap Collateral, except financing statements filed or to be filed in favor of Lender as secured party.

Section 9.5 Payments . If Borrower at any time shall be entitled to receive any payments with respect to the Interest Rate Cap Agreement, such amounts shall, immediately upon becoming payable to Borrower, be deposited by Counterparty into the Holding Account.

Section 9.6 Remedies . Subject to the provisions of the Interest Rate Cap Agreement, if an Event of Default shall occur and then be continuing:

(a) Lender, without obligation to resort to any other security, right or remedy granted under any other agreement or instrument, shall have the right to, in addition to all rights, powers and remedies of a secured party pursuant to the UCC, at any time and from time to time, sell, resell, assign and deliver, in its sole discretion, any or all of the Rate Cap Collateral (in one or more parcels and at the same or different times) and all right, title and interest, claim and demand therein and right of redemption thereof, at public or private sale, for cash, upon credit or for future delivery, and in connection therewith Lender may grant options and may impose reasonable conditions such as requiring any purchaser to represent that any "securities" constituting any part of the Rate Cap Collateral are being purchased for investment only, Borrower hereby waiving and releasing any and all equity or right of redemption to the fullest extent permitted by the UCC or applicable law. If all or any of the Rate Cap Collateral is sold by Lender upon credit or for future delivery, Lender shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, Lender may resell such Rate Cap Collateral. It is expressly agreed that Lender may exercise its rights with respect to less than all of the Rate Cap Collateral, leaving unexercised its rights with respect to the remainder of the Rate Cap Collateral, provided , however , that such partial exercise shall in no way restrict or jeopardize Lender's right to exercise its rights with respect to all or any other portion of the Rate Cap Collateral at a later time or times.

(b) Lender may exercise, either by itself or by its nominee or designee, in the name of Borrower, all of Lender's rights, powers and remedies in respect of the Rate Cap Collateral, hereunder and under law.

(c) Borrower hereby irrevocably, in the name of Borrower or otherwise, authorizes and empowers Lender and assigns and transfers unto Lender, and constitutes and appoints Lender its true and lawful attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Borrower and in the name of Borrower, upon the occurrence and during the continuance of an Event of Default, (i) to exercise and enforce every right, power, remedy, authority, option and privilege of Borrower under the Interest Rate Cap Agreement, including any power to subordinate or modify the Interest Rate Cap Agreement (but not, unless an Event of Default exists and is continuing, the right to terminate or cancel the Interest Rate Cap Agreement), or to give any notices, or to take any action resulting in such subordination, termination, cancellation or modification and (ii) in order to more fully vest in Lender the rights and remedies provided for herein, to exercise all of the rights, remedies and powers granted to Lender in this Agreement, and Borrower further authorizes and empowers Lender, as Borrower's attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Borrower and in the name of Borrower, upon the occurrence and during the continuance of an Event of Default, to give any authorization, to furnish any information, to make any demands, to execute any instruments and to take any and all other action on behalf of and in the name of Borrower which in the opinion of Lender may be necessary or appropriate to be given, furnished, made, exercised or taken under the Interest Rate Cap Agreement, in order to comply therewith, to perform the conditions thereof or to prevent or remedy any default by Borrower thereunder or to enforce any of the rights of Borrower thereunder. These powers-of-attorney are irrevocable and coupled with an interest, and any similar or dissimilar powers heretofore given by Borrower in respect of the Rate Cap Collateral to any other Person are hereby revoked.

(d) Upon the occurrence and during the continuance of an Event of Default, Lender may, without notice to, or assent by, Borrower or any other Person (to the extent permitted by law), but without affecting any of the Obligations, in the name of Borrower or in the name of Lender, notify the Counterparty, or if applicable, any other counterparty to the Interest Rate Cap Agreement, to make payment and performance directly to Lender; extend the time of payment and performance of, compromise or settle for cash, credit or otherwise, and upon any terms and conditions, any obligations owing to Borrower, or claims of Borrower, under the Interest Rate Cap Agreement; file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by Lender necessary or advisable for the purpose of collecting upon or enforcing the Interest Rate Cap Agreement; and execute any instrument and do all other things deemed necessary and proper by Lender to protect and preserve and realize upon the Rate Cap Collateral and the other rights contemplated hereby.

(e) Pursuant to the powers-of-attorney provided for above, Lender may take any action and exercise and execute any instrument which it may deem necessary or advisable to accomplish the purposes hereof; provided , however , that Lender shall not be permitted to take any action pursuant to said power-of-attorney that would conflict with any limitation on Lender's rights with respect to the Rate Cap Collateral. Without limiting the generality of the foregoing, Lender, after the occurrence of an Event of Default, shall have the right and power to receive, endorse and collect all checks and other orders for the payment of money made payable to

Borrower representing: (i) any payment of obligations owed pursuant to the Interest Rate Cap Agreement, (ii) interest accruing on any of the Rate Cap Collateral or (iii) any other payment or distribution payable in respect of the Rate Cap Collateral or any part thereof, and for and in the name, place and stead of Borrower, to execute endorsements, assignments or other instruments of conveyance or transfer in respect of any property which is or may become a part of the Rate Cap Collateral hereunder.

(f) Lender may exercise all of the rights and remedies of a secured party under the UCC.

(g) Without limiting any other provision of this Agreement or any of Borrower's rights hereunder, and without waiving or releasing Borrower from any obligation or default hereunder, Lender shall have the right, but not the obligation, to perform any act or take any appropriate action, as it, in its reasonable judgment, may deem necessary to protect the security of this Agreement, to cure such Event of Default or to cause any term, covenant, condition or obligation required under this Agreement or the Interest Rate Cap Agreement to be performed or observed by Borrower to be promptly performed or observed on behalf of Borrower. All amounts advanced by, or on behalf of, Lender in exercising its rights under this Section 9.7(g) (including, but not limited to, reasonable legal expenses and disbursements incurred in connection therewith), together with interest thereon at the Default Rate from the date of each such advance, shall be payable by Borrower to Lender upon demand and shall be secured by this Agreement.

Section 9.7 Sales of Rate Cap Collateral . No demand, advertisement or notice, all of which are, to the fullest extent permitted by law, hereby expressly waived by Borrower, shall be required in connection with any sale or other disposition of all or any part of the Rate Cap Collateral, except that Lender shall give Borrower at least thirty (30) Business Days' prior written notice of the time and place of any public sale or of the time when and the place where any private sale or other disposition is to be made, which notice Borrower hereby agrees is reasonable, all other demands, advertisements and notices being hereby waived. To the extent permitted by law, Lender shall not be obligated to make any sale of the Rate Cap Collateral if it shall determine not to do so, regardless of the fact that notice of sale may have been given, and Lender may without notice or publication adjourn any public or private sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Upon each private sale of the Rate Cap Collateral of a type customarily sold in a recognized market and upon each public sale, unless prohibited by any applicable statute which cannot be waived, Lender (or its nominee or designee) may purchase any or all of the Rate Cap Collateral being sold, free and discharged from any trusts, claims, equity or right of redemption of Borrower, all of which are hereby waived and released to the extent permitted by law, and may make payment therefor by credit against any of the Obligations in lieu of cash or any other obligations. In the case of all sales of the Rate Cap Collateral, public or private, Borrower shall pay all reasonable costs and expenses of every kind for sale or delivery, including brokers' and attorneys' fees and disbursements and any tax imposed thereon. However, the proceeds of sale of Rate Cap Collateral shall be available to cover such costs and expenses, and, after deducting such costs and expenses from the proceeds of sale, Lender shall apply any residue to the payment of the Obligations in the order of priority as set forth in Section 11 of the Security Instrument.

Section 9.8 Public Sales Not Possible . Borrower acknowledges that the terms of the Interest Rate Cap Agreement may prohibit public sales, that the Rate Cap Collateral may not be of the type appropriately sold at public sales, and that such sales may be prohibited by law. In light of these considerations, Borrower agrees that private sales of the Rate Cap Collateral shall not be deemed to have been made in a commercially unreasonably manner by mere virtue of having been made privately.

Section 9.9 Receipt of Sale Proceeds . Upon any sale of the Rate Cap Collateral by Lender hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt by Lender or the officer making the sale or the proceeds of such sale shall be a sufficient discharge to the purchaser or purchasers of the Rate Cap Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Lender or such officer or be answerable in any way for the misapplication or non-application thereof.

Section 9.10 Extension Interest Rate Cap Agreement . If Borrower exercises any of its options to extend the Maturity Date pursuant to Section 5 of the Note, then, on or prior to the Maturity Date being extended, the Borrower shall obtain or have in place an Extension Interest Rate Cap Agreement (i) having a term through the end of the Interest Period in which the extended Maturity Date occurs, (ii) in a notional amount at least equal to the Principal Amount of the Loan as of the Maturity Date being extended, and (iii) having a strike rate equal to an amount such that the maximum interest rate paid by the Borrower after giving effect to payments made under such Extension Interest Rate Cap Agreement shall equal no more than the LIBOR Cap Strike Rate.

Section 9.11 Filing of Financing Statements Authorized . Borrower and Operating Lessee hereby authorize the filing of a form UCC-1 financing statement naming the Borrower and the Operating Lessee as debtors and the Lender as secured party in any office (including the office of the Secretary of State of the State of Delaware) covering all property of the Borrower and the Operating Lessee (including, but not limited to, the Account Collateral and the Rate Cap Collateral, but excluding Excess Cash Flow).

X. MAINTENANCE OF PROPERTY; ALTERATIONS

Section 10.1 Maintenance of Property . Borrower shall keep and maintain, or cause to be kept and maintained, the Property and every part thereof in good condition and repair, subject to ordinary wear and tear, and, subject to Excusable Delays and the provisions of this Agreement with respect to damage or destruction caused by a Casualty or Condemnation, shall not permit or commit any waste, impairment, or deterioration of any portion of the Property in any material respect. Borrower further covenants to do all other acts which from the character or use of the Property may be reasonably necessary to protect the security hereof, the specific enumerations herein not excluding the general. Borrower shall not demolish any Improvement on the Property except as the same may be necessary in connection with an Alteration or a restoration in connection with a Condemnation or Casualty, or as otherwise permitted herein, in each case in accordance with the terms and conditions hereof.

Section 10.2 Alterations and Expansions . Borrower shall not perform or undertake or consent to the performance or undertaking of any Alteration or Expansion, except in accordance with the following terms and conditions:

(a) The Alteration or Expansion shall be undertaken in accordance with the applicable provisions of this Agreement, the other Loan Documents, the Leases and all Legal Requirements.

(b) No Event of Default shall have occurred and be continuing or shall occur as a result of such action.

(c) A Material Alteration or Material Expansion, to the extent architects are customarily used for alterations or expansions of those types, but including any structural change to any of the Property or the Improvements, shall be conducted under the supervision of an Independent Architect and shall not be undertaken until ten (10) Business Days after there shall have been filed with Lender, for information purposes only and not for approval by Lender, detailed plans and specifications and cost estimates therefor, prepared and approved in writing by such Independent Architect. Such plans and specifications may be revised at any time and from time to time, provided that revisions of such plans and specifications shall be filed with Lender, for information purposes only.

(d) The Alteration or Expansion may not in and of itself, either during the Alteration or Expansion or upon completion, be reasonably expected to have a Material Adverse Effect with respect to the Property.

(e) All work done in connection with any Alteration or Expansion shall be performed with due diligence to Final Completion in a good and workmanlike manner, all materials used in connection with any Alteration or Expansion shall be not less than the standard of quality of the materials generally used at the Property as of the date hereof (or, if greater, the then-current customary quality in the sub-market in which the Property is located) and all work shall be performed and all materials used in accordance with all applicable Legal Requirements and Insurance Requirements.

(f) The cost of any Alteration or Expansion shall be promptly and fully paid for by Borrower, subject to the next succeeding sentence. No payment made prior to the Final Completion (excluding punch-list items) of an Alteration or Expansion or Restoration to any contractor, subcontractor, materialman, supplier, engineer, architect, project manager or other Person who renders services or furnishes materials in connection with such Alteration shall exceed ninety percent (90%) of the aggregate value of the work performed by such Person from time to time and materials furnished and incorporated into the Improvements.

(g) Intentionally Deleted.

(h) With respect to any Material Alteration or Material Expansion:

(i) Borrower shall have delivered to Lender Eligible Collateral in an amount equal to at least the total estimated remaining unpaid costs of such Material Alteration or Material Expansion which is in excess of the Threshold Amount, which Eligible Collateral shall

be held by Lender as security for the Indebtedness and released to Borrower as such work progresses in accordance with Section 10.2(h)(iii) ; provided , however , in the event that any Material Alteration or Material Expansion shall be made in conjunction with any Restoration with respect to which Borrower shall be entitled to use or apply Proceeds pursuant to Section 6.2 hereof (including any Proceeds remaining after completion of such Restoration), the amount of the Eligible Collateral to be furnished pursuant hereto need not exceed the aggregate cost of such Restoration and such Material Alteration or Material Expansion (in either case, as estimated by the Independent Architect) less the sum of the amount of any Proceeds which the Borrower is entitled to withdraw pursuant to Section 6.2 hereof and the Threshold Amount;

(ii) Prior to commencement of construction of such Material Alteration or Material Expansion, Borrower shall deliver to Lender a schedule (with the concurrence of the Independent Architect) setting forth the projected stages of completion of such Alteration or Expansion and the corresponding amounts expected to be due and payable by or on behalf of Borrower in connection with such completion, such schedule to be updated quarterly by Borrower (and with the concurrence of the Independent Architect) during the performance of such Alteration or Expansion.

(iii) Any Eligible Collateral that a Borrower delivers to Lender pursuant hereto (and the proceeds of any such Eligible Collateral) shall be invested (to the extent such Eligible Collateral can be invested) by Lender in Permitted Investments for a period of time consistent with the date on which the Borrower notifies Lender that the Borrower expects to request a release of such Eligible Collateral in accordance with the next succeeding sentence. From time to time as the Alteration or Expansion progresses, the amount of any Eligible Collateral so furnished may, upon the written request of Borrower to Lender, be withdrawn by Borrower and paid or otherwise applied by or returned to Borrower in an amount equal to the amount Borrower would be entitled to so withdraw if Section 6.2.4 were applicable, and any Eligible Collateral so furnished which is a Letter of Credit may be reduced by Borrower in an amount equal to the amount Borrower would be entitled to so reduce if Section 6.2.4 hereof were applicable, subject, in each case, to the satisfaction of the conditions precedent to withdrawal of funds or reduction of the Letter of Credit set forth in Section 6.2.4 hereof. In connection with the above-described quarterly update of the projected stages of completion of the Material Alteration or Material Expansion (as concurred with by an Independent Architect), Borrower shall increase (or be permitted to decrease, as applicable) the Eligible Collateral then deposited with Lender as necessary to comply with Section 10.2(h)(i) hereof.

(iv) At any time after Final Completion of such Material Alterations or Material Expansions, the whole balance of any Cash deposited with Lender pursuant to Section 10.2(h) hereof then remaining on deposit may be withdrawn by Borrower and shall be paid by Lender to Borrower, and any Eligible Collateral so deposited shall, to the extent it has not been called upon, reduced or theretofore released, be released by Lender to Borrower, within ten (10) days after receipt by Lender of an application for such withdrawal and/or release together with an Officer's Certificate, and as to the following clauses (A) and (B) of this clause also a certificate of the Independent Architect, setting forth in substance as follows:

(A) that such Material Alteration(s) or Material Expansion(s) has been completed in all material respects in accordance with any plans and specifications therefor previously filed with Lender under Section 10.2(c) hereof;

(B) that to the knowledge of the certifying Person, (x) such Material Alteration(s) or Material Expansion (s) has been completed in compliance with all Legal Requirements, and (y) to the extent required for the legal use or occupancy of the portion of the Property affected by such Alteration(s) or Expansion(s), the applicable Borrower has obtained a temporary or permanent certificate of occupancy (or similar certificate) or, if no such certificate is required, a statement to that effect;

(C) that to the knowledge of the certifying Person, all amounts that a Borrower is or may become liable to pay in respect of such Material Alteration(s) or Material Expansion(s) through the date of the certification have been paid in full or adequately provided for and, to the extent that such are customary and reasonably obtainable by prudent property owners in the area where the applicable Property is located, that Lien waivers have been obtained from the general contractor and subcontractors performing such Alteration(s) or Expansion(s) or at its sole cost and expense, Borrower shall cause a nationally recognized title insurance company to deliver to Lender an endorsement to the Title Policy, updating such policy and insuring over such Liens without further exceptions to such policy other than Permitted Encumbrances, or shall, at its sole cost and expense, cause a reputable title insurance company to deliver a lender's title insurance policy, in such form, in such amounts and with such endorsements as the Title Policy, which policy shall be dated the date of completion of the Material Alteration and shall contain no exceptions other than Permitted Encumbrances; provided , however , that if, for any reason, Borrower is unable to deliver the certification required by this clause (C) with respect to any costs or expenses relating to the Alteration(s) or Expansion(s), then, assuming Borrower is able to satisfy each of the other requirements set forth in clauses (A) and (B) above, Borrower shall be entitled to the release of the difference between the whole balance of such Eligible Collateral and the total of all costs and expenses to which Borrower is unable to certify; and

(D) that to the knowledge of the certifying Person, no Event of Default has occurred and is continuing.

XI. BOOKS AND RECORDS, FINANCIAL STATEMENTS, REPORTS AND OTHER INFORMATION

Section 11.1 Books and Records . Borrower shall keep and maintain on a fiscal year basis proper books and records separate from any other Person, in which accurate and complete entries shall be made of all dealings or transactions of or in relation to the Note, the Property and the business and affairs of Borrower and Operating Lessee relating to the Property which shall reflect all items of income and expense in connection with the operation on an individual basis of the Property and in connection with any services, equipment or furnishings provided in connection with the operation of the Property, in accordance with GAAP. Lender and its authorized representatives shall have the right at reasonable times and upon reasonable notice to examine the books and records of Borrower and Operating Lessee relating to the operation of the Property and to make such copies or extracts thereof as Lender may reasonably

require. Notwithstanding any other provision of this Agreement or any other Loan Document, so long as the Borrower and Operating Lessee otherwise comply with the foregoing provisions of this Section 11.1 , any requirement for the presentation of audited financial statements or similar reports of the Borrower, the Property or the Operating Lessee shall be deemed satisfied if such audit financial statement or similar reports are contained in an audited financial statement or similar report which includes a separate combining schedule setting forth in reasonable detail the separate financial information which relates solely to the Borrower, the Operating Lessee and the Property.

Section 11.2 Financial Statements.

11.2.1 Monthly Reports . At the request of Lender, Borrower shall furnish to Lender, within thirty (30) days after the end of each calendar month, unaudited operating statements, aged accounts receivable reports, rent rolls, STAR Reports and PACE Reports; occupancy and ADR reports for the Property, in each case accompanied by an Officer's Certificate certifying (i) with respect to the operating statements, that to the Best of Borrower's Knowledge and the best of such officer's knowledge such statements are true, correct, accurate and complete and fairly present the results of the operations of Borrower and the Property, and (ii) with respect to the aged accounts receivable reports, rent rolls, occupancy and ADR reports, that such items are to the Best of Borrower's Knowledge and the best of such officer's knowledge true, correct and accurate and fairly present the results of the operations of Borrower and the Property. Borrower will also provide Lender copies of all flash reports within its possession as to monthly revenues of the Property upon request.

11.2.2 Quarterly Reports . Borrower will furnish, or cause to be furnished, to Lender on or before the forty-fifth (45 th) day after the end of each Fiscal Quarter, the following items, accompanied by an Officer's Certificate, certifying that to the Best of Borrower's Knowledge and the best of such officer's knowledge such items are true, correct, accurate and complete and fairly present the financial condition and results of the operations of Borrower and the Property in a manner consistent with GAAP (subject to normal periodic adjustments) to the extent applicable:

(a) quarterly and year to date financial statements prepared for such fiscal quarter with respect to the Borrower, including a balance sheet and operating statement for such quarter for the Borrower for such quarter;

(b) occupancy levels at the Property for such period, including average daily room rates and the average revenue per available room;

(c) concurrently with the provision of such reports, Borrower shall also furnish a report of Operating Income and Operating Expenses (as well as a calculation of Net Operating Income based thereon) with respect to the Borrower and the Property for the most recently completed quarter;

(d) a STAR Report and to the extent provided by Manager a PACE Report for the most recently completed quarter;

(e) a calculation of DSCR for the trailing four (4) Fiscal Quarters; and

(f) to the extent provided by Manager a report of aged accounts receivable relating to the Property as of the most recently completed quarter and a list of Security Deposits and the aggregate amount of all Security Deposits.

11.2.3 Annual Reports . Borrower shall furnish to Lender within ninety (90) days following the end of each Fiscal Year a complete copy of the annual financial statements of the Borrower, audited by a "Big Four" accounting firm or another independent certified public accounting firm acceptable to Lender in accordance with GAAP for such Fiscal Year and containing a balance sheet, a statement of operations and a statement of cash flows. The annual financial statements of the Borrower shall be accompanied by (i) an Officer's Certificate certifying that each such annual financial statement presents fairly, in all material respects, the financial condition and results of operation of the Property and has been prepared in accordance with GAAP and (ii) a management report, in form and substance reasonably satisfactory to Lender, discussing the reconciliation between the financial statements for such Fiscal Year and the most recent Budget. Together with the Borrower's annual financial statements, the Borrower shall furnish to Lender (A) an Officer's Certificate certifying as of the date thereof whether, to Borrower's knowledge, there exists a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same; and (B) an annual report, for the most recently completed fiscal year, containing:

(1) Capital Expenditures (including for this purpose any and all additions to, and replacements of, FF&E,) made in respect of the Property, including separate line items with respect to any project costing in excess of $500,000;

(2) occupancy levels for the Property for such period; and

(3) average daily room rates at the Property for such period.

11.2.4 Leasing Reports . Not later than forty-five (45) days after the end of each fiscal quarter of Borrower's operations, Borrower shall deliver to Lender a true and complete rent roll for the Property, dated as of the last month of such fiscal quarter, showing the percentage of gross leasable area of the Property, if any, leased as of the last day of the preceding calendar quarter, the current annual rent for the Property, the expiration date of each Lease, whether to Borrower's knowledge any portion of the Property has been sublet, and if it has, the name of the subtenant, and such rent roll shall be accompanied by an Officer's Certificate certifying that such rent roll is true, correct and complete in all material respects as of its date and stating whether Borrower, within the past three (3) months, has issued a notice of default with respect to any Lease which has not been cured and the nature of such default.

11.2.5 Management Agreement . Borrower shall deliver to Lender, within ten (10) Business Days of the receipt thereof by Borrower, a copy of all reports prepared by Manager pursuant to the Management Agreement, including, without limitation, the Budget and any inspection reports.

11.2.6 Budget . Not later than March 1 st of each Fiscal Year hereafter, Borrower shall prepare or cause to be prepared and deliver to Lender, for informational purposes only, a Budget in respect of the Property for the Fiscal Year in which such delivery date falls. If Borrower subsequently amends the Budget, Borrower shall promptly deliver the amended Budget to Lender.

11.2.7 Other Information . Borrower shall, promptly after written request by Lender or, if a Securitization shall have occurred, the Rating Agencies, furnish or cause to be furnished to Lender, in such manner and in such detail as may be reasonably requested by Lender, such reasonable additional information as may be reasonably requested with respect to the Property. The information required to be furnished by Borrower to Lender under this Section 11.2 shall be provided in both hard copy format and electronic format; provided that Borrower shall only be required to provide the information required under this Section 11.2.7 in electronic format if such information is so available in the ordinary course of the operations of the Borrower and Manager and without significant expense.

XII. ENVIRONMENTAL MATTERS

Section 12.1 Representations . Borrower hereby represents and warrants that except as set forth in the environmental reports and studies delivered to Lender (the " **Environmental Reports**"), (i) Borrower has not engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (ii) to the Best of Borrower's Knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (iii) to the Best of Borrower's Knowledge, no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (iv) to the Best of Borrower's Knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Borrower; and (v) to the Best of Borrower's Knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Borrower.

Section 12.2 Covenants . Compliance with Environmental Laws .

Subject to Borrower's right to contest under Section 7.3 , Borrower covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the

continuance of the Lien of the Security Instrument, a Governmental Authority having jurisdiction over the Property requires remedial action to correct the presence of Hazardous Materials in, around, or under the Property (an **"Environmental Event"**), Borrower shall deliver prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Borrower has knowledge of the occurrence of an Environmental Event, Borrower shall deliver to Lender an Officer's Certificate (an **"Environmental Certificate"**) explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Borrower shall promptly provide Lender with copies of all notices from any Governmental Authority which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Borrower in connection with any Environmental Law. For purposes of this paragraph, the term "notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials provided by any Governmental Entity pertinent to compliance of the Property and Borrower with such Environmental Laws.

Section 12.3 Environmental Reports . Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or an Event of Default, Lender shall have the right to direct Borrower to obtain consultants reasonably approved by Lender to perform a comprehensive environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. Borrower grants Lender, its agents, consultants and contractors the right to enter the Property as reasonable or appropriate for the circumstances for the purposes of performing such studies and the reasonable cost of such studies shall be due and payable by Borrower to Lender upon demand and shall be secured by the Lien of the Security Instrument. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Borrower's or any Tenant's, other occupant's or Manager's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 12.3 , Lender shall not be deemed to be exercising any control over the operations of Borrower or the handling of any environmental matter or hazardous wastes or substances of Borrower for purposes of incurring or being subject to liability therefor.

Section 12.4 Environmental Indemnification . Borrower shall protect, indemnify, save, defend, and hold harmless the Indemnified Parties from and against any and all liability, loss, damage, actions, causes of action, costs or expenses whatsoever (including reasonable attorneys' fees and expenses) and any and all claims, suits and judgments which any Indemnified Party may suffer, as a result of or with respect to: (a) any Environmental Claim relating to or arising from the Property; (b) the violation of any Environmental Law in connection with the Property; (c) any release, spill, or the presence of any Hazardous Materials affecting the Property; and (d) the presence at, in, on or under, or the release, escape, seepage, leakage, discharge or migration at or from, the Property of any Hazardous Materials, whether or not such condition was known or unknown to Borrower; provided that, in each case, Borrower shall be relieved of its obligation under this subsection if any of the matters referred to in

clauses (a) through (d) above did not occur (but need not have been discovered) prior to (1) the foreclosure of the Security Instrument, (2) the delivery by Borrower to Lender or its designee of a deed-in-lieu of foreclosure with respect to the Property, or (3) Lender's or its designee's taking possession and control of the Property after the occurrence of an Event of Default hereunder. If any such action or other proceeding shall be brought against Lender, upon written notice from Borrower to Lender (given reasonably promptly following Lender's notice to Borrower of such action or proceeding), Borrower shall be entitled to assume the defense thereof, at Borrower's expense, with counsel reasonably acceptable to Lender; provided, however, Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Borrower expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Borrower's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Borrower that would make such separate representation advisable. Borrower shall have no obligation to indemnify an Indemnified Party for damage or loss resulting from such Indemnified Party's gross negligence or willful misconduct.

Section 12.5 Recourse Nature of Certain Indemnifications . Notwithstanding anything to the contrary provided in this Agreement or in any other Loan Document, the indemnification provided in Section 12.4 shall be fully recourse to Borrower (but not its constituent parties) and shall be independent of, and shall survive, the discharge of the Indebtedness, the release of the Lien created by the Security Instrument, and/or the conveyance of title to the Property to Lender or any purchaser or designee in connection with a foreclosure of the Security Instrument or conveyance in lieu of foreclosure.

XIII. RESERVED

XIV. SECURITIZATION AND PARTICIPATION

Section 14.1 Sale of Note and Securitization . At the request of Lender and, to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to satisfy the market standards which may be reasonably required in the marketplace or by the Rating Agencies in connection with the sale of the Note or participation therein as part of the first successful securitization (such sale and/or securitization, the " **Securitization**") of rated single or multi-class securities (the " **Securities**") secured by or evidencing ownership interests in the Note and this Agreement, including using reasonable efforts to do (or cause to be done) the following (but Borrower shall not in any event be required to incur, suffer or accept (except to a de minimis extent)) (i) any lesser rights or greater obligations or liability than as currently set forth in the Loan Documents and (ii) except as set forth in this Article XIV and other than payment by Borrower of any legal fees of Borrower and Sponsor, any expense or any liability:

14.1.1 Provided Information . (i) Provide, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Sponsor), such non-confidential financial and other information (but not projections) with respect to the Property and Borrower and Manager to the extent such information is reasonably available to Borrower or Manager, (ii) provide, at the sole expense of the holder of the Note (other than legal

fees of counsel to the Borrower and Sponsor), business plans (but not projections) and budgets relating to the Property, to the extent prepared by the Borrower or Manager and (iii) cooperate with the holder of the Note (and its representatives) in obtaining, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Sponsor), such site inspection, appraisals, market studies, environmental reviews and reports, engineering reports and other due diligence investigations of the Property, as may be reasonably requested by the holder of the Note or reasonably requested by the Rating Agencies (all information provided pursuant to this Section 14.1 together with all other information heretofore provided to Lender in connection with the Loan, as such may be updated, at Borrower's request, in connection with a Securitization, or hereafter provided to Lender in connection with the Loan or a Securitization, being herein collectively called the **"Provided Information "**);

14.1.2 Opinions of Counsel . Use reasonable efforts to cause to be rendered such customary updates or customary modifications to the Opinions of Counsel delivered at the closing of the Loan as may be reasonably requested by the holder of the Note or the Rating Agencies in connection with the Securitization. Borrower's failure to use reasonable efforts to deliver or cause to be delivered the opinion updates or modifications required hereby within twenty (20) Business Days after written request therefor shall constitute an "**Event of Default**" hereunder. To the extent any of the foregoing Opinions of Counsel were required to be delivered in connection with the closing of the Loan, any update thereof shall be at the expense of Lender and without cost to Borrower. Any such Opinions of Counsel that Borrower is reasonably required to cause to be delivered in connection with a Securitization (which the parties agree shall consist of a "Review Letter" and bring downs of the Opinions of Counsel delivered as of the date hereof which Borrower acknowledges will be required to be delivered by Borrower's counsel in connection with a Securitization taking into account the due diligence Borrower's counsel deems reasonably necessary to deliver such "Review Letter"). Borrower shall not be required to pay the cost of any reliance letters or new opinions to permit successor holders of the Loan or any interest therein to rely on the opinions delivered at Closing in connection with Securitization or assignments of the Loan.

14.1.3 Modifications to Loan Documents . Without cost to the Borrower (other than legal fees of counsel to the Borrower and Sponsor), execute such amendments to the organizational documents of Borrower, Security Instrument and Loan Documents as may be reasonably requested by Lender or the Rating Agencies in order to achieve the required rating or to effect the Securitization (including, without limitation, modifying the Payment Date, as defined in the Note, to a date other than as originally set forth in the Note), provided , that nothing contained in this Section 14.1.3 shall result in any economic or other adverse change in the transaction contemplated by the Security Instrument or the Loan Documents (unless Borrower is made whole by the holder of Note) or result in any operational changes that are burdensome to the Property, Operating Lessee, Manager or Borrower.

Section 14.2 Cooperation with Rating Agencies . Borrower shall, at Lender's expense (other than legal fees of counsel to the Borrower and Sponsor), (i) at Lender's request, meet with representatives of the Rating Agencies at reasonable times to discuss the business and operations of the Property, and (ii) cooperate with the reasonable requests of the Rating Agencies in connection with the Property. Until the Obligations are paid in full, Borrower shall provide the Rating Agencies with all financial reports required hereunder and such other information as

they shall reasonably request, including copies of any default notices or other material notices delivered to and received from Lender hereunder, to enable them to continuously monitor the creditworthiness of Borrower and to permit an annual surveillance of the implied credit rating of the Securities.

Section 14.3 Securitization Financial Statements . Borrower acknowledges that all such financial information delivered by Borrower to Lender pursuant to Article XI may, at Lender's option, be delivered to the Rating Agencies.

Section 14.4 Securitization Indemnification .

14.4.1 Disclosure Documents . Borrower understands that certain of the Provided Information may be included in disclosure documents in connection with the Securitization, including a prospectus or private placement memorandum or a public registration statement (each, a**"Disclosure Document "**) and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the**" Securities Act"**) or the Securities and Exchange Act of 1934, as amended (the**"Exchange Act"**), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, upon request, Borrower shall reasonably cooperate with the holder of the Note in updating the Provided Information for inclusion or summary in the Disclosure Document by providing all current information pertaining to Borrower and the Property reasonably requested by Lender.

14.4.2 Indemnification Certificate . In connection with each of (x) a preliminary and a private placement memorandum, or (y) a preliminary and final prospectus, as applicable, Borrower agrees to provide, at Lender's reasonable request, an indemnification certificate (at no cost to Borrower other than legal fees of counsel to the Borrower and Sponsor):

(a) certifying that Borrower has carefully examined those portions of such memorandum or prospectus, as applicable, reasonably designated in writing by Lender for Borrower's review pertaining to Borrower, the Property, the Loan and/or the Provided Information and insofar as such sections or portions thereof specifically pertain to Borrower, the Property, the Provided Information or the Loan (such portions, the **"Relevant Portions"**), the Relevant Portions do not (except to the extent specified by Borrower if Borrower does not agree with the statements therein), as of the date of such certificate, to the Best of Borrower's Knowledge, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(b) indemnifying Lender and the Affiliates of Citigroup Global Markets Inc. (collectively,**"CGM "**) that have prepared the Disclosure Document relating to the Securitization, each of its directors, each of its officers who have signed the Disclosure Document and each person or entity who controls CGM within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the**"CGM Group"**), and CGM, together with the CGM Group, each of their respective directors and each person who controls CGM or the CGM Group, within the meaning of Section 15 of the Securities Act and Section 20

of the Exchange Act (collectively, the **"Underwriter Group"**) for any actual, out-of-pocket losses, third party claims, damages (excluding lost profits, diminution in value and other consequential damages) or liabilities arising out of third party claims (the **"Liabilities"**) to which any member of the Underwriter Group may become subject to the extent such Liabilities arise out of or are based upon any untrue statement of any material fact contained in the Relevant Portions and in the Provided Information or arise out of or are based upon the omission by Borrower to state therein a material fact required to be stated in the Relevant Portions in order to make the statements in the Relevant Portions in light of the circumstances under which they were made, not misleading (except that (x) Borrower's obligation to indemnify in respect of any information contained in a preliminary or final registration statement, private placement memorandum or preliminary or final prospectus shall be limited to any untrue statement or omission of material fact therein known to Borrower to the extent in breach of Borrower's certification made pursuant to clause (a) above and (y) Borrower shall have no responsibility for the failure of any member of the Underwriting Group to accurately transcribe written information supplied by Borrower or to include such portions of the Provided Information).

(c) Borrower's liability under clauses (a) and (b) above shall be limited to Liabilities arising out of or based upon any such untrue statement or omission made in a Disclosure Document in reliance upon and in conformity with information furnished to Lender by, or furnished at the direction and on behalf of, Borrower in connection with the preparation of those portions of the registration statement, memorandum or prospectus pertaining to Borrower, the Property or the Loan, including financial statements of Borrower and operating statements with respect to the Property. This indemnity agreement will be in addition to any liability which Borrower may otherwise have.

(d) Promptly after receipt by an indemnified party under this Article XIV of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Article XIV , notify the indemnifying party in writing of the commencement thereof, but the omission to so notify the indemnifying party will not relieve the indemnifying party from any liability which the indemnifying party may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the indemnifying party. In the event that any action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party under this Article XIV of its assumption of such defense, the indemnifying party shall not be liable for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof; provided , however , if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or in conflict with those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties at the expense of the indemnifying party. The indemnifying party shall not be liable for the expenses

of separate counsel unless an indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or in conflict with those available to another indemnified party.

(e) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Article XIV is for any reason held to be unenforceable by an indemnified party in respect of any actual, out-of-pocket losses, claims, damages or liabilities relating to third party claims (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Article XIV , the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such actual, out of pocket losses, third party claims, damages or liabilities (or action in respect thereof) (but excluding damages for lost profits, diminution in value of the Property and consequential damages); provided , however , that no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution for Liabilities arising therefrom from any person who was not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the CGM Group's and Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; (iii) the limited responsibilities and obligations of Borrower as specified herein; and (iv) any other equitable considerations appropriate in the circumstances.

Section 14.5 Retention of Servicer . Lender reserves the right to retain the Servicer. Lender has advised Borrower that the Servicer initially retained by Lender shall be Wachovia Securities and Borrower shall pay any reasonable servicing fees, special servicing fees, trustee fees and any administrative fees and expenses of the Servicer, including, without limitation, reasonable attorney and other third-party fees and disbursements in connection with a prepayment, release of the Property, assumption or modification of the Loan or enforcement of the Loan Documents. Borrower shall also pay the ongoing standard monthly servicing fee.

XV. ASSIGNMENTS AND PARTICIPATIONS

Section 15.1 Assignment and Acceptance . At no incremental cost or liability to Borrower, Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Note); provided that the parties to each such assignment shall execute and deliver to Lender, for its acceptance and recording in the Register (as hereinafter defined), an Assignment and Acceptance. In addition, at no incremental cost to Borrower, Lender may participate to one or more Persons all or any portion of its rights and obligations under this Agreement and the other Loan Documents (including without limitation, all or a portion of the Note) utilizing such documentation to evidence such participation and the parties' respective rights thereunder as Lender, in its sole discretion, shall elect.

Section 15.2 Effect of Assignment and Acceptance . Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Assignment and Acceptance, (i) the assignee thereunder shall be a party hereto and, to the extent

that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of Lender, as the case may be, hereunder and such assignee shall be deemed to have assumed such rights and obligations, and (ii) Lender shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement and the other Loan Documents (and, in the case of an Assignment and Acceptance covering all or the remaining portion of Lender's rights and obligations under this Agreement and the other Loan Documents, Lender shall cease to be a party hereto) accruing from and after the effective date of the Assignment and Acceptance, except with respect to (A) any payments made by Borrower to Lender pursuant to the terms of the Loan Documents after the effective date of the Assignment and Acceptance and (B) any letter of credit, cash deposit or other deposits or security (other than the Lien of the Security Instrument and the other Loan Documents) delivered to or for the benefit of or deposited with Citigroup Global Markets Realty Corp., as Lender, for which Citigroup Global Markets Realty Corp. shall remain responsible for the proper disposition thereof until such items are delivered to a party who is qualified as an Approved Bank and agrees to hold the same in accordance with the terms and provisions of the agreement pursuant to which such items were deposited.

Section 15.3 Content . By executing and delivering an Assignment and Acceptance, Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, this Agreement or any other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (ii) Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Documents or any other instrument or document furnished pursuant thereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes Lender to take such action as agent on its behalf and to exercise such powers and discretion under the Loan Documents as are delegated to Lender by the terms hereof together with such powers and discretion as are reasonably incidental thereto; and (vi) such assignee agrees that it will perform, in accordance with their terms, all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by Lender.

Section 15.4 Register . Borrower shall maintain a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of Lender and each assignee pursuant to this Article XV and the Principal Amount of the Loan owing to each such assignee from time to time (the **"Register"**). The entries in the Register shall, with respect to such assignees, be conclusive and binding for all purposes, absent

manifest error. The Register shall be available for inspection by Lender or any assignee pursuant to this Article XV at any reasonable time and from time to time upon reasonable prior written notice.

Section 15.5 Substitute Notes . Upon its receipt of an Assignment and Acceptance executed by an assignee, together with any Note or Notes subject to such assignment, Lender shall, if such Assignment and Acceptance has been completed and is in substantially the form of **Exhibit J** hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register, and (iii) give prompt written notice thereof to Borrower. Within five (5) Business Days after its receipt of such notice, Borrower, at Lender's own expense, shall execute and deliver to Lender in exchange and substitution for the surrendered Note or Notes a new Note to the order of such assignee in an amount equal to the portion of the Loan assigned to it and a new Note to the order of Lender in an amount equal to the portion of the Loan retained by it hereunder. Such new Note or Notes shall be in an aggregate Principal Amount equal to the aggregate then outstanding principal amount of such surrendered Note or Notes, shall be dated the effective date of such Assignment and Acceptance and shall otherwise be in substantially the form of the Note (modified, however, to the extent necessary so as not to impose duplicative or increased obligations on Borrower and to delete obligations previously satisfied by Borrower). Notwithstanding the provisions of this Article XV , Borrower and Operating Lessee shall not be responsible or liable for any additional taxes, reserves, adjustments or other costs and expenses that are related to, or arise as a result of, any transfer of the Loan or any interest or participation therein that arise solely and exclusively from the transfer of the Loan or any interest or participation therein or from the execution of the new Note contemplated by this Section 15.5 , including, without limitation, any mortgage tax. Lender and/or the assignees, as the case may be, shall from time to time designate one agent through which Borrower shall request all approvals and consents required or contemplated by this Agreement and on whose statements Borrower, Operating Lessee and Sponsor may rely.

Section 15.6 Participations . Each assignee pursuant to this Article XV may sell participations to one or more Persons (other than Borrower or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Note held by it); provided , however , that (i) such assignee's obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) such assignee shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such assignee shall remain the holder of any such Note for all purposes of this Agreement and the other Loan Documents, and (iv) Borrower, Lender and the assignees pursuant to this Article XV shall continue to deal solely and directly with such assignee in connection with such assignee's rights and obligations under this Agreement and the other Loan Documents. In the event that more than one (1) party comprises Lender, Lender shall designate one party to act on the behalf of all parties comprising Lender in providing approvals and all other necessary consents under the Loan Documents and on whose statements Borrower, Operating Lessee and Sponsor may rely.

Section 15.7 Disclosure of Information . Any assignee pursuant to this Article XV may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Article XV , disclose to the assignee or participant or proposed assignee or participant, any information relating to Borrower furnished to such assignee by or on

behalf of Borrower; provided , however , that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree in writing for the benefit of Borrower to preserve the confidentiality of any confidential information received by it.

Section 15.8 Security Interest in Favor of Federal Reserve Bank . Notwithstanding any other provision set forth in this Agreement or any other Loan Document, any assignee pursuant to this Article XV may at any time create a security interest in all or any portion of its rights under this Agreement or the other Loan Documents (including, without limitation, the amounts owing to it and the Note or Notes held by it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

XVI. RESERVE ACCOUNTS

Section 16.1 Tax Reserve Account . In accordance with the time periods set forth in Section 3.1 , if an Event of Default shall have occurred and be continuing, if required under Section 3.1 , Borrower shall deposit into the Tax Reserve Account an amount equal to (a) one-twelfth of the annual Impositions that Lender reasonably estimates, based on the most recent tax bill for the Property, will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Impositions at least twenty (20) days prior to the imposition of any interest, charges or expenses for the non-payment thereof and (b) one-twelfth of the annual Other Charges that Lender reasonably estimates will be payable during the next ensuing twelve (12) months (said monthly amounts in (a) and (b) above hereinafter called the **" Monthly Tax Reserve Amount"**, and the aggregate amount of funds held in the Tax Reserve Account being the **"Tax Reserve Amount "**). As of the Closing Date, the Monthly Tax Reserve Amount is $0.00, but such amount is subject to adjustment by Lender in accordance with the provisions of Section 3.1 and this Section 16.1 . The Monthly Tax Reserve Amount shall be paid by Borrower to Lender on each Payment Date during the continuance of an Event of Default to the extent required to be paid hereunder. Lender will apply the Monthly Tax Reserve Amount to payments of Impositions and Other Charges required to be made by Borrower pursuant to Article V and Article VII and under the Security Instrument, subject to Borrower's right to contest Impositions in accordance with Section 7.3 . In making any payment relating to the Tax Reserve Account, Lender may do so according to any bill, statement or estimate procured from the appropriate public office, without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of funds in the Tax Reserve Account shall exceed the amounts due for Impositions and Other Charges pursuant to Article V and Article VII , Lender shall credit such excess against future payments to be made to the Tax Reserve Account. If at any time Lender reasonably determines that the Tax Reserve Amount is not or will not be sufficient to pay Impositions and Other Charges by the dates set forth above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to the imposition of any interest, charges or expenses for the non-payment of the Impositions and Other Charges. Upon payment of the Impositions and Other Charges, Lender shall reassess the amount necessary to be deposited in the Tax Reserve Account for the succeeding period, which calculation shall take into account any excess amounts remaining in the Tax Reserve Account.

Section 16.2 Insurance Reserve Account . If an Event of Default shall have occurred and be continuing and if required as provided in Section 3.1 hereof, Borrower will immediately pay to Lender for transfer by Lender to the Holding Account (or if Borrower fails to so pay Lender, Lender will transfer from the Holding Account) an amount (the **"Insurance Reserve Amount "**) equal to payments of insurance premiums required to be made by Borrower to pay (or to reimburse Borrower or Operating Lessee for) the insurance required pursuant to Article VI and under the Security Instrument in accordance with the time periods set forth in Section 3.1 , an amount equal to one-twelfth of the insurance premiums that Lender reasonably estimates based on the most recent bill, will be payable for the renewal of the coverage afforded by the insurance policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such insurance premiums at least twenty (20) days prior to the expiration of the policies required to be maintained by Borrower pursuant to the terms hereof (said monthly amounts hereinafter called the **"Monthly Insurance Reserve Amount"**); provided, however, that immediately following an Insurance Reserve Trigger, Borrower will pay to Lender for transfer by Lender to the Insurance Reserve Account (or if Borrower fails to so pay Lender, Lender will transfer from the Holding Account) an amount equal to payments of insurance premiums required to be made by Borrower to pay (or to reimburse Borrower or Operating Lessee) for the insurance required pursuant to Article VI and under the Security Instrument. As of the Closing Date, the Monthly Insurance Reserve Amount is $0.00. The Monthly Insurance Reserve Amount, if same is payable pursuant to Section 3.1 and this Section 16.2 , shall be paid by Borrower to Lender on each Payment Date. Lender will apply the Monthly Insurance Reserve Amount to payments of insurance premiums required to be made by Borrower to pay for the insurance required pursuant to Article VI and under the Security Instrument. In making any payment relating to the Insurance Reserve Account, Lender may do so according to any bill, statement or estimate procured from the insurer or agent, without inquiry into the accuracy of such bill, statement or estimate or into the validity thereof. If at any time Lender reasonably determines that the Insurance Reserve Amount is not or will not be sufficient to pay insurance premiums (up to a maximum amount equal to the aggregate annual insurance premium required hereunder), Lender shall notify Borrower of such determination and Borrower shall increase the Insurance Reserve Amount by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to expiration of the applicable insurance policies. Upon payment of such insurance premiums, Lender shall reassess the amount necessary to be deposited in the Insurance Reserve Account for the succeeding period, which calculation shall take into account any excess amounts remaining in the Insurance Reserve Account.

Section 16.3 Intentionally Deleted .

Section 16.4 FF&E Reserve Account . In accordance with Section 3.1 , and during any period when Manager is not reserving for FF&E pursuant to the terms of the Management Agreement, upon the request of Borrower, Lender will, within fifteen (15) Business Days (or such shorter time as may be appropriate in Lender's reasonable discretion during emergency situations identified to Lender by Borrower in writing) after the receipt of such request and the satisfaction of the other conditions set forth in this Section, cause disbursements to Operating Lessee from the FF&E Reserve Account to pay or to reimburse Operating Lessee or Manager for actual costs incurred in connection with capital expenditures relating to FF&E at the Property (to the extent such expenditures are permitted hereunder), provided that (A) Lender has

received invoices evidencing that the costs for which such disbursements are requested are due and payable and are in respect of capital expenditures relating to FF&E at the property, (B) Operating Lessee has applied any amounts previously received by it in accordance with this Section for the expenses to which specific draws made hereunder relate and received any Lien waivers or other releases which would customarily be obtained with respect to the work in question and (C) Lender has received an Officer's Certificate confirming that the conditions in the foregoing clauses (A) and (B) have been satisfied and that the copies of invoices and evidence of Lien waivers (to the extent required above) attached to such Officer's Certificate are true, complete and correct.

Section 16.5 Letter of Credit Provisions .

16.5.1 Delivery of Letter of Credit . In lieu of maintaining on deposit all or any portion of the funds in the Low Debt Service Reserve Account with Lender pursuant to Section 16.4 , Borrower shall have the right to deliver a Letter of Credit in the amount of all or any portion of the amounts on deposit with Lender from time to time under Sections 16.4 .

16.5.2 Reduction of Letter of Credit . In the event that Borrower elects to deliver the Letter of Credit to Lender under the terms of Section 16.4.1 , Lender agrees to permit the reduction from time to time of the outstanding amount of the Letter of Credit by (i) the amount of cash funds delivered to Lender as reserve funds by Borrower in place of such Letter of Credit, and (ii) the amount that Borrower would otherwise be entitled to receive as a disbursement from the applicable reserve account pursuant to Section 16.4 .

16.5.3 Security for Debt . Each Letter of Credit delivered under this Agreement shall be additional security for the payment of the Indebtedness. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, at its option, to draw on any Letter of Credit and to apply all or any part thereof to the payment of the items for which such Letter of Credit was established or to apply each such Letter of Credit to payment of the Indebtedness in such order, proportion or priority as Lender may determine.

16.5.4 Additional Rights of Lender . In addition to any other right Lender may have to draw upon a Letter of Credit pursuant to the terms and conditions of this Agreement, Lender shall have the additional rights to draw in full any Letter of Credit: (a) if Lender has received a notice from the issuing bank that the Letter of Credit will not be renewed and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (b) upon receipt of notice from the issuing bank that the Letter of Credit will be terminated (except if a substitute Letter of Credit is provided); or (c) if Lender has received notice that the bank issuing the Letter of Credit shall cease to be an Approved Bank (unless an alternative Approved Bank issues an equivalent Letter of Credit within fifteen (15) days of Borrower's receipt of notice of same). Notwithstanding anything to the contrary contained in the above, Lender is not obligated to draw any Letter of Credit upon the happening of an event specified in (a), (b) or (c) above and shall not be liable for any losses sustained by Borrower due to the insolvency of the bank issuing the Letter of Credit if Lender has not drawn the Letter of Credit.

XVII. DEFAULTS

Section 17.1 Event of Default . (a) Each of the following events shall constitute an event of default hereunder (an "**Event of Default**"):

(i) if (A) the Indebtedness is not paid in full on the Maturity Date (subject to the last sentence of Section 3.1.5(b)), (B) any Debt Service is not paid in full on the applicable Payment Date (subject to the last sentence of Section 3.1.5(b)), (C) any prepayment of principal due under this Agreement or the Note is not paid when due, (D) the Prepayment Fee is not paid when due, (E) any deposit to the Collection Account or any of the other Collateral Accounts is not made on the required deposit date therefor; or (F) except as to any amount included in (A), (B), (C), (D), and/or (E) of this clause (i), any other amount payable pursuant to this Agreement, the Note or any other Loan Document is not paid in full when due and payable in accordance with the provisions of the applicable Loan Document, with such failure as described in subclauses (A), (B), (C), (D), and (E) continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(ii) subject to Borrower's right to contest as set forth in Section 7.3 , if any of the Impositions or Other Charges are not paid prior to the imposition of any interest, penalty, charge or expense for the non-payment thereof;

(iii) if the insurance policies required by Section 6.1 are not kept in full force and effect, or if certificates of any of such insurance policies are not delivered to Lender within ten (10) Business Days following Lender's request therefor;

(iv) if, except as permitted pursuant to Article VIII , (a) any Transfer of any direct or indirect legal, beneficial or equitable interest in all or any portion of the Property, (b) any Transfer of any direct or indirect interest in Borrower or other Person restricted by the terms of Article VIII , (c) any Lien or encumbrance on all or any portion of the Property, (d) any pledge, hypothecation, creation of a security interest in or other encumbrance of any direct or indirect interests in Borrower or other Person restricted by the terms of Article VIII or (e) the filing of a declaration of condominium with respect to the Property other than as allowed hereunder;

(v) if (i) any representation or warranty made by Borrower in Section 4.1.23 shall have been false or misleading in any material respect as of the date the representation or warranty was made which incorrect, false or misleading statement is not cured within thirty (30) days after receipt by Borrower of notice from Lender in writing of such breach or (ii) if any other representation or warranty made by Borrower herein by Borrower, any Sponsor, or any Affiliate of Borrower in any other Loan Document, or in any report, certificate (including, but not limited to, any certificate by Borrower delivered in connection with the issuance of the Non-Consolidation Opinion), financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made; provided , however , that if such representation or warranty which was false or misleading in any material respect is, by its nature, curable and is not reasonably likely to have a Material Adverse Effect, and such representation or warranty was not, to the Best of Borrower's Knowledge, false or misleading in any material respect which

made, then same shall not constitute an Event of Default unless Borrower has not cured same within five (5) Business Days after receipt by Borrower of notice from Lender in writing of such breach;

(vi) if Borrower or Sponsor shall make an assignment for the benefit of creditors provided , however , if such assignment was with respect to any Sponsor such Event of Default may be cured by the delivery to Lender by any other Sponsor that is not subject to such assignment, of an executed counterpart to the Sponsor Indemnity assuming the several liability of the Sponsor with respect to which such assignment within five (5) days after such assignment;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Operating Lessee, or Sponsor or if Borrower, Operating Lessee or Sponsor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Operating Lessee or Sponsor, or if any proceeding for the dissolution or liquidation of Borrower, Operating Lessee, or Sponsor shall be instituted; provided , however , if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Operating Lessee, or Sponsor upon the same not being discharged, stayed or dismissed within ninety (90) days; provided , further , if such appointment, adjudication, petition or proceeding was with respect to Sponsor such Event of Default may be cured by the delivery to Lender by Sponsor that, not subject to such appointment, adjudication, petition or proceeding, of an executed counterpart to the Sponsor Indemnity assuming the several liability of the Sponsor with respect to which such appointment, adjudication, petition or proceeding occurred within five (5) days after such occurrence;

(viii) if Borrower, Operating Lessee or Sponsor, as applicable, Transfers its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) with respect to any term, covenant or provision set forth herein (other than the other subsections of this Section 17.1) which specifically contains a notice requirement or grace period, if Borrower, Operating Lessee or Sponsor shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(x) if Borrower, having notified Lender of its election to extend the Maturity Date as set forth in Section 5 of the Note, fails to deliver the Replacement Interest Rate Cap Agreement to Lender prior to the first day of the extended term of the Loan and Borrower has not prepaid the Loan pursuant to the terms of the Note prior to such first day of the extended term;

(xi) if Borrower or Operating Lessee shall fail to comply with any covenants set forth in Article V or Section XI with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(xii) if Borrower shall fail to comply with any covenants set forth in Section 4 or Section 3(d) or Section 8 of the Security Instrument with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(xiii) Borrower, Operating Lessee or any Affiliate of any such Person shall fail to deposit any sums required to be deposited in the Holding Account or any Sub-Accounts thereof are not made pursuant to the requirements herein when due;

(xiv) if this Agreement or any other Loan Document or any Lien granted hereunder or thereunder, in whole or in part, shall terminate or shall cease to be effective or shall cease to be a legally valid, binding and enforceable obligation of Borrower or Sponsor, or any Lien securing the Loan shall, in whole or in part, cease to be a perfected first priority Lien, subject to the Permitted Encumbrances (except in any of the foregoing cases in accordance with the terms hereof or under any other Loan Document or by reason of any affirmative act of Lender);

(xv) if the Management Agreement is terminated and an Acceptable Manager is not appointed as a replacement manager pursuant to the provisions of Section 5.2.14 within sixty (60) days after such termination;

(xvi) if Borrower shall default beyond the expiration of any applicable cure period under any existing easement, covenant or restriction which affects the Property, the default of which shall have a Material Adverse Effect;

(xvii) There exists any fact or circumstance that reasonably could be expected to result in the (a) imposition of a Lien or security interest under Section 412(n) of the Code or under ERISA or (b) the complete or partial withdrawal by Borrower or any ERISA Affiliate from any "multiemployer plan" that is reasonably expected to result in any material liability to Borrower; provided , however that the existence of such fact or circumstance under clause (xvii)(b) shall not constitute an Event of Default if such material withdrawal liability (x) in the case of a withdrawal by an ERISA Affiliate that is reasonably expected to cause a Material Adverse Effect or any withdrawal by Borrower, is paid within thirty (30) days after the date incurred or is contested in accordance with Section 7.3 hereof or (y) in the case of a withdrawal by an ERISA Affiliate that is not reasonably expected to cause a Material Adverse Effect, is paid within the period required under applicable ERISA statutes or is contested in accordance with Section 7.3 hereof; or

(xviii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement or of any Loan Document not specified in subsections (i) to (xvii) above, for thirty (30) days after notice from Lender; provided , however , that if such Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided , further , that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days.

(b) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in clauses (a)(vi), (vii) or (viii) above) Lender may, without notice or demand, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action that Lender deems advisable to protect and enforce its rights against Borrower and in the Property, including, without limitation, (i) declaring immediately due and payable the entire Principal Amount together with interest thereon and all other sums due by Borrower under the Loan Documents, (ii) collecting interest on the Principal Amount at the Default Rate whether or not Lender elects to accelerate the Note and (iii) enforcing or availing itself of any or all rights or remedies set forth in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in subsections (a)(vi) or (a)(vii) above, the Indebtedness and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding. The foregoing provisions shall not be construed as a waiver by Lender of its right to pursue any other remedies available to it under this Agreement, the Security Instrument or any other Loan Document. Any payment hereunder may be enforced and recovered in whole or in part at such time by one or more of the remedies provided to Lender in the Loan Documents.

Section 17.2 Remedies . (a) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Indebtedness shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be subject to any one action or election of remedies law or rule and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Indebtedness or the Indebtedness has been paid in full.

(b) Upon the occurrence and during the continuance of an Event of Default, with respect to the Account Collateral, the Lender may:

(i) subject to the terms of the Subordination of Operating Lease and/or Manager Subordination Agreements, without notice to Borrower, except as required by law, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Account Collateral against the Obligations, Operating Expenses and/or Capital Expenditures for the Property or any part thereof;

(ii) in Lender's sole discretion, at any time and from time to time, exercise any and all rights and remedies available to it under this Agreement, and/or as a secured party under the UCC;

(iii) subject to the terms of the Subordination of Operating Lease and/or Manager Subordination Agreements, demand, collect, take possession of or receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Account Collateral (or any portion thereof) as Lender may determine in its sole discretion; and

(iv) take all other actions provided in, or contemplated by, this Agreement.

(c) With respect to Borrower, the Account Collateral, the Rate Cap Collateral and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Indebtedness, and Lender may seek satisfaction out of the Property or any part thereof, in its absolute discretion in respect of the Indebtedness. In addition, Lender shall have the right from time to time to partially foreclose this Agreement and the Security Instrument in any manner and for any amounts secured by this Agreement or the Security Instrument then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal or interest, Lender may foreclose this Agreement and the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose this Agreement and the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by this Agreement or the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to this Agreement and the Security Instrument to secure payment of sums secured by this Agreement and the Security Instrument and not previously recovered.

Section 17.3 Remedies Cumulative; Waivers . The rights, powers and remedies of Lender under this Agreement and the Security Instrument shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower or any Sponsor shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or any Sponsor or to impair any remedy, right or power consequent thereon.

Section 17.4 Costs of Collection . In the event that after an Event of Default: (i) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (ii) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents; or (iii) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Security Instrument or any of the Loan Documents; then Borrower shall pay to Lender all reasonable attorney's fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

XVIII. SPECIAL PROVISIONS

Section 18.1 Exculpation .

Anything contained herein, in the Note or in any other Loan Document to the contrary notwithstanding (except as set forth in the balance of this Section 18.1 or in the Environmental Indemnity), no recourse shall be had for the payment of the principal or interest on the Note or for any other portion of the Indebtedness hereunder or under the other Loan Documents against (i) any Affiliate, parent company, trustee or advisor of Borrower or owner of a direct or indirect Beneficial or equitable interest in Borrower or Sponsor, any member in Borrower, or any partner, shareholder or member therein (other than against Sponsor pursuant to the Sponsor Indemnity Agreement); (ii) any legal representative, heir, estate, successor or assign of any thereof; (iii) any corporation (or any officer, director, employee or shareholder thereof), individual or entity to which any ownership interest in Borrower shall have been transferred; (iv) any purchaser of any asset of Borrower; or (v) any other Person (except Borrower), for any deficiency or other sum owing with respect to the Note or the Indebtedness. It is understood that the Note and the Indebtedness (except as set forth in the balance of this Section 18.1 and in the Environmental Indemnity) may not be enforced against any Person described in clauses (i) through (v) above (other than against Sponsor pursuant to the Sponsor Indemnity Agreement as set forth in clause (i) above) and Lender agrees not to sue or bring any legal action or proceeding against any such Person in such respect. Notwithstanding the foregoing, the foregoing shall not: (a) prevent recourse to the Borrower or the assets of Borrower, or enforcement of the Security Instrument or other instrument or document by which Borrower is bound pursuant to the Loan Documents; (b) estop Lender from instituting or prosecuting a legal action or proceeding or otherwise making a claim against Borrower as a result of any of the following or against the Person or Persons committing any of the following: (i) fraud or intentional misrepresentation by Borrower or Operating Lessee in connection with the Loan, (ii) the misappropriation by Borrower or Operating Lessee or any Affiliate of Borrower or Operating Lessee of any Proceeds (including, without limitation, any Rents and any security deposits), (iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity, (iv) any transfer in violation of Section 8 or otherwise violate the provisions of such Section 8 , (v) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of all or any part of the Property, the Collection Account, the Holding Account, the Collateral Accounts or the Interest Rate Cap Agreement being encumbered by a Lien (other than pursuant to the Loan Documents in favor of Lender) in violation of the Loan Documents, (vi) physical damage to any Property from intentional waste committed by Borrower or Operating Lessee or any Affiliate of

Borrower or Operating Lessee, (vii) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of the failure of Borrower and/or Operating Lessee to comply with any of the provisions of Section XIV hereof, (viii) any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, causes of action, suits, claims, demands and adjustments of any nature or description whatsoever) which may at any time be imposed upon, incurred by or awarded against Lender, in the event (and arising out of such circumstances) that (x) Borrower should raise any defense, counterclaim and/or allegation in any foreclosure action by Lender relative to the Property, the Collection Account, the Holding Account, the Collateral Accounts or assignment of Borrower's rights to the Interest Rate Cap Agreement (including the right to receive any proceeds derived therefore) or any part thereof which is found by a court to have been raised by Borrower or Operating Lessee in bad faith or to be wholly without basis in fact or law, or (y) an involuntary case is commenced against Borrower or Operating Lessee under the Bankruptcy Code with the collusion of Borrower or Operating Lessee, Sponsor or any of their Affiliates or (z) an order for relief is entered with respect to Borrower or Operating Lessee under the Bankruptcy Code through the actions of Borrower or Operating Lessee, Sponsor or any of their Affiliates; or (ix) attorney's fees, costs and expenses incurred by Lender, its agent or any servicer of the Loan in connection with any successful suit by Lender to enforce the terms of the Loan Documents; or (c) estop Lender from enforcing its rights under the indemnity agreement being executed concurrently herewith by the Sponsor in favor of the Lender, for losses caused by any of the foregoing items set forth in section (b) above. Borrower hereby agrees that notwithstanding any provision to the contrary herein or in any other Loan Document, to the extent otherwise permitted by law, its obligations pursuant to clause (b)(ix) of this Section shall survive the full repayment of the Loan and/or the passage of title to all or any portion of the Property to Lender.

XIX. MISCELLANEOUS

Section 19.1 Survival . This Agreement and all covenants, indemnifications, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Indebtedness is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the successors and assigns of Lender.

Section 19.2 Lender's Discretion . Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided or as is otherwise required by law) be in the sole discretion of Lender and shall be final and conclusive.

Section 19.3 Governing Law . **(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK,**

WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTE, AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND EACH OF BORROWER AND LENDER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH OF BORROWER AND LENDER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

CORPORATION SERVICE COMPANY
80 STATE STREET
ALBANY, NEW YORK 12207-2543

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 19.4 Modification, Waiver in Writing . No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Borrower shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 19.5 Delay Not a Waiver . Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 19.6 Notices . All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Citigroup Global Markets Realty Corp.
388 Greenwich Street, 11th Floor
New York, New York 10013
Attention: Amir Kornblum
Telecopy No.: (212) 816-8307

With a copy to: Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: Fredric L. Altschuler, Esq.
Telecopy: (212) 504-6666

If to Borrower: Strategic Hotel Funding, L.L.C.
77 West Wacker Drive
Suite 4600
Chicago, Illinois, 60601
Attention: Chief Financial Officer and General Counsel
Telefax No.: (312) 658-5799

With a copy to: Perkins Coie LLP
131 South Dearborn Street, Suite 1700
Chicago, IL 60603-5559
Attention: Bruce A. Bonjour, Esq.
Telefax No.: (312) 324-9400

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, or (iii) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

Section 19.7 TRIAL BY JURY . EACH OF BORROWER, LENDER AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, THE SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, THE SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND BORROWER HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. BORROWER ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

Section 19.8 Headings . The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 19.9 Severability . Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 19.10 Preferences . To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 19.11 Waiver of Notice . Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 19.12 Expenses; Indemnity . (a) Except as may be otherwise expressly set forth in the Loan Documents, Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender pursuant to this Agreement); (ii) Lender's ongoing performance of and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters as required herein or under the other Loan Documents; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (v) the filing and recording fees and expenses, mortgage recording taxes, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement,

the other Loan Documents, the Property, or any other security given for the Loan; (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a work-out or of any insolvency or bankruptcy proceedings and (viii) procuring insurance policies pursuant to Section 6.1.1 1; provided , however , that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise (A) by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender or (B) in connection with any action taken under Article IV or a Securitization, other than the Borrower's internal administrative costs. Any cost and expenses due and payable to Lender may be paid from any amounts in the Collection or the Holding Account if same are not paid by Borrower within ten (10) Business Days after receipt of written notice from Lender.

(b) Subject to the non-recourse provisions of Section 18.1 , Borrower shall protect, indemnify and save harmless Lender, and all officers, directors, stockholders, members, partners, employees, agents, successors and assigns thereof (collectively, the Indemnified Parties) from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including all reasonable attorneys' fees and expenses actually incurred) imposed upon or incurred by or asserted against the Indemnified Parties or the Property or any part of its interest therein, by reason of the occurrence or existence of any of the following (to the extent Proceeds payable on account of the following shall be inadequate; it being understood that in no event will the Indemnified Parties be required to actually pay or incur any costs or expenses as a condition to the effectiveness of the foregoing indemnity) prior to (i) the acceptance by Lender or its designee of a deed-in-lieu of foreclosure with respect to the Property, or (ii) an Indemnified Party or its designee taking possession or control of the Property or (iii) the foreclosure of the Security Instrument, except to the extent caused by the willful misconduct or gross negligence of the Indemnified Parties (other than such willful misconduct or gross negligence imputed to the Indemnified Parties because of their interest in the Property): (1) ownership of Borrower's interest in the Property, or any interest therein, or receipt of any Rents or other sum therefrom, (2) any accident, injury to or death of any persons or loss of or damage to property occurring on or about the Property or any Appurtenances thereto, (3) any design, construction, operation, repair, maintenance, use, non-use or condition of the Property or Appurtenances thereto, including claims or penalties arising from violation of any Legal Requirement or Insurance Requirement, as well as any claim based on any patent or latent defect, whether or not discoverable by Lender, any claim the insurance as to which is inadequate, and any Environmental Claim, (4) any Default under this Agreement or any of the other Loan Documents or any failure on the part of Borrower to perform or comply with any of the terms of any Lease within the applicable notice or grace periods, (5) any performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (6) any negligence or tortious act or omission on the part of Borrower or any of its agents, contractors, servants, employees, sublessees, licensees or invitees, (7) any contest referred to in Section 7.3 hereof, (8) any obligation or undertaking relating to the performance or discharge of any of the terms, covenants and conditions of the landlord contained in the Leases, or (9) except as may be expressly limited herein, the presence at, in or under the Property or the Improvements of any Hazardous Materials in violation of any Environmental Law. Any amounts the Indemnified Parties are legally entitled to receive under this Section which are not paid within fifteen (15) Business Days after written demand therefor by the Indemnified Parties

or Lender, setting forth in reasonable detail the amount of such demand and the basis therefor, shall bear interest from the date of demand at the Default Rate, and shall, together with such interest, be part of the Indebtedness and secured by the Security Instrument. In case any action, suit or proceeding is brought against the Indemnified Parties by reason of any such occurrence, Borrower shall at Borrower's expense resist and defend such action, suit or proceeding or will cause the same to be resisted and defended by counsel at Borrower's reasonable expense for the insurer of the liability or by counsel designated by Borrower (unless reasonably disapproved by Lender promptly after Lender has been notified of such counsel); provided , however , that nothing herein shall compromise the right of Lender (or any Indemnified Party) to appoint its own counsel at Borrower's expense for its defense with respect to any action which in its reasonable opinion presents a conflict or potential conflict between Lender and Borrower that would make such separate representation advisable; provided , further , that if Lender shall have appointed separate counsel pursuant to the foregoing, Borrower shall not be responsible for the expense of additional separate counsel of any Indemnified Party unless in the reasonable opinion of Lender a conflict or potential conflict exists between such Indemnified Party and Lender. So long as Borrower is resisting and defending such action, suit or proceeding as provided above in a prudent and commercially reasonable manner, Lender and the Indemnified Parties shall not be entitled to settle such action, suit or proceeding without Borrower's consent which shall not be unreasonably withheld, delayed or conditioned, and claim the benefit of this Section with respect to such action, suit or proceeding and Lender agrees that it will not settle any such action, suit or proceeding without the consent of Borrower; provided , however , that if Borrower is not diligently defending such action, suit or proceeding in a prudent and commercially reasonable manner as provided above, and Lender has provided Borrower with thirty (30) days' prior written notice, or shorter period if mandated by the requirements of applicable law, and opportunity to correct such determination, Lender may settle such action, suit or proceeding and claim the benefit of this Section 19.12 with respect to settlement of such action, suit or proceeding. Any Indemnified Party will give Borrower prompt notice after such Indemnified Party obtains actual knowledge of any potential claim by such Indemnified Party for indemnification hereunder. The Indemnified Parties shall not settle or compromise any action, proceeding or claim as to which it is indemnified hereunder without notice to Borrower.

Section 19.13 Exhibits and Schedules Incorporated . The Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 19.14 Offsets, Counterclaims and Defenses . Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 19.15 Liability of Assignees of Lender . No assignee of Lender shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any other Loan Document or any amendment or amendments hereto made at any time or times,

heretofore or hereafter, any different than the liability of Lender hereunder. In addition, no assignee shall have at any time or times hereafter any personal liability, directly or indirectly, under or in connection with or secured by any agreement, lease, instrument, encumbrance, claim or right affecting or relating to the Property or to which the Property is now or hereafter subject any different than the liability of Lender hereunder. The limitation of liability provided in this Section 19.15 is (i) in addition to, and not in limitation of, any limitation of liability applicable to the assignee provided by law or by any other contract, agreement or instrument, and (ii) shall not apply to any assignee's gross negligence or willful misconduct.

Section 19.16 No Joint Venture or Partnership; No Third Party Beneficiaries . (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 19.17 Publicity . All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, or any of its Affiliates shall be subject to the prior written approval of Lender.

Section 19.18 Waiver of Marshalling of Assets . To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's shareholders and others with interests in Borrower and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Indebtedness without any prior or different resort for collection or of the right of Lender to the payment of the Indebtedness out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 19.19 Waiver of Counterclaim and Other Actions . Borrower hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, the Note, the Security Instrument or any Loan Document, any and

every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement, the Note, the Security Instrument or any Loan Document and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

Section 19.20 Conflict; Construction of Documents; Reliance . In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 19.21 Prior Agreements . This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Agreement and the other Loan Documents and unless specifically set forth in a writing contemporaneous herewith the terms, conditions and provisions of any and all such prior agreements do not survive execution of this Agreement.

Section 19.22 Counterparts . This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 19.23 Joint and Several Liability . If Borrower or Sponsor consists of more than one person, the obligations and liabilities of each such person hereunder and under the other Loan Documents shall be joint and several.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF , the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

SHC MICHIGAN AVENUE, LLC, a Delaware limited liability company

By: /s/ Ryan M. Bowie

Name: Ryan M. Bowie
Title: Assistant Treasurer

By signing below, Operating Lessee agrees that in consideration of the substantial benefit that it will receive from Lender making the Loan to Borrower, to comply with all of the terms, conditions, obligations and restrictions affecting Operating Lessee set forth herein:

OPERATING LESSEE:

DTRS InterContinental Chicago, LLC, a
Delaware limited liability company

By: /s/ Ryan M. Bowie
Name: Ryan M. Bowie
Title: Assistant Treasurer

[Lender's signature appears on following page]

LENDER:

CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation

By: /s/ Amir Kornblum
Name: Amir Kornblum
Title: Authorized Signatory

EXHIBIT A

TITLE INSURANCE REQUIREMENTS, ENDORSEMENTS AND AFFIRMATIVE COVERAGES

1. General . Borrower and/or its counsel is responsible for ordering or updating any title insurance work. Lender requires a lender's title insurance policy insuring "Citigroup Global Markets Realty Corp., and its successors and assigns". The approved title underwriters, type and amount of insurance and required endorsements are described below. The list of endorsements is subject to review by Lender's counsel, local counsel and additional specific coverages may be required after review of the related title commitment.

2. Title Insurer . The Title Company or Title Companies must be approved by Lender and licensed to do business in the jurisdiction in which the Property is located._____has been pre-approved by Lender as a Title Company.

3. Title Agent . Unless Lender otherwise agrees, all title work shall be ordered and coordinated, and the closing of the Loan shall be conducted through_____contact_____Tel:_____.

4. Primary Title Insurance Requirements .

(a) Amount of Coverage : Not less than the Principal Amount of the Loan on the Closing Date.

(b) Effective Date : The later of the date of recording of the Security Instrument or the date of funding of the Loan. Borrower shall be required to provide a customary "gap" indemnity in order to enable the Title Company to provide "gap" coverage.

(c) Insured : "Citigroup Global Markets Realty Corp. and its successors and assigns".

(d) Legal Description : Metes and bounds description to be provided which must conform to that shown on the Survey, the Security Instrument and any other Loan Documents that require a legal description of the Property. A lot and block description shall be acceptable in place of a metes and bounds description in exceptional cases.

(e) Policy Form : An ALTA (or equivalent) lender's policy of title insurance in form and substance acceptable to Lender. Without limiting Lender's right to require specific coverages, endorsements or other title work, the Title Policy shall (i) be in the 1970 ALTA (as amended 84) form or, if not available, ALTA 1992 form (deleting arbitration and creditor rights exclusions) or, if not available, the form commonly used in the state where the Property is located, (ii) to the extent available, include the "extended coverage" provisions described in paragraph 5 below, (iii) include all applicable endorsements described in paragraph 6 below, and (iv) include Schedule B exceptions in a form and to the extent acceptable to Lender's counsel.

5. Extended Coverage Requirements . The Title Policy shall:

(a) not contain any exception for filed or unfilled mechanic, materialmen or similar liens;

(b) limit any general exception for real estate taxes and other charges to real estate or other similar taxes or assessments that are not yet due and payable or delinquent and are not a current lien on the Property;

(c) limit any general exception for the rights of persons in possession to the rights of specified tenants, as tenants only with no right or option to purchase, set forth on the rent roll for the Property and attached to the Title Policy; and

(d) not contain any general exception as to matters that an accurate Survey of the Property would disclose, but may contain specific exceptions to matters disclosed on the Survey to be delivered on the Closing Date, subject to review by Lender's counsel.

6. Required Endorsements . The following endorsements are required, to the extent available in the jurisdiction in which the Property is located:

- Restrictions, Encroachments, Minerals Endorsement ALTA Form 9 or equivalent.
- (If not available, the Title Policy must insure by way of affirmative coverage statements that there are no encroachments by any of the improvements onto easements, rights of way or other exceptions to streets or adjacent property, or insure against loss or damage resulting therefrom.)
- Deletion of Creditors Rights Exclusion Endorsement.
- Environmental Protection Lien Endorsement.
- (The Title Policy may make an exception only for specific state statutes that provide for potential subsequent liens that could take priority over the lien securing the Loan.)
- Direct Access to Public Road Endorsement.
- Usury Endorsement.
- Land Same As Survey/Legal Description Endorsement.
- Zoning Endorsement - ALTA 3.1 with coverage for number/type of parking spaces.

  In lieu of an ALTA 3.1 zoning endorsement, Lender may accept an unambiguous, clean letter from the appropriate zoning authority which satisfies the following :

  Zoning District . Confirms the applicable zoning district for the Property under the laws or ordinances of the applicable jurisdiction and that such zoning is the proper zoning for the improvements located on the Property.

Use Restrictions . Confirms that the current use of the Property is permitted under the zoning ordinance and that the Property is not a non-conforming use.

Dimensional Requirements . Confirms that the Property is in compliance with all dimensional requirements of the zoning code, including minimum lot area, maximum building height, maximum floor area ratio and setback or buffer requirements.

Parking Requirements . Confirms that the Property is in compliance with all parking and loading requirements, including the number of spaces and dimensional requirements for the parking spaces.

Rebuildability . If Property involves legal non-conforming use, confirms that, in the event of casualty, the Property may be rebuilt substantially in its current form (i.e., no loss of square footage, same building footprint) upon satisfaction of stated conditions and/or limitations.

- Subdivision Endorsement.
- Doing Business Endorsement.
- Deletion of Arbitration Endorsement.
- Separate Tax Lot Endorsement.
- Street Address Endorsement
- Contiguity Endorsement.
- Variable Rate Endorsement.
- Mortgage Recording Tax Endorsement.
- Any of the following endorsements customary in the state in which the Property is located or as required by the nature of the transaction:

  Tie-In Endorsement for Multiple Policies
  Mortgage Assignment Endorsement
  First Loss / Last Dollar Endorsement
  Non-Imputation Endorsement
  Blanket Un-located Easements Endorsement
  Closure Endorsement

EXHIBITB

CITIGROUP GLOBAL MARKETS REALTY CORP.
SURVEY REQUIREMENTS

The survey shall contain the following:

- The legal description of the Property;
- The courses and measured distances of the exterior boundary lines of the Property and the identification of owners of abutting parcels;
- The total acreage of the Property to the nearest tenth of an acre;
- The location of any existing improvements, the dimensions thereof at the ground surface level and their relationship to the facing exterior property lines, streets and set-back lines of the Property;
- The location, lines and widths of adjoining publicly dedicated and accepted streets showing the number and location of existing curb cuts, driveways, and fences;
- The location and dimensions of encroachments, if any, upon the Property;
- The location of all set-back lines, restrictions of record, other restrictions established by zoning or building code ordinance, utilities, easements, rights-of-way and other matters affecting title to the Property which are to be shown in Schedule B-2 of the Title Policy identifying each by reference to its recording data, where applicable;
- Evidence that adequate means of ingress and egress to and from the Property exist and that the Property does not serve any adjoining property for ingress, egress or any other purpose;
- If the Property is described as being on a recorded map or plat, a legend relating the survey to such map or plat;
- The street address of the Property;
- Parking areas at the Property and, if striped, the striping and type (e.g., handicapped, motorcycle, regular, etc.) and number of parking spaces at the Property;
- A statement as to whether the Property is located in a special flood or mudslide hazard area as determined by a review of a stated and identified Flood Hazard Boundary Map published by the Federal Insurance

Administration of the U.S. Department of Housing and Urban Development;

- A vicinity map showing the property in reference to nearby highways or major street intersections.
- The exterior dimensions of all buildings at ground level and the square footage of the exterior footprint of all buildings, or gross floor area of all buildings, at ground level.
- The location of utilities serving or existing on the property as evidenced by on-site observation or as determined by records provided by client, utility companies and other appropriate sources (with reference as to the source of information) (for example)
  - railroad tracks and sidings;
  - manholes, catch basins, valve vaults or other surface indications of subterranean uses;
  - wire and cables (including their function) crossing the surveyed premises, all poles on or within ten feet of the surveyed premises, and the dimensions of all crosswires or overhangs affecting the surveyed premises; and
  - utility company installations on the surveyed premises.
- A certificate in substantially the following form:

  The undersigned being a registered surveyor of the State of [State] hereby certifies to CITIGROUP GLOBAL MARKETS REALTY CORP., [NAME OF BORROWING ENTITY] and [INSERT NAME OF TITLE COMPANY], and each of their respective successors and assigns, as of the date below, as follows:

  This print of survey actually was made on the ground on [INSERT DATE SURVEY WAS MADE] in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by American Land Title Association (" ALTA") and American Congress on Surveying & Mapping ("ACSM ") and National Society of Professional Surveyors ("NSPS") in 1999, contains Items 1,2,3,4, 6,7(a), 7(b)(1), 8, 9, la, 11, 13, 14 and 16 of Table A thereto, and correctly shows: (i) a fixed and determinable position and location of the land described herein (together with the buildings and improvements thereon, the "Mortgaged Property"), including the position of the point of beginning; (ii) the location of all buildings, structures and other improvements situated on the land; (iii) all driveways or other curb cuts along any street or alley upon which the land abuts; (iv) the location and name of all public and private streets or alleys located thereon or adjacent thereto, all of which are public unless otherwise noted; (v) the location,

dimension and recording data of all easements, rights-of-way and other matters of record thereon or with respect to which the undersigned has knowledge; (vi) the location and dimension of all unrecorded easements, paths, rights-of-way and party walls to the extent visible thereon or with respect to which the undersigned has knowledge; (vii) the location of applicable building restriction and setback lines required by local ordinances and regulations; and (viii) the location of all encroachments or overhangs onto or from the Mortgaged Property. Except as shown on this survey, there are no visible discrepancies, conflicts, shortages in area or boundary line conflicts. Except as shown on the survey, the Mortgaged Property does not serve any adjoining property for drainage, utilities or ingress or egress. The Mortgaged Property has access to and from a duly dedicated and accepted public roadway. This survey reflects boundary lines of the land, which "close" by engineering calculations. All utility services to the Mortgaged Property either enter the Mortgaged Property through adjoining public streets, or this survey shows the point of entry and location of any utilities which pass through or are located on adjoining private land to the extent visible or known to the undersigned. The Mortgaged Property does not lie within an area designated as a flood hazard area by any map or publication of the U.S. Department of Housing and Urban Development or the Federal Emergency Management Agency. The Mortgaged Property and only the Mortgaged Property constitutes one tax lot. All zoning use and density classifications are properly shown hereon. The undersigned has received and examined a copy of the Commitment for Title Insurance No._____ , dated_____, issued by _____, with respect to the Mortgaged Property, as well as a copy of each instrument listed therein. The location of each exception set forth in such Commitment, to the extent it can be located, has (with recording reference and reference to the exception number of the Commitment) been shown hereon. The undersigned further certifies that this survey meets the Accuracy Standards (as adopted by ALTA, ACSM and NSPS and in effect on the date of this certification) and [SELECT ONE OF THE FOLLOWING TWO PHRASES]:

[the Positional Uncertainties resulting from the survey measurements made on the survey do not exceed the allowable Positional Tolerance.]

[the survey measurements were made in accordance with the "Minimum Angle, Distance and Closure Requirements for Survey Measurements Which Control Land Boundaries for ALTA/ACSM Land Title Surveys."]

_____

, Licensed Surveyor

Date:_____

[seal]

EXHIBIT C

SINGLE PURPOSE ENTITY PROVISIONS

It is a requirement that the borrower be a bankruptcy remote, special purpose entity. A bankruptcy remote, special purpose entity is an entity which is unlikely to become insolvent as a result of its own activities and which is adequately insulated from the consequences of any other party's insolvency. Set forth below is language to be included in the organizational documents of corporations, limited partnerships and limited liability companies to evidence such entities' existence as bankruptcy remote, special purpose entities.

I. CORPORATION

If the Single Purpose Entity is a corporation, its certificate of incorporation will have to have the following provisions to be considered a special purpose entity:

A. Purpose

The corporation's purpose should be limited to owning and operating the mortgaged property (or interests in the Borrower).

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____, State of_____[_____interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the [General Corporation Law] of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

B. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's assets, transfer of ownership assets, incurrence of additional debt and amendment of the corporation's articles of incorporation.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Corporation shall not incur, assume, or guaranty any other indebtedness. The Corporation shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Corporation substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Corporation will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (ii) no amendment to this certificate of incorporation or to the Corporation's By Laws may be made without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary] and (ii) the Corporation shall not dissolve, terminate or liquidate."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

C. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to

the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

D. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the corporation must observe certain covenants designed to make evident the special purpose entity 's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an " Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purpose of this Article __ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for

administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

II. LIMITED PARTNERSHIP

If the Single Purpose Entity is a limited partnership, to be a special purpose entity, all of its general partners shall be special purpose entities. If such limited partnership has more than one general partner, then such limited partnership shall continue (and not dissolve) for so long as a solvent general partner exists. Consequently, both the limited partnership's partnership agreement and the certificate of incorporation of its general partner(s) will have to meet certain requirements to be considered special purpose entities. Such requirements are as follows:

A. Limited Partnership Agreement

a. Purpose

The limited partnership's purpose should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Partnership, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____, State of_____[_____interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the Uniform Limited Partnership Act of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The partnership shall be prohibited, except in certain circumstances, from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the partnership's assets, transfer of partnership interests, incurrence of additional debt and amendment of the partnership agreement.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The Partnership shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Partnership shall not incur, assume, or guaranty any other indebtedness. The Partnership shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Partnership) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Partnership substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Partnership's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this partnership and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Partnership will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the partners of the Partnership. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (i) no amendment to this partnership agreement may be made and (ii) the partnership shall not dissolve, liquidate or terminate without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary] ."

c. Indemnification

Indemnification of a partnership's partners should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Partnership in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the partnership must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in this partnership agreement, the Partnership shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate partnership records and books of account from those of any affiliate.

3. It shall not commingle assets with those of any affiliate.

4. It shall conduct its own business in its own name.

5. It shall observe all partnership formalities.

6. It shall maintain financial statements separate from any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

8. It shall maintain an arm's length relationship with any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity.

16. At all times have all of its general partners shall be special purpose corporate entities with at least two (2) Independent Directors."

For purposes of this Article____ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Partnership including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Partnership, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this partnership, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Independent Director " shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Partnership or any of its respective partners, members,

shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Partnership or managing member of the Partnership or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Partnership or of the managing member of the Partnership. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Dissolution

The limited partnership agreement should provide that the partnership will continue (and not dissolve) so long as a solvent general partner exists.

"Notwithstanding any provision or of any other document governing the formation, management or operation of the Partnership hereof to the contrary, the following shall govern: The Partnership shall not terminate solely as a consequence of the [Bankruptcy] of one or more of the general partners of the Partnership so long as there remains a solvent general partner of the Partnership."

In addition, dissolution of the partnership must not occur so long as the partnership remains mortgagor of the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Subject to applicable law, dissolution of the Partnership shall not occur so long as the Partnership remains mortgagor of the [Property] [use other term for the real estate if necessary] ."

B. Corporate General Partner

a. Purpose

The corporation's purpose should be limited to acting as general partner of the limited partnership whose purpose, as set forth above, generally should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as a general partner of a limited partnership (the "Partnership") whose purpose is to acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____, State of _____(the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the General Corporation Law of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in or causing the partnership to engage in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's or partnership's assets, transfer of ownership assets, transfer of partnership interests, incurrence of additional debt, amendment of the corporation's articles of incorporation and amendment of the partnership agreement.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur or cause the Partnership to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Corporation shall not and shall not cause the Partnership to incur, assume, or guaranty any other indebtedness. For so long as the Partnership remains mortgagor of the Property, the Corporation shall not cause the Partnership to dissolve. The Corporation shall not and shall not cause the Partnership to consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Partnership) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Corporation or Partnership substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article_____and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall

have been committed by this corporation or the Partnership and be continuing. For so long as a mortgage lien exists on the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Partnership to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the Property, (i) no amendment to this certificate of incorporation or to the Corporation's By Laws nor to the Partnership agreement of the Partnership may be made and (ii) neither the Corporation nor the Partnership shall be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the Property."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

c. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Partnership or the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the Corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an "Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or, except to the extent of its liability for the debt secured by such mortgage lien, become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purposes of this Article_____ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

III. LIMITED LIABILITY COMPANY

If the Single Purpose Entity is a limited liability company, to be a special purpose entity, each managing member shall be a special purpose corporation. If such limited liability company has more than one managing member, then such limited liability company shall continue (and not dissolve) for so long as a solvent managing member exists. Consequently, both the Limited Liability Company's articles of organization and the certificate of incorporation of its outside member will have to meet certain requirements to be considered special purpose entities. Such requirements are as follows:

A. Articles of Organization

a. Purpose

The limited liability company's purpose should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Limited Liability Company, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____ State of_____ [_____ interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the Limited Liability Company Act of_____ necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The limited liability company shall be prohibited, except in certain circumstances from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the limited liability company's assets, transfer of limited liability company interests, incurrence of additional debt and amendment of the articles of organization.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: The Limited Liability Company shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Limited Liability Company shall not incur, assume, or guaranty any other indebtedness. The Limited Liability Company shall not consolidate or merge with or into any other entity or convey or transfer its properties and

assets substantially as an entirety to any entity unless (i) the entity (if other than the Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article_____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Limited Liability Company's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this limited liability company and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Limited Liability Company will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the members of the Limited Liability Company. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (i) no amendment to these articles of organization may be made and (ii) the Limited Liability Company shall not be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]."

c. Indemnification

Indemnification of a limited liability company's partners should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Limited Liability Company in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the limited liability company must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in these articles of organization, the Limited Liability Company shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliates and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate records and books of account from those of any affiliate.

3. It shall not commingle assets with those of any affiliate.

4. It shall conduct its own business in its own name.

5. It shall maintain financial statements separate from any affiliate.

6. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

7. It shall maintain an arm's length relationship with any affiliate.

8. It shall maintain adequate capital in light of its contemplated business operations.

9. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

10. It shall not acquire obligations or securities of its partners, members or shareholders.

11. It shall use stationery, invoices and checks separate from any affiliate.

12. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.

13. It shall hold itself out as an entity separate from any affiliate.

14. It shall correct any known misunderstanding regarding its separate identity.

15. At all times all managing members shall be a special purpose corporate member with at least two (2) Independent Directors."

For purposes of this Article___ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Limited Liability Company including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Limited Liability Company, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this limited liability company, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Independent Director " shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Limited Liability Company or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Limited Liability Company or managing member of the Limited Liability Company or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Limited Liability Company or of the managing member of the Limited Liability Company. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Dissolution

To the extent permitted by tax law the articles of organization should provide that the vote of a majority in interest of the remaining members is sufficient to continue the life of the limited liability company. If such vote is not obtained, for so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary] the limited liability company may not be permitted to liquidate the [Property] [use other term for the real estate if necessary] without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary). Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage lien has been paid in full or otherwise completely discharged."

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: To the extent permissible under applicable federal and state tax law, the vote of a majority in interest of the remaining members is sufficient to continue the life of the Limited Liability Company. If such vote is not obtained, for so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary] the Limited Liability Company shall not liquidate the [Property] [use other term for the real estate if necessary] without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage liens has been paid in full or otherwise completely discharged.

f. Voting

When acting on matters subject to the vote of the members, notwithstanding that the limited liability company is not then insolvent, the members and the outside member must take into account the interest of the Limited Liability Company's creditors, as well as those of the members.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: When acting on matters subject to the vote of the members, notwithstanding that the Limited Liability Company is not then insolvent, all of the members shall take into account the interest of the Limited Liability Company's creditors, as well as those of the members."

B. Outside Corporate Member

a. Purpose

The outside corporate member's purpose should be limited to acting as corporate member of the limited liability company whose purpose, as set forth above, generally should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as the outside member of a limited liability company (the "Limited Liability Company") whose purpose is to acquire that certain parcel of real property, together with all improvements located thereon, in the City of _____, State of _____ (the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the General Corporation Law of _____ necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in or causing the limited liability company to engage in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's or the limited liability company's assets, transfer of ownership assets, transfer of limited liability company interests, incurrence of additional debt, amendment of the corporation's articles of incorporation and amendment of the articles of organization.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur or cause the Limited Liability Company to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Corporation shall not and shall not cause the Limited Liability Company to incur, assume, or guaranty any other indebtedness. The Corporation shall not and shall not cause the Limited Liability Company to consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer of the

properties and assets of the Corporation or Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation or the Limited Liability Company and be continuing. For so long as a mortgage lien exists on the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Limited Liability Company to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the Property, without first obtaining approval of the mortgagee holding a first mortgage lien on the Property (i) no material amendment to this certificate of incorporation or to the Corporation's By Laws nor to the articles of organization of the Limited Liability Company may be made and (ii) neither the Corporation nor the Limited Liability Company shall dissolve, liquidate or terminate without first obtaining approval of the mortgagee holding a first mortgage lien on the Property."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

c. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Limited Liability Company or the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an " Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purpose of this Article ____ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Voting

When voting on matters concerning the limited liability company, notwithstanding that the limited liability company is not then insolvent, the Corporation must take into account the interest of the Limited Liability Company's creditors, as well as those of its members.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: When voting on matters concerning the Limited Liability Company, notwithstanding that the Limited Liability Company is not then insolvent, the Corporation shall take into account the interest of the Limited Liability Company's creditors, as well as those of its members."

IV. OTHER STRUCTURES

The foregoing provisions do not exhaustively contemplate all ownership structures for a mortgaged property. Situations involving ownership structures not specifically contemplated by the provisions set forth on this Exhibit C shall nevertheless require Single Purpose Entities substantively to comply with the requirements to these provisions, modified as appropriate to accommodate the ownership structure in question.

EXHIBIT D

ENFORCEABILITY OPINION REQUIREMENTS

1. The Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Opinion shall be given by a professional law firm selected by Borrower and reasonably acceptable to Lender.

3. The Opinion shall be in form and substance acceptable to Lender and shall be given in relation to Borrower, Guarantor, Manager and any other relevant party to the Loan (each a " Loan Party"). Depending on the nature of the transaction, the Opinion shall address the applicable law of the State of New York, the State where the Property is located and each State where any Loan Party is organized (collectively, the "Relevant States"). To the extent that the Property is located in a jurisdiction outside of the State of New York and/or any Loan Party is organized under a jurisdiction outside the States of New York or Delaware, the appropriate opinions below should be given by local counsel. The Opinion shall be given on the basis of an examination of an executed original of each completed Loan Document in addition to such other documents or instruments counsel deems relevant.

4. The Opinion shall contain the following opinions:

Opinions with respect to the law of the State of Formation or Organization of the Loan Parties

(a) Each Loan Party is a [*Describe Legal Form*] duly organized, validly existing and in good standing under the laws of the State of [*State of Organization*] and is authorized to do business and in good standing in the State of [*State of Organization*].

(b) Each Loan Party has the requisite power to own its properties and to carry on its business as now being conducted and to enter into the transactions covered by the Loan Documents.

(c) The execution and delivery by each Loan Party of each Loan Document to which it is a party has been duly authorized by all necessary partnership, company and/or corporate action, as applicable. To the extent a party thereto, the Loan Documents have been duly executed and delivered by each Loan Party.

(d) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party does not:

(i) conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, the partnership agreement, partnership certificate, articles of incorporation, by-laws, trust agreement or trust certificate, as applicable, of such Loan Party;

(ii) contravene any law, statute or regulation of the United States of America or the [*State of Organization*] or any agency or political subdivision of either thereof;

(iii) violate any order, writ, injunction, or decree of which, after due inquiry, counsel has actual knowledge, issued by any court or governmental authority of the United States of America or the [*State of Organization*] or any agency or political subdivision of either thereof to which such Loan Party is subject; or

(iv) conflict with or result in any breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien other than the lien of the Loan Documents upon any of the assets or properties of such Loan Party pursuant to the terms of any material indenture, mortgage, deed of trust, agreement, contract or instrument to which such Loan Party is a party or by which it or any of its assets or properties is bound.

(e) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of [*Relevant State*] or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(f) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(g) To the extent the State of [*State of Organization*] UCC is applicable to the authorization of the Financing Statement, pursuant to the provisions of the Loan Agreement and the Security Instrument, Borrower has authorized the filing of the Financing Statement for purposes of Section 9-509 of the State of [*State of Organization*] UCC.

(h) To the extent the State of [*State of Organization*] UCC is applicable, the financing Statement includes not only all of the types of information required by Section 9-502(a) of the State of [*State of Organization*] UCC but also the types of information without which the Filing Office may refuse to accept the Financing Statement pursuant to Section 9-516 of the State of [*State of Organization*] UCC.

(i) To the extent the State of [*State of Organization*] UCC is applicable, the security interest of the Secured Party will be perfected in Borrower's rights in all UCC Collateral upon the later of the attachment of the security interest and the filing of the Financing Statement in the Filing Office; provided, however, we express no opinion with respect to (i) money, (ii) deposit accounts, (iii) letter of credit rights, (iv) goods covered by a certificate of title statute,

(v) as-extracted collateral, timber to be cut, or (vi) any property subject to a statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-3 10(a) of the State of [*State of Organization*] ."UCC Collateral" means the portion of the Property (as defined in the Security Instrument), the Rate Cap Collateral, the Account Collateral (as defined in the Loan Agreement) and the Collateral Accounts (as defined in the Account Agreement) to the extent the UCC governs a security interest in such collateral.

(j) You have asked whether Borrower is a "registered organization" as such term is defined in Section 9-1 02(a) (70) of the State of [*State of Organization*] UCC. Pursuant to Section 9-102(a)(70) of the State of [*State of Organization*] UCC, a "registered organization" must be (i) organized solely under the laws of a single State (or the United States) and (ii) the State (or the United States) must maintain a public record showing the organization to have been organized.

Opinions with respect to New York Law

(a) To the extent governed by New York law and to the extent a party thereto, the Loan Documents are the legal, valid and binding obligations of each Loan Party, enforceable against such Loan Party in accordance with their terms.

(b) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party does not:

(i) contravene any law, statute or regulation of the United States of America or the State of New York or any agency or political subdivision of either thereof;

(ii) violate any order, writ, injunction, or decree of which, after due inquiry, counsel has actual knowledge, issued by any court or governmental authority of the United States of America or the State of New York or any agency or political subdivision of either thereof to which such Loan Party is subject; or

(iii) conflict with or result in any breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien other than the lien of the Loan Documents upon any of the assets or properties of such Loan Party pursuant to the terms of any material indenture, mortgage, deed of trust, agreement, contract or instrument to which such Loan Party is a party or by which it or any of its assets or properties is bound.

(c) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of New York or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(d) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual

knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(e) The payment by Borrower and receipt by Lender of all principal and interest will not violate the usury laws of the State of New York or otherwise constitute unlawful interest.

(f) The provisions of the Loan Agreement and the Security Instrument are effective to create, in favor of Lender to secure the obligations purported to be secured thereby, a valid security interest in Borrower's rights in the UCC Collateral.

(g) Under New York UCC, the provisions of the Account Agreement are effective to perfect the security interest of Lender in Borrower's rights in the Collateral Accounts (as defined in the Account Agreement).

Opinions with respect to the law of States in which the Property is located

(a) Each Loan Party is authorized to do business and in good standing in the State of [*Relevant State*].

(b) To the extent governed by the laws of the State of [*Relevant States*] , the Security Instrument and the Assignment of Leases are the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms.

(c) The Security Instrument is in proper form so as to comply with recording requirements of the State of [*Relevant State*] . The Security Instrument creates in favor of Lender valid liens on the portion of the Property that are located in the State of [*Relevant States*] , securing payment of the Obligations (as defined in the Security Instrument), and no further action will be required for the valid creation of such liens. Upon recordation in the office of the [*Recording Office*] the Security Instrument will provide constructive notice of the terms thereof and the liens created thereby to third parties acquiring interests in the portion of the Property that are located in the State of [*Relevant States*] subsequent to such recordation.

(d) The Assignment of Leases is in proper form so as to comply with the recording requirements of the State of [*Relevant States*] . At the time the Assignment of Leases is delivered to the Recording Office for recording, it will take effect as to all creditors and subsequent purchasers for a valuable consideration without notice, and it shall be entitled to priority over any other similar instrument delivered to said Recording Office for recording after that time, in the absence of actual notice.

(e) Pursuant to the provisions of the Security Instrument Borrower has authorized the filing of the Fixture Financing Statement identifying the Fixture Collateral for purposes of Section 9-509 of the [*Relevant States*] UCC. " Fixture Collateral" means that portion of the UCC Collateral which consists of "fixtures" (as defined in Article 9 of the UCC) to the extent the UCC governs a security interest in such collateral.

(f) The Fixture Financing Statement includes not only all the types of information required by Section 9-502(a) and 9-502(b) of the [*Relevant States*] UCC but also the types of information without which the Fixture Filing Office may refuse to accept the Fixture Financing Statement pursuant to Section 9-516 of the State of [*Relevant States*] UCC.

(g) Under the [*Relevant States*] UCC, the security interest of the Secured Party will be perfected in Borrower's rights in any Fixture Collateral located on the real property described on Schedule 1 to the Fixture Financing Statement upon the later of the attachment of the security interest and the filing of the Fixture Financing Statement in the Fixture Filing Office.

(h) Borrower has paid all recording tax due in connection with the recording of the Security Instrument and the Assignment of Leases. No additional deed of trust recording, intangibles tax, documentary stamp tax or similar taxes or charges, other than nominal recordation or filing fees, are required to be paid as a condition of the legality of enforceability of the Security Instrument or the Assignment of Leases.

(i) The State of [*Relevant States*] has no law pursuant to which a lien against any assets or properties of Borrower (whether real, personal, mixed, tangible or intangible) superior to the lien created by the Security Instrument could arise as a result of a violation of environmental laws or regulations of such State. No environmental law or regulation of the State of [*Relevant States*] would require any remedial or removal action or certification of nonapplicability as a condition to the granting of the Security Instrument, the foreclosure or other enforcement of the Loan Documents or the sale of any assets or properties of Borrower (whether real, personal, mixed, tangible or intangible) located in the State of [*Relevant States*].

(j) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of [*Relevant States*] or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(k) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(l) If the Obligations (as defined in the Security Instrument) were to be governed by the laws of the State of [*Relevant States*] , the payment by Borrower and receipt by Lender of all principal and interest will not violate the usury laws of the State of [*Relevant States*] or otherwise constitute unlawful interest.

(m) A federal court sitting in the State of [*Relevant States*] and applying the conflict of law rules of the State of [*Relevant States*], and the state courts in the State of [*Relevant States*], would give effect to the choice of law provisions contained in the Loan Documents. If counsel is not able to give this opinion as an unqualified opinion, an opinion that the Loan Agreement and Note would be enforceable under the law of the State of [*Relevant States*] if such law were held to apply will be required.

(n) The operation of any term of the Loan Documents, including, without limitation, the terms regarding late charges, default interest or prepayment premiums, or the lawful exercise of any right thereunder, shall not render the Loan Documents unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense.

5. The Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any servicer of the Loan, (iii) any purchaser of the Loan or any portion thereof in any Securitization, (iv) any Rating Agency involved in a Securitization of the Loan, (v) the issuer of securities in a Securitization of the Loan, and (vi) any trustee or servicer appointed in connection with a Securitization of the Loan.

EXHIBIT E

NON-CONSOLIDATION OPINION REQUIREMENTS

1. The Nonconsolidation Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Nonconsolidation Opinion shall be given by a professional law firm selected by Borrower and reasonably acceptable to Lender.

3. The Nonconsolidation Opinion shall be in form and substance acceptable to Lender and shall be given in relation to both Borrower and any other SPE Entity relevant to the Loan. The Nonconsolidation Opinion shall identify each entity (a "Relevant Entity") which owns more than a 49% direct or indirect interest in either Borrower and/or such SPE Entity. Depending on the circumstances and nature of the transaction structure, a non-affiliated entity, such as a third party property manager, shall be included as a Relevant Entity if required by the Rating Agencies.

4. The Nonconsolidation Opinion shall state that, in the event that any Relevant Entity were to be a debtor in a case under the Bankruptcy Code, it is counsel's opinion that, under present reported decisional authority and statutes applicable to federal bankruptcy cases, in a properly presented and argued case, a court would not, in the proper exercise of its equitable discretion, disregard the separate existence of Borrower or any SPE Entity so as to order substantive consolidation under the Bankruptcy Code of the assets and liabilities of such Relevant Entity with the assets and liabilities of either Borrower or any SPE Entity and treat such assets and liabilities as though either Borrower and such Relevant Entity or any SPE Entity and such Relevant Entity were one entity.

5. The Nonconsolidation Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any participant of Lender's interest in the Loan, (iii) any servicer of the Loan, (iv) any purchaser of the Loan or any portion thereof in any Securitization, (v) any Rating Agency involved in a Securitization of the Loan, (vi) the issuer of securities in a Securitization of the Loan, and (vii) any trustee or servicer appointed in connection with a Securitization of the Loan.

DELAWARE BANKRUPTCY OPINIONS

As a general rule, the following opinions are required with respect to any single-member Delaware limited liability companies (having independent members/managers) in the organizational structure:

1. An opinion of Delaware counsel that federal bankruptcy court would hold that Delaware law, and not federal law, governs the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of the limited liability company.

2. Opinions of Delaware counsel as follows:

a. The limited liability company agreement constitutes a legal, valid and binding agreement of its member, and is enforceable against such member, in accordance with its terms.

b. In order for a voluntary bankruptcy petition to be filed on behalf of the Company, the unanimous consent of all of the independent managers/members is required and the provision requiring such unanimous consent in the limited liability company agreement constitutes a legal, valid and binding agreement of the member, enforceable against the member, in accordance with its terms.

c. The bankruptcy or dissolution of the limited liability company's sole member will not, by itself, cause the limited liability company to be dissolved or its affairs to be wound up.

d. A judgment creditor of the member may not satisfy its claims against the member by asserting a claim against the assets of the limited liability company.

e. The limited liability company is a separate legal entity, and shall continue as such until the cancellation of the limited liability company certificate.

Contact information for a Delaware firm frequently retained by borrowers to obtain such opinions is set forth below:

RICHARDS, LAYTON & FINGER
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
Telephone: 302-658-6541
Facsimile: 302-658-6548
Fax Confirmation: 302-651-7796

Bernard J. Kelley
Telephone: 302-651-7674
Facsimile: 302-658-6548
E-mail: kelley@r1f.com

EXHIBIT F

COUNTERPARTY OPINION REQUIREMENTS

1. The Counterparty Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Counterparty Opinion may be given by a professional law firm selected by Counterparty and reasonably acceptable to Lender or by in-house counsel for Counterparty.

3. The Counterparty Opinion shall be in form and substance acceptable to Lender and shall contain the following opinions:

(a) Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under the Interest Rate Cap Agreement and the Acknowledgment.

(b) The execution and delivery of the Interest Rate Cap Agreement and the Acknowledgment by Counterparty, and any other agreement which Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its Property.

(c) All consents, authorizations and approvals required for the execution and delivery by Counterparty of the Interest Rate Cap Agreement, the Acknowledgment and any other agreement which the Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance.

(d) The Interest Rate Cap Agreement, the Acknowledgment and any other agreement which Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by Counterparty and constitutes the legal, valid and binding obligation of Counterparty, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4. If a Interest Rate Cap Guaranty is delivered in connection with the Interest Rate Cap Agreement, the Counterparty Opinion shall contain the following additional opinions:

(a) Interest Rate Cap Guarantor is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under, the Interest Rate Cap Guaranty.

(b) The execution and delivery of the Interest Rate Cap Guaranty by Interest Rate Cap Guarantor, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or bylaws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property.

(c) All consents, authorizations and approvals required for the execution and delivery by Interest Rate Cap Guarantor of the Interest Rate Cap Guaranty, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance.

(d) The Interest Rate Cap Guaranty, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, has been duly executed and delivered by Interest Rate Cap Guarantor and constitutes the legal, valid and binding obligation of Interest Rate Cap Guarantor, enforceable against Interest Rate Cap Guarantor in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

5. Depending on the nature of the transaction, the Counterparty Opinion shall contain such additional opinions on such other matters relating to the Interest Rate Cap Agreement, the Interest Rate Cap Guaranty and/or the Acknowledgment as Lender shall reasonably require, including, without limitation, the following additional opinions if the Counterparty or Interest Rate Cap Guarantor is a foreign entity:

(a) Jurisdiction where Counterparty and/or Interest Rate Cap Guarantor, as applicable, is located will respect and give effect to the choice of law provisions of the Interest Rate Cap Agreement and the Acknowledgment.

(b) A judgment obtained in the courts of the State of New York is enforceable in the jurisdiction where Counterparty and/or Interest Rate Cap Guarantor, as applicable, is located.

6. The Counterparty Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any participant of Lender's interest in the Loan, (iii) any servicer of the Loan, (iv) any purchaser of the Loan or any portion thereof in any Securitization, (v) any Rating Agency involved in a Securitization of the Loan, (vi) the issuer of securities in a Securitization of the Loan, and (vii) any trustee or servicer appointed in connection with a Securitization of the Loan.

EXHIBIT G

FORM OF TENANT ESTOPPEL LETTER

_____ ,20__

Citigroup Global Markets Realty Corp.,
its successors and assigns
388 Greenwich Street
New York, New York 10013

Re:

Ladies and Gentlemen:

It is our understanding that you are about to make a loan to [_____], a [_____], the landlord, or successor-in-interest to the landlord under our lease, as evidenced by a loan agreement and secured by a mortgage on the captioned premises and, as a condition precedent thereof, you have required this certification by the undersigned.

The undersigned, as tenant under that certain lease made with_____, as landlord, dated_____[, which lease has been modified or amended as follows (list all modifications or amendments or, if none, so indicate) _____] (the "Lease"), hereby ratifies the Lease and certifies that:

1. the undersigned entered into occupancy of the premises described in the Lease on or about_____;

2. the lease commencement date was_____;

3. the square footage of the premises described in the Lease is_____;

4. the fixed rental in the monthly amount of $_____was payable from_____;

5. the percentage rental payable monthly is $_____;

6. there are no rent abatements or free rent periods now or in the future [other than_____];

7. the amount of the current monthly expense reimbursements due under the Lease is equal to $ _____;

8. the Lease is in full force and effect and, except as indicated above, has not been assigned, modified, supplemented or amended in any way and the undersigned has no notice of any assignment, pledge or hypothecation by the landlord of the Lease or of the rentals thereunder;

9. a true and complete copy of the Lease (including all amendments, modifications, supplements, side letters, surrender, space reduction or rent abatement agreements applicable to such Lease) is attached hereto as Exhibit A;

10. the Lease represents the entire agreement between the parties with respect to the above space in the above-mentioned building;

11. the term of the Lease [, as currently extended by means of the exercise of certain options contained therein,] expires on_____;

12. all construction and other obligations of a material nature to be performed by the landlord under the Lease have been satisfied, except as follows: (if none, so indicate);

13. any Payments by the landlord to the undersigned for tenant improvements which are required under the Lease have been made;

14. on this date there are no existing defenses or offsets which the undersigned has against the enforcement of the Lease by the Landlord and the undersigned has no knowledge of any event which with the giving of notice, the passage of time or both would constitute a default under said Lease;

15. the undersigned is not entitled to any offsets, abatements, deductions or otherwise against the rent payable under the Lease from and after the date hereof, except as follows: (if none, so indicate);

16. no rental (including expense reimbursements), other than for the current month, has been paid in advance;

17. the amount of the security deposit presently held under the Lease is $_____(if none, so indicate);

18. the rentals (including expense reimbursements) under the Lease have been paid through the month of _____.

This estoppel certificate is binding upon the undersigned and its successors and assigns and may be relied upon by you and your successors and assigns and, if the mortgage loan becomes the subject of a securitization, may also be relied upon by the credit rating agency, if any, rating the securities collateralized by the mortgage loan as well as any issuer of such securities, and any servicer and/or trustee acting in respect of such securitization.

Very truly yours,

_____

[INSERT NAME OF TENANT]

By: _____

Title:

EXHIBIT A

LEASE

G-4

EXHIBIT H-1

BORROWER ORGANIZATIONAL STRUCTURE AT CLOSING

(ATTACHED HERETO)

H-1-1

EXHIBIT H-2

INTENTIONALLY DELETED

EXHIBIT I

INTEREST RATE CAP AGREEMENT REQUIREMENTS

- The form of cap agreement should be the 1992 ISDA Agreement (Multicurrency Cross Border or Local Currency Single Jurisdiction) subject to the 2000 Definitions.
- Once the cap premium is paid by Borrower, it cannot default. (Paragraph 4 of the May 1989 ISDA Addendum to Schedule to Interest Rate and Currency Exchange Agreement or similar language must be incorporated by reference).
- "Cross Default" provision of Section 5(a)(vi) of the ISDA Master Agreement will not apply. Grace and cure periods in Section 5 of the ISDA Master Agreement will either (i) not apply or (ii) if applicable, any grace or cure periods must expire in time to ensure the availability of cap payments by cap provider on a timely basis for distribution to the holders of the rated securities.
- "Credit Event Upon Merger" provisions of Section 5(b)(iv) of the ISDA Master Agreement will not apply.
- "Automatic Early Termination" provision in Section 6(a) of the ISDA Master Agreement will not apply.
- Termination Events under Sections 5(b)(ii) and 5(b)(iii) of the ISDA Master Agreement either (i) will only constitute termination events exercisable by Borrower against cap provider or (ii) if exercisable by both parties, at the time of any event triggering a termination event under Sections 5(b)(ii) and/or 5(b)(iii), cap provider must either (a) transfer the cap to a replacement cap provider acceptable to each Rating Agency at cap provider's sole cost and expense, or (b) continue to perform its obligations under the cap agreement including, without limitation, the obligation to unconditionally "gross up" in the event that a withholding tax is imposed on payments being made by the cap provider.
- Borrower shall be precluded from payment of any out of pocket expenses required under Section 11 of the ISDA Master Agreement and incurred by cap provider related to the enforcement and protection of cap provider's rights under the cap agreement.
- Market Quotation and Second Method will be used for the purpose of computing amounts payable on early termination with a provision for loss if Market Quotation is not available.
- The parties shall be deemed to have no Affiliates for purposes of the ISDA Master Agreement.
- "Specified Entities" will not apply for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(iv) of the ISDA Master Agreement.
- Transaction will be governed by New York law.
- For the purposes of Section 6(e) of the ISDA Master Agreement, set off and counterclaim will not apply and all payments by cap provider shall be made without set off or counterclaim.

- If this transaction will be guaranteed by a parent to provide a required rating, the guarantee must be unconditional, irrevocable, continuing and a guarantee of payment, not collection, and otherwise satisfy Rating Agency requirements. Any act or omission of such guarantor that would constitute an event of default by the cap provider (other than a cross default) under Section 5 of the ISDA Master Agreement will constitute an event of default under the ISDA Master Agreement.
- The definition of LIBOR will be USD LIBOR BBA and must match the definition of LIBOR in the loan agreement.
- The definition of Business Day must match the definition of Business Day in the loan agreement. LIBOR must be determined on the LIBOR Determination Date.
- Payments must be made by the cap provider on or prior to the applicable Payment Date in respect of a period corresponding to the applicable Interest Period.
- The Termination Date of the cap must be no earlier than the last day of the Interest Period in which the Maturity Date under the loan agreement occurs.
- The Day Count Fraction in the cap must match that contained in the loan agreement.
- The Notional Amount in the cap must match the principal amount of the loan as of the date of the loan agreement.
- US Dollars are selected as the Termination Currency under the cap.
- Section 2(c)(ii) of the ISDA Master Agreement will apply to the Transaction.
- Cap provider and Borrower will represent that it is not a multi branch party.
- Cap provider will covenant that it will not petition Borrower into bankruptcy (or join in any such petition) for 365 days after all outstanding rated securities have been paid in full.
- If the ISDA Master Agreement (Multicurrency Cross Border) ("Cross Border Agreement") is utilized, additional scheduled items and provisions to address "indemnifiable taxes" and other related issues present in cross border transactions must be incorporated:
  - Section 2(d)(i)(4) of the Cross Border Agreement must be amended to require the cap provider to unconditionally "gross up" in the event that a withholding tax is imposed on payments being made by the cap provider.
  - The definition of "indemnifiable tax" must cover any and all withholding tax.
  - Section 2(d)(i)(4) of the Cross Border Agreement will be deleted such that cap provider is not excused from having to "gross up" due to Borrower's breach of a tax representation or failure to notify cap provider of a breach of a tax representation and (ii) Borrower makes no tax representations in the cap agreement or schedule.
  - Section 2(d)(ii) of the Cross Border Agreement must be amended to provide that there is no obligation by Borrower to make payments to the cap provider for any payments made by the cap provider without deduction for taxes (for which there is no obligation to gross up).

- Section 4(e) of the Cross Border Agreement must be amended to provide that there are no payment obligations by Borrower to cap provider for any indemnification resulting from stamp registration or other documentary tax levied by Borrower's taxing authority on the cap provider.

- Cap provider and any guarantor must provide a New York opinion of counsel satisfactory to the Rating Agencies regarding the cap. If cap provider or its guarantor is a non U.S. entity, a foreign opinion must be provided as well. The opinion(s) must include customary legal opinions including, without limitation, an opinion delivered by outside counsel opining that the cap agreement (including the confirmation, ISDA Master Agreement, schedule and collateral assignment agreement) is legal/valid/binding and enforceable against the cap provider and any guarantor.]

EXHIBIT J

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

Reference is made to that certain Loan and Security Agreement, dated as of_____200___ (as amended, supplemented or otherwise modified from time to time, the **Loan Agreement**) between [_____] (**Borrower**), and Citigroup Global Markets Realty Corp., a New York corporation (**Lender**), and that certain Note, dated as of_____, 200___ (the **Note**), made by Borrower in favor of Lender. Terms defined in the Loan Agreement and not otherwise defined herein are used herein with the same meaning.

The **Assignor** and the **Assignee** referred to on Schedule 1 attached hereto agree as follows:

1. The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, an interest in and to the Assignor's rights and obligations under the Note and the Loan Agreement as of the date hereof equal to the percentage interest specified on Schedule 1 attached hereto. After giving effect to such sale and assignment, the amount of the Loan and the Note owing to the Assignee will be as set forth on Schedule 1 attached hereto.

2. The Assignor (i) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with the Loan Documents or any other instrument or document furnished pursuant thereto; (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Document or any other instrument or document furnished pursuant thereto; and (iv) attaches the Note or notes held by the Assignor and requests that the Lender exchange such Note or notes for a new note or notes payable to the order of the Assignee in an amount equal to the principal amount of the Loan assumed by the Assignee pursuant hereto or new notes payable to the order of the Assignee in an amount equal to the principal amount of the Loan assumed by the Assignee pursuant hereto and the Assignor in an amount equal to the principal amount of the Loan retained by the Assignor under the Note and the Loan Agreement, respectively, as specified on Schedule 1 attached hereto.

3. The Assignee (i) confirms that it has received a copy of the Note and the Loan Agreement, together with such financial statements and other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (ii) agrees that it will, independently and without reliance upon Lender or the Assignor based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Agreement or the Note; (iii) appoints and authorizes Lender to take such action as agent on its

behalf and to exercise such powers and discretion under the Loan Documents as are delegated to Lender by the terms thereof, together with such powers and discretion as are reasonably incidental thereto; and (iv) agrees that it will perform in accordance with their terms all of the obligations that by the terms of the Loan Agreement and the Note are required to be performed by it as an assignee of an interest therein.

4. Following the execution of this Assignment and Acceptance, it will be delivered to Lender for acceptance and recording. The effective date for this Assignment and Acceptance (the **Effective Date**) shall be the date of acceptance hereof by the Lender, unless otherwise specified on Schedule 1 attached hereto.

5. Upon such acceptance and recording by Lender, as of the Effective Date, (i) the Assignee shall be a party to the Loan Agreement and the Note and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of an assignee thereof, and (ii) the Assignor shall, to the extent provided in the Loan Agreement and this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Agreement and the Note.

6. Upon such acceptance and recording by Lender, from and after the Effective Date, Lender shall make all payments under the Loan Agreement and the Note or notes in respect of the interest assigned hereby (including, without limitation, all payments of principal, interest and commitment fees with respect thereto) to the Assignee. The Assignor and Assignee shall make all appropriate adjustments in payments under the Loan Agreement and the Note or notes for periods prior to the Effective Date directly between themselves.

7. This Assignment and Acceptance shall be governed by, and construed in accordance with, the laws of the State of New York.

8. This Assignment and Acceptance may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of Schedule 1 to this Assignment and Acceptance by telecopier shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance.

***

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment and Acceptance and Schedule 1 to this Assignment and Acceptance to be executed by their officers thereunto duly authorized as of the date specified on Schedule 1 .

Schedule 1

As to the Loan in respect of which an interest is being assigned:

Percentage interest assigned: ____%

Aggregate outstanding principal amount of the Loan assigned: $____

Principal amount of Note payable to Assignee: $____

Principal amount of Note payable to Assignor: $____

Effective Date (if other than date of acceptance by Lender):_____ ,____

[NAME OF ASSIGNOR], as Assignor

By: _____
Name:
Title:

Dated:_____ ,____

[NAME OF ASSIGNOR], as Assignor

By: _____
Name:
Title:

Dated:_____ ,____

Accepted this___ day of_____,____
[NAME OF LENDER]

By: _____
Name:
Title:

EXHIBIT K

FORM OF
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

_____,
Tenant

AND

CITIGROUP GLOBAL MARKETS REALTY CORP.,
Lender

County: [_____]
Section: [_____]
Block: [_____]
Lot: [_____]

Premises:

Dated: as of_____,____

Record and return by mail to:
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
Attention: Frederic L. Altschuler, Esq.

SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made as of this___ day of_____, 200___ , between CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation, having an address at 388 Greenwich Street, New York, New York 10013 (hereinafter called "Lender"), and_____, a_____, having an address at_____(hereinafter called "Tenant").

W I T N N E S S E T H :

WHEREAS, by a lease (the " Original Lease") dated_____, 200___ between_____(hereinafter called "Landlord"), as landlord, and Tenant, as tenant, as amended by lease amendment[s] dated_____, 200___ , [_____,200___ and_____, 200___ (the Original Lease, as so amended, is hereinafter the "Lease"), a memorandum of which Lease was dated_____and was recorded in_____in Reel_____ , Page___ , [add recording data for memoranda of amendments, if applicable], Landlord leased to Tenant certain premises located in _____(the "Premises") on the property described in Schedule "A" annexed hereto and made a part hereof (the "Property"); and

WHEREAS, Lender is about to make a loan to Landlord, which loan shall be secured by, among other things, a mortgage or deed of trust (which mortgage or deed of trust, and all amendments, renewals, increases, modifications, replacements, substitutions, extensions, spreaders and consolidations thereof and all re-advances thereunder and addictions thereto, is referred to as the "Security Instrument") encumbering the Property; and

WHEREAS, Lender and Tenant desire to confirm their understanding and agreement with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. The Lease, and all of the terms, covenants, provisions and conditions thereof (including, without limitation, any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Property, or any portion thereof) is, shall be and shall at all times remain and continue to be subject and subordinate in all respects to the lien, terms, covenants, provisions and conditions of the Security Instrument and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Tenant shall execute and deliver any additional instruments which Lender may reasonably require to effect such subordination.

2. So long as (i) Tenant is not in default (beyond any period given in the Lease to Tenant to cure such default) in the payment of rent, percentage rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions

of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this Agreement and (iii) the Lease is in full force and effect: (a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease (except to the extent required so that Tenant's right to receive or set-off any monies or obligations owed or to be performed by any of Lender's predecessors-in-interest shall not be enforceable thereafter against Lender or any of Lender's successors-in-interest). Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Lender not to name or join Tenant as a party in a foreclosure proceeding with respect to the Security Instrument, Lender may so name or join Tenant without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

3. (A) After notice is given by Lender that the Security Instrument is in default and that the rentals under the Lease should be paid to Lender, Tenant will attorn to Lender and pay to Lender, or pay in accordance with the directions of Lender, all rentals and other monies due and to become due to Landlord under the Lease or otherwise in respect of the Premises. Such payments shall be made regardless of any right of set-off, counterclaim or other defense which Tenant may have against Landlord, whether as the tenant under the Lease or otherwise.

(B) In addition, if Lender (or its nominee or designee) shall succeed to the rights of Landlord under the Lease through possession or foreclosure action, delivery of a deed or otherwise, or another person purchases the Property or the portion thereof containing the Premises upon or following foreclosure of the Security Instrument or in connection with any bankruptcy case commenced by or against Landlord, then at the request of Lender (or its nominee or designee) or such purchaser (Lender, its nominees and designees, and such purchaser, and their respective successors and assigns, each being a " Successor-Landlord"), Tenant shall attorn to and recognize Successor-Landlord as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument that Successor-Landlord may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor-Landlord and Tenant upon all terms, conditions and covenants as are set forth in the Lease. If the Lease shall have terminated by operation of law or otherwise as a result of or in connection with a bankruptcy case commenced by or against Landlord or a foreclosure action or proceeding or delivery of a deed in lieu, upon request of Successor-Landlord, Tenant shall promptly execute and deliver a direct lease with Successor-Landlord which direct lease shall be on substantially the same terms and conditions as the Lease (subject, however, to the provisions of clauses (i)-(v) of this paragraph 3(B)) and shall be effective as of the day the Lease shall have terminated as aforesaid. Notwithstanding the continuation of the Lease, the attornment of Tenant thereunder or the execution of a direct lease between Successor-Landlord and Tenant as aforesaid, Successor-Landlord shall not:

(i) be liable for any previous act or omission of Landlord under the Lease;

(ii) be subject to any off-set, defense or counterclaim which shall have theretofore accrued to Tenant against Landlord;

(iii) be bound by any modification of the Lease or by any previous prepayment of rent or additional rent made more than one (1) month prior to the date same was due which Tenant might have paid to Landlord, unless such modification or prepayment shall have been expressly approved in writing by Lender;

(iv) be liable for any security deposited under the Lease unless such security has been physically delivered to Lender or Successor-Landlord; and

(v) be liable or obligated to comply with or fulfill any of the obligations of the Landlord under the Lease or any agreement relating thereto with respect to the construction of, or payment for, improvements on or above the Premises (or any portion thereof), leasehold improvements, tenant work letters and/or similar items.

4. Tenant agrees that without the prior written consent of Lender, it shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, (b) tender a surrender of the Lease, (c) make a prepayment of any rent or additional rent more than one (l) month in advance of the due date thereof, or (d) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such consent shall be void as against the holder of the Security Instrument.

5. (A) Tenant shall promptly notify Lender of any default by Landlord under the Lease and of any act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction.

(B) In the event of a default by Landlord under the Lease which would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or to claim a partial or total eviction, or in the event of any other act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease, Tenant shall not exercise such right (i) until Tenant has given written notice of such default, act or omission to Lender and (ii) unless Lender has failed, within sixty (60) days after Lender receives such notice, to cure or remedy the default, act or omission or, if such default, act or omission shall be one which is not reasonably capable of being remedied by Lender within such sixty (60) day period, until a reasonable period for remedying such default, act or omission shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Security Instrument to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under the Lease or otherwise, after similar notice, to effect such remedy), provided that Lender shall with due diligence give Tenant written notice of its intention to and shall commence and continue to, remedy such default, act or omission. If Lender cannot reasonably remedy a default, act or omission of Landlord until after Lender obtains possession of the Premises, Tenant may not terminate or cancel the Lease or claim a partial or total eviction by reason of such default, act or omission

until the expiration of a reasonable period necessary for the remedy after Lender secures possession of the Premises. To the extent Lender incurs any expenses or other costs in curing or remedying such default, act or omission, including, without limitation, attorneys' fees and disbursements, Lender shall be subrogated to Tenant's rights against Landlord.

(C) Notwithstanding the foregoing, Lender shall have no obligation hereunder to remedy such default, act or omission.

6. To the extent that the Lease shall entitle Tenant to notice of the existence of any mortgage and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Lender.

7. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges and remedies of Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Lender were named therein as Landlord.

8. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor-Landlord shall acquire title to the Property or the portion thereof containing the Premises, Successor-Landlord shall have no obligation, nor incur any liability, beyond Successor-Landlord's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor-Landlord in the Property for the payment and discharge of any obligations imposed upon Successor-Landlord hereunder or under the Lease, and Successor-Landlord is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgement which may be obtained or secured by Tenant against Successor-Landlord, Tenant shall look solely to the estate or interest owned by Successor-Landlord in the Property, and Tenant will not collect or attempt to collect any such judgement out of any other assets of Successor-Landlord.

9. Notwithstanding anything to the contrary in the Lease, Tenant agrees for the benefit of Landlord and Lender that, except as permitted by, and fully in accordance with, applicable law, Tenant shall not generate, store, handle, discharge or maintain in, on or about any portion of the Property, any asbestos, polychlorinated biphenyls, or any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such (including, but not limited to, pesticides and petroleum products if they are defined, determined or identified as such) in any federal, state or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of any thereof, including any judicial or administrative interpretation of any thereof, including any judicial or administrative orders or judgments.

10. If the Lease provides that Tenant is entitled to expansion space, Successor-Landlord shall have no obligation nor any liability for failure to provide such expansion space if a prior landlord (including, without limitation, Landlord), by reason of a lease or leases entered into by such prior landlord with other tenants of the Property, has precluded the availability of such expansion space.

11. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.

12. (A) Tenant acknowledges and agrees that this Agreement satisfies and complies in all respects with the provisions of Article___ of the Lease and that this Agreement supersedes (but only to the extent inconsistent with) the provisions of such Article and any other provision of the Lease relating to the priority or subordination of the Lease and the interests or estates created thereby to the Security Instrument.

(B) Tenant agrees to enter into a subordination, non-disturbance and attornment agreement with any lender which shall succeed Lender as lender with respect to the Property, or any portion thereof, provided such agreement is substantially similar to this Agreement. Tenant does herewith irrevocably appoint and constitute Lender as its true and lawful attorney-in-fact in its name, place and stead to execute such subordination, non-disturbance and attornment agreement, without any obligation on the part of Lender to do so. This power, being coupled with an interest, shall be irrevocable as long as the Indebtedness secured by the Security Instrument remains unpaid. Lender agrees not to exercise its rights under the preceding two sentences if Tenant promptly enters into the subordination, non-disturbance and attornment agreement as required pursuant to the first sentence of this subparagraph (B).

13. (A) Any notice required or permitted to be given by Tenant to Landlord shall be simultaneously given also to Lender, and any right to Tenant dependent upon notice shall take effect only after notice is so given. Performance by Lender shall satisfy any conditions of the Lease requiring performance by Landlord, and Lender shall have a reasonable time to complete such performance as provided in Paragraph 5 hereof.

(B) All notices or other communications required or permitted to be given to Tenant or to Lender pursuant to the provisions of this Agreement shall be in writing and shall be deemed given only if mailed by United States registered mail, postage prepaid, or if sent by nationally recognized overnight delivery service (such as Federal Express or United States Postal Service Express Mail), addressed as follows: to Tenant, at the address first set forth above, Attention:_____; to Lender, at the address first set forth above, Attention:_____and General Counsel, with a copy to Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, New York 10281, Attention: Frederic L. Altschuler, Esq.; or to such other address or number as such party may hereafter designate by notice delivered in accordance herewith. All such notices shall be deemed given three (3) business days after delivery to the United States Post office registry clerk if given by registered mail, or on the next business day after delivery to an overnight delivery courier.

14. This Agreement may be modified only by an agreement in writing signed by the parties hereto, or their respective successors-in-interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The term "Lender" shall mean the then holder of the Security Instrument. The term "Landlord" shall mean the then holder of the landlord's interest in the Lease. The term " person" shall mean

an individual, joint venture, corporation, partnership, trust, limited liability company, unincorporated association or other entity. All references herein to the Lease shall mean the Lease as modified by this Agreement and to any amendments or modifications to the Lease which are consented to in writing by Lender. Any inconsistency between the Lease and the provisions of this Agreement shall be resolved, to the extent of such inconsistency, in favor of this Agreement.

15. Tenant hereby represents to Lender as follows:

(a) The Lease is in full force and effect and has not been further amended.

(b) There has been no assignment of the Lease or subletting of any portion of the premises demised under the Lease.

(c) There are no oral or written agreements or understandings between Landlord and Tenant relating to the premises demised under the Lease or the Lease transaction except as set forth in the Lease.

(d) The execution of the Lease was duly authorized and the Lease is in full force and effect and to the best of Tenant's knowledge there exists no default (beyond any applicable grace period) on the part of either Tenant or Landlord under the Lease.

(e) There has not been filed by or against nor to the best of the knowledge and belief of Tenant is there threatened against Tenant, any petition under the bankruptcy laws of the United States.

(f) To the best of Tenant's knowledge, there is no present assignment, hypothecation or pledge of the Lease or rents accruing under the Lease by Landlord, other than pursuant to the Security Instrument.

16. Whenever, from time to time, reasonably requested by Lender (but not more than three (3) times during any calendar year), Tenant shall execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications, in a form acceptable to Tenant, of all of the matters set forth in Paragraph 15 above, and any other information the Lender may reasonably require to confirm the current status of the Lease.

17. BOTH TENANT AND LENDER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

18. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation

By: _____
Name:
Title:

[TENANT]

By: _____
Name:
Title:

AGREED AND CONSENTED TO:

LANDLORD:

[ ]

By: _____
Name:
Title:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____ , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____ , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____ , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____ , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

SCHEDULE A

Legal Description of Property

K-11

EXHIBIT L

INTENTIONALLY DELETED

L-1

EXHIBIT M

COUNTERPARTY ACKNOWLEDGMENT

_____(**Counterparty**) has entered into a Confirmation and Agreement (together with the confirmation and schedules relating thereto, collectively, the **Interest Rate Cap Agreement**), dated as of_____200__ , between the Counterparty Interest Rate Cap transaction with_____(**Borrower**). Attached hereto, is a true, correct and complete copy of the Interest Rate Cap Agreement. Counterparty acknowledges that it has been informed that Borrower, pursuant to a Loan and Security Agreement, dated_____(the **Loan Agreement**) has pledged and collaterally assigned its rights under the Interest Rate Cap Agreement to Citigroup Global Markets Realty Corp., a New York corporation (together with its successors and assigns, **Lender**). Counterparty hereby consents to such pledge and assignment and agrees that it will make any payments to become payable under or pursuant to the Interest Rate Cap Agreement directly to an account at_____ entitled " _____f/b/o Citigroup Global Markets Realty Corp., as secured party, Collection Account" (Account Number _____), ABA #_____or to such other account designated in writing by Lender. Counterparty further agrees that all such payments shall be made without set-off, deduction, defense or counterclaim. Counterparty acknowledges that in the event it shall fail to make such payments directly to such account, it shall be deemed to have not made such payment pursuant to the Interest Rate Cap Agreement. Counterparty also agrees that it will not modify, amend or terminate the Interest Rate Cap Agreement without Lender's consent.

[_____]

By: _____
Name:
Title:

EXHIBIT N

INTENTIONALLY DELETED

N-1

EXHIBIT O

INTENTIONALLY DELETED

EXHIBIT P

INTENTIONALLY DELETED

P-1

EXHIBIT Q

INTENTIONALLY DELETED

EXHIBIT R

ARTICLE 8 "OPT IN" LANGUAGE

Section_____ . Shares and Share Certificates

a. Shares . A [Member's limited liability company interest in the Company] [Partner's limited partnership interest in the Partnership] shall be represented by the Shares issued to such [Member by the Company] [Partner of the Partnership]. All of a [Member's][Partner's] Shares, in the aggregate, represent such [Member's] [Partner's] entire [Partner by the Partnership] [limited liability company interest in the Company [limited partnership interest in the Partnership]. The [Member][Partner] hereby agrees that its interest in the [Company] [Partnership] and in its Shares shall for all purposes be personal property. A [Member] [Partner] has no interest in specific [Company] [Partnership] property. "Share" means a [limited liability company interest][limited partnership interest] in the [Company] [Partnership] held by a [Member] [Partner].

b. Share Certificates .

i. Upon the issuance of Shares to any [Member] [Partner] in accordance with the provisions of this Agreement, the [Company][Partnership] shall issue one or more Share Certificates in the name of such [Member][Partner]. Each such Share Certificate shall be denominated in terms of the number of Shares evidenced by such Share Certificate and shall be signed by the [Member] [Partner] on behalf of the [Company] [Partnership]. "Share Certificate" means a non-negotiable certificate issued by the [Company] [Partnership] substantially in the form of Schedule hereto, which evidences the ownership of one or more Shares. Each Share Certificate shall bear the following legend: "This certificate evidences an interest in_____and shall be a security interest for purposes of Article 8 of the Uniform commercial Code of the State of Delaware and the Uniform Commercial Code of any other Jurisdiction." This provision shall not be amended, and no such purported amendment to this provision shall be effective until all outstanding certificates have been surrendered for cancellation.

ii. The [Company] [Partnership] shall issue a new Share Certificate in place of any Share Certificate previously issued if the holder of the Shares represented by such Share Certificate, as reflected on the books and records of the [Company] [Partnership].

(1) makes proof by affidavit, in form and substance satisfactory to the [Company] [Partnership], that such previously issued Share Certificate has been lost, stolen or destroyed.

(2) requests the issuance of a new Share Certificate before the [Company] [Partnership] has notice that such previously issued Share Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(3) if requested by the [Company] [Partnership], delivers to the [Company][Partnership] a bond, in form and substance satisfactory to the [Company] [Partnership], with such surety or sureties as the [Company] [Partnership] may direct, to indemnify the [Company] [Partnership] against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Share Certificate; and

(4) satisfies any other reasonable requirements imposed by the [Company] [Partnership].

iii. Subject to the restrictions set forth in [describe Loan Agreement/Mezzanine Loan Agreement restrictions] upon a [Member's] [Partner's]'s Transfer in accordance with the provisions of this Agreement of any or all Shares represented by a Share Certificate, the Transferee of such Shares shall deliver such Share Certificate to the [Company] [Partnership] for cancellation, and the [Company] [Partnership] shall thereupon issue a new Share Certificate to such Transferee for the number of Shares being Transferred and, if applicable, cause to be issued to such [Member][Partner] a new Share Certificate for that number of Shares that were represented by the canceled Share Certificate and that are not being Transferred. "Transfer" means, with respect to any Shares, and when used as a verb, to sell or assign such Shares, and, when used as a noun, shall have a meaning that correlates to the foregoing. "Transferee" means an assignee or transferee. "Transferor" means the Person making a Transfer.

c. Free Transferability . Except as limited by the [describe Loan Agreement/Mezzanine Loan Agreement restrictions], to the fullest extent permitted by the Act, any [Member] [Partner] may, at any time or from time to time, without the consent of any other Person, Transfer, pledge or encumber any or all of its Shares. Subject to the restrictions of the [describe Loan Agreement/Mezzanine Loan Agreement restrictions], the Transferee of any Shares shall be admitted to the [Company] [Partnership] as a substitute member of the [Company] [Partnership] on the effective date of such Transfer upon (i) such Transferee's written acceptance of the terms and provisions of this Agreement and its written assumption of the obligations hereunder of the Transferor of such Shares, which shall be evidenced by such Transferee's execution and delivery to the [Company] [Partnership] of an Application for Transfer of Shares on the reverse side of the Share Certificate representing the Shares being transferred, and (ii) the recording of such Transferee's name as a Substitute [Member] [Partner] on the books and records of the [Company] [Partnership]. Any Transfer of any Shares pursuant to this Section shall be effective as of the later of (i) the close of business on the day on which such Transfer occurs, or (ii) the effective date and time of such Transfer that is designated in the Application for Transfer of Shares delivered by the Transferee to the [Company] [Partnership].

SCHEDULE I

LITIGATION SCHEDULE

Plaintiff(s)	Defendant(s)	Date of Incident
Gladys Deitch	Strategic Hotel Capitol Corporation d/b/a Hotel InterContinental	November 13, 2004
Stephen Geis	DTRS Michigan Avenue/Chopin Plaza Sub, LLC, et al	November 6, 2005

SCHEDULE II

INTENTIONALLY DELETED

Schedule II-1

SCHEDULE III

PRE-APPROVED TRANSFEREES

Strategic Hotel Funding, Inc.
Bass PLC
CNL Hotels & Resorts, Inc.
KSL II Management Operations, LLC/KSL Recreation Corp.
Kohlberg Kravis Roberts & Co.
Hilton Hotels Corporation
FelCor Lodging Trust, Inc.
Rosewood Hotels & Resorts
Whitehall Street Real Estate Limited Partnership Funds
Host Marriott Corporation
Hilton Group, PLC
Fairmont Hotels & Resorts
Four Seasons Hotel Inc.
The Blackstone Group, LP
Millennium and Copthorne Hotels, PLC
MeriStar Hotels
LaSalle Hotel Properties
Marriott International, Inc.
Starwood Hotels and Resorts Worldwide, Inc.
Government of Singapore Investment Corporation
Maritz Wolf LLC)
HRH Prince Alwaleed Bin Talal Bin Abdulaziz Al Saud)
Six Continents
Morgan Stanley Real Estate Fund (MSREF)
Walton Street Real Estate Fund
The Carlyle Group Real Estate Fund
Lehman Brothers Real Estate Fund
The Equitable Life Assurance and Annuity Association
Orient Express
Accor
Benchmark Hospitality)
NH Hotels
Mandarin
Peninsula
Raffles
Shangrila
Hyatt
Strategic Hotel Capital
Boca Resorts
Vail Reports)
Destination Resorts
Westbrook Real Estate Fund

Lowe Hospitality
State of Ohio Pension Fund
Highland Hospitality

Schedule III-2

SCHEDULE IV

PRE-APPROVED MANAGERS

KSL or any Affiliate
One & Only / Kerzner
Gaylord Entertainment
Loews Hotels
Hilton Hotels Corporation
Hilton Group, PLC
Fairmont Hotels & Resorts
Millennium and Copthorne Hotels, PLC
Marriott International, Inc.
Four Seasons Hotels, Inc.
Six Continents
Orient Express
Mandarin
Peninsula
Raffles
Shangri-La
Hyatt
Omni
Boca Resorts
Destination Resorts
Lowe Hospitality
Montage Hotels
Intercontinental Hotel Group

SCHEDULE V

INTENTIONALLY DELETED

Schedule V-1

SCHEDULE VI

INTENTIONALLY DELETED

Schedule VI-1

SCHEDULE VII

INTENTIONALLY DELETED

Schedule VII-1

Exhibit 10.84

LOAN AND SECURITY AGREEMENT

Dated as of October 6, 2006

Between

SHC CHOPIN PLAZA, LLC
as Borrower

and

CITIGROUP GLOBAL MARKETS REALTY CORP.,
as Lender

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LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT dated as of October 6, 2006 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement** "), between SHC CHOPIN PLAZA, LLC, a Delaware limited liability company, (the "**Borrower**") having an office at c/o Strategic Hotel Funding, L.L.C., 77 West Wacker Drive, Suite 4600, Chicago, Illinois 60601, and CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation, having an address at 388 Greenwich Street, New York, New York 10013 (together with its successors and assigns, "**Lender**").

W I T N E S S E T H :

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW, THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions . For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"**Acceptable Counterparty**" shall mean a bank or other financial institution which has a long-term unsecured debt or counterparty rating of "AA-" (long term) and "A-1+" (short term) or higher by S&P and its equivalent by Moody's and, if the counterparty is rated by Fitch, by Fitch.

"**Acceptable Management Agreement**" shall mean, with respect to the Property, a new or amended management agreement with the Manager which agreement (as applicable) shall be upon terms and conditions entered into by Borrower, Operating Lessee, and/or Manager with respect to the Property in accordance with the terms of Section 5.2.14 hereof.

"**Acceptable Manager** " shall mean (i) the current Manager as of the Closing Date or any wholly-owned Affiliate (whether direct or indirect) of said current Manager, (ii) at any time after the Closing Date, any Pre-approved Manager listed on **Schedule IV** hereto, provided each such property manager continues to be Controlled by substantially the same Persons Controlling such property manager as of the Closing Date (or if such Manager is a publicly traded company, such Manager continues to be publicly traded on an established securities market), (iii) any other hotel management company that manages a system of at least six (6) hotels or resorts of a class and quality of at least as comparable to the Property (as reasonably

determined by Manager and Operating Lessee; provided , however , Operating Lessee shall obtain Lender's prior approval of such determination, not to be unreasonably withheld) and containing not fewer than 1,500 hotel rooms in the aggregate (including hotel/condominium units under management) in the aggregate, (iv) any Close Affiliate of any of the foregoing Persons or (v) any other reputable and experienced professional hotel management company with respect to which a Rating Agency Confirmation has been obtained.

"**Accommodation Security Documents**" shall mean the Security Instrument, the Assignment of Leases and UCC-1 Financing Statements which have been executed by Borrower and Operating Lessee in favor of Lender to secure Borrower's obligations under the Loan Documents.

"**Account Agreement** " shall mean the Account and Control Agreement, dated the date hereof, among Lender, Borrower and Cash Management Bank.

"**Account Collateral** " shall have the meaning set forth in Section 3.1.2 .

"**Acknowledgment**" shall mean the Acknowledgment, dated on or about the date hereof made by Counterparty, or as applicable, Acceptable Counterparty in the form of **Exhibit M** .

"**Additional Non-Consolidation Opinion**" shall have the meaning set forth in Section 4.1.29(b) .

"**Affiliate**" shall mean, with respect to any specified Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with, or any general partner or managing member in, such specified Person.

"**Agreement**" shall mean this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**ALTA**" shall mean American Land Title Association, or any successor thereto.

"**Alteration**" shall mean any demolition, alteration, installation, improvement or decoration of or to the Property or any part thereof or the Improvements (including FF&E) thereon (other than any of the foregoing that (i) is permitted to be done and actually is done by or on behalf of the Manager without the consent of the Borrower (it being the intent of the parties that for this purpose amounts expended by Manager in respect of FF&E in the ordinary course of business from amounts reserved for FF&E under the Management Agreement shall be deemed not to be an Alteration), or (ii) is paid for out of any reserve account described in Article XVI.

"**Approved Bank** " shall have the meaning set forth in the Account Agreement.

"**Assignment and Acceptance**" shall mean an assignment and acceptance entered into by Lender and an assignee, and accepted by Lender in accordance with Article XV and in substantially the form of **Exhibit J** or such other form customarily used by Lender in connection with the participation or syndication of mortgage loans at the time of such assignment.

"**Assignment of Leases** " shall mean that certain first priority Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated as of the date hereof, from Borrower and Operating Lessee, as assignor, to Lender, as assignee, assigning to Lender all of Borrower's and Operating Lessee's interest in and to the Leases, Rents, Hotel Revenue and Security Deposits as security for the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Bankruptcy Code** " shall mean Title 11, U.S.C.A., as amended from time to time and any successor statute thereto.

"**Beneficial**" when used in the context of beneficial ownership has the analogous meaning to that specified in Rule 13d-3 under the Securities Exchange Act of 1934, as amended.

"**Best of Borrower's Knowledge**", shall mean the actual (as opposed to imputed or constructive) present knowledge of: Cory Warning and Ryan Bowie after due inquiry, and without creating any personal liability on the part of any said individuals. In the case where the term "Best of Borrower's Knowledge" is used in the context of representations or warranties of Borrower to be made after the date hereof, the term shall include the Person or Persons, as applicable, that occupy the capacities of said individuals on the date such representation or warranty to the extent that one or more of such individuals no longer occupy their current capacities.

"**Borrower**" has the meaning set forth in the first paragraph of this Agreement.

"**Borrower's Account**" shall mean an account with any Person subsequently identified in a written notice from Borrower to Lender, which Borrower's Account shall be under the sole dominion and control of Borrower.

"**Budget**" shall mean the operating budget for the Property prepared by Manager on Borrower's behalf, pursuant to the Management Agreement, for the applicable Fiscal Year or other period setting forth, in reasonable detail, Manager's estimates, consistent with the Management Agreement, of the anticipated results of operations of the Property, including revenues from all sources, all Operating Expenses, Management Fees and Capital Expenditures.

"**Building Equipment**" shall have the meaning set forth in the Security Instrument.

"**Business Day** " shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, Florida or in the state in which Servicer is located are not open for business. When used with respect to an Interest Determination Date, Business Day shall mean any day on which dealings in deposits in U.S. Dollars are transacted in the London interbank market.

"**Capital Expenditures** " shall mean any amount incurred in respect of capital items which in accordance with GAAP would not be included in Borrower's annual financial statements for an applicable period as an operating expense of the Property.

"**Cash**" shall mean the legal tender of the United States of America.

"**Cash and Cash Equivalents**" shall mean any one or a combination of the following: (i) Cash, and (ii) U.S. Government Obligations.

"**Cash Management Bank** " shall mean LaSalle Bank National Association or any successor Approved Bank acting as Cash Management Bank under the Account Agreement or other financial institution approved by the Lender and, if a Securitization has occurred, the Rating Agencies.

"**Casualty**" shall mean a fire, explosion, flood, collapse, earthquake or other casualty affecting the Property.

"**CGM**" shall have the meaning set forth in Section 14.4.2(b) .

"**CGM Group**" shall have the meaning set forth in Section 14.4.2(b) .

"**Close Affiliate** " shall mean with respect to any Person (the "First Person") any other Person (each, a "Second Person") which is an Affiliate of the First Person and in respect of which any of the following are true: (a) the Second Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in such First Person, (b) the First Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in such Second Person, or (c) a third Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in both the First Person and the Second Person.

"**Closing Date**" shall mean the date of this Agreement set forth in the first paragraph hereof.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"**Collateral Accounts** " shall have the meaning set forth in Section 3.1.1 .

"**Collection Account** " shall have the meaning set forth in Section 3.1.1 .

"**Condemnation**" shall mean a taking or voluntary conveyance during the term hereof of all or any part of the Property or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority, whether or not the same shall have actually been commenced.

"**Consumer Price Index** " or "**CPI**" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York – Northern New Jersey – Long Island, NY – NJ – CT – PA; All Items; 1982-84 = 100. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made by Lender in the revised index which would produce results equivalent, as nearly as possible, to those which would be obtained if the CPI had not been so revised. If the CPI becomes unavailable to the public because publication is

discontinued, or otherwise, Lender shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by any other governmental agency reasonably acceptable to Borrower or, if no such index is available, then, subject to reasonable approval of Borrower, a comparable index published by a major bank, other financial institution, university or recognized financial publication shall be substituted.

"**CPI Increase**" shall mean the relevant figure multiplied by a fraction, the numerator of which shall be the CPI on each anniversary of the Closing Date and the denominator of which shall be the CPI on the Closing Date, which CPI Increase is calculated on each anniversary of the Closing Date.

"**Condominium**" shall mean the Condominium established pursuant to the Declaration, which Condominium is comprised of all of the Property and includes certain property owned by others and being more particularly described in the Declaration.

"**Condominium Act**" shall mean the Florida Condominium Act (Chapter 718 of the Florida Statutes) and all modifications, supplements and replacements thereof and all regulations with respect thereto, now or hereafter enacted or promulgated.

"**Condominium Association**" shall mean the condominium association established pursuant to the Condominium Documents.

"**Condominium Board** " shall mean the board of directors or managers of the Condominium Association.

"**Condominium Charges** " shall have the meaning set forth in Section 5.1.24.

"**Condominium Charges Reserve Account**" shall have the meaning set forth in Section 3.1.1 .

"**Condominium Documents**" shall have the meaning set forth in Section 5.1.24.

"**Control**" shall mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise and (ii) the ownership, direct or indirect, of no less than 51% of the voting securities of such Person, and the terms Controlled, Controlling and Common Control shall have correlative meanings.

"**Counterparty** " shall mean the counterparty to the Interest Rate Cap Agreement and any counterparty under a Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement and, if applicable, any credit support provider identified in the Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement.

"**Counterparty Opinion** " shall have the meaning set forth in Section 9.3(f) .

"**Current Debt Service Reserve Account**" shall have the meaning set forth in Section 3.1.1 .

"**Debt**" shall mean, with respect to any Person at any time, (a) indebtedness or liability of such Person for borrowed money whether or not evidenced by bonds, debentures, notes or other instruments, or for the deferred purchase price of property or services; (b) obligations of such Person as lessee under leases which should have been or should be, in accordance with GAAP, recorded as capital leases; (c) current liabilities of such Person in respect of unfunded vested benefits under plans covered by Title IV of ERISA; (d) obligations issued for, or liabilities incurred on the account of, such Person; (e) obligations or liabilities of such Person arising under letters of credit, credit facilities or other acceptance facilities; (f) obligations of such Person under any guarantees or other agreement to become secondarily liable for any obligation of any other Person, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss; (g) obligations of such Person secured by any Lien on any property of such Person, whether or not the obligations have been assumed by such Person; or (h) obligations of such Person under any interest rate or currency exchange agreement.

"**Debt Service** " shall mean, with respect to any particular period of time, scheduled interest payments under the Note.

"**Declaration**" shall mean that certain Declaration of Condominium for Miami Center of the Condominium dated as of February 24, 1989, by City National Bank of Florida, as amended by the First Amendment to Declaration of Condominium for Miami Center dated as of August 29, 1990, establishing the condominium regime at the Condominium, as the same may be amended, supplemented or otherwise modified from time to time.

"**Default**" shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

"**Default Rate** " shall have the meaning set forth in the Note.

"**Disclosure Documents** " shall have the meaning set forth in Section 14.4.1 .

"**Disqualified Transferee**" shall mean any Person or its Close Affiliate that, (i) has (within the past five (5) years) defaulted, or is now in default, beyond any applicable cure period, of its material obligations, under any material written agreement with Lender, any Affiliate of Lender, or, unless approved by the Rating Agencies, any other financial institution or other person providing or arranging financing; (ii) has been convicted in a criminal proceeding for a felony or a crime involving moral turpitude or that is an organized crime figure or is reputed (as determined by Lender in its sole discretion) to have substantial business or other affiliations with an organized crime figure; (iii) has at any time filed a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (iv) as to which an involuntary petition (which was not subsequently dismissed within one hundred twenty (120) days) has at any time been filed under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (v) has at any time filed an answer consenting to or acquiescing in any involuntary petition filed against it by any other person under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (vi) has at any time consented to or

acquiesced in or joined in an application for the appointment of a custodian, receiver, trustee or examiner for itself or any of its property; (vii) has at any time made an assignment for the benefit of creditors, or has at any time admitted its insolvency or inability to pay its debts as they become due; or (viii) has been found by a court of competent jurisdiction or other governmental authority in a comparable proceeding to have violated any federal or state securities laws or regulations promulgated thereunder.

"**Downgrade**" shall have the meaning as set forth in Section 9.3(c) hereof.

"**DSCR**" shall mean, with respect to a particular period, the ratio of Net Operating Income to the aggregate amount of Debt Service that is payable in respect of such period, as computed by Lender from time to time pursuant to the terms hereof, using in all cases, an assumed loan constant (instead of actual debt service payable under such loan) per annum equal to the strike price of the Interest Rate Cap Agreement in effect on the date of such determination (which constant shall be calculated at all times using an actual/360 accrual convention). If no such period is specified, then the period shall be deemed to be the immediately preceding four (4) Fiscal Quarters.

"**Eligible Account** " has the meaning set forth in the Account Agreement.

"**Eligible Collateral** " shall mean U.S. Government Obligations, Letters of Credit or Cash and Cash Equivalents, or any combination thereof.

"**Environmental Certificate**" shall have the meaning set forth in Section 12.2.1 .

"**Environmental Claim** " shall mean any claim, action, cause of action, investigation or written notice by any Person alleging potential liability (including potential liability for investigatory costs, cleanup costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based upon or resulting from (a) the presence, threatened presence, release or threatened release into the environment of any Hazardous Materials from or at the Property, or (b) the violation, or alleged violation, of any Environmental Law relating to the Property.

"**Environmental Event** " shall have the meaning set forth in Section 12.2.1 .

"**Environmental Indemnity**" shall mean the Environmental Indemnity, dated the date hereof, made by Sponsor in favor of Lender.

"**Environmental Law** " shall have the meaning provided in the Environmental Indemnity.

"**Environmental Reports** " shall have the meaning set forth in Section 12.1 .

"**ERISA**" shall mean the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

"**Event of Default** " shall have the meaning set forth in Section 17.1(a) .

"**Excess Cash Flow** " shall have the meaning set forth in Section 3.1.5 .

"**Exchange Act**" shall have the meaning set forth in Section 14.4.1 .

"**Exculpated Parties** " shall have the meaning set forth in Section 18.1.1 .

"**Excusable Delay** " shall mean a delay due to acts of god, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Borrower, but Borrower's lack of funds in and of itself shall not be deemed a cause beyond the control of Borrower.

"**Expansion**" shall mean any expansion or reduction of the Property or any portion thereof or the Improvements thereon.

"**Extension Interest Rate Cap Agreement**" shall mean, following the Borrower's exercise of its option to extend the Maturity Date pursuant to Section 5 of the Note, an Interest Rate Cap Agreement or Agreements (together with the confirmations and schedules relating thereto), each from an Acceptable Counterparty and satisfying the requirements set forth on **Exhibit I** hereto; provided that, to the extent any such interest rate cap agreement does not meet the foregoing requirements, an "Extension Interest Rate Cap Agreement" shall be such interest rate cap agreement as may be approved by each of the Rating Agencies (such approval to be evidenced by the receipt of a Rating Agency Confirmation).

"**FF&E**" shall mean furniture, fixtures and equipment of the type customarily utilized in hotel properties in Florida similar to the Property.

"**FF&E Reserve Account**" shall have the meaning set forth in Section 3.1.1 .

"**Final Completion** " shall mean, with respect to any specified work, the final completion of all such work, including the performance of all "punch list" items, as confirmed by an Officer's Certificate and, with respect to any Material Alteration or Material Expansion, a certificate of the Independent Architect, if applicable.

"**Fiscal Quarter** " shall mean each quarter within a Fiscal Year in accordance with GAAP.

"**Fiscal Year**" shall mean the period commencing on the Closing Date and ending on and including December 31 of the calendar year in which the Closing Date occurs and thereafter each twelve month period commencing on January 1 and ending on December 31 until the Debt is repaid in full, or such other common fiscal year of Borrower as Borrower may select from time to time with the prior consent of Lender, such consent not to be unreasonably withheld.

"**Fitch**" shall mean Fitch Ratings Inc.

"**Fitness Center Lease** " shall mean the Spa/Salon/Health Club Management Agreement, dated December 30, 1996 by and between InterContinental Florida Limited Partnership, a Florida limited partnership and Oknes, Inc., a Florida corporation.

"**GAAP**" shall mean the generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination, as appropriately modified by the Uniform System.

"**Governmental Authority**" shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"**Group Services Fee** " shall mean the expenses payable to Manager or any Affiliate as permitted under Article 7 of the Management Agreement or any similar provision in a replacement Management Agreement.

"**Hazardous Materials** " shall have the meaning provided in the Environmental Indemnity.

"**Holding Account**" shall have the meaning set forth in Section 3.1.1 .

"**Hotel Revenue**" shall mean all revenues, income, Rents, issues, profits, termination or surrender fees, penalties and other amounts arising from the use or enjoyment of all or any portion of the Property, including, without limitation, the rental or surrender of any office space, retail space, parking space, halls, stores, and offices of every kind, the rental or licensing of signs, sign space or advertising space and all membership fees and dues, rentals, revenues, receipts, income, accounts, accounts receivable, cancellation fees, penalties, credit card receipts and other receivables relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, conference and banquet rooms, food and beverage facilities, health clubs, spas, vending machines, parking facilities, telecommunication and television systems, guest laundry, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System.

"**Impositions**" shall mean all taxes (including all ad valorem, sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible transaction, privilege or license or similar taxes), governmental assessments (including all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not commenced or completed within the term of this Agreement), water, sewer or other rents and charges, excises, levies, fees (including license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Property and/or any Rents and Hotel Revenue (including all interest

and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a Lien upon (a) Borrower (including all income, franchise, single business or other taxes imposed on Borrower for the privilege of doing business in the jurisdiction in which the Property is located), (b) the Property, or any other collateral delivered or pledged to Lender in connection with the Loan, or any part thereof, or any Rents or Hotel Revenue therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Property or the leasing or use of all or any part thereof. Nothing contained in this Agreement shall be construed to require Borrower to pay any tax, assessment, levy or charge imposed on (i) any tenant occupying any portion of the Property, (ii) any manager of the Property, including any Manager, or (iii) Servicer, Lender or any other third party in the nature of a capital levy, estate, inheritance, succession, income or net revenue tax.

"**Improvements** " shall have the meaning set forth in the Security Instrument.

"**Increased Costs** " shall have the meaning set forth in Section 2.4.1 .

"**Indebtedness** " shall mean, at any given time, the Principal Amount, together with all accrued and unpaid interest thereon and all other obligations and liabilities due or to become due to Lender pursuant hereto, under the Note or in accordance with the other Loan Documents and all other amounts, sums and expenses paid by or payable to Lender hereunder or pursuant to the Note or the other Loan Documents.

"**Indemnified Parties** " shall have the meaning set forth in Section 19.12(b) .

"**Independent**" shall mean, when used with respect to any Person, a Person who: (i) does not have any direct financial interest or any material indirect financial interest in any Borrower or in any Affiliate of any Borrower, (ii) is not connected with Borrower or any Affiliate of Borrower as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, supplier, customer or person performing similar functions and (iii) is not a member of the immediate family of a Person defined in (i) or (ii) above.

"**Independent Architect**" shall mean an architect, engineer or construction consultant selected by Borrower which is Independent, licensed to practice in the State and has at least five (5) years of architectural experience and which is reasonably acceptable to Lender.

"**Independent Director** ",**"Independent Manager"**, or**"Independent Member"** shall mean a Person who is not and will not be while serving and has never been (i) a member (other than an Independent Member), manager (other than an Independent Manager), director, (other than an Independent Director), employee, attorney, or counsel of Borrower or its Affiliates, (ii) in the seven (7) years prior to the Closing Date, a customer, supplier or other Person who derives more than 1% of its purchases or revenues from its activities with Borrower or its Affiliates, (iii) a direct or indirect legal or beneficial owner in such entity or any of its Affiliates, (iv) a member of the immediate family of any member, manager, employee, attorney, customer, supplier or other Person referred to above, or (v) a person Controlling or under the common Control of anyone listed in (i) through (iv) above. A Person that otherwise satisfies the foregoing shall not be disqualified from serving as an Independent Director or Independent

Manager or Independent Member if such individual is at the time of initial appointment, or at any time while serving as such, is an Independent Director or Independent Manager or Independent Member, as applicable, of a Single Purpose Entity affiliated with Borrower.

"**Insurance Requirements**" shall mean, collectively, (i) all material terms of any insurance policy required pursuant to this Agreement and (ii) all material regulations and then-current standards applicable to or affecting the Property or any part thereof or any use or condition thereof, which may, at any time, be recommended by the Board of Fire Underwriters, if any, having jurisdiction over the Property, or such other body exercising similar functions.

"**Insurance Reserve Account**" shall have the meaning set forth in Section 3.1.1(b) .

"**Insurance Reserve Amount**" shall have the meaning set forth in Section 16.2 .

"**Insurance Reserve Trigger**" shall mean Borrower's failure to deliver to Lender not less than five Business Days prior to each Payment Date (unless the prior notice to Lender provided evidence reasonably satisfactory to Lender that Borrower had prepaid such insurance premiums through a future Payment Date), evidence that all insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement have been paid in full.

"**Intangible**" shall have the meaning set forth in the Security Instrument.

"**Interest Determination Date**" shall have the meaning set forth in the Note.

"**Interest Period**" shall have the meaning set forth in the Note.

"**Interest Rate Cap Agreement**" shall mean an Interest Rate Agreement or Agreements (together with the confirmation and schedules relating thereto), or, with Lender's prior written consent (which shall not be unreasonably withheld, delayed or conditioned), a swap or other interest rate hedging instrument, each between a Counterparty and Borrower obtained by Borrower and collaterally assigned to Lender pursuant to this Agreement, and each satisfying the requirements set forth in **Exhibit I** and, in the case of a swap or other interest rate hedging agreement consented to by Lender, any additional requirements of the Rating Agencies).

"**Land**" shall have the meaning set forth in the Security Instrument.

"**Late Payment Charge** " shall have the meaning set forth in Section 2.2.3 .

"**Lease**" shall mean any lease (other than the Operating Lease), sublease or subsublease, letting, license, concession, or other agreement (whether written or oral and whether now or hereafter in effect) (excluding club membership programs now or hereafter in effect entitling Persons to preferential access to the Property) pursuant to which any Person is granted by the Borrower or Operating Lessee a possessory interest in, or right to use or occupy all or any portion of any space in the Property or any facilities at the Property (other than typical short-term occupancy rights of hotel guests which are not the subject of a written agreement), and every modification, amendment or other agreement relating to such lease, sublease, subsublease, or

other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"**Lease Modification** " shall have the meaning set forth in Section 8.8.1 .

"**Legal Requirements** " shall mean all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, and irrespective of the nature of the work to be done, of every Governmental Authority including, without limitation, Environmental Laws and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Borrower or to the Property and the Improvements and the Building Equipment thereon, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Property and the Improvements and the Building Equipment thereon including, without limitation, building and zoning codes and ordinances and laws relating to handicapped accessibility.

"**Lender**" shall have the meaning set forth in the first paragraph of this Agreement.

"**Letter of Credit** " shall mean an irrevocable, unconditional, transferable (without the imposition of any fee except any fees which are expressly payable by the Borrower), clean sight draft letter of credit (either an evergreen letter of credit or one which does not expire until at least sixty (60) days after the Maturity Date (the "LC Expiration Date"), in favor of Lender and entitling Lender to draw thereon in New York, New York, based solely on a statement executed by an officer or authorized signatory of Lender and issued by an Approved Bank. If at any time (a) the institution issuing any such Letter of Credit shall cease to be an Approved Bank or (b) the Letter of Credit is due to expire prior to the LC Expiration Date, Lender shall have the right immediately to draw down the same in full and hold the proceeds thereof in accordance with the provisions of this Agreement, unless Borrower shall deliver a replacement Letter of Credit from an Approved Bank within (i) as to (a) above, twenty (20) days after Lender delivers written notice to Borrower that the institution issuing the Letter of Credit has ceased to be an Approved Bank or (ii) as to (b) above, at least twenty (20) days prior to the expiration date of said Letter of Credit.

"**Liabilities**" shall have the meaning set forth in Section 14.4.2(b) .

"**LIBOR**" shall have the meaning set forth in the Note.

"**LIBOR Cap Strike Rate**" shall mean 7.50%.

"**LIBOR Margin** " shall mean "LIBOR Margin" as defined in the Note.

"**LIBOR Rate**" shall have the meaning set forth in the Note.

"**License**" shall have the meaning set forth in Section 4.1.23 .

"**Lien**" shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance or charge on or affecting Borrower, the

Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and the filing of mechanic's, materialmen's and other similar liens and encumbrances.

"**Loan**" shall mean the loan in the amount of $90,000,000 made by Lender to Borrower pursuant to this Agreement.

"**Loan Documents** " shall mean, collectively, this Agreement, the Note, the Security Instrument, the Assignment of Leases, the Environmental Indemnity, the Subordination of Operating Lease, the Account Agreement, the Sponsor Indemnity, the Manager Subordination Agreements and all other documents executed and/or delivered by Borrower in connection with the Loan including any certifications or representations delivered by or on behalf of Borrower, any Affiliate of Borrower, the Manager, or any Affiliate of the Manager (including, without limitation, any certificates in connection with any legal opinions delivered on the date hereof), together with all of the Accommodation Security Documents executed by the Operating Lessee.

"**Loan to Value Ratio** " shall mean the ratio, as of a particular date, in which the numerator is equal to the outstanding principal balance of the Loan and the denominator is equal to the appraised value of the Property as determined by Lender in its reasonable discretion.

"**Management Agreement** " shall mean that certain Hotel Management Agreement dated April 1, 2005 between IHG Management (Maryland), LLC and DTRS Michigan Avenue/Chopin Plaza Sub, LLC and recorded as Official Records Book 23248, Page 2022 of the Dade County Recoder, as further assigned to the Operating Lessee pursuant to that Assignment and Assumption of Management Agreement and Manager Consent dated the date hereof, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"**Management Control** " shall mean, with respect to any direct or indirect interest in the Borrower or the Property (not including Manager under an Approved Management Agreement), the power and authority to make and implement or cause to be made and implemented all material decisions with respect to the operation, management, financing and disposition of the specified interest.

"**Management Fee**" shall mean an amount equal to the management fees payable to the Manager pursuant to the terms of the Management Agreement for management services, the Group Services Fee, incentive management fees and any other fees described in the Management Agreement, and any allocated franchise fees.

"**Manager**" shall mean, as of the Closing Date, IHG Management (Maryland), LLC, a Maryland corporation, or any replacement "Manager" appointed in accordance with Section 5.2.14 hereof.

"**Manager Accounts** " shall mean the "Bank Accounts" (as defined in the Management Agreement) maintained by Manager in the name of Borrower or Operating Lessee with respect to the Property and in accordance with the terms of the Management Agreement.

"**Manager FF&E Reserve Account**" shall mean the "Reserve Account" as defined in the Management Agreement.

"**Manager Reimbursable Expenses**" shall mean the "Reimbursable Expenses" as defined in Section 5.09 of the Management Agreement.

"Manager Subordination Agreements"shall mean that certain Consent to Assignment, Agreement and Estoppel and Subordination, Non-Disturbance and Attornment Agreement dated the date hereof, among Lender, Borrower, Operating Lessee, and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Material Adverse Effect**" shall mean any event or condition that has a material adverse effect on (i) the Property taken as a whole, (ii) the use, operation, or value of the Property, (iii) the business, profits, operations or financial condition of the Borrower or (iv) the ability of Borrower to repay the principal and interest of the Loan as it becomes due or to satisfy any of Borrower's obligations under the Loan Documents.

"**Material Alteration** " shall mean any Alteration (other than with respect to replacements of FF&E that are funded from reserves for FF&E reserved for hereunder or under the Management Agreement by the Manager) to be performed by or on behalf of Borrower at the Property, the total cost of which (including, without limitation, construction costs and costs of architects, engineers and other professionals), as reasonably estimated by an Independent Architect, exceeds the Threshold Amount.

"**Material Casualty** " shall mean a Casualty where the loss (i) is in an aggregate amount equal to or in excess of thirty percent (30%) of the outstanding Principal Amount of the Loan or (ii) has caused thirty percent (30%) or more of the hotel rooms or common areas (including banquet and conference facilities) in the Property to be unavailable for its applicable use.

"**Material Condemnation**" shall mean a Condemnation where the loss (i) is in an aggregate amount equal to or in excess of thirty percent (30%) of the outstanding Principal Amount of the Loan or (ii) has caused thirty percent (30%) or more of the hotel rooms or common areas (including banquet and conference facilities) in the Property to be unavailable for its applicable use.

"**Material Expansion** " shall mean any Expansion to be performed by or on behalf of the Borrower at the Property, the total cost of which, as reasonably estimated by an Independent Architect, exceeds the Threshold Amount.

"**Material Lease** " shall mean any Lease (a) demising a premises within the Property that is more than 10,000 net rentable square feet or (b) that is for a term equal to or greater than sixty (60) months.

"**Maturity Date** " shall have the meaning set forth in the Note.

"**Maturity Date Payment**" shall have the meaning set forth in the Note.

"**Maximum Legal Rate**" shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

"**Monetary Default** " shall mean a Default (i) that can be cured with the payment of money or (ii) arising pursuant to Section 17.1(a)(vi) or (vii) .

"**Monthly FF&E Reserve Amount**" shall mean an amount determined by Lender (based upon the most recent monthly operating statements delivered pursuant hereto) equal to 4% of Hotel Revenue.

"**Monthly Insurance Reserve Amount**" shall have the meaning set forth in Section 16.2 .

"**Monthly Tax Reserve Amount**" shall have the meaning set forth in Section 16.1 .

"**Moody's**" shall mean Moody's Investors Service, Inc.

"**Net Operating Income** " shall mean, for any specified period, the excess of Operating Income over Operating Expenses for the trailing twelve (12) month period.

"**New Lease**" shall have the meaning set forth in Section 8.8.1 .

"**Non-Consolidation Opinion**" shall have the meaning provided in Section 2.5.5 .

"**Non-Disturbance Agreement**" shall have the meaning set forth in Section 8.8.9 .

"**Note**" shall mean that certain Amended and Restated Note in the principal amount of Ninety Million Dollars ($90,000,000), made by Borrower in favor of Lender as of the date hereof, as the same may be amended, restated, replaced, substituted (including any components or subcomponents) or supplemented or otherwise modified from time to time.

"**Obligations**" shall have meaning set forth in the recitals of the Security Instrument.

"**OFAC List**" means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office Foreign Assets Control and accessible through the internet website www.treas.gov/ofac/t11sdn.pdf.

"**Officer's Certificate**" shall mean a certificate executed by an authorized signatory of Borrower that is familiar with the financial condition of Borrower and the operation of the Property or the particular matter which is the subject of such Officer's Certificate.

"**Operating Asset** " shall have the meaning set forth in the Security Instrument.

"**Operating Expenses**" shall mean, for any specified period, without duplication, all expenses of Borrower or Operating Lessee (or by Manager for the account of Borrower or Operating Lessee) during such period in connection with the ownership or operation of the Property, including costs (including labor) of providing services including rooms, food and beverage, telecommunications, garage and parking and other operating departments, as well as real estate and other business taxes, other rental expenses, insurance premiums, utilities costs, administrative and general costs, repairs and maintenance costs, Management Fees under the Management Agreement, other costs and expenses relating to the Property, required FF&E reserves, and legal expenses incurred in connection with the operation of the Property, determined, in each case on an accrual basis, in accordance with GAAP. "Operating Expenses" shall not include (i) depreciation or amortization or other noncash items, (ii) the principal of and interest on the Note, (iii) income taxes or other taxes in the nature of income taxes, (iv) any expenses (including legal, accounting and other professional fees, expenses and disbursements) incurred in connection with and allocable to the issuance of the Note, (v) the cost of any FF&E expenditures (other than amounts deposited into the applicable hotel operating account for FF&E expenditures, which shall be considered an "Operating Expense" as used herein) or any other capital expenditures, or (vi) the excess of insurance premiums over the Maximum Premium Amount (per annum) incurred by Borrower solely in connection with the purchase of terrorism insurance pursuant to Section 6.1(xi) distributions to the shareholders of the Borrower. Expenses that are accrued as Operating Expenses during any period shall not be included in Operating Expenses when paid during any subsequent period.

"**Operating Lease** " means that certain lease agreement dated the date hereof between the Borrower, as lessor and the Operating Lessee, as lessee.

"**Operating Lessee** " means DTRS InterContinental Miami, LLC, a Delaware limited liability company, as lessee under the Operating Lease.

"**Operating Income** " shall mean for any specified period, all income received by Borrower or Operating Lessee (or by Manager for the account of Borrower or Operating Lessee) from any Person during such period in connection with the ownership or operation of the Property, determined on an accrual basis of accounting determined in accordance with GAAP, including the following:

(i) all amounts payable to Borrower, Operating Lessee or to Manager for the account of Borrower or Operating Lessee by any Person as Rent and/or Hotel Revenue;

(ii) all amounts payable to Borrower or Operating Lessee (or to Manager for the account of Borrower or Operating Lessee) pursuant to any reciprocal easement and/or operating agreements, covenants, conditions and restrictions, condominium documents and similar agreements affecting the Property and binding upon and/or benefiting Borrower and other third parties, but specifically excluding the Management Agreement;

(iii) condemnation awards to the extent that such awards are compensation for lost rent allocable to such specified period;

(iv) business interruption and loss of "rental value" insurance proceeds to the extent such proceeds are allocable to such specified period; and

(v) all investment income with respect to the Collateral Accounts.

Notwithstanding the foregoing clauses (i) through (v), Operating Income shall not include (A) any Proceeds (other than of the types described in clauses (iii) and (iv) above), (B) any proceeds resulting from the sale, exchange, transfer, financing or refinancing of all or any part of the Property (other than of the types described in clause (i) and (iii) above), (C) any repayments received from Tenants of principal loaned or advanced to Tenants by Borrower, (D) any type of income that would otherwise be considered Operating Income pursuant to the provisions above but is paid directly by any Tenant to a Person other than Borrower or Manager or its agent and (E) any fees or other amounts payable by a Tenant or another Person to Borrower that are reimbursable to Tenant or such other Person.

"**Opinion of Counsel**" shall mean opinions of counsel of law firm(s) licensed to practice in Florida and New York selected by Borrower and reasonably acceptable to Lender.

"**Other Charges** " shall mean maintenance charges, impositions other than Impositions, and any other charges, including, without limitation, Condominium Charges, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof by any Governmental Authority, other than those required to be paid by a Tenant pursuant to its respective Lease.

"**Other Taxes**" shall have the meaning set forth in Section 2.4.3 .

"**Payment Date** " shall have the meaning set forth in the Note.

"**Permitted Borrower Transferee**" shall mean any entity (i) that is experienced in owning and operating (including acting as asset manager) properties similar to the Property, (ii) (a) with a net worth together with its Close Affiliates, as of a date no more than six (6) months prior to the date of the transfer of at least $1 Billion (exclusive of the Property) and (b) who, immediately prior to such transfer, controls, together with its Close Affiliates real estate equity assets of at least $1 Billion, (iii) which, together with its Close Affiliates owns or has under management or acts as the exclusive fund manager or investment advisor, at the time of the transfer, not fewer than 20 first class full service resort hotels or business hotel properties (excluding the Property) containing not fewer than 5,000 hotel rooms in the aggregate and (iv) that is not a Disqualified Transferee..

"**Permitted Borrower Transferee Alternative**" shall mean any entity (i) that is experienced in owning and operating (including acting as asset manager of) properties similar to the Property, (ii) that either (a) has a net worth together with its Close Affiliates, as of a date no more than six (6) months prior to the date of the transfer of at least $300 Million (exclusive of the Property) and, immediately prior to such transfer, controls, together with its Close Affiliates real estate equity assets of at least $1 Billion or (b) together with its Close Affiliates owns or has under management or acts as the exclusive fund manager or investment advisor, at the time of the transfer, not fewer than 6 luxury resort hotels (excluding the Property) containing not fewer than 3,000 hotel rooms in the aggregate and (iii) that is not a Disqualified Transferee.

"**Permitted Debt** " shall mean collectively, (a) the Note and the other obligations, indebtedness and liabilities specifically provided for in any Loan Document and secured by this Agreement, the Security Instrument and the other Loan Documents, (b) trade payables and other liabilities incurred in the ordinary course of Borrower's business and payable by or on behalf of Borrower in respect of the operation of the Property, not secured by Liens on the Property (other than liens being properly contested in accordance with the provisions of this Agreement or the Security Instrument), such payables and liabilities (which shall not include taxes, accrued payroll and benefits, customer, membership and security deposits and deferred income), not to exceed at any one time outstanding two percent (2%) of the Principal Amount of the Loan, provided that (but subject to the remaining terms of this definition) each such amount shall be paid within sixty (60) days following the date on which each such amount is incurred, provided, that such two percent (2.0%) limitation shall not include normal and customary retainages related to Alterations that are reserved for by Borrower, (c) purchase money indebtedness and capital lease obligations incurred in the ordinary course of Borrower's business, having scheduled annual debt service not to exceed $600,000, (d) contingent obligations to repay customer, membership and security deposits held in the ordinary course of Borrower's business, (e) obligations incurred in the ordinary course of Borrower's business for the financing of any applicable portfolio insurance premiums, (f) any Management Fees not yet due and payable under the Management Agreement, (g) taxes or other charges not yet due and payable or delinquent or which are being diligently contested in good faith in accordance with Section 5.1(b)(ii) hereof, (h) indebtedness relating to Liens in respect of property or assets imposed by law which were incurred in the ordinary course of business, such as carriers', warehousemen's, landlord's, mechanic's, materialmen's, repairmen's and other similar Liens arising in the ordinary course of business, and Liens for workers' compensation, unemployment insurance and similar programs, in each case arising in the ordinary course of business which are either not yet due and payable or being diligently contested in good faith in accordance with the requirements of the Loan Documents, (i) the Revolver Loan and (j) such other unsecured indebtedness approved by Lender in its sole discretion and with respect to which Borrower has received a Rating Confirmation. Nothing contained herein shall be deemed to require Borrower to pay any amount, so long as Borrower is in good faith, and by proper legal proceedings, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) adequate reserves with respect thereto are maintained on the books of Borrower in accordance with GAAP, and (iii) such contest operates to suspend collection or enforcement, as the case may be, of the contested amount and such contest is maintained and prosecuted continuously and with diligence. Notwithstanding anything set forth herein, in no event shall Borrower be permitted under this provision to enter into a note (other than the Note and the other Loan Documents) or other instrument for borrowed money other than permitted purchase money indebtedness as described in this definition.

"**Permitted Encumbrances**" shall mean collectively, (a) the Liens and security interests created or permitted by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Policy, (c) Liens, if any, for Impositions imposed by any Governmental Authority not yet due or delinquent (other than any such Lien imposed pursuant to

Section 401(a)(29) of the Code or by ERISA), (d) Liens on personal property items that are the subject of clause (c) of the definition of Permitted Debt, and (e) any Lien or encumbrance relating to or resulting from the Condominium Documents other than a Lien resulting solely from the failure of Borrower to pay any Condominium Charges as provided in the Condominium Documents.

"**Permitted Investments**" shall have the meaning set forth in the Account Agreement.

"**Person**" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"**Physical Conditions Report**" shall mean, with respect to the Property, collectively, the (i) seismic report and (ii) structural engineering report (prepared by an Independent Architect), both of which have been (a) addressed to Lender (b) prepared based on a scope of work determined by Lender in Lender's reasonable discretion, and (c) in form and content acceptable to Lender in Lender's reasonable discretion, together with any amendments or supplements thereto.

"**Plan**" shall have the meaning set forth in Section 4.1.10 .

"**Pre-approved Manager** " shall mean any entity set forth on **Schedule IV** .

"**Pre-approved Transferee**" shall mean any of the entities set forth on **Schedule III** hereof, or any Close Affiliates thereof, provided any of the foregoing entities or their Close Affiliates shall only be a "Pre-approved Transferee" if (i) such entity continues to be Controlled by substantially the same Persons Controlling such entity as of the Closing Date or if such Pre-approved Transferee is a publicly traded company, such Pre-approved Transferee continues to be publicly traded on an established securities market, (ii) there has been no material adverse change in the financial condition or results of operations of such entity since the Closing Date, (iii) such entity is not a Disqualified Transferee and (iv) if such entity as of the Closing Date is rated (a) "Investment Grade", there has been no deterioration in such entity's long-term or short-term credit rating (if any) since the Closing Date below "BBB-" or (b) below "Investment Grade", there has been no deterioration in such entity's long-term or short-term credit rating (if any) since the Closing Date.

"**Prepayment Fee** " shall have the meaning set forth in the Note.

"**Principal Amount** " shall have the meaning set forth in the Note.

"**Proceeds**" shall mean amounts, awards or payments payable to Borrower (including, without limitation, amounts payable under any title insurance policies covering Borrower's ownership interest in the Property) or Lender with respect to any Condemnation or Casualty and specifically including insurance required to be maintained hereunder (after the deduction therefrom and payment to Borrower and Lender, respectively, of any and all reasonable expenses incurred by Borrower and Lender in the recovery thereof, including all

attorneys' fees and disbursements, the fees of insurance experts and adjusters and the costs incurred in any litigation or arbitration with respect to any claim under such insurance policies or with respect to such Condemnation or Casualty).

"**Prohibited Person**" means any Person identified on the OFAC List or any other Person with whom a U.S. Person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States of America.

"**Property**" shall have the meaning set forth in the Security Instrument.

"**Provided Information** " shall have the meaning set forth in Section 14.1.1 .

"**Proxy**" shall mean that certain Condominium Proxy which shall be provided by Borrower to Lender pursuant to Section 5.1.24(f) hereof, pursuant to which Borrower shall grant Lender a proxy to vote its interest in the Unit with respect to all matters affecting the Condominium upon the occurrence and during the continuance of an Event of Default and which shall include conditional resignations of each of the representatives elected or appointed by Borrower to the Condominium Board.

"**Rate Cap Collateral** " shall have the meaning set forth in Section 9.2 .

"**Rating Agencies**" shall mean (a) prior to a Securitization, each of S&P, Moody's and Fitch and any other nationally-recognized statistical rating agency which has been approved by Lender and (b) after a Securitization has occurred, each such Rating Agency which has rated the Securities in the Securitization.

"**Rating Agency Confirmation** " shall mean, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency's sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

"**Real Property** " shall mean, collectively, the Land, the Improvements and the Appurtenances (as defined in the Security Instrument).

"**Register**" shall have the meaning set forth in Section 15.4 .

"**Regulatory Change**" shall mean any change after the date of this Agreement in federal, state or foreign laws or regulations or the adoption or the making, after such date, of any interpretations, directives or requests applying to Lender, or any Person Controlling Lender or to a class of banks or companies Controlling banks of or under any federal, state or foreign laws or regulations (whether or not having the force of law) by any court or Governmental Authority or monetary authority charged with the interpretation or administration thereof.

"**Relevant Portions** " shall have the meaning set forth in Section 14.4.2(a) .

"**Rents**" shall mean all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower and/or Operating Lessee from any and all sources arising from or attributable to the Property and Proceeds, if any, from business interruption or other loss of income insurance.

"**Restoration**" shall have the meaning provided in Section 6.2.2 .

"**Retail/Service Facilities**" shall have the meaning provided in Section 8.7.10 .

"**Replacement Interest Rate Cap Agreement**" shall mean, in connection with a replacement of an Interest Rate Cap Agreement following a Downgrade of the Counterparty thereto, an interest rate cap agreement (together with the confirmation and schedules relating thereto) from an Acceptable Counterparty and satisfying the requirements set forth on **Exhibit I** hereto; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements a "Replacement Interest Cap Agreement" shall be such interest rate cap agreement approved by each of the Rating Agencies, such approval to be evidenced by the receipt of a Rating Agency Confirmation.

"**Revolver Loan** " shall mean that certain revolving credit facility from Deutsche Bank Trust Company Americas to Strategic Hotel Funding, L.L.C., evidenced by that certain Revolving Credit Agreement, dated as of November 5, 2006, hereof, between Deutsche Bank Trust Company Americas, Wachovia Bank National Association, as lender, various financial institutions, as lenders specified therein and Strategic Hotel Funding, L.L.C., as the same has heretofore and may hereafter be amended, restated, supplemented or otherwise modified or replaced, from time to time.

"**S&P**" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"**Securities**" shall have the meaning set forth in Section 14.1 .

"**Securities Act**" shall have the meaning set forth in Section 14.4.1 .

"**Securitization** " shall have the meaning set forth in Section 14.1 .

"**Security Instrument**" shall mean that certain first priority Amended and Restated Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated the date hereof, executed and delivered by Borrower and certain of its affiliates to Lender and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Servicer**" shall mean such Person designated in writing with an address for such Person by Lender, in its sole discretion, to act as Lender's agent hereunder with such powers as are specifically delegated to the Servicer by Lender, whether pursuant to the terms of this Agreement, the Account Agreement or otherwise, together with such other powers as are reasonably incidental thereto.

"**Single Purpose Entity**" shall mean a Person, other than an individual, which (i) is formed or organized solely for the purpose of owning, leasing, managing, holding, developing, using, operating and financing the Property, (ii) does not engage in any business unrelated to the Property and the ownership, development, use, operation and financing thereof, (iii) does not have any assets other than those related to its interest in the Property or the operation, management and financing thereof or any indebtedness other than the Permitted Debt, (iv) maintains its own separate books and records and its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person (however the presentation of combined or consolidated financial condition or results of operation for purposes of financial statements prepared for the ultimate equity owners of multiple Single Purpose Entities shall be allowed), (v) holds itself out as being a Person, separate and apart from any other Person, (vi) does not and will not commingle its funds or assets with those of any other Person, (vii) conducts its own business in its own name; (viii) maintains separate financial statements; provided, however, that any consolidated financial statements contain a note indicating that it and its Affiliates are separate legal entities and maintain records, books of account, and accounts separate and apart from any other Person, (ix) pays its own liabilities out of its own funds, (x) observes all partnership, corporate or limited liability company formalities, as applicable, (xi) pays the salaries of its own employees, if any, and maintains a sufficient number of employees, if any, in light of its contemplated business operations, (xii) does not pledge its assets or guarantee or otherwise obligate itself with respect to the debts of any other Person or hold out itself or its credit as being available to satisfy the obligations of any other Person, (xiii) does not acquire obligations or securities of its partners, members or shareholders, (xiv) allocates fairly and reasonably shared expenses, including, without limitation, any overhead for shared office space, if any, (xv) uses separate stationary, invoices, and checks bearing its own name, (xvi) maintains an arms-length relationship with its Affiliates, (xvii) does not pledge its assets for the benefit of any other Person (other than as permitted under clauses (a) and (d) of the definition of Permitted Encumbrances) or make any cash loans or advances to any other Person, (xviii) uses commercially reasonable efforts to correct any known misunderstanding regarding its separate identity and (xix) maintains adequate capital in light of its contemplated business operations. In addition, if such Person is a partnership, (1) all general partners of such Person shall be Single Purpose Entities; and (2) if such Person has more than one general partner, then the organizational documents shall provide that such Person shall continue (and not dissolve) for so long as a solvent general partner exists. In addition, if such Person is a corporation, then, at all times: (a) such Person shall have at least two (2) Independent Directors and (b) the board of directors of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including the Independent Directors, shall have participated in such vote. In addition, if such Person is a limited liability company, (a) such Person shall have at least two (2) Independent Managers or Independent Members, (b) if such Person is managed by a board of managers, the board of managers of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of managers unless all of the managers, including the

Independent Managers, shall have participated in such vote, (c) if such Person is not managed by a board of managers, the members of such Person may not take any action requiring the affirmative vote of 100% of the members of such Person unless all of the members, including the Independent Members, shall have participated in such vote, (d) each managing member shall be a Single Purpose Entity and (e) its articles of organization, certificate of formation and/or operating agreement, as applicable, shall provide that until all of the Indebtedness and Obligations are paid in full such entity will not dissolve. In addition, the organizational documents of such Person shall provide that such Person (1) without the unanimous consent of all of the partners, directors or members, as applicable, shall not with respect to itself or to any other Person in which it has a direct or indirect legal or beneficial interest (a) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or other similar official for the benefit of the creditors of such Person or all or any portion of such Person's properties, or (b) take any action that might cause such Person to become insolvent, petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (2) will maintain its books, records, resolutions and agreements as official records, (3) will hold its assets in its own name, (4) will maintain its financial statements, accounting records and other organizational documents, books and records separate and apart from any other Person, (5) will not identify its partners, members or shareholders, or any Affiliates of any of them as a division or part of it, (6) will maintain an arms-length relationship with its Affiliates, (7) except for capital contributions or capital distributions will not enter into or be a party to any transaction with its partners, members, shareholders, or its Affiliates except in the ordinary course of business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arms-length transaction with a third party; (8) will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities); and (9) except as permitted by the Loan Documents, will not form, acquire or hold any subsidiary (whether corporation, partnership, limited liability company or other) or own any equity interest in any other entity other than the Property.

"**Special Taxes** " shall mean any and all present or future taxes, levies, imposts, deductions, charges or withholdings, or any liabilities with respect thereto, including those arising after the date hereof as result of the adoption of or any change in law, treaty, rule, regulation, guideline or determination of a Governmental Authority or any change in the interpretation or application thereof by a Governmental Authority but excluding, in the case of Lender, such taxes (including income taxes, franchise taxes and branch profit taxes) as are imposed on or measured by Lender's net income by the United States of America or any Governmental Authority of the jurisdiction under the laws under which Lender is organized or maintains a lending office.

"**Sponsor**" shall mean, DTRS MICHIGAN AVENUE/CHOPIN PLAZA, LP, a Delaware limited partnership, INTERCONTINENTAL FLORIDA LIMITED PARTNERSHIP, a Delaware limited partnership, and CIMS LIMITED PARTNERSHIP, an Illinois limited partnership on a joint and several liability basis, all of which shall execute and deliver the Sponsor Indemnity on the Closing Date.

"**Sponsor Indemnity** " shall mean that certain Sponsor Indemnity Agreement of Borrower, dated as of the date hereof, by Sponsor in favor of Lender, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"**State**" shall mean the State in which the Property or any part thereof is located.

"**Sub-Account(s)**" shall have the meaning set forth in Section 3.1.1 .

"**Subordination of Operating Lease**" shall mean that certain Operating Lease Subordination Agreement, dated the date hereof, among Lender, Borrower, Operating Lessee, and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Survey**" shall mean a survey of the Property prepared by a surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Policy, and containing a certification of such surveyor satisfactory to Lender.

"**Tax Reserve Account** " shall have the meaning set forth in Section 3.1.1 .

"**Tax Reserve Amount** " shall have the meaning set forth in Section 16.1 .

"**Tenant**" shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property or permitted to use any portion of the facilities at the Property, other than the Manager and its employees, agents and assigns.

"**Terrorism Coverage Required Amount**" shall mean an aggregate amount equal to the full replacement cost of the Property and the Improvements (without deduction for physical depreciation) from time to time, or such lesser amounts approved by Lender in its sole discretion (or after a Securitization, upon receipt of a Rating Agency Confirmation).

"**Threshold Amount** " shall mean an amount equal to 10% of the Principal Amount of the Loan, being $9,000,000 as of the date of this Agreement.

"**Title Company** " shall mean, Lawyers Title Insurance Corporation and Land America Title Insurance Company.

"**Title Policy** " shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued by the Title Company with respect to the Property and insuring the lien of the Security Instrument.

"**Transfer**" shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise.

"**UCC**" or "**Uniform Commercial Code**" shall mean the Uniform Commercial Code as in effect in the State.

"**Ultimate Equity Owner**" shall mean Strategic Hotel Funding, L.L.C., a Delaware limited liability company.

"**Underwriter Group**" shall have the meaning set forth in Section 14.4.2(b) .

"**Uniform System**" shall mean the Uniform System of Accounts for Hotels, 9th Edition, International Association of Hospitality Accountants (1996), as from time to time amended.

"**Unit**" shall mean the Hotel Unit as defined in the Condominium Documents.

"**U.S. Government Obligations**" shall mean any direct obligations of, or obligations guaranteed as to principal and interest by, the United States Government or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States. Any such obligation must be limited to instruments that have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change. If any such obligation is rated by S&P, it shall not have an "r" highlighter affixed to its rating. Interest must be fixed or tied to a single interest rate index plus a single fixed spread (if any), and move proportionately with said index. U.S. Government Obligations include, but are not limited to: U.S. Treasury direct or fully guaranteed obligations, Farmers Home Administration certificates of beneficial ownership, General Services Administration participation certificates, U.S. Maritime Administration guaranteed Title XI financing, Small Business Administration guaranteed participation certificates or guaranteed pool certificates, U.S. Department of Housing and Urban Development local authority bonds, and Washington Metropolitan Area Transit Authority guaranteed transit bonds. In no event shall any such obligation have a maturity in excess of 365 days.

Section 1.2 Principles of Construction . All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All accounting terms not specifically defined herein shall be construed in accordance with GAAP as modified by the Uniform System. When used herein, the term "financial statements" shall include the notes and schedules thereto. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the definitions given them in this Agreement when used in any other Loan Document or in any certificate or other document made or delivered pursuant thereto. All uses of the word "including" shall mean including, without limitation unless the context shall indicate otherwise. Unless otherwise specified, the words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

II. GENERAL TERMS

Section 2.1 Loan; Disbursement to Borrower .

2.1.1 The Loan . Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2 Disbursement to Borrower . Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed. Borrower acknowledges and agrees that the full proceeds of the Loan have been disbursed by Lender to Borrower on the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents . The Loan shall be evidenced by the Note and secured by the Security Instrument, the Assignment of Leases, this Agreement and the other Loan Documents.

2.1.4 Use of Proceeds . Borrower shall use the proceeds of the Loan to repay and discharge any existing mortgage loans secured by the Property, to provide any necessary or appropriate reserves, to make cash distributions to its members for, among other things, repayment of any existing mezzanine loans secured by direct or indirect interests in Borrower, and as may be otherwise set forth on the Loan closing statement executed by Borrower at closing.

Section 2.2 Interest; Loan Payments; Late Payment Charge .

2.2.1 Payment of Principal and Interest .

(i) Except as set forth in Section 2.2.1(ii) , interest shall accrue on the Principal Amount as set forth in the Note.

(ii) Upon the occurrence and during the continuance of an Event of Default and from and after the Maturity Date if the entire Principal Amount is not repaid on the Maturity Date, interest on the outstanding principal balance of the Loan and, to the extent permitted by law, overdue interest and other amounts due in respect of the Loan shall accrue at the Default Rate calculated from the date such payment was due without regard to any grace or cure periods contained herein. Interest at the Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Indebtedness (or that portion thereof that is then due). To the extent permitted by applicable law, interest at the Default Rate shall be added to the Indebtedness, shall itself accrue interest at the same rate as the Loan and shall be secured by the Security Instrument. This paragraph shall not be construed as an agreement or privilege to extend the date of the payment of the Indebtedness, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default, and Lender retains its rights under the Note to accelerate and to continue to demand payment of the Indebtedness upon the happening of any Event of Default.

2.2.2 Method and Place of Payment .

(a) On each Payment Date, Borrower shall pay or cause to be paid to Lender interest accruing pursuant to the Note for the entire Interest Period during which said Payment Date shall occur.

(b) All amounts advanced by Lender pursuant to the applicable provisions of the Loan Documents, other than the Principal Amount, together with any interest at the Default Rate or other charges as provided therein, shall be due and payable hereunder as provided in the Loan Documents. In the event any such advance or charge is not so repaid by Borrower, Lender may, at its option and upon notice to Borrower, first apply any payments received under the Note to repay such advances, together with any interest thereon, or other charges as provided in the Loan Documents, and the balance, if any, shall be applied in payment of any installment of interest or principal then due and payable.

(c) The Maturity Date Payment shall be due and payable in full on the Maturity Date.

2.2.3 Late Payment Charge . If any interest payment due under the Loan Documents is not paid by Borrower within five (5) days after to the date on which it is due (or, if such fifth (5th) day is not a Business Day, then the Business Day immediately preceding such day) on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of three percent (3%) of such unpaid sum or the Maximum Legal Rate (the "**Late Payment Charge**") in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by this Agreement, the Security Instrument and the other Loan Documents to the extent permitted by applicable law. Borrower acknowledges and agrees that the five day grace period with respect to the applicability of the Late Payment Charge (i) shall only apply to Borrower's first failure to make a monthly interest payment in any calendar year and (ii) shall not constitute a payment grace period and shall in no way limit Lender's rights under Article XVII .

2.2.4 Usury Savings . This Agreement and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Principal Amount of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the Principal Amount due under the Note at a rate in excess of the Maximum Legal Rate, then the LIBOR Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due under the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Prepayments .

2.3.1 Prepayments . No prepayments of the Indebtedness shall be permitted except as set forth in Section 4 of the Note. Borrower agrees and acknowledges after the closing of the Loan that prior to a material Event of Default (as determined by Lender in its sole and absolute discretion) (x) in the case of prepayments of the Loan in connection with a Casualty or Condemnation, principal will be applied (to the extent not used for restoration pursuant to the terms hereof) to the Note, any substitute or component notes (as applicable) sequentially starting with the most senior securitized tranche and (y) in the case of all prepayments of the Loan other than in accordance with the preceding clause (x), such prepayments will be applied to the Note, any substitute or component notes (as applicable) pro-rata (on the basis of their respective principal balances) among the securitized and any non-securitized portions of the Loan (and pro-rata within the securitized portions of the Loan). Notwithstanding the foregoing, upon the occurrence and during the continuance of a material Event of Default (as determined by Lender in its sole and absolute discretion), Borrower agrees and acknowledges that any principal prepayments of the Loan will be applied to the Note, any substitute or component notes (as applicable) sequentially, starting with the most senior securitized tranche (it being acknowledged that during the continuance of a material Event of Default all securitized portions of the Loan shall be paid in full prior to the payment of any non-securitized portions of the Loan).

2.3.2 Prepayments after Event of Default . If, following an Event of Default, Lender shall accelerate the Indebtedness and Borrower thereafter tenders payment of all or any part of the Indebtedness, or if all or any portion of the Indebtedness is recovered by Lender after such Event of Default, (a) such payment may be made only on the next occurring Payment Date together with all unpaid interest thereon as calculated through the end of the Interest Period during which such Payment Date occurs (even if such period extends beyond such Payment Date and calculated as if such payment had not been made on such Payment Date), and all other fees and sums payable hereunder or under the Loan Documents, including without limitation, interest that has accrued at the Default Rate and any Late Payment Charges), (b) such payment shall be deemed a voluntary prepayment by Borrower, and (c) Borrower shall pay, in addition to the Indebtedness, an amount equal to the Prepayment Fee, if applicable.

2.3.3 Release of Property . Lender shall, at the reasonable expense of Borrower, upon payment in full of the Principal Amount and interest on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of (i) this Agreement upon the Account Collateral and the Rate Cap Collateral and (ii) the Security Instrument on the Property or assign it, in whole or in part, to a new lender. In such event, Borrower shall submit to Lender, on a date prior to the date of such release or assignment sufficient to provide a reasonable period for review thereof, a release of lien or assignment of lien, as applicable, for such property for execution by Lender. Such release or assignment, as applicable, shall be in a form appropriate in each jurisdiction in which the Property is located and satisfactory to Lender in its reasonable discretion. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release or assignment, as applicable.

Section 2.4 Regulatory Change; Taxes .

2.4.1 Increased Costs . If, at any time prior to the first Securitization of the Loan, as a result of any Regulatory Change or compliance of Lender therewith, the basis of taxation of payments to Lender of the principal of or interest on the Loan is changed or Lender or the company Controlling Lender shall be subject to (i) any tax, duty, charge or withholding of any kind with respect to this Agreement (excluding federal taxation of the overall net income of Lender); or (ii) any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities, of Lender or any company Controlling Lender is imposed, modified or deemed applicable; or (iii) any other condition affecting loans to borrowers subject to LIBOR-based interest rates is imposed on Lender or any company Controlling Lender and Lender determines that, by reason thereof, the cost to Lender or any company Controlling Lender of making, maintaining or extending the Loan to Borrower is increased, or any amount receivable by Lender or any company Controlling Lender hereunder in respect of any portion of the Loan to Borrower is reduced, in each case by an amount deemed by Lender in good faith to be material (such increases in cost and reductions in amounts receivable being herein called "**Increased Costs**"), then Lender shall provide notice thereof to Borrower and Borrower agrees that it will pay to Lender upon Lender's written request such additional amount or amounts as will compensate Lender or any company Controlling Lender for such Increased Costs to the extent Lender determines that such Increased Costs are allocable to the Loan and provided that Lender is generally exercising rights similar to those set forth in this Section 2.4.1 against other borrowers similarly situated to Borrower. Lender will notify Borrower of any event occurring after the date hereof which will entitle Lender to compensation pursuant to this Section 2.4.1 as promptly as practicable after it obtains knowledge thereof and determines to request such compensation; provided , however , that, if Lender fails to deliver a notice within 90 days after the date on which an officer of Lender responsible for overseeing this Agreement knows or has reason to know of its right to additional compensation under this Section 2.4.1 , Lender shall only be entitled to additional compensation for any such Increased Costs incurred from and after the date that is 90 days prior to the date Borrower received such notice. If Lender requests compensation under this Section 2.4.1 , Borrower may, by notice to Lender, require that Lender furnish to Borrower a statement setting forth the basis for requesting such compensation and the method for determining the amount thereof, and a description as to why Section 2.4.5 is not applicable.

2.4.2 Special Taxes . At all times prior to the first Securitization of the Loan, Borrower shall make all payments hereunder free and clear of and without deduction for Special Taxes. If, at any time prior to the first Securitization of the Loan, Borrower shall be required by law to deduct any Special Taxes from or in respect of any sum payable hereunder or under any other Loan Document to Lender, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.4.2) Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions, and (iii) Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

2.4.3 Other Taxes . In addition, for all periods prior to the first Securitization of the Loan, Borrower agrees to pay any present or future stamp or documentary

taxes or other excise or property taxes, charges, or similar levies which arise from any payment made hereunder, or from the execution, delivery or registration of, or otherwise with respect to, this Agreement, the other Loan Documents, or the Loan (hereinafter referred to as "**Other Taxes**").

2.4.4 Indemnity . Borrower shall indemnify Lender for all periods prior to the first Securitization of the Loan, for the full amount of Special Taxes and Other Taxes (including any Special Taxes or Other Taxes imposed by any Governmental Authority on amounts payable under this Section 2.4.4) paid by Lender and any liability (including penalties, interest, and expenses) arising therefrom or with respect thereto, whether or not such Special Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within thirty (30) days after the date Lender makes written demand therefor.

2.4.5 Change of Office . To the extent that changing the jurisdiction of Lender's applicable office would have the effect of minimizing Special Taxes, Other Taxes or Increased Costs, Lender shall use reasonable efforts to make such a change, provided that same would not otherwise be disadvantageous to Lender.

2.4.6 Survival . Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this Section 2.4 shall survive the payment in full of principal and interest hereunder, and the termination of this Agreement.

Section 2.5 Conditions Precedent to Closing . The obligation of Lender to make the Loan hereunder is subject to the fulfillment by, or on behalf of, Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date; provided , however , that unless a condition precedent shall expressly survive the Closing Date pursuant to a separate agreement, by funding the Loan, Lender shall be deemed to have waived any such conditions not theretofore fulfilled or satisfied:

2.5.1 Representations and Warranties; Compliance with Conditions . The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

2.5.2 Delivery of Loan Documents; Title Policy; Reports; Leases .

(a) **Loan Documents** . Lender shall have received an original copy of this Agreement, the Note and all of the other Loan Documents, in each case, duly executed (and to the extent required, acknowledged) and delivered on behalf of Borrower and any other parties thereto.

(b) **Security Instrument, Assignment of Leases** . Lender shall have received evidence that original counterparts of the Security Instrument and Assignment of Leases, in proper form for recordation, have been delivered to the Title Company for recording, so as

effectively to create, in the reasonable judgment of Lender, upon such recording valid and enforceable first priority Liens upon the Property, in favor of Lender (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents.

(c) **UCC Financing Statements** . Lender shall have received evidence that the UCC financing statements relating to the Security Instrument and this Agreement have been delivered to the Title Company for filing in the applicable jurisdictions.

(d) **Title Insurance** . Lender shall have received a pro forma Title Policy or a Title Policy issued by the Title Company and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such Title Policy shall (i) provide coverage in the amount of the Loan, (ii) insure Lender that the Security Instrument creates a valid, first priority Lien on the Property, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain the endorsements and affirmative coverages set forth on **Exhibit A** (or such other endorsements and affirmative coverages approved by Lender) and such additional endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The Title Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Policy have been paid.

(e) **Survey** . Lender shall have received a current or rectified Survey for the Property, containing the survey certification substantially in the form attached hereto as **Exhibit B** or such other form as approved by Lender. Such Survey shall reflect the same legal description contained in the Title Policy referred to in clause (d) above. The surveyor's seal shall be affixed to the Survey and the surveyor shall provide a certification for such Survey in form and substance acceptable to Lender.

(f) **Insurance** . Lender shall have received valid certificates of insurance for the policies of insurance required hereunder, satisfactory to Lender in its reasonable discretion, and evidence of the payment of all insurance premiums currently due and payable for the existing policy period.

(g) **Environmental Reports** . Lender shall have received an Environmental Report in respect of the Property satisfactory to Lender.

(h) **Zoning** . Lender shall have received an ALTA 3.1 zoning endorsement for the Title Policy.

(i) **Certificate of Occupancy** . Lender shall have received a copy of the valid certificates of occupancy for the Property or evidence acceptable to Lender that a certificate of occupancy is not required by applicable law.

(j) **Encumbrances** . Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first Lien as of the Closing Date on the Property (including extinguishing all existing mezzanine debt and Liens in connection with such debt), subject only to Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

2.5.3 Related Documents . Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

2.5.4 Delivery of Organizational Documents . On or before the Closing Date, Borrower shall deliver, or cause to be delivered, to Lender copies certified by an Officer's Certificate, of all organizational documentation related to Borrower, Operating Lessee and Sponsor and certain Affiliates of the foregoing as have been requested by Lender and/or the formation, structure, existence, good standing and/or qualification to do business of Borrower, Operating Lessee and Sponsor and such Affiliates, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender. Each of the organizational documents of Borrower shall contain provisions having a substantive effect materially similar to that of the language set forth in **Exhibit C** or such other language as approved by Lender. Lender hereby approves the organizational documents of Borrower delivered to Lender on the date hereof.

2.5.5 Opinions . Lender shall have received:

(a) a Non-Consolidation Opinion substantially in compliance with the requirements set forth in **Exhibit E** or in such other form approved by the Lender (the **"Non-Consolidation Opinion"**);

(b) the Opinion of Counsel substantially in compliance with the requirements set forth in **Exhibit D** or in such other form approved by the Lender; and

(c) from Counterparty the Counterparty Opinion substantially in compliance with the requirements set forth in **Exhibit F** or in such other form approved by the Lender.

2.5.6 Budgets . Borrower shall have delivered the Budget for the current Fiscal Year, which Budget shall be certified by an Officer's Certificate.

2.5.7 Completion of Proceedings . All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

2.5.8 Payments . All payments, deposits or escrows, if any, required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

2.5.9 Interest Rate Cap Agreement . Lender shall have received the original Interest Rate Cap Agreement which shall be in form and substance satisfactory to Lender and an original counterpart of the Acknowledgment executed and delivered by the Counterparty.

2.5.10 Account Agreement . Lender shall have received the original of the Account Agreement executed by each of Cash Management Bank, Operating Lessee, and Borrower.

2.5.11 Intentionally Deleted .

2.5.12 Leases and Rent Roll . Lender shall have received copies of all Leases, certified as requested by Lender. Lender shall have received a certified rent roll of the Property dated within thirty (30) days prior to the Closing Date.

2.5.13 Transaction Costs . Borrower shall have paid or reimbursed Lender for all title insurance premiums, recording and filing fees, costs of Environmental Reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses incurred in connection with the origination of the Loan.

2.5.14 Material Adverse Effect . No event or condition shall have occurred since the date of Borrower's most recent financial statements previously delivered to Lender which has or could reasonably be expected to have a Material Adverse Effect. The Operating Income and Operating Expenses of the Property and all other features of the transaction shall be as represented to Lender without material adverse change. Neither Borrower nor any of its constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

2.5.15 Tax Lot . Lender shall have received evidence that the Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

2.5.16 Physical Conditions Report . Lender shall have received a Physical Conditions Report (or re-certified Physical Conditions Report) with respect to the Property, which report shall be satisfactory in form and substance to Lender.

2.5.17 Appraisal . Lender shall have received an appraisal of the Property, which shall be satisfactory in form and substance to Lender.

2.5.18 Operating Lease . Lender shall have received the originals of the Operating Lease, executed by Operating Lessee and Borrower and the Subordination of Operating Lease, executed by Operating Lessee.

2.5.19 Management Agreement . Lender shall have received a certified copy of the Management Agreement which shall be satisfactory in form and substance to Lender.

2.5.20 Financial Statements . Lender shall have received certified copies of financial statements with respect to the Property for the three most recent Fiscal Years, each in form and substance satisfactory to Lender.

2.5.21 Further Documents . Lender or its counsel shall have received such other and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested including the Loan Documents in form and substance satisfactory to Lender and its counsel.

III. CASH MANAGEMENT

Section 3.1 Cash Management .

3.1.1 Establishment of Accounts . Borrower hereby confirms that, simultaneously with the execution of this Agreement, pursuant to the Account Agreement, Operating Lessee has established with Cash Management Bank, in the name of Borrower for the benefit of Lender, as secured party, a collection amount (the**"Collection Account"**), which has been established as an interest-bearing deposit account, and a holding account (the**"Holding Account"**), which has been established as a securities account. Both the Collection and the Holding Account and each sub-account of either such account and the funds deposited therein and the securities and other assets credited thereto shall serve as additional security for the Loan. Pursuant to the Account Agreement, Borrower shall irrevocably instruct and authorize Cash Management Bank to disregard any and all orders for withdrawal from the Collection Account or the Holding Account made by, or at the direction of, Borrower or Operating Lessee other than to transfer all amounts on deposit in the Collection Account on a daily basis to the Holding Account. Borrower agrees that, prior to the payment in full of the Indebtedness, the terms and conditions of the Account Agreement shall not be amended or modified without the prior written consent of Lender (which consent Lender may grant or withhold in its sole discretion), and if a Securitization has occurred, the delivery by Borrower of a Rating Agency Confirmation. In recognition of Lender's security interest in the funds deposited into the Collection Account and the Holding Account, Borrower shall identify both the Collection Account and the Holding Account with the name of Lender, as secured party. The Collection Account shall be named as follows: "Intercontinental Miami f/b/o Citigroup Global Markets Realty Corp., as secured party Collection Account," account number 724141.1. The Holding Account shall be named as follows: "Intercontinental Miami f/b/o Citigroup Global Markets Realty Corp., as secured party Holding Account," account number 724141.2. Borrower confirms that it has established with Cash Management Bank the following sub-accounts of the Holding Account (each, a**"Sub-Account"**and, collectively, the**" Sub-Accounts"**and together with the Holding Account and the Collection Account, the**"Collateral Accounts"**), which (i) may be ledger or book entry sub-accounts and need not be actual sub-accounts, (ii) shall each be linked to the Holding Account, (iii) shall each be a "Securities Account" pursuant to Article 8 of the UCC and (iv) shall each be an Eligible Account to which certain funds shall be allocated and from which disbursements shall be made pursuant to the terms of this Agreement:

(a) a sub-account for the retention of Account Collateral in respect of Impositions and Other Charges for the Property with the account number 724141.2 (the**"Tax Reserve Account"**);

(b) a sub-account for the retention of Account Collateral in respect of insurance premiums for the Property with the account number 724141.2 (the**"Insurance Reserve Account "**);

(c) a sub-account for the retention of Account Collateral in respect of FF&E with the account number 724141.2 (the**"FF&E Reserve Account"**);

(d) a sub-account for the retention of Account Collateral in respect of current Debt Service on the Loan with the account number 724141.2 (the**"Current Debt Service Reserve Account "**); and

(e) a sub-account for the retention of Account Collateral in respect of reserves for Condominium Charges at the Property with the account number 724141.2 (the**"Condominium Charges Reserve Account"**).

3.1.2 Pledge of Account Collateral . To secure the full and punctual payment and performance of the Obligations, Borrower and Operating Lessee hereby collaterally assigns, grants a security interest in and pledges to Lender, to the extent not prohibited by applicable law (and shall cause Operating Lessee to execute the Accommodation Security Documents with respect thereto), a first priority continuing security interest in and to the following property of Borrower and/or Operating Lessee, as applicable, whether now owned or existing or hereafter acquired or arising and regardless of where located (all of the same, collectively, the**"Account Collateral"**):

(a) the Collateral Accounts and Manager Accounts and all cash, checks, drafts, securities entitlements, certificates, instruments and other property, including, without limitation, all deposits and/or wire transfers from time to time deposited or held in, credited to or made to Collateral Accounts;

(b) any and all amounts invested in Permitted Investments;

(c) all interest, dividends, cash, instruments, securities entitlements and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing or purchased with funds from the Collateral Accounts; and

(d) to the extent not covered by clauses (a), (b) or (c) above, all proceeds (as defined under the UCC) of any or all of the foregoing.

In addition to the rights and remedies herein set forth, Lender shall have all of the rights and remedies with respect to the Account Collateral available to a secured party at law or in equity, including, without limitation, the rights of a secured party under the UCC, as if such rights and remedies were fully set forth herein.

This Agreement shall constitute a security agreement for purposes of the Uniform Commercial Code and other applicable law.

3.1.3 Maintenance of Collateral Accounts . (a) Borrower agrees that the Collection Account is and shall be maintained (i) as a "deposit account" (as such term is defined in Section 9-102(a) of the UCC), (ii) in such a manner that Lender shall have control (within the meaning of Section 9-104(a) of the UCC) over the Collection Account and (iii) such that neither the Borrower, Operating Lessee, nor Manager shall have any right of withdrawal from the Collection Account and, except as provided herein, no Account Collateral shall be released to the Borrower, Operating Lessee, or Manager from the Collection Account. Without limiting the Borrower's obligations under the immediately preceding sentence, Borrower shall only establish and maintain the Collection Account with a financial institution that has executed an agreement substantially in the form of the Account Agreement or in such other form acceptable to Lender in its sole discretion.

(b) Borrower agrees that each of the Holding Account and the Sub-Accounts is and shall be maintained (i) as a "securities account" (as such term is defined in Section 8-501(a) of the UCC), (ii) in such a manner that Lender shall have control (within the meaning of Section 8-106(d)(2) of the UCC) over the Holding Account and any Sub-Account, (iii) such that neither Borrower, Operating Lessee, nor Manager shall have any right of withdrawal from the Holding Account or the Sub-Accounts and, except as provided herein, no Account Collateral shall be released to Borrower from the Holding Account or the Sub-Accounts, (iv) in such a manner that the Cash Management Bank shall agree to treat all property credited to the Holding Account or the Sub-Accounts as "financial assets" and (v) such that all securities or other property underlying any financial assets credited to the Accounts shall be registered in the name of Cash Management Bank, indorsed to Cash Management Bank or in blank or credited to another securities account maintained in the name of Cash Management Bank and in no case will any financial asset credited to any of the Collateral Accounts be registered in the name of Borrower, payable to the order of Borrower or specially indorsed to Borrower except to the extent the foregoing have been specially indorsed to Cash Management Bank or in blank. Without limiting Borrower's obligations under the immediately preceding sentence, Borrower shall only establish and maintain the Holding Account with a financial institution that has executed an agreement substantially in the form of the Account Agreement or in such other form acceptable to Lender in its sole discretion.

(c) The Collateral Accounts shall be Eligible Accounts. The Collateral Accounts shall be subject to such applicable laws, and such applicable regulations of the Board of Governors of the Federal Reserve System and of any other banking or governmental authority, as may now or hereafter be in effect. Income and interest accruing on the Collateral Accounts or any investments held in such accounts shall be periodically added to the principal amount of such account and shall be held, disbursed and applied in accordance with the provisions of this Agreement and the Account Agreement. Borrower shall be the beneficial owner of the Collateral Accounts for federal income tax purposes and shall report all income on the Collateral Accounts.

3.1.4 Deposits into Sub-Accounts . On the date hereof, Borrower has deposited the following amounts into the Sub-Accounts:

(i) $0.00 into the Tax Reserve Account;

(ii) $0.00 into the Insurance Reserve Account;

(iii) $0.00 into the Current Debt Service Reserve Account;

(iv) $0.00 into the FF&E Reserve Account; and

(v) $0.00 into the Condominium Charges Reserve Account.

3.1.5 Monthly Funding of Sub-Accounts . (a) Borrower hereby irrevocably authorizes Lender to transfer (and, pursuant to the Account Agreement shall irrevocably authorize Cash Management Bank to execute any corresponding instructions of Lender), and Lender shall transfer (or cause Cash Management Bank to transfer pursuant to disbursement instructions from Lender), from the Holding Account by 11:00 a.m. New York time on each Business Day, or as soon thereafter as sufficient funds are in the Holding Account to make the applicable transfers, funds in the following amounts and in the following order of priority:

(i) during the continuance of an Event of Default and at any such time that Manager does not reserve for or otherwise set aside and pay Impositions and Other Charges directly, funds in an amount equal to the Monthly Tax Reserve Amount and any other amounts required pursuant to Section 16.1 for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Tax Reserve Account;

(ii) during the continuance of an Event of Default and at any time when the insurance required to be maintained pursuant to this Agreement is provided under a blanket policy in accordance with Article VI hereof and the premiums in respect of such blanket policy are not paid or caused to be paid before such premiums become due and payable or at any time that Manager does not pay, reserve for or otherwise set aside and pay, premiums with respect to the Insurance Requirements, funds in an amount equal to the Monthly Insurance Reserve Amount for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Insurance Reserve Account, or following an Event of Default or an Insurance Reserve Trigger, funds sufficient (calculated on a monthly basis from the Insurance Reserve Trigger until the month in which the premium is due) to permit Lender to pay insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement and the Security Instrument on the respective due dates therefor (up to a maximum amount equal to the aggregate annual insurance premium required hereunder), and Lender shall so pay such funds to the insurance company having the right to receive such funds;

(iii) funds in an amount equal to the amount of Debt Service due on the Payment Date for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Current Debt Service Reserve Account;

(iv) during the continuance of an Event of Default and at any such time that Manager does not reserve for or otherwise set aside and pay Condominium Charges directly, funds in an amount equal to the amount of Condominium Charges that will be payable under the

Condominium Documents for the month immediately succeeding the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Condominium Charges Reserve Account and such deposit may be increased by Lender pursuant to Section 16.5 ;

(v) at any such time that Manager does not reserve or otherwise set aside for FF&E in accordance with the terms of the Management Agreement, funds in an amount equal to the Monthly FF&E Reserve Amount for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the FF&E Reserve Account; and

(vi) provided no Event of Default shall have occurred and is then continuing and subject to the provisions of Section 3.1.5(b) , funds in an amount equal to the balance (if any) remaining or deposited in the Holding Account after the foregoing deposits (such remainder being hereinafter referred to as "**Excess Cash Flow** ") and transfer the same to the Borrower's Account (or a third party account as directed by Borrower), free of any Lien or continuing security interest.

(b) Notwithstanding anything to the contrary contained herein or in the Security Instrument, but subject to Section 7.3 , to the extent that Borrower shall fail to pay any mortgage recording tax, costs, expenses or other amounts pursuant to Section 19.12 of this Agreement within the time period set forth therein, Lender shall have the right, at any time, upon five (5) Business Days' notice to Borrower, to withdraw from the Holding Account, an amount equal to such unpaid taxes, costs, expenses and/or other amounts and pay such amounts to the Person(s) entitled thereto.

3.1.6 Payments from Sub-Accounts . Borrower irrevocably authorizes Lender to make and, provided no Event of Default shall have occurred and be continuing, Lender hereby agrees to make, the following payments from the Sub-Accounts to the extent of the monies on deposit therefor:

(i) if notified (timely) by Borrower or otherwise determined by Lender in its reasonable discretion that Manager will not pay Impositions or Other Charges, funds from the Tax Reserve Account to Lender sufficient to permit Lender to pay (or otherwise to Borrower to reimburse Borrower for) (A) Impositions and (B) Other Charges, on the respective due dates therefor, and Lender shall so pay such funds to the Governmental Authority having the right to receive such funds (or shall reimburse Borrower or Operating Lessee upon confirmation of payment);

(ii) at any time when the insurance required to be maintained pursuant to this Agreement is provided under a blanket policy in accordance with Article VI hereof and the premiums in respect of such blanket policy are not paid or caused to be paid before such premiums become due and payable or at any time that Manager does not pay, reserve for or otherwise set aside and pay, premiums with respect to the Insurance Requirements and otherwise following an Insurance Reserve Trigger, funds from the Insurance Reserve Account to Lender sufficient to permit Lender to pay insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement and the Security Instrument, on the respective due dates therefor, and Lender shall so pay such funds to the insurance company having the right to receive such funds;

(iii) funds from the Current Debt Service Reserve Account to Lender sufficient to pay Debt Service on each Payment Date, and Lender, on each Payment Date, shall apply such funds to the payment of the Debt Service payable on such Payment Date;

(iv) if notified (timely) by Borrower or otherwise determined by Lender in its reasonable discretion that Manager will not pay Condominium Charges, funds from the Condominium Charges Reserve Account to Lender sufficient to pay the Condominium Charges for the next calendar month after a Payment Date, and Lender, on each Payment Date, shall apply such funds to the payment of the Condominium Charges payable for the next calendar month; and

(v) if notified (timely) by Borrower or otherwise determined by Lender in its reasonable discretion that Manager will not reserve for FF&E as required under the Management Agreement, and provided Borrower shall have complied with the procedures set forth in Section 16.6 , funds from the FF&E Reserve Account to the Borrower's Account to pay for FF&E.

If and to the extent any Sponsor or any Close Affiliate (other than Borrower or Operating Lessee) makes a payment of any Imposition, any insurance premium under a blanket policy or capital expenditure or overhead charge which qualifies as an Operating Expense, with respect to the Property and such expense is provided for in the Budget, provided no Event of Default has occurred and is continuing, such Sponsor or Close Affiliate will be entitled to receive reimbursement from the Manager, Lender, or the applicable Sub-Account established under hereunder or under the Management Agreement and such payment shall not be required to be re-deposited into the Collection Account.

3.1.7 Cash Management Bank . (a) Lender shall have the right to replace the Cash Management Bank with a financial institution reasonably satisfactory to Borrower in the event that (i) the Cash Management Bank fails, in any material respect, to comply with the Account Agreement, (ii) the Cash Management Bank named herein is no longer the Cash Management Bank or (iii) the Cash Management Bank is no longer an Approved Bank. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right at Borrower's sole cost and expense to replace Cash Management Bank at any time, without notice to Borrower. Borrower shall cooperate with Lender in connection with the appointment of any replacement Cash Management Bank and the execution by the Cash Management Bank and the Borrower of an Account Agreement and delivery of same to Lender.

(b) So long as no Event of Default shall have occurred and be continuing, Borrower shall have the right at its sole cost and expense to replace the Cash Management Bank with a financial institution that is an Approved Bank, provided that such financial institution and Borrower shall execute and deliver to Lender an Account Agreement substantially similar to the Account Agreement executed as of the Closing Date.

3.1.8 Borrower's Account Representations, Warranties and Covenants . Borrower represents, warrants and covenants that (i) as of the date hereof, Borrower has caused Operating Lessee to direct all Tenants under the Leases to mail all checks and wire all funds with respect to any payments due under such Leases directly to Manager, (ii) Borrower shall cause Manager and Operating Lessee to deposit all amounts payable to Borrower or Operating Lessee pursuant to the Management Agreement directly into the Collection Account, (iii) Borrower and Operating Lessee shall pay or cause to be paid all Rents, Cash and Cash Equivalents or other items of Operating Income not otherwise collected by Manager within two Business Days after receipt thereof by Borrower, Operating Lessee or its Affiliates directly into the Collection Account and, until so deposited, any such amounts held by Borrower or Operating Lessee, shall be deemed to be Account Collateral and shall be held in trust by it for the benefit, and as the property, of Lender and shall not be commingled with any other funds or property of Borrower or Operating Lessee, (iv) other than the Manager Accounts, there are no accounts other than the Collateral Accounts maintained by Borrower or Operating Lessee with respect to the Property or the collection of Rents and credit card company receivables with respect to the Property and (v) so long as the Loan shall be outstanding, neither Borrower, Operating Lessee, nor any other Person shall open any other operating accounts with respect to the Property or the collection of Rents or credit card company receivables with respect to the Property, except for the Collateral Accounts and the Manager Accounts; provided that, Borrower and Manager shall not be prohibited from utilizing one or more separate accounts for the disbursement or retention of funds that have been transferred to the Borrower's Account pursuant to Section 3.1.5 .

3.1.9 Account Collateral and Remedies . (a) Upon the occurrence and during the continuance of an Event of Default, without additional notice from Lender to Borrower, (i) Lender may, in addition to and not in limitation of Lender's other rights, make any and all withdrawals from, and transfers between and among, the Collateral Accounts as Lender shall determine in its sole and absolute discretion to pay any Obligations; (ii) all Excess Cash Flow shall be retained in the Holding Account or applicable Sub-Accounts and (iii) Lender may liquidate and transfer any amounts then invested in Permitted Investments to the Collateral Accounts to which they relate or reinvest such amounts in other Permitted Investments as Lender may reasonably determine is necessary to perfect or protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce Lender's rights and remedies hereunder with respect to any Account Collateral or to preserve the value of the Account Collateral.

(b) Upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of Borrower with respect to the Account Collateral, and do in the name, place and stead of Borrower, all such acts, things and deeds for and on behalf of and in the name of Borrower, which Borrower could or might do or which Lender may deem necessary or desirable to more fully vest in Lender the rights and remedies provided for herein and to accomplish the purposes of this Agreement. The foregoing powers of attorney are irrevocable and coupled with an interest. Upon the occurrence and during the continuance of an Event of Default, Lender may perform or cause performance of any such agreement, and any reasonable expenses of Lender incurred in connection therewith shall be paid by Borrower as provided in Section 5.1.16 .

(c) Borrower hereby expressly waives, to the fullest extent permitted by law, presentment, demand, protest or any notice of any kind (except as expressly required under the Loan Documents) in connection with this Agreement or the Account Collateral. Borrower acknowledges and agrees that ten (10) Business Days' prior written notice of the time and place of any public sale of the Account Collateral or any other intended disposition thereof shall be reasonable and sufficient notice to Borrower within the meaning of the UCC.

3.1.10 Transfers and Other Liens . Borrower agrees that it will not (i) sell or otherwise dispose of any of the Account Collateral except as may be expressly permitted under the Loan Documents, or (ii) create or permit to exist any Lien upon or with respect to all or any of the Account Collateral, except for the Lien granted to Lender under this Agreement.

3.1.11 Reasonable Care . Beyond the exercise of reasonable care in the custody thereof, Lender shall have no duty as to any Account Collateral in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any person or otherwise with respect thereto. Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Account Collateral in its possession if the Account Collateral is accorded treatment substantially equal to that which Lender accords its own property, it being understood that Lender shall not be liable or responsible for any loss or damage to any of the Account Collateral, or for any diminution in value thereof, by reason of the act or omission of Lender, its Affiliates, agents, employees or bailees, except to the extent that such loss or damage results from Lender's gross negligence or willful misconduct. In no event shall Lender be liable either directly or indirectly for losses or delays resulting from any event which may be the basis of an Excusable Delay, computer malfunctions, interruption of communication facilities, labor difficulties or other causes beyond Lender's reasonable control or for indirect, special or consequential damages except to the extent of Lender's gross negligence or willful misconduct. Notwithstanding the foregoing, Borrower acknowledges and agrees that (i) Lender does not have custody of the Account Collateral, (ii) Cash Management Bank has custody of the Account Collateral, (iii) the initial Cash Management Bank was chosen by Borrower and (iv) Lender has no obligation or duty to supervise Cash Management Bank or to see to the safe custody of the Account Collateral.

3.1.12 Lender's Liability . (a) Lender shall be responsible for the performance only of such duties with respect to the Account Collateral as are specifically set forth in this Section 3.1 or elsewhere in the Loan Documents, and no other duty shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act with respect to the Account Collateral which would cause it to incur any expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Borrower shall indemnify and hold Lender, its employees and officers harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender in connection with the transactions contemplated hereby with respect to the Account Collateral (excluding losses on Permitted Investments) except as such may be caused by the gross negligence or willful misconduct of Lender, its employees, officers or agents.

(b) Lender shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature believed

by it in good faith to be genuine, and, in so acting, it may be assumed that any person purporting to give any of the foregoing in connection with the provisions hereof has been duly authorized to do so. Lender may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder and in good faith in accordance therewith.

3.1.13 Continuing Security Interest . This Agreement shall create a continuing security interest in the Account Collateral and shall remain in full force and effect until payment in full of the Indebtedness; provided , however , such security interest shall automatically terminate with respect to funds which were duly deposited into Borrower's Account in accordance with the terms hereof. Upon payment in full of the Indebtedness, this security interest shall automatically terminate without further notice from any party and Borrower shall be entitled to the return, upon its request, of such of the Account Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof and Lender shall execute such instruments and documents as may be reasonably requested by Borrower to evidence such termination and the release of the Account Collateral.

IV. REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations . Borrower represents and warrants as of the Closing Date that:

4.1.1 Organization . Each of Borrower and Operating Lessee is a limited liability company, and have been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Each Sponsor entity is a limited partnership, and each such entity has been duly organized and is validly existing and in good standing pursuant to the laws of the relevant State where formed with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Each of Borrower and Operating Lessee has duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Collectively, Borrower and Operating Lessee possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which each is now engaged, and the sole business of Borrower is the ownership of the Property. The organizational structure of Borrower upon the closing is accurately depicted by the schematic diagram attached hereto as **Exhibit H-1** . Borrower shall not itself, and shall not permit Operating Lessee to, change its name, identity, corporate structure or jurisdiction of organization unless it shall have given Lender seven (7) days prior written notice of any such change and shall have taken all steps reasonably requested by Lender to grant, perfect, protect and/or preserve the security interest granted hereunder to Lender.

4.1.2 Proceedings . Each of Borrower, Operating Lessee, and Sponsor, has full power to and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents have been duly executed and delivered by, or on behalf of, each of Borrower, Operating Lessee, and Sponsor, as applicable, and constitute legal, valid and binding obligations

of Borrower, Operating Lessee, and Sponsor, as applicable, enforceable against Borrower, Operating Lessee, and Sponsor, as applicable, in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts . The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower, Operating Lessee, and Sponsor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower, Operating Lessee, and Sponsor, pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement or other agreement or instrument to which Borrower, Operating Lessee, and Sponsor, is a party or by which any of Borrower's, Operating Lessee's, and Sponsor's, property or assets is subject (unless consents from all applicable parties thereto have been obtained), nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority, and any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Borrower, Operating Lessee, and Sponsor, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4 Litigation . There are no lawsuits, administrative proceedings, arbitration proceedings, or other such legal proceedings that have been filed and served upon Borrower (or with respect to which Borrower has otherwise received proper notice) or, to the Best of Borrower's Knowledge, otherwise pending or threatened against or affecting Borrower, Operating Lessee, or the Property whose outcome, if determined against Borrower, Operating Lessee, or the Property, would have a Material Adverse Effect. To the Best of Borrower's Knowledge, **Schedule I** includes each pending action against Borrower, Operating Lessee, or otherwise affecting the Property that involves a claim or claims for either (a) monetary damages exceeding $250,000, or (b) injunctive relief or other equitable remedy that could have a Material Adverse Effect, excluding: (i) actions for monetary damages only that have been tendered to, and accepted without reservation of rights by, the liability insurance carrier for the Property, (ii) worker's compensation claims, and (iii) any proceedings by employees working at the Property where the amount claimed in such proceeding is less than $250,000; to the Best of Borrower's Knowledge, the aggregate amount of such claims described in subclause (iii) of this sentence is less than $1,000,000.

4.1.5 Agreements . Neither Borrower nor Operating Lessee is a party to any agreement or instrument or subject to any restriction which is reasonably likely to have a Material Adverse Effect. Neither Borrower nor Operating Lessee is in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower, Operating Lessee, or the Property is bound, which default is reasonably likely to have a Material Adverse Effect. Neither Borrower nor Operating Lessee has any material financial obligation (contingent or otherwise) under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower or Operating Lessee is a party or by which Borrower, Operating

Lessee, or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property, including membership programs disclosed in writing to Lender on or prior to the date hereof, and (b) obligations under the Loan Documents.

4.1.6 Title . Borrower has good, marketable and insurable fee simple title to the Land and the Improvements, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Borrower or Operating Lessee, as applicable, has good and marketable title to the remainder of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, and Accommodation Security Documents, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first mortgage lien on the Land and the Improvements, subject only to Permitted Encumbrances and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. Except as may be indicated in and insured over by the Title Policy, to the Best of Borrower's Knowledge, there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents. Borrower represents and warrants that none of the Permitted Encumbrances will have a Material Adverse Effect. Borrower shall preserve its right, title and interest in and to the Property for so long as the Note remains outstanding and will warrant and defend same and the validity and priority of the Lien hereof from and against any and all claims whatsoever other than the Permitted Encumbrances.

4.1.7 No Bankruptcy Filing . None of Borrower, Operating Lessee, or Sponsor, is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of such entity's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against Borrower or against Operating Lessee or any Sponsor.

4.1.8 Full and Accurate Disclosure . To the Best of Borrower's Knowledge, no statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower which has not been disclosed which has a Material Adverse Effect, or to the Best of Borrower's Knowledge could reasonably be expected to have a Material Adverse Effect.

4.1.9 All Property . The Property constitutes all of the real property, personal property, equipment and fixtures currently (i) owned or leased by Borrower or Operating Lessee or (ii) used in the operation of the business located on the Property, other than items owned by Manager or any Tenants (excluding items owned by Operating Lessee).

4.1.10 ERISA . (A) Borrower does not maintain or contribute to and is not required to contribute to, an "employee benefit plan" as defined by Section 3(3) of ERISA, which is subject to Title IV of ERISA (other than a "multiemployer plan" as defined by

Section 3(37) of ERISA), and Borrower (i) has no knowledge of any material liability which has been incurred or is expected to be incurred by Borrower which is reasonably likely to result in a Material Adverse Effect and is or remains unsatisfied for any taxes or penalties or unfunded contributions with respect to any "employee benefit plan" or any "plan," within the meaning of Section 4975(e)(1) of the Internal Revenue Code or any other benefit plan (other than a "multiemployer plan") maintained, contributed to, or required to be contributed to by Borrower or by any entity that is under common control with Borrower within the meaning Section 4001(a)(14) of ERISA (each, an **"ERISA Affiliate"**) (each, a **"Plan"**) or any plan that would be a Plan but for the fact that it is a multiemployer plan within the meaning of ERISA Section 3(37); and (ii) has made and shall continue to make when due all required contributions to all such Plans (other than Plans relating to ERISA Affiliates), if any, where the failure to so contribute is reasonably likely to result in a Material Adverse Effect. Each such Plan (other than Plans relating to ERISA Affiliates), if any, has been and will be administered in material compliance with its terms and the applicable provisions of ERISA, the Internal Revenue Code, and any other applicable federal or state law; and no action shall be taken or fail to be taken that would result in the disqualification or loss of tax-exempt status of any such Plan intended to be qualified and/or tax exempt; and

(a) With respect to any "multiemployer plan," (i) Borrower has not, since September 26, 1980, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA, (ii) Borrower has made and shall continue to make when due all required contributions to all such "multiemployer plans" and (iii) no ERISA Affiliate has, since September 26, 1980, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA which withdrawal is reasonably expected to have a Material Adverse Effect.

(b) Borrower is not an employee benefit plan, as defined in Section 3(3) of ERISA, whether or not subject to Title I of ERISA, none of the assets of Borrower constitutes or will constitute plan assets of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101 and transactions by or with Borrower are not subject to similar laws regulating investment of, and fiduciary obligations with respect to, plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect (**"Similar Laws"**), which prohibit or otherwise restrict the transactions contemplated by this Agreement.

4.1.11 Compliance . Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes except where the failure to so comply is not reasonably expected to result in a Material Adverse Effect. To the Best of Borrower's Knowledge, neither Borrower nor Operating Lessee is in default or in violation of any order, writ, injunction, decree or demand of any Governmental Authority. To the Best of Borrower's Knowledge, there has not been committed by Borrower or Operating Lessee any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

4.1.12 Financial Information . To the Best of Borrower's Knowledge, all financial data including, without limitation, the statements of cash flow and income and

operating expense, that have been delivered by or on behalf of Borrower to Lender in respect of the Property (i) are true, complete and correct in all material respects, (ii) fairly represent the financial condition of the Property as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Neither Borrower nor Operating Lessee has any material contingent liabilities, liabilities for delinquent taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and could reasonably be expected to have a Material Adverse Effect, except as referred to or reflected in said financial statements and operating statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operations or business of Borrower or Operating Lessee from that set forth in said financial statements.

4.1.13 Condemnation . No Condemnation has been commenced or, to the Best of Borrower's Knowledge, is contemplated with respect to all or any portion of the Property.

4.1.14 Federal Reserve Regulations . None of the proceeds of the Loan will be used for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U, Regulation X or Regulation T or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry "margin stock" or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of Regulation U or Regulation X. As of the Closing Date, Borrower does not own any "margin stock."

4.1.15 Utilities and Public Access . The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. To the Best of Borrower's Knowledge, all utilities necessary to the existing use of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property. All roads necessary for the use of the Property for its current purposes have been completed and, if necessary, dedicated to public use.

4.1.16 Not a Foreign Person . Borrower is not a foreign person within the meaning of § 1445(f)(3) of the Code.

4.1.17 Separate Lots . The Property is comprised of one (1) or more contiguous parcels which constitute a separate tax lot or lots and does not constitute or include a portion of any other tax lot not a part of the Property.

4.1.18 Assessments . To the Best of Borrower's Knowledge, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

4.1.19 Enforceability . The Loan Documents are not subject to any existing right of rescission, set-off, counterclaim or defense by Borrower, including the defense

of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law)), and Borrower has not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.20 No Prior Assignment . There are no prior sales, transfers or assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding following the funding of the Loan, other than those being terminated or assigned to Lender concurrently herewith.

4.1.21 Insurance . Borrower has obtained and has delivered to Lender certified copies or certificates of all insurance policies required under this Agreement, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. Borrower has not, and to the Best of Borrower's Knowledge no Person has, done by act or omission anything which would impair the coverage of any such policy.

4.1.22 Use of Property . The Property is used exclusively for hotel purposes and other appurtenant and related uses.

4.1.23 Certificate of Occupancy; Licenses . To the Best of Borrower's Knowledge, all material certifications, permits, licenses (including, without limitation, a license to serve alcohol on the Property) and approvals, including without limitation, certificates of completion and occupancy permits required of Borrower for the legal use, occupancy and operation of the Property for hotel purposes (collectively, the "Licenses"), have been obtained and are in full force and effect. Borrower shall keep and maintain all Licenses necessary for the operation of the Property for hotel purposes. The use being made of the Property is in conformity with the certificate of occupancy issued for the Property.

4.1.24 Flood Zone . Except as may be shown on the Survey with respect to portions of the Improvements other than buildings and enclosed structures, none of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards.

4.1.25 Physical Condition . To the Best of Borrower's Knowledge and except as expressly disclosed in the Physical Conditions Report, the Property, including, without limitation, all buildings, Improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; to the Best of Borrower's Knowledge and except as disclosed in the Physical Conditions Report, there exists no structural or other material defects or damages in or to the Property, whether latent or otherwise, and Borrower has not received any written notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

4.1.26 Boundaries . To the Best of Borrower's Knowledge and except as disclosed on the Survey, all of the Improvements lie wholly within the boundaries and building restriction lines of the Real Property, and no improvements on adjoining properties encroach upon the Real Property, and no easements or other encumbrances upon the Real Property encroach upon any of the Improvements, so as to have a Material Adverse Effect on the value or marketability of the Real Property except those which are insured against by the Title Policy.

4.1.27 Leases . The Property is not subject to any Leases other than the Leases described in the certified rent roll delivered in connection with the origination of the Loan. Such certified rent roll is true, complete and correct in all material respects as of the date set forth therein. No Person has any possessory interest in the Property or right to occupy the same (other than typical short-term occupancy rights of hotel guests which are not the subject of a written agreement) except under and pursuant to the provisions of the Leases. The Fitness Center Lease will terminate on October 1, 2006. All other current Leases are in full force and effect and to the Best of Borrower's Knowledge, there are no material defaults thereunder by either party (other than as expressly disclosed on the certified rent roll delivered to Lender or the Tenant estoppel certificates delivered to Lender in connection with the closing of the Loan) and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute material defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date, except as disclosed in the Tenant estoppel certificates delivered to Lender in connection with the closing of the Loan. There has been no prior sale, transfer or assignment, hypothecation or pledge by Borrower of any Lease or of the Rents received therein, which will be outstanding following the funding of the Loan, other than those being assigned to Lender concurrently herewith. No Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the property of which the leased premises are a part.

4.1.28 Filing and Recording Taxes . All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid and the granting and recording of the Security Instrument and the UCC financing statements required to be filed in connection with the Loan. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid, and, under current Legal Requirements, the Security Instrument is enforceable against Borrower in accordance with its terms by Lender (or any subsequent holder thereof) subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law.

4.1.29 Single Purpose Entity/Separateness . (a) Borrower hereby represents, warrants and covenants that each of Operating Lessee and Borrower is and always

has been, since the date of its respective formation, a Single Purpose Entity and has not, since the date of its respective formation, conducted any business and owned any property whatsoever, except as specifically described in the Non-Consolidation Opinion.

All of the assumptions made in the Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto and any certificates delivered by Borrower in connection with the issuance of the Non-Consolidation Opinion, are true and correct in all respects and any assumptions made in any subsequent non-consolidation opinion delivered in connection with the Loan Documents (an **"Additional Non-Consolidation Opinion"**), including, but not limited to, any exhibits attached thereto, are true and correct in all material respects. Borrower has complied with all of the assumptions made with respect to it in the Non-Consolidation Opinion. To the Best of Borrower's Knowledge, each entity other than Borrower with respect to which an assumption shall be made in any Additional Non-Consolidation Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Non-Consolidation Opinion.

4.1.30 Management Agreement . The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Manager is not an Affiliate of Borrower.

4.1.31 Illegal Activity . No portion of the Property has been or will be purchased with proceeds of any illegal activity.

4.1.32 Condominium Documents . The Condominium Documents are in full force and effect and there is no default, breach or violation beyond the expiration of applicable notice and cure periods existing thereunder by Borrower, or to the best of Borrower's knowledge, any other party thereto and to the best of Borrower's knowledge, no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default, breach or violation by any party thereunder. To the best of Borrower's knowledge, the Condominium Documents are in full compliance with all the Condominium Act and all applicable local, state and federal laws, rules and regulations which affect the establishment and maintenance of condominiums in the State. No Condominium Charges payable by the Borrower are past due as of the date hereof.

4.1.33 Tax Filings . Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower.

4.1.34 Solvency/Fraudulent Conveyance . Borrower (a) has not entered into the transaction contemplated by this Agreement or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) has received reasonably equivalent value in exchange for its obligations under the Loan Documents. After giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is

and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

4.1.35 Investment Company Act . Borrower is not (a) an investment company or a company Controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended, (b) a holding company or a subsidiary company of a holding company or an affiliate of either a holding company or a subsidiary company within the mean of the Public Utility Holding Company Act of 1935, as amended or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.36 Interest Rate Cap Agreement . The Interest Rate Cap Agreement is in full force and effect and enforceable against Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws generally affecting the enforcement of creditors' rights and subject as to enforceability to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.37 Labor . Except as described on **Schedule I** , no work stoppage, labor strike, slowdown or lockout is pending or threatened by employees and other laborers at the Property. Except as described on **Schedule I** , neither Borrower, Manager nor Operating Lessee (i) is involved in or, to the Best of Borrower's Knowledge, threatened with any material labor dispute, material grievance or litigation relating to labor matters involving any employees and other laborers at the Property, including, without limitation, violation of any federal, state or local labor, safety or employment laws (domestic or foreign) and/or charges of unfair labor practices or discrimination complaints, (ii) to the Best of Borrower's Knowledge, has engaged with respect to the Property, in any unfair labor practices within the meaning of the National Labor Relations Act or the Railway Labor Act, or (iii) is a party to, or bound by, any existing collective bargaining agreement or union contract with respect to employees and other laborers at the Property.

4.1.38 Brokers . Neither Borrower nor, to the Best of Borrower's Knowledge, Lender has dealt with any broker or finder with respect to the loan transactions contemplated by the Loan Documents and neither party has done any acts, had any negotiations or conversations, or made any agreements or promises which will in any way create or give rise to any obligation or liability for the payment by either party of any brokerage fee, charge, commission or other compensation to any Person with respect to the transactions contemplated by the Loan Documents. Borrower covenants and agrees that it shall pay as and when due any and all brokerage fees, charges, commissions or other compensation or reimbursement due to any broker of Borrower with respect to the transactions contemplated by the Loan Documents. Borrower and Lender shall each indemnify and hold harmless the other from and against any

loss, liability, cost or expense, including any judgments, attorneys' fees, or costs of appeal, incurred by the other party and arising out of or relating to any claim for brokerage commissions or finder's fees alleged to be due as a result of the indemnifying party's agreements or actions. The provisions of this Section 4.1.38 shall survive the expiration and termination of this Agreement and the payment of the Indebtedness.

4.1.39 No Other Debt . Borrower has not borrowed or received debt financing that has not heretofore or contemporaneously herewith been repaid in full, other than the Permitted Debt.

4.1.40 Taxpayer Identification Number . Borrower's Federal taxpayer identification number is 20-2519878.

4.1.41 Compliance with Anti-Terrorism , Embargo and Anti-Money Laundering Laws . (i) None of Borrower or any Person who owns any equity interest in or Controls Borrower or, to the Best of Borrower's Knowledge, Sponsor or Ultimate Equity Owners, currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and Borrower has implemented procedures to ensure that no Person who now or hereafter owns any equity interest in Borrower, Ultimate Equity Owners or Sponsor is a Prohibited Person or Controlled by a Prohibited Person, and (ii) none of Borrower, Ultimate Equity Owners or Sponsor is in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time.

4.1.42 Knowledge Qualifications . Borrower represents that Ryan Bowie and Cory Warning are in a position to have meaningful knowledge with respect to the matters set forth in the Loan Documents which have been qualified to the knowledge of such Persons.

4.1.43 Leases . Borrower represents that it has heretofore delivered to Lender true and complete copies of all Leases and any and all amendments or modifications thereof.

4.1.44 FF&E . Manager is reserving for FF&E on a monthly basis not less than an amount equal to four percent (4%) of adjusted gross revenues with respect to the Property; such reserves are maintained in the Manager FF&E Reserve Account (subject to disbursements therefrom as permitted by the Management Agreement).

4.1.45 Survival of Representations . Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall be deemed given and made as of the date of the funding of the Loan and survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower or Sponsor unless a longer survival period is expressly stated in a Loan Document with respect to a specific representation or warranty, in which case, for such longer period. All representations, warranties, covenants

and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

V. BORROWER COVENANTS

Section 5.1 Affirmative Covenants . From the Closing Date and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of this Agreement and the Security Instrument in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender to comply with and to cause Operating Lessee to comply with, the following covenants, and in such connection, references in this Article V to Borrower shall alternatively mean Operating Lessee, as the context may require:

5.1.1 Performance by Borrower . Borrower shall observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, in accordance with the provisions of each Loan Document, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower, as applicable, without the prior written consent of Lender.

5.1.2 Existence; Compliance with Legal Requirements; Insurance . Subject to Borrower's right of contest pursuant to Section 7.3 , Borrower shall comply and cause the Property to be in compliance with all Legal Requirements applicable to the Borrower, Manager and the Property and the uses permitted upon the Property. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises necessary to comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall not knowingly permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, knowingly permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all material franchises and trade names and preserve all the remainder of its property used in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully set forth in the Security Instrument. Borrower shall keep the Property insured at all times to such extent and against such risks, and maintain liability and such other insurance, as set forth in this Agreement.

5.1.3 Litigation . Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower which, if determined adversely to Borrower, would have a Material Adverse Effect.

5.1.4 Single Purpose Entity . (a) Borrower shall remain a Single Purpose Entity.

(b) Except as permitted by the Loan Documents, Borrower shall continue to maintain its own deposit account or accounts, separate from those of any Affiliate, with commercial banking institutions. None of the funds of Borrower will be commingled with the funds of any other Affiliate.

(c) To the extent that Borrower shares the same officers or other employees as any of its Affiliates, the salaries of and the expenses related to providing benefits to such officers and other employees shall be fairly allocated among such entities, and each such entity shall bear its fair share of the salary and benefit costs associated with all such common officers and employees.

(d) To the extent that Borrower jointly contracts with any of its Affiliates to do business with vendors or service providers or to share overhead expenses, the costs incurred in so doing shall be allocated fairly among such entities, and each such entity shall bear its fair share of such costs. To the extent that Borrower contracts or does business with vendors or service providers where the goods and services provided are partially for the benefit of any other Person, the costs incurred in so doing shall be fairly allocated to or among such entities for whose benefit the goods and services are provided, and each such entity shall bear its fair share of such costs. All material transactions between (or among) Borrower and any of its Affiliates shall be conducted on substantially the same terms (or on more favorable terms for Borrower) as would be conducted with third parties.

(e) To the extent that Borrower or any of its Affiliates have offices in the same location, there shall be a fair and appropriate allocation of overhead costs among them, and each such entity shall bear its fair share of such expenses.

(f) Borrower shall conduct its affairs strictly in accordance with its organizational documents, and observe all necessary, appropriate and customary corporate, limited liability company or partnership formalities, as applicable, including, but not limited to, obtaining any and all consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, without limitation, payroll and intercompany transaction accounts.

(g) In addition, Borrower shall: (i) maintain books and records separate from those of any other Person; (ii) maintain its assets in such a manner that it is not more costly or difficult to segregate, identify or ascertain such assets; (iii) hold regular meetings of its board of directors, shareholders, partners or members, as the case may be, and observe all other corporate, partnership or limited liability company, as the case may be, formalities; (iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; (v) prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group; (vi) transact all business with its Affiliates on an arm's-length basis and pursuant to enforceable agreements; (vii) conduct business in its name and use separate stationery, invoices and checks; (viii) not commingle its assets or funds with those of any other Person; and (ix) not assume, guarantee or pay the debts or obligations of any other Person (however the presentation of combined or consolidated financial condition or results of operation for purposes of financial statements prepared for the ultimate equity owners of multiple Single Purpose Entities shall be allowed).

5.1.5 Consents . If Borrower is a corporation, the board of directors of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including the Independent Directors, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents). If Borrower is a limited liability company, (a) if such Person is managed by a board of managers, the board of managers of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of managers unless all of the managers, including the Independent Managers, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents), (b) if such Person is not managed by a board of managers, the members of such Person may not take any action requiring the affirmative vote of 100% of the members of such Person unless all of the members, including the Independent Members, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents). An affirmative vote of 100% of the directors, board of managers or members, as applicable, including without limitation the Independent Directors, of Borrower shall be required to (i) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings or to authorize Borrower to do so or (ii) file an involuntary bankruptcy petition against any Close Affiliate. Furthermore, Borrower's formation documents shall expressly state that for so long as the Loan is outstanding, Borrower shall not be permitted to (i) dissolve, liquidate, consolidate, merge or sell all or substantially all of Borrower's assets other than in connection with the repayment of the Loan or (ii) engage in any other business activity and such restrictions shall not be modified or violated for so long as the Loan is outstanding.

5.1.6 Access to Property . Borrower shall permit agents, representatives and employees of Lender and the Rating Agencies to inspect the Property or any part thereof during normal business hours on Business Days upon reasonable advance notice.

5.1.7 Notice of Default . Borrower shall promptly advise Lender (a) of any event or condition that has or is likely to have a Material Adverse Effect and (b) of the occurrence of any Default or Event of Default of which Borrower has knowledge.

5.1.8 Cooperate in Legal Proceedings . Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which would reasonably be expected to affect in any material adverse way the rights of Lender hereunder or under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings which may have a Material Adverse Effect.

5.1.9 Perform Loan Documents . Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required, under the Loan Documents executed and delivered by, or applicable to, Borrower.

5.1.10 Insurance . (a) Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any expenses incurred in connection therewith (including reasonable attorneys' fees and disbursements) out of such Proceeds.

(b) Borrower shall comply with all Insurance Requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by any Insurance Requirement, or would invalidate insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to Section 6.1 .

5.1.11 Further Assurances; Separate Notes . (a) Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement and the other Loan Documents and any security interest created or purported to be created thereunder, to protect and further the validity, priority and enforceability of this Agreement and the other Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder. At any time after the Closing Date, Borrower agrees that it shall, upon request, reasonably cooperate with Lender in connection with any request by Lender to reallocate the LIBOR Margin among the Notes or to sever the Note into two (2) or more separate substitute or component notes in an aggregate principal amount equal to the Principal Amount and to reapportion the Loan among such separate substitute notes, including, without limitation, by executing and delivering to Lender new substitute or component notes to replace the Note, amendments to or replacements of existing Loan Documents to reflect such severance and/or Opinions of Counsel with respect to such substitute or component notes, amendments and/or replacements, provided that Borrower shall bear no costs or expenses in connection therewith (other than administrative costs and expenses of Borrower and legal fees of counsel to the Borrower and Sponsor), and the holders of such substitute or component notes shall designate a lead lender or agent for such holders to whom Borrower may direct all communications with respect to the Loan. Any such substitute or component notes may have varying principal amounts and economic terms, provided , however , that (i) the maturity date of any such substitute or component notes shall be the same as the scheduled Maturity Date of the Note immediately prior to the issuance of such substitute notes, (ii) the substitute notes shall provide for amortization of the Principal Amount on a weighted average basis over a period not less than the amortization period provided under the Note, if any, immediately prior to the issuance of the substitute notes, (iii) the weighted average LIBOR Margin for the term of the substitute notes shall not exceed the LIBOR Margin under the Note immediately prior to the issuance of such substitute notes; and (iv) the economics of the Loan, taken as a whole, shall not change in a manner which is adverse to Borrower. Upon the occurrence and during the continuance of an Event of Default, Lender may apply payment of all sums due under such substitute notes in such order and priority as Lender shall elect in its sole and absolute discretion.

(b) No Securitization shall occur prior to April 9, 2007. Borrower further agrees that if, in connection with the Securitization, it is determined by the Rating Agencies that a portion of the Securitization would not receive an “investment grade” rating unless the principal amount of the Loan were to be decreased and, as a result, the principal amount of the

Loan is decreased, then the Borrower shall take all actions as are necessary to effect the "resizing", including the reallocation of the LIBOR Margin of the Loan, and Borrower shall execute and deliver any and all necessary amendments or modifications to the Loan Documents. In connection with the foregoing, Borrower agrees, at Lender's sole cost and expense other than with respect to (1) Borrower's, Operating Lessee's, the Sponsor's, each Ultimate Equity Owners' and their Affiliate's counsel fees and (2) if the principal amount of the Loan is increased, an endorsement to the Title Policy reflecting an increase in the insured amount thereunder which shall be at Borrower's sole cost and expense, to execute and deliver such documents and other agreements reasonably required by Lender to "re-size" the Loan, including, without limitation, an amendment to this Agreement, the Note, the Security Instrument and the other Loan Documents. Borrower agrees to reimburse Lender for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Lender in connection with any "resizing" of the Loan. Notwithstanding the foregoing, Lender agrees that any "resizing" of the Loan shall not change the economics of the Loan in a manner which is adverse to Borrower.

(c) In addition, Borrower shall, at Borrower's sole cost and expense:

(i) furnish to Lender, to the extent not otherwise already furnished to Lender and reasonably acceptable to Lender, all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents;

(ii) execute and deliver, from time to time, such further instruments (including, without limitation, delivery of any financing statements under the UCC) as may be reasonably requested by Lender to confirm the Lien of the Security Instrument on any Building Equipment, Operating Asset or any Intangible;

(iii) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require;

(iv) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the carrying out of the terms and conditions of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time; and

(v) cause its New York counsel to re-issue the New York opinion delivered on the date hereof (in identical form and without updating) in favor of a trustee in a Securitization if such trustee is different that the trustee currently listed in such opinion.

5.1.12 Mortgage Taxes . Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender.

5.1.13 Operation . Borrower shall, and shall cause Manager to, (i) promptly perform and/or observe all of the covenants and agreements required to be

performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any "event of default" under the Management Agreement of which it is aware; (iii) enforce in a commercially reasonable manner the performance and observance of all of the covenants and agreements required to be performed and/or observed by the Manager under the Management Agreement.

5.1.14 Business and Operations . Borrower shall continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower shall qualify to do business and shall remain in good standing under the laws of the State in which the Property is located and as and to the extent required for the ownership, maintenance, management and operation of the Property.

5.1.15 Title to the Property . Borrower shall warrant and defend (a) its title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Security Instrument, the Assignment of Leases and this Agreement on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.16 Costs of Enforcement . In the event (a) that this Agreement or the Security Instrument is foreclosed upon in whole or in part or that this Agreement or the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any security agreement prior to or subsequent to this Agreement in which proceeding Lender is made a party, or a mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including reasonable attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.17 Estoppel Statement . (a) Borrower shall, from time to time, upon thirty (30) days' prior written request from Lender, execute, acknowledge and deliver to the Lender, an Officer's Certificate, stating that this Agreement and the other Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that this Agreement and the other Loan Documents are in full force and effect as modified and setting forth such modifications), stating the amount of accrued and unpaid interest and the outstanding principal amount of the Note and containing such other information, qualified to the Best of Borrower's Knowledge, with respect to the Borrower, the Property and the Loan as Lender shall reasonably request. The estoppel certificate shall also state either that no Default exists hereunder or, if any Default shall exist hereunder, specify such Default and the steps being taken to cure such Default.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender, within thirty (30) days of Lender's request, tenant estoppel certificates from each Tenant under any Material Lease entered into after the Closing Date in substantially the form and substance of the estoppel certificate set forth in **Exhibit G** provided that Borrower shall not be required to deliver such certificates more frequently than one time in any calendar year; provided , however , that there shall be no limit on the number of times Borrower may be required to obtain such certificates if a Default hereunder or under any of the Loan Documents has occurred and is continuing.

5.1.18 Loan Proceeds . Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4 .

5.1.19 No Joint Assessment . Borrower shall not suffer, permit or initiate the joint assessment of the Property (a) with any other real property constituting a tax lot separate from the Property and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.1.20 No Further Encumbrances . Borrower shall do, or cause to be done, all things necessary to keep and protect the Property and all portions thereof unencumbered from any Liens, easements or agreements granting rights in or restricting the use or development of the Property, except for (a) Permitted Encumbrances, (b) Liens permitted pursuant to the Loan Documents, (c) Liens for Impositions prior to the imposition of any interest, charges or expenses for the non-payment thereof and (d) any Liens permitted pursuant to Leases.

5.1.21 Leases . Borrower shall promptly after receipt thereof deliver to Lender a copy of any notice received with respect to any Material Lease claiming that Borrower is in default in the performance or observance of any of the material terms, covenants or conditions of any of the Material Leases, if such default is reasonably likely to have a Material Adverse Effect.

5.1.22 Article 8 "Opt In" Language . Each organizational document of Borrower and each of the other entities identified in Section 4.1.29 hereof shall be modified to include the language set forth on **Exhibit R** .

5.1.23 FF&E . Borrower shall cause Manager to reserve for FF&E on a monthly basis in accordance with the Management Agreement not less than an amount equal to four percent (4%) of adjusted gross revenues with respect to the Property, such reserves to be maintained in the Manager FF&E Reserve Account.

5.1.24 Condominium . (a) Borrower shall promptly and faithfully make all payments required under, and promptly and faithfully observe and perform all other terms, covenants and conditions on the part of Borrower to be observed and performed under (i) the Declaration; (ii) the by-laws of the Condominium; (iii) the rules and regulations promulgated by the Condominium Board or other executive body of the Condominium from time to time; and (iv) all other documents (A) creating the Unit, (B) related, in any material respect, to the

condominium characteristics of ownership of the Unit, to the ownership rights of Borrower in and to the Unit or to the relationship among owners of units in the Condominium, or governing the Unit, as the same may be amended (collectively, the **"Condominium Documents"**).

(b) Borrower shall pay in respect of the Unit on or before the expiration of any applicable grace or cure period all common expenses, charges and assessments, special or general, and other items for the payment of which Borrower is or may hereafter be responsible under the terms of the Condominium Documents (collectively, "**Condominium Charges**").

(c) Lender shall have the right, at reasonable times and upon reasonable notice, to inspect the records of the Condominium as provided in the Condominium Documents until such time as the Indebtedness is paid in full.

(d) Borrower will take all commercially reasonable action to obtain as promptly as possible, and forthwith upon receipt furnish to the Lender, upon Lender's request, a true and correct copy of: (i) each notice of any meeting of the association of owners of the Condominium; (ii) the minutes of any such meeting; (iii) any statement of financial condition of said association, audited or otherwise, furnished to or available to an owner; (iv) any statement showing the allocation of expenses and any other assessments against the owners; (v) any statements issued to Borrower calling for payment of expenses other than the regular monthly maintenance statements; and (vi) any notice of default given to Borrower in respect of the observance of the Condominium Documents, or any of them.

(e) In the event that Lender (or its nominee) shall acquire title to the Unit through the exercise of its rights and remedies under the Security Instrument or by way of a deed in lieu thereof, then Borrower hereby acknowledges and agrees that, subject to the provisions of the Condominium Documents, Lender (or its nominee) shall be solely entitled to remove any Condominium Board members appointed by Borrower representing the Unit and/or to designate replacement or substitute Condominium Board members representing the Unit.

(f) Borrower has delivered to Lender the executed Proxy on the date hereof. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right to exercise the power of attorney granted pursuant to the Proxy and exercise all rights, powers and remedies of Borrower as owner of the Unit pursuant to the Condominium Documents. The rights granted to Lender under the Proxy shall automatically terminate upon the payment of the Loan in full.

(g) Without the prior written consent of Lender (not to be unreasonably withheld), Borrower shall not vote as to any of the following matters upon which Borrower, as an "owner" under the provisions of the Condominium Documents, would or might be authorized to vote, any such vote without such consent being void and of no effect: (i) any subdivision of the Unit not otherwise permitted by the Declaration which would result in a partition of all or a part of the Property subject to the Declaration or have a material adverse effect on (A) the value of the Property, (B) the business operations or financial condition of Borrower, or (C) the ability of Borrower to repay the principal and interest on the Loan as it becomes due; (ii) the nature and amount of any insurance covering all or a part of the Condominium and the disposition of any proceeds thereof relating to the Property; the manner in which any condemnation or threat of

condemnation of all or a part of the Condominium (but only to the extent directly relating to the Property) shall be defended or settled and the disposition of any award or settlement in connection therewith; (iii) any amendment to the Condominium Documents which by its terms requires the consent of Lender and any removal of the Condominium from the provisions of the Condominium Act; (iv) subject to the obligations of the Borrower under the Condominium Documents, the creation of, or any change in, any private restrictive covenant, zoning ordinance, or other public or private restrictions, now or hereafter limiting or defining the uses which may be made of the Condominium or any part thereof; or (v) any relocation of the boundaries of the Units that would adversely affect the Unit. Borrower shall not, and shall not cause the Condominium to take any action inconsistent with the terms and conditions of this Agreement, the Security Instrument or any other Loan Document which would have a material adverse effect on (A) the value of the Property, (B) the business operations or financial condition of Borrower, or (C) the ability of Borrower to repay the principal and interest on the Loan as it becomes due.

Section 5.2 Negative Covenants . From the Closing Date until payment and performance in full of all Obligations of Borrower under the Loan Documents or the earlier release of the Lien of this Agreement or the Security Instrument in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that it will not do (and will not permit Operating Lessee to do), or permit to be done, directly or indirectly, any of the following (and in such connection, references in this Article V to Borrower shall alternatively mean Operating Lessee, as the context may require):

5.2.1 Incur Debt . Incur, create or assume (or permit Operating Lessee to incur, create or assume) any Indebtedness other than Permitted Debt or Transfer all or any part of the Property or any interest therein, except as permitted in the Loan Documents;

5.2.2 Encumbrances . Except as permitted pursuant to Article VIII , (a) incur, create or assume or permit the incurrence, creation or assumption of any Indebtedness other than Permitted Debt secured by an interest in Borrower or Operating Lessee and (b) Transfer or permit the Transfer of any interest in such Persons;

5.2.3 Engage in Different Business . Engage, or permit Operating Lessee to engage, directly or indirectly, in any business other than that of entering into this Agreement and the other Loan Documents to which Borrower is a party and the use, ownership, management, leasing, renovation, financing, development, operation and maintenance of the Property and activities related thereto;

5.2.4 Make Advances . Make or permit Operating Lessee to make advances or make loans to any Person, or hold any investments, except as expressly permitted pursuant to the terms of this Agreement or any other Loan Document;

5.2.5 Partition . Partition or permit the partition of the Property, except as permitted hereunder;

5.2.6 Commingle . Commingle its assets or permit Operating Lessee to commingle its assets with the assets of any of Borrower's and/or Operating Lessee's Affiliates except as permitted by the definition of "Single Purpose Entity";

5.2.7 Guarantee Obligations . Guarantee or permit Operating Lessee to guarantee any obligations of any Person;

5.2.8 Transfer Assets . Transfer or permit Operating Lessee to transfer any asset other than in the ordinary course of business or Transfer any interest in the Property except as may be permitted hereby or in the other Loan Documents;

5.2.9 Amend Organizational Documents . Amend or modify any of its or Operating Lessee's organizational documents without Lender's consent, other than in connection with any Transfer permitted pursuant to Article VIII or to reflect any change in capital accounts, contributions, distributions, allocations or other provisions that do not and could not reasonably be expected to have a Material Adverse Effect and provided that each such Person remain a Single Purpose Entity;

5.2.10 Dissolve . Dissolve, wind-up, terminate, liquidate, merge with or consolidate into another Person, except following or simultaneously with a repayment of the Loan in full or as expressly permitted pursuant to this Agreement;

5.2.11 Bankruptcy . (i) File (or permit Operating Lessee to file) a bankruptcy or insolvency petition or otherwise institute insolvency proceedings, (ii) dissolve, liquidate, consolidate, merge or sell all or substantially all of Borrower's assets other than in connection with the repayment of the Loan, (iii) engage (or permit Operating Lessee to engage) in any other business activity or (iv) file or solicit the filing (or permit Operating Lessee to file or solicit the filing) of an involuntary bankruptcy petition against Borrower, or Operating Lessee, or any Close Affiliate of any such Person without obtaining the prior consent of all of the directors of Borrower, including, without limitation, the Independent Directors;

5.2.12 ERISA . Engage in any activity that would subject it to regulation under ERISA or qualify it as an "employee benefit plan" (within the meaning of Section 3(3) of ERISA) to which ERISA applies and Borrower's assets do not and will not constitute plan assets within the meaning of 29 C.F.R. Section 2510.3-101;

5.2.13 Distributions . From and after the occurrence and during the continuance of an Event of Default, make (or permit Operating Lessee to make) any distributions to or for the benefit of any of Borrower's, or Operating Lessee's shareholders, partners or members, as the case may be, or its or their Affiliates;

5.2.14 Manager . (a) Borrower represents, warrants and covenants on behalf of itself and Operating Lessee that the Property shall at all times be managed by an Acceptable Manager pursuant to an Acceptable Management Agreement.

(b) Notwithstanding any provision to the contrary contained herein or in the other Loan Documents, except as provided in this Section 5.2.14 or in connection with a release made in accordance with Section 2.3.4 , Borrower may not amend, modify, supplement, alter or waive any right under the Management Agreement (or permit any such action) without the receipt of a Rating Agency Confirmation. Without the receipt of a Rating Agency Confirmation, Borrower shall be permitted to make any nonmaterial modification, change, supplement, alteration or amendment to the Management Agreement and to waive any nonmaterial rights

thereunder, provided that no such modification, change, supplement, alteration, amendment or waiver shall affect the cash management procedures set forth in the Management Agreement or the Loan Documents, decrease the cash flow of the Property, adversely affect the marketability of the Property, change the definitions of "default" or "event of default," change the definitions of "operating expense" or words of similar meaning to add additional items to such definitions, change any definitions or provisions so as to reduce the payments due the Borrower thereunder, change the timing of remittances to the Borrower thereunder, increase or decrease reserve requirements, change the term of the Management Agreement or increase any Management Fees payable under the Management Agreement.

(c) Borrower may enter into a new Management Agreement with an Acceptable Manager upon receipt of a Rating Agency Confirmation with respect to the Management Agreement and delivery of an acceptable Non-Consolidation Opinion covering such replacement manager if such Person (i) is not covered by the Non-Consolidation Opinion or an Additional Non-Consolidation Opinion, and (ii) is an Affiliate of Borrower.

(d) Notwithstanding anything contained herein (i) approvals will not be required to enter into management agreements for Retail/Service Facilities that are not expected to have a Material Adverse Effect, and (ii) amendments to the Management Agreement relating to the Retail/Service Facilities will be deemed to be nonmaterial modifications permitted by Section 5.2.14(b) provided they are not expected to have a Material Adverse Effect.

5.2.15 Management Fee . Borrower may not, without the prior written consent of Lender (which may be withheld in its sole and absolute discretion) take or permit to be taken any action that would increase the percentage amount of the Management Fee, or add a new type of fee (other than a "Group Services Expense" as permitted by Section 5.2.14 above) payable to Manager relating to the Property, including, without limitation, the Management Fee.

5.2.16 Operating Lease . Without the prior written consent of Lender surrender or terminate the Operating Lease unless the other party thereto is in material default and the termination of such agreement would be commercially reasonable.

5.2.17 Modify Account Agreement . Without the prior consent of Lender, which shall not be unreasonably withheld, delayed or conditioned (and if a Securitization shall have occurred, a Rating Agency Confirmation obtained by Borrower), Borrower shall not execute any modification to the Account Agreement;

5.2.18 Zoning Reclassification . Except as contemplated by Section 2.3.4 , without the prior written consent of Lender, which consent shall not be unreasonably withheld, (a) initiate or consent to any zoning reclassification of any portion of the Property, (b) seek any variance under any existing zoning ordinance that would result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, or (c) allow any portion of the Property to be used in any manner that could result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation;

5.2.19 Intentionally Deleted .

5.2.20 Debt Cancellation . Cancel or otherwise forgive or release any material claim or debt owed to it by any Person, except for adequate consideration or in the ordinary course of its business and except for termination of a Lease as permitted by Section 8.8 ;

5.2.21 Misapplication of Funds . Distribute any revenue from the Property or any Proceeds in violation of the provisions of this Agreement, fail to remit amounts to the Collection Accounts or Holding Account, as applicable, as required by Section 3.1 , misappropriate any security deposit or portion thereof or apply the proceeds of the Loan in violation of Section 2.1.4 ; or

5.2.22 Single-Purpose Entity . Fail to be (or permit Operating Lessee) to fail to be a Single-Purpose Entity or take or suffer any action or inaction the result of which would be to cause such Person to cease to be a Single-Purpose Entity.

VI. INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

Section 6.1 Insurance Coverage Requirements . Borrower shall, at its sole cost and expense, during the term of this Agreement, comply with the following insurance obligations:

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall keep or cause to be kept the Property insured and obtain and maintain policies of insurance insuring against loss or damage by standard perils included within the classification "All Risks of Physical Loss." Such insurance (i) shall be in an aggregate amount equal to the then full replacement cost of the Property and the Improvements (without deduction for physical depreciation), or such lesser amounts approved by Lender in its sole discretion (or after a Securitization, upon receipt of a Rating Agency Confirmation), and (ii) shall have deductibles no greater than $500,000 (as escalated by the CPI Increase) (or, with respect to windstorm insurance, deductibles no greater than 10% of the full replacement cost of the Property. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" with a waiver of depreciation.

(b) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall also obtain and maintain or cause to be obtained and maintained the following policies of insurance:

(i) Flood insurance if any part of the Property is located in an area identified by the Federal Emergency Management Agency as an area federally designated a "100 year flood plain" (an " **Affected Property**" and collectively the "**Affected Properties** ") and (A) flood insurance is generally available at reasonable premiums and in such amount as generally required by institutional lenders for similar properties or (B) if not so available from a private carrier, from the federal government at commercially reasonable premiums to the extent available. In either case, the flood insurance shall be in an amount at least equal to the aggregate principal amount of the Loan outstanding from time to time or the maximum limit of coverage available with respect to the Property under said program, whichever is less; provided, however, notwithstanding the foregoing, Borrower hereby agrees to maintain at all times flood insurance in an amount equal to at least $50,000,000 in the aggregate and shared with all other properties covered by the blanket policy (if any) for the Affected Properties;

(ii) Commercial general liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages and containing minimum limits per occurrence of $1,000,000 with a $2,000,000 general aggregate for any policy year. In addition, at least $50,000,000 excess and/or umbrella liability insurance shall be obtained and maintained for claims, including legal liability imposed upon Borrower and all related court costs and attorneys' fees and disbursements;

(iii) Rental loss and/or business interruption insurance in an amount sufficient to avoid any co-insurance penalty and equal to the greater of (A) the estimated gross revenues from the operation of the Property (including (x) the total payable under the Leases and all Rents and (y) the total of all other amounts to be received by Borrower or third parties that are the legal obligation of the Tenants), net of non-recurring expenses, for a period of up to the next succeeding eighteen (18) months, or (B) the projected Operating Expenses (including debt service) for the maintenance and operation of the Property for a period of up to the next succeeding eighteen (18) months as the same may be reduced or increased from time to time due to changes in such Operating Expenses and shall include an endorsement providing 12 months extended period of indemnity. The amount of such insurance shall be increased from time to time as and when the Rents increase or the estimates of (or the actual) gross revenue, as may be applicable, increases or decreases to the extent Rents or the estimates of gross revenue decrease;

(iv) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in any of the Improvements (without exclusion for explosions) and insurance against loss of occupancy or use arising from any breakdown, in such amounts as are generally available at reasonable premiums and are generally required by institutional lenders for properties comparable to the Property;

(v) Worker's compensation insurance with respect to all employees of Borrower as and to the extent required by any Governmental Authority or Legal Requirement and employer's liability coverage of at least $2,000,000 which is scheduled to the excess and/or umbrella liability insurance as referenced in clause (ii) above;

(vi) During any period of repair or restoration, completed value (non-reporting) builder's "all risk" insurance in an amount equal to not less than the full insurable value of the Property against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as Lender may request, in form and substance acceptable to Lender;

(vii) Coverage to compensate for the cost of demolition and the increased cost of construction for the Property;

(viii) Intentionally Deleted;

(ix) Windstorm insurance in an amount equal to the probable maximum loss (as determined by Lender in its sole discretion) of the Property per occurrence and in the aggregate and shared with other properties covered by the blanket insurance (if any) provided , that any credit enhancement proposed to be provided by or on behalf of Borrower in connection with the deductible on such windstorm insurance shall be subject to the prior receipt of a Rating Agency Confirmation;

(x) Law and ordinance insurance coverage in an amount no less than that set forth in the insurance policies covering the Property as of the date hereof;

(xi) Provided that insurance coverage relating to the acts of terrorist groups or individuals is either (a) available at commercially reasonable rates, (b) commonly obtained by owners of commercial properties in the same geographic area and which are similar to the Property or (c) maintained for another hotel property in the same geographic area which is at least 51% owned directly or indirectly by Strategic Hotel Funding, LLC, Borrower shall be required to carry terrorism insurance throughout the term of the Loan (including any extension terms) in an amount equal to, with respect to "certified" and "non-certified" acts of terrorism, an amount equal to the Terrorism Coverage Required Amount (per occurrence) (collectively, the "**Initial Terrorism Coverage Amount** "). Lender agrees that terrorism insurance coverage may be provided under a blanket policy that is acceptable to Lender. Notwithstanding the foregoing, Borrower agrees at all times to maintain terrorism insurance coverage throughout the term of the Loan (including extension terms) in an amount not less than that which can be purchased for a sum equal to $130,000 (the "**Maximum Premium Amount**") in any single policy year, provided, that under no circumstance shall terrorism coverage in excess of the Initial Terrorism Coverage Amount (per occurrence) of coverage be required hereunder;

(xii) Such other insurance as may from time to time be reasonably required by Lender in order to protect its interests; and

(xiii) All insurance required under this Section 6.1 may be provided by or on behalf of Borrower in a blanket policy covering the Property and other properties.

(c) All policies of insurance (the "**Policies**") required pursuant to this Section 6.1 shall be issued by companies approved by Lender and licensed or authorized to do business in the state where the Property is located. Further, unless otherwise approved by Lender in its reasonable discretion (prior to a Securitization) and the Rating Agencies in writing, the issuer(s) of the Policies required under this Section 6.1 shall have a claims paying ability rating of "A" or better by Standard & Poor's and "Aa2" or better by Moody's, except that the issuer(s) of the Policies required under Section 6.1(b)(viii) hereof shall have a claims paying ability rating of "A" or better by Standard & Poor's and "A2" or better by Moody's; provided, however, if the insurance provided hereunder is procured by a syndication of more then five (5) insurers then the foregoing requirements shall not be violated if at least (i) sixty percent (60%) of the coverage is with carriers having a claims paying ability rating of "A" or better by Standard & Poor's and "Aa2" or better by Moody's and (ii) each other carrier providing coverage has a claims paying ability rating of "BBB-" or better by Standard & Poor's and Fitch Ratings and "Baa3" or better by Moody's. The Policies (i) shall name Lender (or an agent on Lender's behalf) and its successors and/or assigns as their interest may appear as an additional insured or

as a loss payee (except that in the case of general liability insurance, Lender (or an agent on Lender's behalf) shall be named an additional insured and not a loss payee), and in addition, any Policies of the Condominium Association shall name the Lender as an insured or additional insured, as its interest may appear; (ii) shall contain a Non-Contributory Standard Lender Clause and, except with respect to general liability insurance, a Lender's Loss Payable Endorsement, or their equivalents, naming Lender as the Person to which all payments made by such insurance company shall be paid; (iii) shall include effective waivers by the insurer of all claims for insurance premiums against all loss payees, additional insureds and named insureds (other than Borrower) and all rights of subrogation against any loss payee, additional insured or named insured; (iv) shall be assigned to Lender; (v) except as otherwise provided above, shall be subject to a deductible, if any, not greater in any material respect than the deductible for such coverage on the date hereof; (vi) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest, including endorsements providing that neither Borrower, Lender nor any other party shall be a Contributor-insurer (except deductibles) under said Policies and that no material modification, reduction, cancellation or termination in amount of, or material change (other than an increase) in, coverage of any of the Policies shall be effective until at least thirty (30) days after receipt by each named insured, additional insured and loss payee of written notice thereof or ten (10) days after receipt of such notice with respect to nonpayment of premium; (vii) shall permit Lender to pay the premiums and continue any insurance upon failure of Borrower to pay premiums when due, upon the insolvency of Borrower or through foreclosure or other transfer of title to the Property (it being understood that Borrower's rights to coverage under such policies may not be assignable without the consent of the insurer); and (viii) shall provide that any proceeds shall be payable to Lender and that the insurance shall not be impaired or invalidated by virtue of (A) any act, failure to act, negligence of, or violation of declarations, warranties or conditions contained in such policy by any Borrower, Lender or any other named insured, additional insured or loss payee, except for the willful misconduct of Lender knowingly in violation of the conditions of such policy, (B) the occupation, use, operation or maintenance of the Property for purposes more hazardous than permitted by the terms of the Policy, (C) any foreclosure or other proceeding or notice of sale relating to the Property, or (D) any change in the possession of the Property without a change in the identity of the holder of actual title to the Property (provided that with respect to items (C) and (D), any notice requirements of the applicable Policies are satisfied). Notwithstanding the foregoing, for purposes of this Section 6.1 hereof, Lender hereby approves the existing blanket insurance policies.

(d) **Insurance Premiums; Certificates of Insurance.**

(i) Borrower shall pay the premiums for such Policies (the "**Insurance Premiums**") as the same become due and payable and shall furnish to Lender the receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided , however , that Borrower are not required to furnish such evidence of payment to Lender if such Insurance Premiums are to be paid by Lender pursuant to the terms of this Agreement). Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested in writing by Lender or as may be requested in writing by the Rating Agencies, (except with respect to the Terrorism Insurance), taking into consideration changes in liability laws, changes in prudent customs and practices, and the like. In the event Borrower satisfy the requirements under this Section 6.1 through the use of a Policy covering properties in

addition to the Property (a "**Blanket Policy**"), then (unless such policy is provided in substantially the same manner as it is as of the date hereof), Borrower shall provide evidence satisfactory to Lender that the Insurance Premiums for the Property is separately allocated under such Policy to the Property and that payment of such allocated amount (A) shall maintain the effectiveness of such Policy as to the Property and (B) shall otherwise provide the same protection as would a separate policy that complies with the terms of this Agreement as to the Property, notwithstanding the failure of payment of any other portion of the insurance premiums. If no such allocation is available, Lender shall have the right to increase the amount required to be deposited into the Insurance Reserve Account in an amount sufficient to purchase a non-blanket Policy covering the Property from insurance companies which qualify under this Agreement.

(ii) Borrower shall deliver to Lender on or prior to the Closing Date certificates setting forth in reasonable detail the material terms (including any applicable notice requirements) of all Policies from the respective insurance companies (or their authorized agents) that issued the Policies, including that such Policies may not be canceled or modified in any material respect without thirty (30) days' prior notice to Lender, or ten (10) days' notice with respect to nonpayment of premium. Borrower shall deliver to Lender, concurrently with each change in any Policy, a certificate with respect to such changed Policy certified by the insurance company issuing that Policy, in substantially the same form and containing substantially the same information as the certificates required to be delivered by Borrower pursuant to the first sentence of this clause (d)(ii) and stating that all premiums then due thereon have been paid to the applicable insurers and that the same are in full force and effect (or if such certificate and/or other information described in clause (d)(ii) shall not be obtainable by Borrower, Borrower may deliver an Officer's Certificate to such effect in lieu thereof).

(e) **Renewal and Replacement of Policies .**

(i) Not less than three (3) Business Days prior to the expiration, termination or cancellation of any Policy, Borrower shall renew such policy or obtain a replacement policy or policies (or a binding commitment for such replacement policy or policies), which shall be effective no later than the date of the expiration, termination or cancellation of the previous policy, and shall deliver to Lender a certificate in respect of such policy or policies (A) containing the same information as the certificates required to be delivered by Borrower pursuant to clause (d)(ii) above, or a copy of the binding commitment for such policy or policies and (B) confirming that such policy complies with all requirements hereof.

(ii) If Borrower does not furnish to Lender the certificates as required under clause (e)(i) above, Lender may procure, but shall not be obligated to procure, such replacement policy or policies and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender for the cost of such Insurance Premiums promptly on demand.

(iii) Concurrently with the delivery of each replacement policy or a binding commitment for the same pursuant to this clause (e) , Borrower shall deliver to Lender a report or attestation from a duly licensed or authorized insurance broker or from the insurer, setting forth the particulars as to all insurance obtained by Borrower pursuant to this Section 6.1 and then in effect and stating that all Insurance Premiums then due thereon have been paid in full

to the applicable insurers, that such insurance policies are in full force and effect and that, in the opinion of such insurance broker or insurer, such insurance otherwise complies with the requirements of this Section 6.1 (or if such report shall not be available after Borrower shall have used reasonable efforts to provide the same, Borrower will deliver to Lender an Officer's Certificate containing the information to be provided in such report).

(f) **Separate Insurance .** Borrower will not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to this Section 6.1 unless such insurance complies with clause (c) above.

(g) **Securitization .** Following any Securitization, Borrower shall name any trustee, servicer or special servicer designated by Lender as a loss payee, and any trustee, servicer and special servicer as additional insureds, with respect to any Policy for which Lender is to be so named hereunder.

Section 6.2 Condemnation and Insurance Proceeds .

6.2.1 Right to Adjust . (a) If the Property is damaged or destroyed, in whole or in part in any material respect, by a Casualty, Borrower shall give prompt written notice thereof to Lender, generally describing the nature and extent of such Casualty. Following the occurrence of a Casualty, Borrower, regardless of whether proceeds are available, shall in a reasonably prompt manner proceed to restore, repair, replace or rebuild the Property to the extent practicable to be of at least equal value and of substantially the same character as prior to the Casualty, all in accordance with the terms hereof applicable to Alterations.

(b) Subject to clause (e) below, in the event of a Casualty which is not a Material Casualty, Borrower may settle and adjust such claim; provided that such adjustment is carried out in a competent and timely manner. In such case, Borrower is hereby authorized to collect and receipt for Lender any Proceeds.

(c) Subject to clause (e) below, in the event of a Casualty where the loss exceeds the Threshold Amount, Borrower may settle and adjust such claim only with the consent of Lender (which consent shall not be unreasonably withheld, delayed or conditioned) and Lender shall have the opportunity to participate, at Borrower's cost, in any such adjustments.

(d) Except as provided in clause (b) above, the proceeds of any Policy shall be due and payable solely to Lender and held and applied in accordance with the terms hereof (or, if mistakenly paid to the Borrower, shall be held in trust by the Borrower for the benefit of Lender and shall be paid over to Lender by the Borrower within two (2) Business Days of receipt).

(e) Notwithstanding the terms of clauses (a) and (b) above, Lender shall have the sole authority to adjust any claim with respect to a Casualty and to collect all Proceeds if an Event of Default shall have occurred and is continuing.

6.2.2 Right of the Borrower to Apply to Restoration . Notwithstanding anything contained herein to the contrary, (i) the provisions of the Condominium Documents with respect to insurance Proceeds or Condemnation Proceeds for the Restoration shall control in

the event of any conflict between the provisions of the Condominium Documents and the provisions of this Agreement or any of the other Loan Documents and (ii) Lender hereby agrees to apply the insurance Proceeds and Condemnation Proceeds to the Restoration to the extent required by, and in accordance with, the Condominium Documents.

In the event of (a) a Casualty that does not constitute a Material Casualty, or (b) a Condemnation that does not constitute a Material Condemnation, Lender shall permit the application of the Proceeds (after reimbursement of any expenses incurred by Lender) to reimburse or pay Borrower for the cost of restoring, repairing, replacing or rebuilding or otherwise curing title defects at the Property (the "**Restoration**"), in the manner required hereby, provided and on the condition that (1) no Event of Default shall have occurred and be then continuing and (2) in the reasonable judgment of Lender:

(i) the Property can be restored to an economic unit not materially less valuable (taking into account the effect of the termination of any Leases and the proceeds of any rental loss or business interruption insurance which the Borrower receives or is entitled to receive, in each case, due to such Casualty or Condemnation) and not materially less useful than the same was prior to the Casualty or Condemnation,

(ii) the Property, after such Restoration and stabilization, will adequately secure the outstanding balance of the Loan,

(iii) the Restoration can be completed by the earliest to occur of:

(A) the date on which the business interruption insurance carried by Borrower with respect to the Property shall expire;

(B) the 180th day prior to the Maturity Date (taking into account any extension thereof), and

(C) with respect to a Casualty, the expiration of the payment period on the rental loss or business interruption insurance coverage in respect of such Casualty; and

(iv) after receiving reasonably satisfactory evidence to such effect, during the period of the Restoration, the sum of (A) income derived from the Property, plus (B) proceeds of rental loss insurance or business interruption insurance, if any, payable together with such other monies as Borrower may irrevocably make available for the Restoration, will equal or exceed the sum of (x) 105% of Operating Expenses and (y) the Debt Service.

Notwithstanding the foregoing, if any of the conditions set forth in sub-clauses (1) and (2) of the proviso in this Section 6.2.2 is not satisfied, then, unless Lender shall otherwise elect, at its sole option, the Proceeds shall be applied in the following order of priority: (A) first, to prepay the principal of the Loan; (B) second, to pay the amount of (1) all accrued and unpaid interest in respect of the Principal Amount of the Indebtedness so prepaid through the date which is the final day of the Interest Period in which such prepayment is made (including, if an Event of Default has occurred and is then continuing, interest owed at the Default Rate), and (2) all other sums (excluding any Prepayment Fee) then due and owing under the Loan Documents and

(C) third, to reimburse Lender for any fees and expenses of Lender incurred in connection therewith (it being agreed that, upon satisfaction in full of the entitlements under clauses (A), (B) and (C) of this sentence, Borrower shall be entitled to receive a release of the Lien of the Security Instrument and the other Loan Documents with respect to the Property in accordance with and subject to the terms of Section 2.3.3 hereof and any surplus Proceeds shall be paid over to the Borrower or as the Borrower directs. Notwithstanding the foregoing, or anything else to the contrary contained herein, all Proceeds with respect to the insurance determined pursuant to Section 6.1.4 shall be deposited directly into the Collection Account and shall be disbursed in accordance with Article III as if such Proceeds are applied in the manner amounts received from the Manager are applied

6.2.3 Material Casualty or Condemnation and Lender's Right to Apply Proceeds . In the event of a Material Casualty or a Material Condemnation, then Lender shall have the option to (i) apply the Proceeds hereof in the following order of priority: (A) first, to prepay the principal of the Loan; (B) second, to pay the amount of (1) all accrued and unpaid interest in respect of the Principal Amount of the Indebtedness so prepaid through the date which is the final day of the Interest Period in which such prepayment is made (including, if an Event of Default has occurred and is then continuing, interest owed at the Default Rate), and (2) all other sums (excluding any Prepayment Fee) then due and owing under the Loan Documents; (C) third, to reimburse Lender for any fees and expenses of Lender incurred in connection therewith; and (D) fourth, it being agreed that, upon satisfaction in full of the entitlements under clauses (A), (B) and (C) of this sentence, Borrower shall be entitled to receive the balance of the Proceeds, if any and a release of the Lien of the Security Instrument and the other Loan Documents with respect to the Property in accordance with and subject to the terms of Section 2.3.3 hereof), or (ii) make such Proceeds available to reimburse Borrower for the cost of any Restoration in the manner set forth below in Section 6.2.4 hereof provided , however , that if the Management Agreement provides that the Operating Lessee or Borrower is required to use the Proceeds to restore the Property and Operating Lessee or Borrower does not have the right to terminate the Management Agreement pursuant to the terms of the Management Agreement as a result of such Casualty or Condemnation or otherwise, then the Lender shall be obligated to make such Proceeds available to the Borrower for the Restoration of such Property pursuant to Section 6.2.4 below. Notwithstanding anything to the contrary contained herein, in the event of a Material Casualty or a Material Condemnation, where Borrower cannot restore, repair, replace or rebuild the Property to be of at least substantially equal value and of substantially the same character as prior to the Material Casualty or Material Condemnation or title defect because the Property is a legally non-conforming use or as a result of any other Legal Requirement, Borrower hereby agrees that Lender may apply the Proceeds payable in connection therewith in accordance with clauses (A), (B) (C) and (D).

6.2.4 Manner of Restoration and Reimbursement . If Borrower is entitled pursuant to Sections 6.2.2 or 6.2.3 above to reimbursement out of Proceeds (and the conditions specified therein shall have been satisfied), such Proceeds shall be disbursed on a monthly basis upon Lender being furnished with (i) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Lender may reasonably require and approve, and (ii) all plans and specifications for such Restoration, such plans and specifications to be approved by Lender prior to commencement of any work (such approval not to be

unreasonably withheld, delayed or conditioned). In addition, no payment made prior to the Final Completion of the Restoration (excluding punch-list items) shall exceed ninety percent (90%) of the aggregate value of the work performed from time to time; funds other than Proceeds shall be disbursed prior to disbursement of such Proceeds; and at all times, the undisbursed balance of such Proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the Restoration, free and clear of all Liens or claims for Lien. Prior to any disbursement, Lender shall have received evidence reasonably satisfactory to it of the estimated cost of completion of the Restoration (such estimate to be made by Borrower's architect or contractor and approved by Lender in its reasonable discretion), and Borrower shall have deposited with Lender Eligible Collateral in an amount equal to the excess (if any) of such estimated cost of completion over the net Proceeds. Any surplus which may remain out of Proceeds received pursuant to a Casualty after payment of such costs of Restoration shall be paid to the Borrower or as the Borrower directs. Any surplus which may remain out of Proceeds received pursuant to a Condemnation shall be paid to the Borrower or as the Borrower directs.

6.2.5 Condemnation . (a) Borrower shall promptly give Lender written notice of the actual commencement or written threat of commencement of any Condemnation and shall deliver to Lender copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Borrower, regardless of whether Proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with the terms hereof applicable to Alterations.

(b) Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any Proceeds in respect of a Condemnation and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Section. Provided no Event of Default has occurred and is continuing, (x) in the event of a Condemnation which is not a Material Condemnation, Borrower may settle and compromise such Proceeds; provided that the same is effected in a competent and timely manner, and (y) in the event of a Condemnation, where the loss exceeds the Threshold Amount, Borrower may settle and compromise the Proceeds only with the consent of Lender (which consent shall not be unreasonably withheld, delayed or conditioned) and Lender shall have the opportunity to participate, at Borrower' cost, in any litigation and settlement discussions in respect thereof. Notwithstanding any Condemnation by any public or quasi-public authority (including any transfer made in lieu of or in anticipation of such a Condemnation), Borrower shall continue to pay the Indebtedness at the time and in the manner provided for in the Note, this Agreement and the other Loan Documents, and the Indebtedness shall not be reduced unless and until any Proceeds shall have been actually received and applied by Lender to discharge the Indebtedness, pay required interest and pay any other required amounts, in each case, pursuant to the terms of Sections 6.2.2 or 6.2.3 above. Lender shall not be limited to the interest paid on the Proceeds by the condemning authority but shall be entitled to receive out of the Proceeds interest at the rate or rates provided in the Note. Borrower shall cause any Proceeds that are payable to Borrower to be paid directly to Lender to be held and applied in accordance with the terms hereof.

VII. IMPOSITIONS, OTHER CHARGES, LIENS AND OTHER ITEMS

Section 7.1 Impositions and Other Charges . Subject to the third sentence of this Section 7.1 , Borrower shall pay, or shall cause Operating Lessee to pay all Impositions now or hereafter levied or assessed or imposed against the Property or any part thereof prior to the imposition of any interest, charges or expenses for the non-payment thereof and shall pay all Other Charges on or before the date they are due. Subject to Borrower's right of contest set forth in Section 7.3 , as set forth in the next two sentences and provided that there are sufficient funds available in the Tax Reserve Account, Lender, on behalf of Borrower, shall pay all Impositions and Other Charges which are attributable to or affect the Property or Borrower, prior to the date such Impositions or Other Charges shall become delinquent or late charges may be imposed thereon, directly to the applicable taxing authority with respect thereto. Lender shall, or Lender shall direct the Cash Management Bank to, pay to the taxing authority such amounts to the extent funds in the Tax Reserve Account are sufficient to pay such Impositions. Nothing contained in this Agreement or the Security Instrument shall be construed to require Borrower to pay any tax, assessment, levy or charge imposed on Lender in the nature of a franchise, capital levy, estate, inheritance, succession, income or net revenue tax.

Section 7.2 No Liens . Subject to its right of contest set forth in Section 7.3 , Borrower shall at all times keep, or cause to be kept, the Property free from all Liens (other than Permitted Encumbrances) and shall pay when due and payable (or bond over) all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a Lien on the Property or any portion thereof and shall in any event cause the prompt, full and unconditional discharge of all Liens imposed on or against the Property or any portion thereof within forty-five (45) days after receiving written notice of the filing (whether from Lender, the lienor or any other Person) thereof. Borrower shall do or cause to be done, at the sole cost of Borrower, everything reasonably necessary to fully preserve the first priority of the Lien of the Security Instrument against the Property, subject to the Permitted Encumbrances. Upon the occurrence and during the continuance of an Event of Default with respect to its Obligations as set forth in this Article VII , Lender may (but shall not be obligated to) make such payment or discharge such Lien, and Borrower shall reimburse Lender within three (3) Business Days following demand for all such advances pursuant to Section 19.12 (together with interest thereon at the Default Rate).

Section 7.3 Contest . Nothing contained herein shall be deemed to require Borrower to pay, or cause to be paid, any Imposition or to satisfy any Lien, or to comply with any Legal Requirement or Insurance Requirement, so long as Borrower is in good faith, and by proper legal proceedings, where appropriate, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) Borrower shall keep Lender informed of the status of such contest at reasonable intervals, (iii) if neither Borrower nor Operating Lessee is providing security as provided in clause (vi) below, adequate reserves with respect thereto are maintained on Borrower's books in accordance with GAAP or in the Tax Reserve Account or Insurance Reserve Account, as applicable, (iv) either such contest operates to suspend collection or enforcement as the case may be, of the contested Imposition, Lien or Legal Requirement and such contest is maintained and prosecuted continuously and with diligence or the Imposition or

Lien is bonded, (v) in the case of any Insurance Requirement, the failure of Borrower to comply therewith shall not impair the validity of any insurance required to be maintained by Borrower under Section 6.1 or the right to full payment of any claims thereunder, and (vi) in the case of Impositions and Liens which are not bonded in excess of $1,000,000 individually, or in the aggregate, during such contest, Borrower, shall deposit with or deliver to Lender either Cash and Cash Equivalents or a Letter or Letters of Credit in an amount equal to 125% of (A) the amount of Borrower's obligations being contested plus (B) any additional interest, charge, or penalty arising from such contest. Notwithstanding the foregoing, the creation of any such reserves or the furnishing of any bond or other security, Borrower promptly shall comply with any contested Legal Requirement or Insurance Requirement or shall pay any contested Imposition or Lien, and compliance therewith or payment thereof shall not be deferred, if, at any time the Property or any portion thereof shall be, in Lender's reasonable judgment, in imminent danger of being forfeited or lost or Lender is likely to be subject to civil or criminal damages as a result thereof. If such action or proceeding is terminated or discontinued adversely to Borrower, Borrower shall deliver to Lender reasonable evidence of Borrower's compliance with such contested Imposition, Lien, Legal Requirements or Insurance Requirements, as the case may be.

VIII. TRANSFERS, INDEBTEDNESS AND SUBORDINATE LIENS

Section 8.1 Restrictions on Transfers and Indebtedness . (a) Except in connection with such action as is permitted by the subsequent provisions of this Article VIII , Borrower will not, without Lender's prior written consent and a Rating Agency Confirmation with respect to the transfer or other matter in question, (A), Transfer legal, Beneficial or direct or indirect equitable interests in all or any part of the Property, the Borrower or Operating Lessee, (B) permit or suffer any owner, directly or indirectly, of a legal, Beneficial or equitable interest in the Property, the Borrower or Operating Lessee to Transfer such interest, whether by transfer of stock or other legal, Beneficial or equitable interest in any entity or otherwise, (C) mortgage, hypothecate or otherwise encumber or grant a security interest in all or any part of the legal, Beneficial or equitable interests in all or any part of the Property, the Borrower or the Operating Lessee, or (D) file of record a declaration of condominium with respect to the Property. Notwithstanding any provision herein to the contrary, nothing contained herein shall be deemed to restrict or otherwise interfere with the ability of the holders of direct or indirect legal, Beneficial or equitable interests in the Ultimate Equity Owner to Transfer such interests, whether in connection with an initial public offering of shares in Ultimate Equity Owner or otherwise or any pledge to secure the Revolver Loan or the enforcement or foreclosure thereof pursuant to such pledge.

(b) Borrower shall not incur, create or assume any Indebtedness without the consent of Lender; provided , however , Borrower may, without the consent of Lender, incur, create or assume Permitted Debt or allow or suffer such Permitted Debt to be incurred, created or assumed.

(c) Notwithstanding the foregoing, nothing herein shall prevent Borrower or any direct or indirect owner of any legal or Beneficial or equitable interest therein, to enter into a purchase and sale agreement or other similar arrangements to Transfer any interest in connection with any sale of the Property or other interest so long as a condition precedent to such Transfer is the payment, in full, of the Indebtedness.

Section 8.2 Sale of Building Equipment . Borrower may Transfer or dispose of Building Equipment which is being replaced or which is no longer necessary in connection with the operation of the Property free from the Lien of the Security Instrument provided that such Transfer or disposal will not have a Material Adverse Effect on the value of the Property taken as a whole, will not materially impair the utility of the Property, and will not result in a reduction or abatement of, or right of offset against, the Rents payable under any Lease, in either case as a result thereof, and provided , further , that any new Building Equipment acquired by Borrower or Operating Lessee (and not so disposed of) shall be subject to the Lien of the Security Instrument. Lender shall, from time to time, upon receipt of an Officer's Certificate requesting the same and confirming satisfaction of the conditions set forth above, execute a written instrument in form reasonably satisfactory to Lender to confirm that such Building Equipment which is to be, or has been, sold or disposed of is free from the Lien of the Security Instrument.

Section 8.3 Immaterial Transfers and Easements, etc . Borrower and Operating Lessee may, without the consent of Lender, (i) make immaterial Transfers of portions of the Property to Governmental Authorities for dedication or public use (subject to the provisions of Section 6.2) or, portions of the Property to third parties for the purpose of erecting and operating additional structures whose use is integrated with the use of the Property, and (ii) grant easements, restrictions, covenants, reservations and rights of way in the ordinary course of business for access, water and sewer lines, telephone and telegraph lines, electric lines or other utilities or for other similar purposes, provided that no such Transfer, conveyance or encumbrance set forth in the foregoing clauses (i) and (ii) shall materially impair the utility and operation of the Property or have a Material Adverse Effect on the value of the Property taken as a whole. In connection with any Transfer permitted pursuant to this Section 8.3 , Lender shall execute and deliver any instrument reasonably necessary or appropriate, in the case of the Transfers referred to in clause (i) above, to release the portion of the Property affected by such Condemnation or such Transfer from the Lien of the Security Instrument or, in the case of clause (ii) above, to subordinate the Lien of the Security Instrument to such easements, restrictions, covenants, reservations and rights of way or other similar grants upon receipt by Lender of:

(a) thirty (30) days prior written notice thereof;

(b) a copy of the instrument or instruments of Transfer;

(c) an Officer's Certificate stating (x) with respect to any Transfer, the consideration, if any, being paid for the Transfer and (y) that such Transfer does not materially impair the utility and operation of the Property, materially reduce the value of the Property or have a Material Adverse Effect; and

(d) reimbursement of all of Lender's reasonable costs and expenses incurred in connection with such Transfer.

Section 8.4 Transfers of Interests in Borrower . In addition to any transfer permitted by any other provision of this Article VIII , each holder of any direct or indirect interest in the Borrower shall have the right to transfer (but not pledge, hypothecate or encumber) its equity interest in the Borrower to any Person who is not a Disqualified Transferee without

Lender's consent or a Rating Agency Confirmation if Section 8.6 is complied with and, after giving effect to such transfer:

(a) (i) the Property will be directly owned by a Single Purpose Entity in compliance with the representations, warranties and covenants in Section 4.1.29 hereof (as if the Borrower shall have remade all of such representations, warranties and covenants as of, and after giving effect to, the transfer), and which shall have executed and delivered to Lender an assumption agreement in form and substance acceptable to Lender, evidencing the continuing agreement of the Borrower to abide and be bound by all the terms, covenants and conditions set forth in this Agreement, the Note, the Security Instrument and the other Loan Documents and all other outstanding obligations under the Loan, together with such legal opinions and title insurance endorsements as may be reasonably requested by Lender;

(b) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement;

(c) Any Ultimate Equity Owners or a Close Affiliate of any such entity owns directly or indirectly at least fifty-one percent (51%) of the equity interests in the Borrower and the Person that is the proposed transferee is not a Disqualified Transferee; provided that, after giving effect to any such transfer, in no event shall any Person other than Ultimate Equity Owner or a Close Affiliate of Ultimate Equity Owner exercise Management Control over the Borrower. In the event that Management Control shall be exercisable jointly by any Ultimate Equity Owner or a Close Affiliate of any Ultimate Equity Owner with any other Person or Persons, then the applicable Ultimate Equity Owner or such Close Affiliate shall be deemed to have Management Control only if such Ultimate Equity Owner or such Close Affiliate retains the ultimate right as between such Ultimate Equity Owner or such Close Affiliate and the transferee to unilaterally make all material decisions with respect to the operation, management, financing and disposition of the Property;

(d) if there has been a Transfer of forty-nine percent (49%) or more of the direct membership interests, stock or other direct equity ownership interests in Borrower, Borrower shall have first delivered to Lender (and, after a Securitization, the Rating Agencies) an Officer's Certificate and legal opinion of the types described in Section 8.6 below; and

(e) Borrower shall cause the transferee, if Lender so requests and if such transferee is required to be a Single Purpose Entity pursuant to this Agreement, to deliver to S&P and to any other Rating Agency Lender requests its organizational documents solely for the purpose of Standard & Poor's and such other Rating Agency Lender requests confirming that such organizational documents comply with the single purpose bankruptcy remote entity requirements set forth herein.

Section 8.5 Loan Assumption . Without limiting the foregoing, Borrower and Operating Lessee shall have the right to sell, assign, convey or transfer (but not mortgage, hypothecate or otherwise encumber or grant a security interest in) legal or equitable title to all (but not less than all) of the Property only if:

(a) after giving effect to the proposed transaction:

the Property will be owned by a Single Purpose Entity wholly owned (directly or indirectly) by a Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or such other entity (specifically approved in writing by both Lender and each Rating Agency) which will be in compliance with the representations, warranties and covenants contained in Section 4.1.29 hereof (as if such transferee shall have remade all of such representations, warranties and covenants as of, and after giving effect to, the proposed transaction); such Single Purpose Entity shall have executed and delivered to Lender an assumption agreement and such other agreements as Lender may reasonably request (collectively, the **"Assumption Agreement"**) in form and substance acceptable to Lender, evidencing the proposed transferee's agreement to abide and be bound by all the terms, covenants and conditions set forth in this Agreement, the Note, the Security Instrument and the other Loan Documents and all other outstanding obligations under the Loan; the Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or such other approved entity shall assume the obligations of Sponsor under the Loan Documents (and such Single Purpose Entity and the applicable Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or other approved entity shall thereafter be subject to the provisions of this Article VIII), and the transferee shall cause to be delivered to Lender, such legal opinions and title insurance endorsements as may be reasonably requested by Lender;

(i) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement; and

(ii) no Event of Default shall have occurred and be continuing;

(b) the Assumption Agreement shall state the applicable transferee's agreement to abide by and be bound by the terms in the Note (or such other promissory notes to be executed by the transferee, such other promissory note or notes to be on the same terms as the Note), the Security Instrument, this Agreement (or such other loan agreement to be executed by such transferee, which shall contain terms substantially identical to the terms hereof) and such other Loan Documents (or other loan documents to be delivered by such transferee, which shall contain terms substantially identical to the terms of the applicable Loan Documents) whenever arising, and Borrower, and/or such transferee shall deliver such legal opinions and title insurance endorsements as may reasonably be requested by Lender;

(c) following execution of a contract for the sale of the Property and not less than thirty (30) days prior to the expected date of such proposed sale, Borrower shall submit notice of such sale to Lender. Borrower shall submit to Lender, not less than ten (10) days prior to the expected date of such sale, the Assumption Agreement for execution by Lender. Such documents shall be in a form appropriate for the jurisdiction in which the Property is located and shall be reasonably satisfactory to Lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such assumption, together with an Officer's Certificate certifying that (i) the assumption to be effected will be effected in compliance with the terms of this Agreement and (ii) will not impair or otherwise adversely affect the validity or priority of the Lien of the Security Instrument;

(d) prior to any such transaction, the proposed transferee shall deliver to Lender an Officer's Certificate stating that (x) such transferee is not an "employee benefit plan" within the meaning of Section 3(3) of ERISA that is subject Title I of ERISA or any other Similar Law and (y) the underlying assets of the proposed transferee do not constitute assets of any such employee benefit plan for purposes of ERISA or any Similar Law;

(e) if the transfer is to (i) an entity other than a Single Purpose Entity wholly owned directly or indirectly by one or more Pre-approved Transferees, Permitted Borrower Transferees or Permitted Borrower Transferee Alternatives, a Rating Agency Confirmation shall have been received in respect of such proposed transfer (or, if the proposed transfer shall occur prior to a Securitization, such transfer shall be subject to Lender's consent in its sole discretion) and (ii) a Permitted Borrower Transferee Alternative, such transfer shall be subject to Lender's prior written consent in its reasonable discretion;

(f) the terms of Section 8.6 shall be complied with and Borrower shall cause the transferee to deliver to S&P and to any other Rating Agency Lender requests its organizational documents solely for the purpose of S&P and any other Rating Agency Lender requests confirming that such organizational documents comply with the single purpose bankruptcy remote entity requirements set forth herein; and

(g) Lender shall have received the payment of, or reimbursement for, all reasonable costs and expenses incurred by Lender and the Rating Agencies (and any servicer in connection with a Securitization) in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements).

Section 8.6 Notice Required; Legal Opinions . Not less than five (5) Business Days prior to the closing of any transaction permitted under the provisions of Sections 8.2 through 8.5 , Borrower shall deliver or cause to be delivered to Lender (A) an Officer's Certificate describing the proposed transaction and stating that such transaction is permitted hereunder and under the other Loan Documents, together with any documents upon which such Officer's Certificate is based, and (B) a legal opinion of counsel to Borrower or the transferee selected by either of them (to the extent approved by Lender and the Rating Agencies), in form and substance consistent with similar opinions then being required by the Rating Agencies and acceptable to the Rating Agencies, confirming, among other things, that the assets of the Borrower, and of its managing general partner or managing member, as applicable, will not be substantively consolidated with the assets of such owners or Controlling Persons of the Borrower as Lender or the Rating Agencies may specify, in the event of a bankruptcy or similar proceeding involving such owners or Controlling Persons.

Section 8.7 Leases .

8.7.1 New Leases and Lease Modifications . Except as otherwise provided in this Section 8.7 , Borrower shall not and shall not permit Operating Lessee to (i) enter into any Lease on terms other than "market" and rental rates (in Borrower's or Operating Lessee's good faith judgment), or (ii) enter into any Material Lease (a**"New Lease"**), or (iii) consent to the assignment of any Material Lease (unless required to do so by the terms of such Material Lease) that releases the original Tenant from its obligations under the Material

Lease, or (iv) modify any Material Lease (including, without limitation, accept a surrender of any portion of the Property subject to a Material Lease (unless otherwise permitted or required by law), allow a reduction in the term of any Material Lease or a reduction in the Rent payable under any Material Lease, change any renewal provisions of any Material Lease, materially increase the obligations of the landlord or materially decrease the obligations of any Tenant) or terminate any Material Lease (any such action referred to in clauses (iii) and (iv) being referred to herein as a **"Lease Modification"**) without the prior written consent of Lender which consent shall not be unreasonably withheld, delayed or conditioned. Any New Lease or Lease Modification that requires Lender's consent shall be delivered to Lender for approval not less than ten (10) Business Days prior to the effective date of such New Lease or Lease Modification. Lender acknowledges and consents to the termination of the Fitness Center Lease effective on or about October 1, 2006.

8.7.2 Leasing Conditions . Subject to terms of this Section 8.7 , provided no Event of Default shall have occurred and be continuing, Borrower may enter into a New Lease or Lease Modification, without Lender's prior written consent, that satisfies each of the following conditions (as evidenced by an Officer's Certificate delivered to Lender prior to Borrower's entry into such New Lease or Lease Modification):

(a) with respect to a New Lease or Lease Modification, the premises demised thereunder is not more than 10,000 net rentable square feet of the Property;

(b) the term of such New Lease or Lease Modification, as applicable, does not exceed 120 months, plus up to two (2) 60-month option terms (or equivalent combination of renewals);

(c) the New Lease or Lease Modification provides for "market" rental rates other terms and does not contain any terms which would adversely affect Lender's rights under the Loan Documents or that would have a Material Adverse Effect;

(d) the New Lease or Lease Modification, as applicable, provides that the premises demised thereby cannot be used for any of the following uses: any pornographic or obscene purposes, any commercial sex establishment, any pornographic, obscene, nude or semi-nude performances, modeling, materials, activities or sexual conduct or any other use that has or could reasonably be expected to have a Material Adverse Effect;

(e) the Tenant under such New Lease or Lease Modification, as applicable, is not an Affiliate of Borrower;

(f) the New Lease or Lease Modification, as applicable, does not prevent Proceeds from being held and disbursed by Lender in accordance with the terms hereof and does not entitle any Tenant to receive and retain Proceeds except those that may be specifically awarded to it in condemnation proceedings because of the Condemnation of its trade fixtures and its leasehold improvements which have not become part of the Property and such business loss as Tenant may specifically and separately establish; and

(g) the New Lease or Lease Modification, as applicable satisfies the requirements of Section 8.7.7 and Section 8.7.8 .

8.7.3 Delivery of New Lease or Lease Modification . Upon the execution of any New Lease or Lease Modification, as applicable, Borrower shall deliver to Lender an executed copy of the Lease.

8.7.4 Lease Amendments . Borrower agrees that it shall not have the right or power, as against Lender without its consent, to cancel, abridge, amend or otherwise modify any Lease unless such modification complies with this Section 8.7 .

8.7.5 Security Deposits . All security or other deposits of Tenants of the Property shall be treated as trust funds and shall, if required by law or the applicable Lease not be commingled with any other funds of Borrower, and such deposits shall be deposited, upon receipt of the same by Borrower in a separate trust account maintained by Borrower expressly for such purpose. Within ten (10) Business Days after written request by Lender, Borrower shall furnish to Lender reasonably satisfactory evidence of compliance with this Section 8.7.5 , together with a statement of all lease securities deposited with Borrower by the Tenants and the location and account number of the account in which such security deposits are held.

8.7.6 No Default Under Leases . Borrower shall (i) promptly perform and observe all of the material terms, covenants and conditions required to be performed and observed by Borrower under the Leases, if the failure to perform or observe the same would have a Material Adverse Effect; (ii) exercise, within ten (10) Business Days after a written request by Lender, any right to request from the Tenant under any Lease a certificate with respect to the status thereof and (iii) not collect any of the Rents, more than one (1) month in advance (except that Borrower may collect such security deposits and last month's Rents as are permitted by Legal Requirements and are commercially reasonable in the prevailing market and collect other charges in accordance with the terms of each Lease).

8.7.7 Subordination . All Lease Modifications and New Leases entered into by Borrower after the date hereof shall by their express terms be subject and subordinate to this Agreement and the Security Instrument (through a subordination provision contained in such Lease or otherwise) and shall provide that, if Lender agrees to a non-disturbance provision pursuant to Section 8.7.9 , the Person holding any rights thereunder shall attorn to Lender or any other Person succeeding to the interests of Lender upon the exercise of its remedies hereunder or any transfer in lieu thereof on the terms set forth in this Section 8.7 .

8.7.8 Attornment . Each Lease Modification and New Lease entered into from and after the date hereof shall provide that in the event of the enforcement by Lender of any remedy under this Agreement or the Security Instrument, if Lender agrees to a non-disturbance provision pursuant to Section 8.7.9 , the Tenant under such Lease shall, at the option of Lender or of any other Person succeeding to the interest of Lender as a result of such enforcement, attorn to Lender or to such Person and shall recognize Lender or such successor in the interest as lessor under such Lease without change in the provisions thereof; provided , however , Lender or such successor in interest shall not be liable for or bound by (i) any payment of an installment of rent or additional rent made more than thirty (30) days before the due date of such installment, (ii) any act or omission of or default by Borrower under any such Lease (but the Lender, or such successor, shall be subject to the continuing obligations of the landlord to the extent arising from and after such succession to the extent of Lender's, or such successor's,

interest in the Property), (iii) any credits, claims, setoffs or defenses which any Tenant may have against Borrower, (iv) any obligation on Borrower's part, pursuant to such Lease, to perform any tenant improvement work or (v) any obligation on Borrower's part, pursuant to such Lease, to pay any sum of money to any Tenant. Each such New Lease shall also provide that, upon the reasonable request by Lender or such successor in interest, the Tenant shall execute and deliver an instrument or instruments confirming such attornment.

8.7.9 Non-Disturbance Agreements . Lender shall enter into, and, if required by applicable law to provide constructive notice or requested by a Tenant, record in the county where the subject Property is located, a subordination, attornment and non-disturbance agreement, substantially in form and substance substantially similar to the form attached hereto as **Exhibit K** (a**"Non-Disturbance Agreement"**), with any Tenant (other than an Affiliate of Borrower) entering into a New Lease permitted hereunder or otherwise consented to by Lender within ten (10) Business Days after written request therefor by Borrower, provided that, such request is accompanied by an Officer's Certificate stating that such Lease complies in all material respects with this Section 8.7 . All reasonable third party costs and expenses incurred by Lender in connection with the negotiation, preparation, execution and delivery of any Non-Disturbance Agreement, including, without limitation, reasonable attorneys' fees and disbursements, shall be paid by Borrower (in advance, if requested by Lender).

8.7.10 Approvals for Retail/service Facilities . Notwithstanding anything contained herein (i) approvals will not be required for termination of the Fitness Center Lease and any similar gift shop or other miscellaneous space in lobby or similar locations, and (ii) provided the other requirements of Section 8.7.2 on New Leases and Lease Modifications are otherwise satisfied, the restriction therein on New Leases or Lease Modifications with Affiliates will not apply to New Leases or Lease Modifications relating to portions of the Property used for retail or service facilities (" **Retail/Service Facilities**").

IX. INTEREST RATE CAP AGREEMENT

Section 9.1 Interest Rate Cap Agreement . Borrower shall maintain the Interest Rate Cap Agreement with an Acceptable Counterparty in effect and having a term extending through the last day of the accrual period in which the applicable Maturity Date occurs, and an initial notional amount equal to the Loan Amount. The Interest Rate Cap Agreement shall have a strike rate equal to the LIBOR Cap Strike Rate. The notional amount of the Interest Rate Cap Agreement may be reduced from time to time in amounts equal to any prepayment of the principal of the Loan made in accordance with the Loan Documents, provided that the strike rate shall be equal to the LIBOR Cap Strike Rate.

Section 9.2 Pledge and Collateral Assignment . Borrower hereby pledges, assigns, transfers, delivers and grants a continuing first priority lien to Lender, as security for payment of all sums due in respect of the Loan and the performance of all other terms, conditions and covenants of this Agreement and any other Loan Document on Borrower's part to be paid and performed, in, to and under all of Borrower's right, title and interest whether now owned or hereafter acquired and whether now existing or hereafter arising (collectively, the**" Rate Cap Collateral"**): (i) in the Interest Rate Cap Agreement (as soon as such agreement is effective or when and if any replacement agreement becomes effective, any Replacement Interest Rate Cap

Agreement or Extension Interest Rate Cap Agreement); (ii) to receive any and all payments under the Interest Rate Cap Agreement (or, when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), whether as contractual obligations, damages or otherwise; and (iii) to all claims, rights, powers, privileges, authority, options, security interests, liens and remedies, if any, under or arising out of the Interest Rate Cap Agreement (as soon as such agreement is effective or when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), in each case including all accessions and additions to, substitutions for and replacements, products and proceeds of any of the foregoing. Borrower shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be made directly to Lender) and notify the Counterparty of such assignment (either in such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement or by separate instrument). Borrower shall not, without obtaining the prior written consent of Lender, further pledge, transfer, deliver, assign or grant any security interest in the Interest Rate Cap Agreement (or, when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), or permit any Lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements or any other notice or instrument as may be required under the UCC, as appropriate, except those naming Lender as the secured party, to be filed with respect thereto.

Section 9.3 Covenants . (a) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be deposited immediately into the Holding Account pursuant to Section 3.1 . Borrower shall take all actions reasonably requested by Lender to enforce Borrower's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty thereunder and shall not waive, amend or otherwise modify any of its rights thereunder.

(b) Borrower shall defend Lender's right, title and interest in and to the Rate Cap Collateral pledged by Borrower pursuant hereto or in which it has granted a security interest pursuant hereto against the claims and demands of all other Persons.

In the event of (x) any downgrade, withdrawal or qualification (each, a**"Downgrade "**) of the rating of the Counterparty such that, thereafter, the Counterparty shall cease to be an Acceptable Counterparty and (y) the Counterparty shall fail to comply with the requirements contained in the Interest Rate Cap Agreement which are described in**"Exhibit I"**upon such occurrence, the Borrower shall either (i) obtain a Rating Agency Confirmation with respect to the Counterparty or (ii) replace the Interest Rate Cap Agreement with a Replacement Interest Cap Agreement, (x) having a term extending through the end of the Interest Period in which the Maturity Date occurs, (y) in a notional amount at least equal to the Principal Amount of the Loan then outstanding, and (z) having a strike rate equal to the LIBOR Cap Strike Rate.

(c) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement as and when required hereunder, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing the Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is paid by Borrower to Lender.

(d) Borrower shall not (i) without the prior written consent of Lender, modify, amend or supplement the terms of the Interest Rate Cap Agreement, (ii) without the prior written consent of Lender, except in accordance with the terms of the Interest Rate Cap Agreement, cause the termination of the Interest Rate Cap Agreement prior to its stated maturity date, (iii) without the prior written consent of Lender, except as aforesaid, waive or release any obligation of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) under the Interest Rate Cap Agreement, (iv) without the prior written consent of Lender, consent or agree to any act or omission to act on the part of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) which, without such consent or agreement, would constitute a default under the Interest Rate Cap Agreement, (v) fail to exercise promptly and diligently each and every material right which it may have under the Interest Rate Cap Agreement, (vi) take or intentionally omit to take any action or intentionally suffer or permit any action to be omitted or taken, the taking or omission of which would result in any right of offset against sums payable under the Interest Rate Cap Agreement or any defense by the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) to payment or (vii) fail to give prompt notice to Lender of any notice of default given by or to Borrower under or with respect to the Interest Rate Cap Agreement, together with a complete copy of such notice. If Borrower shall have received written notice that the Securitization shall have occurred, no consent by Lender provided for in this Section 9.3(e) shall be given by Lender unless Lender shall have received a Rating Agency Confirmation.

In connection with an Interest Rate Cap Agreement, Borrower shall obtain and deliver to Lender an Opinion of Counsel from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty upon which Lender and its successors and assigns may rely (the **"Counterparty Opinion"**), under New York law and, if the Counterparty is a non-U.S. entity, the applicable foreign law, substantially in compliance with the requirements set forth in **Exhibit F** or in such other form approved by the Lender.

Section 9.4 Representations and Warranties . Borrower hereby covenants with, and represents and warrants to, Lender as follows:

(a) The Interest Rate Cap Agreement constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(b) The Rate Cap Collateral is free and clear of all claims or security interests of every nature whatsoever, except such as are created pursuant to this Agreement and the other Loan Documents, and Borrower has the right to pledge and grant a security interest in the same as herein provided without the consent of any other Person other than any such consent that has been obtained and is in full force and effect.

(c) The Rate Cap Collateral has been duly and validly pledged hereunder. All consents and approvals required to be obtained by Borrower for the consummation of the transactions contemplated by this Agreement have been obtained.

(d) Giving effect to the aforesaid grant and assignment to Lender, Lender has, as of the date of this Agreement, and as to Rate Cap Collateral acquired from time to time after such date, shall have, a valid, and upon proper filing, perfected and continuing first priority lien upon and security interest in the Rate Cap Collateral; provided that no representation or warranty is made with respect to the perfected status of the security interest of Lender in the proceeds of Rate Cap Collateral consisting of "cash proceeds" or "non-cash proceeds" as defined in the UCC except if, and to the extent, the provisions of Section 9-306 of the UCC shall be complied with.

(e) Except for financing statements filed or to be filed in favor of Lender as secured party, there are no financing statements under the UCC covering any or all of the Rate Cap Collateral and Borrower shall not, without the prior written consent of Lender, until payment in full of all of the Obligations, execute and file in any public office, any enforceable financing statement or statements covering any or all of the Rate Cap Collateral, except financing statements filed or to be filed in favor of Lender as secured party.

Section 9.5 Payments . If Borrower at any time shall be entitled to receive any payments with respect to the Interest Rate Cap Agreement, such amounts shall, immediately upon becoming payable to Borrower, be deposited by Counterparty into the Holding Account.

Section 9.6 Remedies . Subject to the provisions of the Interest Rate Cap Agreement, if an Event of Default shall occur and then be continuing:

(a) Lender, without obligation to resort to any other security, right or remedy granted under any other agreement or instrument, shall have the right to, in addition to all rights, powers and remedies of a secured party pursuant to the UCC, at any time and from time to time, sell, resell, assign and deliver, in its sole discretion, any or all of the Rate Cap Collateral (in one or more parcels and at the same or different times) and all right, title and interest, claim and demand therein and right of redemption thereof, at public or private sale, for cash, upon credit or for future delivery, and in connection therewith Lender may grant options and may impose reasonable conditions such as requiring any purchaser to represent that any "securities" constituting any part of the Rate Cap Collateral are being purchased for investment only, Borrower hereby waiving and releasing any and all equity or right of redemption to the fullest extent permitted by the UCC or applicable law. If all or any of the Rate Cap Collateral is sold by Lender upon credit or for future delivery, Lender shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, Lender may resell such Rate Cap Collateral. It is expressly agreed that Lender may exercise its rights with respect to less than all of the Rate Cap Collateral, leaving unexercised its rights with respect to the remainder of the Rate Cap Collateral, provided , however , that such partial exercise shall in no way restrict or jeopardize Lender's right to exercise its rights with respect to all or any other portion of the Rate Cap Collateral at a later time or times.

(b) Lender may exercise, either by itself or by its nominee or designee, in the name of Borrower, all of Lender's rights, powers and remedies in respect of the Rate Cap Collateral, hereunder and under law.

(c) Borrower hereby irrevocably, in the name of Borrower or otherwise, authorizes and empowers Lender and assigns and transfers unto Lender, and constitutes and appoints Lender its true and lawful attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Borrower and in the name of Borrower, upon the occurrence and during the continuance of an Event of Default, (i) to exercise and enforce every right, power, remedy, authority, option and privilege of Borrower under the Interest Rate Cap Agreement, including any power to subordinate or modify the Interest Rate Cap Agreement (but not, unless an Event of Default exists and is continuing, the right to terminate or cancel the Interest Rate Cap Agreement), or to give any notices, or to take any action resulting in such subordination, termination, cancellation or modification and (ii) in order to more fully vest in Lender the rights and remedies provided for herein, to exercise all of the rights, remedies and powers granted to Lender in this Agreement, and Borrower further authorizes and empowers Lender, as Borrower's attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Borrower and in the name of Borrower, upon the occurrence and during the continuance of an Event of Default, to give any authorization, to furnish any information, to make any demands, to execute any instruments and to take any and all other action on behalf of and in the name of Borrower which in the opinion of Lender may be necessary or appropriate to be given, furnished, made, exercised or taken under the Interest Rate Cap Agreement, in order to comply therewith, to perform the conditions thereof or to prevent or remedy any default by Borrower thereunder or to enforce any of the rights of Borrower thereunder. These powers-of-attorney are irrevocable and coupled with an interest, and any similar or dissimilar powers heretofore given by Borrower in respect of the Rate Cap Collateral to any other Person are hereby revoked.

(d) Upon the occurrence and during the continuance of an Event of Default, Lender may, without notice to, or assent by, Borrower or any other Person (to the extent permitted by law), but without affecting any of the Obligations, in the name of Borrower or in the name of Lender, notify the Counterparty, or if applicable, any other counterparty to the Interest Rate Cap Agreement, to make payment and performance directly to Lender; extend the time of payment and performance of, compromise or settle for cash, credit or otherwise, and upon any terms and conditions, any obligations owing to Borrower, or claims of Borrower, under the Interest Rate Cap Agreement; file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by Lender necessary or advisable for the purpose of collecting upon or enforcing the Interest Rate Cap Agreement; and execute any instrument and do all other things deemed necessary and proper by Lender to protect and preserve and realize upon the Rate Cap Collateral and the other rights contemplated hereby.

(e) Pursuant to the powers-of-attorney provided for above, Lender may take any action and exercise and execute any instrument which it may deem necessary or advisable to accomplish the purposes hereof; provided , however , that Lender shall not be permitted to take any action pursuant to said power-of-attorney that would conflict with any limitation on Lender's rights with respect to the Rate Cap Collateral. Without limiting the generality of the foregoing, Lender, after the occurrence of an Event of Default, shall have the right and power to receive, endorse and collect all checks and other orders for the payment of money made payable to

Borrower representing: (i) any payment of obligations owed pursuant to the Interest Rate Cap Agreement, (ii) interest accruing on any of the Rate Cap Collateral or (iii) any other payment or distribution payable in respect of the Rate Cap Collateral or any part thereof, and for and in the name, place and stead of Borrower, to execute endorsements, assignments or other instruments of conveyance or transfer in respect of any property which is or may become a part of the Rate Cap Collateral hereunder.

(f) Lender may exercise all of the rights and remedies of a secured party under the UCC.

(g) Without limiting any other provision of this Agreement or any of Borrower's rights hereunder, and without waiving or releasing Borrower from any obligation or default hereunder, Lender shall have the right, but not the obligation, to perform any act or take any appropriate action, as it, in its reasonable judgment, may deem necessary to protect the security of this Agreement, to cure such Event of Default or to cause any term, covenant, condition or obligation required under this Agreement or the Interest Rate Cap Agreement to be performed or observed by Borrower to be promptly performed or observed on behalf of Borrower. All amounts advanced by, or on behalf of, Lender in exercising its rights under this Section 9.7(g) (including, but not limited to, reasonable legal expenses and disbursements incurred in connection therewith), together with interest thereon at the Default Rate from the date of each such advance, shall be payable by Borrower to Lender upon demand and shall be secured by this Agreement.

Section 9.7 Sales of Rate Cap Collateral . No demand, advertisement or notice, all of which are, to the fullest extent permitted by law, hereby expressly waived by Borrower, shall be required in connection with any sale or other disposition of all or any part of the Rate Cap Collateral, except that Lender shall give Borrower at least thirty (30) Business Days' prior written notice of the time and place of any public sale or of the time when and the place where any private sale or other disposition is to be made, which notice Borrower hereby agrees is reasonable, all other demands, advertisements and notices being hereby waived. To the extent permitted by law, Lender shall not be obligated to make any sale of the Rate Cap Collateral if it shall determine not to do so, regardless of the fact that notice of sale may have been given, and Lender may without notice or publication adjourn any public or private sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Upon each private sale of the Rate Cap Collateral of a type customarily sold in a recognized market and upon each public sale, unless prohibited by any applicable statute which cannot be waived, Lender (or its nominee or designee) may purchase any or all of the Rate Cap Collateral being sold, free and discharged from any trusts, claims, equity or right of redemption of Borrower, all of which are hereby waived and released to the extent permitted by law, and may make payment therefor by credit against any of the Obligations in lieu of cash or any other obligations. In the case of all sales of the Rate Cap Collateral, public or private, Borrower shall pay all reasonable costs and expenses of every kind for sale or delivery, including brokers' and attorneys' fees and disbursements and any tax imposed thereon. However, the proceeds of sale of Rate Cap Collateral shall be available to cover such costs and expenses, and, after deducting such costs and expenses from the proceeds of sale, Lender shall apply any residue to the payment of the Obligations in the order of priority as set forth in Section 11 of the Security Instrument.

Section 9.8 Public Sales Not Possible . Borrower acknowledges that the terms of the Interest Rate Cap Agreement may prohibit public sales, that the Rate Cap Collateral may not be of the type appropriately sold at public sales, and that such sales may be prohibited by law. In light of these considerations, Borrower agrees that private sales of the Rate Cap Collateral shall not be deemed to have been made in a commercially unreasonably manner by mere virtue of having been made privately.

Section 9.9 Receipt of Sale Proceeds . Upon any sale of the Rate Cap Collateral by Lender hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt by Lender or the officer making the sale or the proceeds of such sale shall be a sufficient discharge to the purchaser or purchasers of the Rate Cap Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Lender or such officer or be answerable in any way for the misapplication or non-application thereof.

Section 9.10 Extension Interest Rate Cap Agreement . If Borrower exercises any of its options to extend the Maturity Date pursuant to Section 5 of the Note, then, on or prior to the Maturity Date being extended, the Borrower shall obtain or have in place an Extension Interest Rate Cap Agreement (i) having a term through the end of the Interest Period in which the extended Maturity Date occurs, (ii) in a notional amount at least equal to the Principal Amount of the Loan as of the Maturity Date being extended, and (iii) having a strike rate equal to an amount such that the maximum interest rate paid by the Borrower after giving effect to payments made under such Extension Interest Rate Cap Agreement shall equal no more than the LIBOR Cap Strike Rate.

Section 9.11 Filing of Financing Statements Authorized . Borrower and Operating Lessee hereby authorize the filing of a form UCC-1 financing statement naming the Borrower and the Operating Lessee as debtors and the Lender as secured party in any office (including the office of the Secretary of State of the State of Delaware) covering all property of the Borrower and the Operating Lessee (including, but not limited to, the Account Collateral and the Rate Cap Collateral, but excluding Excess Cash Flow).

X. MAINTENANCE OF PROPERTY; ALTERATIONS

Section 10.1 Maintenance of Property . Borrower shall keep and maintain, or cause to be kept and maintained, the Property and every part thereof in good condition and repair, subject to ordinary wear and tear, and, subject to Excusable Delays and the provisions of this Agreement with respect to damage or destruction caused by a Casualty or Condemnation, shall not permit or commit any waste, impairment, or deterioration of any portion of the Property in any material respect. Borrower further covenants to do all other acts which from the character or use of the Property may be reasonably necessary to protect the security hereof, the specific enumerations herein not excluding the general. Borrower shall not demolish any Improvement on the Property except as the same may be necessary in connection with an Alteration or a restoration in connection with a Condemnation or Casualty, or as otherwise permitted herein, in each case in accordance with the terms and conditions hereof.

Section 10.2 Alterations and Expansions . Borrower shall not perform or undertake or consent to the performance or undertaking of any Alteration or Expansion, except in accordance with the following terms and conditions:

(a) The Alteration or Expansion shall be undertaken in accordance with the applicable provisions of this Agreement, the other Loan Documents, the Leases and all Legal Requirements.

(b) No Event of Default shall have occurred and be continuing or shall occur as a result of such action.

(c) A Material Alteration or Material Expansion, to the extent architects are customarily used for alterations or expansions of those types, but including any structural change to any of the Property or the Improvements, shall be conducted under the supervision of an Independent Architect and shall not be undertaken until ten (10) Business Days after there shall have been filed with Lender, for information purposes only and not for approval by Lender, detailed plans and specifications and cost estimates therefor, prepared and approved in writing by such Independent Architect. Such plans and specifications may be revised at any time and from time to time, provided that revisions of such plans and specifications shall be filed with Lender, for information purposes only.

(d) The Alteration or Expansion may not in and of itself, either during the Alteration or Expansion or upon completion, be reasonably expected to have a Material Adverse Effect with respect to the Property.

(e) All work done in connection with any Alteration or Expansion shall be performed with due diligence to Final Completion in a good and workmanlike manner, all materials used in connection with any Alteration or Expansion shall be not less than the standard of quality of the materials generally used at the Property as of the date hereof (or, if greater, the then-current customary quality in the sub-market in which the Property is located) and all work shall be performed and all materials used in accordance with all applicable Legal Requirements and Insurance Requirements.

(f) The cost of any Alteration or Expansion shall be promptly and fully paid for by Borrower, subject to the next succeeding sentence. No payment made prior to the Final Completion (excluding punch-list items) of an Alteration or Expansion or Restoration to any contractor, subcontractor, materialman, supplier, engineer, architect, project manager or other Person who renders services or furnishes materials in connection with such Alteration shall exceed ninety percent (90%) of the aggregate value of the work performed by such Person from time to time and materials furnished and incorporated into the Improvements.

(g) Intentionally Deleted.

(h) With respect to any Material Alteration or Material Expansion:

(i) Borrower shall have delivered to Lender Eligible Collateral in an amount equal to at least the total estimated remaining unpaid costs of such Material Alteration or Material Expansion which is in excess of the Threshold Amount, which Eligible Collateral shall

be held by Lender as security for the Indebtedness and released to Borrower as such work progresses in accordance with Section 10.2(h)(iii) ; provided , however , in the event that any Material Alteration or Material Expansion shall be made in conjunction with any Restoration with respect to which Borrower shall be entitled to use or apply Proceeds pursuant to Section 6.2 hereof (including any Proceeds remaining after completion of such Restoration), the amount of the Eligible Collateral to be furnished pursuant hereto need not exceed the aggregate cost of such Restoration and such Material Alteration or Material Expansion (in either case, as estimated by the Independent Architect) less the sum of the amount of any Proceeds which the Borrower is entitled to withdraw pursuant to Section 6.2 hereof and the Threshold Amount;

(ii) Prior to commencement of construction of such Material Alteration or Material Expansion, Borrower shall deliver to Lender a schedule (with the concurrence of the Independent Architect) setting forth the projected stages of completion of such Alteration or Expansion and the corresponding amounts expected to be due and payable by or on behalf of Borrower in connection with such completion, such schedule to be updated quarterly by Borrower (and with the concurrence of the Independent Architect) during the performance of such Alteration or Expansion.

(iii) Any Eligible Collateral that a Borrower delivers to Lender pursuant hereto (and the proceeds of any such Eligible Collateral) shall be invested (to the extent such Eligible Collateral can be invested) by Lender in Permitted Investments for a period of time consistent with the date on which the Borrower notifies Lender that the Borrower expects to request a release of such Eligible Collateral in accordance with the next succeeding sentence. From time to time as the Alteration or Expansion progresses, the amount of any Eligible Collateral so furnished may, upon the written request of Borrower to Lender, be withdrawn by Borrower and paid or otherwise applied by or returned to Borrower in an amount equal to the amount Borrower would be entitled to so withdraw if Section 6.2.4 were applicable, and any Eligible Collateral so furnished which is a Letter of Credit may be reduced by Borrower in an amount equal to the amount Borrower would be entitled to so reduce if Section 6.2.4 hereof were applicable, subject, in each case, to the satisfaction of the conditions precedent to withdrawal of funds or reduction of the Letter of Credit set forth in Section 6.2.4 hereof. In connection with the above-described quarterly update of the projected stages of completion of the Material Alteration or Material Expansion (as concurred with by an Independent Architect), Borrower shall increase (or be permitted to decrease, as applicable) the Eligible Collateral then deposited with Lender as necessary to comply with Section 10.2(h)(i) hereof.

(iv) At any time after Final Completion of such Material Alterations or Material Expansions, the whole balance of any Cash deposited with Lender pursuant to Section 10.2(h) hereof then remaining on deposit may be withdrawn by Borrower and shall be paid by Lender to Borrower, and any Eligible Collateral so deposited shall, to the extent it has not been called upon, reduced or theretofore released, be released by Lender to Borrower, within ten (10) days after receipt by Lender of an application for such withdrawal and/or release together with an Officer's Certificate, and as to the following clauses (A) and (B) of this clause also a certificate of the Independent Architect, setting forth in substance as follows:

(A) that such Material Alteration(s) or Material Expansion(s) has been completed in all material respects in accordance with any plans and specifications therefor previously filed with Lender under Section 10.2(c) hereof;

(B) that to the knowledge of the certifying Person, (x) such Material Alteration(s) or Material Expansion (s) has been completed in compliance with all Legal Requirements, and (y) to the extent required for the legal use or occupancy of the portion of the Property affected by such Alteration(s) or Expansion(s), the applicable Borrower has obtained a temporary or permanent certificate of occupancy (or similar certificate) or, if no such certificate is required, a statement to that effect;

(C) that to the knowledge of the certifying Person, all amounts that a Borrower is or may become liable to pay in respect of such Material Alteration(s) or Material Expansion(s) through the date of the certification have been paid in full or adequately provided for and, to the extent that such are customary and reasonably obtainable by prudent property owners in the area where the applicable Property is located, that Lien waivers have been obtained from the general contractor and subcontractors performing such Alteration(s) or Expansion(s) or at its sole cost and expense, Borrower shall cause a nationally recognized title insurance company to deliver to Lender an endorsement to the Title Policy, updating such policy and insuring over such Liens without further exceptions to such policy other than Permitted Encumbrances, or shall, at its sole cost and expense, cause a reputable title insurance company to deliver a lender's title insurance policy, in such form, in such amounts and with such endorsements as the Title Policy, which policy shall be dated the date of completion of the Material Alteration and shall contain no exceptions other than Permitted Encumbrances; provided , however , that if, for any reason, Borrower are unable to deliver the certification required by this clause (C) with respect to any costs or expenses relating to the Alteration(s) or Expansion(s), then, assuming Borrower are able to satisfy each of the other requirements set forth in clauses (A) and (B) above, Borrower shall be entitled to the release of the difference between the whole balance of such Eligible Collateral and the total of all costs and expenses to which Borrower are unable to certify; and

(D) that to the knowledge of the certifying Person, no Event of Default has occurred and is continuing.

XI. BOOKS AND RECORDS, FINANCIAL STATEMENTS, REPORTS AND OTHER INFORMATION

Section 11.1 Books and Records . Borrower shall keep and maintain on a fiscal year basis proper books and records separate from any other Person, in which accurate and complete entries shall be made of all dealings or transactions of or in relation to the Note, the Property and the business and affairs of Borrower and Operating Lessee relating to the Property which shall reflect all items of income and expense in connection with the operation on an individual basis of the Property and in connection with any services, equipment or furnishings provided in connection with the operation of the Property, in accordance with GAAP. Lender and its authorized representatives shall have the right at reasonable times and upon reasonable notice to examine the books and records of Borrower and Operating Lessee relating to the operation of the Property and to make such copies or extracts thereof as Lender may reasonably

require. Notwithstanding any other provision of this Agreement or any other Loan Document, so long as the Borrower and Operating Lessee otherwise comply with the foregoing provisions of this Section 11.1 , any requirement for the presentation of audited financial statements or similar reports of the Borrower, the Property or the Operating Lessee shall be deemed satisfied if such audit financial statement or similar reports are contained in an audited financial statement or similar report which includes a separate combining schedule setting forth in reasonable detail the separate financial information which relates solely to the Borrower, the Operating Lessee and the Property.

Section 11.2 Financial Statements .

11.2.1 Monthly Reports . At the request of Lender, Borrower shall furnish to Lender, within thirty (30) days after the end of each calendar month, unaudited operating statements, aged accounts receivable reports, rent rolls, STAR Reports and PACE Reports; occupancy and ADR reports for the Property, in each case accompanied by an Officer's Certificate certifying (i) with respect to the operating statements, that to the Best of Borrower's Knowledge and the best of such officer's knowledge such statements are true, correct, accurate and complete and fairly present the results of the operations of Borrower and the Property, and (ii) with respect to the aged accounts receivable reports, rent rolls, occupancy and ADR reports, that such items are to the Best of Borrower's Knowledge and the best of such officer's knowledge true, correct and accurate and fairly present the results of the operations of Borrower and the Property. Borrower will also provide Lender copies of all flash reports within its possession as to monthly revenues of the Property upon request.

11.2.2 Quarterly Reports . Borrower will furnish, or cause to be furnished, to Lender on or before the forty-fifth (45 th) day after the end of each Fiscal Quarter, the following items, accompanied by an Officer's Certificate, certifying that to the Best of Borrower's Knowledge and the best of such officer's knowledge such items are true, correct, accurate and complete and fairly present the financial condition and results of the operations of Borrower and the Property in a manner consistent with GAAP (subject to normal periodic adjustments) to the extent applicable:

(a) quarterly and year to date financial statements prepared for such fiscal quarter with respect to the Borrower, including a balance sheet and operating statement for such quarter for the Borrower for such quarter;

(b) occupancy levels at the Property for such period, including average daily room rates and the average revenue per available room;

(c) concurrently with the provision of such reports, Borrower shall also furnish a report of Operating Income and Operating Expenses (as well as a calculation of Net Operating Income based thereon) with respect to the Borrower and the Property for the most recently completed quarter;

(d) a STAR Report and to the extent provided by Manager a PACE Report for the most recently completed quarter;

(e) a calculation of DSCR for the trailing four (4) Fiscal Quarters; and

(f) to the extent provided by Manager a report of aged accounts receivable relating to the Property as of the most recently completed quarter and a list of Security Deposits and the aggregate amount of all Security Deposits.

11.2.3 Annual Reports . Borrower shall furnish to Lender within ninety (90) days following the end of each Fiscal Year a complete copy of the annual financial statements of the Borrower, audited by a "Big Four" accounting firm or another independent certified public accounting firm acceptable to Lender in accordance with GAAP for such Fiscal Year and containing a balance sheet, a statement of operations and a statement of cash flows. The annual financial statements of the Borrower shall be accompanied by (i) an Officer's Certificate certifying that each such annual financial statement presents fairly, in all material respects, the financial condition and results of operation of the Property and has been prepared in accordance with GAAP and (ii) a management report, in form and substance reasonably satisfactory to Lender, discussing the reconciliation between the financial statements for such Fiscal Year and the most recent Budget. Together with the Borrower's annual financial statements, the Borrower shall furnish to Lender (A) an Officer's Certificate certifying as of the date thereof whether, to Borrower's knowledge, there exists a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same; and (B) an annual report, for the most recently completed fiscal year, containing:

(1) Capital Expenditures (including for this purpose any and all additions to, and replacements of, FF&E,) made in respect of the Property, including separate line items with respect to any project costing in excess of $500,000;

(2) occupancy levels for the Property for such period; and

(3) average daily room rates at the Property for such period.

11.2.4 Leasing Reports . Not later than forty-five (45) days after the end of each fiscal quarter of Borrower's operations, Borrower shall deliver to Lender a true and complete rent roll for the Property, dated as of the last month of such fiscal quarter, showing the percentage of gross leasable area of the Property, if any, leased as of the last day of the preceding calendar quarter, the current annual rent for the Property, the expiration date of each Lease, whether to Borrower's knowledge any portion of the Property has been sublet, and if it has, the name of the subtenant, and such rent roll shall be accompanied by an Officer's Certificate certifying that such rent roll is true, correct and complete in all material respects as of its date and stating whether Borrower, within the past three (3) months, has issued a notice of default with respect to any Lease which has not been cured and the nature of such default.

11.2.5 Management Agreement . Borrower shall deliver to Lender, within ten (10) Business Days of the receipt thereof by Borrower, a copy of all reports prepared by Manager pursuant to the Management Agreement, including, without limitation, the Budget and any inspection reports.

11.2.6 Budget . Not later than March 1st of each Fiscal Year hereafter, Borrower shall prepare or cause to be prepared and deliver to Lender, for informational purposes only, a Budget in respect of the Property for the Fiscal Year in which such delivery date falls. If Borrower subsequently amends the Budget, Borrower shall promptly deliver the amended Budget to Lender.

11.2.7 Other Information . Borrower shall, promptly after written request by Lender or, if a Securitization shall have occurred, the Rating Agencies, furnish or cause to be furnished to Lender, in such manner and in such detail as may be reasonably requested by Lender, such reasonable additional information as may be reasonably requested with respect to the Property. The information required to be furnished by Borrower to Lender under this Section 11.2 shall be provided in both hard copy format and electronic format; provided that Borrower shall only be required to provide the information required under this Section 11.2.7 in electronic format if such information is so available in the ordinary course of the operations of the Borrower and Manager and without significant expense.

XII. ENVIRONMENTAL MATTERS

Section 12.1 Representations . Borrower hereby represents and warrants that except as set forth in the environmental reports and studies delivered to Lender (the **"Environmental Reports"**), (i) Borrower has not engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (ii) to the Best of Borrower's Knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (iii) to the Best of Borrower's Knowledge, no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (iv) to the Best of Borrower's Knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Borrower; and (v) to the Best of Borrower's Knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Borrower.

Section 12.2 Covenants . Compliance with Environmental Laws .

Subject to Borrower's right to contest under Section 7.3 , Borrower covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the

continuance of the Lien of the Security Instrument, a Governmental Authority having jurisdiction over the Property requires remedial action to correct the presence of Hazardous Materials in, around, or under the Property (an **"Environmental Event"**), Borrower shall deliver prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Borrower has knowledge of the occurrence of an Environmental Event, Borrower shall deliver to Lender an Officer's Certificate (an **"Environmental Certificate"**) explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Borrower shall promptly provide Lender with copies of all notices from any Governmental Authority which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Borrower in connection with any Environmental Law. For purposes of this paragraph, the term "notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials provided by any Governmental Entity pertinent to compliance of the Property and Borrower with such Environmental Laws.

Section 12.3 Environmental Reports . Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or an Event of Default, Lender shall have the right to direct Borrower to obtain consultants reasonably approved by Lender to perform a comprehensive environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. Borrower grants Lender, its agents, consultants and contractors the right to enter the Property as reasonable or appropriate for the circumstances for the purposes of performing such studies and the reasonable cost of such studies shall be due and payable by Borrower to Lender upon demand and shall be secured by the Lien of the Security Instrument. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Borrower's or any Tenant's, other occupant's or Manager's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 12.3 , Lender shall not be deemed to be exercising any control over the operations of Borrower or the handling of any environmental matter or hazardous wastes or substances of Borrower for purposes of incurring or being subject to liability therefor.

Section 12.4 Environmental Indemnification . Borrower shall protect, indemnify, save, defend, and hold harmless the Indemnified Parties from and against any and all liability, loss, damage, actions, causes of action, costs or expenses whatsoever (including reasonable attorneys' fees and expenses) and any and all claims, suits and judgments which any Indemnified Party may suffer, as a result of or with respect to: (a) any Environmental Claim relating to or arising from the Property; (b) the violation of any Environmental Law in connection with the Property; (c) any release, spill, or the presence of any Hazardous Materials affecting the Property; and (d) the presence at, in, on or under, or the release, escape, seepage, leakage, discharge or migration at or from, the Property of any Hazardous Materials, whether or not such condition was known or unknown to Borrower; provided that, in each case, Borrower shall be relieved of its obligation under this subsection if any of the matters referred to in

clauses (a) through (d) above did not occur (but need not have been discovered) prior to (1) the foreclosure of the Security Instrument, (2) the delivery by Borrower to Lender or its designee of a deed-in-lieu of foreclosure with respect to the Property, or (3) Lender's or its designee's taking possession and control of the Property after the occurrence of an Event of Default hereunder. If any such action or other proceeding shall be brought against Lender, upon written notice from Borrower to Lender (given reasonably promptly following Lender's notice to Borrower of such action or proceeding), Borrower shall be entitled to assume the defense thereof, at Borrower's expense, with counsel reasonably acceptable to Lender; provided , however , Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Borrower expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Borrower's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Borrower that would make such separate representation advisable. Borrower shall have no obligation to indemnify an Indemnified Party for damage or loss resulting from such Indemnified Party's gross negligence or willful misconduct.

Section 12.5 Recourse Nature of Certain Indemnifications . Notwithstanding anything to the contrary provided in this Agreement or in any other Loan Document, the indemnification provided in Section 12.4 shall be fully recourse to Borrower (but not its constituent parties) and shall be independent of, and shall survive, the discharge of the Indebtedness, the release of the Lien created by the Security Instrument, and/or the conveyance of title to the Property to Lender or any purchaser or designee in connection with a foreclosure of the Security Instrument or conveyance in lieu of foreclosure.

XIII. RESERVED

XIV. SECURITIZATION AND PARTICIPATION

Section 14.1 Sale of Note and Securitization . At the request of Lender and, to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to satisfy the market standards which may be reasonably required in the marketplace or by the Rating Agencies in connection with the sale of the Note or participation therein as part of the first successful securitization (such sale and/or securitization, the **" Securitization "**) of rated single or multi-class securities (the **" Securities "**) secured by or evidencing ownership interests in the Note and this Agreement, including using reasonable efforts to do (or cause to be done) the following (but Borrower shall not in any event be required to incur, suffer or accept (except to a de minimis extent)) (i) any lesser rights or greater obligations or liability than as currently set forth in the Loan Documents and (ii) except as set forth in this Article XIV and other than payment by Borrower of any legal fees of Borrower and Sponsor, any expense or any liability:

14.1.1 Provided Information . (i) Provide, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Sponsor), such non-confidential financial and other information (but not projections) with respect to the Property and Borrower and Manager to the extent such information is reasonably available to Borrower or Manager, (ii) provide, at the sole expense of the holder of the Note (other than legal

fees of counsel to the Borrower and Sponsor), business plans (but not projections) and budgets relating to the Property, to the extent prepared by the Borrower or Manager and (iii) cooperate with the holder of the Note (and its representatives) in obtaining, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Sponsor), such site inspection, appraisals, market studies, environmental reviews and reports, engineering reports and other due diligence investigations of the Property, as may be reasonably requested by the holder of the Note or reasonably requested by the Rating Agencies (all information provided pursuant to this Section 14.1 together with all other information heretofore provided to Lender in connection with the Loan, as such may be updated, at Borrower's request, in connection with a Securitization, or hereafter provided to Lender in connection with the Loan or a Securitization, being herein collectively called the **"Provided Information"**);

14.1.2 Opinions of Counsel . Use reasonable efforts to cause to be rendered such customary updates or customary modifications to the Opinions of Counsel delivered at the closing of the Loan as may be reasonably requested by the holder of the Note or the Rating Agencies in connection with the Securitization. Borrower's failure to use reasonable efforts to deliver or cause to be delivered the opinion updates or modifications required hereby within twenty (20) Business Days after written request therefor shall constitute an **"Event of Default"** hereunder. To the extent any of the foregoing Opinions of Counsel were required to be delivered in connection with the closing of the Loan, any update thereof shall be at the expense of Lender and without cost to Borrower. Any such Opinions of Counsel that Borrower is reasonably required to cause to be delivered in connection with a Securitization (which the parties agree shall consist of a "Review Letter" and bring downs of the Opinions of Counsel delivered as of the date hereof which Borrower acknowledges will be required to be delivered by Borrower's counsel in connection with a Securitization taking into account the due diligence Borrower's counsel deems reasonably necessary to deliver such "Review Letter"). Borrower shall not be required to pay the cost of any reliance letters or new opinions to permit successor holders of the Loan or any interest therein to rely on the opinions delivered at Closing in connection with Securitization or assignments of the Loan.

14.1.3 Modifications to Loan Documents . Without cost to the Borrower (other than legal fees of counsel to the Borrower and Sponsor), execute such amendments to the organizational documents of Borrower, Security Instrument and Loan Documents as may be reasonably requested by Lender or the Rating Agencies in order to achieve the required rating or to effect the Securitization (including, without limitation, modifying the Payment Date, as defined in the Note, to a date other than as originally set forth in the Note), provided , that nothing contained in this Section 14.1.3 shall result in any economic or other adverse change in the transaction contemplated by the Security Instrument or the Loan Documents (unless Borrower is made whole by the holder of Note) or result in any operational changes that are burdensome to the Property, Operating Lessee, Manager or Borrower.

Section 14.2 Cooperation with Rating Agencies . Borrower shall, at Lender's expense (other than legal fees of counsel to the Borrower and Sponsor), (i) at Lender's request, meet with representatives of the Rating Agencies at reasonable times to discuss the business and operations of the Property, and (ii) cooperate with the reasonable requests of the Rating Agencies in connection with the Property. Until the Obligations are paid in full, Borrower shall provide the Rating Agencies with all financial reports required hereunder and such other information as

they shall reasonably request, including copies of any default notices or other material notices delivered to and received from Lender hereunder, to enable them to continuously monitor the creditworthiness of Borrower and to permit an annual surveillance of the implied credit rating of the Securities.

Section 14.3 Securitization Financial Statements . Borrower acknowledges that all such financial information delivered by Borrower to Lender pursuant to Article XI may, at Lender's option, be delivered to the Rating Agencies.

Section 14.4 Securitization Indemnification .

14.4.1 Disclosure Documents . Borrower understands that certain of the Provided Information may be included in disclosure documents in connection with the Securitization, including a prospectus or private placement memorandum or a public registration statement (each, a**"Disclosure Document"**) and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the**"Securities Act "**) or the Securities and Exchange Act of 1934, as amended (the**" Exchange Act"**), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, upon request, Borrower shall reasonably cooperate with the holder of the Note in updating the Provided Information for inclusion or summary in the Disclosure Document by providing all current information pertaining to Borrower and the Property reasonably requested by Lender.

14.4.2 Indemnification Certificate . In connection with each of (x) a preliminary and a private placement memorandum, or (y) a preliminary and final prospectus, as applicable, Borrower agrees to provide, at Lender's reasonable request, an indemnification certificate (at no cost to Borrower other than legal fees of counsel to the Borrower and Sponsor):

(a) certifying that Borrower has carefully examined those portions of such memorandum or prospectus, as applicable, reasonably designated in writing by Lender for Borrower's review pertaining to Borrower, the Property, the Loan and/or the Provided Information and insofar as such sections or portions thereof specifically pertain to Borrower, the Property, the Provided Information or the Loan (such portions, the **"Relevant Portions"**), the Relevant Portions do not (except to the extent specified by Borrower if Borrower does not agree with the statements therein), as of the date of such certificate, to the Best of Borrower's Knowledge, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(b) indemnifying Lender and the Affiliates of Citigroup Global Markets Inc. (collectively,**"CGM"**) that have prepared the Disclosure Document relating to the Securitization, each of its directors, each of its officers who have signed the Disclosure Document and each person or entity who controls CGM within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the**"CGM Group"**), and CGM, together with the CGM Group, each of their respective directors and each person who controls CGM or the CGM Group, within the meaning of Section 15 of the Securities Act and Section 20

of the Exchange Act (collectively, the **"Underwriter Group"**) for any actual, out-of-pocket losses, third party claims, damages (excluding lost profits, diminution in value and other consequential damages) or liabilities arising out of third party claims (the **"Liabilities"**) to which any member of the Underwriter Group may become subject to the extent such Liabilities arise out of or are based upon any untrue statement of any material fact contained in the Relevant Portions and in the Provided Information or arise out of or are based upon the omission by Borrower to state therein a material fact required to be stated in the Relevant Portions in order to make the statements in the Relevant Portions in light of the circumstances under which they were made, not misleading (except that (x) Borrower's obligation to indemnify in respect of any information contained in a preliminary or final registration statement, private placement memorandum or preliminary or final prospectus shall be limited to any untrue statement or omission of material fact therein known to Borrower to the extent in breach of Borrower's certification made pursuant to clause (a) above and (y) Borrower shall have no responsibility for the failure of any member of the Underwriting Group to accurately transcribe written information supplied by Borrower or to include such portions of the Provided Information).

(c) Borrower's liability under clauses (a) and (b) above shall be limited to Liabilities arising out of or based upon any such untrue statement or omission made in a Disclosure Document in reliance upon and in conformity with information furnished to Lender by, or furnished at the direction and on behalf of, Borrower in connection with the preparation of those portions of the registration statement, memorandum or prospectus pertaining to Borrower, the Property or the Loan, including financial statements of Borrower and operating statements with respect to the Property. This indemnity agreement will be in addition to any liability which Borrower may otherwise have.

(d) Promptly after receipt by an indemnified party under this Article XIV of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Article XIV , notify the indemnifying party in writing of the commencement thereof, but the omission to so notify the indemnifying party will not relieve the indemnifying party from any liability which the indemnifying party may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the indemnifying party. In the event that any action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party under this Article XIV of its assumption of such defense, the indemnifying party shall not be liable for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof; provided , however , if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or in conflict with those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties at the expense of the indemnifying party. The indemnifying party shall not be liable for the expenses

of separate counsel unless an indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or in conflict with those available to another indemnified party.

(e) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Article XIV is for any reason held to be unenforceable by an indemnified party in respect of any actual, out-of-pocket losses, claims, damages or liabilities relating to third party claims (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Article XIV , the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such actual, out of pocket losses, third party claims, damages or liabilities (or action in respect thereof) (but excluding damages for lost profits, diminution in value of the Property and consequential damages); provided , however , that no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution for Liabilities arising therefrom from any person who was not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the CGM Group's and Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; (iii) the limited responsibilities and obligations of Borrower as specified herein; and (iv) any other equitable considerations appropriate in the circumstances.

Section 14.5 Retention of Servicer . Lender reserves the right to retain the Servicer. Lender has advised Borrower that the Servicer initially retained by Lender shall be Wachovia Securities and Borrower shall pay any reasonable servicing fees, special servicing fees, trustee fees and any administrative fees and expenses of the Servicer, including, without limitation, reasonable attorney and other third-party fees and disbursements in connection with a prepayment, release of the Property, assumption or modification of the Loan or enforcement of the Loan Documents. Borrower shall also pay the ongoing standard monthly servicing fee.

XV. ASSIGNMENTS AND PARTICIPATIONS

Section 15.1 Assignment and Acceptance . At no incremental cost or liability to Borrower, Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Note); provided that the parties to each such assignment shall execute and deliver to Lender, for its acceptance and recording in the Register (as hereinafter defined), an Assignment and Acceptance. In addition, at no incremental cost to Borrower, Lender may participate to one or more Persons all or any portion of its rights and obligations under this Agreement and the other Loan Documents (including without limitation, all or a portion of the Note) utilizing such documentation to evidence such participation and the parties' respective rights thereunder as Lender, in its sole discretion, shall elect.

Section 15.2 Effect of Assignment and Acceptance . Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Assignment and Acceptance, (i) the assignee thereunder shall be a party hereto and, to the extent

that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of Lender, as the case may be, hereunder and such assignee shall be deemed to have assumed such rights and obligations, and (ii) Lender shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement and the other Loan Documents (and, in the case of an Assignment and Acceptance covering all or the remaining portion of Lender's rights and obligations under this Agreement and the other Loan Documents, Lender shall cease to be a party hereto) accruing from and after the effective date of the Assignment and Acceptance, except with respect to (A) any payments made by Borrower to Lender pursuant to the terms of the Loan Documents after the effective date of the Assignment and Acceptance and (B) any letter of credit, cash deposit or other deposits or security (other than the Lien of the Security Instrument and the other Loan Documents) delivered to or for the benefit of or deposited with Citigroup Global Markets Realty Corp., as Lender, for which Citigroup Global Markets Realty Corp. shall remain responsible for the proper disposition thereof until such items are delivered to a party who is qualified as an Approved Bank and agrees to hold the same in accordance with the terms and provisions of the agreement pursuant to which such items were deposited.

Section 15.3 Content . By executing and delivering an Assignment and Acceptance, Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, this Agreement or any other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (ii) Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Documents or any other instrument or document furnished pursuant thereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes Lender to take such action as agent on its behalf and to exercise such powers and discretion under the Loan Documents as are delegated to Lender by the terms hereof together with such powers and discretion as are reasonably incidental thereto; and (vi) such assignee agrees that it will perform, in accordance with their terms, all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by Lender.

Section 15.4 Register . Borrower shall maintain a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of Lender and each assignee pursuant to this Article XV and the Principal Amount of the Loan owing to each such assignee from time to time (the **"Register"**). The entries in the Register shall, with respect to such assignees, be conclusive and binding for all purposes, absent

manifest error. The Register shall be available for inspection by Lender or any assignee pursuant to this Article XV at any reasonable time and from time to time upon reasonable prior written notice.

Section 15.5 Substitute Notes . Upon its receipt of an Assignment and Acceptance executed by an assignee, together with any Note or Notes subject to such assignment, Lender shall, if such Assignment and Acceptance has been completed and is in substantially the form of **Exhibit J** hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register, and (iii) give prompt written notice thereof to Borrower. Within five (5) Business Days after its receipt of such notice, Borrower, at Lender's own expense, shall execute and deliver to Lender in exchange and substitution for the surrendered Note or Notes a new Note to the order of such assignee in an amount equal to the portion of the Loan assigned to it and a new Note to the order of Lender in an amount equal to the portion of the Loan retained by it hereunder. Such new Note or Notes shall be in an aggregate Principal Amount equal to the aggregate then outstanding principal amount of such surrendered Note or Notes, shall be dated the effective date of such Assignment and Acceptance and shall otherwise be in substantially the form of the Note (modified, however, to the extent necessary so as not to impose duplicative or increased obligations on Borrower and to delete obligations previously satisfied by Borrower). Notwithstanding the provisions of this Article XV , Borrower and Operating Lessee shall not be responsible or liable for any additional taxes, reserves, adjustments or other costs and expenses that are related to, or arise as a result of, any transfer of the Loan or any interest or participation therein that arise solely and exclusively from the transfer of the Loan or any interest or participation therein or from the execution of the new Note contemplated by this Section 15.5 , including, without limitation, any mortgage tax. Lender and/or the assignees, as the case may be, shall from time to time designate one agent through which Borrower shall request all approvals and consents required or contemplated by this Agreement and on whose statements Borrower, Operating Lessee and Sponsor may rely.

Section 15.6 Participations . Each assignee pursuant to this Article XV may sell participations to one or more Persons (other than Borrower or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Note held by it); provided , however , that (i) such assignee's obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) such assignee shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such assignee shall remain the holder of any such Note for all purposes of this Agreement and the other Loan Documents, and (iv) Borrower, Lender and the assignees pursuant to this Article XV shall continue to deal solely and directly with such assignee in connection with such assignee's rights and obligations under this Agreement and the other Loan Documents. In the event that more than one (1) party comprises Lender, Lender shall designate one party to act on the behalf of all parties comprising Lender in providing approvals and all other necessary consents under the Loan Documents and on whose statements Borrower, Operating Lessee and Sponsor may rely.

Section 15.7 Disclosure of Information . Any assignee pursuant to this Article XV may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Article XV , disclose to the assignee or participant or proposed assignee or participant, any information relating to Borrower furnished to such assignee by or on

behalf of Borrower; provided , however , that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree in writing for the benefit of Borrower to preserve the confidentiality of any confidential information received by it.

Section 15.8 Security Interest in Favor of Federal Reserve Bank . Notwithstanding any other provision set forth in this Agreement or any other Loan Document, any assignee pursuant to this Article XV may at any time create a security interest in all or any portion of its rights under this Agreement or the other Loan Documents (including, without limitation, the amounts owing to it and the Note or Notes held by it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

XVI. RESERVE ACCOUNTS

Section 16.1 Tax Reserve Account . In accordance with the time periods set forth in Section 3.1 , if an Event of Default shall have occurred and be continuing, if required under Section 3.1 , Borrower shall deposit into the Tax Reserve Account an amount equal to (a) one-twelfth of the annual Impositions that Lender reasonably estimates, based on the most recent tax bill for the Property, will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Impositions at least twenty (20) days prior to the imposition of any interest, charges or expenses for the non-payment thereof and (b) one-twelfth of the annual Other Charges that Lender reasonably estimates will be payable during the next ensuing twelve (12) months (said monthly amounts in (a) and (b) above hereinafter called the **"Monthly Tax Reserve Amount"**, and the aggregate amount of funds held in the Tax Reserve Account being the **"Tax Reserve Amount"**). As of the Closing Date, the Monthly Tax Reserve Amount is $0.00, but such amount is subject to adjustment by Lender in accordance with the provisions of Section 3.1 and this Section 16.1 . The Monthly Tax Reserve Amount shall be paid by Borrower to Lender on each Payment Date during the continuance of an Event of Default to the extent required to be paid hereunder. Lender will apply the Monthly Tax Reserve Amount to payments of Impositions and Other Charges required to be made by Borrower pursuant to Article V and Article VII and under the Security Instrument, subject to Borrower's right to contest Impositions in accordance with Section 7.3 . In making any payment relating to the Tax Reserve Account, Lender may do so according to any bill, statement or estimate procured from the appropriate public office, without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of funds in the Tax Reserve Account shall exceed the amounts due for Impositions and Other Charges pursuant to Article V and Article VII , Lender shall credit such excess against future payments to be made to the Tax Reserve Account. If at any time Lender reasonably determines that the Tax Reserve Amount is not or will not be sufficient to pay Impositions and Other Charges by the dates set forth above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to the imposition of any interest, charges or expenses for the non-payment of the Impositions and Other Charges. Upon payment of the Impositions and Other Charges, Lender shall reassess the amount necessary to be deposited in the Tax Reserve Account for the succeeding period, which calculation shall take into account any excess amounts remaining in the Tax Reserve Account.

Section 16.2 Insurance Reserve Account . If an Event of Default shall have occurred and be continuing and if required as provided in Section 3.1 hereof, Borrower will immediately pay to Lender for transfer by Lender to the Holding Account (or if Borrower fails to so pay Lender, Lender will transfer from the Holding Account) an amount (the **"Insurance Reserve Amount"**) equal to payments of insurance premiums required to be made by Borrower to pay (or to reimburse Borrower or Operating Lessee for) the insurance required pursuant to Article VI and under the Security Instrument in accordance with the time periods set forth in Section 3.1 , an amount equal to one-twelfth of the insurance premiums that Lender reasonably estimates based on the most recent bill, will be payable for the renewal of the coverage afforded by the insurance policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such insurance premiums at least twenty (20) days prior to the expiration of the policies required to be maintained by Borrower pursuant to the terms hereof (said monthly amounts hereinafter called the **"Monthly Insurance Reserve Amount"**); provided , however , that immediately following an Insurance Reserve Trigger, Borrower will pay to Lender for transfer by Lender to the Insurance Reserve Account (or if Borrower fails to so pay Lender, Lender will transfer from the Holding Account) an amount equal to payments of insurance premiums required to be made by Borrower to pay (or to reimburse Borrower or Operating Lessee) for the insurance required pursuant to Article VI and under the Security Instrument. As of the Closing Date, the Monthly Insurance Reserve Amount is $0.00. The Monthly Insurance Reserve Amount, if same is payable pursuant to Section 3.1 and this Section 16.2 , shall be paid by Borrower to Lender on each Payment Date. Lender will apply the Monthly Insurance Reserve Amount to payments of insurance premiums required to be made by Borrower to pay for the insurance required pursuant to Article VI and under the Security Instrument. In making any payment relating to the Insurance Reserve Account, Lender may do so according to any bill, statement or estimate procured from the insurer or agent, without inquiry into the accuracy of such bill, statement or estimate or into the validity thereof. If at any time Lender reasonably determines that the Insurance Reserve Amount is not or will not be sufficient to pay insurance premiums (up to a maximum amount equal to the aggregate annual insurance premium required hereunder), Lender shall notify Borrower of such determination and Borrower shall increase the Insurance Reserve Amount by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to expiration of the applicable insurance policies. Upon payment of such insurance premiums, Lender shall reassess the amount necessary to be deposited in the Insurance Reserve Account for the succeeding period, which calculation shall take into account any excess amounts remaining in the Insurance Reserve Account.

Section 16.3 Intentionally Deleted .

Section 16.4 FF&E Reserve Account . In accordance with Section 3.1 , and during any period when Manager is not reserving for FF&E pursuant to the terms of the Management Agreement, upon the request of Borrower, Lender will, within fifteen (15) Business Days (or such shorter time as may be appropriate in Lender's reasonable discretion during emergency situations identified to Lender by Borrower in writing) after the receipt of such request and the satisfaction of the other conditions set forth in this Section, cause disbursements to Operating Lessee from the FF&E Reserve Account to pay or to reimburse Operating Lessee or Manager for actual costs incurred in connection with capital expenditures relating to FF&E at the Property (to the extent such expenditures are permitted hereunder), provided that (A) Lender has

received invoices evidencing that the costs for which such disbursements are requested are due and payable and are in respect of capital expenditures relating to FF&E at the property, (B) Operating Lessee has applied any amounts previously received by it in accordance with this Section for the expenses to which specific draws made hereunder relate and received any Lien waivers or other releases which would customarily be obtained with respect to the work in question and (C) Lender has received an Officer's Certificate confirming that the conditions in the foregoing clauses (A) and (B) have been satisfied and that the copies of invoices and evidence of Lien waivers (to the extent required above) attached to such Officer's Certificate are true, complete and correct.

Section 16.5 Condominium Charges Reserve Account . In accordance with the time periods set forth in Section 3.1 , if an Event of Default shall have occurred and be continuing, if required under Section 3.1 , Borrower shall deposit into the Condominium Charges Reserve Account an amount equal to the amount of Condominium Charges that will be payable under the Condominium Documents for the next calendar month after the relevant Payment Date (such amounts so deposited shall hereinafter be referred to as the "**Condominium Reserve Funds**"). Such deposit may be increased by Lender in the amount Lender deems is necessary in its reasonable discretion based on any increases in the Condominium Charges. Provided no Event of Default has occurred and is continuing, Lender shall apply the Condominium Reserve Funds to payments of Condominium Charges. In making any payment relating to Condominium Charges, Lender may do so according to any bill or statement given by the Condominium Association without inquiry into the accuracy of such bill or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Condominium Reserve Funds shall exceed the amounts due for Condominium Charges, Lender shall, in its sole discretion, either (a) return any excess to Borrower or (b) credit such excess against future payments to be made to the Condominium Reserve Funds. Any Condominium Reserve Funds remaining after the Indebtedness has been paid in full shall be returned to Borrower.

Section 16.6 Letter of Credit Provisions .

16.6.1 Delivery of Letter of Credit . In lieu of maintaining on deposit all or any portion of the funds in the Low Debt Service Reserve Account with Lender pursuant to Section 16.4 , Borrower shall have the right to deliver a Letter of Credit in the amount of all or any portion of the amounts on deposit with Lender from time to time under Sections 16.4 .

16.6.2 Reduction of Letter of Credit. In the event that Borrower elects to deliver the Letter of Credit to Lender under the terms of Section 16.4.1 , Lender agrees to permit the reduction from time to time of the outstanding amount of the Letter of Credit by (i) the amount of cash funds delivered to Lender as reserve funds by Borrower in place of such Letter of Credit, and (ii) the amount that Borrower would otherwise be entitled to receive as a disbursement from the applicable reserve account pursuant to Section 16.4 .

16.6.3 Security for Debt . Each Letter of Credit delivered under this Agreement shall be additional security for the payment of the Indebtedness. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, at its option, to draw on any Letter of Credit and to apply all or any part thereof to the payment of the items for which such Letter of Credit was established or to apply each such Letter of Credit to payment of the Indebtedness in such order, proportion or priority as Lender may determine.

16.6.4 Additional Rights of Lender . In addition to any other right Lender may have to draw upon a Letter of Credit pursuant to the terms and conditions of this Agreement, Lender shall have the additional rights to draw in full any Letter of Credit: (a) if Lender has received a notice from the issuing bank that the Letter of Credit will not be renewed and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (b) upon receipt of notice from the issuing bank that the Letter of Credit will be terminated (except if a substitute Letter of Credit is provided); or (c) if Lender has received notice that the bank issuing the Letter of Credit shall cease to be an Approved Bank (unless an alternative Approved Bank issues an equivalent Letter of Credit within fifteen (15) days of Borrower's receipt of notice of same). Notwithstanding anything to the contrary contained in the above, Lender is not obligated to draw any Letter of Credit upon the happening of an event specified in (a), (b) or (c) above and shall not be liable for any losses sustained by Borrower due to the insolvency of the bank issuing the Letter of Credit if Lender has not drawn the Letter of Credit.

XVII. DEFAULTS

Section 17.1 Event of Default . (a) Each of the following events shall constitute an event of default hereunder (an **"Event of Default"**):

(i) if (A) the Indebtedness is not paid in full on the Maturity Date (subject to the last sentence of Section 3.1.5(b)), (B) any Debt Service is not paid in full on the applicable Payment Date (subject to the last sentence of Section 3.1.5(b)), (C) any prepayment of principal due under this Agreement or the Note is not paid when due, (D) the Prepayment Fee is not paid when due, (E) any deposit to the Collection Account or any of the other Collateral Accounts is not made on the required deposit date therefor; or (F) except as to any amount included in (A), (B), (C), (D), and/or (E) of this clause (i), any other amount payable pursuant to this Agreement, the Note or any other Loan Document is not paid in full when due and payable in accordance with the provisions of the applicable Loan Document, with such failure as described in subclauses (A), (B), (C), (D), and (E) continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(ii) subject to Borrower's right to contest as set forth in Section 7.3 , if any of the Impositions or Other Charges are not paid prior to the imposition of any interest, penalty, charge or expense for the non-payment thereof;

(iii) if the insurance policies required by Section 6.1 are not kept in full force and effect, or if certificates of any of such insurance policies are not delivered to Lender within ten (10) Business Days following Lender's request therefor;

(iv) if, except as permitted pursuant to Article VIII , (a) any Transfer of any direct or indirect legal, beneficial or equitable interest in all or any portion of the Property, (b) any Transfer of any direct or indirect interest in Borrower or other Person restricted by the terms of Article VIII , (c) any Lien or encumbrance on all or any portion of the Property, (d) any

pledge, hypothecation, creation of a security interest in or other encumbrance of any direct or indirect interests in Borrower or other Person restricted by the terms of Article VIII or (e) the filing of a declaration of condominium with respect to the Property other than as allowed hereunder;

(v) if (i) any representation or warranty made by Borrower in Section 4.1.23 shall have been false or misleading in any material respect as of the date the representation or warranty was made which incorrect, false or misleading statement is not cured within thirty (30) days after receipt by Borrower of notice from Lender in writing of such breach or (ii) if any other representation or warranty made by Borrower herein by Borrower, any Sponsor, or any Affiliate of Borrower in any other Loan Document, or in any report, certificate (including, but not limited to, any certificate by Borrower delivered in connection with the issuance of the Non-Consolidation Opinion), financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made; provided , however , that if such representation or warranty which was false or misleading in any material respect is, by its nature, curable and is not reasonably likely to have a Material Adverse Effect, and such representation or warranty was not, to the Best of Borrower's Knowledge, false or misleading in any material respect which made, then same shall not constitute an Event of Default unless Borrower has not cured same within five (5) Business Days after receipt by Borrower of notice from Lender in writing of such breach;

(vi) if Borrower or Sponsor shall make an assignment for the benefit of creditors provided , however , if such assignment was with respect to any Sponsor such Event of Default may be cured by the delivery to Lender by any other Sponsor that is not subject to such assignment, of an executed counterpart to the Sponsor Indemnity assuming the several liability of the Sponsor with respect to which such assignment within five (5) days after such assignment;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Operating Lessee, or Sponsor or if Borrower, Operating Lessee or Sponsor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Operating Lessee or Sponsor, or if any proceeding for the dissolution or liquidation of Borrower, Operating Lessee, or Sponsor shall be instituted; provided , however , if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Operating Lessee, or Sponsor upon the same not being discharged, stayed or dismissed within ninety (90) days; provided , further , if such appointment, adjudication, petition or proceeding was with respect to Sponsor such Event of Default may be cured by the delivery to Lender by Sponsor that, not subject to such appointment, adjudication, petition or proceeding, of an executed counterpart to the Sponsor Indemnity assuming the several liability of the Sponsor with respect to which such appointment, adjudication, petition or proceeding occurred within five (5) days after such occurrence;

(viii) if Borrower, Operating Lessee or Sponsor, as applicable, Transfers its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) with respect to any term, covenant or provision set forth herein (other than the other subsections of this Section 17.1) which specifically contains a notice requirement or grace period, if Borrower, Operating Lessee or Sponsor shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(x) if Borrower, having notified Lender of its election to extend the Maturity Date as set forth in Section 5 of the Note, fails to deliver the Replacement Interest Rate Cap Agreement to Lender prior to the first day of the extended term of the Loan and Borrower has not prepaid the Loan pursuant to the terms of the Note prior to such first day of the extended term;

(xi) if Borrower or Operating Lessee shall fail to comply with any covenants set forth in Article V or Section XI with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(xii) if Borrower shall fail to comply with any covenants set forth in Section 4 or Section 3(d) or Section 8 of the Security Instrument with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(xiii) Borrower, Operating Lessee or any Affiliate of any such Person shall fail to deposit any sums required to be deposited in the Holding Account or any Sub-Accounts thereof are not made pursuant to the requirements herein when due;

(xiv) if this Agreement or any other Loan Document or any Lien granted hereunder or thereunder, in whole or in part, shall terminate or shall cease to be effective or shall cease to be a legally valid, binding and enforceable obligation of Borrower or Sponsor, or any Lien securing the Loan shall, in whole or in part, cease to be a perfected first priority Lien, subject to the Permitted Encumbrances (except in any of the foregoing cases in accordance with the terms hereof or under any other Loan Document or by reason of any affirmative act of Lender);

(xv) if the Management Agreement is terminated and an Acceptable Manager is not appointed as a replacement manager pursuant to the provisions of Section 5.2.14 within sixty (60) days after such termination;

(xvi) if Borrower shall default beyond the expiration of any applicable cure period under any existing easement, covenant or restriction which affects the Property, the default of which shall have a Material Adverse Effect;

(xvii) There exists any fact or circumstance that reasonably could be expected to result in the (a) imposition of a Lien or security interest under Section 412(n) of the Code or under ERISA or (b) the complete or partial withdrawal by Borrower or any ERISA Affiliate from any "multiemployer plan" that is reasonably expected to result in any material liability to Borrower; provided , however that the existence of such fact or circumstance under clause (xvii)(b) shall not constitute an Event of Default if such material withdrawal liability (x) in the case of a withdrawal by an ERISA Affiliate that is reasonably expected to cause a Material Adverse Effect or any withdrawal by Borrower, is paid within thirty (30) days after the

date incurred or is contested in accordance with Section 7.3 hereof or (y) in the case of a withdrawal by an ERISA Affiliate that is not reasonably expected to cause a Material Adverse Effect, is paid within the period required under applicable ERISA statutes or is contested in accordance with Section 7.3 hereof; or

(xviii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement or of any Loan Document not specified in subsections (i) to (xvii) above, for thirty (30) days after notice from Lender; provided, however, that if such Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided , further , that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days.

(b) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in clauses (a)(vi), (vii) or (viii) above) Lender may, without notice or demand, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action that Lender deems advisable to protect and enforce its rights against Borrower and in the Property, including, without limitation, (i) declaring immediately due and payable the entire Principal Amount together with interest thereon and all other sums due by Borrower under the Loan Documents, (ii) collecting interest on the Principal Amount at the Default Rate whether or not Lender elects to accelerate the Note and (iii) enforcing or availing itself of any or all rights or remedies set forth in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in subsections (a)(vi) or (a)(vii) above, the Indebtedness and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding. The foregoing provisions shall not be construed as a waiver by Lender of its right to pursue any other remedies available to it under this Agreement, the Security Instrument or any other Loan Document. Any payment hereunder may be enforced and recovered in whole or in part at such time by one or more of the remedies provided to Lender in the Loan Documents.

Section 17.2 Remedies . (a) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Indebtedness shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Property. Lender may, at its option, and Borrower hereby grants and assigns to Lender, from and after the occurrence and during the continuation of an Event of Default, the right to, either by itself or by its nominee or designee, in the name of Borrower, exercise the rights, powers and

remedies of Borrower as owner of the Unit pursuant to the Condominium Documents. Such rights and remedies shall include, without limitation, the right to exercise all voting, consent, managerial and other rights relating to the Condominium, whether in Borrower's name or otherwise, and the right to exercise Borrower's rights in the Condominium, including, without limitation, voting to elect members of the Board of Managers and voting to amend the Condominium Documents. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be subject to any one action or election of remedies law or rule and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Indebtedness or the Indebtedness has been paid in full.

(b) Upon the occurrence and during the continuance of an Event of Default, with respect to the Account Collateral, the Lender may:

(i) subject to the terms of the Subordination of Operating Lease and/or Manager Subordination Agreements, without notice to Borrower, except as required by law, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Account Collateral against the Obligations, Operating Expenses and/or Capital Expenditures for the Property or any part thereof;

(ii) in Lender's sole discretion, at any time and from time to time, exercise any and all rights and remedies available to it under this Agreement, and/or as a secured party under the UCC;

(iii) subject to the terms of the Subordination of Operating Lease and/or Manager Subordination Agreements, demand, collect, take possession of or receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Account Collateral (or any portion thereof) as Lender may determine in its sole discretion; and

(iv) take all other actions provided in, or contemplated by, this Agreement.

(c) With respect to Borrower, the Account Collateral, the Rate Cap Collateral and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Indebtedness, and Lender may seek satisfaction out of the Property or any part thereof, in its absolute discretion in respect of the Indebtedness. In addition, Lender shall have the right from time to time to partially foreclose this Agreement and the Security Instrument in any manner and for any amounts secured by this Agreement or the Security Instrument then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the

payment of one or more scheduled payments of principal or interest, Lender may foreclose this Agreement and the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose this Agreement and the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by this Agreement or the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to this Agreement and the Security Instrument to secure payment of sums secured by this Agreement and the Security Instrument and not previously recovered.

Section 17.3 Remedies Cumulative; Waivers . The rights, powers and remedies of Lender under this Agreement and the Security Instrument shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower or any Sponsor shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or any Sponsor or to impair any remedy, right or power consequent thereon.

Section 17.4 Costs of Collection . In the event that after an Event of Default: (i) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (ii) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents; or (iii) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Security Instrument or any of the Loan Documents; then Borrower shall pay to Lender all reasonable attorney's fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

XVIII. SPECIAL PROVISIONS

Section 18.1 Exculpation .

Anything contained herein, in the Note or in any other Loan Document to the contrary notwithstanding (except as set forth in the balance of this Section 18.1 or in the Environmental Indemnity), no recourse shall be had for the payment of the principal or interest on the Note or for any other portion of the Indebtedness hereunder or under the other Loan Documents against (i) any Affiliate, parent company, trustee or advisor of Borrower or owner of a direct or indirect Beneficial or equitable interest in Borrower or Sponsor, any member in Borrower, or any partner, shareholder or member therein (other than against Sponsor pursuant to the Sponsor Indemnity Agreement); (ii) any legal representative, heir, estate, successor or assign of any thereof; (iii) any corporation (or any officer, director, employee or shareholder thereof),

individual or entity to which any ownership interest in Borrower shall have been transferred; (iv) any purchaser of any asset of Borrower; or (v) any other Person (except Borrower), for any deficiency or other sum owing with respect to the Note or the Indebtedness. It is understood that the Note and the Indebtedness (except as set forth in the balance of this Section 18.1 and in the Environmental Indemnity) may not be enforced against any Person described in clauses (i) through (v) above (other than against Sponsor pursuant to the Sponsor Indemnity Agreement as set forth in clause (i) above) and Lender agrees not to sue or bring any legal action or proceeding against any such Person in such respect. Notwithstanding the foregoing, the foregoing shall not: (a) prevent recourse to the Borrower or the assets of Borrower, or enforcement of the Security Instrument or other instrument or document by which Borrower is bound pursuant to the Loan Documents; (b) estop Lender from instituting or prosecuting a legal action or proceeding or otherwise making a claim against Borrower as a result of any of the following or against the Person or Persons committing any of the following: (i) fraud or intentional misrepresentation by Borrower or Operating Lessee in connection with the Loan, (ii) the misappropriation by Borrower or Operating Lessee or any Affiliate of Borrower or Operating Lessee of any Proceeds (including, without limitation, any Rents and any security deposits), (iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity, (iv) any transfer in violation of Section 8 or otherwise violate the provisions of such Section 8 , (v) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of all or any part of the Property, the Collection Account, the Holding Account, the Collateral Accounts or the Interest Rate Cap Agreement being encumbered by a Lien (other than pursuant to the Loan Documents in favor of Lender) in violation of the Loan Documents, (vi) physical damage to any Property from intentional waste committed by Borrower or Operating Lessee or any Affiliate of Borrower or Operating Lessee, (vii) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of the failure of Borrower and/or Operating Lessee to comply with any of the provisions of Section XIV hereof, (viii) any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, causes of action, suits, claims, demands and adjustments of any nature or description whatsoever) which may at any time be imposed upon, incurred by or awarded against Lender, in the event (and arising out of such circumstances) that (x) Borrower should raise any defense, counterclaim and/or allegation in any foreclosure action by Lender relative to the Property, the Collection Account, the Holding Account, the Collateral Accounts or assignment of Borrower's rights to the Interest Rate Cap Agreement (including the right to receive any proceeds derived therefore) or any part thereof which is found by a court to have been raised by Borrower or Operating Lessee in bad faith or to be wholly without basis in fact or law, or (y) an involuntary case is commenced against Borrower or Operating Lessee under the Bankruptcy Code with the collusion of Borrower or Operating Lessee, Sponsor or any of their Affiliates or (z) an order for relief is entered with respect to Borrower or Operating Lessee under the Bankruptcy Code through the actions of Borrower or Operating Lessee, Sponsor or any of their Affiliates; or (ix) attorney's fees, costs and expenses incurred by Lender, its agent or any servicer of the Loan in connection with any successful suit by Lender to enforce the terms of the Loan Documents; or (c) estop Lender from enforcing its rights under the indemnity agreement being executed concurrently herewith by the Sponsor in favor of the Lender, for losses caused by any of the foregoing items set forth in section (b) above. Borrower hereby agrees that notwithstanding any provision to the contrary herein or in any other Loan Document, to the extent otherwise permitted by law, its obligations pursuant to clause (b)(ix) of this Section shall survive the full repayment of the Loan and/or the passage of title to all or any portion of the Property to Lender.

XIX. MISCELLANEOUS

Section 19.1 Survival . This Agreement and all covenants, indemnifications, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Indebtedness is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the successors and assigns of Lender.

Section 19.2 Lender's Discretion . Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided or as is otherwise required by law) be in the sole discretion of Lender and shall be final and conclusive.

Section 19.3 Governing Law . **(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTE, AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.**

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND EACH OF BORROWER AND LENDER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER

HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH OF BORROWER AND LENDER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

CORPORATION SERVICE COMPANY
80 STATE STREET
ALBANY, NEW YORK 12207-2543

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 19.4 Modification, Waiver in Writing . No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Borrower shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 19.5 Delay Not a Waiver . Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 19.6 Notices . All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Citigroup Global Markets Realty Corp.
388 Greenwich Street, 11th Floor
New York, New York 10013
Attention: Amir Kornblum
Telecopy No.: (212) 816-8307

With a copy to: Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: Fredric L. Altschuler, Esq.
Telecopy: (212) 504-6666

If to Borrower: Strategic Hotel Funding, L.L.C.
77 West Wacker Drive
Suite 4600
Chicago, Illinois, 60601
Attention: Chief Financial Officer and General Counsel
Telefax No.: (312) 658-5799

With a copy to: Perkins Coie LLP
131 South Dearborn Street, Suite 1700
Chicago, IL 60603-5559
Attention: Bruce A. Bonjour, Esq.
Telefax No.: (312) 324-9400

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, or (iii) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

Section 19.7 TRIAL BY JURY . EACH OF BORROWER, LENDER AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, THE SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, THE SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND BORROWER HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. BORROWER ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

Section 19.8 Headings . The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 19.9 Severability . Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 19.10 Preferences . To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 19.11 Waiver of Notice . Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives

the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 19.12 Expenses; Indemnity . (a) Except as may be otherwise expressly set forth in the Loan Documents, Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender pursuant to this Agreement); (ii) Lender's ongoing performance of and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters as required herein or under the other Loan Documents; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (v) the filing and recording fees and expenses, mortgage recording taxes, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a work-out or of any insolvency or bankruptcy proceedings and (viii) procuring insurance policies pursuant to Section 6.1.11 ; provided , however , that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise (A) by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender or (B) in connection with any action taken under Article IV or a Securitization, other than the Borrower's internal administrative costs. Any cost and expenses due and payable to Lender may be paid from any amounts in the Collection Account or the Holding Account if same are not paid by Borrower within ten (10) Business Days after receipt of written notice from Lender.

(b) Subject to the non-recourse provisions of Section 18.1 , Borrower shall protect, indemnify and save harmless Lender, and all officers, directors, stockholders, members, partners, employees, agents, successors and assigns thereof (collectively, the Indemnified Parties) from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including all reasonable attorneys' fees and expenses actually incurred) imposed upon or incurred by or asserted against the Indemnified Parties or the Property or any part of its interest therein, by reason of the occurrence or existence of any of the following (to the extent Proceeds payable on account of the following shall be inadequate; it being understood that in no event will the Indemnified Parties be required to actually pay or incur any costs or expenses as a condition to the effectiveness of the foregoing indemnity) prior to (i) the

acceptance by Lender or its designee of a deed-in-lieu of foreclosure with respect to the Property, or (ii) an Indemnified Party or its designee taking possession or control of the Property or (iii) the foreclosure of the Security Instrument, except to the extent caused by the willful misconduct or gross negligence of the Indemnified Parties (other than such willful misconduct or gross negligence imputed to the Indemnified Parties because of their interest in the Property): (1) ownership of Borrower's interest in the Property, or any interest therein, or receipt of any Rents or other sum therefrom, (2) any accident, injury to or death of any persons or loss of or damage to property occurring on or about the Property or any Appurtenances thereto, (3) any design, construction, operation, repair, maintenance, use, non-use or condition of the Property or Appurtenances thereto, including claims or penalties arising from violation of any Legal Requirement or Insurance Requirement, as well as any claim based on any patent or latent defect, whether or not discoverable by Lender, any claim the insurance as to which is inadequate, and any Environmental Claim, (4) any Default under this Agreement or any of the other Loan Documents or any failure on the part of Borrower to perform or comply with any of the terms of any Lease within the applicable notice or grace periods, (5) any performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (6) any negligence or tortious act or omission on the part of Borrower or any of its agents, contractors, servants, employees, sublessees, licensees or invitees, (7) any contest referred to in Section 7.3 hereof, (8) any obligation or undertaking relating to the performance or discharge of any of the terms, covenants and conditions of the landlord contained in the Leases, or (9) except as may be expressly limited herein, the presence at, in or under the Property or the Improvements of any Hazardous Materials in violation of any Environmental Law. Any amounts the Indemnified Parties are legally entitled to receive under this Section which are not paid within fifteen (15) Business Days after written demand therefor by the Indemnified Parties or Lender, setting forth in reasonable detail the amount of such demand and the basis therefor, shall bear interest from the date of demand at the Default Rate, and shall, together with such interest, be part of the Indebtedness and secured by the Security Instrument. In case any action, suit or proceeding is brought against the Indemnified Parties by reason of any such occurrence, Borrower shall at Borrower's expense resist and defend such action, suit or proceeding or will cause the same to be resisted and defended by counsel at Borrower's reasonable expense for the insurer of the liability or by counsel designated by Borrower (unless reasonably disapproved by Lender promptly after Lender has been notified of such counsel); provided , however , that nothing herein shall compromise the right of Lender (or any Indemnified Party) to appoint its own counsel at Borrower's expense for its defense with respect to any action which in its reasonable opinion presents a conflict or potential conflict between Lender and Borrower that would make such separate representation advisable; provided , further , that if Lender shall have appointed separate counsel pursuant to the foregoing, Borrower shall not be responsible for the expense of additional separate counsel of any Indemnified Party unless in the reasonable opinion of Lender a conflict or potential conflict exists between such Indemnified Party and Lender. So long as Borrower is resisting and defending such action, suit or proceeding as provided above in a prudent and commercially reasonable manner, Lender and the Indemnified Parties shall not be entitled to settle such action, suit or proceeding without Borrower's consent which shall not be unreasonably withheld, delayed or conditioned, and claim the benefit of this Section with respect to such action, suit or proceeding and Lender agrees that it will not settle any such action, suit or proceeding without the consent of Borrower; provided , however , that if Borrower is not diligently defending such action, suit or proceeding in a prudent and commercially reasonable

manner as provided above, and Lender has provided Borrower with thirty (30) days' prior written notice, or shorter period if mandated by the requirements of applicable law, and opportunity to correct such determination, Lender may settle such action, suit or proceeding and claim the benefit of this Section 19.12 with respect to settlement of such action, suit or proceeding. Any Indemnified Party will give Borrower prompt notice after such Indemnified Party obtains actual knowledge of any potential claim by such Indemnified Party for indemnification hereunder. The Indemnified Parties shall not settle or compromise any action, proceeding or claim as to which it is indemnified hereunder without notice to Borrower.

Section 19.13 Exhibits and Schedules Incorporated . The Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 19.14 Offsets, Counterclaims and Defenses . Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 19.15 Liability of Assignees of Lender . No assignee of Lender shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any other Loan Document or any amendment or amendments hereto made at any time or times, heretofore or hereafter, any different than the liability of Lender hereunder. In addition, no assignee shall have at any time or times hereafter any personal liability, directly or indirectly, under or in connection with or secured by any agreement, lease, instrument, encumbrance, claim or right affecting or relating to the Property or to which the Property is now or hereafter subject any different than the liability of Lender hereunder. The limitation of liability provided in this Section 19.15 is (i) in addition to, and not in limitation of, any limitation of liability applicable to the assignee provided by law or by any other contract, agreement or instrument, and (ii) shall not apply to any assignee's gross negligence or willful misconduct.

Section 19.16 No Joint Venture or Partnership; No Third Party Beneficiaries . (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require

satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 19.17 Publicity . All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, or any of its Affiliates shall be subject to the prior written approval of Lender.

Section 19.18 Waiver of Marshalling of Assets . To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's shareholders and others with interests in Borrower and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Indebtedness without any prior or different resort for collection or of the right of Lender to the payment of the Indebtedness out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 19.19 Waiver of Counterclaim and Other Actions . Borrower hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, the Note, the Security Instrument or any Loan Document, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement, the Note, the Security Instrument or any Loan Document and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

Section 19.20 Conflict; Construction of Documents; Reliance . In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 19.21 Prior Agreements . This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Agreement and the other Loan Documents and unless specifically set forth in a writing contemporaneous herewith the terms, conditions and provisions of any and all such prior agreements do not survive execution of this Agreement.

Section 19.22 Counterparts . This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 19.23 Joint and Several Liability . If Borrower or Sponsor consists of more than one person, the obligations and liabilities of each such person hereunder and under the other Loan Documents shall be joint and several.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF , the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

SHC CHOPIN PLAZA, LLC, a Delaware limited liability company

By: /s/ Ryan M. Bowie

Name: Ryan M. Bowie
Title: Assistant Treasurer

By signing below, Operating Lessee agrees that in consideration of the substantial benefit that it will receive from Lender making the Loan to Borrower, to comply with all of the terms, conditions, obligations and restrictions affecting Operating Lessee set forth herein:

OPERATING LESSEE:

DTRS InterContinental Miami, LLC, a
Delaware limited liability company

By: /s/ Ryan M. Bowie
Name: Ryan M. Bowie
Title: Assistant Treasurer

[Lender's signature appears on following page]

LENDER:

CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation

By: /s/ Amir Kornblum
Name: Amir Kornblum
Title: Authorized Signatory

EXHIBIT A

TITLE INSURANCE REQUIREMENTS, ENDORSEMENTS AND AFFIRMATIVE COVERAGES

1. General . Borrower and/or its counsel is responsible for ordering or updating any title insurance work. Lender requires a lender's title insurance policy insuring "Citigroup Global Markets Realty Corp., and its successors and assigns". The approved title underwriters, type and amount of insurance and required endorsements are described below. The list of endorsements is subject to review by Lender's counsel, local counsel and additional specific coverages may be required after review of the related title commitment.

2. Title Insurer . The Title Company or Title Companies must be approved by Lender and licensed to do business in the jurisdiction in which the Property is located._____has been pre-approved by Lender as a Title Company.

3. Title Agent . Unless Lender otherwise agrees, all title work shall be ordered and coordinated, and the closing of the Loan shall be conducted through_____contact_____Tel:_____.

4. Primary Title Insurance Requirements .

(a) Amount of Coverage : Not less than the Principal Amount of the Loan on the Closing Date.

(b) Effective Date : The later of the date of recording of the Security Instrument or the date of funding of the Loan. Borrower shall be required to provide a customary "gap" indemnity in order to enable the Title Company to provide "gap" coverage.

(c) Insured : "Citigroup Global Markets Realty Corp. and its successors and assigns".

(d) Legal Description : Metes and bounds description to be provided which must conform to that shown on the Survey, the Security Instrument and any other Loan Documents that require a legal description of the Property. A lot and block description shall be acceptable in place of a metes and bounds description in exceptional cases.

(e) Policy Form : An ALTA (or equivalent) lender's policy of title insurance in form and substance acceptable to Lender. Without limiting Lender's right to require specific coverages, endorsements or other title work, the Title Policy shall (i) be in the 1970 ALTA (as amended 84) form or, if not available, ALTA 1992 form (deleting arbitration and creditor rights exclusions) or, if not available, the form commonly used in the state where the Property is located, (ii) to the extent available, include the "extended coverage" provisions described in paragraph 5 below, (iii) include all applicable endorsements described in paragraph 6 below, and (iv) include Schedule B exceptions in a form and to the extent acceptable to Lender's counsel.

5. Extended Coverage Requirements . The Title Policy shall:

(a) not contain any exception for filed or unfilled mechanic, materialmen or similar liens;

(b) limit any general exception for real estate taxes and other charges to real estate or other similar taxes or assessments that are not yet due and payable or delinquent and are not a current lien on the Property;

(c) limit any general exception for the rights of persons in possession to the rights of specified tenants, as tenants only with no right or option to purchase, set forth on the rent roll for the Property and attached to the Title Policy; and

(d) not contain any general exception as to matters that an accurate Survey of the Property would disclose, but may contain specific exceptions to matters disclosed on the Survey to be delivered on the Closing Date, subject to review by Lender's counsel.

6. Required Endorsements . The following endorsements are required, to the extent available in the jurisdiction in which the Property is located:

- Restrictions, Encroachments, Minerals Endorsement ALTA Form 9 or equivalent.
- (If not available, the Title Policy must insure by way of affirmative coverage statements that there are no encroachments by any of the improvements onto easements, rights of way or other exceptions to streets or adjacent property, or insure against loss or damage resulting therefrom.)
- Deletion of Creditors Rights Exclusion Endorsement.
- Environmental Protection Lien Endorsement.
- (The Title Policy may make an exception only for specific state statutes that provide for potential subsequent liens that could take priority over the lien securing the Loan.)
- Direct Access to Public Road Endorsement.
- Usury Endorsement.
- Land Same As Survey/Legal Description Endorsement.
- Zoning Endorsement - ALTA 3.1 with coverage for number/type of parking spaces.

  In lieu of an ALTA 3.1 zoning endorsement, Lender may accept an unambiguous, clean letter from the appropriate zoning authority which satisfies the following :

Zoning District . Confirms the applicable zoning district for the Property under the laws or ordinances of the applicable jurisdiction and that such zoning is the proper zoning for the improvements located on the Property.

Use Restrictions . Confirms that the current use of the Property is permitted under the zoning ordinance and that the Property is not a non-conforming use.

Dimensional Requirements . Confirms that the Property is in compliance with all dimensional requirements of the zoning code, including minimum lot area, maximum building height, maximum floor area ratio and setback or buffer requirements.

Parking Requirements . Confirms that the Property is in compliance with all parking and loading requirements, including the number of spaces and dimensional requirements for the parking spaces.

Rebuildability . If Property involves legal non-conforming use, confirms that, in the event of casualty, the Property may be rebuilt substantially in its current form (i.e., no loss of square footage, same building footprint) upon satisfaction of stated conditions and/or limitations.

- Subdivision Endorsement.
- Doing Business Endorsement.
- Deletion of Arbitration Endorsement.
- Separate Tax Lot Endorsement.
- Street Address Endorsement
- Contiguity Endorsement.
- Variable Rate Endorsement.
- Mortgage Recording Tax Endorsement.
- Any of the following endorsements customary in the state in which the Property is located or as required by the nature of the transaction:

  Tie-In Endorsement for Multiple Policies
  Mortgage Assignment Endorsement
  First Loss / Last Dollar Endorsement
  Non-Imputation Endorsement
  Blanket Un-located Easements Endorsement
  Closure Endorsement

EXHIBIT B

CITIGROUP GLOBAL MARKETS REALTY CORP.
SURVEY REQUIREMENTS

The survey shall contain the following:

- The legal description of the Property;
- The courses and measured distances of the exterior boundary lines of the Property and the identification of owners of abutting parcels;
- The total acreage of the Property to the nearest tenth of an acre;
- The location of any existing improvements, the dimensions thereof at the ground surface level and their relationship to the facing exterior property lines, streets and set-back lines of the Property;
- The location, lines and widths of adjoining publicly dedicated and accepted streets showing the number and location of existing curb cuts, driveways, and fences;
- The location and dimensions of encroachments, if any, upon the Property;
- The location of all set-back lines, restrictions of record, other restrictions established by zoning or building code ordinance, utilities, easements, rights-of-way and other matters affecting title to the Property which are to be shown in Schedule B-2 of the Title Policy identifying each by reference to its recording data, where applicable;
- Evidence that adequate means of ingress and egress to and from the Property exist and that the Property does not serve any adjoining property for ingress, egress or any other purpose;
- If the Property is described as being on a recorded map or plat, a legend relating the survey to such map or plat;
- The street address of the Property;
- Parking areas at the Property and, if striped, the striping and type (e.g., handicapped, motorcycle, regular, etc.) and number of parking spaces at the Property;
- A statement as to whether the Property is located in a special flood or mudslide hazard area as determined by a review of a stated and identified Flood Hazard Boundary Map published by the Federal Insurance

Administration of the U.S. Department of Housing and Urban Development;

- A vicinity map showing the property in reference to nearby highways or major street intersections.
- The exterior dimensions of all buildings at ground level and the square footage of the exterior footprint of all buildings, or gross floor area of all buildings, at ground level.
- The location of utilities serving or existing on the property as evidenced by on-site observation or as determined by records provided by client, utility companies and other appropriate sources (with reference as to the source of information) (for example)
  - railroad tracks and sidings;
  - manholes, catch basins, valve vaults or other surface indications of subterranean uses;
  - wire and cables (including their function) crossing the surveyed premises, all poles on or within ten feet of the surveyed premises, and the dimensions of all crosswires or overhangs affecting the surveyed premises; and
  - utility company installations on the surveyed premises.
- A certificate in substantially the following form:

  The undersigned being a registered surveyor of the State of [State] hereby certifies to CITIGROUP GLOBAL MARKETS REALTY CORP., [NAME OF BORROWING ENTITY] and [INSERT NAME OF TITLE COMPANY], and each of their respective successors and assigns, as of the date below, as follows:

  This print of survey actually was made on the ground on [INSERT DATE SURVEY WAS MADE] in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by American Land Title Association (" ALTA") and American Congress on Surveying & Mapping ("ACSM ") and National Society of Professional Surveyors ("NSPS") in 1999, contains Items 1,2,3,4, 6,7(a), 7(b)(l), 8, 9, 10, 11, 13, 14 and 16 of Table A thereto, and correctly shows: (i) a fixed and determinable position and location of the land described herein (together with the buildings and improvements thereon, the "Mortgaged Property"), including the position of the point of beginning; (ii) the location of all buildings, structures and other improvements situated on the land; (iii) all driveways or other curb cuts along any street or alley upon which the land abuts; (iv) the location and name of all public and private streets or alleys located thereon or adjacent thereto, all of which are public unless otherwise noted; (v) the location,

dimension and recording data of all easements, rights-of-way and other matters of record thereon or with respect to which the undersigned has knowledge; (vi) the location and dimension of all unrecorded easements, paths, rights-of-way and party walls to the extent visible thereon or with respect to which the undersigned has knowledge; (vii) the location of applicable building restriction and setback lines required by local ordinances and regulations; and (viii) the location of all encroachments or overhangs onto or from the Mortgaged Property. Except as shown on this survey, there are no visible discrepancies, conflicts, shortages in area or boundary line conflicts. Except as shown on the survey, the Mortgaged Property does not serve any adjoining property for drainage, utilities or ingress or egress. The Mortgaged Property has access to and from a duly dedicated and accepted public roadway. This survey reflects boundary lines of the land, which "close" by engineering calculations. All utility services to the Mortgaged Property either enter the Mortgaged Property through adjoining public streets, or this survey shows the point of entry and location of any utilities which pass through or are located on adjoining private land to the extent visible or known to the undersigned. The Mortgaged Property does not lie within an area designated as a flood hazard area by any map or publication of the U.S. Department of Housing and Urban Development or the Federal Emergency Management Agency. The Mortgaged Property and only the Mortgaged Property constitutes one tax lot. All zoning use and density classifications are properly shown hereon. The undersigned has received and examined a copy of the Commitment for Title Insurance No. , dated , issued by , with respect to the Mortgaged Property, as well as a copy of each instrument listed therein. The location of each exception set forth in such Commitment, to the extent it can be located, has (with recording reference and reference to the exception number of the Commitment) been shown hereon. The undersigned further certifies that this survey meets the Accuracy Standards (as adopted by ALTA, ACSM and NSPS and in effect on the date of this certification) and [SELECT ONE OF THE FOLLOWING TWO PHRASES]:

[the Positional Uncertainties resulting from the survey measurements made on the survey do not exceed the allowable Positional Tolerance.]

[the survey measurements were made in accordance with the "Minimum Angle, Distance and Closure Requirements for Survey Measurements Which Control Land Boundaries for ALTA/ACSM Land Title Surveys."]

_____

, Licensed Surveyor

Date: _____

[seal]

EXHIBIT C

SINGLE PURPOSE ENTITY PROVISIONS

It is a requirement that the borrower be a bankruptcy remote, special purpose entity. A bankruptcy remote, special purpose entity is an entity which is unlikely to become insolvent as a result of its own activities and which is adequately insulated from the consequences of any other party's insolvency. Set forth below is language to be included in the organizational documents of corporations, limited partnerships and limited liability companies to evidence such entities' existence as bankruptcy remote, special purpose entities.

1. CORPORATION

If the Single Purpose Entity is a corporation, its certificate of incorporation will have to have the following provisions to be considered a special purpose entity:

A. Purpose

The corporation's purpose should be limited to owning and operating the mortgaged property (or interests in the Borrower).

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____, State of_____[_____interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the [General Corporation Law] of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

B. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's assets, transfer of

ownership assets, incurrence of additional debt and amendment of the corporation's articles of incorporation.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Corporation shall not incur, assume, or guaranty any other indebtedness. The Corporation shall not consolidate or merge with or into any other entity or conveyor transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Corporation substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Corporation will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (ii) no amendment to this certificate of incorporation or to the Corporation's By Laws may be made without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary] and (ii) the Corporation shall not dissolve, terminate or liquidate."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

C. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to

the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

D. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an " Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the

direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purpose of this Article __ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for

administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

II. LIMITED PARTNERSHIP

If the Single Purpose Entity is a limited partnership, to be a special purpose entity, all of its general partners shall be special purpose entities. If such limited partnership has more than one general partner, then such limited partnership shall continue (and not dissolve) for so long as a solvent general partner exists. Consequently, both the limited partnership's partnership agreement and the certificate of incorporation of its general partner(s) will have to meet certain requirements to be considered special purpose entities. Such requirements are as follows:

A. Limited Partnership Agreement

a. Purpose

The limited partnership's purpose should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Partnership, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____ , State of_____ [_____ interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the Uniform Limited Partnership Act of necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The partnership shall be prohibited, except in certain circumstances, from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the partnership's assets, transfer of partnership interests, incurrence of additional debt and amendment of the partnership agreement.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The Partnership shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Partnership shall not incur, assume, or guaranty any other indebtedness. The Partnership shall not consolidate or merge with or into any other entity or conveyor transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Partnership) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Partnership substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article_____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Partnership's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this partnership and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Partnership will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the partners of the Partnership. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (i) no amendment to this partnership agreement may be made and (ii) the partnership shall not dissolve, liquidate or terminate without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary] ."

c. Indemnification

Indemnification of a partnership's partners should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Partnership in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the partnership must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in this partnership agreement, the Partnership shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate partnership records and books of account from those of any affiliate.

3. It shall not commingle assets with those of any affiliate.

4. It shall conduct its own business in its own name.

5. It shall observe all partnership formalities.

6. It shall maintain financial statements separate from any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

8. It shall maintain an arm's length relationship with any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity.

16. At all times have all of its general partners shall be special purpose corporate entities with at least two (2) Independent Directors."

For purposes of this Article___ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Partnership including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Partnership, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this partnership, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Independent Director " shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Partnership or any of its respective partners, members,

shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Partnership or managing member of the Partnership or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Partnership or of the managing member of the Partnership. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Dissolution

The limited partnership agreement should provide that the partnership will continue (and not dissolve) so long as a solvent general partner exists.

"Notwithstanding any provision or of any other document governing the formation, management or operation of the Partnership hereof to the contrary, the following shall govern: The Partnership shall not terminate solely as a consequence of the [Bankruptcy] of one or more of the general partners of the Partnership so long as there remains a solvent general partner of the Partnership."

In addition, dissolution of the partnership must not occur so long as the partnership remains mortgagor of the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Subject to applicable law, dissolution of the Partnership shall not occur so long as the Partnership remains mortgagor of the [Property] [use other term for the real estate if necessary] ."

B. Corporate General Partner

a. Purpose

The corporation's purpose should be limited to acting as general partner of the limited partnership whose purpose, as set forth above, generally should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as a general partner of a limited partnership (the "Partnership") whose purpose is to acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____ , State of_____ (the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the General Corporation Law of_____ necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in or causing the partnership to engage in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's or partnership's assets, transfer of ownership assets, transfer of partnership interests, incurrence of additional debt, amendment of the corporation's articles of incorporation and amendment of the partnership agreement.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur or cause the Partnership to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Corporation shall not and shall not cause the Partnership to incur, assume, or guaranty any other indebtedness. For so long as the Partnership remains mortgagor of the Property, the Corporation shall not cause the Partnership to dissolve. The Corporation shall not and shall not cause the Partnership to consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Partnership) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Corporation or Partnership substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article_____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall

have been committed by this corporation or the Partnership and be continuing. For so long as a mortgage lien exists on the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Partnership to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the Property, (i) no amendment to this certificate of incorporation or to the Corporation's By Laws nor to the Partnership agreement of the Partnership may be made and (ii) neither the Corporation nor the Partnership shall be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the Property."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

c. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Partnership or the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the Corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and

any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an "Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital ill light of its contemplated business operations.

10. It shall not guarantee or, except to the extent of its liability for the debt secured by such mortgage lien, become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purposes of this Article___ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

III. LIMITED LIABILITY COMPANY

If the Single Purpose Entity is a limited liability company, to be a special purpose entity, each managing member shall be a special purpose corporation. If such limited liability company has more than one managing member, then such limited liability company shall continue (and not dissolve) for so long as a solvent managing member exists. Consequently, both the Limited Liability Company's articles of organization and the certificate of incorporation

of its outside member will have to meet certain requirements to be considered special purpose entities. Such requirements are as follows:

A. Articles of Organization

a. Purpose

The limited liability company's purpose should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Limited Liability Company, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____State of_____[_____interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the Limited Liability Company Act of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The limited liability company shall be prohibited, except in certain circumstances from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the limited liability company's assets, transfer of limited liability company interests, incurrence of additional debt and amendment of the articles of organization.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: The Limited Liability Company shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Limited Liability Company shall not incur, assume, or guaranty any other indebtedness. The Limited Liability Company shall not consolidate or merge with or into any other entity or convey or transfer its properties and

assets substantially as an entirety to any entity unless (i) the entity (if other than the Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article___ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Limited Liability Company's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this limited liability company and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Limited Liability Company will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the members of the Limited Liability Company. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (i) no amendment to these articles of organization may be made and (ii) the Limited Liability Company shall not be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]."

c. Indemnification

Indemnification of a limited liability company's partners should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Limited Liability Company in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the limited liability company must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in these articles of organization, the Limited Liability Company shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliates and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate records and books of account from those of any affiliate.

3. It shall not commingle assets with those of any affiliate.

4. It shall conduct its own business in its own name.

5. It shall maintain financial statements separate from any affiliate.

6. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

7. It shall maintain an arm's length relationship with any affiliate.

8. It shall maintain adequate capital in light of its contemplated business operations.

9. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

10. It shall not acquire obligations or securities of its partners, members or shareholders.

11. It shall use stationery, invoices and checks separate from any affiliate.

12. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.

13. It shall hold itself out as an entity separate from any affiliate.

14. It shall correct any known misunderstanding regarding its separate identity.

15. At all times all managing members shall be a special purpose corporate member with at least two (2) Independent Directors."

For purposes of this Article___ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Limited Liability Company including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Limited Liability Company, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this limited liability company, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Independent Director " shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Limited Liability Company or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Limited Liability Company or managing member of the Limited Liability Company or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Limited Liability Company or of the managing member of the Limited Liability Company. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Dissolution

To the extent permitted by tax law the articles of organization should provide that the vote of a majority in interest of the remaining members is sufficient to continue the life of the limited liability company. If such vote is not obtained, for so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary] the limited liability company may not be permitted to liquidate the [Property] [use other term for the real estate if necessary] without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage lien has been paid in full or otherwise completely discharged."

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: To the extent permissible under applicable federal and state tax law, the vote of a majority in interest of the remaining members is sufficient to continue the life of the Limited Liability Company. If such vote is not obtained, for so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary] the Limited Liability Company shall not liquidate the [Property] [use other term for the real estate if necessary] without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage liens has been paid in full or otherwise completely discharged.

f. Voting

When acting on matters subject to the vote of the members, notwithstanding that the limited liability company is not then insolvent, the members and the outside member must take into account the interest of the Limited Liability Company's creditors, as well as those of the members.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: When acting on matters subject to the vote of the members, notwithstanding that the Limited Liability Company is not then insolvent, all of the members shall take into account the interest of the Limited Liability Company's creditors, as well as those of the members."

B. Outside Corporate Member

a. Purpose

The outside corporate member's purpose should be limited to acting as corporate member of the limited liability company whose purpose, as set forth above, generally should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as the outside member of a limited liability company (the "Limited Liability Company") whose purpose is to acquire that certain parcel of real property, together with all improvements located thereon, in the City of _____, State of_____(the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the General Corporation Law of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in or causing the limited liability company to engage in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's or the limited liability company's assets, transfer of ownership assets, transfer of limited liability company interests, incurrence of additional debt, amendment of the corporation's articles of incorporation and amendment of the articles of organization.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur or cause the Limited Liability Company to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Corporation shall not and shall not cause the Limited Liability Company to incur, assume, or guaranty any other indebtedness. The Corporation shall not and shall not cause the Limited Liability Company to consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer of the

properties and assets of the Corporation or Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation or the Limited Liability Company and be continuing. For so long as a mortgage lien exists on the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Limited Liability Company to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the Property, without first obtaining approval of the mortgagee holding a first mortgage lien on the Property (i) no material amendment to this certificate of incorporation or to the Corporation's By Laws nor to the articles of organization of the Limited Liability Company may be made and (ii) neither the Corporation nor the Limited Liability Company shall dissolve, liquidate or terminate without first obtaining approval of the mortgagee holding a first mortgage lien on the Property."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

c. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Limited Liability Company or the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another

entity, the corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an " Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purpose of this Article __ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Voting

When voting on matters concerning the limited liability company, notwithstanding that the limited liability company is not then insolvent, the Corporation must take into account the interest of the Limited Liability Company's creditors, as well as those of its members.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: When voting on matters concerning the Limited Liability Company, notwithstanding that the Limited Liability Company is not then insolvent, the Corporation shall take into account the interest of the Limited Liability Company's creditors, as well as those of its members."

IV. OTHER STRUCTURES

The foregoing provisions do not exhaustively contemplate all ownership structures for a mortgaged property. Situations involving ownership structures not specifically contemplated by the provisions set forth on this Exhibit C shall nevertheless require Single Purpose Entities substantively to comply with the requirements to these provisions, modified as appropriate to accommodate the ownership structure in question.

EXHIBIT D

ENFORCEABILITY OPINION REQUIREMENTS

1. The Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Opinion shall be given by a professional law firm selected by Borrower and reasonably acceptable to Lender.

3. The Opinion shall be in form and substance acceptable to Lender and shall be given in relation to Borrower, Guarantor, Manager and any other relevant party to the Loan (each a " Loan Party"). Depending on the nature of the transaction, the Opinion shall address the applicable law of the State of New York, the State where the Property is located and each State where any Loan Party is organized (collectively, the "Relevant States"). To the extent that the Property is located in a jurisdiction outside of the State of New York and/or any Loan Party is organized under a jurisdiction outside the States of New York or Delaware, the appropriate opinions below should be given by local counsel. The Opinion shall be given on the basis of an examination of an executed original of each completed Loan Document in addition to such other documents or instruments counsel deems relevant.

4. The Opinion shall contain the following opinions:

Opinions with respect to the law of the State of Formation or Organization of the Loan Parties

(a) Each Loan Party is a [*Describe Legal Form*] duly organized, validly existing and in good standing under the laws of the State of [*State of Organization*] and is authorized to do business and in good standing in the State of [*State of Organization*].

(b) Each Loan Party has the requisite power to own its properties and to carry on its business as now being conducted and to enter into the transactions covered by the Loan Documents.

(c) The execution and delivery by each Loan Party of each Loan Document to which it is a party has been duly authorized by all necessary partnership, company and/or corporate action, as applicable. To the extent a party thereto, the Loan Documents have been duly executed and delivered by each Loan Party.

(d) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party does not:

(i) conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, the partnership agreement, partnership certificate, articles of incorporation, by-laws, trust agreement or trust certificate, as applicable, of such Loan Party;

(ii) contravene any law, statute or regulation of the United States of America or the [*State of Organization*] or any agency or political subdivision of either thereof;

(iii) violate any order, writ, injunction, or decree of which, after due inquiry, counsel has actual knowledge, issued by any court or governmental authority of the United States of America or the [*State of Organization*] or any agency or political subdivision of either thereof to which such Loan Party is subject; or

(iv) conflict with or result in any breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien other than the lien of the Loan Documents upon any of the assets or properties of such Loan Party pursuant to the terms of any material indenture, mortgage, deed of trust, agreement, contract or instrument to which such Loan Party is a party or by which it or any of its assets or properties is bound.

(e) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of [*Relevant State*] or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(f) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(g) To the extent the State of [*State of Organization*] UCC is applicable to the authorization of the Financing Statement, pursuant to the provisions of the Loan Agreement and the Security Instrument, Borrower has authorized the filing of the Financing Statement for purposes of Section 9-509 of the State of [*State of Organization*] UCC.

(h) To the extent the State of [*State of Organization*] UCC is applicable, the financing Statement includes not only all of the types of information required by Section 9-502(a) of the State of [*State of Organization*] UCC but also the types of information without which the Filing Office may refuse to accept the Financing Statement pursuant to Section 9-516 of the State of [*State of Organization*] UCC.

(i) To the extent the State of [*State of Organization*] UCC is applicable, the security interest of the Secured Party will be perfected in Borrower's rights in all UCC Collateral upon the later of the attachment of the security interest and the filing of the Financing Statement in the Filing Office; provided, however, we express no opinion with respect to (i) money, (ii) deposit accounts, (iii) letter of credit rights, (iv) goods covered by a certificate of title statute,

(v) as-extracted collateral, timber to be cut, or (vi) any property subject to a statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-3 10(a) of the State of [*State of Organization*]. "UCC Collateral" means the portion of the Property (as defined in the Security Instrument), the Rate Cap Collateral, the Account Collateral (as defined in the Loan Agreement) and the Collateral Accounts (as defined in the Account Agreement) to the extent the UCC governs a security interest in such collateral.

(j) You have asked whether Borrower is a "registered organization" as such term is defined in Section 9-1 02(a) (70) of the State of [*State of Organization*] UCC. Pursuant to Section 9-102(a)(70) of the State of [*State of Organization*] UCC, a "registered organization" must be (i) organized solely under the laws of a single State (or the United States) and (ii) the State (or the United States) must maintain a public record showing the organization to have been organized.

Opinions with respect to New York Law

(a) To the extent governed by New York law and to the extent a party thereto, the Loan Documents are the legal, valid and binding obligations of each Loan Party, enforceable against such Loan Party in accordance with their terms.

(b) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party does not:

(i) contravene any law, statute or regulation of the United States of America or the State of New York or any agency or political subdivision of either thereof;

(ii) violate any order, writ, injunction, or decree of which, after due inquiry, counsel has actual knowledge, issued by any court or governmental authority of the United States of America or the State of New York or any agency or political subdivision of either thereof to which such Loan Party is subject; or

(iii) conflict with or result in any breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien other than the lien of the Loan Documents upon any of the assets or properties of such Loan Party pursuant to the terms of any material indenture, mortgage, deed of trust, agreement, contract or instrument to which such Loan Party is a party or by which it or any of its assets or properties is bound.

(c) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of New York or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(d) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual

knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(e) The payment by Borrower and receipt by Lender of all principal and interest will not violate the usury laws of the State of New York or otherwise constitute unlawful interest.

(f) The provisions of the Loan Agreement and the Security Instrument are effective to create, in favor of Lender to secure the obligations purported to be secured thereby, a valid security interest in Borrower's rights in the UCC Collateral.

(g) Under New York UCC, the provisions of the Account Agreement are effective to perfect the security interest of Lender in Borrower's rights in the Collateral Accounts (as defined in the Account Agreement).

Opinions with respect to the law of States in which the Property is located

(a) Each Loan Party is authorized to do business and in good standing in the State of [*Relevant State*].

(b) To the extent governed by the laws of the State of [*Relevant States*], the Security Instrument and the Assignment of Leases are the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms.

(c) The Security Instrument is in proper form so as to comply with recording requirements of the State of [*Relevant State*]. The Security Instrument creates in favor of Lender valid liens on the portion of the Property that are located in the State of [*Relevant States*], securing payment of the Obligations (as defined in the Security Instrument), and no further action will be required for the valid creation of such liens. Upon recordation in the office of the [*Recording Office*] the Security Instrument will provide constructive notice of the terms thereof and the liens created thereby to third parties acquiring interests in the portion of the Property that are located in the State of [*Relevant States*] subsequent to such recordation.

(d) The Assignment of Leases is in proper form so as to comply with the recording requirements of the State of [*Relevant States*]. At the time the Assignment of Leases is delivered to the Recording Office for recording, it will take effect as to all creditors and subsequent purchasers for a valuable consideration without notice, and it shall be entitled to priority over any other similar instrument delivered to said Recording Office for recording after that time, in the absence of actual notice.

(e) Pursuant to the provisions of the Security Instrument Borrower has authorized the filing of the Fixture Financing Statement identifying the Fixture Collateral for purposes of Section 9-509 of the [*Relevant States*] UCC. "Fixture Collateral " means that portion

of the UCC Collateral which consists of "fixtures" (as defined in Article 9 of the UCC) to the extent the UCC governs a security interest in such collateral.

(f) The Fixture Financing Statement includes not only all the types of information required by Section 9-502(a) and 9-502(b) of the [*Relevant States*] UCC but also the types of information without which the Fixture Filing Office may refuse to accept the Fixture Financing Statement pursuant to Section 9-516 of the State of [*Relevant States*] UCC.

(g) Under the [*Relevant States*] UCC, the security interest of the Secured Party will be perfected in Borrower's rights in any Fixture Collateral located on the real property described on Schedule 1 to the Fixture Financing Statement upon the later of the attachment of the security interest and the filing of the Fixture Financing Statement in the Fixture Filing Office.

(h) Borrower has paid all recording tax due in connection with the recording of the Security Instrument and the Assignment of Leases. No additional deed of trust recording, intangibles tax, documentary stamp tax or similar taxes or charges, other than nominal recordation or filing fees, are required to be paid as a condition of the legality of enforceability of the Security Instrument or the Assignment of Leases.

(i) The State of [*Relevant States*] has no law pursuant to which a lien against any assets or properties of Borrower (whether real, personal, mixed, tangible or intangible) superior to the lien created by the Security Instrument could arise as a result of a violation of environmental laws or regulations of such State. No environmental law or regulation of the State of [*Relevant States*] would require any remedial or removal action or certification of nonapplicability as a condition to the granting of the Security Instrument, the foreclosure or other enforcement of the Loan Documents or the sale of any assets or properties of Borrower (whether real, personal, mixed, tangible or intangible) located in the State of [*Relevant States*].

(j) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of [*Relevant States*] or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(k) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(l) If the Obligations (as defined in the Security Instrument) were to be governed by the laws of the State of [*Relevant States*], the payment by Borrower and receipt by

Lender of all principal and interest will not violate the usury laws of the State of [*Relevant States*] or otherwise constitute unlawful interest.

(m) A federal court sitting in the State of [*Relevant States*] and applying the conflict of law rules of the State of [*Relevant States*], and the state courts in the State of [*Relevant States*], would give effect to the choice of law provisions contained in the Loan Documents. If counsel is not able to give this opinion as an unqualified opinion, an opinion that the Loan Agreement and Note would be enforceable under the law of the State of [*Relevant States*] if such law were held to apply will be required.

(n) The operation of any term of the Loan Documents, including, without limitation, the terms regarding late charges, default interest or prepayment premiums, or the lawful exercise of any right thereunder, shall not render the Loan Documents unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense.

5. The Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any servicer of the Loan, (iii) any purchaser of the Loan or any portion thereof in any Securitization, (iv) any Rating Agency involved in a Securitization of the Loan, (v) the issuer of securities in a Securitization of the Loan, and (vi) any trustee or servicer appointed in connection with a Securitization of the Loan.

EXHIBIT E

NON-CONSOLIDATION OPINION REQUIREMENTS

1. The Nonconsolidation Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Nonconsolidation Opinion shall be given by a professional law firm selected by Borrower and reasonably acceptable to Lender.

3. The Nonconsolidation Opinion shall be in form and substance acceptable to Lender and shall be given in relation to both Borrower and any other SPE Entity relevant to the Loan. The Nonconsolidation Opinion shall identify each entity (a "Relevant Entity") which owns more than a 49% direct or indirect interest in either Borrower and/or such SPE Entity. Depending on the circumstances and nature of the transaction structure, a non-affiliated entity, such as a third party property manager, shall be included as a Relevant Entity if required by the Rating Agencies.

4. The Nonconsolidation Opinion shall state that, in the event that any Relevant Entity were to be a debtor in a case under the Bankruptcy Code, it is counsel's opinion that, under present reported decisional authority and statutes applicable to federal bankruptcy cases, in a properly presented and argued case, a court would not, in the proper exercise of its equitable discretion, disregard the separate existence of Borrower or any SPE Entity so as to order substantive consolidation under the Bankruptcy Code of the assets and liabilities of such Relevant Entity with the assets and liabilities of either Borrower or any SPE Entity and treat such assets and liabilities as though either Borrower and such Relevant Entity or any SPE Entity and such Relevant Entity were one entity.

5. The Nonconsolidation Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any participant of Lender's interest in the Loan, (iii) any servicer of the Loan, (iv) any purchaser of the Loan or any portion thereof in any Securitization, (v) any Rating Agency involved in a Securitization of the Loan, (vi) the issuer of securities in a Securitization of the Loan, and (vii) any trustee or servicer appointed in connection with a Securitization of the Loan.

DELAWARE BANKRUPTCY OPINIONS

As a general rule, the following opinions are required with respect to any single-member Delaware limited liability companies (having independent members/managers) in the organizational structure:

1. An opinion of Delaware counsel that federal bankruptcy court would hold that Delaware law, and not federal law, governs the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of the limited liability company.

2. Opinions of Delaware counsel as follows:

a. The limited liability company agreement constitutes a legal, valid and binding agreement of its member, and is enforceable against such member, in accordance with its terms.

b. In order for a voluntary bankruptcy petition to be filed on behalf of the Company, the unanimous consent of all of the independent managers/members is required and the provision requiring such unanimous consent in the limited liability company agreement constitutes a legal, valid and binding agreement of the member, enforceable against the member, in accordance with its terms.

c. The bankruptcy or dissolution of the limited liability company's sole member will not, by itself, cause the limited liability company to be dissolved or its affairs to be wound up.

d. A judgment creditor of the member may not satisfy its claims against the member by asserting a claim against the assets of the limited liability company.

e. The limited liability company is a separate legal entity, and shall continue as such until the cancellation of the limited liability company certificate.

Contact information for a Delaware firm frequently retained by borrowers to obtain such opinions is set forth below:

RICHARDS, LAYTON & FINGER
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
Telephone: 302-658-6541
Facsimile: 302-658-6548
Fax Confirmation: 302-651-7796

Bernard J. Kelley
Telephone: 302-651-7674
Facsimile: 302-658-6548
E-mail: kelley@rlf.com

EXHIBIT F

COUNTERPARTY OPINION REQUIREMENTS

1. The Counterparty Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Counterparty Opinion may be given by a professional law firm selected by Counterparty and reasonably acceptable to Lender or by in-house counsel for Counterparty.

3. The Counterparty Opinion shall be in form and substance acceptable to Lender and shall contain the following opinions:

(a) Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under the Interest Rate Cap Agreement and the Acknowledgment.

(b) The execution and delivery of the Interest Rate Cap Agreement and the Acknowledgment by Counterparty, and any other agreement which Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its Property.

(c) All consents, authorizations and approvals required for the execution and delivery by Counterparty of the Interest Rate Cap Agreement, the Acknowledgment and any other agreement which the Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance.

(d) The Interest Rate Cap Agreement, the Acknowledgment and any other agreement which Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by Counterparty and constitutes the legal, valid and binding obligation of Counterparty, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4. If a Interest Rate Cap Guaranty is delivered in connection with the Interest Rate Cap Agreement, the Counterparty Opinion shall contain the following additional opinions:

(a) Interest Rate Cap Guarantor is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power

and authority to execute and deliver, and to perform its obligations under, the Interest Rate Cap Guaranty.

(b) The execution and delivery of the Interest Rate Cap Guaranty by Interest Rate Cap Guarantor, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or bylaws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property.

(c) All consents, authorizations and approvals required for the execution and delivery by Interest Rate Cap Guarantor of the Interest Rate Cap Guaranty, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance.

(d) The Interest Rate Cap Guaranty, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, has been duly executed and delivered by Interest Rate Cap Guarantor and constitutes the legal, valid and binding obligation of Interest Rate Cap Guarantor, enforceable against Interest Rate Cap Guarantor in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

5. Depending on the nature of the transaction, the Counterparty Opinion shall contain such additional opinions on such other matters relating to the Interest Rate Cap Agreement, the Interest Rate Cap Guaranty and/or the Acknowledgment as Lender shall reasonably require, including, without limitation, the following additional opinions if the Counterparty or Interest Rate Cap Guarantor is a foreign entity:

(a) Jurisdiction where Counterparty and/or Interest Rate Cap Guarantor, as applicable, is located will respect and give effect to the choice of law provisions of the Interest Rate Cap Agreement and the Acknowledgment.

(b) A judgment obtained in the courts of the State of New York is enforceable in the jurisdiction where Counterparty and/or Interest Rate Cap Guarantor, as applicable, is located.

6. The Counterparty Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any participant of Lender's interest in the Loan, (iii) any servicer of the Loan, (iv) any purchaser of the Loan or any portion thereof in any Securitization, (v) any Rating Agency involved in a Securitization of the Loan, (vi) the issuer of securities in a Securitization of the Loan, and (vii) any trustee or servicer appointed in connection with a Securitization of the Loan.

EXHIBIT G

FORM OF TENANT ESTOPPEL LETTER

_____ , 20__

Citigroup Global Markets Realty Corp.,
its successors and assigns
388 Greenwich Street
New York, New York 10013

Re:

Ladies and Gentlemen:

It is our understanding that you are about to make a loan to [_____], a [_____], the landlord, or successor-in-interest to the landlord under our lease, as evidenced by a loan agreement and secured by a mortgage on the captioned premises and, as a condition precedent thereof, you have required this certification by the undersigned.

The undersigned, as tenant under that certain lease made with_____, as landlord, dated_____[, which lease has been modified or amended as follows (list all modifications or amendments or, if none, so indicate)_____] (the "Lease"), hereby ratifies the Lease and certifies that:

1. the undersigned entered into occupancy of the premises described in the Lease on or about_____;

2. the lease commencement date was_____;

3. the square footage of the premises described in the Lease is_____;

4. the fixed rental in the monthly amount of $_____ was payable from_____;

5. the percentage rental payable monthly is $_____ ;

6. there are no rent abatements or free rent periods now or in the future [other than_____];

7. the amount of the current monthly expense reimbursements due under the Lease is equal to $_____ ;

8. the Lease is in full force and effect and, except as indicated above, has not been assigned, modified, supplemented or amended in any way and the undersigned has no

notice of any assignment, pledge or hypothecation by the landlord of the Lease or of the rentals thereunder;

9. a true and complete copy of the Lease (including all amendments, modifications, supplements, side letters, surrender, space reduction or rent abatement agreements applicable to such Lease) is attached hereto as Exhibit A;

10. the Lease represents the entire agreement between the parties with respect to the above space in the above-mentioned building;

11. the term of the Lease [, as currently extended by means of the exercise of certain options contained therein,] expires on_____;

12. all construction and other obligations of a material nature to be performed by the landlord under the Lease have been satisfied, except as follows: (if none, so indicate);

13. any payments by the landlord to the undersigned for tenant improvements which are required under the Lease have been made;

14. on this date there are no existing defenses or offsets which the undersigned has against the enforcement of the Lease by the Landlord and the undersigned has no knowledge of any event which with the giving of notice, the passage of time or both would constitute a default under said Lease;

15. the undersigned is not entitled to any offsets, abatements, deductions or otherwise against the rent payable under the Lease from and after the date hereof, except as follows: (if none, so indicate);

16. no rental (including expense reimbursements), other than for the current month, has been paid in advance;

17. the amount of the security deposit presently held under the Lease is $_____ (if none, so indicate);

18. the rentals (including expense reimbursements) under the Lease have been paid through the month of _____.

This estoppel certificate is binding upon the undersigned and its successors and assigns and may be relied upon by you and your successors and assigns and, if the mortgage loan becomes the subject of a securitization, may also be relied upon by the credit rating agency, if any, rating the securities collateralized by the mortgage loan as well as any issuer of such securities, and any servicer and/or trustee acting in respect of such securitization.

Very truly yours,

_____

[INSERT NAME OF TENANT]

By: _____

Title:

EXHIBIT A

LEASE

EXHIBIT H-1

BORROWER ORGANIZATIONAL STRUCTURE AT CLOSING

(ATTACHED HERETO)

EXHIBIT H-2

INTENTIONALLY DELETED

EXHIBIT I

INTEREST RATE CAP AGREEMENT REQUIREMENTS

- The form of cap agreement should be the 1992 ISDA Agreement (Multicurrency Cross Border or Local Currency Single Jurisdiction) subject to the 2000 Definitions.
- Once the cap premium is paid by Borrower, it cannot default. (Paragraph 4 of the May 1989 ISDA Addendum to Schedule to Interest Rate and Currency Exchange Agreement or similar language must be incorporated by reference).
- "Cross Default" provision of Section 5(a)(vi) of the ISDA Master Agreement will not apply. Grace and cure periods in Section 5 of the ISDA Master Agreement will either (i) not apply or (ii) if applicable, any grace or cure periods must expire in time to ensure the availability of cap payments by cap provider on a timely basis for distribution to the holders of the rated securities.
- "Credit Event Upon Merger" provisions of Section 5(b)(iv) of the ISDA Master Agreement will not apply.
- "Automatic Early Termination" provision in Section 6(a) of the ISDA Master Agreement will not apply.
- Termination Events under Sections 5(b)(ii) and 5(b)(iii) of the ISDA Master Agreement either (i) will only constitute termination events exercisable by Borrower against cap provider or (ii) if exercisable by both parties, at the time of any event triggering a termination event under Sections 5(b)(ii) and/or 5(b)(iii), cap provider must either (a) transfer the cap to a replacement cap provider acceptable to each Rating Agency at cap provider's sole cost and expense, or (b) continue to perform its obligations under the cap agreement including, without limitation, the obligation to unconditionally "gross up" in the event that a withholding tax is imposed on payments being made by the cap provider.
- Borrower shall be precluded from payment of any out of pocket expenses required under Section 11 of the ISDA Master Agreement and incurred by cap provider related to the enforcement and protection of cap provider's rights under the cap agreement.
- Market Quotation and Second Method will be used for the purpose of computing amounts payable on early termination with a provision for loss if Market Quotation is not available.
- The parties shall be deemed to have no Affiliates for purposes of the ISDA Master Agreement.
- "Specified Entities" will not apply for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(iv) of the ISDA Master Agreement.
- Transaction will be governed by New York law.
- For the purposes of Section 6(e) of the ISDA Master Agreement, set off and counterclaim will not apply and all payments by cap provider shall be made without set off or counterclaim.

- If this transaction will be guaranteed by a parent to provide a required rating, the guarantee must be unconditional, irrevocable, continuing and a guarantee of payment, not collection, and otherwise satisfy Rating Agency requirements. Any act or omission of such guarantor that would constitute an event of default by the cap provider (other than a cross default) under Section 5 of the ISDA Master Agreement will constitute an event of default under the ISDA Master Agreement.

- The definition of LIBOR will be USD LIBOR BBA and must match the definition of LIBOR in the loan agreement.

- The definition of Business Day must match the definition of Business Day in the loan agreement. LIBOR must be determined on the LIBOR Determination Date.

- Payments must be made by the cap provider on or prior to the applicable Payment Date in respect of a period corresponding to the applicable Interest Period.

- The Termination Date of the cap must be no earlier than the last day of the Interest Period in which the Maturity Date under the loan agreement occurs.

- The Day Count Fraction in the cap must match that contained in the loan agreement.

- The Notional Amount in the cap must match the principal amount of the loan as of the date of the loan agreement.

- US Dollars are selected as the Termination Currency under the cap.

- Section 2(c)(ii) of the ISDA Master Agreement will apply to the Transaction.

- Cap provider and Borrower will represent that it is not a multi branch party.

- Cap provider will covenant that it will not petition Borrower into bankruptcy (or join in any such petition) for 365 days after all outstanding rated securities have been paid in full.

- If the ISDA Master Agreement (Multicurrency Cross Border) ("Cross Border Agreement") is utilized, additional scheduled items and provisions to address "indemnifiable taxes" and other related issues present in cross border transactions must be incorporated:

    - Section 2(d)(i)(4) of the Cross Border Agreement must be amended to require the cap provider to unconditionally "gross up" in the event that a withholding tax is imposed on payments being made by the cap provider.

    - The definition of "indemnifiable tax" must cover any and all withholding tax.

    - Section 2(d)(i)(4) of the Cross Border Agreement will be deleted such that cap provider is not excused from having to "gross up" due to Borrower's breach of a tax representation or failure to notify cap provider of a breach of a tax representation and (ii) Borrower makes no tax representations in the cap agreement or schedule.

    - Section 2(d)(ii) of the Cross Border Agreement must be amended to provide that there is no obligation by Borrower to make payments to the cap provider for any payments made by the cap provider without deduction for taxes (for which there is no obligation to gross up).

- Section 4(e) of the Cross Border Agreement must be amended to provide that there are no payment obligations by Borrower to cap provider for any indemnification resulting from stamp registration or other documentary tax levied by Borrower's taxing authority on the cap provider.

- Cap provider and any guarantor must provide a New York opinion of counsel satisfactory to the Rating Agencies regarding the cap. If cap provider or its guarantor is a non U.S. entity, a foreign opinion must be provided as well. The opinion(s) must include customary legal opinions including, without limitation, an opinion delivered by outside counsel opining that the cap agreement (including the confirmation, ISDA Master Agreement, schedule and collateral assignment agreement) is legal/valid/binding and enforceable against the cap provider and any guarantor.]

EXHIBIT J

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

Reference is made to that certain Loan and Security Agreement, dated as of_____ 200__ (as amended, supplemented or otherwise modified from time to time, the **Loan Agreement)** between [_____] **(Borrower),** and Citigroup Global Markets Realty Corp., a New York corporation **(Lender),** and that certain Note, dated as of_____ , 200__ (the **Note),** made by Borrower in favor of Lender. Terms defined in the Loan Agreement and not otherwise defined herein are used herein with the same meaning.

The **Assignor** and the **Assignee** referred to on Schedule 1 attached hereto agree as follows:

1. The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, an interest in and to the Assignor's rights and obligations under the Note and the Loan Agreement as of the date hereof equal to the percentage interest specified on Schedule 1 attached hereto. After giving effect to such sale and assignment, the amount of the Loan and the Note owing to the Assignee will be as set forth on Schedule 1 attached hereto.

2. The Assignor (i) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with the Loan Documents or any other instrument or document furnished pursuant thereto; (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Document or any other instrument or document furnished pursuant thereto; and (iv) attaches the Note or notes held by the Assignor and requests that the Lender exchange such Note or notes for a new note or notes payable to the order of the Assignee in an amount equal to the principal amount of the Loan assumed by the Assignee pursuant hereto or new notes payable to the order of the Assignee in an amount equal to the principal amount of the Loan assumed by the Assignee pursuant hereto and the Assignor in an amount equal to the principal amount of the Loan retained by the Assignor under the Note and the Loan Agreement, respectively, as specified on Schedule 1 attached hereto.

3. The Assignee (i) confirms that it has received a copy of the Note and the Loan Agreement, together with such financial statements and other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (ii) agrees that it will, independently and without reliance upon Lender or the Assignor based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Agreement or the Note; (iii) appoints and authorizes Lender to take such action as agent on its

behalf and to exercise such powers and discretion under the Loan Documents as are delegated to Lender by the terms thereof, together with such powers and discretion as are reasonably incidental thereto; and (iv) agrees that it will perform in accordance with their terms all of the obligations that by the terms of the Loan Agreement and the Note are required to be performed by it as an assignee of an interest therein.

4. Following the execution of this Assignment and Acceptance, it will be delivered to Lender for acceptance and recording. The effective date for this Assignment and Acceptance (the **Effective Date)** shall be the date of acceptance hereof by the Lender, unless otherwise specified on Schedule 1 attached hereto.

5. Upon such acceptance and recording by Lender, as of the Effective Date, (i) the Assignee shall be a party to the Loan Agreement and the Note and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of an assignee thereof, and (ii) the Assignor shall, to the extent provided in the Loan Agreement and this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Agreement and the Note.

6. Upon such acceptance and recording by Lender, from and after the Effective Date, Lender shall make all payments under the Loan Agreement and the Note or notes in respect of the interest assigned hereby (including, without limitation, all payments of principal, interest and commitment fees with respect thereto) to the Assignee. The Assignor and Assignee shall make all appropriate adjustments in payments under the Loan Agreement and the Note or notes for periods prior to the Effective Date directly between themselves.

7. This Assignment and Acceptance shall be governed by, and construed in accordance with, the laws of the State of New York.

8. This Assignment and Acceptance may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of Schedule 1 to this Assignment and Acceptance by telecopier shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance.

***

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment and Acceptance and Schedule 1 to this Assignment and Acceptance to be executed by their officers thereunto duly authorized as of the date specified on Schedule 1 .

Schedule I

As to the Loan in respect of which an interest is being assigned:

Percentage interest assigned: _____%

Aggregate outstanding principal amount of the Loan assigned: $_____

Principal amount of Note payable to Assignee: $_____

Principal amount of Note payable to Assignor: $_____

Effective Date (if other than date of acceptance by Lender):_____ ,__

[NAME OF ASSIGNOR], as Assignor

By: _____
Name:
Title:

Dated: _____ ,__

[NAME OF ASSIGNOR], as Assignor

By: _____
Name:
Title:

Dated: _____ ,__

Accepted this__ day of_____ , __
[NAME OF LENDER]

By: _____
Name:
Title:

EXHIBIT K

FORM OF
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

_____ ,
Tenant

AND

CITIGROUP GLOBAL MARKETS REALTY CORP.,
Lender

County: [ ]
Section: [ ]
Block: [ ]
Lot: [ ]

Premises:

Dated: as of_____,__

Record and return by mail to:
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
Attention: Frederic L. Altschuler, Esq.

SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made as of this___ day of_____ , 200___ , between CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation, having an address at 388 Greenwich Street, New York, New York 10013 (hereinafter called "Lender"), and_____, a_____, having an address at_____(hereinafter called "Tenant").

W I T N E S S E T H :

WHEREAS, by a lease (the " Original Lease") dated_____ ,200___ between_____(hereinafter called "Landlord"), as landlord, and Tenant, as tenant, as amended by lease amendment[s] dated_____ , 200___ , [_____ , 200 ___ and_____ , 200___] (the Original Lease, as so amended, is hereinafter the "Lease"), a memorandum of which Lease was dated_____and was recorded in_____in Reel___ , Page___, [add recording data for memoranda of amendments, if applicable], Landlord leased to Tenant certain premises located in_____(the "Premises") on the property described in Schedule "A" annexed hereto and made a part hereof (the "Property"); and

WHEREAS, Lender is about to make a loan to Landlord, which loan shall be secured by, among other things, a mortgage or deed of trust (which mortgage or deed of trust, and all amendments, renewals, increases, modifications, replacements, substitutions, extensions, spreaders and consolidations thereof and all re-advances thereunder and addictions thereto, is referred to as the "Security Instrument") encumbering the Property; and

WHEREAS, Lender and Tenant desire to confirm their understanding and agreement with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. The Lease, and all of the terms, covenants, provisions and conditions thereof (including, without limitation, any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Property, or any portion thereof) is, shall be and shall at all times remain and continue to be subject and subordinate in all respects to the lien, terms, covenants, provisions and conditions of the Security Instrument and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Tenant shall execute and deliver any additional instruments which Lender may reasonably require to effect such subordination.

2. So long as (i) Tenant is not in default (beyond any period given in the Lease to Tenant to cure such default) in the payment of rent, percentage rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions

of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this Agreement and (iii) the Lease is in full force and effect: (a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease (except to the extent required so that Tenant's right to receive or set-off any monies or obligations owed or to be performed by any of Lender's predecessors-in-interest shall not be enforceable thereafter against Lender or any of Lender's successors-in-interest). Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Lender not to name or join Tenant as a party in a foreclosure proceeding with respect to the Security Instrument, Lender may so name or join Tenant without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

3. (A) After notice is given by Lender that the Security Instrument is in default and that the rentals under the Lease should be paid to Lender, Tenant will attorn to Lender and pay to Lender, or pay in accordance with the directions of Lender, all rentals and other monies due and to become due to Landlord under the Lease or otherwise in respect of the Premises. Such payments shall be made regardless of any right of set-off, counterclaim or other defense which Tenant may have against Landlord, whether as the tenant under the Lease or otherwise.

(B) In addition, if Lender (or its nominee or designee) shall succeed to the rights of Landlord under the Lease through possession or foreclosure action, delivery of a deed or otherwise, or another person purchases the Property or the portion thereof containing the Premises upon or following foreclosure of the Security Instrument or in connection with any bankruptcy case commenced by or against Landlord, then at the request of Lender (or its nominee or designee) or such purchaser (Lender, its nominees and designees, and such purchaser, and their respective successors and assigns, each being a " Successor-Landlord"), Tenant shall attorn to and recognize Successor-Landlord as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument that Successor-Landlord may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor-Landlord and Tenant upon all terms, conditions and covenants as are set forth in the Lease. If the Lease shall have terminated by operation of law or otherwise as a result of or in connection with a bankruptcy case commenced by or against Landlord or a foreclosure action or proceeding or delivery of a deed in lieu, upon request of Successor-Landlord, Tenant shall promptly execute and deliver a direct lease with Successor-Landlord which direct lease shall be on substantially the same terms and conditions as the Lease (subject, however, to the provisions of clauses (i)-(v) of this paragraph 3(B)) and shall be effective as of the day the Lease shall have terminated as aforesaid. Notwithstanding the continuation of the Lease, the attornment of Tenant thereunder or the execution of a direct lease between Successor-Landlord and Tenant as aforesaid, Successor-Landlord shall not:

(i) be liable for any previous act or omission of Landlord under the Lease;

(ii) be subject to any off-set, defense or counterclaim which shall have theretofore accrued to Tenant against Landlord;

(iii) be bound by any modification of the Lease or by any previous prepayment of rent or additional rent made more than one (1) month prior to the date same was due which Tenant might have paid to Landlord, unless such modification or prepayment shall have been expressly approved in writing by Lender;

(iv) be liable for any security deposited under the Lease unless such security has been physically delivered to Lender or Successor-Landlord; and

(v) be liable or obligated to comply with or fulfill any of the obligations of the Landlord under the Lease or any agreement relating thereto with respect to the construction of, or payment for, improvements on or above the Premises (or any portion thereof), leasehold improvements, tenant work letters and/or similar items.

4. Tenant agrees that without the prior written consent of Lender, it shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, (b) tender a surrender of the Lease, (c) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (d) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such consent shall be void as against the holder of the Security Instrument.

5. (A) Tenant shall promptly notify Lender of any default by Landlord under the Lease and of any act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction.

(B) In the event of a default by Landlord under the Lease which would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or to claim a partial or total eviction, or in the event of any other act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease, Tenant shall not exercise such right (i) until Tenant has given written notice of such default, act or omission to Lender and (ii) unless Lender has failed, within sixty (60) days after Lender receives such notice, to cure or remedy the default, act or omission or, if such default, act or omission shall be one which is not reasonably capable of being remedied by Lender within such sixty (60) day period, until a reasonable period for remedying such default, act or omission shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Security Instrument to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under the Lease or otherwise, after similar notice, to effect such remedy), provided that Lender shall with due diligence give Tenant written notice of its intention to and shall commence and continue to, remedy such default, act or omission. If Lender cannot reasonably remedy a default, act or omission of Landlord until after Lender obtains possession of the Premises, Tenant may not terminate or cancel the Lease or claim a partial or total eviction by reason of such default, act or omission

until the expiration of a reasonable period necessary for the remedy after Lender secures possession of the Premises. To the extent Lender incurs any expenses or other costs in curing or remedying such default, act or omission, including, without limitation, attorneys' fees and disbursements, Lender shall be subrogated to Tenant's rights against Landlord.

(C) Notwithstanding the foregoing, Lender shall have no obligation hereunder to remedy such default, act or omission.

6. To the extent that the Lease shall entitle Tenant to notice of the existence of any mortgage and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Lender.

7. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges and remedies of Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Lender were named therein as Landlord.

8. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor-Landlord shall acquire title to the Property or the portion thereof containing the Premises, Successor-Landlord shall have no obligation, nor incur any liability, beyond Successor-Landlord's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor-Landlord in the Property for the payment and discharge of any obligations imposed upon Successor-Landlord hereunder or under the Lease, and Successor-Landlord is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgement which may be obtained or secured by Tenant against Successor-Landlord, Tenant shall look solely to the estate or interest owned by Successor-Landlord in the Property, and Tenant will not collect or attempt to collect any such judgement out of any other assets of Successor-Landlord.

9. Notwithstanding anything to the contrary in the Lease, Tenant agrees for the benefit of Landlord and Lender that, except as permitted by, and fully in accordance with, applicable law, Tenant shall not generate, store, handle, discharge or maintain in, on or about any portion of the Property, any asbestos, polychlorinated biphenyls, or any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such (including, but not limited to, pesticides and petroleum products if they are defined, determined or identified as such) in any federal, state or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of any thereof, including any judicial or administrative interpretation of any thereof, including any judicial or administrative orders or judgments.

10. If the Lease provides that Tenant is entitled to expansion space, Successor-Landlord shall have no obligation nor any liability for failure to provide such expansion space if a prior landlord (including, without limitation, Landlord), by reason of a lease or leases entered into by such prior landlord with other tenants of the Property, has precluded the availability of such expansion space.

11. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.

12. (A) Tenant acknowledges and agrees that this Agreement satisfies and complies in all respects with the provisions of Article of the Lease and that this Agreement supersedes (but only to the extent inconsistent with) the provisions of such Article and any other provision of the Lease relating to the priority or subordination of the Lease and the interests or estates created thereby to the Security Instrument.

(B) Tenant agrees to enter into a subordination, non-disturbance and attornment agreement with any lender which shall succeed Lender as lender with respect to the Property, or any portion thereof, provided such agreement is substantially similar to this Agreement. Tenant does herewith irrevocably appoint and constitute Lender as its true and lawful attorney-in-fact in its name, place and stead to execute such subordination, non-disturbance and attornment agreement, without any obligation on the part of Lender to do so. This power, being coupled with an interest, shall be irrevocable as long as the Indebtedness secured by the Security Instrument remains unpaid. Lender agrees not to exercise its rights under the preceding two sentences if Tenant promptly enters into the subordination, non-disturbance and attornment agreement as required pursuant to the first sentence of this subparagraph (B).

13. (A) Any notice required or permitted to be given by Tenant to Landlord shall be simultaneously given also to Lender, and any right to Tenant dependent upon notice shall take effect only after notice is so given. Performance by Lender shall satisfy any conditions of the Lease requiring performance by Landlord, and Lender shall have a reasonable time to complete such performance as provided in Paragraph 5 hereof.

(B) All notices or other communications required or permitted to be given to Tenant or to Lender pursuant to the provisions of this Agreement shall be in writing and shall be deemed given only if mailed by United States registered mail, postage prepaid, or if sent by nationally recognized overnight delivery service (such as Federal Express or United States Postal Service Express Mail), addressed as follows: to Tenant, at the address first set forth above, Attention:_____; to Lender, at the address first set forth above, Attention:_____and General Counsel, with a copy to Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, New York 10281, Attention: Frederic L. Altschuler, Esq.; or to such other address or number as such party may hereafter designate by notice delivered in accordance herewith. All such notices shall be deemed given three (3) business days after delivery to the United States Post office registry clerk if given by registered mail, or on the next business day after delivery to an overnight delivery courier.

14. This Agreement may be modified only by an agreement in writing signed by the parties hereto, or their respective successors-in-interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The term "Lender" shall mean the then holder of the Security Instrument. The term "Landlord" shall mean the then holder of the landlord's interest in the Lease. The term " person" shall mean

an individual, joint venture, corporation, partnership, trust, limited liability company, unincorporated association or other entity. All references herein to the Lease shall mean the Lease as modified by this Agreement and to any amendments or modifications to the Lease which are consented to in writing by Lender. Any inconsistency between the Lease and the provisions of this Agreement shall be resolved, to the extent of such inconsistency, in favor of this Agreement.

15. Tenant hereby represents to Lender as follows:

(a) The Lease is in full force and effect and has not been further amended.

(b) There has been no assignment of the Lease or subletting of any portion of the premises demised under the Lease.

(c) There are no oral or written agreements or understandings between Landlord and Tenant relating to the premises demised under the Lease or the Lease transaction except as set forth in the Lease.

(d) The execution of the Lease was duly authorized and the Lease is in full force and effect and to the best of Tenant's knowledge there exists no default (beyond any applicable grace period) on the part of either Tenant or Landlord under the Lease.

(e) There has not been filed by or against nor to the best of the knowledge and belief of Tenant is there threatened against Tenant, any petition under the bankruptcy laws of the United States.

(f) To the best of Tenant's knowledge, there is no present assignment, hypothecation or pledge of the Lease or rents accruing under the Lease by Landlord, other than pursuant to the Security Instrument.

16. Whenever, from time to time, reasonably requested by Lender (but not more than three (3) times during any calendar year), Tenant shall execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications, in a form acceptable to Tenant, of all of the matters set forth in Paragraph 15 above, and any other information the Lender may reasonably require to confirm the current status of the Lease.

17. BOTH TENANT AND LENDER HEREBY IRREVOCABLY WAWE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

18. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation

By: _____
Name:
Title:

[TENANT]

By: _____
Name:
Title:

AGREED AND CONSENTED TO:

LANDLORD:

[_____]

By: _____
Name:
Title:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____ in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal]

My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____ in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal]

My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____ in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal]

My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____ in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal]

My commission expires:

SCHEDULE A

Legal Description of Property

EXHIBIT L

INTENTIONALLY DELETED

EXHIBIT M

COUNTERPARTY ACKNOWLEDGMENT

_____(**Counterparty**) has entered into a Confirmation and Agreement (together with the confirmation and schedules relating thereto, collectively, the **Interest Rate Cap Agreement**), dated as of_____ 200__ , between the Counterparty Interest Rate Cap transaction with_____(**Borrower**). Attached hereto, is a true, correct and complete copy of the Interest Rate Cap Agreement. Counterparty acknowledges that it has been informed that Borrower, pursuant to a Loan and Security Agreement, dated_____(the **Loan Agreement**) has pledged and collaterally assigned its rights under the Interest Rate Cap Agreement to Citigroup Global Markets Realty Corp., a New York corporation (together with its successors and assigns, **Lender**). Counterparty hereby consents to such pledge and assignment and agrees that it will make any payments to become payable under or pursuant to the Interest Rate Cap Agreement directly to an account at_____ entitled " _____f/b/o Citigroup Global Markets Realty Corp., as secured party, Collection Account" (Account Number _____), ABA #_____or to such other account designated in writing by Lender. Counterparty further agrees that all such payments shall be made without set-off, deduction, defense or counterclaim. Counterparty acknowledges that in the event it shall fail to make such payments directly to such account, it shall be deemed to have not made such payment pursuant to the Interest Rate Cap Agreement. Counterparty also agrees that it will not modify, amend or terminate the Interest Rate Cap Agreement without Lender's consent.

[_____]

By: _____
Name:
Title:

EXHIBIT N

INTENTIONALLY DELETED

EXHIBIT O

INTENTIONALLY DELETED

EXHIBIT P

INTENTIONALLY DELETED

EXHIBIT Q

INTENTIONALLY DELETED

EXHIBIT R

ARTICLE 8 "OPT IN" LANGUAGE

Section ___ . Shares and Share Certificates

a. Shares . A [Member's limited liability company interest in the Company] [Partner's limited partnership interest in the Partnership] shall be represented by the Shares issued to such [Member by the Company] [Partner of the Partnership]. All of a [Member's] [Partner's] Shares, in the aggregate, represent such [Member's] [Partner's] entire [Partner by the Partnership] [limited liability company interest in the Company [limited partnership interest in the Partnership]. The [Member][Partner] hereby agrees that its interest in the [Company] [Partnership] and in its Shares shall for all purposes be personal property. A [Member] [Partner] has no interest in specific [Company] [Partnership] property. "Share" means a [limited liability company interest][limited partnership interest] in the [Company] [Partnership] held by a [Member] [Partner].

b. Share Certificates .

i. Upon the issuance of Shares to any [Member] [Partner] in accordance with the provisions of this Agreement, the [Company][Partnership] shall issue one or more Share Certificates in the name of such [Member][Partner]. Each such Share Certificate shall be denominated in terms of the number of Shares evidenced by such Share Certificate and shall be signed by the [Member] [Partner] on behalf of the [Company] [Partnership]. "Share Certificate" means a non-negotiable certificate issued by the [Company] [Partnership] substantially in the form of Schedule hereto, which evidences the ownership of one or more Shares. Each Share Certificate shall bear the following legend: "This certificate evidences an interest in_____and shall be a security interest for purposes of Article 8 of the Uniform commercial Code of the State of Delaware and the Uniform Commercial Code of any other Jurisdiction." This provision shall not be amended, and no such purported amendment to this provision shall be effective until all outstanding certificates have been surrendered for cancellation.

ii. The [Company] [Partnership] shall issue a new Share Certificate in place of any Share Certificate previously issued if the holder of the Shares represented by such Share Certificate, as reflected on the books and records of the [Company] [Partnership].

(1) makes proof by affidavit, in form and substance satisfactory to the [Company] [Partnership], that such previously issued Share Certificate has been lost, stolen or destroyed.

(2) requests the issuance of a new Share Certificate before the [Company] [Partnership] has notice that such previously issued Share Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(3) if requested by the [Company] [Partnership], delivers to the [Company][Partnership] a bond, in form and substance satisfactory to the [Company] [Partnership], with such surety or sureties as the [Company] [Partnership] may direct, to indemnify the [Company] [Partnership] against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Share Certificate; and

(4) satisfies any other reasonable requirements imposed by the [Company] [Partnership].

iii. Subject to the restrictions set forth in [describe Loan Agreement/Mezzanine Loan Agreement restrictions] upon a [Member's] [Partner's]'s Transfer in accordance with the provisions of this Agreement of any or all Shares represented by a Share Certificate, the Transferee of such Shares shall deliver such Share Certificate to the [Company] [Partnership] for cancellation, and the [Company] [Partnership] shall thereupon issue a new Share Certificate to such Transferee for the number of Shares being Transferred and, if applicable, cause to be issued to such [Member][Partner] a new Share Certificate for that number of Shares that were represented by the canceled Share Certificate and that are not being Transferred. "Transfer" means, with respect to any Shares, and when used as a verb, to sell or assign such Shares, and, when used as a noun, shall have a meaning that correlates to the foregoing. "Transferee" means an assignee or transferee. "Transferor" means the Person making a Transfer.

c. Free Transferability . Except as limited by the [describe Loan Agreement/Mezzanine Loan Agreement restrictions], to the fullest extent permitted by the Act, any [Member] [Partner] may, at any time or from time to time, without the consent of any other Person, Transfer, pledge or encumber any or all of its Shares. Subject to the restrictions of the [describe Loan Agreement/Mezzanine Loan Agreement restrictions], the Transferee of any Shares shall be admitted to the [Company] [Partnership] as a substitute member of the [Company] [Partnership] on the effective date of such Transfer upon (i) such Transferee's written acceptance of the terms and provisions of this Agreement and its written assumption of the obligations hereunder of the Transferor of such Shares, which shall be evidenced by such Transferee's execution and delivery to the [Company] [Partnership] of an Application for Transfer of Shares on the reverse side of the Share Certificate representing the Shares being transferred, and (ii) the recording of such Transferee's name as a Substitute [Member] [Partner] on the books and records of the [Company] [Partnership]. Any Transfer of any Shares pursuant to this Section___ shall be effective as of the later of (i) the close of business on the day on which such Transfer occurs, or (ii) the effective date and time of such Transfer that is designated in the Application for Transfer of Shares delivered by the Transferee to the [Company] [Partnership].

SCHEDULE I

LITIGATION SCHEDULE

NONE

SCHEDULE II

INTENTIONALLY DELETED

SCHEDULE III

PRE-APPROVED TRANSFEREES

Strategic Hotel Funding, Inc.
Bass PLC
CNL Hotels & Resorts, Inc.
KSL II Management Operations, LLC/KSL Recreation Corp.
Kohlberg Kravis Roberts & Co.
Hilton Hotels Corporation
FelCor Lodging Trust, Inc.
Rosewood Hotels & Resorts
Whitehall Street Real Estate Limited Partnership Funds
Host Marriott Corporation
Hilton Group, PLC
Fairmont Hotels & Resorts
Four Seasons Hotel Inc.
The Blackstone Group, LP
Millennium and Copthorne Hotels, PLC
MeriStar Hotels
LaSalle Hotel Properties
Marriott International, Inc.
Starwood Hotels and Resorts Worldwide, Inc.
Government of Singapore Investment Corporation
Maritz Wolf LLC)
HRH Prince Alwaleed Bin Talal Bin Abdulaziz Al Saud)
Six Continents
Morgan Stanley Real Estate Fund (MSREF)
Walton Street Real Estate Fund
The Carlyle Group Real Estate Fund
Lehman Brothers Real Estate Fund
The Equitable Life Assurance and Annuity Association
Orient Express
Accor
Benchmark Hospitality)
NH Hotels
Mandarin
Peninsula
Raffles
Shangrila
Hyatt
Strategic Hotel Capital
Boca Resorts
Vail Reports)
Destination Resorts
Westbrook Real Estate Fund

Lowe Hospitality
State of Ohio Pension Fund
Highland Hospitality

Schedule III-2

SCHEDULE IV

PRE-APPROVED MANAGERS

KSL or any Affiliate
One & Only / Kerzner
Gaylord Entertainment
Loews Hotels
Hilton Hotels Corporation
Hilton Group, PLC
Fairmont Hotels & Resorts
Millennium and Copthorne Hotels, PLC
Marriott International, Inc.
Four Seasons Hotels, Inc.
Six Continents
Orient Express
Mandarin
Peninsula
Raffles
Shangri-La
Hyatt
Omni
Boca Resorts
Destination Resorts
Lowe Hospitality
Montage Hotels
Intercontinental Hotel Group

SCHEDULE V

INTENTIONALLY DELETED

SCHEDULE VI

INTENTIONALLY DELETED

SCHEDULE VII

INTENTIONALLY DELETED

Exhibit 10.90

U.S. $415,000,000

CREDIT AGREEMENT

dated as of March 9, 2007

among

STRATEGIC HOTEL FUNDING, L.L.C.,

as the Borrower,

VARIOUS FINANCIAL INSTITUTIONS,

as the Lenders,

DEUTSCHE BANK TRUST COMPANY AMERICAS, *as the Administrative Agent*

DEUTSCHE BANK SECURITIES INC. and
CITIGROUP GLOBAL MARKETS INC.
as Co- Lead Arrangers and Joint Book Running Managers

CITIGROUP GLOBAL MARKETS INC. and
WACHOVIA BANK NATIONAL ASSOCIATION *as Co-Syndication Agents*

BANK OF AMERICA, N.A. and
JPMORGAN CHASE BANK, N.A. *as Co-Documentation Agent*

and

LASALLE BANK, NATIONAL ASSOCIATION
As Senior Managing Agent

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT, dated as of March 9, 2007, is between STRATEGIC HOTEL FUNDING, L.L.C., a Delaware limited liability company (the "Borrower"), DEUTSCHE BANK TRUST COMPANY AMERICAS ("DBTCA"), as the administrative agent (in such capacity, the "Administrative Agent") and the various financial institutions as are or may become parties hereto (together with DBTCA, collectively the "Lenders" and individually, a "Lender").

W I T N E S S E T H :

WHEREAS, subject to and upon the terms and conditions set forth herein, the Lenders are willing to make available to the Borrower the respective credit facilities provided for herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.1 Defined Terms . The following terms (whether or not underscored) when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

"Acceptable Appraisal " shall mean, an MAI appraisal, in compliance with the Uniform Standards of Professional Appraisal Practice, reasonably acceptable to Administrative Agent as to form, substance, and appraisal date, prepared by a professional appraiser that is reasonably acceptable to Administrative Agent.

"Acquisition Cost" means, with respect to any Property, (i) the purchase price of a Property as set forth in the applicable purchase and sale agreement or otherwise as approved by the Administrative Agent, plus or minus (ii) increases or reductions to such purchase price as provided in such purchase and sale agreement or the final closing statement.

"Additional Loan Commitment Requirements" shall mean, with respect to any request for an Additional Revolving Loan Commitment made pursuant to Section 2.8 , the satisfaction of each of the following conditions: (i) no Default or Event of Default then exists or would result therefrom, including, without limitation, no violation of Section 7.2.4 as a result of the increase in the size of the Facility, (ii) all representations and warranties contained herein and in the other Loan Documents shall be true and correct in all material respects with the same effect as though such representations and warranties had been made as of such date of request, unless stated to relate to a specified date, in which case such representations and warranties shall be true and correct in all material respects as of such specified date and (iii) the delivery by the Borrower of an officer's certificate to the Administrative Agent certifying as to compliance with preceding clauses (i) and (ii), and containing the calculations required by preceding clause (i) (as applicable).

"Additional Revolving Loan Commitment" shall mean, for each Additional Revolving Loan Lender, any commitment by such Additional Revolving Loan Lender to make Revolving Loans pursuant to Section 2.8(b) as agreed to by such Additional Revolving Loan Lender in the respective Additional Revolving Loan Commitment Agreement delivered pursuant to Section 2.8 ; it being understood, however, that on each date upon which an Additional Revolving Loan Commitment of any Additional Revolving Loan Lender becomes effective, such Additional Revolving Loan Commitment of such Additional Revolving Loan Lender shall be added to (and thereafter become a part of) the Revolving Loan Commitment of such Additional Revolving Loan Lender for all purposes of this Agreement, as contemplated by Section 2.8 .

"Additional Revolving Loan Commitment Agreement" shall mean an Additional Revolving Loan Commitment Agreement substantially in the form of Exhibit J (appropriately completed).

"Additional Revolving Loan Lender" is defined in Section 2.8(b) .

"Adjusted Net Operating Income" shall mean Net Operating Income with respect to each Borrowing Base Property, less (a) Deemed FF&E Reserves for such Borrowing Base Property, (b) Deemed Management Fees for such Borrowing Base Property and (c) any other monetary obligations paid during the applicable period with respect to such Borrowing Base Property, provided that no deductions will be made for Capital Expenditures other than Deemed FF&E Reserves included under clause (a) above.

"Administrative Agent " is defined in the preamble and includes each other Person as shall have subsequently been appointed as the successor Administrative Agent pursuant to Section 9.10 .

"Affiliate" of any Person means any other Person which, directly or indirectly, controls, is controlled by or is under common control with such Person (excluding any trustee under, or any committee with responsibility for administering, any Plan). With respect to any Lender or the Issuer, a Person shall be deemed to be "controlled by" another Person if such other Person possesses, directly or indirectly, power to vote 51% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general partners of such "controlled" Person. With respect to all other Persons, a Person shall be deemed to be "controlled by" another Person if such other Person possesses, directly or indirectly, power:

(a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general partners or managing members of such "controlled" Person; or

(b) to direct or cause the direction of the management and policies of such "controlled" Person whether through ownership of voting securities, membership or partnership interests, by contract or otherwise.

"Agents" means the Administrative Agent, the Arrangers, the Co-Syndication Agents, the Co-Documentation Agents and the Senior Managing Agent.

"Agreement" means, on any date, this Amended and Restated Credit Agreement as amended, supplemented, amended and restated or otherwise modified from time to time and in effect on such date.

"Aggregate Commitment " means, as of any date, the aggregate of the then-current Commitments of all the Lenders, which is, as of the Closing Date $415,000,000, not to exceed, together with any Additional Revolving Loan Commitments, Five Hundred Million Dollars ($500,000,000).

"Aggregate Outstanding Balance" means, on any date, the principal sum of all then outstanding Revolving Loans, Swingline Loans and Letter of Credit Outstandings, determined as of such date.

"Alternate Base Rate " means, on any date and with respect to all Base Rate Loans, a fluctuating rate of interest per annum (rounded upward, if necessary, to the next highest 1/1000 of 1%) equal to the higher of

(a) the Base Rate in effect on such day; and

(b) the Federal Funds Rate in effect on such day plus $^{1}/_{2}$ of 1%.

Changes in the rate of interest on that portion of any Loans maintained as Base Rate Loans will take effect simultaneously with each change in the Alternate Base Rate.

"Applicable Margin" means, with respect to each Loan, the respective percentages per annum determined, at any time, based on the range into which Borrower's Total Leverage Ratio then falls, in accordance with the following table, as of the last day of the most recent preceding Fiscal Quarter for which financial results have been reported, which percentage shall change upon the date Administrative Agent has received a Compliance Certificate from Borrower with respect to such preceding Fiscal Quarter, however, if Borrower does not deliver the applicable Compliance Certificate when due, the Applicable Margin will be determined by reference to the highest Total Leverage Ratio (greater than 60%) until such Compliance Certificate is delivered:

Total Leverage Ratio	Applicable Margin for LIBO Rate Loans (% per annum)	Applicable Margin for Base Rate Loans (% per annum)
Greater than or equal to 60% but equal to less than 65%	1.50%	0.25%
Greater than or equal to 55% but less than 60%	1.25%	0.00%
Greater than or equal to 50% but less than 55%	1.00%	0.00%
Less than 50%	0.80%	0.00%

"Appraised Value" means the "as-is" appraised value of any Property as shown on the most recent Acceptable Appraisal thereof.

"Approved Fund" means any Person (other than a natural Person) that (a) is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business, and (b) is administered or managed by a Lender, an Affiliate of a Lender or an entity or an Affiliate of an entity that administers or manages a Lender.

"Approved Manager" means those property managers set forth on Schedule IV .

"Arrangers" mean Deutsche Bank Securities Inc. and Citigroup Global Markets, Inc. in their capacities as Co- Lead Arrangers and Joint Book Running Managers for the Facility.

"Authorized Financial Officer" means, relative to the Borrower and Guarantor, any of its chief financial officer, chief accounting officer, treasurer, assistant treasurer, controller or other officer thereof having substantially the same authority and responsibility.

"Authorized Officer" means, relative to the Borrower and Guarantor, those of its officers whose signatures and incumbency shall have been certified to the Administrative Agent and the Lenders pursuant to Section 5.1.1 and such other officers of the Borrower or Guarantor as the Borrower or Guarantor, respectively, designate in writing as such to the Administrative Agent.

"Available Commitment " means, as of any date, the lesser of (i) sixty percent (60%) of the aggregate Appraised Value of all Borrowing Base Properties, less the Deemed Net Termination Value as of such date, and (ii) an amount which, if it were the Aggregate Outstanding Balance, would produce a Pro Forma Borrowing Base Coverage Ratio of 1.75:1.0.

"Base Rate" means, at any time, the rate of interest which the Person serving as the Administrative Agent announces from time to time as its prime lending rate. The Base Rate is a reference rate and does not necessarily represent the lowest or best rate of interest actually charged to any customer by the Administrative Agent, which may make commercial loans or other loans at rates of interest at, above or below the Base Rate.

"Base Rate Loan" means a Loan bearing interest at a fluctuating rate determined by reference to the Alternate Base Rate.

"Borrower" is defined in the preamble .

"Borrowing" means the Loans of the same type and, in the case of LIBO Rate Loans, having the same Interest Period, made by all Lenders required to make such Loans on the same Business Day and pursuant to the same Borrowing Request in accordance with Section 2.1 ; provided that Base Rate Loans incurred pursuant to Section 4.1 shall be considered part of the related Borrowing of LIBO Rate Loans.

"Borrowing Base Intercompany Indebtedness" shall mean certain intercompany indebtedness relating to Borrowing Base Properties and described on Schedule V .

"Borrowing Base Property " means a Property that satisfies the following criteria: (i) Borrower or a wholly-owned Subsidiary of the Borrower holds good title (by fee or pursuant to a Qualified Ground Lease) to such Property, free and clear of all Liens (except for the Liens permitted under Section 7.2.3), (ii) such Property is leased to an Operating Lessee, (iii) such Property is designated a full-service property (in accordance with industry standard, as reasonably determined by Administrative Agent), (iv) such Property is an upscale, upper-upscale, luxury or better quality hotel, as designated by Smith Travel Research (or a similar successor company designated by Administrative Agent), (v) such Property is operated under a nationally recognized brand by an Approved Manager (as set forth on Schedule IV), (vi) such Property is fully operating, open to the public and not under development or redevelopment (except for routine, ordinary course renovation, maintenance and repair that does not result in the closure of more than fifteen percent (15%) of the rooms at such hotel); provided , however , that temporary closure due to force majeure events, not to exceed five (5) Business Days, shall be permitted, (vii) such Property is not subject to or encumbered by any Indebtedness other than Permitted Borrowing Base Debt, (viii) such Property is free of material structural defects or material environmental issues, (ix) neither such Property nor the Property Owner thereof is encumbered with Permitted Borrowing Base Debt or any other Material Agreement that by its terms precludes the grant of the Collateral or the exercise by or on behalf of the Secured Creditors of remedies with respect to the Collateral, and (x) the Property Owner of such Property is Borrower or a Subsidiary Guarantor.

"Borrowing Base Property Owner" means, with respect to each Borrowing Base Property: (i) the wholly-owned Subsidiary of Borrower that owns such Borrowing Base Property and (ii) any other wholly-owned Subsidiary of Borrower that directly or indirectly own Capital Stock in the wholly-owned Subsidiary of Borrower that owns such Borrowing Base Property.

"Borrowing Request" means a Loan request and certificate duly executed by an Authorized Officer of the Borrower, substantially in the form of Exhibit B-1 hereto, including Borrower's certified calculation of the Aggregate Commitment and the Available Commitment after giving effect to the Loan requested thereunder.

"Business Day" means

(a) any day which is neither a Saturday or Sunday nor a legal holiday on which banks are authorized or required to be closed in New York, New York; and

(b) relative to the making, continuing, prepaying or repaying of any LIBO Rate Loans, any day which is a Business Day described in clause (a) above and which is also a day on which dealings in Dollars are carried on in the London interbank eurodollar market.

"Capital Expenditures " means, for any period, the aggregate amount of all expenditures of the Borrower, Guarantor and their respective Subsidiaries for fixed or capital assets made during such period which, in accordance with GAAP, would be classified as capital expenditures; provided , however , that the term "Capital Expenditures" shall not include (i) expenditures made in connection with the replacement, substitution or restoration of assets (A) to the extent financed from insurance proceeds paid on account of the loss of or damage to the assets being replaced, substituted or restored or (B) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, and (iii) the purchase of plant, property or equipment made within one year of the sale of any asset in replacement of such asset to the extent purchased with the proceeds of such sale and Capitalized Lease Liabilities paid in respect of such replaced asset.

"Capital Stock" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of capital of such Person, including if such Person is a partnership or a limited liability company, partnership interests (whether general or limited) or membership interests, as applicable, and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership or limited liability company, as applicable, whether now outstanding or issued after the Closing Date.

"Capitalized Lease Liabilities" means all monetary obligations of Borrower, Guarantor or any of their respective Subsidiaries under any leasing or similar arrangement which, in accordance with GAAP, are classified as capitalized leases, and, for purposes of this Agreement and each other Loan Document, the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP, and the stated maturity thereof shall be determined in accordance with GAAP.

"Cash Equivalents" shall mean (a) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than one year from the date of acquisition, (b) U.S. dollar denominated time deposits, certificates of deposit, and bankers' acceptances of (i) any Lender, or (ii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank, an "Approved Lender"), in each case with maturities of not more than one (1) year from the date of acquisition, (c) commercial paper issued by any Lender or Approved Lender or by the parent company of any Lender or Approved Lender and commercial paper issued by, or guaranteed by, any industrial or financial company with a short-term commercial paper rating of at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody's, or guaranteed by any industrial company with a long term unsecured debt rating of at least A or A2, or the equivalent of each thereof, from S&P or Moody's, as the case may be, and in each case maturing within one (1) year after the date of acquisition, and (d) investments in money market funds (x) substantially all the assets of which are comprised of securities of the types described in clauses (a) through (c) above or (y) which have a AAA rating.

"CERCLA" has the meaning specified in the definition of "Environmental Laws."

"Change of Control" shall mean the occurrence of any of the following events: (a) Guarantor shall at any time and for any reason whatsoever cease to be the sole managing member of Borrower; (b) any merger or consolidation of the Guarantor or Borrower with or into any Person or any sale, transfer or other conveyance, whether direct or indirect, of all or substantially all of the assets of the Guarantor, on a consolidated basis, in one transaction or a series of related transactions, if, immediately after giving effect to such transaction, any Person or group of Persons (within the meaning of Sections 13 or 14 of the Exchange Act), which was not before such transaction(s), is or becomes the beneficial owner (within the meaning of Rule 13d-3 promulgated by the SEC under the Exchange Act) of the Capital Stock representing a majority of the total voting power of the aggregate outstanding securities of the transferee or surviving entity normally entitled to vote in the election of directors, managers, or trustees, as applicable, of the transferee or surviving entity, (c) any Person or group of Persons (within the meaning of Sections 13 or 14 of the Exchange Act) is or becomes the beneficial owner (within the meaning of Rule 13d-3 promulgated by the SEC under the Exchange Act) , which was not before such transaction(s), of the Capital Stock representing a majority of total voting power of the aggregate outstanding Capital Stock of the Guarantor normally entitled to vote in the election of directors of the Guarantor, (d) during any period of twelve (12) consecutive calendar months, individuals who were directors of the Guarantor on the first day of such period (together with any new directors whose election by the board of directors of the Guarantor or whose nomination for election by the stockholders of the Guarantor was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any

reason to constitute a majority of the board of directors of the Guarantor, or (e) the sale or disposition, whether directly or indirectly, by the Guarantor, Borrower and/or their respective Subsidiaries (whether pursuant to a single transaction or series of related transactions) of tangible assets representing more than 25% of the Borrower's assets (determined as of the Closing Date).

"Closing Date" means the date hereof.

"Closing Date Certificate" means the Closing Date Certificate executed and delivered by the Borrower on the Closing Date, substantially in the form of Exhibit D hereto.

"Code" means the Internal Revenue Code of 1986, and the regulations thereunder, in each case as amended, reformed or otherwise modified from time to time.

"Collateral" means, collectively, all Pledge Agreement Collateral and all Guarantor Pledge Agreement Collateral, as required to be granted from time to time pursuant to the terms hereof.

"Commitment" means, as the context may require, a Lender's Revolving Loan Commitment or Letter of Credit Commitment, or both.

"Commitment Amount" means, as the context may require, the Revolving Loan Commitment Amount, or the Letter of Credit Commitment Amount, or both.

"Commitment Termination Event" means

(a) the occurrence of any Event of Default described in clauses (a) through (e) of Section 8.1.9 with respect to the Borrower; or

(b) the occurrence and continuance of any other Event of Default and either

(i) the declaration of all of the Loans to be due and payable pursuant to Section 8.3 , or

(ii) the giving of notice by the Administrative Agent, acting at the direction, or with the consent, of the Required Lenders, to the Borrower that the Commitments have been terminated pursuant to Section 8.3 .

"Compliance Certificate " means a certificate duly completed and executed by an Authorized Financial Officer of the Borrower, substantially in the form of Exhibit E hereto, as amended, supplemented, amended and restated or otherwise modified from time to time, together with such changes thereto as the Administrative Agent may from time to time reasonably request for the purpose of monitoring the Borrower's compliance with the financial covenants contained herein, including, without limitation, with respect to the Borrowing Base Properties, Adjusted Net Operating Income, and then Available Commitment.

"Confidential Information" has the meaning set forth in Section 10.11 .

"Confidential Memorandum" means the February 2007 Confidential Information Memorandum prepared by the Arrangers relating to Strategic Hotel & Resorts, Inc and the Facility.

"Consolidated" or " consolidated" shall mean "consolidated" in accordance with GAAP.

"Consolidated Debt" shall mean, at any time, the sum of (without duplication) (i) all indebtedness (including principal, interest, fees and charges) of the Consolidated Group for borrowed money (including obligations evidenced by bonds, notes or similar instruments) and for the deferred purchase price of property or services (excluding ordinary payable and accrued expenses and deferred purchase price which is not yet a liquidated sum), (ii) the aggregate amount of all Capitalized Lease Liabilities of the Consolidated Group, (iii) all Indebtedness of the types described in clause (i) or (ii) of this definition of Persons other than members of the Consolidated Group secured by any Lien on any property owned by the Consolidated Group, whether or not such Indebtedness has been assumed by such Person (provided that, if the Person has not assumed or otherwise become liable in respect of such Indebtedness, such Indebtedness shall be deemed to be the outstanding principal amount (or maximum principal amount, if larger) of such Indebtedness or, if not stated or if indeterminable, in an amount equal to the fair market value of the property to which such Lien relates, as determined in good faith by such Person), (iv) all Contingent Obligations of the Consolidated Group, (v) all Indebtedness of the Consolidated Group of the type described in clauses (ii) and (vii) of the definition of Indebtedness contained herein, and (vi) the Borrower's Share of all such items described in the foregoing clauses (i) through (v) inclusive, with respect to Unconsolidated Subsidiaries; provided that for purposes of this definition, the amount of Indebtedness in respect of Hedging Agreements included pursuant to preceding clause (v) shall be at any time the Net Termination Value of all such Hedging Agreements, all as determined on a consolidated basis, in accordance with GAAP, and without duplication.

"Consolidated EBITDA " shall mean, for any period, Consolidated Net Income for such period, adjusted by (x) adding thereto (i) to the extent actually deducted in determining said Consolidated Net Income, consolidated interest expense, minority interest and provision for taxes for such period (excluding, however, consolidated interest expense and taxes attributable to Unconsolidated Subsidiaries of the Guarantor and any of its Subsidiaries), (ii) the amount of all amortization of intangibles and depreciation that were deducted determining Consolidated Net Income for such period, and (iii) any non-recurring non-cash charges in such period to the extent that (A) such non-cash charges do not give rise to a liability that would be required to be reflected on the consolidated balance sheet of the Guarantor (and so long as no cash payments or cash expenses will be associated therewith (whether in the current period or for any future period)) and (B) same were deducted in determining Consolidated Net Income for such period, and (y)

subtracting therefrom, to the extent included in determining Consolidated Net Income for such period, the amount of non-recurring non-cash gains during such period; provided that Consolidated EBITDA shall be determined without giving effect to any extraordinary gains or losses (including any taxes attributable to any such extraordinary gains or losses) or gains or losses (including any taxes attributable to such gains or losses) from sales of assets other than from sales of inventory (excluding Real Property) in the ordinary course of business.

"Consolidated Group" shall mean, collectively, Borrower, Guarantor and their Subsidiaries, determined in accordance with GAAP.

"Consolidated Group Properties" shall mean those Properties owned or leased by a member of the Consolidated Group.

"Consolidated Net Income " shall mean, for any period, the consolidated net income (or loss) of the Consolidated Group for such period; provided that (without duplication of exclusions) (i) the net income of any member of the Consolidated Group (to the extent otherwise included in determining Consolidated Net Income) shall be excluded to the extent that the declaration or payment of dividends and distributions by such Person of net income is not permitted at the date of determination without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Person or its equityholders, as applicable, and (ii) except for determinations expressly required to be made on a pro forma basis, the net income (or loss) of any member of the Consolidated Group accrued prior to the date it becomes a member of the Consolidated Group, or the date that all or substantially all of the property or assets of such Person are acquired by a member of the Consolidated Group, shall be excluded from such determination.

"Consolidated Tangible Net Worth" shall mean, at any time, the tangible net worth of the Consolidated Group determined in accordance with GAAP, calculated based on (a) the shareholder book equity of Guarantor's common Capital Stock, plus (b) accumulated depreciation and amortization of the Consolidated Group, plus (c) to the extent not included in clause (a), the amount properly attributable to the minority interests, if any, of Borrower in the common Capital Stock of other Persons, in each case determined without duplication and in accordance with GAAP.

"Construction Cost" shall mean, with respect to rehabilitations, renovations or construction of Properties in which work has begun but has not yet been substantially completed (substantial completion shall be deemed to mean not less than 90% completion, as such completion shall be evidenced by a certificate of occupancy or its equivalent or, in the case of condominium conversions the sale to buyers of portions of such Property), the aggregate, good faith estimated cost of construction of such improvements (including, where applicable, land acquisition costs).

"Contingent Obligation " means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is

contingently liable upon (by direct or indirect agreement, contingent or otherwise, with or without recourse, to provide funds for payment to, to purchase from, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of scheduled dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation under any Contingent Obligation shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount (or maximum principal amount, if larger) of the debt, obligation or other liability guaranteed thereby or, if not stated or if indeterminable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder), as determined by such Person in good faith. Notwithstanding the foregoing, the term "Contingent Obligation" shall not include (a) endorsements of instruments for deposit or collection in the ordinary course of business (b) guarantees made by a Person of the obligations of a Subsidiary of such Person that do not constitute Indebtedness of such Subsidiary and are incurred in the ordinary course of business of such Subsidiary, (c) any portion of the Commitment Amount which at any time is unused, and (d) any portion of an obligation which would otherwise be considered to be a Contingent Obligation if such portion is secured by cash or Cash Equivalents, but Contingent Obligations shall include the deferred purchase price of property or services which is not yet a liquidated sum. In addition, a guaranty of completion shall not be deemed to be Contingent Obligation unless and until a claim for payment has been made thereunder, at which time such guaranty of completion shall be deemed to be a Contingent Obligation in an amount equal to such claim.

"Continuation/Conversion Notice" means a notice of continuation or conversion and certificate duly executed by an Authorized Officer of the Borrower, substantially in the form of Exhibit C hereto.

"Credit Extension" means, as the context may require,

(a) the making of Loan by a Lender; or

(b) the issuance of any Letter of Credit, or the extension of any Stated Expiry Date of any existing Letter of Credit, by the Issuer.

"Credit Hedging Agreements" shall mean one or more Hedging Agreements entered into between or among Borrower and/or Guarantor, on the one hand, and another Person (other than Borrower, Guarantor or any Subsidiary of either), to the extent such other Person is a Lender (even if such Lender subsequently ceases to be a Lender under this Agreement for any reason) or any affiliate thereof, and their subsequent successors and assigns, on the other.

"DBTCA" is defined in the preamble.

"Deemed FF&E Reserves" shall mean, with respect to any Property, for any period, a deemed reserve funding for FF&E equal to four percent (4%) of Gross Hotel Revenues, for such Property for such period.

"Deemed Management Fees " shall mean, with respect to any Property, for any period, a deemed base management fee in an amount equal to the greater of the actual management fees payable in such period for such Property and three percent (3%) of Gross Hotel Revenues, for such Property for such period.

"Deemed Net Termination Value" shall mean the aggregate Net Termination Value of all Pari Pasu Hedging Agreements, marked-to-market as of the date of determination, but capped at a maximum amount of Ten Million Dollars ($10,000,000).

"Default" means any condition, occurrence or event which, after notice or lapse of time or both, would constitute an Event of Default.

"Defaulting Lender" means any Lender with respect to which a Lender Default is in effect.

"Development Cost" means, with respect to any Development Property, the undepreciated "book value" of such Development Property.

"Development Property" means a Property being developed or redeveloped by the applicable Property Owner such that 50% or more of the units at such Property are under construction, development or redevelopment and not open for business to the general public, until such time as such Property (or the relevant portion thereof) has opened to the general public for a period of twelve calendar months.

"Disclosure Schedule " means the Disclosure Schedule attached hereto as Schedule I , as it may be amended, supplemented, amended and restated or otherwise modified from time to time by the Borrower with the written consent of the Administrative Agent, provided that the consent of the Administrative Agent shall not be required to modify the Disclosure Schedule in a manner that causes the representations and warranties set forth herein to remain true and correct as long as the state of facts reflected in the modified Disclosure Schedule would not constitute a breach of the covenants set forth herein.

"Disposition" means the sale, conveyance or other disposition of any Consolidated Group Property, material business or other material property, interests or assets by the Borrower or any Subsidiary (including Capital Stock owned by, the Borrower or such Subsidiary, and in all cases whether now owned or hereafter acquired).

"Dividend" with respect to any Person shall mean that such Person has declared or paid a dividend or distribution or returned any equity capital to its stockholders, partners, members or other holders of its Capital Stock or authorized or made any other distribution, payment or delivery of property or cash to its holders of Capital Stock as such, or redeemed, retired, purchased, repurchased or otherwise acquired, directly or indirectly, for a consideration any shares of any class of its Capital Stock outstanding on or after the Closing Date (or any options or warrants issued by such Person with respect to its Capital Stock), or set aside any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for a consideration any shares of any class of the Capital Stock of such Person

outstanding on or after the Closing Date (or any options or warrants issued by such Person with respect to its Capital Stock). Without limiting the foregoing, "dividends" with respect to any Person shall also include (i) all payments made (or required to be made in the applicable period) by such Person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes, in each case except to the extent (x) the same are paid in common stock of the Guarantor or (y) such payments reduced Consolidated EBITDA.

"Dollar" and the sign "$" mean lawful money of the United States.

"Domestic Office" means, relative to any Lender, the office of such Lender designated as such Lender's "Domestic Office" below its name in Annex I hereto or as set forth in a Lender Assignment Agreement, or such other office of a Lender (or any successor or assign of a Lender) within the United States as may be designated from time to time by notice from a Lender, as the case may be, to each other Person party hereto.

"Domestic Subsidiary " means a Subsidiary formed or organized under the laws of the United States or any state thereof.

"Eligible Assigne e" means and includes Lender (and any Affiliate thereof), an Approved Fund, any commercial bank, any financial institution, any finance company, any fund that is regularly engaged in making, purchasing or investing in loans or any other Person that would satisfy the requirements of an "accredited investor" (as defined in SEC Regulation D, but excluding a natural person).

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations (other than internal reports prepared by the Borrower, Guarantor or any of their respective Subsidiaries (a) in the ordinary course of such Person's business or (b) as required in connection with a financing transaction or an acquisition or disposition of real estate) or proceedings relating in any way to any Environmental Law or any permit issued, or any approval given, under any such Environmental Law (hereafter, "Claims"), including, without limitation, (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Laws" means any and all present and future laws, statutes, ordinances, rules, regulations, requirements, restrictions, permits, orders, and determinations of any governmental authority that have the force and effect of law, pertaining to pollution (including Hazardous Materials), natural resources or the environment, whether federal, state, or local, including environmental response laws such

as the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as the same may be further amended (hereinafter collectively called "CERCLA").

"Environmental Occurrence" means any occurrence or event that would cause the representations set forth in Section 6.12 to become untrue in any material respect.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means any of the following if such event or occurrence could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (a) the failure to make a required contribution to a Pension Plan or a Multiemployer Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations which is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization or insolvent; (d) the filing of a notice of intent to terminate a Pension Plan or a Multiemployer Plan, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA, for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the occurrence of a reportable event described in Section 4043(c) of ERISA with respect to any Pension Plan or Multiemployer Plan; or (g) the imposition of any liability under Title IV of ERISA other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

"Event of Default" is defined in Section 8.1 .

"Excess Cash Collateral " is defined in Section 2.6.7 .

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Extended Maturity Date " is defined in Section 3.1(b) .

"Extension Notice" is defined in Section 3.1(b) .

"Extension Option" is defined in Section 3.1(b) .

"Extension Term" is defined in Section 3.1(b) .

"Facility" means the $415,000,000 revolving credit facility evidenced by this Agreement, as the same may be increased, amended, supplemented, amended and restated or otherwise modified from time to time and in effect on such date.

"Federal Funds Rate" means, for any day, a fluctuating interest rate equal to

(a) the rate set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Federal Reserve Bank of New York (including any such successor, "H.15(519)") on the preceding Business Day opposite the caption "Federal Funds (Effective)"; or

(b) if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Lender from three federal funds brokers of recognized standing selected by it.

"Fee Letters" means those certain confidential letters, dated as of the date hereof between the Borrower, the Arrangers, the Lenders, and the Administrative Agent.

"FF&E" shall mean furniture, fixtures, and equipment.

"Fiscal Quarter" means any quarter of a Fiscal Year ending on the last day of March, June, September or December.

"Fiscal Year" means any period of twelve consecutive calendar months ending on December 31; references to a Fiscal Year with a number corresponding to any calendar year (e.g., the "2007 Fiscal Year") refer to the Fiscal Year ending on December 31 of such calendar year.

"Fiscal Year End" is defined in Section 7.1.13 .

"F.R.S. Board" means the Board of Governors of the Federal Reserve System or any successor thereto.

"GAAP" is defined in Section 1.4 .

"Governmental Authority " means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

"Gross Asset Value" shall mean, (1) for any Borrowing Base Property, its Appraised Value and (2) for any other Property: (a) for the eighteen (18) month period commencing on the Closing Date, the Appraised Value of such Property as set forth in

the Initial Appraisals, (b) at any time after such eighteen month period for any Consolidated Group Property other than New Acquisitions and Development Properties, on a trailing twelve month basis ending on the date of determination, an amount equal to Net Operating Income attributable to such Property for such period, less the Deemed FF&E Reserves attributable to such Property for such period, less Deemed Management Fees attributable to such Property, divided by seven and one-half percent (7.5%) in the case of "luxury" or "upper-upscale" Properties, eight and one-half percent (8.5%) in the case of all other full service Properties, and ten percent (10%) in the case of limited service Properties, in each case as designated by Smith Travel Research (or a similar successor company designated by Administrative Agent); as of the Closing Date the Properties set forth on Schedule III are all either "luxury" or "upper-upscale"; (c) for each Consolidated Group Property that is a New Acquisition, an amount equal to the Acquisition Cost with respect thereto; (d) for each Consolidated Group Property that is a Development Property, an amount equal to the Development Cost of such Property; and (e) at any time and for any Property that is not a Consolidated Group Property, an amount equal to Borrower's share, based on its Share of the Unconsolidated Subsidiary that is the Property Owner of such Property, of the Gross Asset Value that would have been attributable to such Property pursuant to clause (2)(a), (2)(b), (2)(c) or (2)(d) of this definition if such Property were a Consolidated Group Property; provided, however, that (A) the Gross Asset Value for the Hyatt New Orleans Property will be deemed to be (i) an amount equal the principal amount of the Mortgage Indebtedness encumbering such Property until such Property has re-opened to the public, (ii) for the first year after such Property has re-opened to the public, the appraised value of such Property as set forth in an Acceptable Appraisal satisfactory to the Administrative Agent, and (iii) thereafter as calculated in accordance with clause (2)(a) or (2)(b), as applicable, above; and (B) the Gross Asset Value of any Property that is subjected to a condominium regime or similar structure for the purpose of timeshare, condominium hotel, or fractional interest or similar development will be (i) for the portion of the Property to be retained by Borrower (or its Subsidiary) to be operated as a traditional hotel, as set forth in a new Acceptable Appraisal satisfactory to the Administrative Agent for the first year of operation and, thereafter, pursuant to clause (b) above, and (ii) for the portion of the Property to be held for sale, the undepreciated "book value" of such portion of the Property.

"Gross Hotel Revenues " shall mean, for all Properties, all revenues and receipts of every kind derived from operating such Properties, as the case may be, and parts thereof, including, but not limited to: income (from both cash and credit transactions), before commissions and discounts for prompt or cash payments, from rentals or sales of rooms, stores, offices, meeting space, exhibit space, or sales space of every kind (including rentals from timeshare marketing and sales desks); license, lease, and concession fees and rentals (not including gross receipts of licensees, lessees, and concessionaires); net income from vending machines; health club membership fees; food and beverage sales; sales of merchandise (other than proceeds from the sale of FF&E no longer necessary to the operation of such Properties); service charges, to the extent not distributed to the employees at such Properties as, or in lieu of, gratuities; interest which accrues on amounts deposited in any FF&E reserve account and proceeds, if any, from business interruption or other loss of income insurance; provided , however , that Gross Hotel Revenues shall not include the following: gratuities to employees of such

Properties; federal, state, or municipal excise, sales, use, or similar taxes collected directly from tenants, patrons, or guests or included as part of the sales price of any goods or services; insurance proceeds (other than proceeds from business interruption or other loss of income insurance); condemnation proceeds; or any proceeds from any sale of such Properties.

"Guarantor" shall mean Strategic Hotels and Resorts, Inc.

"Guarantor Pledge Agreement" is defined in Section 5.1.18 .

"Guarantor Pledge Agreement Collateral" means all "Collateral" under, and as defined in, the Guarantor Pledge Agreement.

"Guaranty" is defined in Section 5.1.4 .

"Hazardous Materials " means any substance that is defined or listed as a hazardous, toxic or dangerous substance under any present or future Environmental Law or that is otherwise regulated or prohibited or subject to investigation or remediation under any present or future Environmental Law because of its hazardous, toxic, or dangerous properties, including (a) any substance that is a "hazardous substance" under CERCLA and (b) petroleum wastes or products.

"Hedging Agreements" shall mean any Interest Rate Protection Agreements and any foreign exchange contracts, currency swap agreements, commodity agreements or other similar agreements or arrangements designed to protect against the fluctuations in currency values or instruments to hedge and protect against fluctuations in the Guarantor's, Borrower's and/or their Subsidiaries cash flow and earnings from changes in financial markets, including, without limitation, any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and any and all transactions of any kind, and their related confirmations and schedules, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement.

"Hedging Counterparty Intercreditor Agreement" means an intercreditor agreement entered into pursuant to Section 9.2 hereof among the Administrative Agent on behalf of the Secured Creditors and one or more counterparties to a Hedging Agreement.

"herein ," " hereof ," "hereto ," "hereunder" and similar terms contained in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular Section, paragraph or provision of this Agreement or such other Loan Document.

"Impermissible Qualification" means, relative to the opinion or certification of any independent public accountant as to any financial statement of the Borrower, any qualification or exception to such opinion or certification

(a) which questions the status of the Borrower and its Subsidiaries, taken as a whole, as a "going concern";

(b) which relates to the limited scope of examination of any material portion of the records of the Borrower and its Subsidiaries relevant to such financial statement; or

(c) which relates to the treatment or classification of any item in such financial statement and which, as a condition to its removal, would require an adjustment to such item the effect of which would be to cause the Borrower to be in default of any of its obligations under Section 7.2.4 .

"Immaterial Subsidiary " means a Domestic Subsidiary that is formed but owns no assets and has not commenced any business or operations for so long as such Domestic Subsidiary owns no assets and has not commenced any business or operations.

"including" and "include" means including without limiting the generality of any description preceding such term.

"Indebtedness" shall mean, as to any Person, without duplication, (i) all indebtedness (including principal, interest, fees and charges) of such Person for borrowed money or for the deferred purchase price of property or services (excluding accounts payable, current trade liabilities and accrued expenses arising in the ordinary course of business), (ii) the maximum amount available to be drawn under all letters of credit issued for the account of such Person and all unpaid drawings in respect of such letters of credit, (iii) all Indebtedness of the types described in clause (i), (ii), (iv), (v) or (vi) of this definition secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person (provided that, if the Person has not assumed or otherwise become liable in respect of such Indebtedness, such Indebtedness shall be deemed to be the outstanding principal amount (or maximum principal amount, if larger) of such Indebtedness or, if not stated or if indeterminable, the maximum reasonably anticipated liability in respect thereof, as determined by such Person in good faith), (iv) all obligations for the payment of money relating to a Capitalized Lease Liability, (v) all Contingent Obligations of such Person and (vi) all obligations under any Hedging Agreement or under any similar type of agreement.

"Initial Appraisals" shall mean Acceptable Appraisals delivered to the Administrative Agent with respect to each of the Properties at or prior to the Closing Date.

"Initial Borrowing Base" shall mean those Borrowing Base Properties set forth on Schedule II .

"Initial Maturity Date " shall mean March 9, 2011 (i.e. , the four-year anniversary date of the Closing Date).

"Insurance Policies" shall mean satisfactory evidence (including appropriate certificates or certified copies of policies) of insurance and reinsurance policies (whether individual or blanket).

"Interest Period" means, relative to any LIBO Rate Loan, the period beginning on (and including) the date on which such LIBO Rate Loan is made or continued as, or converted into, a LIBO Rate Loan pursuant to Section 2.3 and shall end on (but exclude) the day which numerically corresponds to such date one, two, three or six months thereafter (or, if such month has no numerically corresponding day, on the last Business Day of such month), as the Borrower may select in its relevant notice pursuant to Section 2.3 or 2.4 ; provided , however , that

(a) the Borrower shall not be permitted to select Interest Periods to be in effect at any one time which have expiration dates occurring on more than five different dates;

(b) if such Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next following Business Day (unless such next following Business Day is the first Business Day of a calendar month, in which case such Interest Period shall end on the Business Day next preceding such numerically corresponding day);

(c) no Interest Period for any LIBO Rate Loan may end later than the Maturity Date; and

(d) no Interest Period may be elected at any time when an Event of Default is then in existence unless Lenders in their sole discretion otherwise agree.

"Interest Rate Protection Agreement" shall mean any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement or other similar agreement or arrangement.

"Investment" means, relative to any Person,

(a) any loan or advance made by such Person to any other Person;

(b) any Contingent Obligation of such Person incurred in connection with loans or advances described in clause (a) above;

(c) any ownership or similar interest held or acquired by such Person in any other Person and any capital contribution made by such Person in any other Person; and

(d) any other acquisition by such Person of any assets or properties of another Person outside the ordinary course of business of such first Person.

The amount of any Investment shall be the original principal or capital amount thereof less all returns of principal or equity, or distributions or dividends paid, thereon and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair value of such property at the time of such Investment, as determined in good faith by the Borrower.

"Issuance Request" means a Letter of Credit request and certificate duly executed by an Authorized Officer of the Borrower, substantially in the form of Exhibit B-2 hereto, including Borrower's certified calculation of the Aggregate Commitment and the Available Commitment after giving effect to the issuance of the Letter of Credit requested thereunder.

"Issuer" means DBTCA in its capacity as issuer of the Letters of Credit, together with each other Person as shall have subsequently been appointed as the successor Issuer in accordance with Section 9.10 . At the request of Borrower, upon providing notice to Administrative Agent, another Lender with a Revolving Loan Commitment or an Affiliate of DBTCA may, with such other Lender's or Affiliate's (as applicable) consent, in its sole discretion, issue one or more Letters of Credit hereunder and shall be deemed to be the Issuer with respect to such Letter(s) of Credit.

"Joinder" means a Joinder duly executed by an Authorized Officer of any Subsidiary, substantially in the form of Exhibit H-2 hereto.

"Joint Venture" means a partnership, limited liability company, corporation or other entity held or owned, directly or indirectly, jointly by the Guarantor, Borrower or a Subsidiary of Borrower and one or more Persons which Persons are not Consolidated with Borrower (each, a "Joint Venture Partner").

"Lender Assignment Agreement" means a lender assignment agreement substantially in the form of Exhibit F hereto.

"Lender Default" shall mean (i) the wrongful refusal (which has not been retracted) or the failure of a Lender to make available its portion of any Borrowing or to fund its portion of any unreimbursed payment or to purchase participating interests under Section 2.6.1 or (ii) a Lender having notified in writing any Borrower and/or the Administrative Agent that such Lender does not intend to comply with its obligations under Section 2.1 in circumstances where such non-compliance would constitute a breach of such Lender's obligations under the respective Section.

"Lenders" is defined in the preamble and, in addition, shall include any Eligible Assignee that becomes a Lender pursuant to Section 10.9.1 and any Additional Revolving Loan Lenders.

"Letter of Credit" is defined in Section 2.1.2 .

"Letter of Credit Collateral" is defined in Section 8.4(b) .

"Letter of Credit Collateral Account" is defined in Section 8.4(a) .

"Letter of Credit Commitment" means, with respect to the Issuer, the Issuer's obligation to issue Letters of Credit pursuant to Section 2.1.2 and, with respect to each of the other Lenders that has a Revolving Loan Commitment, the obligations of each such Lender to participate in such Letters of Credit pursuant to Section 2.6.1 .

"Letter of Credit Commitment Amount" means, on any date, a maximum amount equal to the lesser of (i) Seventy-Five Million Dollars ($75,000,000.00), as such amount may be permanently reduced from time to time pursuant to Section 2.2 , and (ii) the Revolving Loan Commitment Amount on such date.

"Letter of Credit Outstandings" means, on any date, an amount equal to the sum of the then aggregate amount which is undrawn and available under all issued and outstanding Letters of Credit, plus the then aggregate amount of all unpaid and outstanding Reimbursement Obligations.

"LIBO Office" means, relative to any Lender, the office of such Lender designated as such Lender's "LIBO Office" below its name in Annex I hereto or as set forth in a Lender Assignment Agreement, or such other office of a Lender as designated from time to time by notice from such Lender to the Borrower and the Administrative Agent, whether or not outside the United States, which shall be making or maintaining LIBO Rate Loans of such Lender hereunder.

"LIBO Rate" means, with respect to each day during each Interest Period pertaining to a LIBO Rate Loan, the rate of interest per annum equal to the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period.

"LIBO Rate Loan" means a Revolving Loan bearing interest, at all times during an Interest Period applicable to such Revolving Loan, at a fixed rate of interest determined by reference to the LIBO Rate.

"Lien" means any mortgage, deed of trust, pledge, security interest, hypothecation, charge, lien (statutory or other), escrow or similar encumbrance of any kind, or any other type of similar preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof).

"Loan Documents" means, collectively, this Agreement, the Notes (if any), the Letters of Credit, the Security Documents, the Guaranty, the Subsidiary Guaranty, the Fee Letters, each Borrowing Request and each Issuance Request.

"Loan Pledge Agreement" means that certain Loan Pledge Agreement dated as of the date hereof, and as the same may be hereafter modified, supplemented or amended from time to time.

"Loan Pledge Collateral" means all "Collateral" under, and as defined in, the Loan Pledge Agreement.

"Loans" means a Revolving Loan or a Swingline Loan of any type.

"Mandatory Borrowing" is defined in Section 2.9(b).

"Material Adverse Effect" means a circumstance or condition that, either individually or in the aggregate has had, or could reasonably be expected to have, a material adverse effect on (i) the business, assets, operations, properties, or financial condition of the Borrower and its Subsidiaries taken as a whole, (ii) the ability of the Borrower to perform its obligations under this Agreement and the other Loan Documents taken as a whole, (iii) the ability of the Guarantor and the Subsidiary Guarantors, taken together as a whole, to perform their obligations under this Agreement and the other Loan Documents taken as a whole, (iv) the legality, validity or enforceability of the Loan Documents taken as a whole, or (v) the rights and remedies of the Administrative Agent and the Lenders under this Agreement and the other Loan Documents.

"Material Agreements" shall mean any license, contract, joint venture, management, or other agreement, the loss of which could reasonably be expected to have a Material Adverse Effect.

"Maturity Date" shall mean the Initial Maturity Date unless the Extension Option is properly exercised pursuant to Section 3.1, in which case "Maturity Date" shall mean the Extended Maturity Date.

"Mezzanine Indebtedness" means non-recourse Indebtedness secured by direct or indirect beneficial interests in the Capital Stock of a Property Owner or Operating Lessee and customary recourse guaranties provided in connection therewith.

"Monthly Payment Date" means the last day of each calendar month, or, if any such day is not a Business Day, the next succeeding Business Day.

"Moody's" means Moody's Investors Service, Inc.

"Mortgage Indebtedness" means Property-level non-recourse Indebtedness, where the borrower under such Indebtedness is a special purpose bankruptcy-remote entity and customary recourse guaranties provided in connection therewith.

"Multiemployer Plan" means a "multiemployer plan," within the meaning of Section 4001(a)(3) of ERISA, with respect to which the Borrower or any ERISA Affiliate may have any liability.

"NAIC" means the National Association of Insurance Commissioners or any successor thereto with similar authority.

"Net Asset Value" shall mean the sum of (i) the Gross Asset Value of wholly-owned Properties less the then outstanding amount of Indebtedness with respect to such Properties and (ii) the Borrower's Share of the amount described in clause (i) with respect to any Properties owned through Joint Ventures.

"Net Operating Income" shall mean the amount obtained by subtracting Operating Expenses from Operating Income.

"Net Termination Value " shall mean at any time, with respect to all Hedging Agreements for which a Net Termination Value is being determined, the excess, if positive, of (i) the aggregate of the unrealized net loss position, if any, of the Guarantor, Borrower and/or their Subsidiaries under each such Hedging Agreement on a marked-to-market basis determined no more than one month prior to such time less (ii) the aggregate of the unrealized net gain position, if any, of the Guarantor, Borrower and/or their Subsidiaries under each such Hedging Agreement on a marked-to-market basis determined no more than one month prior to such time, with each marked-to market determination made pursuant to clauses (i) and (ii) above in connection with a determination of "Net Termination Value" to be made on the same date.

"New Acquisitions" shall mean a Property that has been owned or leased for fewer than twelve (12) full calendar months.

"Non-Defaulting Lender " means and includes each Lender other than a "Defaulting Lender."

"Non-U.S. Lender" has the meaning specified in clause (e) of Section 4.6 .

"Non-U.S. Participant" means a Participant that is not incorporated or organized in or under the laws of the United States or a state thereof.

"Note" means a Revolving Note.

"Obligations" means all monetary obligations (whether absolute or contingent, matured or unmatured, direct or indirect, choate or inchoate, sole, joint, several or joint and several, due or to become due, heretofore or hereafter contracted or acquired) of the Borrower, Guarantor and each Subsidiary Guarantor to any Lender or the Issuer or the Administrative Agent arising under this Agreement, the Notes, the Letters of Credit and each other Loan Document.

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Operating Expenses" shall mean, for any specified period and any Property, without duplication, all expenses actually paid or payable by or on behalf of Property Owner during such period in connection with the ownership or operation of the

Property, including costs (including labor) of providing services including rooms, food and beverage, telecommunications, garage and parking and other operating departments, as well as real estate and other business taxes, rental expenses, insurance premiums, utilities costs, administrative and general costs, repairs and maintenance costs, third-party franchise fees, other costs and expenses relating to the Property, legal expenses (incurred in connection with the ordinary course operation of the Property), determined, in each case on an accrual basis, in accordance with GAAP. "Operating Expenses" shall not include (i) depreciation or amortization or other noncash items, (ii) the principal of and interest on Indebtedness for borrowed money, (iii) income taxes or other taxes in the nature of income taxes, (iv) any expenses (including legal, accounting and other professional fees, expenses and disbursements) incurred in connection with and allocable to the issuance of the Revolving Note, (v) distributions to the shareholders of the Property Owner or (vi) Capital Expenditures or management fees actually paid or payable by or on behalf of Property Owner during such period.

"Operating Income" shall mean for any specified period and any Property, all income received by Property Owner from any Person during such period in connection with the ownership or operation of the Property, determined on an accrual basis of accounting determined in accordance with GAAP, including the following:

(i) all amounts payable to Property Owner or to the applicable manager for the account of Property Owner by any Person as rent and/or hotel revenue;

(ii) all amounts payable to Property Owner pursuant to any reciprocal easement and/or operating agreements, covenants, conditions and restrictions, condominium documents and similar agreements affecting the Property and binding upon and/or benefiting Property Owner and other third parties, but specifically excluding any management agreement;

(iii) condemnation awards to the extent that such awards are compensation for lost rent allocable to such specified period;

(iv) business interruption and loss of "rental value" insurance proceeds (but allocating such proceeds to the period to which they relate); and

(v) all investment income with respect to any collateral accounts.

Notwithstanding the foregoing clauses (i) through (v), Operating Income shall not include (A) any insurance proceeds (other than of the types described in clauses (iii) and (iv) above), (B) any proceeds resulting from the sale, exchange, transfer, financing or refinancing of all or any part of the Property (other than of the types described in clause (i), (iii) and (v) above), (C) any repayments received from tenants of principal loaned or advanced to tenants by Property Owner, (D) any type of income that would otherwise be considered Operating Income pursuant to the provisions above but is paid directly by any tenant to a Person other than Property Owner or its agent and (E) any fees or other amounts payable by a tenant or another Person to Property Owner that are reimbursable to tenant or such other Person.

"Operating Lessee" means a Taxable REIT Subsidiary that is owned, directly or indirectly, wholly or through a Joint Venture, by the Borrower and that leases a Property.

"Organic Document" means, relative to Borrower, each Subsidiary and Guarantor or Joint Venture, as applicable, its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation or limited liability company agreement and any certificate of designations or similar instrument relating to the rights of shareholder, including preferred shareholders, of such Person.

"Other Taxes" means any present or future stamp, court or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, this Agreement or any other Loan Document.

"Pari-Pasu Hedging Agreement" means a Hedging Agreement (i) between a counterparty which is not a Lender or affiliate of a Lender (each, a "Pari-Pasu Hedging Counterparty") and Borrower (or Guarantor), (ii) that has been pledged by Borrower (or Guarantor) as additional Collateral for the Facility, and (iii) with respect to which a Hedging Counterparty Intercreditor Agreement is in effect.

"Pari-Pasu Hedging Counterparty" has the meaning set forth in the definition of "Pari-Pasu Hedging Agreement".

"Participant" is defined in Section 10.9.2 .

"Patriot Act" has the meaning specified in Section 6.21 .

"PBGC" means the Pension Benefit Guaranty Corporation, or any Governmental Authority succeeding to any of its principal functions under ERISA.

"Pension Plan" means a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA (other than a Multiemployer Plan) with respect to which the Borrower or any ERISA Affiliate may have any liability.

"Percentage" means, relative to any Lender, the applicable fraction, expressed as a percentage, relating to Revolving Loans and Letter of Credit Outstandings, the numerator of which shall be such Lender's Commitment and the denominator of which shall be the Commitment Amount, as such percentage may be adjusted from time to time.

"Permitted Borrowing Base Debt" means, with respect to any Borrowing Base Property or Borrowing Base Property Owner: (a) trade payables incurred in the ordinary course of such Borrowing Base Property Owner's business, not secured by Liens

on the Property or the Capital Stock of a Borrowing Base Property Owner, not exceeding one percent (1%) of the Appraised Value of such Borrowing Base Property at any one time outstanding, payable by or on behalf of the Borrowing Base Property Owner for or in respect of the operation of the Borrowing Base Property in the ordinary course of operating such Borrowing Base Property Owner's business, provided that (but subject to the remaining terms of this definition) each such amount shall be paid within sixty (60) days following the date on which each such amount is incurred (except in the case of a bona fide dispute being diligently contested in good faith and for which adequate reserves have been set aside, (b) purchase money indebtedness, capital lease obligations or other indebtedness for FF&E incurred in the ordinary course of business (but, in either case, not with respect to Property acquisitions or in any event recourse to Borrower or Guarantor) in the aggregate not exceeding three percent (3%) of the Appraised Value of such Borrowing Base Property, including, for the avoidance of doubt, the Ritz Carlton FF&E Facility, at any one time outstanding with respect to such Borrowing Base Property, (c) the Borrowing Base Intercompany Indebtedness, (d) indebtedness under this Agreement, and (e) obligations due and payable by Borrower pursuant to a permitted Material Agreement or any other agreement approved by Lender and not secured by Liens on such Borrowing Base Property or Borrowing Base Property Owner's Capital Stock, each in the ordinary course of operating such Borrowing Base Property.

"Permitted Borrowing Base Liens" means, with respect to a Borrowing Base Property or Borrowing Base Property Owner:

(a) Liens for taxes, assessments or governmental charges or levies on such Borrowing Base Property if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings and for which adequate reserves shall have been set aside on the books of the Borrower or such Borrowing Base Property Owner;

(b) Liens imposed by law, such as carriers', warehousemen's and mechanics' liens and other similar liens arising in the ordinary course of business which secure payment of obligations not more than 60 days past due or which are being contested in good faith by appropriate proceedings and for which adequate reserves shall have been set aside on the books of the Borrower or such Borrowing Base Property Owner;

(c) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business in connection with workmen's compensation, unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory and regulatory obligations, bids, leases and contracts or other similar obligations (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on surety bonds or performance or return-of-money bonds;

(d) Liens securing permitted indebtedness of the type described in clause (b) of the definition of Permitted Borrowing Base Debt so long as such Lien is only in respect of the specific property relating to such obligation;

(e) Liens securing Borrowing Base Intercompany Indebtedness;

(f) Easements, rights-of-way, municipal and zoning ordinances or similar restrictions, minor defects or irregularities in title and other similar charges or encumbrances against real property as are of a nature generally existing with respect to properties of a similar character and which do not in any material and adverse way affect the marketability of the Borrowing Base Property or interfere with the use thereof in the business of the Borrower or its Subsidiaries;

(g) Liens arising solely by virtue of any statutory or common law provision relating to banks' liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution, provided that such deposit account is not a cash collateral account; and

(h) Leases for space entered into in the ordinary course of business affecting any Property (to tenants as tenants only, without purchase rights or options)

"Permitted Construction Indebtedness" means Indebtedness for Construction Costs secured by, a Property and/or the Capital Stock of a Property Owner (including customary recourse guaranties provided in connection therewith), where the borrower under such Indebtedness is a special purpose bankruptcy-remote entity, which does not provide for or require any pre-event of default cash flow sweeps or cash traps, whether resulting from low debt service coverage or otherwise, and the maximum principal amount of which does not exceed seventy-five percent (75%) of the Construction Costs of such Property.

"Person" means any natural person, corporation, limited liability company, partnership, joint venture, joint stock company, firm, association, trust or unincorporated organization, government, governmental agency, court or any other legal entity, whether acting in an individual, fiduciary or other capacity.

"Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) which the Borrower sponsors or maintains or to which the Borrower makes, is making or is obligated to make contributions and includes any Pension Plan.

"Pledge Agreement" means that certain Pledge Agreement dated as of the date hereof, and as the same may be hereafter modified, supplemented or amended from time to time.

"Pledge Agreement Collateral" means all "Collateral" under, and as defined in, the Pledge Agreement.

"Pro Forma Borrowing Base Coverage Ratio" means, as of any date of determination, the ratio of (a) Adjusted Net Operating Income allocable to the Borrowing Base Properties for the immediately preceding trailing twelve month period, adjusted on

a pro forma basis for Borrowing Base Property acquisitions and dispositions consummated during the period of determination, to (b) Pro Forma Interest Expense.

"Pro Forma Interest Expense" means, as of any date of determination, the interest expense that would be payable under the Facility for a twelve month period, assuming an interest rate equal to the sum of the LIBO Rate plus the Applicable Margin, each as of such date of determination and an outstanding principal balance equal to the Aggregate Outstanding Balance as of such date of determination, after giving effect to the requested Borrowing/Letter of Credit.

"Projections" is defined in Section 5.1.12(a) .

"Properties" shall mean hotels and resorts owned or leased by Guarantor, Borrower or any of its Subsidiaries or its Unconsolidated Subsidiaries. Schedule III contains a list of the Properties as of the Closing Date.

"Property Owner" means a Person that owns a Property.

"Qualified Ground Lease " means a ground lease that (x) has a remaining term of at least thirty (30) years (including, for this purpose, any renewal option exercisable at the sole option of the ground lessee with no veto or approval rights by the ground lessor or any lender to such ground lessor) and (y) can be mortgaged without the consent of the ground lessor and (z) contains customary leasehold mortgagee protection rights (including, without limitation, the right to receive notice of any ground lease default, the right to cure any such default and the right to a new ground lease in favor of the leasehold mortgagee or its designee in the event that the ground lease should terminate on account of a default thereunder or for any other reason).

"Quarterly Payment Date " means the last day of each March, June, September and December, or, if any such day is not a Business Day, the next succeeding Business Day.

"Real Estate" means all land, buildings and improvements owned or leased by the Borrower or any of its Subsidiaries, but excluding all operating fixtures and equipment, whether or not incorporated into improvements.

"Recourse Indebtedness " means Indebtedness with respect to which the right of recovery of the obligee is not limited to recourse against (a) collateral, if any, securing such Indebtedness or (b) if the Indebtedness is incurred by a Restricted Subsidiary that is a special/single purpose entity, recourse is limited to the special/single purpose entities that are the obligor (s) with respect to such Indebtedness.

"Register" is defined in Section 10.9.1(c) .

"Reimbursement Obligations" is defined in Section 2.6.3 .

"REIT" shall mean a real estate investment trust under Sections 856 through 860 of the Code.

"Replaced Lender" is defined in Section 4.4 .

"Replacement Lender" is defined in Section 4.4 .

"Required Lenders" means, at any time, Non-Defaulting Lenders having or holding at least fifty percent (50%) of the sum (without duplication) of the aggregate outstanding principal amount of the Revolving Loans, the aggregate amount of the Letter of Credit Outstandings and the unfunded amount of the Revolving Loan Commitment Amount, in each case, taken as a whole, of the Non-Defaulting Lenders, but in no event fewer than three (3) Lenders.

"Requirement of Law" means, as to any Person, any law, treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or legally binding upon the Person or any of its property or to which the Person or any of its property is subject.

"Responsible Officer " means, with respect to any Person, its chief executive officer, its president or any vice president, managing director, chief financial officer, treasurer, controller or other officer thereof having substantially the same authority and responsibility.

"Restricted Subsidiary " means a Domestic Subsidiary that is prohibited, whether (i) contractually by the terms of Indebtedness encumbering the related Property, (ii) by the Organic Documents of such Subsidiary if such Subsidiary is not wholly-owned (directly or indirectly) by Borrower (unless such Subsidiary will realize benefits from this Facility as a result of the contribution or loan by Borrower of proceeds of Loans to such Subsidiary) or (iii) by law, (to be determined, in each case, in the discretion of the Administrative Agent unless the Borrower delivers (x) a legal opinion that such Subsidiary is so restricted and (y) an officer's certificate to the effect that such restriction was not entered into to circumvent or otherwise avoid the requirements of Section 7.1.9), from (A) becoming a Subsidiary Guarantor, in the case of a Subsidiary that would otherwise become a Subsidiary Guarantor, or (B) pledging its interests in the Capital Stock of another Subsidiary, in the case of a Subsidiary that is not restricted from becoming a Subsidiary Guarantor but is restricted from pledging such interests, or (C) having its Capital Stock pledged by Borrower or another Subsidiary pursuant to the provisions hereof and of the Pledge Agreement, in the case of a Subsidiary the Capital Stock of which would otherwise be pledged by a Subsidiary Guarantor pursuant to the Pledge Agreement. In no circumstance may a Borrowing Base Property Owner be deemed a Restricted Subsidiary.

"Revolving Loan Commitment" shall mean, for each Lender, the commitment by such Lender to make Revolving Loans pursuant to Section 2.1 as set forth on Annex I attached hereto.

"Revolving Loan Commitment Amount" means $415,000,000, as such amount may be (x) reduced from time to time pursuant to Section 2.2 and (y) increased from time to time pursuant to Section 2.8 .

"Revolving Loan Commitment Termination Date" means the earliest of

(a) the Maturity Date;

(b) the date on which the Revolving Loan Commitment Amount is terminated in full or reduced to zero pursuant to Section 2.2 ; and

(c) the date on which any Commitment Termination Event occurs.

Upon the occurrence of any event described in the preceding clause (b) or (c), the Revolving Loan Commitments shall terminate automatically and without any further action.

"Revolving Loan Commitments " means, relative to any Lender, such Lender's obligation (if any) to make Revolving Loans pursuant to Section 2.1.1 .

"Revolving Loans" is defined in Section 2.1.1 .

"Revolving Note" means a promissory note, if any, executed by the Borrower and payable to any Lender, in the form of Exhibit A-1 hereto (as such promissory note may be amended, endorsed or otherwise modified from time to time), evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from outstanding Revolving Loans, and also means all other promissory notes accepted from time to time in substitution therefor or renewal thereof.

"Ritz Carlton FF&E Facility" means the Ritz Carlton FF&E facility described on Schedule VI .

"S&P" means Standard & Poor's Rating Services.

"SEC" means the Securities and Exchange Commission.

"Secured Creditors" means and includes each of the Administrative Agent, the Issuer, the Lenders, each Person (other than Borrower, Guarantor or any Subsidiary of either) party to a Credit Hedging Agreement, to the extent such party is a Lender or any affiliate thereof (even if such Lender subsequently ceases to be a Lender under this Agreement for any reason), and their subsequent assigns.

"Security Documents" shall mean: (i) the Guarantor Pledge Agreement; (ii) the Pledge Agreement (including any supplements or Joinders thereto); (iii) the Loan Pledge Agreement (including any supplements or Joinders thereto), (iv) an omnibus assignment of Material Agreements of the Borrower and Guarantor, (v) intentionally omitted; (vi) financing statements to be filed with the appropriate state and/or county offices for the perfection of a security interest in any of the Collateral or any other collateral or security for the Obligations; (vii) all other agreements, documents, and instruments evidencing, securing, or pertaining to the Obligations or any part thereof, as shall from time to time be executed and delivered by Borrower, Guarantor, or any other

Person in favor of any Secured Creditor; and (viii) all renewals, extensions, and restatements of, and amendments and supplements to, any of the foregoing.

"Share" shall mean, for any Person, such Person's share of the assets, liabilities, revenues, income, losses, or expenses of a Subsidiary or an Unconsolidated Subsidiary based upon such Person's percentage ownership of such Subsidiary or Unconsolidated Subsidiary.

"Share Repurchase" is defined in Section 7.2.6(b) .

"Specified Default" means any Default under Section 8.1.1 or 8.1.9 .

"Stated Amount" of each Letter of Credit means the total amount available to be drawn under such Letter of Credit upon the issuance thereof, as such amount may be amended from time to time.

"Stated Expiry Date" is defined in Section 2.6 .

"Stop Issue Notice" shall mean a notice received by Issuer from the Administrative Agent, whether on its own initiative or at the direction of the Required Lenders, that one or more of the conditions specified in Article V are not then satisfied, or that the issuance of a Letter of Credit would violate Section 2.1.4 .

"Subsidiary" shall mean, for any Person, any other Person in whom such first Person or a Subsidiary of such Person holds Capital Stock and whose financial results would be consolidated under GAAP with the financial results of such first Person on the consolidated financial statements of such first Person.

"Subsidiary Guarantor " means each Domestic Subsidiary of Borrower that is, or becomes, party to the Subsidiary Guaranty, on a joint and several basis.

"Subsidiary Guaranty " is defined in Section 5.1.4 .

"Swingline Borrowing " means a Borrowing under Section 2.9 hereof.

"Swingline Commitment" has the meaning set forth in Section 2.9(a) .

"Swingline Lender" means the Administrative Agent and any other Lender designated by the Borrower from among those Lenders identified by the Administrative Agent as permissible Swingline Lenders.

"Swingline Loan" means a loan made by the Swingline Lender pursuant to Section 2.9 .

"Taxable REIT Subsidiary " means a Subsidiary that has elected to be treated as a "taxable REIT subsidiary under Section 856(l)(1) of the Code.

"Taxes" means any and all present or future taxes, levies, assessments, imposts, duties, deductions, fees, withholdings or similar charges, and all liabilities with respect thereto, excluding, in the case of each Lender and the Administrative Agent, respectively, taxes imposed on any Lender or the Administrative Agent as a result of a present or former connection between such Lender or the Administrative Agent and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Lender or the Administrative Agent having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement).

"Telerate Page 3750" means the display designated as "Page 3750" on the Telerate Service (or such other page as may replace Page 3750 on the service or such other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association interest settlement rates for Dollar deposits).

"Test Period" means, for any determination under this Agreement at any time, the four consecutive Fiscal Quarters then last ended (in each case taken as one accounting period).

"Title Searches" shall mean title commitments and/or searches from each recording district in which a Borrowing Base Property is located evidencing no Liens other than Permitted Borrowing Base Liens with respect to each Borrowing Base Property.

"Total Fixed Charge Coverage Ratio" means, as of the close of any Fiscal Quarter, the ratio computed for the period consisting of such Fiscal Quarter and each of the three immediately prior Fiscal Quarters, of (a) Consolidated EBITDA for such period to (b) the sum, on a consolidated basis, of (i) Total Interest Expense for such period, plus (ii) the scheduled principal amount of all amortization payments (but not final balloon payments at maturity) for such period on all Indebtedness of the Consolidated Group; plus (iii) distributions on preferred partnership units payable by the Borrower for such period and distributions made by the Borrower in such period for the purpose of paying Dividends on preferred shares in Guarantor; plus (iv) an amount equal to the aggregate Deemed FF&E Reserves for the Consolidated Group Properties for such period; plus (v) amounts paid by or on behalf of the Consolidated Group into cash reserves as required pursuant to the terms of other Indebtedness.

"Total Interest Expense " means the aggregate cash interest expense of the Consolidated Group for such period, as determined in accordance with GAAP, including capitalized interest and the portion of any payments made in respect of Capitalized Lease Liabilities allocable to interest expense, but excluding (i) deferred financing costs, (ii) other non-cash interest expense and (iii) any capitalized interest relating to construction financing for a Property to the extent an interest reserve or a loan "holdback" is maintained in respect of such capitalized interest pursuant to the terms of such financing as reasonably approved by the Administrative Agent.

"Total Leverage Ratio " shall mean, at any time, the ratio of: (a) Consolidated Debt to (b) aggregate Gross Asset Value in respect of all of the Properties.

"Transaction" means the entering into of this Agreement and the other Loan Documents on the Closing Date and the incurrence of Loans, if any, hereunder on the Closing Date.

"type" means, relative to any Loan, the portion thereof, if any, being maintained as a Base Rate Loan or a LIBO Rate Loan.

"U.C.C." means the Uniform Commercial Code as from time to time in effect in the State of New York.

"UCC Searches" shall mean central and local current financing statement searches from the State of Delaware and each state in which a Property is located, and such other jurisdictions as Administrative Agent may request, covering Guarantor, Borrower, and each of its Subsidiaries, together with copies of all financing statements listed in such searches.

"Unconsolidated Subsidiary" shall mean, for any Person, any other Person in whom such first Person holds Capital Stock and whose financial results would not be consolidated under GAAP with the financial results of such first Person on the consolidated financial statements of such first Person.

"Unfunded Pension Liability" means the excess of a Plan's benefit liabilities under Section 4001(a)(16) of ERISA over the current value of that Plan's assets, determined in accordance with the assumptions used for funding the Plan pursuant to Section 412 of the Code for the applicable plan year.

"United States" or "U.S ." means the United States of America, its fifty states and the District of Columbia.

"Unsecured Indebtedness " means Recourse Indebtedness that is not secured by a Lien.

"U.S. Lender" is defined in Section 4.6(d) .

"wholly-owned" means, with respect to any direct or indirect Subsidiary, any Subsidiary all of the outstanding Capital Stock of which is owned directly or indirectly by the Borrower.

Section 1.2 Use of Defined Terms . Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in this Agreement shall have such meanings when used in each other Loan Document, the Disclosure Schedule, or any Borrowing Request, Issuance Request, Closing Date Certificate, Compliance Certificate, solvency certificate, Lender Assignment Agreement, notice or other communications delivered from time to time in connection with this Agreement or any other Loan Document.

Section 1.3 Cross-References . Unless otherwise specified, references in this Agreement and in each other Loan Document to any Article or Section are references to such Article or Section of this Agreement or such other Loan Document, as the case may be, and, unless otherwise specified, references in any Article, Section or definition to any clause are references to such clause of such Article, Section or definition.

Section 1.4 Accounting and Financial Determinations . Unless otherwise specified, all accounting terms used herein or in any other Loan Document or solvency certificate, shall be interpreted, all accounting determinations and computations hereunder or thereunder (including under Section 7.2.4) shall be made, and all financial statements required to be delivered hereunder or thereunder shall be prepared, in accordance with, those generally accepted accounting principles ("GAAP") applied in the preparation of the financial statements referred to in Section 5.1.5 ; provided , however , that at any time the computations determining compliance with Section 7.2 utilize accounting principles different from those utilized in the financial statements furnished to the Lenders pursuant to Section 7.1.1 , such financial statements shall be accompanied by reconciliation work-sheets. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for the Guarantor, Borrower and its Subsidiaries, in each case without duplication.

ARTICLE II

REVOLVING LOAN COMMITMENT AND BORROWING PROCEDURES, NOTES

Section 2.1 Commitments . On the terms and subject to the conditions of this Agreement (including Section 2.1.3 , Section 2.1.4 and Article V), the Lenders and the Issuer severally agree to make Credit Extensions as set forth below.

Section 2.1.1 Revolving Loan Commitment . From time to time on any Business Day occurring from and after the Closing Date but prior to the Revolving Loan Commitment Termination Date, each Lender severally agrees through the Administrative Agent to make loans (relative to such Lender, its "Revolving Loans") to the Borrower equal to such Lender's Percentage of the aggregate amount of each Borrowing of the Revolving Loans requested by the Borrower to be made on such day, provided that the making of any such Revolving Loan shall not: (a) cause the then-current Aggregate Outstanding Balance to exceed the then-current Aggregate Commitment; or (b) cause the then-current Aggregate Outstanding Balance to exceed the then-current Available Commitment.

The commitment of each such Lender described in this Section 2.1.1 (as the same may be increased pursuant to Section 2.8) is herein referred to as its "Revolving Loan Commitment ." On the terms and subject to the conditions hereof, the Borrower may from time to time borrow, prepay and reborrow the Revolving Loans.

Section 2.1.2 Letter of Credit Commitment . From time to time on any Business Day occurring from and after the Closing Date but prior to the tenth (10th) Business Day prior to the Revolving Loan Commitment Termination Date, the Issuer will:

(a) issue one or more standby letters of credit in the form customarily used by the Issuer or in such other form as requested by Borrower and approved by the Issuer (each, a " Letter of Credit") for the account of the Borrower in the Stated Amount requested by the Borrower on such day; or

(b) extend the Stated Expiry Date of an existing standby Letter of Credit previously issued hereunder to a date not later than the earlier of (x) the last Business Day prior to the Maturity Date and (y) one year from the date of the then current Stated Expiry Date, provided that the Issuer shall be under no obligation to issue any Letter of Credit, or extend a Stated Expiry Date, if at the time of such issuance:

(i) any order, judgment or decree of any governmental authority or arbitrator shall purport by its terms to enjoin or restrain such Issuer from issuing such Letter of Credit or any requirement of law applicable to such Issuer or any request or directive (whether or not having the force of law) from any governmental authority with jurisdiction over such Issuer shall prohibit, or request that such Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuer with respect to such Letter of Credit any restriction or reserve or capital requirement (for which such Issuer is not otherwise compensated) not in effect on the date hereof, or any unreimbursed loss, cost or expense which was not applicable, in effect or known to such Issuer as of the date hereof and which such Issuer reasonably and in good faith deems material to it; or

(ii) such Issuer shall have received a Stop Issue Notice from the Administrative Agent prior to the issuance of such Letter of Credit.

Each Letter of Credit shall be issued in Dollars and on a sight basis only.

Section 2.1.3 Lenders Not Permitted or Required to Make Loans . No Lender shall be permitted or required to make any Loan if, after giving effect thereto, the aggregate outstanding principal amount of all Revolving Loans, Swingline Loans and all Letter of Credit Outstandings with respect to such Lender would exceed the then existing Revolving Loan Commitment of such Lender, including such Lender's Percentage of the aggregate amount of all Letter of Credit Outstandings and outstanding Swingline Loans.

Section 2.1.4 Issuer Not Permitted or Required to Issue Letters of Credit . The Issuer shall not be permitted or required to issue any Letter of Credit if, after giving effect thereto, (i) the aggregate amount of all Letter of Credit Outstandings would exceed the Letter of Credit Commitment Amount or (ii) the sum of the aggregate amount of all Letter of Credit Outstandings plus the aggregate principal amount of all Revolving Loans

then outstanding would exceed any of (A) the Revolving Loan Commitment Amount, (B) the then-current Aggregate Commitment, or (C) the then-current Available Commitment; or if a Lender Default known to the Issuer exists, unless the Issuer has entered into arrangements reasonably satisfactory to it and the Borrower to eliminate the Issuer's risk with respect to the participation in Letter of Credit Outstandings by each Defaulting Lender, including cash collateralizing such Defaulting Lender's Percentage of Letter of Credit Outstandings in respect thereof.

Section 2.1.5 Swingline Lender Not Permitted or Required to Make Swingline Loans . The Swingline Lender shall not be permitted or required to make any Swingline Loan if, after giving effect thereto, (i) the aggregate amount of all outstanding Swingline Loans would exceed the Swingline Commitment or (ii) the sum of the aggregate amount of all outstanding Swingline Loans, plus Letter of Credit Outstandings plus the aggregate principal amount of all Revolving Loans then outstanding would exceed any of (A) the Revolving Loan Commitment Amount, (B) the then-current Aggregate Commitment, or (C) the then-current Available Commitment; or if a Lender Default known to the Issuer exists, unless the Swingline Lender has entered into arrangements reasonably satisfactory to it and the Borrower to eliminate the Swingline Lender's risk with respect to the participation in Swingline Loans by each Defaulting Lender, including cash collateralizing such Defaulting Lender's Percentage of Swingline Loans in respect thereof.

Section 2.2 Reduction of the Commitment Amounts . The Commitment Amounts are subject to reduction from time to time pursuant to this Section 2.2 .

Section 2.2.1 Optional . The Borrower may, from time to time on any Business Day occurring after the Closing Date, voluntarily reduce the amount of the Revolving Loan Commitment Amount or the Letter of Credit Commitment Amount on the Business Day so specified by the Borrower; provided , however , that (a) all such reductions shall require at least three (3) Business Day's prior written notice to the Administrative Agent and shall be permanent, and any partial reduction of any Commitment Amount shall be in a minimum amount of $1,000,000 and in an integral multiple of $500,000 in excess thereof and (b) in no event shall the Borrower be permitted to cancel Commitments for which a Letter of Credit has been issued and is outstanding unless the Borrower returns (or causes to be returned) such Letter of Credit to the Issuer.

Section 2.2.2 Mandatory . The Commitment Amount shall be reduced to zero on the Revolving Loan Commitment Termination Date.

Section 2.3 Borrowing Procedures . Revolving Loans shall be made by the Lenders in accordance with Section 2.3.1 .

Section 2.3.1 Revolving Loans . By delivering a Borrowing Request to the Administrative Agent on or before 1:00 p.m., New York City time, on a Business Day, the Borrower may from time to time irrevocably request, on not less than one (1) Business Day's notice in the case of Base Rate Loans or three (3) Business Days' notice

in the case of LIBO Rate Loans, that a Borrowing be made, in the case of LIBO Rate Loans, in a minimum amount of $3,000,000 and an integral multiple of $500,000 in excess thereof, in the case of Base Rate Loans, in a minimum amount of $3,000,000 and in integral multiples of $500,000 in excess thereof or, in either case, in the unused amount of the Revolving Loan Commitment, and in any case in not to exceed the Available Commitment. On the terms and subject to the conditions of this Agreement, each Borrowing shall be comprised of the Revolving Loans, and shall be made on the Business Day, specified in such Borrowing Request. On or before 12:00 noon, New York City time, on such Business Day, each Lender shall deposit with the Administrative Agent same day funds in an amount equal to such Lender's Percentage of the requested Borrowing. Such deposit will be made to an account which the Administrative Agent shall specify from time to time by notice to the Lenders. To the extent funds are received from the Lenders, the Administrative Agent shall make such funds available to the Borrower by wire transfer to the accounts the Borrower shall have specified in its Borrowing Request. Unless Administrative Agent shall have been notified by any Lender prior to the date of Borrowing that such Lender does not intend to make available to Administrative Agent its portion of the Borrowing or Borrowings to be made on such date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such date of Borrowing, and Administrative Agent, in reliance upon such assumption, may (in its sole discretion and without any obligation to do so) make available to Borrower a corresponding amount. If such corresponding amount is not in fact made available to Administrative Agent by such Lender and Administrative Agent has made available same to Borrower, then Administrative Agent shall be entitled to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, then Administrative Agent shall promptly notify Borrower, and Borrower shall, within five (5) Business Days, pay such corresponding amount to Administrative Agent. Administrative Agent shall also be entitled to recover from such Lender or Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by Administrative Agent to Borrower to the date such corresponding amount is recovered by Administrative Agent, at a rate per annum equal to the then applicable rate of interest, calculated in accordance with Section 3.2 , for the respective Loans. No Lender's obligation to make any Loan shall be affected by any other Lender's failure to make any Loan. At any time that an Event of Default has occurred and is continuing, Borrower shall not be entitled to elect or request LIBO Rate Loans.

Section 2.3.2 Telephonic Notice . Without in any way limiting the obligation of Borrower to confirm in writing any telephonic notice permitted to be given hereunder, Administrative Agent may act prior to receipt of written confirmation without liability upon the basis of such telephonic notice believed by Administrative Agent in good faith to be from an Authorized Officer of Borrower entitled to give telephonic notices under this Agreement on behalf of Borrower. In each such case, Administrative Agent's record of the terms of such telephonic notice shall be conclusive absent manifest error and Borrower hereby waives the right to dispute such record.

Section 2.4 Continuation and Conversion Elections . By delivering a Continuation/Conversion Notice to the Administrative Agent on or before 1:00 p.m., New York City time, on a Business Day, the Borrower may from time to time irrevocably elect, on not less than one (1) Business Days' notice in the case of any Revolving Loans that are to be continued as, or converted into Base Rate Loans, or three (3) Business Days' notice in the case of any Revolving Loans that are to be continued as, or converted into, LIBO Rate Loans, that all, or any portion in an aggregate minimum amount of $3,000,000 and in integral multiples of $500,000 in excess thereof, in the case of any Revolving Loans that are to be continued as, or converted into, LIBO Rate Loans, or an aggregate minimum amount of $3,000,000 and an integral multiple of $500,000 in excess thereof, in the case of any Revolving Loans that are to be continued as, or converted into, Base Rate Loans, be, in the case of Base Rate Loans, converted into LIBO Rate Loans or continued as Base Rate Loans, or be, in the case of LIBO Rate Loans, converted into Base Rate Loans or continued as LIBO Rate Loans (in the absence of delivery of a Continuation/Conversion Notice with respect to any LIBO Rate Loan at least three (3) Business Days before the last day of the then current Interest Period with respect thereto, such LIBO Rate Loan shall, on such last day, automatically be continued as a LIBO Rate Loan having an Interest Period of one (1) month); provided , however , that (x) each such conversion or continuation shall be pro rated among the applicable outstanding Revolving Loans of all Lenders, and (y) if any Event of Default is in existence at the applicable time of any proposed continuation of, or conversion into, any LIBO Rate Loans, the Borrower may not elect to have a Revolving Loan converted into or continued as a LIBO Rate Loan and any outstanding LIBO Rate Loans shall be automatically converted on the last day of the current Interest Period applicable thereto into Base Rate Loans. Administrative Agent shall give each Lender prompt notice of any such proposed conversion affecting any of its Loans.

Section 2.5 Funding . Each Lender may, if it so elects, fulfill its obligation to make, continue or convert LIBO Rate Loans hereunder by causing one of its foreign branches or Affiliates (or an international banking facility created by such Lender) to make or maintain such LIBO Rate Loan; provided , however , that such LIBO Rate Loan shall nonetheless be deemed to have been made and to be held by Lender, and the obligation of the Borrower to repay such LIBO Rate Loan shall nevertheless be to Lender for the account of such foreign branch, Affiliate or international banking facility; provided , further , that in no event shall the Borrower be obligated to pay to Lender any amounts pursuant to Section 4.1 , 4.2 , 4.3 , 4.5 or 4.6 that would not have arisen but for such Lender's election pursuant to the first sentence of this Section (it being acknowledged and agreed that any change in lending office or other action taken by Lender in accordance with Section 4.7 shall not be considered to be an "election" by such Lender under this Section).

Section 2.6 Issuance Procedures . By delivering to the Administrative Agent and the Issuer an Issuance Request (including by way of facsimile) on or before 11:00 a.m., New York City time, on a Business Day, the Borrower may, from time to time irrevocably request, on not less than three (3) nor more than ten (10) Business Days' notice, in the case of an initial issuance of a Letter of Credit for the account of the Borrower, that the Issuer issue an irrevocable Letter of Credit in such form as may be

requested by the Borrower and approved by the Issuer. Any standby Letter of Credit theretofore issued which contains an "evergreen" or similar automatic extension feature shall, unless the Borrower shall have notified the Issuer in writing not less than thirty (30) days' (or such shorter period as may be acceptable to the Issuer in its sole discretion or such longer period as may be required by the beneficiary of such Letter of Credit) prior to the date that such standby Letter of Credit is scheduled to be automatically extended that the Borrower desires that such standby Letter of Credit not be so extended, be automatically extended in accordance with the terms thereof subject to the Issuer's right not to so extend if the conditions precedent to the issuance of such a Letter of Credit would not be satisfied. Each Letter of Credit shall by its terms be stated to expire on a date (its "Stated Expiry Date") no later than the earlier to occur of (i) the last Business Day prior to the Maturity Date and (ii) one (1) year from the date of its issuance.

Section 2.6.1 Other Lenders' Participation . Upon the issuance of each Letter of Credit issued by the Issuer pursuant hereto, and without further action, each Lender (other than the Issuer) shall be deemed to have irrevocably purchased, to the extent of its Percentage to make Revolving Loans, a participation interest in such Letter of Credit (including the Contingent Obligation and any Reimbursement Obligation with respect thereto), and such Lender shall, to the extent of its Percentage, be responsible for reimbursing promptly (and in any event within one (1) Business Day) the Issuer for Reimbursement Obligations which have not been reimbursed by the Borrower in accordance with Section 2.6.3 . In addition, such Lender shall, to the extent of its Percentage to make Revolving Loans, be entitled to receive a ratable portion of the Letter of Credit fees payable pursuant to Section 3.4.3 with respect to each Letter of Credit (other than the issuance and processing fees and other charges payable to the Issuer of such Letter of Credit pursuant to the last sentence of Section 3.4.3) and of interest payable pursuant to Section 3.4 with respect to any Reimbursement Obligation. To the extent that any Lender has reimbursed the Issuer for a Disbursement as required by this Section, such Lender shall be entitled to receive its ratable portion of any amounts subsequently received (from the Borrower or otherwise) in respect of such Disbursement.

Section 2.6.2 Disbursements . The Issuer will notify the Borrower and the Administrative Agent promptly of the presentment for payment of any Letter of Credit issued by the Issuer, together with notice of the date (the "Disbursement Date") such payment shall be made (each such payment, a "Disbursement"). The Administrative Agent shall apply all funds then on deposit with the Administrative Agent pursuant to Section 3.2.1(b)(B) , Section 8.2 , Section 8.3 or Section 8.4 for the purpose of cash collateralizing the Letter of Credit Outstandings to reimburse the Issuer for any such Disbursement provided such cash collateral, after giving effect to such disbursement would not otherwise be required to be re-deposited under any such Section. Subject to the terms and provisions of such Letter of Credit and this Agreement, the Issuer shall make such payment to the beneficiary (or its designee) of such Letter of Credit. Prior to 1:00 p.m., New York City time, on the first Business Day following the Disbursement Date, the Borrower will reimburse the Administrative Agent, for the account of Issuer, for all amounts which the Issuer has disbursed under such Letter of Credit to the extent that the amounts on deposit with the Administrative Agent are insufficient to satisfy such disbursement, together with interest thereon at a rate per annum equal to the Alternate

Base Rate then in effect for Base Rate Loans (with the Applicable Margin for Revolving Loans maintained as Base Rate Loans accruing on such amount) pursuant to Section 3.3 for the period from the Disbursement Date through the date of such reimbursement. Notwithstanding anything contained herein to the contrary, however, unless the Borrower shall have notified the Administrative Agent and the Issuer prior to 1:00 P.M. (New York City time) on the Business Day immediately preceding the date of such drawing that the Borrower intends to reimburse the Issuer for the amount of such drawing with funds other than the proceeds of the Loans, the Borrower shall be deemed to have timely given a Notice of Borrowing pursuant to Section 2.3 to the Administrative Agent, requesting a Borrowing of Base Rate Loans on the date on which such drawing is honored and in an amount equal to the amount of such drawing less amounts, if any, applied, or required to be applied, to reimburse the Issuer pursuant to the second sentence of this Section 2.6.2 . Each Lender (other than the Issuer) shall, in accordance with Section 2.3.1 , make available its pro rata share of such Borrowing to the Administrative Agent, the proceeds of which shall be applied directly by the Administrative Agent to reimburse the Issuer for the amount of such draw. Without limiting in any way the foregoing and notwithstanding anything to the contrary contained herein, the Borrower hereby acknowledges and agrees that it shall be obligated to reimburse the Lender as set forth herein upon each Disbursement of a Letter of Credit.

Section 2.6.3 Reimbursement Obligations . The obligation (a "Reimbursement Obligation ") of the Borrower under Section 2.6.2 to reimburse the Issuer with respect to each Disbursement (including interest thereon), and, upon the failure of the Borrower to reimburse the Issuer, each Lender's obligation under Section 2.6.1 to reimburse the Issuer, shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Borrower or such Lender, as the case may be, may have or have had against the Issuer or any such Lender, including any defense based upon the failure of any Disbursement to conform to the terms of the applicable Letter of Credit (if, in the Issuer's good faith opinion, such Disbursement is determined to be appropriate) or any non-application or misapplication by the beneficiary of the proceeds of such Letter of Credit; provided , however , that after paying in full its Reimbursement Obligation hereunder, nothing herein shall preclude the right of such Lender to commence any proceeding against the Issuer for any wrongful Disbursement made by the Issuer under a Letter of Credit as a result of acts or omissions constituting gross negligence or willful misconduct (as determined by a court of competent jurisdiction on the part of the Issuer in a final and non-appealable decision); provided , further , that, in any event, the Borrower may have a claim against the Issuer, and the Issuer may be liable to the extent (but only to the extent) of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which were caused by the Issuer's willful misconduct or gross negligence as determined by a court of competent jurisdiction in a final and non-appealable decision or the Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a demand for payment strictly complying with the terms and conditions of such Letter of Credit.

Section 2.6.4 Intentionally Omitted .

Section 2.6.5 Nature of Reimbursement Obligations . The Borrower and, to the extent set forth in Section 2.6.1 , each Lender shall assume all risks of the acts, omissions or misuse of any Letter of Credit by the beneficiary thereof. The Issuer (except to the extent of its own gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision)) shall not be responsible for:

(a) the form, validity, sufficiency, accuracy, genuineness or legal effect of any Letter of Credit or any document submitted by any party in connection with the application for and issuance of a Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged;

(b) the form, validity, sufficiency, accuracy, genuineness or legal effect of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or the proceeds thereof in whole or in part, which may prove to be invalid or ineffective for any reason;

(c) failure of the beneficiary to comply fully with conditions required in order to demand payment under a Letter of Credit;

(d) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise; or

(e) any loss or delay in the transmission or otherwise of any document or draft required in order to make a Disbursement under a Letter of Credit.

None of the foregoing shall affect, impair or prevent the vesting of any of the rights or powers granted to the Issuer or any Lender hereunder. In furtherance and extension and not in limitation or derogation of any of the foregoing, any action taken or omitted to be taken by the Issuer in good faith (and not constituting gross negligence or willful misconduct) shall be binding upon the Borrower and each Lender, and shall not put the Issuer under any resulting liability to the Borrower or any Lender, as the case may be.

Section 2.6.6 Certain Notifications Regarding Letters of Credit . Promptly after the issuance of, or any modification or amendment to, any standby Letter of Credit, the Issuer shall notify the Borrower and the Administrative Agent in writing of such issuance, modification or amendment. Promptly after receipt of such notice, the Administrative Agent shall notify the Lenders in writing of such issuance, modification or amendment. On the first Business Day of each week, the Issuer shall furnish the Administrative Agent with a written (including via facsimile) report of the daily aggregate outstandings of Letters of Credit issued by the Issuer for the immediately preceding week.

Section 2.6.7 Excess Cash Collateral . Subject to Section 8.4 , unless a Default or an Event of Default has occurred and is continuing, if the amount on deposit with the Administrative Agent designated for, or intended to be used for, the purpose of

cash collateralizing the Letter of Credit Outstandings is in excess of the Letter of Credit Outstandings at such time and would not otherwise be required to be deposited under Section 3.2.1(b)(B) , Section 8.2 , Section 8.3 , or Section 8.4 (the amount of any such excess is referred to herein as the "Excess Cash Collateral"), the Administrative Agent shall promptly return to the Borrower the Excess Cash Collateral.

Section 2.7 Loan Accounts and Revolving Notes . All Loans under this Agreement shall be made by Lenders pro rata on the basis of their respective Revolving Loan Commitments, it being understood that no Lender shall be responsible for any default by any other Lender in its obligation to make Loans hereunder or any other breach by any other Lender of this Agreement and that each Lender shall be obligated to make the Loans provided to be made by it hereunder, regardless of the failure of any other Lender to fulfill its commitments hereunder.

(a) The Loans made by each Lender and the Letters of Credit issued by the Issuer shall be evidenced by one or more loan accounts or records maintained by such Lender or the Issuer, as the case may be, in the ordinary course of business. The loan accounts or records maintained by the Administrative Agent, the Issuer and each Lender shall be conclusive absent clearly demonstrable error of the amount of the Loans made by the Lenders to, and the Letters of Credit issued by the Issuer for the account of, the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Loans and the Reimbursement Obligations.

(b) Upon the request of any Lender made through the Administrative Agent, the Loans made by such Lender may be evidenced by (and the Borrowers agree to issue) one or more Revolving Notes, instead of or in addition to loan accounts. Each such Lender is irrevocably authorized by the Borrower to endorse on the Revolving Note(s) the date, amount and maturity of each Loan made, continued or converted by it and the amount of each payment of principal made by the Borrower with respect thereto. Each such Lender's record shall be conclusive absent clearly demonstrable error; provided , however , that the failure of a Lender to make, or an error in making, a notation thereon with respect to any Loan shall not limit or otherwise affect the obligations of the Borrower hereunder or under any such Revolving Note to such Lender. The reasonable costs and expenses incurred in connection with the issuance of each Note shall be for the account of the Borrower.

Section 2.8 Additional Revolving Loan Commitments .

(a) So long as no Default or Event of Default then exists or would result therefrom, the Borrower shall have the right after the Closing Date and on or prior to 180 days prior to the Maturity Date, and upon at least five (5) Business Days prior written notice to the Administrative Agent (which shall promptly notify each of the Lenders), to request that one or more Lenders (and/or one or

more other Persons which will become Lenders as provided below) provide Additional Revolving Loan Commitments and, subject to the applicable terms and conditions contained in this Agreement, make Revolving Loans pursuant thereto; it being understood and agreed, however, that (i) no Lender shall be obligated to provide an Additional Revolving Loan Commitment as a result of any such request by the Borrower, (ii) until such time, if any, as (x) such Lender has agreed in its sole discretion to provide an Additional Revolving Loan Commitment and executed and delivered to the Administrative Agent an Additional Revolving Loan Commitment Agreement in respect thereof as provided in clause (b) of this Section 2.8 , and (y) such Additional Revolving Loan Commitment Agreement has become effective, such Lender shall not be obligated to fund any Revolving Loans in excess of its Revolving Loan Commitment as in effect prior to giving effect to such Additional Revolving Loan Commitment provided pursuant to this Section 2.8 , (iii) any Lender (or, in the circumstances contemplated by clause (vi) below, any other Person which will qualify as an Eligible Assignee) may so provide an Additional Revolving Loan Commitment without the consent of any other Lender, (iv) each provision of Additional Revolving Loan Commitments on a given date pursuant to this Section 2.8 shall be in a minimum aggregate amount (for all Lenders (including, in the circumstances contemplated by clause (vi) below, Eligible Assignees who will become Lenders)) of at least $5,000,000 and in integral multiples of $1,000,000 in excess thereof, (v) the aggregate amount of all Additional Revolving Loan Commitments permitted to be provided pursuant to this Section 2.8 shall not cause the Aggregate Commitment to exceed Five Hundred Million Dollars ($500,000,000), (vi) if after the Borrower has requested the then existing Lenders (other than Defaulting Lenders) to provide Additional Revolving Loan Commitments pursuant to this Section 2.8 , the Borrower has not received Additional Revolving Loan Commitments in an aggregate amount equal to that amount of the Additional Revolving Loan Commitments which the Borrower desires to obtain pursuant to such request (as set forth in the notice provided by the Borrower as provided below) then the Borrower may request Additional Revolving Loan Commitments from Persons reasonably acceptable to the Administrative Agent and the Issuer which would qualify as Eligible Assignees hereunder in an aggregate amount equal to such deficiency on terms which are no more favorable to such Eligible Assignee in any respect than the terms offered to the Lenders, provided that any such Additional Revolving Loan Commitments provided by any such Eligible Assignee which is not already a Lender shall be in a minimum amount (for such Eligible Assignee) of at least $5,000,000.

(b) In connection with the Additional Revolving Loan Commitments to be provided pursuant to this Section 2.8 , (i) the Borrower, the Administrative Agent and each such Lender or other Eligible Assignee (each, an "Additional Revolving Loan Lender") which agrees to provide an Additional Revolving Loan Commitment shall execute and deliver to the Administrative Agent an Additional Revolving Loan Commitment Agreement substantially in the form of Exhibit J (appropriately completed), with the effectiveness of such Additional Revolving Loan Lender's Additional Revolving Loan Commitment to occur upon delivery of

such Additional Revolving Loan Commitment Agreement to the Administrative Agent, the payment of up-front, commitment or other fees required in connection therewith (including, without limitation, any fees owing to the Administrative Agent) and the satisfaction of the other conditions in this Section 2.8(b) to the reasonable satisfaction of the Administrative Agent, (ii) the Additional Loan Commitment Requirements and any other conditions precedent agreed to by the Borrower that may be set forth in the respective Additional Revolving Loan Commitment Agreement shall have been satisfied, and (iii) if requested by the Administrative Agent, the Borrower shall deliver to the Administrative Agent an opinion or opinions, in form and substance reasonably satisfactory to the Administrative Agent, from counsel to the Borrower reasonably satisfactory to the Administrative Agent and dated such date, covering such of the matters set forth in the opinions of counsel delivered to the Administrative Agent on the Closing Date pursuant to Section 5.1.11 as may be reasonably requested by the Administrative Agent, and such other matters as the Administrative Agent may reasonably request. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Additional Revolving Loan Commitment Agreement, and at such time (i) the Revolving Loan Commitment under, and for all purposes of, this Agreement shall be increased by the aggregate amount of such Additional Revolving Loan Commitments, (ii) Annex I shall be deemed modified to reflect the revised Revolving Loan Commitments of the affected Lenders and (iii) to the extent requested by any Additional Revolving Loan Lender, Revolving Notes will be issued at the Borrower's expense, to such Additional Revolving Loan Lender, to be in conformity with the requirements of Section 2.7 (with appropriate modification) to the extent needed to reflect the Additional Revolving Loan Commitment made by such Additional Revolving Loan Lender.

(c) In connection with any provision of Additional Revolving Loan Commitments pursuant to this Section 2.8 , the Lenders and the Borrower hereby agree that, notwithstanding anything to the contrary contained in this Agreement, (i) the Borrower shall, in coordination with the Administrative Agent, (x) repay outstanding Revolving Loans and incur additional Revolving Loans or (y) take such other actions as may be reasonably required by the Administrative Agent (including by requiring new Revolving Loans to be incurred and added to then outstanding Borrowings of the respective such Loans, even though as a result thereof such new Loans may have a shorter Interest Period than the then outstanding Borrowings of the respective such Loans), in each case to the extent necessary so that all of the Additional Revolving Loan Lenders effectively participate in each outstanding Borrowing of Revolving Loans pro rata on the basis of their Percentages (determined after giving effect to any increase in the Revolving Loan Commitment pursuant to this Section 2.8), (ii) the Borrower shall pay to the respective Lenders any costs of the type referred to in Section 4.5 in connection with any repayment and/or Borrowing required pursuant to preceding clause (i), and (iii) to the extent Revolving Loans are to be so incurred or added to the then outstanding Borrowings of the respective Loans which are maintained as LIBO Rate Loans, the Lenders that have made such Loans shall be entitled to

receive from the Borrower such amounts, as reasonably determined by the respective Lenders, to compensate them for funding the various Revolving Loans during an existing Interest Period (rather than at the beginning of the respective Interest Period, based upon rates then applicable thereto). All determinations by any Lender pursuant to clauses (ii) and (iii) above shall, absent manifest error, be final and conclusive and binding on all parties hereto.

Section 2.9 Swingline Loan Subfacility .

(a) Swingline Commitment .

Subject to the terms and conditions of this Section 2.9, the Swingline Lender, in its individual capacity, agrees to make certain revolving credit loans to the Borrower (each a "Swingline Loan" and, collectively, the "Swingline Loans") from time to time prior to the Revolving Loan Commitment Termination Date; provided, however, that the aggregate amount of Swingline Loans outstanding at any time shall not exceed the lesser of (i) Fifty Million Dollars ($50,000,000), and (ii) the Revolving Credit Loan Commitment Amount (the "Swingline Commitment"). Subject to the limitations set forth herein, any amounts repaid in respect of Swingline Loans may be reborrowed.

(b) Swingline Borrowings .

(i) Notice of Borrowing . With respect to any Swingline Borrowing, the Borrower shall give the Swingline Lender and the Administrative Agent notice in writing which shall be received by the Swingline Lender and Administrative Agent not later than 12:00 noon (New York City time) on the proposed date of such Swingline Borrowing (and confirmed by telephone by such time), specifying (A) that a Swingline Borrowing is being requested, (B) the amount of such Swingline Borrowing, (C) the proposed date of such Swingline Borrowing, which shall be a Business Day and (D) that no Default or Event of Default has occurred and is continuing both before and after giving effect to such Swingline Borrowing. Such notice shall be irrevocable.

(ii) Minimum Amounts . Each Swingline Borrowing shall be in a minimum principal amount of $500,000, or an integral multiple of $100,000 in excess thereof.

(iii) Repayment of Swingline Loans . Each Swingline Loan, including all interest accrued thereon, shall be due and payable on the earliest of (A) five (5) Business Days from and including the date of the applicable Swingline Borrowing, (B) the date of the next Revolving Borrowing or (C) the Maturity Date. If, and to the extent, any Swingline Loans shall be outstanding on the date of any Revolving Borrowing, such Swingline Loans shall first be repaid from the proceeds of such Revolving Borrowing prior to the disbursement of the same to the Borrower. If, and to the extent, a Revolving Borrowing is not requested prior to the Maturity

Date or the end of the five Business Day period after a Swingline Borrowing, or unless the Borrower shall have notified the Administrative Agent and the Swingline Lender prior to 1:00 P.M. (New York City time) on the fourth (4th) Business Day after the Swingline Borrowing that the Borrower intends to reimburse the Swingline Bank for the amount of such Swingline Borrowing with funds other than proceeds of the Loans, the Borrower shall be deemed to have requested a Borrowing comprised entirely of Base Rate Loans in the amount of the applicable Swingline Loan then outstanding, the proceeds of which shall be used to repay such Swingline Loan to the Swingline Lender. In addition, if (x) the Borrower does not repay the Swingline Loan on or prior to the end of such five Business Day period, or (y) a Default or Event of Default shall have occurred during such five Business Day period, the Swingline Lender may, at any time, in its sole discretion, by written notice to the Borrower and the Administrative Agent, demand repayment of its Swingline Loans by way of a Borrowing, in which case the Borrower shall be deemed to have requested a Borrowing comprised entirely of Base Rate Loans in the amount of such Swingline Loans then outstanding, the proceeds of which shall be used to repay such Swingline Loans to the Swingline Lender. Any Borrowing which is deemed requested by the Borrower in accordance with this Section 2.9 (b)(iii) is hereinafter referred to as a " Mandatory Borrowing". Each Lender hereby irrevocably agrees to make Loans promptly upon receipt of notice from the Swingline Lender of any such deemed request for a Mandatory Borrowing in the amount and in the manner specified in the preceding sentences and on the date such notice is received by such Lender (or the next Business Day if such notice is received after 12:00 noon (New York City time)) notwithstanding (I) that the amount of the Mandatory Borrowing may not comply with the minimum amount of Borrowings otherwise required hereunder, (II) whether any conditions specified in Section 5.2 are then satisfied, (III) whether a Default or an Event of Default then exists, (IV) failure of any such deemed request for a Borrowing to be made by the time otherwise required in Section 2.1, (V) the date of such Mandatory Borrowing (provided that such date must be a Business Day), or (VI) any termination of the Commitments immediately prior to such Mandatory Borrowing or contemporaneously therewith; provided, however, that no Lender shall be obligated to make Committed Loans in respect of a Mandatory Borrowing if a Default or an Event of Default then exists and the applicable Swingline Loan was made by the Swingline Lender without receipt of a written Notice of Borrowing in the form specified in subclause (i) above or after the Administrative Agent has delivered a notice of Default or Event of Default which has not been rescinded.

(iv) Purchase of Participations . In the event that any Mandatory Borrowing cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code with respect to the Borrower), then

each Lender hereby agrees that it shall forthwith purchase (as of the date the Mandatory Borrowing would otherwise have occurred, but adjusted for any payment received from the Borrower on or after such date and prior to such purchase) from the Swingline Lender such participations in the outstanding Swingline Loans as shall be necessary to cause each such Lender to share in such Swingline Loans ratably based upon its Pro Rata Share (determined before giving effect to any termination of the Commitments pursuant hereto), provided that (A) all interest payable on the Swingline Loans with respect to any participation shall be for the account of the Swingline Lender until but excluding the day upon which the Mandatory Borrowing would otherwise have occurred, and (B) in the event of a delay between the day upon which the Mandatory Borrowing would otherwise have occurred and the time any purchase of a participation pursuant to this sentence is actually made, the purchasing Lender shall be required to pay to the Swingline Lender interest on the principal amount of such participation for each day from and including the day upon which the Mandatory Borrowing would otherwise have occurred to but excluding the date of payment for such participation, at the rate equal to the Federal Funds Rate, for the two (2) Business Days after the date the Mandatory Borrowing would otherwise have occurred, and thereafter at a rate equal to the Base Rate. Notwithstanding the foregoing, no Lender shall be obligated to purchase a participation in any Swingline Loan if a Default or an Event of Default then exists and such Swingline Loan was made by the Swingline Lender without receipt of a written Notice of Borrowing in the form specified in subclause (i) above or after the Administrative Agent has delivered a notice of Default or Event of Default which has not been rescinded.

(c) Interest Rate . Each Swingline Loan shall bear interest on the outstanding principal amount thereof, for each day from the date such Swingline Loan is made until the date it is repaid, at a rate per annum equal to the Federal Funds Rate plus the Applicable Margin for LIBO Rate Loans for such day.

ARTICLE III

MATURITY DATE; REPAYMENTS, PREPAYMENTS, INTEREST AND FEES

Section 3.1 Maturity Date; Extension Option .

(a) Initial Maturity Date . The term of the Loans shall terminate and expire on the Initial Maturity Date, unless extended by Borrower pursuant to clause (b) below.

(b) Extended Maturity Date . Subject to the provisions of this Section 3.1 (b) , Borrower shall have the option (the "Extension Option"), by irrevocable written

notice (the "Extension Notice") delivered to Administrative Agent no later than sixty (60) days prior to the Initial Maturity Date, to extend the Initial Maturity Date for a period of twelve (12) months (the "Extension Term ") to the fifth (5 th) anniversary of the Closing Date (the "Extended Maturity Date"). Borrower's right to so extend the Initial Maturity Date shall be subject to the satisfaction (or waiver, in the sole discretion of the Required Lenders) of the following conditions precedent prior to the commencement of the Extension Term:

(i) payment by Borrower on the Initial Maturity Date of an extension fee equal to 0.25% of the aggregate outstanding Revolving Loan Commitment Amount as of such date, together with all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Lenders in connection with the Extension Option;

(ii) no Default or Event of Default shall have occurred and be continuing on the date Borrower delivers the Extension Notice or as of the Initial Maturity Date; and

(iii) Borrower shall deliver (1) an Officer's Certificate which confirms and certifies that all applicable representations and warranties contained in the Loan Documents are true and correct in all material respects as if made on and as of the Initial Maturity Date and (2) such other acknowledgments and ratifications from the Guarantor and Subsidiary Guarantors as the Administrative Agent may request.

(c) Extension Documentation . As soon as practicable following any extension of the Maturity Date pursuant to this Section 3.1 , Borrower shall, if requested by Administrative Agent, execute and deliver an amendment or restatement of the Notes and shall, if requested by Administrative Agent, enter into such other amendments or modifications to the related Loan Documents as may be necessary or appropriate to evidence the extension of the Maturity Date as provided in this Section 3.1 ; provided , however, that failure by Borrower to enter into any such amendments and/or restatements, in and of itself, shall not affect the rights or obligations of Borrower or Administrative Agent with respect to the extension of the Maturity Date.

Section 3.2 Repayments and Prepayments; Application .

Section 3.2.1 Repayments and Prepayments . The Borrower shall repay in full the unpaid principal amount of all Loans on the Maturity Date. Prior thereto, payments and prepayments of Loans shall or may be made as set forth below.

(a) Voluntary Prepayments. From time to time on any Business Day, the Borrower may make a voluntary prepayment, in whole or in part, of the outstanding principal amount of any Loans, provided that

(A) any such prepayment of the Revolving Loans shall be made pro rata among the Revolving Loans of the same type and, if applicable, having the same Interest Period of all Lenders that have made such Revolving Loans;

(B) all such voluntary prepayments shall require at least one (1) Business Days' prior written notice to the Administrative Agent; and

(C) all such voluntary partial prepayments shall be, in an aggregate minimum amount of $1,000,000 and an integral multiple of $500,000 in excess thereof (or, if less, in the remaining outstanding principal amount thereof), except in the case of Swingline Loans, which shall be in the minimum amount of $100,000, and integral multiples of $100,000.

(b) Exceeding Commitment Amounts .

(A) On each date when the aggregate outstanding principal amount of all Revolving Loans, Swingline Loans and Letter of Credit Outstandings exceeds the Revolving Loan Commitment Amount (as it may, from time to time, be reduced including pursuant to Section 2.2 or increased pursuant to Section 2.8), the Borrower shall make a mandatory prepayment of the Swingline Loans and/or Revolving Loans in an aggregate amount equal to the amount by which the Swingline Loans, Revolving Loans and Letter of Credit Outstandings exceed the then Revolving Loan Commitment Amount.

(B) On each date when the aggregate amount of all Letter of Credit Outstandings exceeds the Letter of Credit Commitment Amount (as it may be reduced from time to time, including pursuant to Section 2.2), the Borrower shall give cash collateral to the Administrative Agent, pursuant to Section 8.4 hereof, to collateralize Letter of Credit Outstandings in an aggregate amount (taking into account any amounts then on deposit in the Letter of Credit Collateral Account) equal to such excess.

(c) Acceleration of Maturity . Immediately upon any acceleration of any Loans pursuant to Section 8.2 or Section 8.3 , the Borrower shall repay all the Loans.

Each prepayment of any Loans made pursuant to this Section shall be without premium or penalty, except as may be required by Section 4.5 . No prepayment of principal of any Revolving Loans pursuant to clause (a) or (b) of this Section shall cause a reduction in the Revolving Loan Commitment Amount.

Section 3.2.2 Application . Each prepayment or repayment of the principal of the Revolving Loans shall be applied, to the extent of such prepayment or

repayment, as the Borrower shall direct (and in the absence of such direction, shall be applied first, to the principal amount thereof being maintained as Base Rate Loans, second to the principal amount thereof being maintained as LIBO Rate Loans with respect to which the date of such prepayment or repayment is the last day of the Interest Period applicable thereto and third, to the principal amount thereof being maintained as LIBO Rate Loans with the shortest Interest Periods remaining); provided, that prepayments or repayments of LIBO Rate Loans not made on the last day of the Interest Period with respect thereto, shall be prepaid or repaid subject to the provisions of Section 4.5 (together with a payment of all accrued interest).

Section 3.3 Interest Provisions . Interest on the outstanding principal amount of Loans shall accrue and be payable in accordance with this Section 3.3 .

Section 3.3.1 Rates . Pursuant to an appropriately delivered Borrowing Request or Continuation/Conversion Notice, the Borrower may elect that Loans comprising a Borrowing accrue interest at a rate per annum:

(a) on that portion maintained from time to time as a Base Rate Loan, equal to the sum of the Alternate Base Rate from time to time in effect plus the Applicable Margin; and

(b) on that portion maintained as a LIBO Rate Loan, during each Interest Period applicable thereto, equal to the sum of the LIBO Rate for such Interest Period plus the Applicable Margin.

All LIBO Rate Loans shall bear interest from and including the first day of the applicable Interest Period to (but not including) the last day of such Interest Period at the interest rate determined as applicable to such LIBO Rate Loan. All Base Rate Loans shall bear interest from and including the day they are made to and excluding the day they are repaid or converted into LIBO Rate Loans.

Section 3.3.2 Post-Maturity Rates . After the date any principal amount of any Loan or Reimbursement Obligation is due and payable (whether on the Maturity Date, upon acceleration, an Event of Default or otherwise), or after any other monetary Obligation of the Borrower shall have become due and payable, the Borrower shall pay, but only to the extent permitted by law, interest (after as well as before the entry of judgment thereon) on such amounts at a rate per annum equal to (x) in the case of overdue principal and interest the rate which is 4% in excess of the rate then borne by the applicable Loans, and (y) in the case of all other overdue amounts, the rate which is 4% in excess of the rate applicable to Base Rate Loans from time to time. Anything herein to the contrary notwithstanding, the obligations of the Borrower to any Lender hereunder shall be subject to the limitation that payments of interest shall not be required for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by such Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest that may be lawfully contracted for, charged or received by such Lender, and in such event the Borrower shall pay such Lender interest at the highest rate permitted by applicable law.

Section 3.3.3 Payment Dates. Interest accrued on each Loan shall be payable, without duplication:

(a) on the Maturity Date;

(b) on the date of any payment or prepayment, in whole or in part, of principal outstanding on such Loan on the principal amount so paid or prepaid;

(c) with respect to Base Rate Loans, in arrears on each Monthly Payment Date occurring after the Closing Date;

(d) with respect to LIBO Rate Loans, in arrears on the last day of each applicable Interest Period; provided that if an Interest Period is longer than three months, then on the date which is three months after the first day of such Interest Period;

(e) with respect to any Base Rate Loans converted into LIBO Rate Loans on a day when interest would not otherwise have been payable pursuant to clause (c) above, on the date of such conversion;

(f) with respect to Swingline Loans, as provided in Section 2.9 ; and

(g) on that portion of any Loans which is accelerated pursuant to Section 8.2 or Section 8.3 , immediately upon such acceleration.

Interest accrued on Loans or other monetary Obligations arising under this Agreement or any other Loan Document after the date such amount is due and payable (whether on the Maturity Date, upon acceleration or otherwise) shall be payable upon demand.

Section 3.4 Fees . The Borrower agrees to pay the fees set forth in this Section 3.3 . All such fees shall be non-refundable.

Section 3.4.1 Revolving Loan Unused Fee . The Borrower agrees to pay to the Administrative Agent for the account of each Lender, for the period (including any portion thereof when any of its Commitments are suspended by reason of the Borrower's inability to satisfy any condition of Article V) commencing on the Closing Date and continuing through the Revolving Loan Commitment Termination Date, an unused fee at a rate per annum equal to (a) 0.20% for any Fiscal Quarters that the average daily unused Revolving Loan Commitment Amount was less than fifty percent (50%) and (b) 0.125% for any Fiscal Quarter that the average daily unused Revolving Loan Commitment Amount was fifty percent (50%) or greater, in each case on such Lender's Percentage of the average daily unused portion of the Revolving Loan Commitment Amount (net of Letter of Credit Outstandings but without giving effect to Swingline Loans made during such Fiscal Quarter). All unused fees payable pursuant to this Section shall be calculated on a year comprised of 360 days and payable by the Borrower in arrears on each

Quarterly Payment Date, commencing with the first Quarterly Payment Date following the Closing Date, and on the Revolving Loan Commitment Termination Date.

Section 3.4.2 Fees . The Borrower agrees to pay to the Arrangers, the Administrative Agent, and the Lenders, each for its own account, the fees in the amounts and on the dates set forth in the Fee Letters.

Section 3.4.3 Letter of Credit Fee . The Borrower agrees to pay to the Administrative Agent, for the pro rata account of each Lender, a Letter of Credit fee for each Letter of Credit in an amount equal to a rate per annum equal to the then Applicable Margin for LIBO Rate Loans on the Stated Amount of each such Letter of Credit, with such fees being payable in arrears on each Monthly Payment Date. The Borrower further agrees to pay to the Issuer, for its own account, (x) monthly in arrears payable on each Monthly Payment Date for each Letter of Credit issued by it, a fronting fee at a rate per annum equal to 0.125% multiplied by the Stated Amount of each such Letter of Credit, and (y) from time to time promptly after demand, the normal issuance, payment, amendment and other processing fees, and other standard administrative costs and charges of the Issuer relating to Letters of Credit as from time to time in effect.

Section 3.4.4 Additional Revolving Loan Commitment Fees . The Borrower shall pay to the Administrative Agent for distribution to each Additional Revolving Loan Lender such fees and other amounts, if any, as are specified in the relevant Additional Revolving Loan Commitment Agreement, with the fees and other amounts, if any, to be payable on the effective date of the respective Additional Revolving Loan Commitment.

ARTICLE IV
CERTAIN LIBO RATE AND OTHER PROVISIONS

Section 4.1 LIBO Rate Lending Unlawful . If any Lender shall reasonably determine (which determination shall, upon notice thereof to the Borrower and the Administrative Agent, be conclusive and binding on the Borrower) that the introduction of or any change in or in the interpretation of any law makes it unlawful, or any central bank or other Governmental Authority asserts that it is unlawful, for such Lender to make, continue or maintain any Revolving Loan as, or to convert any Revolving Loan into, a LIBO Rate Loan, the obligations of such Lender to make, continue or maintain or to convert any Revolving Loan into, a LIBO Rate Loan shall, upon such determination, forthwith be suspended until such Lender shall notify the Administrative Agent that the circumstances causing such suspension no longer exist, and all outstanding LIBO Rate Loans of such Lender shall automatically convert into Base Rate Loans at the end of the then current Interest Periods with respect thereto or sooner, if required by such law or assertion. Each Lender agrees to promptly give notice to the Administrative Agent and the Borrower when the circumstances causing such suspension cease to exist.

Section 4.2 Deposits Unavailable . If the Required Lenders shall have reasonably determined that (a) Dollar deposits in the relevant amount and for the relevant

Interest Period are neither available to such Required Lenders in the eurodollar market nor available to them in their respective relevant markets, or (b) by reason of circumstances affecting the eurodollar market, adequate means do not exist for ascertaining the interest rate applicable hereunder to LIBO Rate Loans, then, upon notice from the Administrative Agent to the Borrower and the Lenders, the obligations of all Lenders under Section 2.3 and Section 2.4 to make or continue any Revolving Loans as, or to convert any Revolving Loans into, LIBO Rate Loans shall forthwith be suspended until the Administrative Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist. Upon receipt of notice from the Administrative Agent that the Required Lenders are unable to determine the LIBO Rate, the Borrower may revoke any Borrowing Request or Continuation/Conversion Notice then submitted by it. If the Borrower does not revoke such Borrowing Request or Conversion/Continuation Notice, the Lenders shall make, convert or continue the Revolving Loans, as proposed by the Borrower, in the amount specified in the applicable notice submitted by the Borrower, but such Revolving Loans shall be made, converted or continued as Base Rate Loans instead of LIBO Rate Loans. The Administrative Agent agrees to give prompt notice to the Borrower and the Lenders when it ascertains that the circumstances causing such suspension cease to exist.

Section 4.3 Change of Circumstances . If, after the Closing Date, the introduction of or any change in or in the interpretation of, or any change in the application of, any law or any regulation (including Regulation D of the F.R.S. Board) or guideline issued by any central bank or other Governmental Authority (whether or not having the force of law), or by the NAIC or any other comparable agency charged with the interpretation or administration thereof or including any reserve or special deposit requirement or any tax (other than Taxes covered by Section 4.6 and taxes on a Lender's overall net income) or any capital requirement, has, due to a Lender's compliance the effect, directly or indirectly, of (i) increasing the cost to such Lender or any corporation controlling such Lender of performing its obligations hereunder (including the making, continuing or maintaining of any Revolving Loans as or converting any Revolving Loans into, LIBO Rate Loans); (ii) reducing any amount received or receivable by such Lender or any corporation controlling such Lender hereunder or its effective return hereunder or on its capital; or (iii) causing such Lender or any corporation controlling such Lender to make any payment or to forego any return based on any amount received or receivable by such Lender hereunder, then upon demand of such Lender to the Borrower through the Administrative Agent, accompanied by written notice showing in reasonable detail the basis for calculation of any such amounts, from time to time, the Borrower shall be obligated to pay such amounts and shall compensate such Lender promptly after receipt of such notice and demand for any such cost, reduction, payment or foregone return. Any certificate of Lender in respect of the foregoing will be conclusive and binding upon the Borrower, except for clearly demonstrable error.

Section 4.4 Replacement of Lender . If (a) the Borrower receives notice from any Lender requesting increased costs or additional amounts under Section 4.3 or 4.6 , (b) any Lender is affected in the manner described in Section 4.1 or (c) a Lender becomes a Defaulting Lender, then in each case, the Borrower shall have the right, so long as no Event of Default shall have occurred and be continuing and unless, in the case

of clause (a) above, such Lender has removed or cured the conditions which resulted in the obligation to pay such increased costs or additional amounts or agreed to waive and otherwise forego any right it may have to any payments provided for under Section 4.3 or 4.6 in respect of such conditions, to replace in its entirety such Lender (the " Replaced Lender"), upon prior written notice to the Administrative Agent and such Replaced Lender, with one or more other Eligible Assignee(s) (collectively, the "Replacement Lender") acceptable to the Administrative Agent and the Issuer (which acceptance, in each case, shall not be unreasonably withheld); provided , however , that, at the time of any replacement pursuant to this Section 4.4 , the Replaced Lender and the Replacement Lender shall enter into (each Replaced Lender hereby unconditionally agreeing to enter into) one or more Lender Assignment Agreements (appropriately completed), pursuant to which (A) the Replacement Lender shall acquire all of the Commitments and outstanding Revolving Loans of, and participations in Letter of Credit Outstandings of, the Replaced Lender and, in connection therewith, shall pay (x) to the Replaced Lender in respect thereof an amount equal to the sum of (1) an amount equal to the principal of, and all accrued but unpaid interest on, all outstanding Loans of the Replaced Lender and (2) an amount equal to all accrued but theretofore unpaid fees owing to the Replaced Lender pursuant to Section 3.4 and (y) to the Issuer, an amount equal to any portion of the Replaced Lender's funding of an unpaid drawing under a Letter of Credit as to which the Replaced Lender is then in default; and (B) the Borrower shall pay to the Replaced Lender any other amounts payable to the Replaced Lender under this Agreement (including amounts payable under Sections 4.3 , 4.5 and 4.6 which have accrued to the date of such replacement). Upon the execution of the Lender Assignment Agreement(s), the payment to the Administrative Agent of the processing fee referred to in clause (a) of Section 10.9.1 , the payment of the amounts referred to in the preceding sentence and, if so requested by the Replacement Lender in accordance with clause (b) of Section 10.9.1 , delivery to the Replacement Lender of a Revolving Note executed by the Borrower, the Replacement Lender shall automatically become a Lender hereunder and the Replaced Lender shall cease to constitute a Lender hereunder, except with respect to indemnification provisions under this Agreement, which shall survive as to such Replaced Lender. It is understood and agreed that if any Replaced Lender shall fail to enter into a Lender Assignment Agreement in accordance with the foregoing, it shall be deemed to have entered into such a Lender Assignment Agreement.

Section 4.5 Funding Losses . In the event any Lender shall reasonably incur any loss or expense (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to make, continue or maintain any portion of the principal amount of any Revolving Loan as, or to convert any portion of the principal amount of any Revolving Loan into, a LIBO Rate Loan) as a result of (a) any conversion or repayment or prepayment of the principal amount of any LIBO Rate Loans on a date other than the scheduled last day of the Interest Period applicable thereto, whether pursuant to Section 3.2 or otherwise, or (b) any Revolving Loans not being made or continued as, or converted into, LIBO Rate Loans as a result of a withdrawn or revoked Borrowing Request or Continuation/Conversion Notice or for any other reason (other than a default by such Lender or the Administrative Agent), then, upon the written notice of such Lender to the Borrower (with a copy to the Administrative Agent), the Borrower shall, promptly after

its receipt thereof and prior to the expiration of the applicable Interest Period, pay to the Administrative Agent for the account of such Lender such amounts required to compensate such Lender for any additional losses, costs or expenses that such Lender may reasonably incur as a result of such payment, failure to convert or failure to continue, including any loss, cost or expense (excluding loss of anticipated profits) actually incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund or maintain such LIBO Rate Loan. Such written notice (which shall set forth in reasonable detail the basis for requesting such amount and include calculations in reasonable detail in support thereof) shall, in the absence of clearly demonstrable error, be conclusive and binding on the Borrower.

Section 4.6 Taxes .

(a) Any and all payments by the Borrower to each Lender and the Administrative Agent under this Agreement and under any other Loan Document shall be made free and clear of, and without deduction or withholding for, any Taxes and any and all interest, penalties, or similar liabilities with respect to such Taxes. In addition, the Borrower shall pay all Other Taxes to the relevant taxing authority or other authority in accordance with applicable law.

(b) If the Borrower shall be required by law to deduct or withhold any Taxes or Other Taxes from or in respect of any sum payable hereunder to any Lender or the Administrative Agent, then:

(i) the sum payable shall be increased as necessary so that, after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section), such Lender or the Administrative Agent, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made;

(ii) the Borrower shall make such deductions and withholdings; and

(iii) the Borrower shall pay the full amount deducted or withheld to the relevant taxing authority or other authority in accordance with applicable law and shall as promptly as possible thereafter send to the Administrative Agent for its own account or for the account of such Lender, as the case may be, a certified copy of an original receipt (or other written evidence) showing payment thereof.

(c) The Borrower agrees to indemnify and hold harmless each Lender and the Administrative Agent for the full amount of (i) Taxes and (ii) Other Taxes that are payable by such Lender or the Administrative Agent and any penalties, interest, additions to tax, expenses or other similar liabilities arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. Payment under this indemnification shall be made within forty- five (45) days after the date such Lender or the Administrative Agent makes written demand therefor.

(d) Each Lender that is a U.S. Person (as such term is defined in Section 7701(a)(30) of the Code) (a "U.S. Lender") shall:

(i) deliver to the Borrower and the Administrative Agent, prior to the first day on which the Borrower is required to make any payments hereunder to Lender, two (2) copies of United States Internal Revenue Service Form W-9 (or successor forms). Each U.S. Lender that shall become a Participant pursuant to Section 10.9.2 or a Lender pursuant to Section 10.9.1 shall, upon the effectiveness of the related transfer, be required to provide all the forms and statements required pursuant to this Section 4.6(d) , provided that in the case of a Participant such Participant shall furnish all such required forms and statements to the Lender from which the related participation shall have been purchased; and

(ii) deliver to the Borrower and the Administrative Agent two (2) further copies of any such form of certification on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower.

(e) Each Lender that is not a U.S. Person (as such term is defined in Section 7701(a)(30) of the Code) (a "Non-U.S. Lender") shall:

(i) deliver to the Borrower and the Administrative Agent, prior to the first day on which the Borrower is required to make any payments hereunder to Lender, two (2) copies of either United States Internal Revenue Service Form W-8BEN or Form W-8ECI (or successor forms) or, in the case of a Non-U.S. Lender claiming exemption from U.S. Federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest," a Form W-8BEN, or any subsequent versions thereof or successors thereto (and, if such Non-U.S. Lender delivers a Form W-8BEN (with respect to the portfolio interest exemption), a certificate representing that such Non-U.S. Lender (x) is not a bank for purposes of Section 881(c) of the Code, is not subject to regulatory or other legal requirements as a bank in any jurisdiction, and has not been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Agency, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements, (y) is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of the Borrower and (z) is not a controlled foreign corporation related to the Borrower (within the meaning of Section 864 (d)(4) of the Code)), properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. Federal withholding tax on payments by the Borrower under this Agreement;

(ii) deliver to the Borrower and the Administrative Agent two (2) further copies of any such form of certification on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower; and

(iii) obtain such extensions of time for filing and completing such forms or certifications as may reasonably be requested by the Borrower or the Administrative Agent;

unless in any such case any change in treaty, law or regulation has occurred prior to the date on which any such delivery would otherwise be required that renders any such form inapplicable or would prevent such Lender from duly completing and delivering any such form with respect to it and such Lender so advises the Borrower and the Administrative Agent. Each Non-U.S. Lender that shall become a Participant pursuant to Section 10.9.2 or a Lender pursuant to Section 10.9.1 shall, upon the effectiveness of the related transfer, be required to provide all the forms and statements required pursuant to this Section 4.6(e) , provided that in the case of a Participant such Participant shall furnish all such required forms and statements to the Lender from which the related participation shall have been purchased.

(f) Notwithstanding anything to the contrary herein, the Borrower shall not be required to indemnify any U.S. Lender or the Administrative Agent, or to pay any additional amounts to such U.S. Lender or the Administrative Agent pursuant to this Section 4.6 to the extent that the obligation to pay such additional amounts would not have arisen but for a failure by such U.S. Lender to comply with the provisions of clause (d) above.

(g) Notwithstanding anything to the contrary herein, the Borrower shall not be required to indemnify any Non-U.S. Lender or the Administrative Agent, or to pay any additional amounts to such Non-U.S. Lender or the Administrative Agent, in respect of U.S. Federal withholding tax pursuant to this Section 4.6 to the extent that (i) the obligation to withhold amounts with respect to U.S. Federal withholding tax existed on the date such Non-U.S. Lender became a party to this Agreement (or, in the case of a Non-U.S. Participant, on the date such Participant became a Participant hereunder) or as of the date such Non-U.S. Lender changes its applicable lending office; provided , however , that this clause (i) shall not apply to the extent that (x) in the case of an assignee Lender or a Participant or a change in the Lender's applicable lending office, the indemnity payments or additional amounts Lender (or Participant) would be entitled to receive (without regard to this clause (i)) do not exceed the indemnity payment or additional amounts that the Person making the assignment, participation, transfer or change in lending office would have been entitled to receive in the absence of such assignment, participation, transfer or change in lending office, or (y) such

assignment, participation, transfer or change in lending office had been requested by the Borrower, (ii) the obligation to pay such additional amounts would not have arisen but for a failure by such Non-U.S. Lender or Non-U.S. Participant to comply with the provisions of clause (e) above or (iii) any of the representations or certifications made by a Non-U.S. Lender or Non-U.S. Participant pursuant to clause (e) above are incorrect at the time a payment hereunder is made, other than by reason of any change in treaty, law or regulation having effect after the date such representations or certifications were made.

(h) If the Borrower determines in good faith that a reasonable basis exists for contesting any Taxes for which indemnification has been demanded hereunder, the relevant Lender or the Administrative Agent, as applicable (to the extent such Lender or the Administrative Agent reasonably determines in good faith that it will not suffer any adverse effect as a result thereof), shall, subject to clause (i) of the proviso in the immediately succeeding sentence, cooperate with the Borrower in challenging such Taxes at the Borrower's expense if so requested by the Borrower in writing. If any Lender or the Administrative Agent, as applicable, receives a refund of, or a credit relating to a Tax for which a payment has been made or borne by the Borrower pursuant to this Agreement, which refund in the good faith judgment of such Lender or the Administrative Agent, as the case may be, is attributable to such payment, then such Lender or the Administrative Agent, as the case may be, shall reimburse the Borrower for such amount as such Lender or the Administrative Agent, as the case may be, determines to be the proportion of the refund as will leave it, after such reimbursement, in no better or worse position than it would have been in if the payment by or borne by the Borrower had not been required; provided , however , that (i) any Lender or the Administrative Agent may determine, in its reasonable discretion consistent with the policies of such Lender or the Administrative Agent, whether to seek a refund and (ii) any Taxes that are imposed on a Lender or the Administrative Agent as a result of a disallowance or reduction of any refund with respect to which such Lender or the Administrative Agent has made a payment to the Borrower pursuant to this clause (h) shall be treated as a Tax for which the Borrower is obligated to indemnify such Lender or the Administrative Agent pursuant to this Section 4.6 . Neither the Lenders nor the Administrative Agent shall be obliged to disclose information regarding its tax affairs or computations to the Borrower in connection with this clause (h) or any other provision of this Section 4.6 .

(i) Promptly after the date of any payment by the Borrower of Taxes or Other Taxes, the Borrower shall furnish to each Lender and the Administrative Agent the original or a certified copy of a receipt evidencing payment thereof, or other evidence of payment satisfactory to such Lender or the Administrative Agent.

Section 4.7 Change of Lending Office . Each Lender agrees that, as promptly as practicable after it becomes aware of the occurrence of an event or the existence of a condition that would give rise to the operation of Sections 4.1 , 4.3 , 4.6(a) ,

4.6(b) or 4.6(c) with respect to such Lender, it will exercise commercially reasonable efforts to make, fund or maintain the affected Revolving Loans of such Lender through another lending office and to take such other actions as it deems appropriate to remove or lessen the impact of such condition and if, as determined by such Lender in its discretion, the making, funding or maintaining of such affected Revolving Loans through such other lending office or the taking of such other actions would not otherwise adversely affect such Revolving Loans or such Lender and would not, in such Lender's discretion, be commercially unreasonable. Nothing in this Section 4.7 shall affect or postpone any of the Obligations of the Borrower or the right of any Lender provided in Sections 4.1 , 4.3 , 4.6(b) or 4.6(c) .

Section 4.8 Payments, Computations, etc. Unless otherwise expressly provided, all payments by the Borrower pursuant to this Agreement, the Notes, each Letter of Credit or any other Loan Document shall be made by the Borrower to the Administrative Agent for the pro rata account of the Lenders entitled to receive such payment. All such payments required to be made to the Administrative Agent shall be made, without setoff, deduction or counterclaim, not later than 1:00 p.m., New York City time, on the date due, in same day or immediately available funds, to such account as the Administrative Agent shall specify from time to time by notice to the Borrower. Funds received after 2:00 p.m., New York City time, on such due date shall be deemed to have been received by the Administrative Agent on the next succeeding Business Day. The Administrative Agent shall promptly remit in same day funds to each Lender its share, if any, of such payments received by the Administrative Agent for the account of such Lender. All computations of interest for LIBO Rate Loans and Base Rate Loans (calculated at the Federal Funds Rate), and all computations of Letter of Credit fees and issuance fees pursuant to Section 3.3.3 , in each case shall be made on the basis of a 360-day year and actual days elapsed, and, with respect to LIBO Rate Loans, on the expiration of the applicable LIBO contract. Whenever any payment to be made shall otherwise be due on a day which is not a Business Day, such payment shall (except as otherwise required by clause (c) of the definition of the term "Interest Period ") be made on the next succeeding Business Day and such extension of time shall be included in computing interest and fees, if any, in connection with such payment.

Section 4.9 Sharing of Payments . If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan or Reimbursement Obligation (other than pursuant to the terms of Section 4.3 , 4.4 , 4.5 or 4.6) in excess of its pro rata share of payments then or therewith obtained by all Lenders, such Lender shall purchase from the other Lenders such participations in Credit Extensions made by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; provided , however , that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such recovery together with an amount equal to such selling Lender's ratable share (according to a fraction having a numerator of (a) the amount of such selling Lender's required repayment to the purchasing Lender and a denominator of (b) total amount so recovered

from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 4.10) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section to share in the benefits of any recovery on such secured claim.

Section 4.10 Setoff . Each Lender shall, if the Loans have been accelerated or otherwise have become due and payable or upon the occurrence and during the continuance of any Event of Default described in Section 8.1.1 or in clauses (a) through (e) of Section 8.1.9 with respect to the Borrower or, with the consent of the Required Lenders, upon the occurrence and during the continuance of any other Event of Default, without prior notice to the Borrower (any such notice being waived by the Borrower to the fullest extent permitted by law), have the right to appropriate and apply to the payment of the Obligations then due or owing to it, any and all balances, credits, deposits, accounts or moneys of the Borrower then or thereafter maintained with such Lender; provided , however , that any such appropriation and application shall be subject to the provisions of Section 4.9 . Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such setoff and application made by such Lender; provided , however , that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff under applicable law or otherwise) which such Lender may have.

ARTICLE V
CONDITIONS TO EFFECTIVENESS AND TO FUTURE CREDIT EXTENSIONS

Section 5.1 Conditions Precedent to Making of Loans and the Issuance of Letters of Credit . The obligations of the Lenders to make any Loans and the obligations of the Issuer to issue any Letter of Credit shall be subject to the prior or concurrent satisfaction or waiver of each of the conditions precedent set forth in this Section 5.1 , in Section 5.2 and in Section 10.6 on or before the Closing Date.

Section 5.1.1 Resolutions, etc . The Administrative Agent shall have received from the Borrower, Guarantor and Subsidiary Guarantor, as applicable, (i) good standing certificates for each such Person from the Secretary of State (or similar applicable Governmental Authority) of such Person's state of incorporation and each state where the Borrower or such , as the case may be, is qualified to do business as a foreign corporation as of a recent date, together with a bring-down certificate by facsimile, dated a date reasonably close to the Closing Date, (ii) a chart depicting the ownership structure for the Borrower, Guarantor and their Subsidiaries and (iii) a certificate, dated the

Closing Date and with counterparts for each Lender, duly executed and delivered by such Person's Secretary or Assistant Secretary, as to

(a) resolutions of each such Person's Board of Directors then in full force and effect authorizing, to the extent relevant, the execution, delivery and performance of this Agreement, the Notes, each other Loan Document to be executed by such Person and the transactions contemplated hereby and thereby;

(b) the incumbency and signatures of those of its officers authorized to act with respect to this Agreement, the Notes and each other Loan Document to be executed by such Person; and

(c) each Organic Document of such Person,

upon which certificates the Administrative Agent and each Lender may conclusively rely until it shall have received a further certificate of the Secretary or Assistant Secretary of any such Person canceling or amending the prior certificate of such Person.

Section 5.1.2 Closing Date Certificate . The Administrative Agent shall have received, with counterparts for each Lender, the Closing Date Certificate, dated the Closing Date and duly executed and delivered by an Authorized Officer of the Borrower, in which certificate the Borrower shall agree and acknowledge that the statements made therein shall be deemed to be true and correct representations and warranties in all material respects of the Borrower made as of such date and under this Agreement, and, at the time such certificate is delivered, such statements shall in fact be true and correct in all material respects. All documents and agreements required to be appended to the Closing Date Certificate shall be in form and substance reasonably satisfactory to the Administrative Agent and such certificate shall specify that none of such documents or agreements have been modified except as set forth in such certificate.

Section 5.1.3 Pledge Agreement . The Borrower and each other pledgor under the Pledge Agreement shall have duly authorized, executed and delivered to the Administrative Agent the Pledge Agreement substantially in the form of Exhibit G-1 hereto (as modified, supplemented or amended from time to time, the "Pledge Agreement "), and shall have delivered to the Administrative Agent all of the certificated Pledge Agreement Collateral referred to therein (to the extent required to be pledged by the Pledge Agreement), together with duly executed and undated stock powers, or, if any Pledge Agreement Collateral are uncertificated securities, confirmation and evidence reasonably satisfactory to the Administrative Agent that the security interest in such uncertificated securities has been transferred to and perfected by the Administrative Agent for the benefit of the Lenders in accordance with Article 8 of the Uniform Commercial Code, as in effect in the State of New York, and all laws otherwise applicable to the perfection of the pledge of such shares; and the Administrative Agent and its counsel shall be satisfied that:

(i) the Lien granted to the Administrative Agent, for the benefit of the Secured Creditors, in the Pledge Agreement Collateral is a first priority security interest; and

(ii) no Lien exists on any of the Pledge Agreement Collateral other than the Lien created in favor of the Administrative Agent, for the benefit of the Secured Creditors, pursuant to the Pledge Agreement.

Section 5.1.4 Guaranty . The Guarantor shall have duly authorized, executed and delivered to the Administrative Agent the Guaranty in the form of Exhibit H-1 hereto (as modified, supplemented or amended from time to time, the "Guaranty"), and the Guaranty shall be in full force and effect. Each Subsidiary Guarantor shall have duly authorized, executed and delivered to the Administrative Agent the Subsidiary Guaranty in the form of Exhibit H-2 hereto (as modified, supplemented or amended from time to time, the "Subsidiary Guaranty"), and the Subsidiary Guaranty shall be in full force and effect.

Section 5.1.5 Financial Information, etc . Administrative Agent shall have received evidence of pro forma financial covenant compliance with the covenants set forth in Section 7.2.4 .

Section 5.1.6 Loan Pledge Agreement . Each pledgor under the Loan Pledge Agreement shall have duly authorized, executed and delivered to the Administrative Agent the Loan Pledge Agreement substantially in the form of Exhibit G-3 hereto (as modified, supplemented or amended from time to time, the "Loan Pledge Agreement"), and shall have delivered to the Administrative Agent all of the Loan Pledge Collateral referred to therein (to the extent required to be pledged by the Loan Pledge Agreement), together with the promissory notes pledged thereby and duly executed and undated allonges to the notes, confirmation and evidence reasonably satisfactory to the Administrative Agent that the security interest in the Loan Pledge Collateral has been transferred to and perfected by the Administrative Agent for the benefit of the Lenders in accordance with Article 8 of the Uniform Commercial Code, as in effect in the State of New York, and all laws otherwise applicable to the perfection of the pledge of such collateral; and the Administrative Agent and its counsel shall be satisfied that:

(i) the Lien granted to the Administrative Agent, for the benefit of the Secured Creditors, in the Loan Pledge Collateral is a first priority security interest; and

(ii) no Lien exists on any of the Loan Pledge Collateral other than the Lien created in favor of the Administrative Agent, for the benefit of the Secured Creditors, pursuant to the Loan Pledge Agreement.

Section 5.1.7 Intentionally Omitted .

Section 5.1.8 Litigation . There shall exist no pending or threatened action, suit, investigation, litigation or proceeding in any court or before any arbitrator or governmental instrumentality which (x) purports to affect the consummation of the

Transaction or the legality or validity of this Agreement or any other Loan Document or (y) could reasonably be expected to have a Material Adverse Effect.

Section 5.1.9 No Material Adverse Effect . On or prior to the Closing Date, in the determination of the Administrative Agent, no Material Adverse Effect shall have occurred; and neither Administrative Agent nor the Lenders shall have become aware of any facts, conditions or other information not previously known to it which could reasonably be expected to have a Material Adverse Effect.

Section 5.1.10 Approvals . All governmental and third party approvals necessary in connection with the financing contemplated hereby and the continuing operations of the Borrower and its Subsidiaries shall have been obtained and shall be in full force and effect except as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and all applicable waiting periods, if any, shall have expired without any action being taken or threatened by any competent authority which could restrain, prevent or otherwise impose materially adverse conditions on the financing contemplated hereby.

Section 5.1.11 Opinions of Counsel . The Administrative Agent shall have received opinions, each dated the Closing Date and addressed to the Administrative Agent, each Lender and the Issuer, from Perkins Coie LLP and Venables LLP, each as special counsel to the Borrower and Guarantor, in form and substance reasonably satisfactory to the Administrative Agent.

Section 5.1.12 Projections; Solvency Certificate . On or prior to the Closing Date, there shall have been delivered to the Lenders:

(a) projected financial and cash flow statements for the Consolidated Group for the period from the Closing Date to and including at least December 31, 2010 (the " Projections"), which Projections shall reflect the forecasted financial condition, income and expenses and cash flows of the Consolidated Group after giving effect to the Transaction; and

(b) a solvency certificate as to the Borrower and its Subsidiaries, taken as a whole, from an Authorized Financial Officer, substantially in the form of Exhibit I hereto, addressed to the Administrative Agent and the Lenders and dated the Closing Date.

Section 5.1.13 Diligence . Administrative Agent shall have received the following due diligence materials for the Properties: (i) the Initial Appraisals, (ii) summaries of Insurance Policies together with certificates evidencing coverage, (iii) UCC Searches, and (iv) Title Searches, all in form and substance acceptable to Administrative Agent.

Section 5.1.14 Closing Fees, Expenses, etc . The Administrative Agent shall have received evidence of payment by the Borrower of (or a draw request with respect to) all accrued and unpaid fees, costs and expenses to the extent then due and payable under this Agreement on the Closing Date, together with all reasonable legal

costs and expenses of the Administrative Agent to the extent invoiced prior to or on the Closing Date, including any such fees, costs and expenses arising under or referenced in Sections 3.3 and 10.3.

Section 5.1.15 Intentionally Omitted .

Section 5.1.16 Intentionally Omitted .

Section 5.1.17 Execution of Agreement; Notes .

On or prior to the Closing Date, there shall have been delivered to the Administrative Agent for the account of each of the Lenders (i) the appropriate Revolving Notes executed by the Borrower, in each case in the amount, maturity and as otherwise provided herein, and (ii) duly executed copies of each Loan Document.

Section 5.1.18 Guarantor Pledge Agreement .

The Guarantor shall have duly authorized, executed and delivered to the Administrative Agent the Guarantor Pledge Agreement substantially in the form of Exhibit G-2 hereto (as modified, supplemented or amended from time to time, the "Guarantor Pledge Agreement"), and shall have delivered to the Administrative Agent all of the certificated Guarantor Pledge Agreement Collateral referred to therein (to the extent required to be pledged by the Guarantor Pledge Agreement), together with duly executed and undated stock powers, or, if any Guarantor Pledge Agreement Collateral are uncertificated securities, confirmation and evidence reasonably satisfactory to the Administrative Agent that the security interest in such uncertificated securities has been transferred to and perfected by the Administrative Agent for the benefit of the Lenders in accordance with Article 8 of the Uniform Commercial Code, as in effect in the State of New York, and all laws otherwise applicable to the perfection of the pledge of such shares; and the Administrative Agent and its counsel shall be satisfied that:

(i) the Lien granted to the Administrative Agent, for the benefit of the Secured Creditors, in the Guarantor Pledge Agreement Collateral is a first priority security interest; and

(ii) no Lien exists on any of the Guarantor Pledge Agreement Collateral other than the Lien created in favor of the Administrative Agent, for the benefit of the Secured Creditors, pursuant to the Guarantor Pledge Agreement.

Section 5.2 All Credit Extensions . The obligation of each Lender and the Issuer to make any Credit Extension shall be subject to Sections 2.1.3 and 2.1.4 and the satisfaction of each of the conditions precedent set forth in this Section 5.2 .

Section 5.2.1 Representations and Warranties, No Default, etc. Both before and after giving effect to any Credit Extension:

(a) the representations and warranties set forth in Article VI and in each other Loan Document shall, in each case, be true and correct in all material

respects with the same effect as if then made (unless stated to relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date);

(b) no Default or Event of Default shall have then occurred and be continuing;

(c) the occurrence of such Credit Extension on such date does not violate any Requirement of Law and is not enjoined, temporarily, preliminarily or permanently and no litigation shall be pending or threatened, which in the good faith judgment of Administrative Agent or the Required Lenders would enjoin, prohibit or restrain, or impose or result in the imposition of any material adverse condition upon, such Credit Extension or any member of the Consolidated Group's obligations with respect thereto; and

(d) Administrative Agent shall have received a Borrowing Request or an Issuance Request in the form attached as Exhibit B-1 and Exhibit B-2 .

Section 5.2.2 Credit Extension Request, etc . Subject to Section 2.6.2 , the Administrative Agent shall have received a Borrowing Request if Loans are being requested, or an Issuance Request if a Letter of Credit is being requested or extended. Each of the delivery of a Borrowing Request and the acceptance by the Borrower of the proceeds of such Credit Extension shall constitute a representation and warranty by the Borrower that on the date of such Credit Extension (both immediately before and after giving effect to such Credit Extension and the application of the proceeds thereof) the conditions set forth in clauses (a) and (b) of Section 5.2.1 have been satisfied.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders, the Issuer and the Administrative Agent to enter into this Agreement and to make Credit Extensions hereunder, the Borrower represents and warrants unto the Administrative Agent, the Issuer and each Lender as set forth in this Article VI .

Section 6.1 Organization, etc . Each of Guarantor, Borrower and, in the case of each other member of the Consolidated Group except where failure could not reasonably be expected to have a Material Adverse Effect:

(a) is a corporation, limited liability company, or partnership, as the case may be, validly organized and existing and in good standing under the laws of the state or jurisdiction of its incorporation or organization;

(b) is duly qualified to do business and is in good standing as a foreign corporation, limited liability company or partnership, as the case may be, in each jurisdiction where the nature of its business requires such qualification; and

(c) has full power and authority and holds all requisite governmental licenses, permits and other approvals to enter into and perform its Obligations under this Agreement, the Notes and each other Loan Document to which it is a party and to own and hold under lease its property and to conduct its business substantially as currently conducted by it.

Section 6.2 Due Authorization, Non-Contravention, etc . The execution, delivery and performance by the Borrower of this Agreement, the Notes and each other Loan Document executed or to be executed by it, the execution, delivery and performance by Guarantor and Subsidiary Guarantor of each Loan Document executed or to be executed by it, the granting of the Liens contemplated by the Security Documents and the Borrower's, and each Subsidiary Guarantor's or Guarantor's participation in the consummation of all aspects of the transactions contemplated hereby, are in each case within each such Person's corporate, limited liability company or partnership powers, as the case may be, have been duly authorized by all necessary corporate, limited liability company or partnership action, as the case may be, and do not

(a) contravene any such Person's Organic Documents;

(b) contravene any material contractual restriction binding on or affecting any such Person or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under the terms of any material indenture, loan agreement, lease agreement, mortgage, deed of trust, agreement or other material instrument to which the Borrower or any of the Subsidiaries or Guarantor is a party or by which it or any of its property or assets is bound;

(c) contravene (i) any court decree or order binding on or affecting any such Person or (ii) any law or governmental regulation binding on or affecting any such Person; or

(d) result in, or require the creation or imposition of, any Lien on any of such Person's material properties (except as permitted by this Agreement).

Section 6.3 Government Approval, Regulation, etc . No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any Governmental Authority or regulatory body or other Person (other than those that have been, or on the Closing Date will be, duly obtained or made and which are, or on the Closing Date will be, in full force and effect and other than those, singly or in the aggregate, with respect to which the failure to obtain or make could not reasonably be expected to have a Material Adverse Effect) is necessary or required for the consummation of the transactions contemplated hereby or the due execution, delivery or performance by, or to make enforceable against, the Borrower, Guarantor or Subsidiary Guarantor, the Notes or any other Loan Document to which it is a party or the granting of the Liens contemplated by the Security Documents. Neither the Borrower nor any Subsidiary nor Guarantor is an "investment company" within the meaning of the Investment Company Act of 1940, as amended. Neither the Borrower nor any of its Subsidiaries nor Guarantor is a "holding company," or a "subsidiary company" of a

"holding company," or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company" within the meaning of the Public Utility Holdings Company Act of 1935, as amended.

Section 6.4 Validity, etc . This Agreement constitutes, and the Notes and each other Loan Document, executed by the Borrower will, on the due execution and delivery thereof, constitute, the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms; and each other Loan Document executed pursuant hereto by each Subsidiary Guarantor or Guarantor will, on the due execution and delivery thereof by such Subsidiary Guarantor or Guarantor, constitute the legal, valid and binding obligation of such Subsidiary Guarantor or Guarantor enforceable against such Subsidiary Guarantor or Guarantor in accordance with its terms (except, in any case above, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity).

Section 6.5 Financial Information .

(a) The financial statements furnished to the Administrative Agent and the Lenders pursuant to Section 5.1.5 have been prepared in accordance with GAAP consistently applied, except as otherwise expressly noted therein, and present fairly in all material respects the consolidated financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended. All balance sheets, all statements of operations, shareholders' equity, earnings and cash flow and all other financial information of each member of the Consolidated Group and the Unconsolidated Subsidiaries furnished pursuant to Section 7.1.1 have been and will for periods following the Closing Date be prepared in accordance with GAAP consistently applied, except as otherwise expressly noted therein, and do or will present fairly in all material respects the consolidated financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended.

(b) On and as of the Closing Date, after giving effect to all Indebtedness (including the Loans) being incurred or assumed and Liens created by the Borrower and Guarantor in connection therewith, (a) the sum of the assets, at a fair valuation, of the Guarantor and its Subsidiaries taken as a whole and the Borrower on a stand-alone basis will exceed their respective debts; (b) Guarantor and its Subsidiaries taken as a whole and the Borrower on a stand-alone basis have not incurred and do not intend to incur, and do not believe that they will incur, debts beyond their ability to pay such debts as such debts mature; and (c) the Guarantor and its Subsidiaries taken as a whole and the Borrower on a stand-alone basis will have sufficient capital with which to conduct their respective businesses. For purposes of this Section 6.5(b) , "debt" means any liability on a claim, and "claim" means (i) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured or (ii) right to an equitable remedy for breach of performance if such breach gives rise to

a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

(c) Except as disclosed in the financial statements delivered pursuant to Section 6.5(a) or in Item 6.5(c) of the Disclosure Schedule and the Indebtedness incurred in connection with the Commitments, there were as of the Closing Date no liabilities or obligations with respect to the Borrower or any of its Subsidiaries of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether or not due) which, either individually or in aggregate, has had or could reasonably be expected to have a Material Adverse Effect. As of the Closing Date, Borrower does not know of any basis for the assertion against it or any of its Subsidiaries of any liability or obligation of any nature whatsoever that is not disclosed in the financial statements delivered pursuant to Section 6.5(a) which, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(d) On and as of the Closing Date, the Projections have been prepared in good faith and are based on assumptions believed by Borrower to be reasonable and attainable under the then known facts and circumstances, and there are no statements or conclusions in any of the Projections which are based upon or include information known to the Borrower to be misleading in any material respect or which knowingly fail to take into account material information regarding the matters reported therein; it being understood, however, that nothing contained herein shall constitute a representation that the results forecasted in such Projections will in fact be achieved.

Section 6.6 No Material Adverse Effect . Since the Closing Date, there has been no change in the business, assets, operations, properties or financial condition of the Consolidated Group that, either individually or in the aggregate, has had, or could reasonably have, a Material Adverse Effect.

Section 6.7 Litigation, etc . There is no pending or, to the knowledge of the Borrower, threatened litigation, action, proceeding or controversy affecting the Borrower or any of its Subsidiaries or Guarantor, or any of their respective Properties, businesses, assets or revenues, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 6.8 Subsidiaries . The Borrower has no Subsidiaries, except (i) those Subsidiaries existing on the Closing Date which are identified in Item 6.8 of the Disclosure Schedule or (ii) those Subsidiaries which have been identified to the Administrative Agent pursuant to Section 7.1.9 hereof.

Section 6.9 Ownership of Properties . The Borrower or, as applicable, each Property Owner, has good title, or leasehold interests in, or indirect ownership of, (i) each Borrowing Base Property, except for Permitted Borrowing Base Liens and (ii) except where the failure to have such good title or leasehold interests could not, either

individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all of its other Properties and assets, real and personal, tangible and intangible, of any nature whatsoever, free and clear in each case of all Liens or claims, except for Liens permitted pursuant to Section 7.2.3 .

Section 6.10 Taxes . The members of the Consolidated Group and all other Persons with whom the members of the Consolidated Group join in the filing of a consolidated return have filed all Federal income tax returns and other material tax returns and reports, domestic and foreign, required by law to have been filed, and have paid all material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable except those not yet delinquent or those which are being diligently contested in good faith and for which adequate reserves have been established (in the good faith judgment of the Borrower) in accordance with GAAP. The members of the Consolidated Group and each such other Person with whom the members of the Consolidated Group join in the filing of a consolidated return have paid, or have provided adequate reserves (in the good faith judgment of the management of the Borrower) in accordance with GAAP for the payment of all such material taxes, assessments, fees and charges relating to all prior taxable years and the current taxable year of the members of the Consolidated Group and each such other Person with whom the members of the Consolidated Group join in the filing of a consolidated return. To the best knowledge of the Borrower, there is no proposed tax assessment against the members of the Consolidated Group or any such other Person with whom the members of the Consolidated Group join in the filing of a consolidated return that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 6.11 ERISA Compliance .

(a) Each Plan is in compliance in all material respects with the terms thereof and the applicable provisions of ERISA, the Code and other federal or state law except to the extent that failure to comply could not result, either individually or in the aggregate, in an amount of liability that could reasonably be expected to have a Material Adverse Effect. The Borrower and each ERISA Affiliate have made all required contributions to each Plan, except to the extent that a failure to do so could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code or Section 302 of ERISA has been made with respect to any Plan subject to either such Section of the Code or ERISA.

(b) There are no pending or, to the best knowledge of Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Pension Plan which has resulted or could reasonably be expected to result in, either individually or in the aggregate, a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability in an amount which could reasonably be expected to have a Material Adverse Effect if such Pension Plan were then terminated; and (iii) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 6.12 Compliance with Environmental Laws . The Borrower and each of its Subsidiaries is in compliance with all applicable Environmental Laws in respect of the conduct of its business and the ownership of its property, except such noncompliance as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Without limiting the effect of the preceding sentence:

(a) neither the Borrower nor any of its Subsidiaries has received a complaint, order, citation, notice or other written communication with respect to the existence or alleged existence of a violation of, or liability arising under, any Environmental Law, the outcome of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect;

(b) to the best of the Borrower's knowledge, after due inquiry, there are no environmental, health or safety conditions existing or reasonably expected to exist at any real property owned, operated, leased or used by the Borrower or any of its existing or former Subsidiaries or any of their respective predecessors, including off-site treatment or disposal facilities used by the Borrower or its existing or former Subsidiaries for wastes treatment or disposal, which could reasonably be expected to require any construction or other capital costs or clean-up obligations to be incurred prior to the Maturity Date in order to assure compliance with any Environmental Law, including provisions regarding clean-up, to the extent that any of such conditions, construction or other capital costs or clean-up obligations, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; and

(c) neither the Borrower nor any of its Subsidiaries has treated, stored, transported or disposed of Hazardous Materials at or from any currently or formerly owned Real Estate or facility relating to its business in a manner that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 6.13 Regulations T, U and X . Neither the Borrower nor any of its Subsidiaries is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and no use of any proceeds of any Credit Extensions will violate F.R.S. Board Regulation T, U or X. Terms for which meanings are provided in F.R.S. Board Regulation T, U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.

Section 6.14 Accuracy of Information . All factual information (taken as a whole) heretofore or contemporaneously furnished by or on behalf of the Consolidated Group in writing to the Administrative Agent, the Issuer or any Lender on or before the Closing Date (including (i) the Confidential Memorandum and (ii) all information contained in the Loan Documents) for purposes of or in connection with this Agreement or any transaction contemplated hereby is true and complete in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any material fact necessary to make such information (taken as a whole) not misleading at such time in light of the circumstances under which such information was provided, it being understood and agreed that for purposes of this Section 6.14 , such factual information shall not include Projections and pro forma financial information.

Section 6.15 REIT . Guarantor is qualified as a REIT and its proposed methods of operation will enable it to continue to be so qualified.

Section 6.16 No Bankruptcy Filing . None of the members of the Consolidated Group are contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of such entity's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or against any Guarantor or Subsidiary, except for any such filing or liquidation after the date hereof which would not constitute an Event of Default hereunder and regarding which the Administrative Agent has received written notice.

Section 6.17 Use of Proceeds . The proceeds of all Loans shall be used by the Borrower and its Subsidiaries, subject to the other restrictions set forth in this Agreement, for their working capital and general corporate, partnership or limited liability company purposes. Each Letter of Credit may be used in support of any purpose not prohibited by this Agreement or the other Loan Documents.

Section 6.18 Other Debt . No member of the Consolidated Group is in default in the payment of any other Indebtedness or under any agreement, mortgage, deed of trust, security agreement, or lease to which it is a party, which default could reasonably be expected to have a Material Adverse Effect.

Section 6.19 Security Interests . Once executed and delivered, and until terminated in accordance with the terms thereof, the Pledge Agreement and the Guarantor Pledge Agreement create, as security for the obligations purported to be secured thereby, a valid and enforceable first priority Lien on all of the Pledge Agreement Collateral and Guarantor Pledge Agreement Collateral subject thereto from time to time, superior to and prior to the rights of all third Persons in favor of the Administrative Agent, for the benefit of the Lenders. No filings or recordings are required in order to perfect the security interests created under the Pledge Agreement and the Guarantor Pledge Agreement except for such filings as have been made, or provided for to the satisfaction of Administrative Agent, at the time of the execution and delivery thereof.

Section 6.20 Material Agreements . Each management agreement and each other Material Agreement is in full force and effect, and no terminating event, default, or failure or performance has accrued thereunder except where such terminating event, default, or failure of performance could not reasonably be expected to have a Material Adverse Effect. The Material Agreements furnished to Administrative Agent constitute all Material Agreements of the Borrower and Guarantor as of the Closing Date. No party to any management agreement or any Material Agreement has challenged or denied the validity or enforceability of any such agreement. The Borrower shall promptly furnish to Administrative Agent copies of all Material Agreements of the Borrower or the Guarantor entered into after the Closing Date.

Section 6.21 Office of Foreign Assets Control . Neither Borrower nor Guarantor shall (a) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the OFAC List) that prohibits or limits any Lender from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower and/or Guarantor, or (b) fail to provide documentary and other evidence of Borrower's identity as may be requested by the Administrative Agent at any time to enable the Administrative Agent to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. § 5318 (the "Patriot Act"). In addition, Borrower hereby agrees to provide Administrative Agent with any additional information that Administrative Agent deems reasonably necessary from time to time in order to ensure compliance with all legal requirements concerning money laundering and similar activities.

Section 6.22 Labor Relations . None of Guarantor, Borrower, nor any of its Subsidiaries has received written notice, or otherwise has reason to believe that it is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (i) no unfair labor practice complaint pending against Guarantor, Borrower or any of its Subsidiaries or, to the best knowledge of Borrower, threatened against any of them, before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement is so pending against Guarantor, Borrower or any of its Subsidiaries or, to the best knowledge of Borrower, threatened against any of them, (ii) no strike, labor dispute, slowdown or stoppage pending against Guarantor, Borrower or any of its Subsidiaries or, to the best knowledge of Borrower, threatened against Guarantor, Borrower or any of its Subsidiaries and (iii) to the best knowledge of Borrower, no union representation question existing with respect to the employees of Guarantor, Borrower or any of its Subsidiaries and, to the best knowledge of Borrower, no union organizing activities are taking place, except (with respect to any matter specified in clause (i), (ii) or (iii) above, either individually or in the aggregate) such as could not reasonably be expected to have a Material Adverse Effect.

Section 6.23 Intellectual Property, Licenses, Franchises and Formulas . Guarantor, Borrower and each of its Subsidiaries owns, or has the right to use, all the patents, trademarks, permits, service marks, trade names, copyrights, licenses, franchises, proprietary information (including, but not limited to, rights in computer programs and

databases) and formulas, or other rights with respect to the foregoing, or has obtained assignments of all leases and other rights of whatever nature, necessary for the present conduct of its business, without any known conflict with the rights of others which, or the failure to obtain which, as the case may be, could reasonably be expected to result in a Material Adverse Effect.

ARTICLE VII
COVENANTS

Section 7.1 Affirmative Covenants . The Borrower hereby agrees with the Administrative Agent, the Issuer and each Lender that, until all Commitments have terminated, all Letters of Credit Commitment have terminated or expired and all Obligations have been paid and performed in full, the Borrower will perform or cause to be performed the obligations set forth in this Section 7.1 .

Section 7.1.1 Financial Information, Reports, Notices, etc . The Borrower will furnish, or will cause to be furnished, to the Administrative Agent (for distribution to the Issuer and each Lender) copies of the following financial statements, reports, notices and information:

(a) as soon as available and in any event within 45 days after the end of each of the first three (3) Fiscal Quarters of each Fiscal Year of the Borrower, (i) unaudited consolidated balance sheets of the Consolidated Group as of the end of such Fiscal Quarter and unaudited consolidated statements of operations and cash flow of the Consolidated Group for such Fiscal Quarter and for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter, certified by an Authorized Financial Officer as fairly presenting in all material respects, in accordance with GAAP (subject to year-end audit adjustments), the financial position and results of operations of the Consolidated Group covered thereby as of the date thereof, and (ii) management's discussion and analysis of the important operational and financial developments during such Fiscal Quarter;

(b) as soon as available and in any event within 90 days after the end of each Fiscal Year of the Borrower, (i) a copy of the annual audited financial statements for such Fiscal Year for the Consolidated Group, including therein consolidated balance sheets of the Consolidated Group as of the end of such Fiscal Year and consolidated statements of operations and cash flow of the Consolidated Group for such Fiscal Year, in each case as audited (without any Impermissible Qualification) by Deloitte & Touche LLP or other nationally recognized independent public accountants and (ii) management's discussion and analysis of the important operational and financial developments during such Fiscal Year;

(c) as soon as available and in any event within 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Consolidated Group and within 120 days after the end of each Fiscal Year of the Consolidated

Group, a Compliance Certificate, executed and certified by an Authorized Financial Officer of the Borrower, showing (in reasonable detail, including with respect to appropriate calculations and computations) compliance with the financial covenants set forth in Section 7.2.4 (including reconciliation to GAAP, if applicable);

(d) promptly after preparation, and no later than forty-five (45) days after the last day of each the first three Fiscal Quarters of each Fiscal Year of the Consolidated Group and within 90 days after the end of each Fiscal Year of the Consolidated Group, with respect to each Property, (i) certified Property report(s) by an Authorized Officer of Borrower, setting forth in reasonable detail the date acquired, location, appraised value, real estate taxes, insurance, gross revenues, FF&E Reserves, and EBITDA, and (ii) monthly or quarterly operating statements for each of the Properties which shall detail the revenues, expenses, Net Operating Income, average daily room rate, occupancy levels, Capital Expenditures, and revenue per available room for each of the Properties, in each case for the period then ended and (iii) with respect to each Borrowing Base Property, the foregoing information together with Borrower's certification that such Property continues to satisfy all requirements for a "Borrowing Base Property" hereunder;

(e) promptly upon receipt, in the case of the Unconsolidated Subsidiaries, copies of such financial statements, statements of operations and cash flow, balance sheets, and similar financial information received with respect to any Unconsolidated Subsidiary, it being acknowledged and agreed that Borrower shall exercise reasonable efforts to obtain the materials and information described in clauses (a)-(c) above with respect to each such Unconsolidated Subsidiary as soon as reasonably practicable;

(f) promptly, and in any event within seven (7) Business Days after any Responsible Officer of the Borrower obtains knowledge of the occurrence of a Default or an Event of Default, a statement of an Authorized Officer of the Borrower setting forth details of such Default or Event of Default and the action which the Borrower has taken and proposes to take with respect thereto;

(g) written notice, promptly and in any event within seven (7) Business Days after any Responsible Officer of the Borrower obtains knowledge of (x) the occurrence of any material adverse development with respect to the Borrower, Guarantor or any Borrowing Base Property, (y) the commencement of any litigation, action, proceeding, hotel management or labor controversy which could reasonably be expected to have a material adverse effect on any Borrowing Base Property or which could reasonably be expected to result in a Material Adverse Effect, or (z) the occurrence of any development or circumstance with respect to any litigation, action, proceeding, hotel management or labor controversy which could reasonably be expected to have a material adverse effect on any Borrowing Base Property or which could reasonably be expected to result in a Material Adverse Effect;

(h) (i) as soon as available (but the Borrower will use reasonable efforts to deliver on or before December 31 of each Fiscal Year), a preliminary annual operating budget and capital expenditure schedule for each Property for the following Fiscal Year, (ii) as soon as available, and in any event on or before March 1 of each Fiscal Year, the final annual operating budget and Capital Expenditure schedule for each Property for the such Fiscal Year, in each case satisfactory to Administrative Agent as to form, and (iii) within 45 days after June 30 and December 31, a statement containing a listing of all Development Properties and other Properties then undergoing significant rehabilitation;

(i) promptly upon filing thereof, copies of any reports filed on Forms 10-K, 10-Q, and 8-K, effective registration statements filed on Forms S-1, S-2, S-3, S-4 or S-11, and any proxy statements, as well as any substitute or similar documents to substantially the same effect as the foregoing, including, to the extent requested by the Administrative Agent, the schedules and exhibits thereto, in such each case as filed with the SEC by the Consolidated Group (other than immaterial amendments to any such registration statement);

(j) promptly after transmission thereof, copies of any notices or reports that the Consolidated Group shall send to the holders of any publicly issued debt of the Consolidated Group;

(k) promptly after a Responsible Officer of Borrower obtains knowledge of the occurrence of any ERISA Event (but in no event more than ten (10) days after a Responsible Officer of Borrower obtains knowledge of such ERISA Event), notice thereof together with a copy of any notice with respect to such event that is filed with a Governmental Authority and any notice delivered by a Governmental Authority to the Consolidated Group or any ERISA Affiliate with respect to such event;

(l) promptly when available and in any event within sixty (60) Business Days after the last day of each Fiscal Year of the Borrower, a budget for the then current Fiscal Year of the Borrower as customarily prepared by the management of the Borrower for its internal use, which budget shall be prepared on a Fiscal Quarter basis and shall set forth the principal assumptions on which such budget is based;

(m) promptly after obtaining knowledge of any one or more of the following environmental matters, unless such environmental matters could not, either individually or when aggregated with all other such matters, be reasonably expected to affect a Borrowing Base Property or to result in a Material Adverse Effect, written notice of:

(i) any pending or threatened Environmental Claim against the Guarantor, Borrower or any of its Subsidiaries or any Real Estate;

(ii) any condition or occurrence on any Real Estate that (x) results in noncompliance by the Consolidated Group with any applicable Environmental Law or (y) could reasonably be anticipated to form the basis of an Environmental Claim against the Borrower or any of its Subsidiaries or any Real Estate;

(iii) any condition or occurrence on any Real Estate that could reasonably be anticipated to cause such Real Estate to be subject to any restrictions on the ownership, occupancy, use or transferability of such Real Estate under any Environmental Law; and

(iv) the taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any Real Estate.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and the Borrower's response thereto;

(n) no later than the Closing Date, copies of the pro forma consolidated financial statements of the Consolidated Group, including therein a pro forma consolidated balance sheet of the Consolidated Group and pro forma consolidated statements of operations and cash flow of the Consolidated Group, in each case as of December 31, 2006, and certified by an Authorized Financial Officer of the Borrower, giving effect to the consummation of the transaction and reflecting the proposed capital structure of the Borrower after giving effect to the transaction; and

(o) such other information respecting the condition or operations, financial or otherwise, of the Consolidated Group as the Administrative Agent, or the required Lenders through the Administrative Agent, may from time to time reasonably request in writing.

Section 7.1.2 Preservation of Corporate Existence, etc . The Borrower will, and will cause Guarantor and each of their respective Subsidiaries to:

(a) preserve and maintain in full force and effect its corporate, limited liability company or partnership existence, as the case may be, under the laws of its state or jurisdiction of incorporation or organization (provided that the Borrower, Guarantor and their respective Subsidiaries may consummate any transaction permitted under Section 7.2.7), except, in the case of any such Subsidiary, to the extent that the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect; and

(b) preserve and maintain in full force and effect its good standing under the laws of its state or jurisdiction of incorporation or organization and all material governmental and other rights, privileges, qualification, permits, licenses,

intellectual property and franchises necessary in the normal conduct of its business except in each case to the extent that the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 7.1.3 Intentionally Omitted .

Section 7.1.4 Payment of Taxes . The Borrower will, and will cause Guarantor and each of their respective Subsidiaries to, pay and discharge all material taxes, assessments and governmental charges or levies upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which material penalties attach thereto; provided, however, that neither the Borrower, Guarantor nor any of their respective Subsidiaries shall be required hereunder to pay any such tax, assessment, charge, levy or claim that is being contested in good faith if it has maintained adequate reserves (in the good faith judgment of the management of the Borrower, Guarantor or such Subsidiary) with respect thereto in accordance with GAAP.

Section 7.1.5 Compliance with Statutes, etc . The Borrower will, and will cause Guarantor and each of their respective Subsidiaries to, comply, in all material respects, with all applicable statutes, regulations, licenses and other Requirements of Law (including Environmental Laws) having jurisdiction over it or its business, except such as may be contested in good faith or as to which a bona fide dispute may exist or except to the extent that the failure to so comply, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 7.1.6 Insurance . The Borrower will, and will cause Guarantor and each of their respective Subsidiaries to, at all times maintain in full force and effect, with third party insurance companies which are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance with respect to its properties and business (including business interruption, terrorism insurance and wind storm insurance (but with respect to terrorism and wind storm coverage, only to the extent commercially reasonable or as required under Mortgage Indebtedness) against such casualties and contingencies and of such types and in such amounts, and with such deductibles, retentions, self-insured amounts and reinsurance provisions, as are customarily maintained by companies engaged in the same or similar businesses in the same general area, as well as corporate level excess liability coverage of at least $75,000,000. The Borrower will, upon request of the Administrative Agent or any Lender, furnish to Administrative Agent information presented in reasonable detail as to the insurance maintained by the Borrower and its Subsidiaries.

Section 7.1.7 Appraisals . In addition to the Initial Appraisals, the Administrative Agent shall annually obtain, at Borrower's expense, an updated or replacement Acceptable Appraisal of each Borrowing Base Property.

Section 7.1.8 Further Assurances . Borrower will, and will cause Guarantor and each of their respective Subsidiaries to: (a) promptly execute and deliver any and all other and further instruments which may be reasonably requested by

Administrative Agent to cure any defect in the execution and delivery of any Loan Document or more fully describe particular aspects of any Subsidiary Guarantor's, Guarantor's or Borrower's agreements set forth in the Loan Documents; and (b) promptly execute, deliver, and file all such notices, statements, and other documents and take such other steps, including but not limited to the amendment of the Pledge Agreement, the Guarantor Pledge Agreement and any financing statements prepared thereunder, as may be reasonably necessary or advisable, or that Administrative Agent may reasonably request, to render fully valid and enforceable under all applicable laws, the rights, liens, and priorities of Administrative Agent, for the benefit of the Lenders, with respect to all security from time to time furnished under this Agreement or the Pledge Agreement or the Guarantor Pledge Agreement or intended to be so furnished, in each case in such form and at such times as shall be reasonably satisfactory to Administrative Agent.

Section 7.1.9 Future Pledgors and Subsidiary Guarantors . Within twenty (20) days after the formation or acquisition by Borrower of any (direct or indirect) Domestic Subsidiary, except as otherwise provided in this Section 7.1.9 , the Borrower shall notify the Administrative Agent of such event and:

(a) if such Person is a Borrowing Base Property Owner or owns Capital Stock in another Domestic Subsidiary that is not an Immaterial Subsidiary or a Restricted Subsidiary the Capital Stock of which is prohibited from being pledged, and such Person is not theretofore a party to the Pledge Agreement, execute and deliver to the Administrative Agent a supplement to the Pledge Agreement for the purposes of becoming a pledgor thereunder with respect to the Capital Stock of such other Domestic Subsidiary, as applicable; and

(b) the Borrower, Subsidiary Guarantor, or the Person that is required to become a pledgor under Section 7.1.9(a) above, shall, pursuant to (and to the extent required by) the Pledge Agreement, pledge to the Administrative Agent all of the outstanding shares of Capital Stock of such Subsidiary owned directly by it, along with undated stock powers for such certificates, executed in blank (or, if any such shares of capital stock are uncertificated, confirmation and evidence reasonably satisfactory to the Administrative Agent that the security interest in such uncertificated securities has been transferred to and perfected by the Administrative Agent, for the benefit of the Secured Creditors, in accordance with Article 8 of the U.C.C. or any other similar law which may be applicable); and

(c) unless such Subsidiary is a Restricted Subsidiary that is prohibited from becoming a Subsidiary Guarantor, such Subsidiary shall execute a Joinder to become party to the Subsidiary Guaranty, substantially in the form attached as Exhibit H hereto.

In addition, in the event that an existing Restricted Subsidiary ceases to qualify as a Restricted Subsidiary or an existing Immaterial Subsidiary ceases to qualify as an Immaterial Subsidiary, Borrower shall promptly cause the provisions of this Section 7.1.9 to be complied with. Further, if a Restricted Subsidiary is restricted (as and to the extent set forth in the definition of "Restricted Subsidiary") from complying with a

portion, but not all, of the provisions of this Section 7.1.9 , Borrower shall cause such Subsidiary to comply with the portions hereof that are not so restricted.

Notwithstanding the foregoing, in the event that the Administrative Agent is satisfied that any Domestic Subsidiary that is (or will be) a Property Owner, or a single purpose entity that owns the Capital Stock of a Property Owner, will incur Indebtedness such that it will become a Restricted Subsidiary, then upon the request of the Borrower, the Administrative Agent may in its discretion waive the requirements of this Section 7.1.9 for a period of time, as established by the Administrative Agent, to enable such financing to be incurred; provided, however , that, if granted, such waiver may, at any time prior to such Subsidiary becoming a Restricted Subsidiary, be revoked by the Administrative Agent upon no less than ten (10) Business Days notice to Borrower and provided, further that no such waiver shall be applicable to subsequent transactions.

In the event that any Subsidiary Guarantor (other than a Borrowing Base Property Owner) becomes a Restricted Subsidiary in connection with the permitted incurrence of Indebtedness, or is otherwise released with the consent of the Required Lenders, the Administrative Agent, at the request and expense of the Borrower, will promptly deliver to the Borrower or such Subsidiary Guarantor, as applicable (without recourse and without any representation or warranty) releases thereof from the Subsidiary Guaranty and the Pledge Agreement, as applicable.

Section 7.1.10 Intentionally Omitted .

Section 7.1.11 Transactions with Affiliates . The Borrower will, and will cause Guarantor and each of their respective Subsidiaries to, conduct all transactions with any of their respective Affiliates upon terms that are substantially as favorable to the Borrower, Guarantor or such Subsidiary as it would obtain in a comparable arm's-length transaction with a Person not an Affiliate of the Borrower, Guarantor or such Subsidiary. Intercompany Indebtedness shall generally be permitted provided (i) the same is subordinated to this Facility and the full repayment of the Obligations and all obligations of Guarantor and any Subsidiary Guarantor under this Facility, (ii) the incurrence of such Indebtedness will not otherwise cause an Event of Default, (iii) intercompany loans to Subsidiaries which are not wholly-owned directly or indirectly by the Borrower or Subsidiary Guarantors are subject to reasonable approval by Administrative Agent and (iv) such Indebtedness otherwise complies with the terms and restrictions set forth in this Agreement; and provided, further, that, in addition to the foregoing, in the case of Indebtedness relating to a Borrowing Base Property or Borrowing Base Property Owner, (A) the holder thereof is (or becomes) a Subsidiary Guarantor and (B) such Indebtedness is pledged to the Administrative Agent as Loan Pledge Collateral pursuant to the Loan Pledge Agreement. The Borrowing Base Intercompany Indebtedness set forth on Schedule V and the other intercompany Indebtedness existing as of the Closing Date and identified in Item 7.1.11 of the Disclosure Schedule is permitted hereunder.

Section 7.1.12 Corporate Separateness . Borrower will, and will cause Guarantor and each of their respective Subsidiaries to, take all such action as is necessary to keep the operations of Borrower and its Subsidiaries separate and apart from those of

Guarantor including, without limitation, ensuring that all customary formalities regarding corporate existence, including holding regular board of directors' meetings and maintenance of corporate records, are followed. All financial statements of Guarantor and Borrower provided to creditors will, to the full extent permitted by GAAP, clearly evidence the corporate separateness of Borrower and its Subsidiaries from Guarantor. Finally, no such company will take any action, or conduct its affairs in a manner which is likely to result in the corporate existence of Borrower and/or any of its Subsidiaries on the one hand, and Guarantor on the other, being ignored, or in the assets and liabilities of Borrower or any of its Subsidiaries being substantively consolidated with those of Guarantor in a bankruptcy, reorganization, or other insolvency proceeding.

Section 7.1.13 End of Fiscal Year . The Borrower will, for financial reporting purposes, cause each of its Domestic Subsidiaries', Fiscal Years to end on December 31 of each year (the "Fiscal Year End");provided , however , that the Borrower may, upon written notice to the Administrative Agent, change the definition of Fiscal Year End set forth above to any other date reasonably acceptable to the Administrative Agent, in which case the Borrower and the Administrative Agent, will and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary in order to reflect such change in financial reporting.

Section 7.1.14 Interest Rate Protection Agreements . At least eighty percent (80%) of the outstanding principal amount of all Indebtedness for borrowed money of the Consolidated Group shall be either (a) subject to a fixed interest rate or (b) hedged pursuant to an Interest Rate Protection Agreement that is: (i) acceptable to the lender or lenders providing such Indebtedness, if such lenders or lenders required such Interest Rate Protection Agreement with respect to such Indebtedness, (ii) acceptable to Moody's Investors Service, Inc., Standard & Poor's Rating Group, a division of McGraw Hill, Inc., a New York corporation, or Fitch Ratings, Inc., if such ratings agency required such Interest Rate Protection Agreement with respect to rating such Indebtedness, or (iii) reasonably acceptable to Administrative Agent, in all other cases.

Section 7.1.15 Intentionally Omitted .

Section 7.1.16 Parent Guarantor . Guarantor will at all times (i) qualify and maintain its status as a self-directed and self-administered REIT, (ii) remain a publicly traded company with common stock listed on the New York Stock Exchange or NASDAQ, (iii) conduct substantially all of its business and hold substantially all of its assets through the Borrower and operate its business at all times so as to satisfy all requirements necessary to qualify as a real estate investment trust under Sections 856 through 860 of the Code, and (iv) maintain adequate records so as to comply with all record-keeping requirements relating to the qualification of Guarantor as a real estate investment trust as required by the Code and applicable regulations of the Department of Treasury promulgated thereunder and will properly prepare and timely file with the U.S. Internal Revenue Service all returns and reports required thereby.

Section 7.1.17 Maintenance, Repairs, and Alterations . Except to the extent the failure to do so could not reasonably be expected to materially adversely affect a Borrowing Base Property or have a Material Adverse Effect:

(a) Borrower will cause each of the Consolidated Group Properties to be operated, maintained, and managed in a professional manner at all times in all material respects as an upscale, upper-upscale or luxury hotel project under the names shown on Schedule III (as supplemented from time to time to reflect changes reasonably approved by Administrative Agent) and in a manner consistent with the way it is operated, maintained, and managed as of the date hereof with respect to any Consolidated Group Property owned or leased by Borrower on the date hereof (including all marketing, advertising, promotional, and reservation programs available as of the date hereof with respect to any such Consolidated Group Property). Borrower will keep in effect (or cause to be kept in effect) at all times all permits, licenses, and contractual arrangements as may be necessary to meet the standard of operation described in the foregoing sentence or as may be required by the law. Upon the request of the Administrative Agent, the Borrower will deliver to Administrative Agent true, correct, and complete copies of all permits and licenses necessary for the ownership and operation of the Consolidated Group Properties, issued in the name of the applicable Consolidated Group Property and consistent with any legal requirements.

(b) Borrower will not commit or permit any waste or deterioration of or to any Consolidated Group Property.

(c) Borrower will act prudently and in accordance with customary industry standards in managing and operating the Consolidated Group Properties. Borrower will keep the Consolidated Group Properties and all of its other assets which are reasonably necessary to the conduct of its business in good working order and condition, normal wear and tear excepted.

(d) The Borrower will, and will cause Guarantor and each of their respective Subsidiaries to pay and discharge all lawful material claims that, if unpaid, could reasonably be expected to become a material Lien upon any properties of the Borrower, Guarantor or any of their respective Subsidiaries; provided, however, that neither the Borrower, Guarantor nor any of their respective Subsidiaries shall be required hereunder to pay any such claim that is being contested in good faith if it has maintained adequate reserves (in the good faith judgment of the management of the Borrower, Guarantor or such Subsidiary) with respect thereto in accordance with GAAP.

Section 7.1.18 Access; Annual Meetings with Lenders .

(a) Access . The Borrower shall, at any reasonable time and from time to time upon reasonable advance notice, permit the Administrative Agent or any of the Lenders, or any agents or representatives thereof to, under the guidance of officers of the Borrower (unless such officers are not made available for such

purpose upon reasonable advance notice), (i) examine and make copies (at the expense of Borrower) of and abstracts from the records and books of account of the Consolidated Group, (ii) visit the properties of the Consolidated Group, (iii) discuss the affairs, finances and accounts of the Consolidated Group with any of their respective officers or directors, and (iv) communicate directly with the Borrower's independent certified public accountants.

(b) Annual Meetings with Lenders . At the request of the Administrative Agent or the Required Lenders, the Borrower shall, at least once during each Fiscal Year (other than during the Fiscal Year in effect on the Closing Date) of the Borrower, hold a meeting (at a mutually agreeable location and time) with all of the Lenders at which meeting the financial results of the previous Fiscal Year and the financial condition of the Consolidated Group and the budgets presented for the current Fiscal Year of the Consolidated Group shall be reviewed, with each Lender bearing its own travel, lodging, food and other costs associated with attending any such meeting.

Section 7.1.19 Keeping of Books . The Borrower shall keep, and shall cause Guarantor and each of their respective Subsidiaries to keep, proper books of record and account, in which proper entries shall be made of all financial transactions and the assets and business of the Borrower, Guarantor and each respective Subsidiary.

Section 7.1.20 Management Letters . Promptly after the Borrower's receipt thereof, a copy of any "management letter" received by the Borrower, Guarantor or any of their respective Subsidiaries from its certified public accountants and management's responses, if any, thereto shall be delivered to Administrative Agent.

Section 7.1.21 Intentionally Omitted .

Section 7.1.22 Borrowing Base Properties .

(a) (i) Borrower shall own at least three (3) Borrowing Base Properties at all times, of which no fewer than two (2) must be located in the United States of America; (ii) no Borrowing Base Property and no Capital Stock in any Borrowing Base Property Owner shall at any time be subject to or encumbered by (A) any Indebtedness other than Permitted Borrowing Base Debt, or (B) any Lien other than a Permitted Borrowing Base Lien, (iii) no more than three (3) Properties located outside of the United State of America may qualify as Borrowing Base Properties at any time, and (iv) no more than two (2) Borrowing Base Properties may include a condominium or timeshare component or otherwise be part of a condominium or similar development that includes a residential/hotel condominium, fractional interest or timeshare component, in any such case unless otherwise agreed by the Required Lenders, and (v) at least three (3) Borrowing Base Properties shall at all times qualify as "luxury" or "upper-upscale" hotels, as designated by Smith Travel Research (or a similar successor company designated by Administrative Agent).

(b) A Property may cease to qualify as a Borrowing Base Property, but may subsequently regain its status as a Borrowing Base Property as provided in clause (c) below.

(c) The Properties approved as Borrowing Base Properties as of the Closing Date are set forth on Schedule II hereto. Borrower may propose to include additional Properties (whether New Acquisitions, former Development Properties or Properties that had been Borrowing Base Properties but ceased to qualify as such) by sending written proposals for inclusion to the Administrative Agent together with (i) a certification by the Borrower that such Property then satisfies the criteria for a Borrowing Base Property or, if a waiver or discretionary approval is required with respect to any element thereof, so specifying, (ii) reasonable supporting documentation with respect to each of the elements of such certification or request, (iii) an Acceptable Appraisal of the proposed Borrowing Base Property and (iv) a Title Search with respect to such proposed Borrowing Base Property. The Administrative Agent will make such request and materials available to the Lenders and will endeavor promptly either to (A) accept in writing the Borrower's certification that such Property satisfies the criteria and is deemed a Borrowing Base Property (or specify the reason it is unable to so accept) or (B) solicit the consent or waiver of the Required Lenders with respect to any matter so requested by the Borrower.

(d) Borrower shall promptly after any Responsible Officer of the Borrower obtains knowledge thereof notify Administrative Agent of: (i) any material structural defects or Environmental Occurrence affecting a Borrowing Base Property or (ii) the occurrence of any casualty event affecting a Borrowing Base Property, or (iii) any other event or occurrence which would cause a Borrowing Base Property to cease to qualify as such. In such event, the affected Borrowing Base Property will immediately, as of the occurrence, cease to qualify as a Borrowing Base Property hereunder, except to the extent provided in the following sentence. In the event that structural defects, Environmental Occurrence or casualty result in the temporary closure (for repair, restoration or remediation) of less than 25% of the rooms in such hotel and provided that the applicable Property Owner has given reasonable security to the Lenders to insure that such repair, restoration or remediation will be promptly and diligently resolved in a good and workman-like manner within one hundred twenty (120) days, then such Property will not cease to qualify as a Borrowing Base Property for so long as such conditions remain satisfied and provided that such issues are finally repaired or resolved within one hundred twenty (120) day period.

Section 7.2 Negative Covenants . The Borrower agrees with the Administrative Agent, the Issuer and each Lender that, until all Commitments have terminated, all Letters of Credit have terminated or expired and all Obligations have been paid and performed in full, the Borrower will comply with the covenants set forth in this Section 7.2 .

Section 7.2.1 Changes in Business . Borrower will not, and will not permit Guarantor or any of their respective Subsidiaries to, engage in any significant business or activities in any industries or business segments, other than the business and activities conducted by Borrower, Guarantor and their respective Subsidiaries (taken as a whole) on the Closing Date (*i.e.* , the acquisition, ownership and operation of hotels and interests therein), and other businesses and activities related or incidental thereto.

Section 7.2.2 Indebtedness . The Borrower will not, and will not permit Guarantor or any of their respective Subsidiaries to, create, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness, other than, without duplication, the following:

(a) Mortgage Indebtedness and Mezzanine Indebtedness, including customary recourse guaranties provided in connection therewith;

(b) Unsecured Indebtedness incurred in connection with Permitted Construction Indebtedness, subject to compliance with the covenants set forth in Section 7.2.9 , not to exceed $100,000,000 in aggregate principal amount at any time;

(c) Permitted Borrowing Base Debt;

(d) Indebtedness incurred by Borrower, Guarantor and their respective Subsidiaries in respect of (i) Credit Hedging Agreements and other Hedging Agreements entered into in the ordinary course and not for speculative purposes, (ii) purchase money indebtedness, capital lease obligations or other indebtedness for FF&E incurred in the ordinary course of business (but, in either case, not with respect to Property acquisitions or in any event recourse to Borrower or Guarantor), (iii) hotel management agreement fees and obligations incurred in the ordinary course of business, and (iv) other trade payables, letter of credit reimbursement obligations or guaranties (excluding guarantees of indebtedness for borrowed money or letter of credit reimbursement obligations relating to indebtedness for borrowed money) incurred in the ordinary course of business, subject to compliance with the covenants set forth in Section 7.2.4 .

(e) All Obligations hereunder, including pursuant to the Guaranty and Subsidiary Guaranty;

(f) Indebtedness secured by any Liens permitted pursuant to Section 7.2.3 ;

(g) Indebtedness existing as of the Closing Date and identified in Item 7.1.11 of the Disclosure Schedule and Indebtedness to be incurred on the Hamburg and Paris assets, substantially in accordance with the term sheets therefor attached to Schedule VI; as well as refinancings of such Hamburg and Paris Indebtedness, subject to compliance with the covenants set forth in Section 7.2.4 , so long as (i) any excess proceeds are used to pay down the Facility, (ii) there is no additional recourse to Borrower or Guarantor as a result of such

refinancing and (iii) such refinancing is approved by the Administrative Agent in its reasonable discretion; and

(h) Unsecured Indebtedness not otherwise permitted under the foregoing clauses (a)-(g), subject to compliance with the covenants set forth in Section 7.2.9 , not to exceed $50,000,000 in aggregate principal amount at any time.

Section 7.2.3 Liens . The Borrower and Guarantor will not, and will not permit any of their Subsidiaries to, create, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets (real or personal, tangible or intangible), whether now owned or hereafter acquired or sell any such property or assets subject to an understanding or agreement, contingent or otherwise, to repurchase or leaseback such property or assets (including sales or accounts receivable with recourse to such Borrower, Guarantor or any of their respective Subsidiaries), or assign any right to receive income or permit the filing of any financing statement under the UCC or any other similar notice of Lien under any similar recording or notice statute, except, with respect to Borrowing Base Properties, Permitted Borrowing Base Liens and with respect to all Properties other than Borrowing Base Properties, the following:

(a) Liens securing payment of the Obligations granted pursuant to any Loan Document or Liens securing Credit Hedging Agreements;

(b) Liens securing Permitted Construction Indebtedness;

(c) Liens securing Mortgage Indebtedness or Mezzanine Indebtedness;

(d) Liens securing Indebtedness of the type permitted and described in clause (c) or (d) of Section 7.2.2 ;

(e) Liens on cash or Cash Equivalents or deposit accounts holding cash or Cash Equivalents securing Hedging Agreements or letter of credit reimbursement obligations permitted under Section 7.2.2(e) or Liens securing FF&E purchase money indebtedness or capital lease obligations permitted under Section 7.2.2(e) ;

(f) inchoate Liens for taxes, assessments or other governmental charges or levies not at the time delinquent or thereafter payable without penalty or to the extent payment is not required pursuant to Section 7.1.4 ;

(g) Liens of carriers, warehousemen, mechanics, materialmen and landlords and other similar Liens imposed by law incurred in the ordinary course of business, in each case so long as such Liens could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect;

(h) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business in connection with workmen’s compensation, unemployment insurance or other forms of governmental

insurance or benefits, or to secure performance of tenders, statutory and regulatory obligations, bids, leases and contracts or other similar obligations (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on surety bonds or performance or return-of-money bonds;

(i) Liens consisting of judgment or judicial attachment liens in circumstances not constituting an Event of Default under Section 8.1.6 ;

(j) easements, rights-of-way, municipal and zoning ordinances or similar restrictions, minor defects or irregularities in title and other similar charges or encumbrances not securing Indebtedness and not interfering in any material respect with the ordinary conduct of the business of the Borrower or its Subsidiaries;

(k) Leases for space entered into in the ordinary course of business affecting any Property (to tenants as tenants only, without purchase rights or options); and

(l) Liens arising solely by virtue of any statutory or common law provision relating to banks' liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution, provided that such deposit account is not a cash collateral account.

Section 7.2.4 Financial Covenants . The Borrower will not permit to occur any of the events set forth below.

(a) Total Fixed Charge Coverage Ratio . The Borrower will not permit the Total Fixed Charge Coverage Ratio, as of the end of any Fiscal Quarter to be: (i) less than 1.20:1.00 through and including the second anniversary of the Closing Date and (ii) less than 1.30:1.00 at any time after the second anniversary of the Closing Date.

(b) Maximum Total Leverage Ratio . The Borrower will not permit the Total Leverage Ratio to be greater than 0.65 to 1.0.

(c) Net Worth . The Borrower will not permit, as of any date, Consolidated Tangible Net Worth to be less than an amount equal to $1,585,991,000 plus seventy-five percent (75%) of the proceeds to Guarantor of any new issuances of common Capital Stock.

(d) Construction Cost . The Borrower will not permit Construction Costs of the Consolidated Group, including, in the case of Unconsolidated Subsidiaries, the greater of (i) Borrower's Share of such Construction Cost and (ii) the amount (without duplication) of such Construction Cost for which the member of the Consolidated Group is liable, at any time to exceed fifteen percent (15%) of the aggregate Gross Asset Value in respect of all of the Properties, excluding however those Construction Costs to be expended in repairing the Hyatt New

Orleans Property and re-opening such Property to the general public following Hurricane Katrina.

(e) Minority Joint Ventures . The Borrower will not permit its Share of the aggregate Net Asset Value of Properties held in Unconsolidated Subsidiaries at any time to exceed 25% of the aggregate Gross Asset Value in respect of all of the Properties.

(f) Construction Costs and Minority Joint Ventures . The Borrower will not permit (i) the sum of the Construction Costs described in clause (g) above and the Borrower's Share of the aggregate Net Asset Value of Properties held in Unconsolidated Subsidiaries to exceed at any time (ii) thirty-five percent (35%) of the aggregate Gross Asset Value in respect of all of the Properties.

Section 7.2.5 Investments . The Borrower will not, and will not permit Guarantor or any of their respective Subsidiaries to, make, incur, assume or suffer to exist any Investment in any other Person except:

(a) Investments existing as of the Closing Date and identified in Item 7.2.5(a) of the Disclosure Schedule, provided that any additional Investments made with respect thereto shall be permitted only if permitted under the other provisions of this Section 7.2.5 ;

(b) Investments in Cash Equivalents;

(c) without duplication, Investments to the extent permitted as Indebtedness pursuant to Section 7.2.2 ;

(d) without duplication, Capital Expenditures;

(e) without duplication, Investments permitted by Section 7.2.6 ;

(f) acquisitions of Properties provided that the financial covenants in Section 7.2.4 are complied with;

(g) Investments constituting (i) accounts receivable arising, (ii) trade debt granted, or (iii) deposits made in connection with the purchase price of goods or services, in each case in the ordinary course of business;

(h) loans to Subsidiaries permitted pursuant to Section 7.1.11 ;

(i) loans and advances to employees of the Guarantor, the Borrower or any Subsidiary in the ordinary course of business, including in connection with a management incentive plan, not to exceed $5,000,000.00 in the aggregate;

(j) Investments in the Capital Stock of any Subsidiary; and

(k) Investments in Unconsolidated Subsidiaries unless the Borrower's Share of the Net Asset Value of Properties held in all Unconsolidated Subsidiaries is equal to or greater than 25% of the aggregate Gross Asset Value of all the Properties.

Section 7.2.6 Restricted Payments, etc .

(a) Borrower will not, nor will Borrower permit Guarantor or any of their respective Subsidiaries to, authorize, declare or pay any Dividends, except that:

(i) any Subsidiary of Borrower may authorize, declare and pay cash Dividends to Borrower or to any Subsidiary of Borrower; and

(ii) Guarantor, Borrower and any of their respective Subsidiaries may authorize, declare or pay Dividends from time to time (in addition to those permitted pursuant to the preceding clause (i)), so long as (A) no Event of Default exists at the time of the respective authorization, declaration or payment or would exist immediately after giving effect thereto, (B) calculations are made by Borrower establishing compliance with the financial covenants contained in Section 7.2.4 for the Test Period, on a pro forma basis (giving effect to the payment of the applicable Dividend).

(b) Without limitation of the foregoing, any Dividend that is a redemption, retirement, purchase or other acquisition or similar transaction, of any class of Borrower's or Guarantor's outstanding Capital Stock (each, a "Share Repurchase") shall be permitted only upon Borrower's certification to the Administrative Agent that the Total Leverage Ratio, on a pro forma basis after giving effect to such Share Repurchase would not be (i) during the first three years following the Closing Date, equal or exceed sixty percent (60%) and (ii) at any time from and after the third anniversary of the Closing Date, equal or exceed fifty-five percent (55%).

(c) No Dividend, including any Share Repurchase, or other payment may be paid or made under this Section 7.2.6 at any time that an Event of Default shall have occurred and be continuing or would result from any such Dividend or other payment; provided , however , that notwithstanding the restrictions of Section 7.2.6(a) or the first part of this sentence, for so long as Guarantor qualifies, or has taken all other actions necessary to qualify, as a "real estate investment trust" under the Code during any Fiscal Year of Guarantor, the Borrower may authorize, declare and pay quarterly cash Dividends (which may be based on estimates) to Guarantor when and to the extent necessary for Guarantor to distribute, and Guarantor may so distribute, cash Dividends to its shareholders generally in an aggregate amount not to exceed the minimum amount necessary for Guarantor to maintain its tax status as a real estate investment trust, unless the Borrower receives notice from the Administrative Agent of any monetary Event of Default or other material Event of Default.

Section 7.2.7 Consolidations and Mergers; Dispositions . The Borrower will not, and will not suffer or permit Guarantor or any of their respective Subsidiaries to, merge, consolidate, reorganize or otherwise combine or liquidate with or into, whether in one transaction or in a series of transactions to or in favor of, any Person except for (i) transactions that occur between wholly-owned Subsidiaries, (ii) transactions where the Borrower is the surviving entity and there is no change in the type of business conducted (i.e., from that of a hotel owner and operator) and no other Change of Control or Default results from such transaction, (iii) transactions otherwise permitted hereunder including in connection with a permitted Disposition, or (iv) transactions otherwise approved in advance by Administrative Agent or the Required Lenders. The Borrower will not, and will not permit Guarantor and any of their respective Subsidiaries to enter into or consummate any Disposition (other than any Disposition resulting from a casualty or condemnation, a Disposition by any Subsidiary to any wholly-owned Subsidiary of Borrower or to Borrower or otherwise approved in advance by the Required Lenders) if (A) an Event of Default then exists; or (B) the Disposition would result in (1) proceeds of less than eighty-five percent (85%) cash or Cash Equivalents or (2) Capital Stock in a Subsidiary or Joint Venture that would otherwise not be permitted under this Agreement; or (C) the Disposition is not on a bona fide arms-length basis; or (D) the Disposition would, on an actual or pro forma basis, cause an Event of Default or the breach of the financial covenants set forth in Section 7.2.4 .

Section 7.2.8 Limitation on Certain Restrictions on Subsidiaries . The Borrower will not, and will not permit Guarantor or any of their respective Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective, any encumbrance or restriction on the ability of any such Subsidiary to (x) pay Dividends or make any other distributions on its Capital Stock or any other interest or participation in its profits owned by the Borrower, Guarantor or any of their Subsidiaries, or pay any Indebtedness owed to the Borrower, Guarantor or any of their respective Subsidiaries, (y) make loans or advances to the Borrower, Guarantor or any of their respective Subsidiaries or (z) transfer any of its properties or assets to the Borrower, Guarantor or any of their respective Subsidiaries, except for such encumbrances or restrictions existing under or by reason of (i) applicable law, (ii) this Agreement and the other Loan Documents, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower, Guarantor or any of their respective Subsidiaries, (iv) customary provisions restricting assignment of any licensing agreement or other contract entered into by the Borrower, Guarantor or any of their respective Subsidiaries in the ordinary course of business, (v) restrictions on the transfer of any assets subject to or restrictions on the making of distributions imposed in connection with a Lien permitted by Sections 7.2.3(b), (c) or (d) , and (vi) restrictions on transfer imposed on Restricted Subsidiaries or with respect to Properties owned by Restricted Subsidiaries.

Section 7.2.9 Covenant Restrictions . No Recourse Indebtedness of the Borrower or Guarantor shall contain any covenant or restriction which is more restrictive than any covenant or restriction contained in this Agreement or any other Loan

Documents. Without limiting the rights and remedies of the Lenders with respect to any breach of the foregoing covenant, any such more restrictive covenant or restriction shall be deemed incorporated herein, *mutatis mutandis* , and applicable to the Facility.

Section 7.2.10 Organic Documents . Neither the Guarantor nor the Borrower shall amend, modify or otherwise change any of the terms or provisions in any of its respective Organic Documents as in effect on the Closing Date, except amendments to effect changes that could not be reasonably expected to have Material Adverse Effect; provided , however in no event shall the Organic Documents of Borrower be amended in any manner to reduce or otherwise diminish the management rights and powers of the managing member without the consent of the Administrative Agent.

ARTICLE VIII
EVENTS OF DEFAULT

Section 8.1 Listing of Events of Default . Each of the following events or occurrences described in this Section 8.1 shall constitute an "Event of Default ."

Section 8.1.1 Non-Payment of Obligations . The Borrower shall default in the payment or prepayment when due of

(a) any principal or interest of any Loan; or

(b) any fee described in Article III or of any other amount payable hereunder or under any other Loan Document and such default shall continue unremedied for a period of five (5) Business Days.

Section 8.1.2 Breach of Warranty . Any representation or warranty of the Borrower made or deemed to be made hereunder or in any other Loan Document executed by it or any other writing or certificate furnished by or on behalf of the Borrower to the Lender for the purposes of or in connection with this Agreement or any such other Loan Document (including any certificates delivered pursuant to Article V), is or shall be incorrect, false or misleading when made or deemed to have been made in any material respect.

Section 8.1.3 Non-Performance of Certain Covenants and Obligations . The Borrower shall (a) default in the due performance and observance of any of its obligations under Section 7.1.1 (f) , Section 7.1.2 (but only to the extent arising from the failure of Guarantor or Borrower to preserve and keep in full force and effect its existence), Section 7.1.16 , Section 7.1.22(a) , or Section 7.2 hereof, or (b) default in the due performance and observance of any of its obligations under Section 7.1.1(g) , (k) or (m) , Section 7.1.6 , Section 7.1.14 , or Section 7.1.22(c) hereof and such default shall continue unremedied for a period of ten (10) days.

Section 8.1.4 Non-Performance of Other Covenants and Obligations . The Borrower shall default in the due performance and observance of any other agreement contained herein or in any other Loan Document executed by it, and such default shall continue unremedied for a period of thirty (30) days after written notice

thereof shall have been given to the Borrower by the Administrative Agent or the Required Lenders; provided , however , that if such default is susceptible of cure but cannot reasonably be cured within such 30 day period and the Borrower shall have commenced to cure such default within such 30 day period and is working in good faith to cure the same, such 30 day period shall be extended for up to an additional thirty (30) days.

Section 8.1.5 Default on Other Indebtedness . A default shall occur in the payment when due (subject to any applicable grace period), whether by acceleration or otherwise, of any Indebtedness (other than Indebtedness described in Section 8.1.1) of the Consolidated Group having a principal amount, individually or in the aggregate, in excess of $25,000,000 (exclusive of non-recourse debt related to the Prague asset identified on Schedule V attached hereto), or a default shall occur in the performance or observance of any obligation or condition, or any other event shall occur or condition shall exist, in either case, with respect to such Indebtedness (subject to any applicable grace period) if the effect of such default or other event or condition is to accelerate the maturity of any such Indebtedness or cause such Indebtedness to become due and payable or to require such Indebtedness to be prepaid, redeemed, purchased or defeased, or to cause an offer to purchase or defease such Indebtedness to be required to be made, prior to its expressed maturity.

Section 8.1.6 Judgments . Any judgment, order, decree or arbitration award for the payment of money in excess of $5,000,000 (to the extent not fully covered by a solvent third party insurance company (less any applicable deductible) and as to which the insurer has not disputed in writing its responsibility to cover such judgment, order, decree or arbitration award) shall be rendered against Borrower, Guarantor or any of their respective Subsidiaries and the same shall not have been satisfied or vacated or discharged or stayed or bonded pending appeal within 60 days after the entry thereof.

Section 8.1.7 ERISA . An ERISA Event shall occur with respect to a Pension Plan or Multiemployer Plan.

Section 8.1.8 Change of Control . Any Change of Control shall occur.

Section 8.1.9 Bankruptcy, Insolvency, etc . The Borrower, Guarantor, or any of their respective Subsidiaries (except for Subsidiaries that are not Property Owners and which own in the aggregate less than $25,000,000 of assets) shall:

(a) become insolvent or generally fail to pay, or admit in writing its inability or unwillingness generally to pay, debts as they become due;

(b) apply for, consent to, or acquiesce in, the appointment of a trustee, receiver, sequestrator or other custodian for any substantial part of the property of any thereof, or make a general assignment for the benefit of creditors;

(c) in the absence of such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other

custodian for a substantial part of the property of any thereof, and such trustee, receiver, sequestrator or other custodian shall not be discharged within 60 days;

(d) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect thereof, and, if any such case or proceeding is not commenced by the Borrower or any such Subsidiary, such case or proceeding shall be consented to or acquiesced in by the Borrower or any Subsidiary, as the case may be, or shall result in the entry of an order for relief or shall remain for 60 days undismissed; or

(e) take any corporate action authorizing, or in furtherance of, any of the foregoing.

Section 8.1.10 Impairment of Security, etc . The Pledge Agreement, the Guarantor Pledge Agreement or the Guaranty, in whole or in material part, or any Lien granted under the Pledge Agreement or the Guarantor Pledge Agreement shall (except in accordance with its terms and except as a result of acts or omissions of the Administrative Agent or any Lender) terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of any party thereto; the Borrower, any Guarantor or any other party shall, directly or indirectly, deny or disaffirm in writing such effectiveness, validity, binding nature or enforceability; or, except as permitted under any Loan Document, any Lien securing any Obligation shall, in whole or in part, cease to be a perfected first priority Lien.

Section 8.1.11 Intentionally Omitted .

Section 8.1.12 Intentionally Omitted .

Section 8.1.13 Termination of Agreements . Any Material Agreement shall be terminated pursuant to the terms thereof and shall not be replaced with a new corresponding Material Agreement or other arrangement reasonably satisfactory to the Administrative Agent within sixty (60) days.

Section 8.1.14 REIT Status . Guarantor shall for any reason, whether or not within the control of the Borrower, cease to maintain its status as REIT.

Section 8.1.15 Intentionally Omitted .

Section 8.1.16 Illegal or Invalid . If this Agreement or any other Loan Document shall terminate or shall cease to be effective or shall cease to be a legally valid, binding and enforceable obligation of Borrower or Guarantor.

Section 8.2 Action if Bankruptcy . If any Event of Default described in clauses (a) through (e) of Section 8.1.9 shall occur with respect to the Borrower, the Commitments (if not theretofore terminated) shall automatically terminate and the outstanding principal amount of all outstanding Loans and all other Obligations

(including Reimbursement Obligations) shall automatically be and become immediately due and payable, without notice or demand and the Borrower shall automatically and immediately be obligated to deposit with the Administrative Agent cash collateral in an amount equal to all Letter of Credit Outstandings.

Section 8.3 Action if Other Event of Default . If any Event of Default (other than any Event of Default described in clauses (a) through (e) of Section 8.1.9 with respect to the Borrower) shall occur for any reason, whether voluntary or involuntary, and be continuing, the Administrative Agent, upon the direction or with the consent of the Required Lenders, shall by written notice to the Borrower declare all of the outstanding principal amount of the Loans and other Obligations (including Reimbursement Obligations) to be due and payable and/or the Revolving Loan Commitments (if not theretofore terminated) to be terminated, whereupon the full unpaid amount of the Loans and other Obligations shall be and become immediately due and payable, without further notice, demand or presentment, and the Commitments shall terminate and the Borrower shall automatically and immediately be obligated to deposit with the Administrative Agent cash collateral in an amount equal to all Letter of Credit Outstandings.

Section 8.4 Actions in Respect of Letters of Credit .

(a) If, at any time and from time to time, any Letter of Credit shall have been issued hereunder and an Event of Default shall have occurred and be continuing, then, upon the occurrence and during the continuation thereof, the Administrative Agent, after consultation with the Lenders, may, and upon the demand of the Required Lenders shall, whether in addition to the taking by the Administrative Agent of any of the actions described in this Article or otherwise, make a demand upon the Borrower to, and forthwith upon such demand (but in any event within ten (10) days after such demand) the Borrower shall, pay to the Administrative Agent, on behalf of the Lenders, in same day funds at the Administrative Agent's office designated in such demand, for deposit in a special cash collateral account (the "Letter of Credit Collateral Account") to be maintained in the name of the Administrative Agent (on behalf of the Lenders) and under its sole dominion and control at such place as shall be designated by the Administrative Agent, an amount equal to the amount of the Letter of Credit Outstandings (taking into account any amounts then on deposit in the Letter of Credit Collateral Account) under the Letters of Credit. Interest shall accrue on the Letter of Credit Collateral Account at a rate equal to the rate on overnight funds.

(b) The Borrower hereby pledges, assigns and grants to the Administrative Agent, as administrative agent for its benefit and the ratable benefit of the Lenders a lien on and a security interest in, the following collateral (the "Letter of Credit Collateral "):

(i) the Letter of Credit Collateral Account, all cash deposited therein and all certificates and instruments, if any, from time to time representing or evidencing the Letter of Credit Collateral Account;

(ii) all notes, certificates of deposit and other instruments from time to time hereafter delivered to or otherwise possessed by the Administrative Agent for or on behalf of the Borrower in substitution for or in respect of any or all of the then existing Letter of Credit Collateral;

(iii) all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the then existing Letter of Credit Collateral; and

(iv) to the extent not covered by the above clauses, all proceeds of any or all of the foregoing Letter of Credit Collateral.

The lien and security interest granted hereby secures the payment of all obligations of the Borrower now or hereafter existing hereunder and under any other Loan Document.

(c) The Borrower hereby authorizes the Administrative Agent for the ratable benefit of the Lenders to apply, from time to time after funds are deposited in the Letter of Credit Collateral Account, funds then held in the Letter of Credit Collateral Account to the payment of any amounts, in such order as the Administrative Agent may elect, as shall have become due and payable by the Borrower to the Lenders in respect of the Letters of Credit.

(d) Neither the Borrower nor any Person claiming or acting on behalf of or through the Borrower shall have any right to withdraw any of the funds held in the Letter of Credit Collateral Account, except as provided in Section 8.4(h) or Section 2.6.7 hereof.

(e) The Borrower agrees that it will not (i) sell or otherwise dispose of any interest in the Letter of Credit Collateral or (ii) create or permit to exist any lien, security interest or other charge or encumbrance upon or with respect to any of the Letter of Credit Collateral, except for the security interest created by this Section 8.4 .

(f) If any Event of Default shall have occurred and be continuing:

(i) The Administrative Agent may, in its sole discretion, without notice to the Borrower except as required by law and at any time from time to time, charge, set off or otherwise apply all or any part of any unpaid Obligations then due and payable, in such order as the Administrative Agent shall elect against the Letter of Credit Collateral Account or any part thereof. The rights of the Administrative Agent under this Section 8.4 are in addition to any rights and remedies which any Lender may have.

(ii) The Administrative Agent may also exercise, in its sole discretion, in respect of the Letter of Credit Collateral Account, in addition to the other rights and remedies provided herein or otherwise available to

it, all the rights and remedies of a secured party upon default under the Uniform Commercial Code in effect in the State of New York at that time.

(g) The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Letter of Credit Collateral if the Letter of Credit Collateral is accorded treatment substantially equal to that which the Administrative Agent accords its own property, it being understood that, assuming such treatment, the Administrative Agent shall not have any responsibility or liability with respect thereto.

(h) At such time as all Events of Default have been cured or waived in writing, all amounts remaining in the Letter of Credit Collateral Account shall be promptly returned to the Borrower. Absent such cure or written waiver, any surplus of the funds held in the Letter of Credit Collateral Account and remaining after payment in full of all of the Obligations (including without limitation all Letter of Credit Outstandings) hereunder and under any other Loan Document after the termination or expiration of all of the Commitments shall be paid to the Borrower or to whomsoever may be lawfully entitled to receive such surplus.

ARTICLE IX
THE ADMINISTRATIVE AGENT

Section 9.1 Appointment .

(a) The Lenders hereby irrevocably designate and appoint DBTCA as Administrative Agent (for purposes of this Article IX and Sections 10.3 and 10.12 , the term "Administrative Agent" also shall include Deutsche Bank Securities Inc., an affiliate of DBTCA, and Citigroup Global Markets, Inc. in their capacities as Co-Lead Arrangers and Joint Book Running Managers in connection with this Agreement and the financings contemplated hereby) to act as specified herein and in the other Loan Documents. Each Lender hereby irrevocably authorizes, and each holder of any Note by the acceptance of such Note shall be deemed irrevocably to authorize, the Administrative Agent to take such action on its behalf under the provisions of this Agreement, the other Loan Documents and any other instruments and agreements referred to herein or therein and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of the Administrative Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto. The Administrative Agent may perform any of its respective duties hereunder or under the other Loan Documents by or through its officers, directors, agents, employees or affiliates.

(b) Each Lender hereby irrevocably appoints the Issuer to act on behalf of such Lenders with respect to any Letters of Credit issued by the Issuer and the documents associated therewith until such time and except for so long as the Administrative Agent may agree at the request of the Required Lenders to act for such Issuer with respect thereto; provided , however , that the Issuer shall have

all of the benefits and immunities (i) provided to the Administrative Agent in this Article IX with respect to any acts taken or omissions suffered by the Issuer in connection with Letters of Credit issued by it or proposed to be issued by it pertaining to the Letters of Credit as fully as if the term "Administrative Agent," as used in this Article IX, included the Issuer with respect to such acts or omissions and (ii) as additionally provided in this Agreement with respect to the Issuer.

Section 9.2 Hedging Counterparty Intercreditor Agreements . At the request of Borrower, the Administrative Agent on behalf of the Lenders will enter into a Hedging Counterparty Intercreditor Agreement in order to permit the sharing of Collateral on a *pari pasu* basis among the Lenders and the Pari-Pasu Hedging Counterparties, provided that such Hedging Counterparty Intercreditor Agreement:

(i) limits the maximum aggregate pro rata share in Collateral to which the Pari-Pasu Hedging Counterparties could be entitled to Ten Million Dollars ($10,000,000) in principal amount, including with respect to any interests, liabilities or Net Termination Values under the Pari-Pasu Hedging Agreements, whether or not actually in excess of Ten Million Dollars ($10,000,000);

(ii) requires the Pari-Pasu Hedging Counterparties to in all events standstill and forebear with respect to any actions relating to the Collateral;

(iii) provides for reasonable acknowledgment by each Pari-Pasu Hedging Counterparty that it has no rights or obligations with respect to the Facility or Collateral, other than the sharing arrangements expressly provided in the intercreditor agreement;

(iv) requires as a condition to the sharing of such Collateral that such Pari-Pasu Hedging Counterparty bear its pro rata share of all expenses incurred by the Administrative Agent and Secured Creditors in connection with the ownership, operation, maintenance, marketing and sale of the Collateral;

(v) relates to a Hedging Agreement that has been pledged by Borrower (and/or Guarantor, as applicable), pursuant to documents in form and substance reasonably acceptable to the Administrative Agent, as additional Collateral for the Facility; and

(vi) is otherwise on terms and conditions and in form and substance, including with respect to indemnification of the Administrative Agent and the Lenders, reasonably acceptable to the Administrative Agent and the Required Lenders.

Section 9.3 Nature of Duties . The Administrative Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents. Neither the Administrative Agent nor any of its officers, directors, agents, employees or affiliates shall be liable to any Person for any action taken or omitted by it or them hereunder or under any other Loan Document or in connection herewith or therewith, unless caused by its or their gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable

decision). The duties of the Administrative Agent shall be mechanical and administrative in nature; the Administrative Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender or the holder of any Note; and nothing in this Agreement or in any other Loan Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein.

Section 9.4 Lack of Reliance on the Administrative Agent . Independently and without reliance upon the Administrative Agent, each Lender and the holder of each Note, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of the Borrower, Guarantor and their respective Subsidiaries in connection with the making and the continuance of the Credit Extensions and the taking or not taking of any action in connection herewith and (ii) its own appraisal of the creditworthiness of the Borrower, Guarantor and their respective Subsidiaries and, except as expressly provided in this Agreement, the Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender or the holder of any Note with any credit or other information with respect thereto, whether coming into its possession before the making of any Credit Extension or at any time or times thereafter. The Administrative Agent shall not be responsible to any Lender or the holder of any Note for any recitals, statements, information, representations or warranties herein, in any other Loan Document or in any document, certificate or other writing delivered in connection herewith or therewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectibility, priority or sufficiency of this Agreement or any other Loan Document or the financial condition of the Borrower, Guarantor or any of their respective Subsidiaries or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Loan Document, or the financial condition of the Borrower, Guarantor or any of their respective Subsidiaries or the existence or possible existence of any Default or Event of Default.

Section 9.5 Certain Rights of the Administrative Agent . If the Administrative Agent requests instructions from the Required Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, the Administrative Agent shall be entitled to refrain from such act or taking such action unless and until the Administrative Agent shall have received written instructions from the Required Lenders; and the Administrative Agent shall not incur liability to any Lender by reason of so refraining. Without limiting the foregoing, neither any Lender nor the holder of any Note shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of the Required Lenders, or such greater number of Lenders as may be expressly required under Section 10.1 .

Section 9.6 Reliance . The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice,

statement, certificate, telex, teletype or telecopier message, cablegram, radiogram, order or other document or telephone message signed, sent or made by any Person that the Administrative Agent believed to be the proper Person, and, with respect to all legal matters pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of counsel selected by the Administrative Agent.

Section 9.7 Indemnification . To the extent the Administrative Agent (or any affiliate thereof) is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Administrative Agent (and any affiliate thereof) in proportion to their respective "percentage" as used in determining the Required Lenders for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent (or any affiliate thereof) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's (or such affiliate's) gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

Section 9.8 The Administrative Agent in its Individual Capacity . With respect to its obligation to make Loans, or issue or participate in Letters of Credit, under this Agreement, the Administrative Agent shall have the rights and powers specified herein for a "Lender" and may exercise the same rights and powers as though it were not performing the duties specified herein; and the terms "Lender," "Required Lenders," or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent in its respective individual capacities. The Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any member of the Consolidated Group or any Affiliate of any member of the Consolidated Group (or any Person engaged in a similar business with any member of the Consolidated Group or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any member of the Consolidated Group or any Affiliate of any member of the Consolidated Group for services in connection with this Agreement and otherwise without having to account for the same to the Lenders.

Section 9.9 Holders . The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes hereof unless and until a written notice of the assignment, transfer or endorsement thereof, as the case may be, shall have been filed with the Administrative Agent. Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is the holder of any Note shall be conclusive and binding on any subsequent holder, transferee, assignee or endorsee, as the case may be, of such Note or of any Note or Notes issued in exchange therefor.

Section 9.10 Resignation by the Administrative Agent .

(a) The Administrative Agent may resign from the performance of all its respective functions and duties hereunder and/or under the other Loan Documents at any time by giving thirty (30) days prior written notice to the Lenders and, unless an Event of Default then exists with respect to the Borrower, the Borrower. Any such resignation by the Administrative Agent hereunder shall also constitute its resignation as the Issuer, in which case the resigning Administrative Agent (x) shall not be required to issue any further Letters of Credit and (y) shall maintain all of its rights as the Issuer with respect to any Letters of Credit issued by it prior to the date of such resignation. Such resignation shall take effect upon the appointment of a successor Administrative Agent pursuant to clauses (b) and (c) below in this Section 9.10 or as otherwise provided below in this Section 9.10 .

(b) Upon any such notice of resignation by the Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent and Issuer hereunder and who shall be either an Affiliate of the Administrative Agent or a commercial bank or trust company reasonably acceptable to the Borrower, which acceptance shall not be unreasonably withheld or delayed (provided that the Borrower's approval or acceptance shall not be required if an Event of Default then exists).

(c) If a successor Administrative Agent shall not have been so appointed within such 30 day period, the Administrative Agent, with the consent of the Borrower (which consent shall not be unreasonably withheld or delayed, provided that the Borrower's consent shall not be required if an Event of Default then exists), shall then appoint a successor Administrative Agent who shall serve as Administrative Agent and Issuer hereunder and until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above.

(d) If no successor Administrative Agent has been appointed pursuant to clause (b) or (c) above in this Section 9.10 by the 35th Business Day after the date such notice of resignation was given by the Administrative Agent, the Administrative Agent's resignation shall become effective and the Required Lenders shall thereafter perform all the duties of the Administrative Agent hereunder and/or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above.

(e) Upon a resignation of the Administrative Agent pursuant to this Section 9.10 , the Administrative Agent shall remain indemnified to the extent provided in this Agreement and the other Loan Documents and the provisions of this Article IX shall continue in effect for the benefit of the Administrative Agent for all of its actions and inactions while serving as the Administrative Agent.

ARTICLE X
MISCELLANEOUS PROVISIONS

Section 10.1 Waivers, Amendments, etc .

(a) Neither this Agreement nor any other Loan Document nor any terms hereof or thereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the respective parties thereto and the Required Lenders, provided that no such change, waiver, discharge or termination shall, without the consent of each Lender (other than a Defaulting Lender) with Obligations being directly affected thereby, (i) extend the final scheduled maturity of any Revolving Loan or Note or extend the Stated Expiry Date of any Letter of Credit beyond the Maturity Date, or reduce the rate or extend the time of payment of interest (except in connection with a waiver of applicability of any post-default increase in interest rates) or fees thereon or reduce the principal amount thereof (except to the extent repaid in cash) or extend the time for payment thereof (it being understood that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in any rate of interest or fees for purposes of this clause (i), so long as the primary purpose of the respective amendments or modifications to the financial definitions was not to reduce the interest or fees payable hereunder), (ii) amend, modify or waive any provision of this Section 10.1 , (iii) reduce the percentage specified in the definition of Required Lenders, (iv) consent to the assignment or transfer by Borrower of any of its rights and obligations under this Agreement, (v) release Guarantor from the Guaranty, or (vi) release any Subsidiary Guarantor from the Subsidiary Guaranty or release all or any material portion of the Collateral, except, in each case, as provided in Section 7.1.9 or in connection with a Disposition or refinancing that is otherwise permitted pursuant to the terms of this Agreement; provided further , that, in addition to the consent of the Required Lenders required above, no such change, waiver, discharge or termination shall (A) increase the Revolving Loan Commitments of any Lender over the amount thereof then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the Revolving Loan Commitment Amount shall not constitute an increase of the Revolving Loan Commitment of any Lender, and that an increase in the available portion of any Revolving Loan Commitment of any Lender shall not constitute an increase of the Revolving Loan Commitment of such Lender), or (B) without the consent of the Issuer, amend, modify or waive any provision of Sections 2.1.2, 2.1.4 , or 2.6, or alter its rights or obligations with respect to Letters of Credit.

(b) If, in connection with any proposed change, waiver, discharge or termination to any of the provisions of this Agreement as contemplated by clauses (i) through (vi), inclusive, of the first proviso to Section 10.1(a) , the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then the Borrower shall have the right, so long as all non-consenting Lenders whose individual consent is

required are treated as described below, to replace each such non-consenting Lender or Lenders with one or more Replacement Lenders pursuant to Section 4.4 so long as at the time of such replacement, each such Replacement Lender consents to the proposed change, waiver, discharge or termination; provided further , that in any event the Borrower shall not have the right to replace a Lender solely as a result of the exercise of such Lender's rights (and the withholding of any required consent by such Lender) pursuant to the second proviso to Section 10.1(a) .

(c) No failure or delay on the part of the Administrative Agent, the Issuer or any Lender in exercising any power, privilege or right under this Agreement or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, privilege or right preclude any other or further exercise thereof or the exercise of any other power, privilege or right. No notice to or demand on the Borrower in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by the Administrative Agent, the Issuer or any Lender under this Agreement or any other Loan Document shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder. The rights, powers and remedies herein or in any other Loan Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Administrative Agent, the Issuer or any Lender would otherwise have.

Section 10.2 Notices . All notices and other communications provided to any party hereto under this Agreement or under any other Loan Document shall be in writing or by facsimile and addressed, delivered or transmitted to such party at its address or facsimile number set forth below its signature hereto, in the case of the Borrower or the Administrative Agent, or set forth below its name in Annex I hereto or in a Lender Assignment Agreement, in the case of any Lender (including in its separate capacity as the Issuer), or at such other address or facsimile number as may be designated by such party in a notice to the other parties. Any notice, if mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when the confirmation of transmission thereof is received by the transmitter.

Section 10.3 Payment of Costs and Expenses; Indemnification . The Borrower hereby agrees to: (i) whether or not the transactions herein contemplated are consummated, pay all reasonable out-of-pocket costs and expenses of the Administrative Agent (including, without limitation, the reasonable fees and disbursements of Skadden, Arps, Slate, Meagher & Flom LLP and the Administrative Agent's other counsel and consultants) in connection with the preparation, execution and delivery of this Agreement and the other Loan Documents and the documents and instruments referred to herein and therein and any amendment, waiver or consent relating hereto or thereto, of the Administrative Agent in connection with its syndication efforts and administrative functions with respect to this Agreement and of the Administrative Agent and, after the

occurrence of an Event of Default, each of the Lenders and the Issuer in connection with the enforcement of this Agreement and the other Loan Documents and the documents and instruments referred to herein and therein or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to any insolvency or bankruptcy proceedings (including, in each case without limitation, the reasonable fees and disbursements of counsel and consultants for the Administrative Agent and, after the occurrence of an Event of Default, counsel for each of the Lenders and the Issuer); (ii) pay and hold the Administrative Agent, each of the Lenders and the Issuer harmless from and against any and all present and future stamp, excise and other similar documentary taxes with respect to the foregoing matters and save the Administrative Agent, each of the Lenders and the Issuer harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to the Administrative Agent, each of the Lenders and the Issuer) to pay such taxes; and (iii) indemnify the Administrative Agent, each Lender and the Issuer, and each of their respective officers, directors, employees, representatives, agents, affiliates, trustees and investment advisors from and hold each of them harmless against any and all liabilities, obligations (including removal or remedial actions), losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) incurred by, imposed on or assessed against any of them as a result of, or arising out of, or in any way related to, or by reason of, (a) any investigation, litigation or other proceeding (whether or not the Administrative Agent, any Lender or the Issuer is a party thereto and whether or not such investigation, litigation or other proceeding is brought by or on behalf of Borrower) related to the entering into and/or performance of this Agreement or any other Loan Document or the use of any Letter of Credit or the proceeds of any Loans hereunder or the consummation of the Transaction or any other transactions contemplated herein or in any other Loan Document or the exercise of any of their rights or remedies provided herein or in the other Loan Documents, or (b) the actual or alleged presence of Hazardous Materials in the air, surface water or groundwater or on the surface or subsurface of any real property at any time owned, leased or operated by the Borrower or any of its Subsidiaries, the generation, storage, transportation, handling or disposal of Hazardous Materials by the Borrower or any of its Subsidiaries at any location, whether or not owned, leased or operated by the Borrower or any of its Subsidiaries, the non-compliance by the Borrower or any of its Subsidiaries with any Environmental Law (including applicable permits thereunder) applicable to any real property, or any Environmental Claim asserted against the Borrower, any of its Subsidiaries or any real property at any time owned, leased or operated by the Borrower or any of its Subsidiaries, including, in each case, without limitation, the reasonable fees and disbursements of counsel and other consultants incurred in connection with any such investigation, litigation or other proceeding (but excluding any portion of any such losses, liabilities, claims, damages or expenses to the extent incurred by reason of the gross negligence or willful misconduct of the Person to be indemnified (as determined by a court of competent jurisdiction in a final and non-appealable decision)). To the extent that the undertaking to indemnify, pay or hold harmless the Administrative Agent, any Lenders or the Issuer set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Borrower shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities which is permissible under applicable law.

Section 10.4 Survival and Recourse Nature of Obligations . The obligations of the Borrower under Sections 4.3 , 4.4 , 4.5 , 4.6 and 10.3 , and the obligations of the Lenders under Section 9.7 and Section 10.9.2 , shall in each case survive any assignment from one Lender to another (in the case of Section 10.3 or Section 10.9.2) and any termination of this Agreement, the payment in full of all the Obligations and the termination of all the Revolving Loan Commitments. In addition, all provisions herein and in any other Loan Document (other than Section 3.3.3 hereof) relating to outstanding Letters of Credit and Excess Cash Collateral shall survive termination of this Agreement until all outstanding Letters of Credit have been drawn in full or terminated and all Excess Cash Collateral has been returned to the Borrower if required pursuant to Section 2.6.7 or Section 8.4 . The representations and warranties made by Borrower, Guarantor, and each Subsidiary Guarantor, in this Agreement and in each other Loan Document shall survive the execution and delivery of this Agreement and each such other Loan Document. Borrower, pursuant to this Agreement, and Guarantor and each Subsidiary Guarantor, pursuant to the Guaranty and the Subsidiary Guaranty, as applicable, agrees that they shall be personally liable (whether by suit, deficiency judgment or otherwise) and there shall be full recourse to the Borrower, Guarantor and each Subsidiary Guarantor, for the full payment and performance of the Obligations; provided that the amount of liability of any Subsidiary Guarantor shall not exceed the fair market value of its assets less any liabilities (it being the intention of the parties that no Subsidiary Guarantor shall become insolvent as a result of its obligations hereunder and under the other Loan Documents). It is understood and agreed that each of Borrower, Guarantor and each Subsidiary Guarantor shall remain liable with respect to their Obligations to the extent of any deficiency between the amount of the proceeds of the Collateral pledged to Lender under the Pledge Agreement, the Guarantor Pledge Agreement and the aggregate amount of such Obligations.

Section 10.5 Headings . The various headings of this Agreement and of each other Loan Document are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or such other Loan Document or any provisions hereof or thereof.

Section 10.6 Execution in Counterparts, Effectiveness, etc . This Agreement may be executed by the parties hereto in several counterparts, each of which shall be an original and all of which shall constitute together but one and the same agreement. This Agreement shall become effective when counterparts hereof executed on behalf of the Borrower, the Administrative Agent and each of the Lenders (or notice thereof satisfactory to the Administrative Agent) shall have been received by the Administrative Agent and notice thereof shall have been given by the Administrative Agent to the Borrower and each Lender.

Section 10.7 Governing Law; Entire Agreement . THIS AGREEMENT (INCLUDING PROVISIONS WITH RESPECT TO INTEREST, LOAN CHARGES AND COMMITMENT FEES) SHALL EACH BE DEEMED TO BE A CONTRACT

MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK). This Agreement, the Notes and the other Loan Documents constitute the entire understanding among the parties hereto with respect to the subject matter hereof and thereof and supersede any prior agreements, written or oral, with respect thereto.

Section 10.8 Successors and Assigns . This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided , however , that:

(a) the Borrower may not assign or transfer its rights or obligations hereunder or under any of the other Loan Documents without the prior written consent of the Administrative Agent and all of the Lenders; and

(b) the rights of sale, assignment and transfer of the Lenders are subject to Section 10.9 .

Section 10.9 Sale and Transfer of Loans and Notes; Participations in Loans and Notes . Lender may assign, or sell participations in, its Loans, Letter of Credit Outstandings and Commitments to one or more other Persons in accordance with this Section 10.9 .

Section 10.9.1 Assignments .

(a) Upon prior notice to the Borrower, and the Administrative Agent, any Lender may at any time assign and delegate to one or more Eligible Assignees with the consent of the Borrower, the Administrative Agent and the Issuer (which consents of the Borrower and the Issuer shall not be required (x) if the Eligible Assignee is a Lender or an Affiliate of a Lender, or (y) in the case of the Borrower, if a Specified Default or an Event of Default exists, and each of which consents shall not be unreasonably withheld or delayed if such consents are in fact required), all or any fraction of such Lender's total Loans, Letter of Credit Outstandings and Commitments; provided , however , that (x) the assigning Lender must assign a pro rata portion of each of its Revolving Loan Commitments, Revolving Loans and interest in Letter of Credit Outstandings and (y) no Lender may assign a Commitment of less than $5,000,000 or, unless such Lender has assigned the entirety of its Commitment, retain a Commitment of less than $5,000,000. The Borrower and the Administrative Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned and delegated to an Eligible Assignee until:

(i) notice of such assignment and delegation, together with (A) payment instructions, (B) the Internal Revenue Service Forms or other statements contemplated or required to be delivered pursuant to Section 4.6 , if applicable, (C) addresses and related information with respect to such Eligible Assignee, shall have been delivered to the Borrower and the

Administrative Agent by such Lender and such Eligible Assignee and (D) the Administrative Agent has made the appropriate entries in the Register;

(ii) such Eligible Assignee shall have executed and delivered to the Borrower and the Administrative Agent a Lender Assignment Agreement, accepted by the Administrative Agent; and

(iii) the processing fees described below shall have been paid.

From and after the date that the Administrative Agent accepts such Lender Assignment Agreement, (x) the Eligible Assignee thereunder shall be deemed automatically to have become a party hereto and to the extent that rights and obligations hereunder have been assigned and delegated to such Eligible Assignee in connection with the Lender Assignment Agreement, shall have the rights and obligations of assignor Lender hereunder and under the other Loan Documents, and (y) the assignor Lender, to the extent that rights and obligations hereunder have been assigned and delegated by it in connection with the Lender Assignment Agreement, shall be released from its obligations hereunder and under the other Loan Documents. Accrued interest on that part of the Loans assigned, if any, and accrued fees, shall be paid as provided in the Lender Assignment Agreement. Accrued interest and accrued fees shall be paid at the same time or times provided in this Agreement. Unless such Eligible Assignee is an Affiliate of the assignor Lender, such assignor Lender or such Eligible Assignee must also pay a processing fee in the amount of $3,500 to the Administrative Agent upon delivery of any Lender Assignment Agreement. Any attempted assignment and delegation not made in accordance with this Section 10.9.1 shall be null and void.

(b) Nothing in this Agreement shall prevent or prohibit Lender from pledging its Loans and Notes hereunder to a Federal Reserve Bank in support of borrowings made by Lender from such Federal Reserve Bank and, with prior notification to the Administrative Agent (but without the consent of the Administrative Agent or the Borrower), any Lender which is a fund may pledge all or any portion of its Loans and Notes to its trustee or to a collateral agent providing credit or credit support to Lender in support of its obligations to such trustee, such collateral agent or a holder of such obligations, as the case may be. No pledge pursuant to this clause (b) shall release the transferor Lender from any of its obligations hereunder.

(c) The Administrative Agent, on behalf of the Borrower, shall maintain at the address of the Administrative Agent specified below its signature hereto (or at such other address as may be designated by the Administrative Agent from time to time in accordance with Section 10.2) a copy of each Lender Assignment Agreement delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitment of and principal amount of the Loans owing to each Lender from time to time. The entries in the Register shall be conclusive and binding, in the absence of clearly demonstrable error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register as the owner of a

Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement and the other Loan Documents, notwithstanding any notice to the contrary. Any assignment of any Loan or other obligation hereunder shall be effective only upon appropriate entries with respect thereto being made in the Register. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

Section 10.9.2 Participations . Any Lender may at any time sell to one or more commercial lenders, financial institutions or other Persons (each of such commercial lenders, financial institutions or other Persons being herein called a " Participant") participating interests in any of the Loans, Letter of Credit Outstandings, Commitments, or other interests of such Lender hereunder (including loan derivatives and similar swap arrangements based on such Lender's interests hereunder); provided , however , that

(a) no participation contemplated in this Section 10.9.2 shall relieve Lender from its Commitments or its other obligations hereunder or under any other Loan Document;

(b) Lender shall remain solely responsible for the performance of its Commitments and such other obligations;

(c) the Borrower and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and under each of the other Loan Documents;

(d) no Participant, unless such Participant is an Affiliate of Lender or is itself a Lender shall be entitled to require such Lender to take or refrain from taking any action hereunder or under any other Loan Document, except that such Lender may agree with any Participant that such Lender will not, without such Participant's consent, to the extent requiring the consent of such Lender, take any action of the type described in clauses (i) through (vi) of the first proviso of Section 10.1 ; and

(e) the Borrower shall not be required to pay any amount under this Agreement that is greater than the amount which it would have been required to pay had no participating interest been sold.

In the case of any such participation, the Participant shall not have any rights under this Agreement or any of the other Loan Documents (the Participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the Participant relating thereto) and all amounts payable by the Borrower hereunder shall be determined and paid as if such Lender had not sold such participation. Any Lender that sells a participating interest in any Loan, Revolving Loan Commitment or other interest to a Participant under this Section 10.9.2 , shall indemnify and hold harmless the Borrower and the Administrative Agent from and against any taxes, penalties, interest or other costs or losses (including reasonable attorneys' fees and

expenses) incurred or payable by the Borrower or the Administrative Agent as a result of the failure of the Borrower or the Administrative Agent to comply with its obligations to deduct or withhold any Taxes from any payments made pursuant to this Agreement to such Lender or the Administrative Agent, as the case may be, which Taxes would not have been incurred or payable if such Participant had delivered a valid Form W-9 to the Borrower or if such Participant had been a Non-U.S. Lender that was entitled to deliver to the Borrower, the Administrative Agent or such Lender, and did in fact so deliver, a duly completed and valid Form W-8ECI or W-8BEN (with respect to a complete exemption under an income tax treaty (or applicable successor form) entitling such Participant to receive payments under this Agreement without deduction or withholding of any United States federal taxes.

Section 10.10 Intentionally Omitted .

Section 10.11 Confidentiality . Administrative Agent, Issuer and each Lender agrees to maintain, in accordance with its customary procedures for handling confidential information, the confidentiality of all information provided to it by or on behalf of the Borrower, the Guarantor, any Subsidiary or any Unconsolidated Subsidiary or by the Administrative Agent on the Borrower's, the Guarantor's or such Subsidiary's or Unconsolidated Subsidiary's behalf, under this Agreement or any other Loan Document ("Confidential Information"), and neither it nor any of its Affiliates shall use any such information other than in connection with or in enforcement of this Agreement and the other Loan Documents or in connection with other business now or hereafter existing or contemplated with the Borrower or any Subsidiary or Unconsolidated Subsidiary, except to the extent such information (i) was or becomes generally available to the public other than as a result of disclosure by the Administrative Agent, Issuer or the Lender or (ii) was or becomes available on a non-confidential basis from a source other than the Borrower, provided that such source is not bound by a confidentiality agreement with the Borrower, Guarantor or any Subsidiary or Unconsolidated Subsidiary known to the Lender; provided , however , that Lender may disclose such information (A) at the request or pursuant to any requirement of any Governmental Authority to which the Lender is subject or in connection with an examination of such Lender by any such Governmental Authority; (B) pursuant to subpoena or other court process; (C) when required to do so in accordance with the provisions of any applicable Requirement of Law; (D) to the extent reasonably required in connection with any litigation or proceeding to which the Administrative Agent, any Lender or their respective Affiliates may be party; (E) to the extent reasonably required in connection with the exercise of any remedy hereunder or under any other Loan Document; (F) to such Lender's independent auditors and other professional advisors who have been advised that such information is confidential pursuant to this Section 10.11 ; (G) to any Participant or Eligible Assignee in respect of such Lender's rights and obligations hereunder, actual or potential, provided that such Person shall have agreed in writing to keep such information confidential to the same extent required of the Lenders hereunder with the Borrower being a third party beneficiary of such agreement; (H) to its Affiliates who have been advised that such information is confidential pursuant to this Section 10.11 ; or (I) to any direct or indirect contractual counterparty to swap agreements or such contractual counterparty's professional advisor, provided that such Person shall have agreed in writing to keep such

information confidential to the same extent required of the Lenders hereunder with the Borrower being a third party beneficiary of such agreement. Unless prohibited by applicable law or court order, each Lender and the Administrative Agent shall notify the Borrower of any request by any Governmental Authority (other than any request in connection with an examination of the financial condition of such Lender) for disclosure of Confidential Information prior to such disclosure; provided further , that in no event shall the Administrative Agent or any Lender be obligated to return any materials furnished by the Borrower, Guarantor or any of their respective Subsidiaries. This Section shall supersede any confidentiality letter or agreement with respect to the Borrower, the Guarantor or the Transaction entered into prior to the date hereof.

Section 10.12 Tax Advice . None of the Lenders nor the Administrative Agent provides accounting, tax or legal advice. Notwithstanding anything provided herein, and any express or implied claims of exclusivity or proprietary rights, the Borrower each Lender and the Administrative Agent hereby agree and acknowledge that the Borrower each Lender and Administrative Agent (and each of their employees, representatives or other agents) are authorized to disclose to any and all Persons, beginning immediately upon commencement of their discussions and without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement, and all materials of any kind (including opinions or other tax analyses) that are provided by the Borrower, any Lender or the Administrative Agent to the other relating to such tax treatment and tax structure except to the extent that such disclosure is subject to restrictions reasonably necessary to comply with securities laws. In this regard, the Borrower, each Lender and the Administrative Agent acknowledge and agree that disclosure of the tax treatment and tax structure of the transactions contemplated by this Agreement has not been and is not limited in any way by an express or implied understanding or agreement, whether oral or written, and whether or not such understanding or agreement is legally binding, except to the extent that such disclosure is subject to restrictions reasonably necessary to comply with securities laws. For purposes of this authorization, “tax treatment” means the purported or claimed U.S. Federal income tax treatment of the transaction, and “tax structure” means any fact that may be relevant to understanding the purported or claimed U.S. Federal income tax treatment of the transaction. This Section 10.12 is intended to reflect the understanding of the Borrower, any Lender or the Administrative Agent that no transaction contemplated by this Agreement has been offered under “Conditions of Confidentiality” as that phrase is used in Treasury Regulation 9 § 1.6011-4(b)(3)(i) and 301.6111-2(c)(i), and shall be interpreted in a manner consistent therewith. Nothing herein is intended to imply that any of the Borrower, each Lender and the Administrative Agent has made or provided to, or for the benefit of, the other any oral or written statement as to any potential tax consequences that are related to, or may result from, the transactions contemplated by this Agreement.

Section 10.13 Forum Selection and Consent to Jurisdiction . ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE

AGENT, THE LENDERS, THE ISSUER OR THE BORROWER IN CONNECTION HEREWITH OR THEREWITH SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE COUNTY OF NEW YORK OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED , HOWEVER , THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE ADMINISTRATIVE AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE PERSONAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE COUNTY OF NEW YORK OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION, SUBJECT TO THE BORROWER'S RIGHT TO CONTEST SUCH JUDGMENT BY MOTION OR APPEAL ON ANY GROUNDS NOT EXPRESSLY WAIVED IN THIS SECTION 10.13 . THE BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK AT THE ADDRESS FOR NOTICES SPECIFIED IN SECTION 10.2 . EACH OF THE BORROWER, ADMINISTRATIVE AGENT, LENDER AND ISSUER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT THE BORROWER HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE BORROWER HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

Section 10.14 Waiver of Jury Trial . **THE ADMINISTRATIVE AGENT, THE LENDERS, THE ISSUER AND THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, THE**

LENDERS, THE ISSUER OR THE BORROWER IN CONNECTION HEREWITH OR THEREWITH. THE BORROWER ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS, THE LENDERS, AND THE ISSUER ENTERING INTO THIS AGREEMENT AND EACH SUCH OTHER LOAN DOCUMENT.

* * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

STRATEGIC HOTEL FUNDING, L.L.C.
a Delaware limited liability company

By: /s/ Ryan M. Bowie
Name: Ryan M. Bowie
Title: Vice President and Treasurer

Address: 77 West Wacker Drive
Suite 4600
Chicago, Illinois 60601

Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
ATTN: General counsel

with a copy to:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601
Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
ATTN: Treasurer

Signature Page to Strategic Hotel Funding, L.L.C.
Credit Agreement

DEUTSCHE BANK TRUST COMPANY
AMERICAS, a New York banking corporation

By: /s/ George R. Reynolds
Name: George R. Reynolds
Title: Director

By: /s/ Linda Wang
Name: Linda Wang
Title: Director

Address: 60 Wall Street
New York, New York 10005

Facsimile No.: (646) 324-7091
Telephone No.:(212) 250-3352
Attention: James Rolison

With a copy to:

Deutsche Bank Securities Inc.
Crescent Court
Suite 550
Dallas, Texas 75201
Facsimile No.: (214) 740-7910
Telephone No.: (214) 740-7900
Attention: Linda Davis

Signature Page to Strategic Hotel Funding, L.L.C.
Credit Agreement

CITICORP NORTH AMERICA, INC.

By /s/ Niraj Shah
Name: Niraj Shah
Title: Vice President

Citicorp North America, Inc.
2 Penns Way, 1st Floor
New Castle DE 19720
Attention: Jessica Zimmers, Loan Specialist
Telephone: 302-894-6052
Facsimile: 212-994-0849
Email: Jesssica.Zimmers@citigroup.com

Signature Page to Strategic Hotel Funding, L.L.C.
Credit Agreement

BANK OF AMERICA, N.A.

By: /s/ Steven P. Renwick
Name: Steven P. Renwick
Title: Senior Vice President

Address:

901 Main Street
66th Floor
Dallas, TX 75202
Attention: Stephen Remwick

Facsimile: 214-209-0995
Telephone: 214-209-1867
email:Steven.p.renwick@bankofamerica.com

Signature Page to Strategic Hotel Funding, L.L.C.
Credit Agreement

JPMORGAN CHASE BANK, N.A.

By: /s/ Marc E. Costantino
Name: Marc E. Costantino
Title: Executive Director

Address:
270 Park Avenue
New York, New York
Attention: Marc Constantino

Signature Page to Strategic Hotel Funding, L.L.C.
Credit Agreement

LASALLE BANK, NATIONAL ASSOCIATION

By: /s/ Kim Kalseth
Name: Kim Kalseth
Title: VP

Address: 135 S. LaSalle St. Ste 1211

Facsimile No.: 312-904-5616
Telephone No.: 312-904-6472
Attention: Kim Kalseth

Signature Page to Strategic Hotel Funding, L.L.C.
Credit Agreement

WACHOVIA BANK, NATIONAL ASSOCIATION

By: /s/ Cynthia A. Bean
Name: Cynthia A. Bean
Title: Vice President

Address: 301 S. College Street
NC 0172
Charlotte, NC 28288-0172

Facsimile No.: (704) 383-6205
Telephone No.: (704) 374-6272
Attention: David Blackman

Signature Page to Strategic Hotel Funding, L.L.C.
Credit Agreement

CREDIT SUISSE, Cayman Islands Branch

By: /s/ Brian Caldwell
Name: Brian Caldwell
Title: Director

By: /s/ Laurence Lapeyre
Name: Laurence Lapeyre
Title: Associate

Address: Eleven Madison Avenue
New York, New York 10005

Facsimile No.: (212) 325-8319
Telephone No.: (212) 325-2949
Attention: Cassandra Droogan

Signature Page to Strategic Hotel Funding, L.L.C.
Credit Agreement

BARCLAYS CAPITAL REAL ESTATE INCORPORATED

By: /s/ Lori Rung
Name: Lori Rung
Title: Associate Director

Address: 200 Park Avenue, 5th Floor
New York, NY

Facsimile No.: 212-412-1664
Telephone No.: 212-412-3026
Attention: David Proctor

Signature Page to Strategic Hotel Funding, L.L.C.
Credit Agreement

RAYMOND JAMES BANK, FSB

By: /s/ Thomas G Scott
Name: Thomas G Scott
Title: Vice President
Address:

710 Carillon Parkway
PO Box 11628
St. Petersburg, FL 33733
Attention: Thomas Macina

Signature Page to Strategic Hotel Funding, L.L.C.
Credit Agreement

ANNEX I

LENDER INFORMATION

1. **DEUTSCHE BANK TRUST COMPANY AMERICAS**

Domestic Office:	LIBO Office:	Revolving Loan Commitment
Address: 100 Plaza One, 8th Floor M/S JCY03-0899 Jersey City, NJ 07311	Address: 100 Plaza One, 8th Floor M/S JCY03-0899 Jersey City, NJ 07311	$75,000,000
Facsimile No. 201-593-2307 Telephone 201-593-2235 Attention: Patricia Ciocco	Facsimile No. 201-593-2307 Telephone 201-593-2235 Attention: Patricia Ciocco	

2. **CITICORP NORTH AMERICA, INC.**

DOMESTIC LENDING OFFICE:	LIBO OFFICE:	Revolving Loan Commitment
Citicorp North America, Inc. 2 Penns Way, 1st Floor New Castle DE 19720 Attn: Jessica Zimmers, Loan Specialist Telephone: 302-894-6052 Facsimile: 212-994-0849 Email:Jesssica.Zimmers@citigroup.com	Citicorp North America, Inc. 2 Penns Way, 1st Floor New Castle DE 19720 Attn: Jessica Zimmers, Loan Specialist Telephone: 302-894-6052 Facsimile: 212-994-0849 Email:Jesssica.Zimmers@citigroup.com	$75,000,000

3. **BANK OF AMERICA, N.A.**

Domestic Office:	LIBO Office:	Revolving Loan Commitment
Address: 901 Main Street 14 th Floor Dallas, TX 75202 Attention: Ramon Presas Facsimile: 214-209-8364 Telephone: 214-209-9262 email: Ramon.presas@bankofamerica.com	Address: 901 Main Street 14 th Floor Dallas, TX 75202 Attention: Ramon Presas Facsimile: 214-209-8364 Telephone: 214-209-9262 email:ramon.presas@bankofamerica.com	$50,000,000

4. **JPMORGAN CHASE BANK, N.A**

Domestic Office:	LIBO Office:	Revolving Loan Commitment
Address: 200 White Clay Center Drive, Floor 03 Newark, DE 19711	Address: 200 White Clay Center Drive, Floor 03 Newark, DE 19711	$50,000,000
Facsimile No.: 713-750-2666 Telephone No.: 713-286-3247 Attention: Omar Musule email: Omar.P.Musule@chase.com	Facsimile No.: 713-750-2666 Telephone No.: 713-286-3247 Attention: Omar Musule email: Omar.P.Musule@chase.com	

5. **LASALLE BANK NATIONAL ASSOCIATION**

Domestic Office:	LIBO Office:	Revolving Loan Commitment
Address: 135 S. LaSalle St. Suite 1211 Chicago, IL 60603	Address: 135 S. LaSalle St. Suite 1211 Chicago, IL 60603	$50,000,000
Facsimile No.: (312) 904-5142 Telephone No.: (312) 904-6472 Attention: Kim Kalseth	Facsimile No. : (312) 904-5142 Telephone No.: (312) 904-6472 Attention: Kim Kalseth	

6. **WACHOVIA BANK, NATIONAL ASSOCIATION**

Domestic Office:	LIBO Office:	Revolving Loan Commitment
Address: 301 S. College Street NC 0172 Charlotte, NC 28288-0172	Address: 301 S. College Street NC 0172 Charlotte, NC 28288-0172	$50,000,000
Facsimile No.: (704) 383-6205 Telephone No.: (704) 374-6272 Attention: David Blackman	Facsimile No.: (704) 383-6205 Telephone No.: (704) 374-6272 Attention: David Blackman	

7. **CREDIT SUISSE, Cayman Islands Branch**

Domestic Office:	LIBO Office:	Revolving Loan Commitment
Address: Eleven Madison Avenue New York, NY 10010	Address: Eleven Madison Avenue New York, NY 10010	$25,000,000
Facsimile No.: (212) 325-8326 Telephone No.: (212) 325-6911 Attention: Andreas Rupp	Facsimile No.: (212) 325-8326 Telephone No.: (212) 325-6911 Attention: Andreas Rupp	

8. **BARCLAYS REAL ESTATE CAPITAL INC.**

Domestic Office:	LIBO Office:	Revolving Loan Commitment
Address: 200 Park Avenue, 5th Floor New York, NY	Address: 200 Park Avenue, 5th Floor New York, NY	$25,000,000
Facsimile No.: 212-412-1664 Telephone No.: 212-412-2496 Attention: Lori Rung	Facsimile No.: 212-412-1664 Telephone No. : 212-412-2496 Attention: Lori Rung	

9. **RAYMOND JAMES BANK, FSB**

Domestic Office:	LIBO Office:	Revolving Loan Commitment
Address: PO Box 11628 710 Carillon Pkwy (33716) St. Petersburg, FL 33733	Address: PO Box 11628 710 Carillon Pkwy (33716) St. Petersburg, FL 33733	$15,000,000
Facsimile No.: (727) 567-8830 Telephone No.: (727) 567-4184 Attention: Barry D. Starling	Facsimile No.: (727) 567-8830 Telephone No.: (727) 567-4184 Attention: Barry D. Starling	

SCHEDULE I

DISCLOSURE SCHEDULE

ITEM NUMBER	DISCLOSURE (IF APPLICABLE)
Item 6.5(c)	**The liabilities and obligations of Borrower and its Subsidiaries under or related to the following:** **1. Hotel Lease Agreement between Deutsche Immobilien Fonds Aktiengesellschaft, as Lessor ("DIFA") and Bohus Verwaltung, BV, as Lessee, effective in 2004 and the related sublease with Hamburg Marriott GmbH; and** **2. Hotel Lease Agreement between DIFA, as Lessor, and Hotel Paris Champs Elysees SNC, as Lessee.**
Item 6.8	**1. SHC DTRS, Inc.** **2. SHC New Orleans LLC** **3. SHC Aventine II, L.L.C.** **4. New Aventine, L.L.C.** **5. SHC Phoenix III, L.L.C.** **6. SHC Lincolnshire LLC** **7. SHCI Santa Monica Beach Hotel, L.L.C.** **8. SHC Santa Monica Beach Hotel III, L.L.C.** **9. New Santa Monica Beach Hotel, L.L.C.** **10. SHC Santa Monica Land, L.L.C.** **11. DTRS New Orleans, L.L.C.** **12. DTRS La Jolla, L.L.C.** **13. DTRS Phoenix, L.L.C.** **14. DTRS Lincolnshire, L.L.C.** **15. DTRS Santa Monica, L.L.C.** **16. SHC Holdings L.L.C.** **17. Punta Mita Resort S. de R.L. de C.V.** **18. SHC Mexico Holdings, L.L.C.** **19. Proparmex, S. de R.L. de C.V.** **20. Inmobiliaria Nacional Mexicana, S. de R.L. de C.V.** **21. SHC Asset Management, L.L.C.** **22. SHC Residence Club, L.L.C.**

	23. SHC Residence Club II, L.L.C. **24. SHC Residence Club S. de R.L. de C.V.** **25. SHC Europe, L.L.C.** **26. SHR Prague Praha, L.L.C.** **27. SHC Finance (Champs Elysees), L.L.C.** **28. SHC (Champs Elysees) Sarl** **29. Strategic Paris Sarl** **30. SHC Champs Elysees SAS** **31. Hotel Paris Champs Elysees SNC** **32. Strategic Holding SNC** **33. Strategic Hotel Capital France SNC** **34. SHC Investments Limited** **35. Strategic Hotel Capital Europe Investment Limited** **36. SHC Hamburg S.a.r.l.** **37. SHC Hamburg (Netherlands) B.V.** **38. CIMS Limited Partnership** **39. DTRS Columbus Drive, LLC** **40. DTRS Half Moon Bay, LLC** **41. DTRS Michigan Avenue/Chopin Plaza LP** **42. DTRS Michigan Avenue/Chopin Plaza Sub, LLC** **43. DTRS Michigan Avenue/Chopin Plaza, LLC** **44. Helcont. spol. s.r.o.** **45. Intercontinental Florida Limited Partnership** **46. ITM Praha** **47. Punta Mita TRS S. de R.L. de C.V.** **48. SHC Aventine, LLC** **49. SHC Chopin Plaza Holdings, LLC** **50. SHC Chopin Plaza Mezzanine I, LLC** **51. SHC Chopin Plaza Mezzanine II, LLC** **52. SHC Chopin Plaza, LLC** **53. SHC Columbus Drive, LLC** **54. SHC Half Moon Bay Mezzanine, LLC**

	55. SHC Half Moon Bay, LLC **56. SHC Management Prague, s.r.o.** **57. SHC Mexico Lender, LLC** **58. SHC Michigan Avenue Holdings, LLC** **59. SHC Michigan Avenue Mezzanine I, LLC** **60. SHC Michigan Avenue Mezzanine II, LLC** **61. SHC Michigan Avenue, LLC** **62. SHC Prague (Gibraltar) Limited** **63. SHR Prague Praha B.V.** **64. SHC Prague Repository B.V.** **65. SHC Prague TRS, a.s. (f/k/a Masala, a.s.)** **66. SHC Property Acquisition, L.L.C.** **67. SHC Property Prague, s.r.o.** **68. Strategic Hotel Capital Prague, a.s.** **69. Stredisko Praktickeho Vyucovani hotelu Inter. Continental s.r.o.** **70. SHC del LP, LLC** **71. SHC del GP, LLC** **72. SHC del Coronado, LLC** **73. DTRS North Beach del Coronado, LLC** **74. SHC Washington, LLC** **75. DTRS Washington, LLC** **76. DTRS Columbus Drive II, LLC** **77. SHC St. Francis, L.L.C.** **78. SHR St. Francis, L.L.C.** **79. DTRS St. Francis, L.L.C.** **80. SHC Laguna, L.L.C.** **81. SHC Laguna Niguel I, L.L.C.** **82. DTRS Laguna, L.L.C.** **83. SHR Scottsale L.L.C.** **84. SHR Scottsdale Mezz X-1, L.L.C.** **85. SHR Scottsdale Mezz Y-1, L.L.C.** **86. SHR Scottsdale X, L.L.C.** **87. SHR Scottsdale Y, L.L.C.** **88. SHR Scottsdale Operating Lessee I, L.L.C.** **89. SHR Scottsdale Operating Lessee II, L.L.C.** **90. DTRS Scottsdale, L.L.C.** **91. SHR Scottsdale Z, L.L.C.**

	92. SHR Grosvenor Square LLC **93. SHR Grosvenor Square S.a.r.l.** **94. BRE/Grosvenor Sharholders S.a.r.l.** **95. Lomar Holding UK Ltd** **96. Grosvenor Square Hotel S.a.r.l.** **97. Lomar Hotel Comopany Limited** **98. Santa Barbara US LP** **99. SBA Villas, LLC** **100. SB Villas, S. de R.L. de C.V.** **101. SHC Santa Fe, S. de R.L. de C.V.** **102. SHC Solana Mexico, S. de R.L. de C.V.** **103. Santa Barbara Punta Mita Desarrollos, S. de R.L. de C.V.** **104. SB Hotel S. de R.L. de C.V.** **105. Bohus Verwaltung BV** **106. DTRS Intercontinental Chicago, LLC** **107. DTRS Intercontinental Miami, LLC** **108. Aventine Hotel, L.L.C.** **109. Banian Finance, S.a.r.l.** **110. C.T.U. Holdings, S.a.r.l.** **111. DTRS Burbank, L.L.C.** **112. DRS Lake Buena Vista, L.L.C.** **113. DTRS Rancho Las Palmas, L.L.C.** **114. DTRS Schaumberg, L.L.C.** **115. GAMMA Finance S.a.r.l.** **116. New Burbank, L.L.C.** **117. New Rancho, L.L.C.** **118. Pingleton Hodling, S.a.r.l.** **119. SHC Burbank, L.L.C.** **120. SHC Burbank II, L.L.C.** **121. SHC Lake Buena Vista, L.L.C.** **122. SHC Rancho III, L.L.C.** **123. SHC Schaumberg II, L.L.C.** **124. SHR New Orleans New Parcel, L.L.C.** **125. SHR Retail, L.L.C.**

	126. SHR Finance, L.L.C. **127. SHR Scottsdale Mezz X-2, L.L.C.** **128. SHR Scottsdale Mezz Y-2, L.L.C.** **129. SHR Scottsdale Mezz Z-2, L.L.C.** **130. Strategic Hotel Capital Europe Investment Limited**
Item 7.1.11	**1. $60 million loan made by Strategic Hotel Funding, L.L.C. to SHCI Santa Monica Beach Hotel, L.L.C. evidenced by a Promissory Note, dated March 4, 1998 (balance as of December 31, 2006)** **2. €9,569,829 loan from Strategic Hotel Funding, L.L.C. to SHC Champs Elysees SAS (balance as of December 31, 2006)** **3. €5,536,232 loan from Strategic Hotel Funding, L.L.C. to Bohus Verwaltung BV (balance as of December 31, 2006)**
Item 7.2.5	**1. 31% interest in Resort Club Punta Mita S. de R.L. de C.V. (which is developing and selling time shares)** **2. SHC Santa Monica Land, L.L.C. owns an additional parcel of land located adjacent to the Loews Santa Monica** **3. SB Hotel S de RL de CV owns a parcel of land located adjacent to the Four Seasons Resort Punta Mita.** **4. SB Villas, S de RL de CV owns a parcel of land located adjacent to the Four Seasons Resort Punta Mita** **5. Contract to purchase a portion of a to-be-constructed high rise building in Chicago which the Borrower intends to utilize as a hotel upon completion** **6. SHR Scottsdale Z, L.L.C. owns a 10-acre parcel [adjacent to the Fairmont Scottsdale Princess]**

SCHEDULE II

INITIAL BORROWING BASE PROPERTIES

Four Seasons Hotel, District of Columbia, USA
Four Seasons Hotel, Mexico City, Mexico
Four Seasons Resort Punta Mita, Puerto Vallarta, Mexico
Marriott Lincolnshire Resort, Lincolnshire, IL, USA
Ritz Carlton, Laguna Niguel, CA, USA

SCHEDULE III

PROPERTIES

1. Hyatt Regency, New Orleans, LA
2. Hyatt Regency, Phoenix, AZ
3. Hyatt Regency La Jolla at Aventine, La Jolla, CA
4. Loews Santa Monica Beach Hotel, Santa Monica, CA
5. Marriott Lincolnshire Resort, Lincolnshire, IL
6. Ritz Carlton Half Moon Bay, Half Moon Bay, CA
7. InterContinental, Chicago, IL
8. InterContinental, Miami, FL
9. Fairmont Chicago, Chicago IL
10. Four Seasons Hotel, Mexico City, Mexico
11. Four Seasons Resort Punta Mita, Puerto Vallarta, Mexico
12. Intercontinental, Praha, Prague Czech Republic
13. Hotel Del Coronado, San Diego, CA
14. The Westin St. Francis, San Francisco, CA
15. Four Seasons Hotel, District of Columbia
16. Ritz Carlon, Laguna Niguel, CA
17. Marriott Champs Elysees Hotel, Paris, France
18. Marriott Hamburg, Hamburg, Germany
19. Marriott Grosvenor Square, London, England
20. Fairmont Scottsdale Princess, Scottsdale, AZ

SCHEDULE IV

APPROVED MANAGERS

Acceptable Property Managers:
Bass PLC
Fairmont Hotels
FelCor Hotels
Four Seasons Ltd.
Hilton Hotels Corporation
Hyatt Hotel Corporation
InterContinental Hotel Group
KSL Partners
Loews Hotel
Mandarin Oriental
Marriott International
The Peninsula Group
Shangri-La
Starwood Hotels & Resorts
Windsor Hospitality

Acceptable Brands:
Crowne Plaza
Embassy Suites
Fairmont
Four Seasons
Hilton
Hyatt, Grand Hyatt, Hyatt Regency, Park Hyatt
Inter-Continental
KSL Resorts
Loews
Mandarin Oriental
Marriott, JW Marriott, Marriott Suites
Peninsula
Raffles
Renaissance
Ritz-Carlton
Shangri-La
Sheraton
St Regis
Swiss Hotel
Westin
W Hotel

SCHEDULE V

BORROWING BASE INTERCOMPANY INDEBTEDNESS

Mexico Intercompany Indebtedness

Unsecured loans in the amounts of Ps$326,000,000 and Ps$233,000,000 made by SHC Mexico Lender, LLC (the "SHC Mexico") to Inmobiliaria Nacional Mexicana, S. de R.L. de C.V. ("Inalmex") and Punta Mita Resort, S. de R.L. de C.V. ("PMR" and collectively with Inalmex, the "Borrowers"), respectively, pursuant to the Subordinated Loan Agreement dated as of November 9, 2005, between SHC Mexico and the Borrowers, and evidenced by separate Promissory Notes each dated November 9, 2005 from the respective Borrower.

Washington, D.C. Intercompany Indebtedness

Loan in the amount of $128,000 (the "D.C. Loan") made by the Borrower to SHC Washington, L.L.C. ("SHC Washington"), pursuant to the Loan and Security Agreement dated March 1, 2006 between the Borrower and SHC Washington, and evidenced by a Note of SHC Washington dated March 1, 2006 and a Note Supplement between the Borrower and SHC Washington dated March 1, 2006. The D.C. Loan is secured by a Deed of Trust between SHC Washington and Lawyers Title Realty Services, Inc. for the benefit of the Borrower dated March 1, 2006 and is subject to a Subordination, Non-Disturbance and Attornment Agreement between the Borrower, SHC Washington, DTRS Washington, L.L.C. and Four Seasons Hotels Limited dated March 1, 2006.

SCHEDULE VI

PARIS AND HAMBURG GUARANTEE ISSUANCE FACILITIES
AND
LAGUNA NIGUEL FF&E LOAN

1. **Paris and Hamburg:** Guarantee Issuance Facilities from a bank or similar institution involved in the making of such facilities with respect to Paris and Hamburg to be entered into on substantially the terms set forth on the attached term sheets.

2. **Ritz Carlton FF&E Loans.** The (i) $6,300,000 loan to SHC Laguna Niguel I, L.L.C. (the "Owner") from Marriott International Corporation ("MICC"), the proceeds of which were used to fund the costs of certain planned renovations to the property, issued in accordance with the Amendment to Amended and Restated Operating Agreement dated as of June 29, 2004, by and between The Ritz-Carlton Hotel Company, L.L.C. (the "Amendment") and (ii) the $2,250,000 loan to the Owner from MICC, the proceeds of which were used to fund the conversion of an existing restaurant into meetin space and the conversion of the dining room into a three-meal restaurant, issued in accordance with the Amendment.

PARIS MARRIOTT, FRANCE
SHORT FORM TERMS FOR A €6.6 MILLION BANK GUARANTEE

Borrower	Hotel Paris Champs Elysees SNC (whose obligations are guaranteed by Strategic Hotel Funding LLC ("the Guarantor")).
Term	Expiry 31/12/2009.
Amount	€6.6 million – calls under the Bank Guarantee will reduce the face value amount.
Guarantee Commission	5% p.a. payable quarterly in arrears by the Borrower.
Arrangement Fee	€250,000.
Expiry	The Bank Guarantee will expire at the earlier of: -

- End of term (31/12/2029 or later if extended):

- Sale of the Borrower's leasehold interest in the Paris Marriott hotel;

- The full face value of the Bank Guarantee having been utilised. (Any calls by DIFA would need to be funded by the Borrower/Guarantor in the first instance with utilisation of the cash held by DIFA in the event of non-payment by the Borrower/Guarantor as a secondary remedy).

Security	To include:- • Counter-indemnity from the Borrower/Guarantor; • Step-in arrangements into the lease with the long leaseholder (DIFA); and • Step-in arrangements (via Non-Disturbance Agreement) with Marriott in respect of continued trading of the hotel Step-in arrangements are limited to taking business decisions not exercising control.
Covenants	To include:- • Maintenance of cash with DIFA in an initial sum of €8 million increasing by €900,000 p.a. in 2004 & 2005, €1,150,000 p.a. in 2006, 2007 & 2008 and €1,350,000 in 2009. Minimum of 50% of cash in any one year to have been deposited with DIFA at the half year (which provides a corresponding reduction in the guarantee liability); • Information requirements: monthly Marriott figures and quarterly, half year and annual audits *(as per Deutsche Bank facility for the Guarantor)* ; • No change in ownership control; • No further borrowings or granting of security (in particular over this hotel) etc; • Material Adverse Change (to also include the Guarantor); • No changes to the terms of the lease with the long leaseholder or operating agreements with Marriott; • No dividends/distributions whilst an event of default is outstanding; • No other activities, other than in connection with the hotel.
Financial Covenants	To include:- • Net house profit to indexed fixed rent to be minimum 1 times. In the event that this covenant is breached for a continuous 2 year period then an Event of Default will occur; • Corporate Covenants for the Guarantor *(covenant definitions as per Deutsche Bank facility)* :- a) Minimum Tangible Net Worth of US$325m (based on book shareholder equity plus add-back of minority interests and depreciation on assets); b) Minimum Interest Cover Ratio (consolidated EBITDA to interest) of 3 times; c) Minimum Fixed Charge Coverage (consolidated EBITDA to fixed charges (to include cash interest expense, scheduled debt amortisation and reserve fundings required by any other debt agreements)) of 1.5 times; d) Maximum Total Leverage (consolidated indebtedness to gross asset value - based on trailing12 month NOI adjusted for FF&E reserve and management fees divided by cap rate) of 65% in 2004 and 2005 reducing to 60% thereafter; and e) Maximum Facility Outstandings (facility outstandings to adjusted NOI) of 2.5 times decreasing to 2.25 times on second anniversary.
Events of Default	Standard and in a default to include:- • Non-receipt or withdrawal of cash with DIFA which breaches the limits as outlined above; • Breach of corporate covenants; • Cross default. In the event of a default, the Borrower/Guarantor will be obliged to provide cash cover to DIFA directly to cover the liability in full or refinance this Facility enabling take out of the Bank's guarantee commitment to DIFA.
Documentation	Prepared by lawyers instructed by the Bank.

MARRIOTT HAMBURG, GERMANY
SHORT FORM TERMS FOR A €2 MILLION BANK GUARANTEE

Borrower	Bohus Verwaltung BV (whose obligations are guaranteed by Strategic Hotel Funding LLC ("the Guarantor")).
Term	Expiry 31/12/2009.
Amount	€2 million - calls under the Bank Guarantee will reduce the face value amount.
Guarantee Commission	*5%* p.a. payable quarterly in arrears by the Borrower.
Arrangement Fee	€250,000.
Expiry	The Bank Guarantee will expire at the earlier of:-

- End of term (13/6/2030 or later if extended);

- Sale of the Borrower's leasehold interest in the Hamburg Marriott hotel;

- The full face value of the Bank Guarantee having been utilised. (Any calls by DIFA would need to be funded by the Borrower/Guarantor in the first instance with utilisation of the cash held by DIFA in the event of non-payment by the Borrower/Guarantor as a secondary remedy).

Security	To include - • Counter-indemnity from the Borrower/Guarantor; • Step-in arrangements into the lease with the long leaseholder (DIFA); and • Step-in arrangements (via Non-Disturbance Agreement) with Marriott in respect of continued trading of the hotel Step-in arrangements are limited to taking business decisions not exercising control.
Covenants	To include:- • Maintenance of cash with DIFA in an initial sum of €3 million increasing by €300,000 p.a. in 2004 & 2005, €350,000 p.a. in 2006, 2007, 2008 & 2009. Minimum of 50% of cash in any one year to have been deposited with DIFA at the half year (which provides a corresponding reduction in the guarantee liability); • Information requirements: monthly Marriott figures and quarterly, half year and annual audits *(as per Deutsche Bank facility for the Guarantor)* ; • No change in ownership or control; • No further borrowings or granting of security (in particular over this hotel) etc; • Material Adverse Change (to also include the Guarantor); • No changes to the terms of the lease with the long leaseholder or operating agreements with Marriott; • No dividends/distributions whilst an event of default is outstanding; • No other activities, other than in connection with the hotel.
Financial Covenants	To include:- • Net house profit to indexed fixed rent to be minimum 1 times. In the event that this covenant is breached for a continuous 2 year period then an Event of Default will occur; • Corporate Covenants for the Guarantor *(covenant definitions as per Deutsche Bank facility)* :- f) Minimum Tangible Net Worth of US$325m (based on book shareholder equity plus add-back of minority interests and depreciation on assets); g) Minimum Interest Cover Ratio (consolidated EBITDA to interest) of 3 times; h) Minimum Fixed Charge Coverage (consolidated EBITDA to fixed charges (to include cash interest expense, scheduled debt amortisation and reserve fundings required by any other debt agreements)) of 1.5 times; i) Maximum Total Leverage (consolidated indebtedness to gross asset value - based on trailing 12 month NOI adjusted for FF&E reserve and management fees divided by cap rate) of 65% in 2004 and 2005 reducing to 60% thereafter; and j) Maximum Facility Outstandings (facility outstandings to adjusted NOI) of 2.5 times decreasing to 2.25 times on second anniversary.
Events of Default	Standard and in a default to include:- • Non-receipt or withdrawal of cash with DIFA which breaches the limits as outlined above; • Breach of corporate covenants; • Cross default. In the event of a default, the Borrower/Guarantor will be obliged to provide cash cover to DIFA directly to cover the liability in full or refinance this Facility enabling take out of the Bank's guarantee commitment to DIFA.
Documentation	Prepared by lawyers instructed by the Bank.

EXHIBIT A-1

REVOLVING NOTE

$_____ _____,_____

FOR VALUE RECEIVED, the undersigned, STRATEGIC HOTEL FUNDING, L.L.C., a Delaware limited liability company (the "Borrower"), promises to pay to the order of_____(the "Lender") on the Maturity Date (as defined in the Credit Agreement referred to below) the principal sum of_____DOLLARS ($_____) or, if less, the aggregate unpaid principal amount of all Revolving Loans (as defined in the Credit Agreement) made by the Lender pursuant to that certain Credit Agreement, dated as of March___ , 2007, among the Borrower, the various financial institutions as are or may become parties thereto (including the Lender), and Deutsche Bank Trust Company Americas, as Administrative Agent (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"). Unless otherwise defined herein or the context otherwise requires, capitalized terms used herein shall have the meanings provided in the Credit Agreement.

The Borrower also promises to pay interest on the unpaid principal amount hereof from time to time outstanding from the date hereof until maturity (whether by acceleration or otherwise) and, after maturity, until paid at the rates per annum and on the dates specified in the Credit Agreement.

Payments of both principal and interest are to be made in lawful money of the United States of America in same day or immediately available funds to the account designated by the Administrative Agent pursuant to the Credit Agreement.

This Note is one of the Revolving Notes referred to in, and evidences Indebtedness incurred under, the Credit Agreement, to which reference is made for a description of the security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments and repayments of principal of the Indebtedness evidenced by this Note and on which such Indebtedness may be declared to be immediately due and payable.

All parties hereto, whether as makers, endorsers, or otherwise, severally waive presentment for payment, demand, protest and notice of dishonor.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

STRATEGIC HOTEL FUNDING, L.L.C.,
a Delaware limited liability company

By: _____
Name:
Title:

REVOLVING LOANS AND PRINCIPAL PAYMENTS

Date	Amount of Revolving Loan Made	Interest Period (If Applicable)	Amount of Principal Repaid	Unpaid Principal Balance	Total	Notation Made By
		Base Rate				
		LIBO Rate				
		Base Rate				
		LIBO Rate				
		Base Rate				
		LIBO Rate				

EXHIBIT B-1

BORROWING REQUEST

Deutsche Bank Trust Company Americas,
acting as Administrative Agent
for the Lenders referred to below
90 Hudson Street
5th Floor
Jersey City, New Jersey 07302

Attention: Geraldine Harper

STRATEGIC HOTEL FUNDING, L.L.C.

Ladies and Gentlemen:

This Borrowing Request is delivered to you pursuant to Section 2.3 of the Credit Agreement, dated as of March 9, 2007, among STRATEGIC HOTEL FUNDING, L.L.C., a Delaware limited liability company (the "Borrower"), the various financial institutions as are or may become parties thereto, and Deutsche Bank Trust Company Americas, as Administrative Agent (as amended, supplemented or otherwise modified from time to time, the " Credit Agreement"). Unless otherwise defined herein, capitalized terms used in this Borrowing Request shall have the meanings set forth in the Credit Agreement.

The Borrower hereby requests that a Revolving Loan be made in the aggregate principal amount of $_____ on _____, 200___ as a [LIBO Rate Loan having an Interest Period of___ months] [Base Rate Loan].

The Borrower hereby acknowledges that, pursuant to Section 5.2.2 of the Credit Agreement, each of the delivery of this Borrowing Request and the acceptance by the Borrower of the proceeds of the Loans requested hereby constitute a representation and warranty by the Borrower that, on the date of such Loans, and before and after giving effect thereto and to the application of the proceeds therefrom, the conditions set forth in clauses (a) and (b) of Section 5.2.1 of the Credit Agreement have been satisfied.

The Borrower hereby certifies that (a) attached hereto as Exhibit A is a true, correct and complete copy of the calculation of the Aggregate Commitment and the Available Commitment and (b) each Borrowing Base Property included in such calculations continues to satisfy all of the criteria and requirements for a Borrowing Base Property under the Credit Agreement.

The Borrower agrees that if prior to the time of the Borrowing requested hereby any matter certified to herein by it will not be true and correct at such time as if then made, it will immediately so notify the Administrative Agent. Except to the extent, if any, that prior to the time of the Borrowing requested hereby the Administrative Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed once again to he certified as true and correct at the date of such Borrowing as if then made.

Please wire transfer the proceeds of the Borrowing to the accounts of the following persons at the financial institutions indicated respectively:

Amount to be Transferred	Person to be Paid: Name	Person to be Paid: Account No.	Name, Address, etc. of Transferrer Lender
$_____	_____	_____	_____ _____ Attention: _____
$ _____	_____	_____	_____ _____ Attention: _____
Balance of such proceeds	[Borrower]		_____ _____ Attention: _____

The Borrower has caused this Borrowing Request to be executed and delivered, and the certification and warranties contained herein to be made, by its duly Authorized Officer this___ day of_____, 200___ .

STRATEGIC HOTEL FUNDING, L.L.C.,
a Delaware limited liability company

By _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

EXHIBIT A

Calculations

EXHIBIT B-2

ISSUANCE REQUEST

Deutsche Bank Trust Company Americas,
acting as Administrative Agent
for the Lenders referred to below
60 Wall Street
New York, New York 10005-M5 NYC 60-3812

Attention: Global Loan Operations
Standby Letter of Credit Unit

STRATEGIC HOTEL FUNDING, L.L.C.

Ladies and Gentlemen:

This Issuance Request is delivered to you pursuant to Section 2.6 of the Credit Agreement, dated as of March , 2007, among STRATEGIC HOTEL FUNDING, L.L.C, a Delaware limited liability company (the "Borrower"), the various financial institutions as are or may become parties thereto, and Deutsche Bank Trust Company Americas, as Administrative Agent (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"). Unless otherwise defined herein or the context otherwise requires, capitalized terms used herein have the meanings provided in the Credit Agreement.

The Borrower hereby requests that on_____ , 200___ (the "Date of Issuance") the Lender issue a standby Letter of Credit on_____, 200___ in the initial Stated Amount of $_____ with a Stated Expiry Date (as defined therein) of [_____ , 200___] [extend the Stated Expiry Date (as defined under Irrevocable Standby Letter of Credit No.___ , issued on_____ , 200___ , in the initial Stated Amount of $_____) to a revised Stated Expiry Date (as define therein) of_____ , 200___].

The beneficiary of the requested Letter of Credit will be **_____, and such Letter of Credit will be in support of***_____.

The Borrower hereby acknowledges that, pursuant to Section 5.2.2 of the Credit Agreement, each of the delivery of this Issuance Request and the **** [issuance] [extension] of the Letter of Credit requested hereby constitutes a representation and warranty by the Borrower that, on such date of [issuance] [extension], the conditions set forth in clauses (a) and (b) of Section 5.2.1 of the Credit Agreement have been satisfied.

** Insert name and address of beneficiary.

*** Insert description of supported Indebtedness or other obligations and name of agreement to which it relates.

**** Complete as appropriate.

The Borrower hereby certifies that (a) attached hereto as Exhibit A is a true, correct and complete copy of the calculation of the Aggregate Commitment and the Available Commitment and (b) each Borrowing Base Property included in such calculations continues to satisfy all of the criteria and requirements for a Borrowing Base Property under the Credit Agreement.

The Borrower agrees that if, prior to the time of the [issuance] [extension] of the Letter of Credit requested hereby, any matter certified to herein by it will not be true and correct at such time as if then made, it will immediately so notify the Administrative Agent. Except to the extent, if any, that prior to the time of the issuance or extension requested hereby the Administrative Agent and the Issuer shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed to be certified at the date of such issuance or extension.

[*Signature on following page*]

EXHIBIT B-2

IN WITNESS WHEREOF, the Borrower has caused this request to be executed and delivered by its duly Authorized Officer this___ day of_____, 200___ .

STRATEGIC HOTEL FUNDING, L.L.C.,
a Delaware limited liability company

By: _____
Name:
Title:

EXHIBIT A

Calculations

EXHIBIT C

CONTINUATION/CONVERSION NOTICE

Deutsche Bank Trust Company Americas,
acting as Administrative Agent
for the Lenders referred to below
90 Hudson Street
5th Floor
Jersey City, New Jersey 07302

Attention: Geraldine Harper

STRATEGIC HOTEL FUNDING, L.L.C.

Ladies and Gentlemen:

This Continuation/Conversion Notice is delivered to you pursuant to Section 2.4 of the Credit Agreement, dated as of March___ , 2007, among STRATEGIC HOTEL FUNDING, L.L.C, a Delaware limited liability company (the "Borrower"), the various financial institutions as are or may become parties thereto, and Deutsche Bank Trust Company Americas, as Administrative Agent (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

The Borrower hereby requests that on_____ , 200___ ,

(1) $_____ of the presently outstanding principal amount of the Revolving Loans originally made on_____ __ ,_____ ,

(2) and being presently maintained as * [Base Rate Loans] [LIBO Rate Loans],

(3) be [converted into] [continued as],

(4) ** [LIBO Rate Loans having an Interest Period of___ months] [Base Rate Loans].

---

* Select appropriate interest rate option.

** Insert appropriate interest rate option.

The Borrower hereby:

(a) certifies and warrants that no Event of Default has occurred and is continuing; and

(b) agrees that if prior to the time of such continuation or conversion any matter certified to herein by it will not be true and correct at such time as if then made, it will immediately so notify the Administrative Agent.

Except to the extent, if any, that prior to the time of the continuation or conversion requested hereby the Administrative Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed to be certified at the date of such continuation or conversion as if then made.

The Borrower has caused this Continuation/Conversion Notice to be executed and delivered, and the certification and warranties contained herein to be made, by its Authorized Officer this___ day of_____, 200___ .

STRATEGIC HOTEL FUNDING, L.L.C.,
a Delaware limited liability company

By _____
Name:
Title:

EXHIBIT D

CLOSING DATE CERTIFICATE

STRATEGIC HOTEL FUNDING, L.L.C.

This certificate is delivered pursuant to Section 5.1.2 of the Credit Agreement, dated as of March 9, 2007, among STRATEGIC HOTEL FUNDING, L.L.C., a Delaware limited liability company (the "Borrower"), the various financial institutions as are or may become parties thereto and Deutsche Bank Trust Company Americas, as Administrative Agent (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"). Unless otherwise defined herein or the context otherwise requires, capitalized terms used herein shall have the meanings provided in the Credit Agreement.

The undersigned hereby certifies, represents and warrants that, as of the Closing Date:

1. Warranties, No Default, etc. Both immediately before and immediately after giving effect to the Closing Date and any Credit Extension to be made on such date:
   (a) the statements made in Article VI of the Credit Agreement and in each other Loan Document are true and correct in all material respects; and
   (b) no Default has occurred and is continuing.
2. Financial Information, etc. A true and complete copy of each of the items described in Section 5.1.5 of the Credit Agreement is attached hereto as Annex I Financial Information, etc.
3. No Material Adverse Effect . No Material Adverse Effect has occurred prior to the date hereof.
4. Material Agreements . A true and complete copy of each Material Agreement of the Borrower and Guarantor is attached hereto as Annex II .
5. Borrowing Base Properties . Each of the Initial Borrowing Base Properties satisfy the criteria and requirements to qualify as a " Borrowing Base Property" under the Credit Agreement.
6. Approvals, Diligence . A true and complete copy of each of the items described in Section 5.1.13 of the Credit Agreement have been delivered to the Administrative Agent and Borrower has obtained all necessary approvals described in Section 5.1.10 of the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be executed and delivered, and the certification, representations and warranties contained herein to be made, by its duly Authorized Officer this__ day of March, 2007.

STRATEGIC HOTEL FUNDING, L.L.C.,
a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

ANNEX I

FINANCIAL INFORMATION

ANNEX II

MATERIAL AGREEMENTS

4

EXHIBIT E

[See attached]

STRATEGIC HOTEL FUNDING, LLC
$415,000,000 Revolver Financial Covenant Calculations

Section 7.2.4 (a) - FIXED CHARGE COVERAGE RATIO (Minimum 1.20x, steps up to 1.30x on second anniversary)

Tested at the end of each Fiscal Quarter	1Q 2006	2Q 2006	3Q 2006	4Q 2006
Consolidated Net Income				
Net Income of the Consolidated Group	(1,423)	11,708	91,427	(6,126)
Add: preferred dividends	3,706	5,914	7,461	7,462
Add: minority interests	313	884	96	9
Consolidated Net Income	**2,596**	**18,506**	**98,984**	**1,345**
Consolidated EBITDA				
Consolidated Net Income	2,596	18,506	98,984	1,345
Add: consolidated interest expense	7,850	7,926	16,453	20,800
Add: consolidated provisions for taxes	(2,236)	1,407	(395)	563
Add: amortization of intangibles	—	—	—	—
Add: depreciation	14,513	15,487	21,892	25,778
Add: non-recurring non-cash charge, if such charge is not reflected on the balance sheet; and such charge will not require a present or future payment				
Less: non-recurring non-cash gains, if included in Consolidated Net Income	—	—	—	
Excludes: Equity in Earnings from - Prague JV - unconsolidated subsidiary	136	(316)	(42)	—
Excludes: Equity in Earnings from - Hotel Del Coronado - unconsolidated subsidiary	1,442	(5)	(918)	1,258
Excludes: Equity in Earnings from - FSPMRC - unconsolidated subsidiary		(352)	(241)	62
Excludes: extraordinary gains or losses, and taxes associated	10,384	425	1,562	3,072
Excludes: gains or losses from sales of assets	(43)	17	(89,300)	—
Less: EBITDA attributable to New Orleans	—	—	—	—
Consolidated EBITDA	**34,642**	**43,095**	**47,995**	**52,878**
Total Interest Expense (Consolidated Group)				
Interest Expense	7,850	7,926	16,453	20,800
Less: Deferred Financing Fees	(408)	(412)	(530)	(604)
Capitalized Interest	1,676	1,810	2,171	2,600
Capitalized Lease Liabilities	—	—	—	—
Less Interest Expense Attributable to New Orleans	(1,268)	(1,277)	(1,281)	(1,277)
Total Interest Expense	**7,850**	**8,047**	**16,813**	**21,519**
Scheduled Principal Amounts of Amortization of Indebtedness				
Fixed Rate Debt	752	732	711	720
Floating Rate Debt				
Scheduled Principal Amounts of Amortization of Indebtedness	**752**	**732**	**711**	**720**
Gross Hotel Revenue (Consolidated Group)				
All revenues and receipt of every kind including but not limited to:				

income, before commissions/discounts for prompt payment, from rentals and sales of space				
license lease and concession fees of rentals				
net income from vending machines, health club membership fees				
food & beverage sales				
sales of merchandise (other than used FF&E)				
service charges but not gratuities				
interest which accrues on FF&E reserve accounts				
but shall not include:				
gratuities to employees				
federal, state, municipal sales, use and excise taxes				
insurance proceeds (other than BI)				
condemnation proceeds				
proceeds from sales of properties				
Gross Hotel Revenues	**137,221**	**165,303**	**201,414**	**237,999**
Total Fixed Charge				
Total Interest Expense	7,850	8,047	16,813	21,519
Add: Scheduled Principal Amounts of Amortization of Indebtedness	752	732	711	720
Add: Distributions on Preferred Partnership Units	—	—	—	—
Add: Dividends on Preferred Shares	3,706	5,914	7,461	7,462
Add: Deemed FF&E Reserves (4% of Gross Hotel Revenue)	5,489	6,612	8,057	9,520
Add: Any amounts paid into cash reserves as required by other indebtedness	—	—	—	—
Add: New Orleans Interest	1,268	1,277	1,281	1,277
Total Fixed Charges	**19,065**	**22,583**	**34,322**	**40,498**
a) Consolidated EBITDA, Trailing 12 Months	**119,266**	**127,784**	**151,502**	**178,610**
b) Total Fixed Charges, Trailing 12 Months	**72,110**	**76,583**	**93,077**	**116,468**
Ratio of a) to b)	**1.65**	**1.67**	**1.63**	**1.53**
Minimum	**1.20x**	**1.20x**	**1.20x**	**1.20x**
	Pass	**Pass**	**Pass**	**Pass**

STRATEGIC HOTEL FUNDING, LLC
$415,000,000 Revolver Financial Covenant Calculations

Section 7.2.4 (b) - MAXIMUM TOTAL LEVERAGE RATIO (Maximum 65%)

	1Q 2006	2Q 2006	3Q 2006	4Q 2006
Consolidated Debt				
(i) all indebtedness (principal, interest, fees and charges) for borrowed money* and for the deferred purchase price of property				1,557,865
(ii) the aggregate amount of capitalized lease liabilities				
(iii) all indebtedness of the type described in clauses (i) and (ii) of Persons other than members of the Consolidated Group which is secured by a Lien on any property owned by the Consolidated Group				
(iv) all Contingent Obligations				
(v) all Indebtedness described in clauses (ii) and (vii) of the definition of Indebtedness:				
(ii) - letters of credit drawn under the revolver				
(vii) - hedging agreements = Net Termination Value				
(vi) Borrowers Share of all above clause (i) to (v) for Unconsolidated Affiliates				288,289
Consolidated Debt				**1,857,373**
Gross Asset Value				
Consolidated Group Properties				
Borrowing Base (Appraised Values)				**Appraised Value**
Four Seasons Hotel Mexico D.F.				72,000
Four Seasons Resort - Punta Mita				303,000
Four Seasons Washington, D.C.				175,500
Ritz-Carlton Laguna Niguel				334,000
Marriott Lincolnshire Resort				40,400
Total Borrowing Base				**924,900**
Hyatt Regency LaJolla				160,000
Hyatt Regency New Orleans*				92,000
Hyatt Regency Phoenix				125,000
Loews Santa Monica				221,900
Ritz-Carlton Half Moon Bay				167,800
InterContinental Chicago*				293,600
InterContinental Miami*				166,900
Fairmont Chicago				226,300
Westin St. Francis				446,300
Fairmont Scottsdale Princess				345,300
InterContinental Prague				216,454
Marriott Grosvenor Square				200,808
Non Borrowing Base Consolidated Group Properties				**2,662,362**
Unconsolidated Subsidiary				
Hotel del Coronado*				382,500
Unconsolidated Subsidiary				**382,500**
Acquisition Properties				
Development Properties				51,900

Gross Asset Value	**4,021,662**
a) Consolidated Debt	**1,857,373**
b) Gross Asset Value (Appraised Value used until September 30th, 2008)	**4,021,662**
Ratio of a) to b)	**46.2%**
Maximum	**65.0%**
	Pass

STRATEGIC HOTEL FUNDING, LLC
$415,000,000 Revolver Financial Covenant Calculations

Section 7.2.4 (c) - NET WORTH (MINIMUM: $946,831 plus 75% of the proceeds of new stock issuances)

	1Q 2006	2Q 2006	3Q 2006	4Q 2006
Consolidated Tangible Net Worth				
tangible net worth of Consolidated Group in accordance with GAAP based on:				
shareholder book equity of Guarantor's common Capital Stock				970,022
add: Minority Interest in the common Capital Stock of Borrower				23,428
add: accumulated depreciation and amortization				268,991
Consolidated Tangible Net Worth				**1,262,441**
a) Consolidated Tangible Net Worth				**1,262,441**
Minimum (75% of Closing Date Consolidated Tangible Net Worth)				**946,831**
				Pass

Section 7.2.4 (d) - CONSTRUCTION COSTS (Maximum Construction Costs 15% of Gross Asset Value)

	1Q 2006	2Q 2006	3Q 2006	4Q 2006
a) Construction Costs				**111,517**
b) Gross Asset Value				**4,021,662**
Ratio of a) to b)				**2.77%**
Maximum				**15.00%**
				Pass

Section 7.2.4 (e) - Minority Joint Ventures (Maximum 25% of Gross Asset Value in the form of Minority Joint Ventures)

	1Q 2006	2Q 2006	3Q 2006	4Q 2006
Net Asset Value - Unconsolidated Subsidiaries				
Gross Asset Value - Unconsolidated Subsidiaries				382,500
Less: Debt allocated to Unconsolidate Subsidiaries				(288,289)
Net Asset Value - Unconsolidated Subsidiaries				**94,211**
a) Net Asset Value - Unconsolidated Subsidiaries				**94,211**
b) Gross Asset Value				**4,021,662**
Ratio of a) to b)				**2.3%**
Maximum				**25.0%**
				Pass

Section 7.2.4 (f) - Construction Costs and Joint Ventures (Maximum 35% of Gross Asset Value)

	1Q 2006	2Q 2006	3Q 2006	4Q 2006

Construction Costs and Joint Ventures	
Construction Costs	111,517
Net Asset Value - Unconsolidated Subsidiaries	94,211
Construction Costs and Joint Ventures	**205,728**
b) Construction Costs and Joint Ventures	**205,728**
b) Gross Asset Value	**4,021,662**
Ratio of a) to b)	**5.1%**
Maximum	**35.0%**
	Pass

STRATEGIC HOTEL FUNDING, LLC
$415,000,000 Revolver Financial Covenant Calculations

Borrowing Base Coverage

	1Q 2006	2Q 2006	3Q 2006	4Q 2006
(a) Adjusted Net Operating Income (Borrowing Base)				
Pro Forma Operating Income (Borrowing Base)				
all income received by the property determined on an accrual basis and according to GAAP including:				
(i) rent or hotel revenue				
(ii) all amounts payable under REA's, operating agreements, covenants, conditions and restrictions, and condo agreements				
(iii) condemnation awards				
(iv) business interruption and loss of rental value proceeds				
(v) all investment income with respect to any collateral accounts (reserves, restricted cash, rent deposits, etc.) but shall not include:				
but shall not include:				
(a) insurance proceeds other than those described above				
(b) proceeds from the sale, financing, refinancing, transfer, exchange of any part of the property (condo units, time shares, out-parcel, etc.)				
(c) repayments received from tenants of principal loaned or advanced to tenants				
(d) any income which is Operating Income but is paid directly by a tenant to another Person				
(e) any fees payable by a tenant that are reimbursable to tenant.				
Four Seasons Hotel Mexico D.F.	6,069	5,736	4,077	7,357
Four Seasons Resort - Punta Mita	14,050	11,602	8,156	12,621
Four Seasons Washington, D.C.	10,366	14,415	10,393	13,785
Ritz-Carlton Laguna Niguel	16,428	19,241	23,283	17,936
Marriott Lincolnshire Resort	7,969	9,366	10,161	12,642
Pro Forma Operating Income (Borrowing Base)	**54,881**	**60,360**	**56,071**	**64,341**
Pro Forma Operating Expenses (Borrowing Base)				
all expenses actually paid or payable in connection with ownership or operation of the property determined on an accrual basis and according to GAAP including:				
Costs (including labor) for providing service for rooms, food & beverage, telecom, garage, parking, other departments, real estate and business taxes, insurance, utilities, rental expenses administrative and general costs, repairs and maintenance, third-party franchise fees and legal expenses incurred in connection with the operation of the property rental expenses for leaseholds (Paris & Hamburg)				
but shall not include:				
(i) depreciation, amortization and other non-cash items				
(ii) principal and interest on borrowed money				
(iii) income taxes or other taxes in the nature of income taxes				
(iv) expenses incurred in connection with the Revolver				

(v) distributions to shareholders (vi) capital expenditures (FF&E Reserve) or *management fees* Other				
Four Seasons Hotel Mexico D.F.	4,360	4,083	3,648	4,927
Four Seasons Resort - Punta Mita	7,178	6,267	6,192	8,066
Four Seasons Washington, D.C.	9,164	9,997	9,158	10,482
Ritz-Carlton Laguna Niguel	12,549	13,169	14,697	13,978
Marriott Lincolnshire Resort	7,013	7,541	7,802	10,193
Pro Forma Operating Expenses (Borrowing Base)	**40,263**	**41,056**	**41,497**	**47,645**
Pro Forma Net Operating Income (Borrowing Base)				
Four Seasons Hotel Mexico D.F.	1,709	1,653	429	2,430
Four Seasons Resort - Punta Mita	6,872	5,335	1,964	4,555
Four Seasons Washington, D.C.	1,202	4,419	1,235	3,303
Ritz-Carlton Laguna Niguel	3,879	6,072	8,587	3,958
Marriott Lincolnshire Resort	956	1,825	2,359	2,449
Pro Forma Net Operating Income (Borrowing Base)	**14,618**	**19,304**	**14,574**	**16,696**
Adjusted Net Operating Income				
Net Operating Income (Borrowing Base)	14,618	19,304	14,574	16,696
Less: Deemed FF&E Reserves for Consolidated Group (4% of Gross Hotel Revenues)	(2,195)	(2,414)	(2,243)	(2,574)
Less: Deemed Management Fees for Consolidated Group (Greater of Actual or 3% of Gross	(1,646)	(1,811)	(1,682)	(1,930)
Less: any other monetary obligations paid during the period with respect to the properties	—	—	—	—
Adjusted Net Operating Income	**10,776**	**15,078**	**10,649**	**12,192**
TTM Pro Forma Adjusted Net Operating Income (Borrowing Base)				**48,695**
(b) Pro Forma Interest Expense				
Pro Forma Aggregate Outstanding Balance				206,000
LIBOR Rate				5.32%
Applicable Margin				0.80%
Pro Forma Interest Expense				**12,607**
a) TTM Pro Forma Adjusted Net Operating Income (Borrowing Base)				**48,695**
b) Pro Forma Interest Expense				**12,607**
Ratio of a) to b)				**3.86x**
Minimum				**1.75x**
Maximum Availability				**454,672**

STRATEGIC HOTEL FUNDING, LLC
$415,000,000 Revolver Financial Covenant Calculations

Appraised Values (Borrowing Base)

	1Q 2006	2Q 2006	3Q 2006	4Q 2006
Borrowing Base (Appraised Values)				**Appraised Value**
Four Seasons Hotel Mexico D.F.				72,000
Four Seasons Resort - Punta Mita				303,000
Four Seasons Washington, D.C.				175,500
Ritz-Carlton Laguna Niguel				334,000
Marriott Lincolnshire Resort				40,400
Total Borrowing Base				**924,900**
Maximum				**60.00%**
Maximum Availability				**554,940**

EXHIBIT F

LENDER ASSIGNMENT AGREEMENT [1]

This Lender Assignment Agreement (this "Assignment") is dated as of the Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the "Assignor") and [the] [each] Assignee identified in item [2] [3] below ([the] [each an] "Assignee"). [It is understood and agreed that the rights and obligations of such Assignee hereunder are several and not joint]. Capitalized terms used herein but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by [the] [each] Assignee. The Standard Terms and Conditions set forth in Annex 1 hereto (the "Standard Terms and Conditions") are hereby agreed to and incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to [the] [each] Assignee, and [the] [each] Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, the interest in and to all of the Assignor's rights and obligations under the Credit Agreement and any other documents or instruments delivered pursuant thereto that represents the amount and percentage interest identified below of all of the Assignor's outstanding rights and obligations under its Revolving Loan Commitment (including with respect to any outstanding Revolving Loans and Letters of Credit) (the " Assigned Interest"). [Such] [Each] sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment, without representation or warranty by the Assignor.

1.	Assignor:	_____
[2.	Assignee:	_____] [2]
[2.][3.] Credit Agreement:		Credit Agreement, dated as of March 9, 2007, among Strategic Hotel Funding, L.L.C., the various financial institutions as are or may become parties thereto, and Deutsche Bank Trust Company Americas, as Administrative Agent (such Credit Agreement, as in effect on the date of this Assignment, being herein called the "Credit Agreement")

[1] This form of Lender Assignment Agreement should be used by Lenders for an assignment to a single Assignee or to funds managed by the same or related investment managers.

[2] Item 2 should list the Assignee if the Form is used for a single Assignee. In the case of an assignment to funds managed by the same or related investment managers, the Assignees should be listed in the table under bracketed item 3.

[3. Assigned Interest: [3]

	Aggregate Amount of all Revolving Loan Commitments (or, if terminated, aggregate outstanding principal amount of Revolving Loans for all Lenders and total Letter of Credit Outstandings)	Amount of Revolving Loan Commitment (or, if terminated, aggregate outstanding principal amount of Revolving Loans and Percentage of Letter of Credit Outstandings) Assigned	Percentage of Assigned Revolving Loan Commitment (or, if terminated, aggregate outstanding principal amount of Revolving Loans and Percentage of Letter of Credit Outstandings) [4]
[Name of Assignee]	$_____	$_____	_____%
[Name of Assignee]	$_____	$_____	_____%]

[3] Insert this chart if this Form is being used for assignment to funds managed by the same or related investment managers.

[4] Set forth, to at least 9 decimals, as a percentage of the Revolving Loan Commitments (or Revolving Loans, as the case may be) of all Lenders thereunder.

[4. Assigned Interest: [5]

Aggregate Amount of all Revolving Loan Commitments (or, if terminated, aggregate outstanding principal amount of Revolving Loans for all Lenders and total Letter of Credit Outstandings)	Amount of Revolving Loan Commitment (or, if terminated, aggregate outstanding principal amount of Revolving Loans and Percentage of Letter of Credit Outstandings) Assigned	Percentage of Assigned Revolving Loan Commitment (or, if terminated, aggregate outstanding principal amount of Revolving Loans and Percentage of Letter of Credit Outstandings) [6]
$_____	$_____	_____%]

Effective Date: _____, _____ , 200___ .

Payment Instructions: _____
_____
_____
Attention: _____

Reference:

Address for Notices:

Relationship Contact:

[5] Insert this chart if this Form is being used by a Lender for an assignment to a single Assignee.

[6] Set forth, to at least 9 decimals, as a percentage of the Revolving Loan Commitments (or Revolving Loans, as the case may be) of all Lenders thereunder.

The terms set forth in this Assignment are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: _____
Name:
Title:

ASSIGNEE [7]
[NAME OF ASSIGNEE]

By: _____
Name:
Title:

[Consented to and] [8] Accepted:
DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

[Consented to:
STRATEGIC HOTEL FUNDING, L.L.C.

By: _____
Name:
Title:] [9]

---

7 Add additional signature blocks, as needed, if this Form is being used by funds managed by the same or related investment managers.

8 Insert only if assignment is being made to an Eligible Assignee that is not an existing Lender, an Affiliate of an existing Lender or an Approved Fund.

9 Insert only if assignment is being made to an Eligible Assignee that is not an existing Lender, an Affiliate of an existing Lender or an Approved Fund and so long as no Specified Default or Event of Default exists.

ANNEX 1
TO
EXHIBIT F

STRATEGIC HOTEL FUNDING, L.L.C.

CREDIT AGREEMENT

STANDARD TERMS AND CONDITIONS
FOR
LENDER ASSIGNMENT AGREEMENT

1. Representations and Warranties.

1.1 Assignor . The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with any Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any other Loan Document or any other instrument or document delivered pursuant thereto, other than this Assignment, or any collateral thereunder, (iii) the financial condition of the Borrower or any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower or any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Documents.

1.2 Assignee . [The] [Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 7.1.1 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and to purchase the Assigned Interest on the basis of which it has made such analysis and decision and (v) attached to this Assignment is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the] [each] Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payment . From and after the Effective Date, the Administrative Agent shall make all payment in respect to the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to [the] [each] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions . This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment by telecopy shall be effective as delivery of a manually executed counterpart of the Assignment. THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

* * * *

EXHIBIT G-1

PLEDGE AGREEMENT

among

STRATEGIC HOTEL FUNDING, L.L.C.

and

CERTAIN SUBSIDIARIES OF STRATEGIC HOTEL FUNDING, L.L.C.

collectively, as PLEDGOR

and

DEUTSCHE BANK TRUST COMPANY AMERICAS,

as PLEDGEE

Dated as of March 9, 2007

PLEDGE AGREEMENT

PLEDGE AGREEMENT (as amended, modified or supplemented from time to time, this "Agreement"), dated as of March 9, 2007, among each of the undersigned pledgors (each, a "Pledgor" and, together with any other entity that becomes a pledgor hereunder pursuant to Section 30 hereof, the "Pledgors") and Deutsche Bank Trust Company Americas, as administrative agent (together with any successor administrative agent, the "Pledgee"), for the benefit of the Secured Creditors (as defined below). Except as otherwise defined herein, all capitalized terms used herein and defined in the Credit Agreement (as defined below) shall be used herein as therein defined.

W I T N E S S E T H :

WHEREAS, STRATEGIC HOTEL FUNDING, L.L.C. (the "Borrower"), the lenders from time to time party thereto (the "Lenders"), and the Pledgee, as administrative agent (together with any successor administrative agent, the "Administrative Agent "), have entered into a Credit Agreement, dated as of March 9, 2007 (as amended, modified or supplemented from time to time, the "Credit Agreement "), providing for the making of Loans to and the issuance of, and participation in, Letters of Credit for the account of the Borrower, all as contemplated therein (the Pledgee, the Issuer, the Lenders and each Person (other than Borrower, Guarantor or any Subsidiary of either) party to a Credit Hedging Agreement or a Pari-Pasu Hedging Agreement, to the extent such party is a Lender or any affiliate thereof, and their subsequent successors and assigns, are herein called the "Secured Creditors");

WHEREAS, pursuant to the Subsidiary Guaranty, certain Pledgors (other than the Borrower) have jointly and severally guaranteed the payment and performance when due of all Guaranteed Obligations as described (and defined) therein;

WHEREAS, it is a condition precedent to the making of Loans to, and the issuance of Letters of Credit for the account of, the Borrower under the Credit Agreement that each Pledgor shall have executed and delivered to the Pledgee this Agreement; and

WHEREAS, each Pledgor will obtain direct and indirect material benefits from the incurrence of Loans by the Borrower and the issuance of Letters of Credit for the account of the Borrower under the Credit Agreement, the entering into of Credit Hedging Agreements by the Secured Creditors and the entering into of Pari-Pasu Hedging Agreements by the Lenders and the Pari-Pasu Hedging Counterparties and, accordingly, desires to enter into this Agreement in order to satisfy the conditions described in the preceding recital and to induce the Lenders to make Loans to the Borrower and issue, and/or participate in, Letters of Credit for the account of the Borrower and/or enter into Credit Hedging Agreements and/or enter into Pari-Pasu Hedging Agreements;

NOW, THEREFORE, in consideration of the foregoing and other benefits accruing to each Pledgor, the receipt and sufficiency of which are hereby acknowledged, each Pledgor hereby makes the following representations and warranties to the Pledgee for the benefit of the Secured Creditors and hereby covenants and agrees with the Pledgee for the benefit of the Secured Creditors as follows:

1. SECURITY FOR OBLIGATIONS. This Agreement is made by each Pledgor for the benefit of the Secured Creditors to secure:

(i) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations, liabilities and indebtedness (including, without limitation, principal, premium, interest, reimbursement obligations (both actual and contingent) under Letters of Credit, Credit Hedging Agreements, Pari-Pasu Hedging Agreements, fees, costs, and indemnities (including in each case, without limitation, all interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency, reorganization or similar proceeding of any Pledgor at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such proceeding) of such Pledgor to the Secured Creditors, whether now existing or hereafter incurred under, arising out of, or in connection with, the Credit Agreement and the other Loan Documents to which such Pledgor is a party (including, in the case of each Pledgor that is party to the Subsidiary Guaranty, all Guaranteed Obligations (as defined in the Subsidiary Guaranty)) and the due performance and compliance by such Pledgor with all of the terms, conditions and agreements contained in the Credit Agreement and in such other Loan Documents (all such obligations, liabilities and indebtedness under this clause (i) being herein collectively called the "Credit Document Obligations");

(ii) any and all sums advanced by the Pledgee in order to preserve the Collateral (as hereinafter defined) or preserve its security interest in the Collateral;

(iii) in the event of any proceeding for the collection or enforcement of any indebtedness, obligations or liabilities of such Pledgor referred to in clause (i) above, after an Event of Default shall have occurred and be continuing, the reasonable expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral, or of any exercise by the Pledgee of its rights hereunder, together with reasonable attorneys' fees and court costs; and

(iv) all amounts paid by any Secured Creditor as to which such Secured Creditor has the right to reimbursement under Section 11 of this Agreement;

all such obligations, liabilities, sums and expenses set forth in clauses (i) through (iv) of this Section 1 being herein collectively called the "Obligations ," it being acknowledged and agreed that the "Obligations" shall include extensions of credit of the types described above, whether outstanding on the date of this Agreement or extended from time to time after the date of this Agreement.

2. DEFINITIONS.

(a) Reference to singular terms shall include the plural and vice versa.

(b) The following capitalized terms used herein shall have the definitions specified below:

"Administrative Agent" shall have the meaning set forth in the recitals hereto.

"Adverse Claim" shall have the meaning given such term in Section 8-102(a)(1) of the UCC.

"Agreement" shall have the meaning set forth in the first paragraph hereof.

"Borrower" shall have the meaning set forth in the recitals hereto.

"Certificated Security " shall have the meaning given such term in Section 8-102(a)(4) of the UCC.

"Class" shall have the meaning set forth in Section 22 hereof.

"Clearing Corporation " shall have the meaning given such term in Section 8-102(a)(5) of the UCC.

"Collateral" shall have the meaning set forth in Section 3.1 hereof.

"Corporation" shall mean any corporation that is a Subsidiary of a Pledgor listed on Annex C attached hereto.

"Corporate Assets" shall mean all assets, whether tangible or intangible and whether real, personal or mixed (including, without limitation, all capital and interest in other Corporations), at any time owned by any Corporation.

"Corporate Stock" shall mean all of the shares at any time owned by Pledgor of the Corporations.

"Credit Agreement" shall have the meaning set forth in the recitals hereto.

"Credit Document Obligations" shall have the meaning set forth in Section 1(i) hereof.

"Credit Hedging Agreements" shall have the meaning set forth in the Credit Agreement.

"Equity Interest" of any Subsidiary of a Pledgor shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interest in (however designated) equity of such Subsidiary, including, without limitation, any common stock, preferred stock, any limited or general partnership interest and any limited liability company membership interest.

"Event of Default" shall mean any Event of Default (or equivalent term) under, and as defined in, the Credit Agreement and shall in any event include, without limitation, any payment default on any of the Obligations after the expiration of any applicable grace period.

"Indemnitees" shall have the meaning set forth in Section 11 hereof.

"Lenders" shall have the meaning set forth in the recitals hereto.

"Limited Liability Company" shall mean any limited liability company that is a Subsidiary of a Pledgor listed on Annex B attached hereto.

"Limited Liability Company Assets" shall mean all assets, whether tangible or intangible and whether real, personal or mixed (including, without limitation, all limited liability company capital and interest in other limited liability companies), at any time owned by any Limited Liability Company.

"Limited Liability Company Interests" shall mean the entire limited liability company membership interest at any time owned by any Pledgor in the Limited Liability Companies.

"Limited Partnership " shall mean any limited partnership that is a subsidiary of a Pledgor listed on Annex B attached hereto.

"Limited Partnership Interests" shall mean the entire limited partnership membership interest at any time owned by a Pledgor in the Limited Partnerships.

"Loan Documents" shall have the meaning set forth in the Credit Agreement.

"Location" of any Pledgor shall mean such Pledgor's "location" as determined pursuant to Section 9-307 of the UCC.

"Obligations" shall have the meaning set forth in Section 1 hereof.

"Organizational Documents" means all documents, instruments and other papers constituting the entire organizational documents of any Corporation or Limited Liability Company and any and all amendments thereto, including without limitation, certificates of formation, operating agreements, certificates of incorporation and bylaws.

"Pari-Pasu Hedging Agreements" shall have the meaning set forth in the Credit Agreement.

"Person" means any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust or other enterprise or any government or political subdivision or any agency, department or instrumentality thereof.

"Pledgee" shall have the meaning set forth in the first paragraph hereof.

"Pledgor" shall have the meaning set forth in the first paragraph hereof.

"Primary Obligations " shall have the meaning set forth in Section 9(b) hereof.

"Pro Rata Share" shall have the meaning set forth in Section 9(b) hereof.

"Proceeds" shall have the meaning given such term in Section 9-102(a)(64) of the UCC and, in any event, shall also include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Pledgee or any Pledgor from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to any Pledgor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any Person acting under color of governmental authority) and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Registered Organization " shall mean a "registered organization" as such term is defined in Section 9-102 (a) (70) of the UCC.

"Required Lenders" shall have the meaning set forth in the Credit Agreement.

"Secondary Obligations " shall have the meaning set forth in Section 9(b) hereof.

"Secured Creditors" shall have the meaning set forth in the recitals hereto.

"Securities Act" shall mean the Securities Act of 1933, as amended, as in effect from time to time.

"Securities Intermediary " shall have the meaning given such term in Section 8-102(14) of the UCC.

"Security Entitlement" shall have the meaning given such term in Section 8-102(a)(17) of the UCC.

"Subsidiary" shall have the meaning given such term in the Credit Agreement.

"Subsidiary Guaranty " shall have the meaning given such term in the Credit Agreement.

"Termination Date" shall have the meaning set forth in Section 20 hereof.

"Transmitting Utility " shall mean a "transmitting utility" as such term is defined in Section 9-102(a)(80) of the UCC.

"UCC" shall mean the Uniform Commercial Code as in effect in the State of New York from time to time; provided that all references herein to specific sections or subsections of the UCC are references to such sections or subsections, as the case may be, of the Uniform Commercial Code as in effect in the State of New York on the date hereof.

"Uncertificated Security " shall have the meaning given such term in Section 8-102(a)(18) of the UCC.

"Voting Rights" shall have the meaning set forth in Section 5 hereof.

3. PLEDGE OF SECURITIES, ETC.

3.1 Pledge . To secure the Obligations now or hereafter owed or to be performed by such Pledgor, each Pledgor does hereby grant, pledge and assign to the Pledgee for the benefit of the Secured Creditors, and does hereby create a continuing security interest in favor of the Pledgee for the benefit of the Secured Creditors in, all of its right, title and interest in and to the following, whether now existing or hereafter from time to time acquired (collectively, but subject to the terms of the proviso to this Section 3.1, the "Collateral"):

(a) all Limited Liability Company Interests owned by such Pledgor from time to time and all of its right, title and interest in each Limited Liability Company to which each such interest relates, whether now existing or hereafter acquired, including, without limitation, to the fullest extent permitted under the terms and provisions of the documents and agreements governing such Limited Liability Company Interests and applicable law:

(A) all the capital thereof and its interest in all profits, losses, Limited Liability Company Assets and other distributions to which such Pledgor shall at any time be entitled in respect of such Limited Liability Company Interests;

(B) all other payments due or to become due to such Pledgor in respect of Limited Liability Company Interests, whether under any limited liability company agreement or otherwise, whether as contractual obligations, damages, insurance proceeds or otherwise;

(C) all of its claims, rights, powers, privileges, authority, options, security interests, liens and remedies, if any, under any limited liability company agreement or operating agreement, or at law or otherwise in respect of such Limited Liability Company Interests;

(D) all present and future claims, if any, of such Pledgor against any such Limited Liability Company for monies loaned or advanced, for services rendered or otherwise;

(E) all of such Pledgor's rights under any limited liability company agreement or operating agreement or at law to exercise and enforce every right, power, remedy, authority, option and privilege of such Pledgor relating to such Limited Liability Company Interests, including any power to terminate, cancel or modify any limited liability company agreement or operating agreement, to execute any instruments and to take any and all other action on behalf of and in the name of any of such Pledgor in respect of such Limited Liability Company Interests and any such limited liability company, to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, amendment, waiver or approval, together with full power and authority to demand, receive, enforce, collect or receipt for any of the foregoing or for any Limited Liability Company Asset, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action in connection with any of the foregoing; and

(F) all other property hereafter delivered in substitution for or in addition to any of the foregoing, all certificates and instruments representing or evidencing such other property and all cash, securities, interest, dividends, rights and other property at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all thereof;

(b) all Corporate Stock owned by such Pledgor from time to time, all options and warrants owned by such Pledgor from time to time to purchase such Corporate Stock, and all of its right, title and interest in each Corporation to which each such shares relates, whether now existing or hereafter acquired, including, without limitation, to the fullest extent permitted under the terms and provisions of the documents and agreements governing such Corporate Stock and applicable law:

(A) all the capital thereof and its interest in all profits, losses, Corporate Assets and other distributions to which such Pledgor shall at any time be entitled in respect of such Corporate Stock;

(B) all other payments due or to become due to such Pledgor in respect of Corporate Stock, whether under the bylaws, any Organizational Document or otherwise, whether as contractual obligations, damages, insurance proceeds or otherwise;

(C) all of its claims, rights, powers, privileges, authority, options, security interests, liens and remedies, if any, under the bylaws, any Organizational Document, or at law or otherwise in respect of such Corporate Stock;

(D) all present and future claims, if any, of such Pledgor against any such Corporation for monies loaned or advanced, for services rendered or otherwise;

(E) all of such Pledgor's rights under the bylaws, any Organizational Document or at law or otherwise to exercise and enforce every right, power, remedy, authority, option and privilege of such Pledgor relating to such Corporate Stock, including any power to terminate, cancel or modify the bylaws, any Organizational Document or any other Organizational Document, to execute any instruments and to take any and all other action on behalf of and in the name of any of such Pledgor in respect of such Corporate Stock and any such Corporation, to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, amendment, waiver or approval, together with full power and authority to demand, receive, enforce, collect or receipt for any of the foregoing or for any Corporation Asset, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action in connection with any of the foregoing; and

(F) all other property hereafter delivered in substitution for or in addition to any of the foregoing, all certificates and instruments representing or evidencing such other property and all cash, securities, interest, dividends, rights and other property at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all thereof;

(c) all Security Entitlements owned by such Pledgor from time to time in any and all of the foregoing; and

(d) all Proceeds of any and all of the foregoing.

3.2 Procedures . (a) To the extent that any Pledgor at any time or from time to time owns, acquires or obtains any right, title or interest in any Collateral, such Collateral shall automatically (and without the taking of any action by the respective Pledgor) be pledged pursuant to Section 3.1 of this Agreement and, in addition thereto, the respective Pledgor shall (to the extent provided below) take the following actions as set forth below (as promptly as practicable and, in any event, within ten (10) days after it obtains such Collateral) for the benefit of the Pledgee and the other Secured Creditors:

(i) with respect to a Certificated Security (other than a Certificated Security credited on the books of a Clearing Corporation or Securities Intermediary), the respective Pledgor shall deliver such Certificated Security to the Pledgee, indorsed to the Pledgee or indorsed in blank;

(ii) with respect to an Uncertificated Security (other than an Uncertificated Security credited on the books of a Clearing Corporation or Securities Intermediary), the respective Pledgor shall cause the issuer of such Uncertificated Security to duly authorize, execute and deliver to the Pledgee, an agreement for the benefit of the Pledgee and the other Secured Creditors substantially in the form of Annex D hereto (appropriately completed to the reasonable satisfaction of the Pledgee and with such modifications, if any, as shall be reasonably satisfactory to the Pledgee) pursuant to which such issuer agrees to comply with any and all instructions originated by the Pledgee without further consent by the registered owner and not to comply with instructions regarding such Uncertificated Security originated by any other Person other than a court of competent jurisdiction;

(iii) with respect to a Certificated Security, Uncertificated Security, Corporate Stock or Limited Liability Company Interest credited on the books of a Clearing Corporation or Securities Intermediary (including a Federal Reserve Bank, Participants Trust Company or The Depository Trust Company), the respective Pledgor shall promptly notify the Pledgee thereof and shall promptly take all actions required (x) to comply with the applicable rules of such Clearing Corporation or Securities Intermediary and (y) to perfect the security interest of the Pledgee under applicable law (including, in any event, under Sections 9-314(a) and (c), 9-106 and 8-106(d) of the UCC). The Pledgor further agrees to take such actions as the Pledgee deems reasonably necessary or desirable to effect the foregoing;

(iv) with respect to Corporate Stock or a Limited Liability Company Interest (other than Corporate Stock or a Limited Liability Company Interest credited on the books of a Clearing Corporation or Securities Intermediary), (x) if such Corporate Stock

or Limited Liability Company Interest is represented by a certificate and is a "security" for purposes of Section 8-102(a)(15) of the UCC, the procedure set forth in Section 3.2(a)(i) hereof, and (y) if such Corporate Stock or Limited Liability Company Interest is not represented by a certificate or is not a "security" for purposes of the UCC, the procedure set forth in Section 3.2(a)(ii) hereof; and

(v) with respect to cash proceeds from any of the Collateral described in Section 3.1 hereof which are required to be paid over to (or may be received by) the Pledgee or any of the other Secured Creditors pursuant to the terms of this Agreement, (i) establishment by the Pledgee of a cash account in the name of such Pledgor over which the Pledgee shall have "exclusive and absolute control" and dominion (and no withdrawals or transfers may be made therefrom by any Person except with the prior written consent of the Pledgee) and (ii) deposit of such cash in such cash account.

(b) In addition to the actions required to be taken pursuant to Section 3.2(a) hereof, each Pledgor shall take the following additional actions with respect to the Collateral:

(i) with respect to all Collateral of such Pledgor whereby or with respect to which the Pledgee may (and in accordance with the terms hereof is entitled to) obtain "control" thereof within the meaning of Section 8-106 of the UCC (or under any provision of the UCC as same may be amended or supplemented from time to time, or under the laws of any relevant State other than the State of New York), the respective Pledgor shall take all actions as may be reasonably requested from time to time by the Pledgee so that "control" of such Collateral is obtained and at all times held by the Pledgee; and

(ii) each Pledgor shall from time to time cause appropriate financing statements (on Form UCC-1 or other appropriate form) under the Uniform Commercial Code as in effect in the various relevant States, covering all Collateral hereunder (with the form of such financing statements to be satisfactory to the Pledgee), to be filed in the relevant filing offices so that at all times the Pledgee has a security interest in all Collateral which also may be perfected by the filing of such financing statements under the laws of the relevant States, including, without limitation, Section 9-312(a) of the UCC.

3.3 Subsequently Acquired Collateral . (a) If any Pledgor shall acquire (by purchase, stock dividend or similar distribution or otherwise) any additional Collateral at any time or from time to time after the date hereof, such Collateral shall automatically (and without any further action being required to be taken) be subject to the pledge and security interests created pursuant to Section 3.1 hereof and, furthermore, the respective Pledgor will promptly thereafter take (or cause to be taken) all action with respect to such Collateral in accordance with the procedures set forth in Section 3.2 hereof, and will promptly thereafter deliver to the Pledgee (in the case of any such additional Collateral consisting of additional Equity Interests) (i) a certificate executed by an authorized officer of such Pledgor describing such Collateral and certifying that the same has been duly pledged in favor of the Pledgee (for the benefit of the Secured Creditors) hereunder and (ii) such supplements to Annexes A through D hereto as are reasonably necessary to cause such annexes to be complete and accurate at such time.

(b) In addition, if any Pledgor shall acquire (by purchase, stock dividend or similar distribution or otherwise) any Capital Stock of any Subsidiary whose Capital Stock is required to be pledged to Pledgee pursuant to Section 7.1.9(b) of the Credit Agreement, at any time or from time to time after the date hereof, such Capital Stock shall automatically (and without any further action being required to be taken) be subject to the pledge and security interests created pursuant to Section 3.1 hereof and, furthermore, the respective Pledgor will promptly thereafter take (or cause to be taken) all action with respect to such Capital Stock in accordance with the procedures set forth in Section 3.2 hereof, and will promptly thereafter deliver to the Pledgee (i) a certificate executed by an authorized officer of such Pledgor describing such Capital Stock and certifying that the same has been duly pledged in favor of the Pledgee (for the benefit of the Secured Creditors) hereunder and (ii) such supplements to Annexes A through D hereto as are reasonably necessary to cause such annexes to be complete and accurate at such time.

3.4 Transfer Taxes . Each pledge of Collateral under Section 3.1 or Section 3.3 hereof shall be accompanied by any transfer tax stamps required in connection with the pledge of such Collateral.

3.5 Certain Representations and Warranties Regarding the Collateral . Each Pledgor represents and warrants that on the date hereof: (i) the exact legal name of such Pledgor, the type of organization of such Pledgor, whether or not such Pledgor is a Registered Organization, the jurisdiction of organization of such Pledgor, such Pledgor's Location, the organizational identification number (if any) of such Pledgor, and whether or not such Pledgor is a Transmitting Utility, is listed on Annex A hereto; (ii) the Limited Liability Company Interests held by such Pledgor consist of the number and type of interests of the Limited Liability Companies described in Annex B hereto; (iii) each such Limited Liability Company Interest constitutes that percentage of the issued and outstanding Equity Interest of the issuing Limited Liability Company as set forth in Annex B hereto; (iv) the Corporate Stock (and any warrants or options to purchase Corporate Stock) held by such Pledgor consists of the number and type of shares of the stock (or warrants or options to purchase any stock) of the Corporation described in Annex C hereto; (v) such Corporate Stock constitutes that percentage of the issued and outstanding Equity Interest of the issuing the Corporation as set forth in Annex C hereto; (vi) the Pledgor has complied with the respective procedure set forth in Section 3.2(a) hereof with respect to each item of Collateral described in Annexes B and C hereto; and (vii) on the date hereof, such Pledgor owns no other stock, Corporate Stock or Limited Liability Company Interests that would otherwise constitute Collateral or a Pledge of such Collateral is contractually prohibited by existing Mortgage Indebtedness.

4. APPOINTMENT OF SUB-AGENTS; ENDORSEMENTS, ETC. If and to the extent necessary to enable the Pledgee to perfect its security interest in any of the Collateral or to exercise any of its remedies hereunder, the Pledgee shall have the right to appoint one or more sub-agents for the purpose of retaining physical possession of the Collateral, which may be held (in the discretion of the Pledgee) in the name of the relevant Pledgor, endorsed or assigned in blank or in favor of the Pledgee or any nominee or nominees of the Pledgee or a sub-agent appointed by the Pledgee.

5. VOTING, ETC., WHILE NO EVENT OF DEFAULT. Unless and until there shall have occurred and be continuing an Event of Default, each Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to and attaching to any and all of the Collateral owned by it, and to give consents, waivers or ratifications in respect thereof; provided that, in each case, no vote shall be cast or any consent, waiver or ratification given or any action taken or omitted to be taken which would violate in any material respect, result in a breach of any covenant contained in, or be inconsistent with any of the terms of any Loan Document, or which could reasonably be expected to have a Material Adverse Effect (collectively, the "Voting Rights"). All such rights of each Pledgor to vote and to give consents, waivers and ratifications shall cease in case an Event of Default has occurred, and is continuing and the Pledgee shall have given notice to the relevant Pledgor of its intent to exercise rights pursuant to Section 7 hereof (although no such notice shall be required if an Event of Default described in any of clauses (a) through (e) of Section 8.1.9 of the Credit Agreement shall have occurred and be continuing) and Section 7 hereof shall become applicable.

6. DIVIDENDS AND OTHER DISTRIBUTIONS. Unless and until there shall have occurred and be continuing an Event of Default and the Pledgee shall have given notice to the relevant Pledgor of its intent to exercise rights pursuant to Section 7 hereof (although no such notice shall be required if an Event of Default described in any of clauses (a) through (e) of Section 8.1.9 of the Credit Agreement shall have occurred and be continuing), all cash dividends, cash distributions, cash Proceeds and other cash amounts payable in respect of the Collateral shall be paid to the respective Pledgor free of liens and security interests created hereby and by the other Loan Documents. The Pledgee shall be entitled to receive directly, and to retain as part of the Collateral:

(i) all other or additional stock, certificates, limited liability company interests, partnership interests, instruments or other securities or property (including, but not limited to, cash dividends other than as set forth above) paid or distributed by way of dividend or otherwise in respect of the Collateral;

(ii) all other or additional stock, certificates, limited liability company interests, partnership interests, instruments or other securities or property (including, but not limited to, cash (although such cash may be paid directly to the respective Pledgor so long as no Event of Default then exists)) paid or distributed in respect of the Collateral by way of stock-split, spin-off, split-up, reclassification, combination of shares or similar rearrangement; and

(iii) all other or additional stock, certificates, limited liability company interests, partnership interests, instruments or other securities or property (including, but not limited to, cash (although such cash may be paid directly to the respective Pledgor so long as no Event of Default then exists)) which may be paid in respect of the Collateral by reason of any consolidation, merger, exchange of stock, conveyance of assets, liquidation or similar corporate or other organization.

All dividends, distributions or other payments which are received by any Pledgor contrary to the provisions of this Section 6 and Section 7 hereof shall be received in trust for the benefit of the Pledgee, shall be segregated from other property or funds of such Pledgor and shall be forthwith paid over to the Pledgee as Collateral in the same form as so received (with any necessary endorsement).

7. REMEDIES IN CASE OF AN EVENT OF DEFAULT. If there shall have occurred and be continuing an Event of Default and the Pledgee shall have given notice to the relevant Pledgor of its intent to exercise rights pursuant to this Section 7 (although no such notice shall be required if an Event of Default described in any of clauses (a) through (e) of Section 8.1.9 of the Credit Agreement shall have occurred and be continuing), then and in every such case, the Pledgee shall be entitled to exercise all of the rights, powers and remedies (whether vested in it by this Agreement, any other Loan Document or by law) for the protection and enforcement of its rights in respect of the Collateral, and the Pledgee shall be entitled to exercise all the rights and remedies of a secured party under the UCC as in effect in any relevant jurisdiction and also shall be entitled, without limitation, to exercise the following rights, which each Pledgor hereby agrees to be commercially reasonable:

(i) to receive all amounts payable in respect of the Collateral otherwise payable under Section 6 hereof to the respective Pledgor;

(ii) to transfer all or any part of the Collateral into the Pledgee's name or the name of its nominee or nominees;

(iii) to vote all or any part of the Collateral (whether or not transferred into the name of the Pledgee) and give all consents, waivers and ratifications in respect of the Collateral and otherwise act with respect thereto as though it were the outright owner thereof (each Pledgor hereby irrevocably constituting and appointing the Pledgee the proxy and attorney-in-fact of such Pledgor, with full power of substitution to do so);

(iv) at any time and from time to time to sell, assign and deliver, or grant options to purchase, all or any part of the Collateral, or any interest therein, at any public or private sale, without demand of performance, advertisement or, notice of intention to sell or of the time or place of sale or adjournment thereof or to redeem or otherwise (all of which are hereby waived by each Pledgor), for cash, on credit or for other property, for immediate or future delivery without any assumption of credit risk, and for such price or prices and on such terms as the Pledgee in its absolute discretion may determine, provided that at least ten (10) days' written notice of the time and place of any such sale shall be given to the respective Pledgor. The Pledgee shall not be obligated to make any such sale of Collateral regardless of whether any such notice of sale has theretofore been given. Each Pledgor hereby waives and releases to the fullest extent permitted by law any right or equity of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling the Collateral and any other security or the Obligations or otherwise. At any such sale, unless prohibited by applicable law, the Pledgee on behalf of the Secured Creditors may bid for and purchase all or any part of the Collateral so sold free from any such right or equity of redemption. Neither the Pledgee nor any other Secured Creditor shall be liable for failure to collect or realize upon any or all of the Collateral or for any delay in so doing nor shall any of them be under any obligation to take any action whatsoever with regard thereto; and

(v) to set-off any and all Collateral against any and all Obligations, and to withdraw any and all cash or other Collateral from any and all accounts referred to Section 3.2(a)(v) hereof and to apply such cash and other Collateral to the payment of any and all Obligations.

8. REMEDIES, CUMULATIVE, ETC. Each and every right, power and remedy of the Pledgee provided for in this Agreement or in any other Loan Document, or now or hereafter existing at law or in equity or by statute shall be cumulative and concurrent and shall be in addition to every other such right, power or remedy. The exercise or beginning of the exercise by the Pledgee or any other Secured Creditor of any one or more of the rights, powers or remedies provided for in this Agreement or any other Loan Document or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Pledgee or any other Secured Creditor of all such other rights, powers or remedies, and no failure or delay on the part of the Pledgee or any other Secured Creditor to exercise any such right, power or remedy shall operate as a waiver thereof. No notice to or demand on any Pledgor in any case shall entitle it to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Pledgee or any other Secured Creditor to any other or further action in any circumstances without notice or demand. The Secured Creditors agree that this Agreement may be enforced only by the action of the Pledgee, acting upon the instructions of the Required Lender and that no other Secured Creditor shall have any right individually to seek to enforce or to enforce this Agreement or to realize upon the security to be granted hereby, it being understood and agreed that such rights and remedies may be exercised by the Pledgee for the benefit of the Secured Creditors upon the terms of this Agreement.

9. APPLICATION OF PROCEEDS. (a) All moneys collected by the Pledgee upon any sale or other disposition of the Collateral, together with all other moneys received by the Pledgee hereunder, shall be applied as follows:

(i) first , to the payment of all amounts owing the Pledgee of the type described in clauses (i), (ii), (iii) and (iv) of the definition of "Obligations" contained in Section 1 hereof;

(ii) second , to the extent proceeds remain after the application pursuant to preceding clause (i), an amount equal to the outstanding Primary Obligations shall be paid to the Secured Creditors as provided in Section 9(e) hereof, with each Secured Creditor receiving an amount equal to its outstanding Primary Obligations or, if the proceeds are insufficient to pay in full all such Primary Obligations, its Pro Rata Share of such amount remaining to be distributed;

(iii) third , to the extent proceeds remain after the application pursuant to preceding clauses (i) and (ii), an amount equal to the outstanding Secondary Obligations shall be paid to the Secured Creditors as provided in Section 9(e) hereof, with each Secured Creditor receiving an amount equal to its outstanding Secondary Obligations or, if the proceeds are insufficient to pay in full all such Secondary Obligations, its Pro Rata Share of such amount remaining to be distributed; and

(iv) fourth , to the extent proceeds remain after the application pursuant to preceding clauses (i) through (iii), inclusive, and following the termination of this Agreement pursuant to Section 20(a) hereof, to the relevant Pledgor or to whomever may be lawfully entitled to receive such surplus.

(b) For purposes of this Agreement, (x) "Pro Rata Share" shall mean, when calculating a Secured Creditor's portion of any distribution or amount, that amount (expressed as a percentage) equal to a fraction the numerator of which is the then unpaid amount of such Secured Creditor's Primary Obligations or Secondary Obligations, as the case may be, and the denominator of which is the then outstanding amount of all Primary Obligations or Secondary Obligations, as the case may be, (y) "Primary Obligations" shall mean all principal of, premium, if any, and interest on, all Loans, all Disbursements, all contingent reimbursement obligations equal to the Stated Amount of all outstanding Letters of Credit and all fees payable under the Credit Agreement, and (z) "Secondary Obligations" shall mean all Obligations other than Primary Obligations.

(c) When payments to Secured Creditors are based upon their respective Pro Rata Shares, the amounts received by such Secured Creditors hereunder shall be applied (for purposes of making determinations under this Section 9 only) (i) first, to their Primary Obligations and (ii) second, to their Secondary Obligations. If any payment to any Secured Creditor of its Pro Rata Share of any distribution would result in overpayment to such Secured Creditor, such excess amount shall instead be distributed in respect of the unpaid Primary Obligations or Secondary Obligations, as the case may be, of the other Secured Creditors, with each Secured Creditor whose Primary Obligations or Secondary Obligations, as the case may be, have not been paid in full to receive an amount equal to such excess amount multiplied by a fraction the numerator of which is the unpaid Primary Obligations or Secondary Obligations, as the case may be, of such Secured Creditor entitled to distribution and the denominator of which is the unpaid Primary Obligations or Secondary Obligations, as the case may be, of all Secured Creditors entitled to such distribution.

(d) Each of the Secured Creditors, by their acceptance of the benefits hereof and of the other Loan Documents, agrees and acknowledges that if the Secured Creditors are to receive a distribution on account of undrawn amounts with respect to Letters of Credit issued under the Credit Agreement (which shall only occur after all outstanding Loans under the Credit Agreement and Disbursements have been paid in full), such amounts shall be paid to the Administrative Agent under the Credit Agreement and held by it, for the equal and ratable benefit of the Secured Creditors, as cash security for the repayment of Obligations owing to the Secured Creditors as such. If any amounts are held as cash security pursuant to the immediately preceding sentence, then upon the termination of all outstanding Letters of Credit under the Credit Agreement, and after the application of all such cash security to the repayment of all Obligations owing to the Secured Creditors after giving effect to the termination of all such Letters of Credit, if there remains any excess cash, such excess cash shall be distributed by the Pledgee in accordance with Section 9(a) hereof.

(e) All payments required to be made hereunder shall be made to the Administrative Agent for the account of the Secured Creditors.

(f) This Agreement is made with full recourse to each Pledgor and pursuant to and upon all the warranties, representations, covenants and agreements on the part of such Pledgor contained herein, in the Loan Documents and otherwise in writing in connection herewith or therewith. It is understood and agreed that each Pledgor shall remain liable with respect to its Obligations to the extent of any deficiency between the amount of the proceeds of the Collateral pledged by it hereunder and the aggregate amount of such Obligations.

10. PURCHASERS OF COLLATERAL. Upon any sale of the Collateral by the Pledgee hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt of the Pledgee or the officer making such sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Pledgee or such officer or be answerable in any way for the misapplication or nonapplication thereof.

11. INDEMNITY. Each Pledgor jointly and severally agrees (i) to indemnify and hold harmless the Pledgee and each other Secured Creditor (in their capacity as such) and their respective successors, assigns, employees, advisors, agents and affiliates (individually an "Indemnitee," and collectively, the "Indemnitees ") from and against any and all claims, demands, losses, judgments and liabilities (including liabilities for penalties) of whatsoever kind or nature, and (ii) to reimburse each Indemnitee for all reasonable costs and expenses, including reasonable attorneys' fees, in each case arising out of or resulting from this Agreement or the exercise by any Indemnitee of any right or remedy granted to it hereunder (but excluding any claims, demands, losses, judgments and liabilities or expenses to the extent incurred by reason of gross negligence or willful misconduct of such Indemnitee (as determined by a court of competent jurisdiction in a final and non-appealable decision)). In no event shall the Pledgee be liable, in the absence of gross negligence or willful misconduct on its part (as determined by a court of competent jurisdiction in a final and non-appealable decision), for any matter or thing in connection with this Agreement other than to account for monies actually received by it in accordance with the terms hereof. If and to the extent that the obligations of any Pledgor under this Section 11 are unenforceable for any reason, such Pledgor hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law. The indemnity obligations of each Pledgor contained in this Section 11 shall continue in full force and effect notwithstanding the full payment of all the Notes issued under the Credit Agreement, the termination of all Letters of Credit, and the payment of all other Obligations and notwithstanding the discharge thereof.

12. PLEDGEE NOT A OFFICER, LIMITED LIABILITY COMPANY OR MEMBER. (a) Nothing herein shall be construed to make the Pledgee or any other Secured Creditor liable as a member of any Limited Liability Company or as an officer of any Corporation and neither the Pledgee nor any other Secured Creditor by virtue of this Agreement or otherwise shall have any of the duties, obligations or liabilities of a member of any Limited Liability Company or as an officer of any Corporation. The parties hereto expressly agree that, this Agreement shall not be construed as creating a partnership or joint venture among the Pledgee, any other Secured Creditor, any Pledgor and/or any other Person.

(b) The Pledgee shall have only those powers set forth herein and the Secured Creditors shall assume none of the duties, obligations or liabilities of a member of any Limited Liability Company or as an officer of any Corporation or any Pledgor.

(c) The Pledgee and the other Secured Creditors shall not be obligated to perform or discharge any obligation of any Pledgor as a result of the pledge hereby effected.

(d) The acceptance by the Pledgee of this Agreement, with all the rights, powers, privileges and authority so created, shall not at any time or in any event obligate the Pledgee or any other Secured Creditor to appear in or defend any action or proceeding relating to the Collateral to which it is not a party, or to take any action hereunder or thereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Collateral.

13. FURTHER ASSURANCES; POWER-OF-ATTORNEY. (a) Each Pledgor authorizes the Pledgee to cause to be filed, at such Pledgor's own expense, UCC financing statements, continuation statements or amendments thereto and other documents, in form reasonably acceptable to the Pledgee, in such offices as the Pledgee may deem reasonably necessary and wherever required by law in order to perfect and preserve the Pledgee's security interest in the Collateral, and agrees to do such further acts and things and to execute and deliver to the Pledgee such additional conveyances, assignments, agreements and instruments as the Pledgee may reasonably require or deem necessary to carry into effect the purposes of this Agreement or to further assure and confirm unto the Pledgee its rights, powers and remedies hereunder.

(b) Each Pledgor hereby appoints the Pledgee such Pledgor's attorney-in-fact with full authority in the place and stead of such Pledgor and in the name of such Pledgor or otherwise, to act from time to time solely after the occurrence and during the continuance of an Event of Default and upon notice to the relevant Pledgor (although no such notice shall be required if an Event of Default described in any of clauses (a) through (e) of Section 8.1.9 of the Credit Agreement shall have occurred and be continuing), in the Pledgee's reasonable discretion, to take any action and to execute any instrument which the Pledgee may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, which appointment as attorney is coupled with an interest.

14. THE PLEDGEE. The Pledgee will hold in accordance with this Agreement all items of the Collateral at any time received under this Agreement. It is expressly understood and agreed by each Secured Creditor that by accepting the benefits of this Agreement, each such Secured Creditor acknowledges and agrees that the obligations of the Pledgee as holder of the Collateral and interests therein and with respect to the disposition thereof, and otherwise under this Agreement, are only those expressly set forth in this Agreement and in Article IX of the Credit Agreement. The Pledgee shall act hereunder on the terms and conditions set forth herein and in Article IX of the Credit Agreement.

15. TRANSFER BY THE PLEDGORS. No Pledgor will sell or otherwise dispose of, grant any option with respect to, or mortgage, pledge or otherwise encumber any of the Collateral or any interest therein except as permitted by the respective Loan Documents.

16. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PLEDGORS. (a) Each Pledgor represents, warrants and covenants that on the date hereof with respect to such Pledgor's respective portion of the Collateral that it is pledging herewith:

(i) it is the legal, beneficial and record owner of, and has good and marketable title to, all of its Collateral and that it has sufficient interest in all of its Collateral in which a security interest is purported to be created hereunder for such security interest to attach (subject, in each case, to no pledge, lien, mortgage, hypothecation, security interest, charge, option, Adverse Claim or other encumbrance whatsoever, except the liens and security interests created by this Agreement);

(ii) it has full power, authority and legal right to pledge all the Collateral pledged by it pursuant to this Agreement;

(iii) all of the Collateral has been duly and validly issued and acquired, is fully paid and non-assessable and is subject to no options to purchase or similar rights;

(iv) the Certificated Securities have been "certificated" and are "securities" within the meaning of Article 8 of the UCC;

(v) the pledge and collateral assignment and possession by the Pledgee of the Collateral consisting of Certificated Securities pursuant to this Agreement creates a valid and perfected first priority security interest in such Certificated Securities, and the proceeds thereof, subject to no prior Lien or encumbrance or to any agreement purporting to grant to any third party a Lien or encumbrance on the property or assets of such Pledgor which would include the Securities and the Pledgee is entitled to all the rights, priorities and benefits afforded by the UCC or other relevant law as enacted in any relevant jurisdiction to perfect security interests in respect of such Collateral; and

(vi) "control" (as defined in Section 8-106 of the UCC) has been obtained by the Pledgee over all Collateral with respect to which such "control" may, as of the date hereof, be obtained pursuant to Section 8-106 of the UCC.

(b) Each Pledgor covenants and agrees that it will use its best efforts to defend the Pledgee's right, title and security interest in and to the Collateral and the proceeds thereof against the claims and demands of all Persons whomsoever; and each Pledgor covenants and agrees that it will have like title to and right to pledge any other property at any time hereafter pledged to the Pledgee as Collateral hereunder and will likewise use its best efforts to defend the right thereto and security interest therein of the Pledgee and the other Secured Creditors.

Each Pledgor covenants and agrees that it shall promptly deliver to the Pledgee any note or other document or instrument entered into after the date hereof which evidences, constitutes, guarantees or secures any of the distributions or any right to receive a distribution, which notes or other documents and instruments shall be accompanied by such endorsements or assignments as the Pledgee may require to transfer title to the Pledgee.

17. CHANGES TO LEGAL NAMES; TYPE OF ORGANIZATION (AND WHETHER A REGISTERED ORGANIZATION AND/OR A TRANSMITTING UTILITY); JURISDICTION OF ORGANIZATION; LOCATION; ORGANIZATIONAL IDENTIFICATION NUMBERS; CHANGES THERETO; ETC. No Pledgor shall change its legal name, its type of organization, its status as a Registered Organization (in the case of a Registered Organization), its status as a Transmitting Utility or as a Person which is not a Transmitting Utility, as the case may be, its jurisdiction of organization or, its Location, or its organizational identification number (if any), except that any such changes shall be permitted (so long as not in violation of the applicable requirements of the Loan Documents and so long as same do not involve (x) a Registered Organization ceasing to constitute same or (y) any Pledgor changing its jurisdiction of organization or Location from the United States or a State thereof to a jurisdiction of organization or Location, as the case may be, outside the United States or a State thereof) if (i) it shall have given to the Pledgee not less than fifteen (15) days' prior written notice of each change to the information listed on Annex A (as adjusted for any subsequent changes thereto previously made in accordance with this sentence), and (ii) in connection with such respective change or changes, it shall have taken all action reasonably requested by the Pledgee to maintain the security interests of the Pledgee in the Collateral intended to be granted hereby at all times fully perfected and in full force and effect. In addition, to the extent that any Pledgor does not have an organizational identification number on the date hereof and later obtains one, such Pledgor shall promptly thereafter notify the Pledgee of such organizational identification number and shall take all actions reasonably satisfactory to the Pledgee to the extent necessary to maintain the security interest of the Pledgee in the Collateral intended to be granted hereby fully perfected and in full force and effect.

18. PLEDGORS' OBLIGATIONS ABSOLUTE, ETC. The obligations of each Pledgor under this Agreement shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by any circumstance or occurrence whatsoever, including, without limitation: (i) any renewal, extension, amendment or modification of or addition or supplement to or deletion from any Loan Document or any other instrument or agreement referred to therein, or any assignment or transfer of any thereof; (ii) any waiver, consent, extension, indulgence or other action or inaction under or in respect of any such agreement or instrument including, without limitation, this Agreement; (iii) any furnishing of any additional security to the Pledgee or its assignee or any acceptance thereof or any security by the Pledgee or its assignee; (iv) any limitation on any party's liability or obligations under any such instrument or agreement or any invalidity or unenforceability, in whole or in part, of any such instrument or agreement or any term thereof; or (v) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to any Pledgor or any Subsidiary of any Pledgor, or any action taken with respect to this Agreement by any trustee or receiver, or by any court, in any such proceeding, whether or not such Pledgor shall have notice or knowledge of any of the foregoing.

19. PRIVATE SALES. If at any time when the Pledgee shall determine to exercise its right to sell all or any part of the Collateral pursuant to Section 7 hereof, and the

Collateral or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Securities Act, as then in effect, the Pledgee may, in its sole and absolute discretion, sell such Collateral, as the case may be, or part thereof by private sale in such manner and under such circumstances as the Pledgee may deem necessary or advisable in order that such sale may legally be effected without such registration. Without limiting the generality of the foregoing, in any such event the Pledgee, in its sole and absolute discretion (i) may proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Collateral or part thereof shall have been filed under such Securities Act, (ii) may approach and negotiate with a single possible purchaser to effect such sale, and (iii) may restrict such sale to a purchaser who will represent and agree that such purchaser is purchasing for its own account, for investment, and not with a view to the distribution or sale of such Collateral or part thereof. In the event of any such sale, the Pledgee shall incur no responsibility or liability for selling all or any part of the Collateral at a price which the Pledgee, in its sole and absolute discretion, in good faith deems reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might be realized if the sale were deferred until after registration as aforesaid.

20. TERMINATION; RELEASE. (a) After the Termination Date, this Agreement and the security interest created hereby shall automatically terminate (provided that all indemnities set forth herein including, without limitation, in Section 11 hereof shall survive any such termination), and the Pledgee, at the request and expense of such Pledgor, will execute and deliver to any Pledgor a proper instrument or instruments acknowledging the satisfaction and termination of this Agreement, and will duly assign, transfer and deliver to such Pledgor (without recourse and without any representation or warranty) such of the Collateral as has not theretofore been sold or otherwise applied or released pursuant to this Agreement, together with any monies at the time held by the Pledgee or any of its sub-agents hereunder and, with respect to any Collateral consisting of an Uncertificated Security, Corporate Stock or a Limited Liability Company Interest (other than an Uncertificated Security, Corporate Stock or Limited Liability Company Interest credited on the books of a Clearing Corporation or Securities Intermediary), a termination of the agreement relating thereto executed and delivered by the issuer of such Uncertificated Security pursuant to Section 3.2(a)(ii) or by the respective partnership or limited liability company pursuant to Section 3.2(a)(iv)(2) . As used in this Agreement, "Termination Date" shall mean the date upon which all Commitments under the Credit Agreement have been terminated, no Note under the Credit Agreement is outstanding and all Loans thereunder have been repaid in full in accordance with the terms thereof, all Letters of Credit issued under the Credit Agreement have been terminated, and all other Obligations then due and payable have been paid in full in cash in accordance with the terms thereof. In the event that any Subsidiary Guarantor is released from its Obligations hereunder pursuant to Section 7.1.9 of the Credit Agreement, the Pledgee, at the request and expense of such Subsidiary Guarantor, shall execute and deliver an instrument acknowledging such Subsidiary Guarantor's release from this Agreement.

(b) In the event that any part of the Collateral is sold or otherwise disposed of in connection with a sale or other disposition permitted by the Loan Documents (other than a sale or other disposition to any Pledgor or any Subsidiary thereof) or is otherwise released with the consent of the Required Lenders and the proceeds of such other sale or disposition or from such release are applied in accordance with the provisions of the Loan Documents to the extent

required to be so applied, the Pledgee, at the request and expense of the respective Pledgor, will duly assign, transfer and deliver to such Pledgor (without recourse and without any representation or warranty) such of the Collateral (and releases therefore) as is then being (or has been) so sold or released and has not theretofore been released pursuant to this Agreement.

(c) At any time that a Pledgor desires that the Pledgee assign, transfer and deliver Collateral (and releases therefore) as provided in Section 20(a) or (b) hereof, such Pledgor shall deliver to the Pledgee a certificate signed by an authorized officer of such Pledgor stating that the release of the respective Collateral is permitted pursuant to such Section 20 (a) or (b) .

(d) The Pledgee shall have no liability whatsoever to any other Secured Creditor as the result of any release of Collateral by it in accordance with this Section 20 .

21. NOTICES, ETC. All notices and communications hereunder shall be in writing and sent or delivered by mail, telegraph, telex, telecopy, cable or overnight courier service and all such notices and communications shall, when mailed, telegraphed, telexed, telecopied, or cabled or sent by overnight courier, be effective when deposited in the mails, delivered to the telegraph company, cable company or overnight courier, as the case may be, or sent by telex or telecopier, except that notices and communications to the Pledgee or any Pledgor shall not be effective until received by the Pledgee or such Pledgor, as the case may be. All such notices and other communications shall be in writing and addressed as follows:

(a) if to any Pledgor, at:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601
Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
Attn: General Counsel

with copies to:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601
Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
Attn: Treasurer

and

Perkins Coie LLP
Suite 1700
131 South Dearborn Avenue
Chicago, Illinois 60603

Telephone No.: (312) 324-8650
Telecopier No.: (312) 324-9650
Attn: Bruce A. Bonjour

(b) if to the Pledgee, at:

60 Wall Street
New York, New York 10005
Attn: James Rolison
Telephone No.: (212) 250-3352
Telecopier No.: (646) 324-7091

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attn: Harvey R. Uris
Telephone No.: (212) 735-2212
Telecopier No.: (917) 777-2212

(c) if to any Secured Creditor, at such address as such Secured Creditor shall have specified in the Credit Agreement;

or at such other address or addressed to such other individual as shall have been furnished in writing by any Person described above to the party required to give notice hereunder.

22. WAIVER; AMENDMENT. Except as provided in Sections 20 and 30 hereof, none of the terms and conditions of this Agreement may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by each Pledgor directly affected thereby (it being understood that the addition or release of any Pledgor hereunder shall not constitute a change, waiver, discharge or termination affecting any Pledgor other than the Pledgor so added or released) and the Pledgee (with the written consent of the Required Lenders).

23. MISCELLANEOUS. This Agreement shall and shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of and be enforceable by each of the parties hereto and their respective successors and assigns, provided that no Pledgor may assign any of its rights or obligations except in accordance with the terms of the other Loan Documents.

24. HEADINGS DESCRIPTIVE. The headings of the several Sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

25. GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL. (a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE WHICH ARE LOCATED IN THE COUNTY OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PLEDGOR HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH PLEDGOR HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER SUCH PLEDGOR, AND AGREES NOT TO PLEAD OR CLAIM IN ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT BROUGHT IN ANY OF THE AFORESAID COURTS THAT ANY SUCH COURT LACKS PERSONAL JURISDICTION OVER SUCH PLEDGOR. EACH PLEDGOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ANY SUCH PLEDGOR AT ITS ADDRESS FOR NOTICES AS PROVIDED IN SECTION 21 ABOVE, SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING. EACH PLEDGOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT THAT SUCH SERVICE OF PROCESS WAS IN ANY WAY INVALID OR INEFFECTIVE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE PLEDGEE UNDER THIS AGREEMENT, OR ANY SECURED CREDITOR, TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY PLEDGOR IN ANY OTHER JURISDICTION.

(b) EACH PLEDGOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (a) ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

26. PLEDGOR'S DUTIES. It is expressly agreed, anything herein contained to the contrary notwithstanding, that each Pledgor shall remain liable to perform all of the obligations, if any, assumed by it with respect to the Collateral and the issuer of Collateral and the Pledgee shall not have any obligations or liabilities, except as expressly set forth herein, with respect to the Collateral or the issuer of Collateral by reason of or arising out of this Agreement, nor shall the Pledgee be required or obligated in any manner to perform or fulfill any of the obligations of any Pledgor under or with respect to any Collateral.

27. COUNTERPARTS. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A set of counterparts executed by all the parties hereto shall be lodged with each Pledgor and the Pledgee.

28. SEVERABILITY. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

29. RECOURSE. This Agreement is made with full recourse to each Pledgor and pursuant to and upon all the representations, warranties, covenants and agreements on the part of such Pledgor contained herein and in the other Loan Documents and otherwise in writing in connection herewith or therewith.

30. ADDITIONAL PLEDGORS. It is understood and agreed that any Subsidiary of the Borrower that is required to execute a counterpart of this Agreement after the date hereof pursuant to the Credit Agreement shall become a Pledgor hereunder by (x) executing a counterpart hereof and delivering the same to the Pledgee, (y) delivering supplements to Annexes A through D hereto as are necessary to cause such annexes to be complete and accurate with respect to such additional Pledgor on such date and (z) taking all actions as specified in this Agreement as would have been taken by such Pledgor had it been an original party to this Agreement, in each case with all documents required above to be delivered to the Pledgee and with all documents and actions required above to be taken to the reasonable satisfaction of the Pledgee.

31. LIMITED OBLIGATIONS. It is the desire and intent of each Pledgor and the Secured Creditors that this Agreement shall be enforced against each Pledgor to the fullest extent permissible under the laws applied in each jurisdiction in which enforcement is sought.

32. RELEASE OF PLEDGORS. If at any time (i) all of the Equity Interests of any Pledgor are sold (to a Person other than the Borrower or a Subsidiary) in a transaction permitted pursuant to the Loan Documents or (ii) the pledge of all such Equity Interests becomes prohibited, contractually or by law, as a result of a financing transaction permitted pursuant to the Loan Documents, then, in any such case, such Pledgor shall be released as a Pledgor pursuant to this Agreement without any further action hereunder (it being understood that the sale of all of the Equity Interests (and all Collateral owned by such Pledgor shall be released from any liens on

the security interest granted hereunder) in any Person that owns, directly or indirectly, all of the Equity Interests in any Pledgor shall be deemed to be a sale of all of the Equity Interests in such Pledgor for purposes of this Section 32), and the Pledgee is authorized and directed to execute and deliver such instruments of release as are reasonably satisfactory to it. If at any time all of the Collateral of any Pledgor is sold (in a manner permitted under the Loan Documents), such Pledgor will be released from any liens on the security interest granted hereunder. At any time that the Borrower desires that a Pledgor be released from this Agreement as provided in this Section 32 , the Borrower shall deliver to the Pledgee a certificate signed by an officer of the Borrower stating that the release of such Pledgor is permitted pursuant to the terms of the Credit Agreement and this Section 32 and including reasonable supporting documentation with respect thereto. If requested by Pledgee (although the Pledgee shall have no obligation to make any such request), the Borrower shall furnish legal opinions (from counsel acceptable to the Pledgee) to the effect set forth in the immediately preceding sentence. The Pledgee shall have no liability whatsoever to any other Secured Creditor as a result of the release of any Pledgor by it in accordance with, or which it believes to be in accordance with, this Section 32 .

* * * *

IN WITNESS WHEREOF, each Pledgor and the Pledgee have caused this Agreement to be executed by their duly elected officers duly authorized as of the date first above written.

PLEDGOR:

STRATEGIC HOTEL FUNDING, L.L.C., a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC DTRS, INC., a Delaware corporation

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC EUROPE, L.L.C., a Delaware limited liability company

By: STRATEGIC HOTEL FUNDING, L.L.C., its sole Member

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC AVENTINE II, L.L.C., a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC ST. FRANCIS, L.L.C., a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC LAGUNA, L.L.C., a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC HALF MOON BAY MEZZANINE, L.L.C.,
a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

Accepted and Agreed to:

PLEDGEE:

DEUTSCHE BANK TRUST COMPANY
AMERICAS

By: _____
Name:
Title:

By: _____
Name:
Title:

ANNEX A
to
PLEDGE AGREEMENT

SCHEDULE OF LEGAL NAMES, TYPE OF ORGANIZATION
(AND WHETHER A REGISTERED ORGANIZATION AND/OR
A TRANSMITTING UTILITY), JURISDICTION OF ORGANIZATION,
LOCATION AND ORGANIZATIONAL IDENTIFICATION NUMBERS

Exact Legal Name of Each Pledgor	Registered Organization? (Yes/No)	Jurisdiction of Organization	Pledgor's Location (for purposes of NY UCC §9-307)	Pledgor's Organization Identification Number (or if it has none, so indicate)	Transmitting Utility? (Yes/No)
Strategic Hotel Funding, L.L.C.	Yes	Delaware	Delaware	2828390	No
SHC DTRS, Inc.	Yes	Delaware	Delaware	3813595	No
SHC Aventine II, L.L.C.	Yes	Delaware	Delaware	3366487	No
SHC Europe, L.L.C.	Yes	Delaware	Delaware	3111564	No
SHC Half Moon Bay Mezzanine LLC	Yes	Delaware	Delaware	3831674	No

Exact Legal Name of Each Pledgor	Registered Organization? (Yes/No)	Jurisdiction of Organization	Pledgor's Location (for purposes of NY UCC §9-307)	Pledgor's Organization Identification Number (or if it has none, so indicate)	Transmitting Utility? (Yes/No)
SHC St. Francis, L.L.C.	Yes	Delaware	Delaware	4133716	No
SHC Laguna, L.L.C.	Yes	Delaware	Delaware	4142968	No
SHC Mexico Lender, LLC	Yes	Delaware	Delaware	4054875	No

ANNEX B
to
PLEDGE AGREEMENT

SCHEDULE OF LIMITED LIABILITY COMPANY INTERESTS

1. PLEDGOR

Name of Issuing Entity	Type of Interest	Certificate No.	Percentage Owned	Sub-clause of Section 3.2(a)(i) of Pledge Agreement
1. Strategic Hotel Funding, L.L.C.				
SHC New Orleans LLC	Membership	2	100%	Yes
SHC Aventine II, L.L.C.	Membership	2	100%	Yes
SHC Phoenix III, L.L.C.	Membership	2	100%	Yes
SHC Lincolnshire LLC	Membership	2	100%	Yes
SHC Holdings L.L.C.	Membership	N/A	100%	No
SHC Mexico Holdings, L.L.C.	Membership	N/A	100%	No
SHC Asset Management, L.L.C.	Membership	N/A	100%	No
SHC Residence Club, L.L.C.	Membership	N/A	100%	No
SHC Residence Club II, L.L.C.	Membership	N/A	100%	No
SHC Europe, L.L.C.	Membership	N/A	100%	No

Name of Issuing Entity	Type of Interest	Certificate No.	Percentage Owned	Sub-clause of Section 3.2(a)(i) of Pledge Agreement
SHC Finance (Champs Elysees), L.L.C.	Membership	N/A	100%	No
SHC Half Moon Bay Mezzanine LLC	Membership	1	100%	Yes
SHC Columbus Drive, LLC	Membership	1	100%	Yes
SHC Mexico Lender, LLC	Membership	1	100%	Yes
SHC Washington, L.L.C.	Membership	1	99.99%	Yes
SHC St. Francis, L.L.C.	Membership	1	100%	Yes
SHC Laguna, L.L.C.	Membership	1	100%	Yes

SHR Scottsdale, L.L.C. Membership 1 100% Yes

2. SHC DTRS, Inc.

DTRS New Orleans, L.L.C. Membership 1 100% Yes DTRS La Jolla, L.L.C. Membership 1 100% Yes DTRS Phoenix, L.L.C. Membership 1 100% Yes

Name of Issuing Entity	Type of Interest	Certificate No.	Percentage Owned	Sub-clause of Section 3.2(a)(i) of Pledge Agreement
DTRS Lincolnshire, L.L.C.	Membership	1	100%	Yes
DTRS Santa Monica, L.L.C.	Membership	1	100%	Yes
DTRS Half Moon Bay, LLC	Membership	1	100%	Yes
DTRS Columbus Drive, LLC	Membership	1	100%	Yes
SHC Washington, L.L.C.	Membership	2	.01	Yes
DTRS Washington, L.L.C.	Membership	1	100%	Yes
DTRS St. Francis, LLC	Membership	1	100%	Yes
DTRS Laguna, L.L.C.	Membership	1	100%	Yes
3. SHC Aventine II, L.L.C.				
New Aventine, L.L.C.	Membership	1	100%	Yes

Name of Issuing Entity	Type of Interest	Certificate No.	Percentage Owned	Sub-clause of Section 3.2(a)(i) of Pledge Agreement
4. SHC Europe, L.L.C.				
SHR Prague Praha, LLC	Membership	N/A	100%	No
5. SHC Half Moon Bay Mezzanine LLC				
SHC Half Moon Bay, LLC	Membership	1	100%	Yes
6. SHC St. Francis, L.L.C.				
SHR St. Francis, L.L.C.	Membership	1	100%	Yes
7. SHC Laguna, L.L.C.				
SHC Laguna Niguel I LLC	Membership	2	100%	Yes

ANNEX C
to
PLEDGE AGREEMENT

S SCHEDULE OF CORPORATE STOCK

1. PLEDGOR

Name of Issuing Entity	Type of Interest	Number of Shares	Certificate No.	Percentage Owned	Sub-clause of Section 3.2(a)(i) of Pledge Agreement
1. Strategic Hotel Funding, L.L.C.					
SHC DTRS, Inc.	Stock	100	1	100%	Yes

ANNEX D
to
PLEDGE AGREEMENT

Form of Agreement Regarding Uncertificated Securities, Limited Liability Company Interests and Corporate Stock

AGREEMENT (as amended, modified or supplemented from time to time, this "Agreement"), dated as of _____, among the undersigned pledgor (the "Pledgor"), Deutsche Bank Trust Company Americas, as lender (the "Pledgee"), and_____, as the issuer of the [Uncertificated Securities] [Limited Liability Company Interests] [Corporate Stock] (defined below) (the "Issuer").

W I T N E S S E T H :

WHEREAS, the Pledgor, certain of its affiliates and the Pledgee have entered into a Pledge Agreement, dated as of March ___ , 2007 (as amended, modified or supplemented from time to time, the "Pledge Agreement"), under which, among other things, in order to secure the payment of the Obligations (as defined in the Pledge Agreement), the Pledgor will pledge to the Pledgee, and grant a security interest in favor of the Pledgee in, all of the right, title and interest of the Pledgor in and to any and [all "uncertificated securities" (as defined in Section 8-102(a)(18) of the Uniform Commercial Code, as adopted in the State of New York) ("Uncertificated Securities")] [Corporate Stock (as defined in the Pledge Agreement)] [Limited Liability Company Interests (as defined in the Pledge Agreement)] issued from time to time by the Issuer, whether now existing or hereafter from time to time acquired by the Pledgor (with all of such [Uncertificated Securities] [Corporate Stock] [Limited Liability Company Interests] being herein collectively called the " Issuer Pledged Interests"); and

WHEREAS, the Pledgor desires the Issuer to enter into this Agreement in order to protect the security interest of the Pledgee under the Pledge Agreement in the Issuer Pledged Interests, to vest in the Pledgee control of the Issuer Pledged Interests and to provide for the rights of the parties under this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual promises and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Pledgor hereby irrevocably authorizes and directs the Issuer, and the Issuer hereby agrees, to comply with any and all instructions and orders originated by the Pledgee (and its successors and assigns) regarding any and all of the Issuer Pledged Interests without the further consent by the registered owner (including the Pledgor), and, after receiving a notice from the Pledgee stating that an "Event of Default" has occurred and is continuing (i) not to comply with any instructions or orders regarding any or all of the Issuer Pledged Interests originated by any person or entity other than the Pledgee (and its successors and assigns) or a court of competent jurisdiction and (ii) the Issuer will send any and all redemptions, distributions, interest or other payments in respect of the Issuer Pledged Interests from the Issuer for the account of the Pledgor only by wire transfers to such account as may be directed by Pledgee.

2. The Issuer hereby certifies that (i) no notice of any security interest, lien or other encumbrance or claim affecting the Issuer Pledged Interests (other than the security interest of the Pledgee) has been received by it, and (ii) the security interest of the Pledgee in the Issuer Pledged Interests has been registered in the books and records of the Issuer.

3. The Issuer hereby represents and warrants that (i) the pledge by the Pledgor of, and the granting by the Pledgor of a security interest in, the Issuer Pledged Interests to the Pledgee does not violate the charter, by-laws, partnership agreement, membership agreement or any other agreement governing the Issuer or the Issuer Pledged Interests, and (ii) the Issuer Pledged Interests are fully paid and nonassessable.

4. All notices, statements of accounts, reports, prospectuses, financial statements and other communications to be sent to the Pledgor by the Issuer in respect of the Issuer will also be sent to the Pledgee at the following address:

60 Wall Street
New York, New York 10005
Attention: James Rolison
Telephone No.: (212) 250-3352
Telecopier No.: (646) 324-7091

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attention: Harvey R. Uris
Telephone No.: (212) 735-2212
Telecopier No.: (917) 777-2212

5. Except as expressly provided otherwise in Sections 4 above, all notices shall be sent or delivered by mail, telegraph, telex, telecopy, cable or overnight courier service and all such notices and communications shall, when mailed, telegraphed, telexed, telecopied, or cabled or sent by overnight courier, be effective when deposited in the mails, delivered to the telegraph company, cable company or overnight courier, as the case may be, or sent by telex or telecopier, except that notices and communications to the Pledgee, the Pledgor or the Issuer shall not be effective until received by the Pledgee, the Pledgor or the Issuer, as the case may be. All notices and other communications shall be in writing and addressed as follows:

(a) if to the Pledgor, at:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600

Chicago, Illinois 60601
Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
Attn: General Counsel

with copies to:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601
Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
Attn: Treasurer

and

Perkins Coie LLP
Suite 1700
131 South Dearborn Avenue
Chicago, Illinois 60603
Telephone No.: (312) 324-8650
Telecopier No.: (312) 324-9650
Attn: Bruce A. Bonjour

(b) if to the Pledgee, at:

60 Wall Street
New York, New York 10005
Attention: James Rolison
Telephone No.: (212) 250-3352
Telecopier No.: (646) 324-7091

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attention: Harvey R. Uris
Telephone No.: (212) 735-2212
Telecopier No.: (917) 777-2212

(c) if to the Issuer, at:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601

Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
Attn: General Counsel

with copies to:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601
Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
Attn: Treasurer

and

Perkins Coie LLP
Suite 1700
131 South Dearborn Avenue
Chicago, Illinois 60603
Telephone No.: (312) 324-8650
Telecopier No.: (312) 324-9650
Attn: Bruce A. Bonjour

or at such other address as shall have been furnished in writing by any Person described above to the party required to give notice hereunder. As used in this Section 6, "Business Day" means any day other than a Saturday, Sunday, or other day in which banks in New York are authorized to remain closed.

6. This Agreement shall be binding upon the successors and assigns of the Pledgor and the Issuer and shall inure to the benefit of and be enforceable by the Pledgee and its successors and assigns. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one instrument. In the event that any provision of this Agreement shall prove to be invalid or unenforceable, such provision shall be deemed to be severable from the other provisions of this Agreement which shall remain binding on all parties hereto. None of the terms and conditions of this Agreement may be changed, waived, modified or varied in the manner whatsoever except in writing signed by the Pledgee, the Issuer and the Pledgor.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflict of laws.

IN WITNESS WHEREOF, the Pledgor, the Pledgee and the Issuer have caused this Agreement to be executed by their duly elected officers duly authorized as of the date first above written.

[_____],
as Pledgor

By _____
Name:
Title:

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Pledgee

By _____
Name:
Title:

[_____],
as Issuer

By _____
Name:
Title:

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EXHIBIT G-2

PLEDGE AGREEMENT

among

STRATEGIC HOTELS & RESORTS, INC.,

as PLEDGOR

and

DEUTSCHE BANK TRUST COMPANY AMERICAS,

as PLEDGEE

Dated as of March 9, 2007

PLEDGE AGREEMENT

PLEDGE AGREEMENT (as amended, modified or supplemented from time to time, this "Agreement"), dated as of March 9, 2007, among the undersigned pledgor ("Pledgor" and, together with any other entity that becomes a pledgor hereunder pursuant to Section 30 hereof, the "Pledgors") and Deutsche Bank Trust Company Americas, as administrative agent (together with any successor administrative agent, the "Pledgee"), for the benefit of the Secured Creditors (as defined below). Except as otherwise defined herein, all capitalized terms used herein and defined in the Credit Agreement (as defined below) shall be used herein as therein defined.

W I T N E S S E T H :

WHEREAS, STRATEGIC HOTEL FUNDING, L.L.C. (the "Borrower"), the lenders from time to time party thereto (the "Lenders"), and the Pledgee, as administrative agent (together with any successor administrative agent, the "Administrative Agent "), have entered into a Credit Agreement, dated as of March 9, 2007 (as amended, modified or supplemented from time to time, the "Credit Agreement "), providing for the making of Loans to and the issuance of, and participation in, Letters of Credit for the account of the Borrower, all as contemplated therein (the Pledgee, the Issuer, the Lenders and each Person (other than Borrower, Guarantor or any Subsidiary of either) party to a Credit Hedging Agreement or a Pari-Pasu Hedging Agreement, to the extent such party is a Lender or any affiliate thereof, and their subsequent successors and assigns, are herein called the "Secured Creditors");

WHEREAS, pursuant to the Guaranty, the Pledgor has guaranteed the payment and performance when due of all Guaranteed Obligations as described (and defined) therein;

WHEREAS, it is a condition precedent to the making of Loans to, and the issuance of Letters of Credit for the account of, the Borrower under the Credit Agreement that the Pledgor shall have executed and delivered to the Pledgee this Agreement; and

WHEREAS, the Pledgor will obtain direct and indirect material benefits from the incurrence of Loans by the Borrower and the issuance of Letters of Credit for the account of the Borrower under the Credit Agreement, the entering into of Credit Hedging Agreements by the Secured Creditors and the entering into of Pari-Pasu Hedging Agreements by the Lenders and the Pari-Pasu Hedging Counterparties and, accordingly, desires to enter into this Agreement in order to satisfy the conditions described in the preceding recital and to induce the Lenders to make Loans to the Borrower, to issue, and/or participate in, Letters of Credit for the account of the Borrower, and to enter into Credit Hedging Agreements and/or enter into Pari-Pasu Hedging Agreements;

NOW, THEREFORE, in consideration of the foregoing and other benefits accruing to the Pledgor, the receipt and sufficiency of which are hereby acknowledged, the Pledgor hereby makes the following representations and warranties to the Pledgee for the benefit of the Secured Creditors and hereby covenants and agrees with the Pledgee for the benefit of the Secured Creditors as follows:

1. SECURITY FOR OBLIGATIONS. This Agreement is made by the Pledgor for the benefit of the Secured Creditors to secure:

(i) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations, liabilities and indebtedness (including, without limitation, principal, premium, interest, reimbursement obligations (both actual and contingent) under Letters of Credit, Credit Hedging Agreements, Pari-Pasu Hedging Agreements, fees, costs, and indemnities (including in each case, without limitation, all interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency, reorganization or similar proceeding of any Pledgor at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such proceeding) of such Pledgor to the Secured Creditors, whether now existing or hereafter incurred under, arising out of, or in connection with, the Credit Agreement and the other Loan Documents to which such Pledgor is a party (including, in the case of each Pledgor that is party to the Subsidiary Guaranty, all Guaranteed Obligations (as defined in the Guaranty)) and the due performance and compliance by such Pledgor with all of the terms, conditions and agreements contained in the Credit Agreement and in such other Loan Documents;

(ii) any and all sums advanced by the Pledgee in order to preserve the Collateral (as hereinafter defined) or preserve its security interest in the Collateral;

(iii) in the event of any proceeding for the collection or enforcement of any indebtedness, obligations or liabilities of the Borrower and the Pledgor referred to in clause (i) above, after an Event of Default shall have occurred and be continuing, the reasonable expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral, or of any exercise by the Pledgee of its rights hereunder, together with reasonable attorneys' fees and court costs; and

(iv) all amounts paid by any Secured Creditor as to which such Secured Creditor has the right to reimbursement under Section 11 of this Agreement;

all such obligations, liabilities, sums and expenses set forth in clauses (i) through (iv) of this Section 1 being herein collectively called the "Obligations ," it being acknowledged and agreed that the "Obligations" shall include extensions of credit of the types described above, whether outstanding on the date of this Agreement or extended from time to time after the date of this Agreement.

2. DEFINITIONS.

(a) Reference to singular terms shall include the plural and vice versa.

(b) The following capitalized terms used herein shall have the definitions specified below:

"Administrative Agent" shall have the meaning set forth in the recitals hereto.

"Adverse Claim" shall have the meaning given such term in Section 8-102(a)(1) of the UCC.

"Agreement" shall have the meaning set forth in the first paragraph hereof.

"Borrower" shall have the meaning set forth in the recitals hereto.

"Certificated Security " shall have the meaning given such term in Section 8-102(a)(4) of the UCC.

"Class" shall have the meaning set forth in Section 22 hereof.

"Clearing Corporation " shall have the meaning given such term in Section 8-102(a)(5) of the UCC.

"Collateral" shall have the meaning set forth in Section 3.1 hereof.

"Credit Agreement" shall have the meaning set forth in the recitals hereto.

"Credit Hedging Agreement" shall have the meaning given such term in the Credit Agreement.

"Equity Interest" of the Limited Liability Company shall mean any and all interests, rights to purchase, options, participations or other equivalents of or interest in (however designated) equity of such Limited Liability Company, including, without limitation, any limited liability company membership interest.

"Event of Default" shall mean any Event of Default (or equivalent term) under, and as defined in, the Credit Agreement and shall in any event include, without limitation, any payment default on any of the Obligations after the expiration of any applicable grace period.

"Guaranteed Obligations " shall have the meaning given such term in the Guaranty.

"Guaranty" shall have the meaning given such term in the Credit Agreement.

"Indemnitees" shall have the meaning set forth in Section 11 hereof.

"Lenders" shall have the meaning set forth in the recitals hereto.

"Limited Liability Company" shall mean Strategic Hotel Funding, L.L.C.

"Limited Liability Company Assets" shall mean all assets, whether tangible or intangible and whether real, personal or mixed (including, without limitation, all limited liability company capital and interest in other limited liability companies), at any time owned by the Limited Liability Company.

"Limited Liability Company Interests" shall mean the entire limited liability company membership interest at any time owned by the Pledgor in the Limited Liability Company listed on Annex B attached hereto.

"Loan Documents" shall have the meaning set forth in the Credit Agreement.

"Location" of Pledgor shall mean the Pledgor's "location" as determined pursuant to Section 9-307 of the UCC.

"Obligations" shall have the meaning set forth in Section 1 hereof.

"Organizational Documents" means all documents, instruments and other papers constituting the entire organizational documents of the Limited Liability Company and any and all amendments thereto, including without limitation, certificates of formation and operating agreements.

"Pari-Pasu Hedging Agreements" shall have the meaning set forth in the Credit Agreement.

"Person" means any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust or other enterprise or any government or political subdivision or any agency, department or instrumentality thereof.

"Pledgee" shall have the meaning set forth in the first paragraph hereof.

"Pledgor" shall have the meaning set forth in the first paragraph hereof.

"Primary Obligations " shall have the meaning set forth in Section 9(b) hereof.

"Pro Rata Share" shall have the meaning set forth in Section 9(b) hereof.

"Proceeds" shall have the meaning given such term in Section 9-102(a)(64) of the UCC and, in any event, shall also include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Pledgee or the Pledgor from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to the Pledgor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any Person acting under color of governmental authority) and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Registered Organization " shall mean a "registered organization" as such term is defined in Section 9-102(a)(70) of the UCC.

"Required Lenders" shall have the meaning set forth in the Credit Agreement.

"Secondary Obligations " shall have the meaning set forth in Section 9(b) hereof.

"Secured Creditors" shall have the meaning set forth in the recitals hereto.

"Securities Act" shall mean the Securities Act of 1933, as amended, as in effect from time to time.

"Securities Intermediary" shall have the meaning given such term in Section 8-102(14) of the UCC.

"Security Entitlement" shall have the meaning given such term in Section 8-102(a)(17) of the UCC.

"Subsidiary" shall have the meaning given such term in the Credit Agreement.

"Termination Date" shall have the meaning set forth in Section 20 hereof.

"Transmitting Utility" shall mean a "transmitting utility" as such term is defined in Section 9-102(a)(80) of the UCC.

"UCC" shall mean the Uniform Commercial Code as in effect in the State of New York from time to time; provided that all references herein to specific sections or subsections of the UCC are references to such sections or subsections, as the case may be, of the Uniform Commercial Code as in effect in the State of New York on the date hereof.

"Uncertificated Security" shall have the meaning given such term in Section 8-102(a)(18) of the UCC.

"Voting Rights" shall have the meaning set forth in Section 5 hereof.

3. PLEDGE OF SECURITIES, ETC.

3.1 Pledge . To secure the Obligations now or hereafter owed or to be performed by the Pledgor, the Pledgor does hereby grant, pledge and assign to the Pledgee for the benefit of the Secured Creditors, and does hereby create a continuing security interest in favor of the Pledgee for the benefit of the Secured Creditors in, all of its right, title and interest in and to the following, whether now existing or hereafter from time to time acquired (collectively, but subject to the terms of the proviso to this Section 3.1, the "Collateral"):

(a) the Limited Liability Company Interests owned by the Pledgor from time to time and all of its right, title and interest in the Limited Liability Company, whether now existing or hereafter acquired, including, without limitation, to the fullest extent permitted under the terms and provisions of the documents and agreements governing such Limited Liability Company Interests and applicable law:

(A) all the capital thereof and its interest in all profits, losses, Limited Liability Company Assets and other distributions to which the Pledgor shall at any time be entitled in respect of such Limited Liability Company Interests;

(B) all other payments due or to become due to the Pledgor in respect of Limited Liability Company Interests, whether under the limited liability company agreement or otherwise, whether as contractual obligations, damages, insurance proceeds or otherwise;

(C) all of its claims, rights, powers, privileges, authority, options, security interests, liens and remedies, if any, under the limited liability company agreement or operating agreement, or at law or otherwise in respect of the Limited Liability Company Interests;

(D) all present and future claims, if any, of the Pledgor against any the Limited Liability Company for monies loaned or advanced, for services rendered or otherwise;

(E) all of the Pledgor's rights under the limited liability company agreement or operating agreement or at law to exercise and enforce every right, power, remedy, authority, option and privilege of the Pledgor relating to the Limited Liability Company Interests, including any power to terminate, cancel or modify the limited liability company agreement or operating agreement, to execute any instruments and to take any and all other action on behalf of and in the name of any of the Pledgor in respect of the Limited Liability Company Interests and any such limited liability company, to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, amendment, waiver or approval, together with full power and authority to demand, receive, enforce, collect or receipt for any of the foregoing or for the Limited Liability Company Asset, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action in connection with any of the foregoing; and

(F) all other property hereafter delivered in substitution for or in addition to any of the foregoing, all certificates and instruments representing or evidencing such other property and all cash, securities, interest, dividends, rights and other property at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all thereof;

(b) all Security Entitlements owned by the Pledgor from time to time in any and all of the foregoing; and

(c) all Proceeds of any and all of the foregoing.

3.2 Procedures . (a) To the extent that the Pledgor at any time or from time to time owns, acquires or obtains any right, title or interest in any Collateral, such Collateral shall automatically (and without the taking of any action by the Pledgor) be pledged pursuant to Section 3.1 of this Agreement and, in addition thereto, the Pledgor shall (to the extent provided below) take the following actions as set forth below (as promptly as practicable and, in any event, within ten (10) days after it obtains such Collateral) for the benefit of the Pledgee and the other Secured Creditors:

(i) with respect to a Certificated Security (other than a Certificated Security credited on the books of a Clearing Corporation or Securities Intermediary), the Pledgor shall deliver such Certificated Security to the Pledgee, indorsed to the Pledgee or indorsed in blank;

(ii) with respect to an Uncertificated Security (other than an Uncertificated Security credited on the books of a Clearing Corporation or Securities Intermediary), the Pledgor shall cause the issuer of such Uncertificated Security to duly authorize, execute and deliver to the Pledgee, an agreement for the benefit of the Pledgee and the other Secured Creditors substantially in the form of Annex C hereto (appropriately completed to the reasonable satisfaction of the Pledgee and with such modifications, if any, as shall be reasonably satisfactory to the Pledgee) pursuant to which such issuer agrees to comply with any and all instructions originated by the Pledgee without further consent by the registered owner and not to comply with instructions regarding such Uncertificated Security originated by any other Person other than a court of competent jurisdiction;

(iii) with respect to a Certificated Security, Uncertificated Security or Limited Liability Company Interest credited on the books of a Clearing Corporation or Securities Intermediary (including a Federal Reserve Bank, Participants Trust Company or The Depository Trust Company), the Pledgor shall promptly notify the Pledgee thereof and shall promptly take all actions required (x) to comply with the applicable rules of such Clearing Corporation or Securities Intermediary and (y) to perfect the security interest of the Pledgee under applicable law (including, in any event, under Sections 9-314 (a) and (c), 9-106 and 8-106(d) of the UCC). The Pledgor further agrees to take such actions as the Pledgee deems reasonably necessary or desirable to effect the foregoing;

(iv) with respect to the Limited Liability Company Interest (other than a Limited Liability Company Interest credited on the books of a Clearing Corporation or Securities Intermediary), (x) if the Limited Liability Company Interest is represented by a certificate and is a "security" for purposes of Section 8-102(a)(15) of the UCC, the procedure set forth in Section 3.2(a)(i) hereof, and (y) if the Limited Liability Company Interest is not represented by a certificate or is not a "security" for purposes of the UCC, the procedure set forth in Section 3.2(a)(ii) hereof; and

(v) with respect to cash proceeds from any of the Collateral described in Section 3.1 hereof which are required to be paid over to (or may be received by) the Pledgee or any of the other Secured Creditors pursuant to the terms of this Agreement, (i) establishment by the Pledgee of a cash account in the name of the Pledgor over which the Pledgee shall have "exclusive and absolute control" and dominion (and no withdrawals or transfers may be made therefrom by any Person except with the prior written consent of the Pledgee) and (ii) deposit of such cash in such cash account.

(b) In addition to the actions required to be taken pursuant to Section 3.2(a) hereof, the Pledgor shall take the following additional actions with respect to the Collateral:

(i) with respect to all Collateral of the Pledgor whereby or with respect to which the Pledgee may (and in accordance with the terms hereof is entitled to) obtain "control" thereof within the meaning of Section 8-106 of the UCC (or under any provision of the UCC as same may be amended or supplemented from time to time, or under the laws of any relevant State other than the State of New York), the Pledgor shall take all actions as may be reasonably requested from time to time by the Pledgee so that "control" of such Collateral is obtained and at all times held by the Pledgee; and

(ii) the Pledgor shall from time to time cause appropriate financing statements (on Form UCC-1 or other appropriate form) under the Uniform Commercial Code as in effect in the various relevant States, covering all Collateral hereunder (with the form of such financing statements to be satisfactory to the Pledgee), to be filed in the relevant filing offices so that at all times the Pledgee has a security interest in all Collateral which also may be perfected by the filing of such financing statements under the laws of the relevant States, including, without limitation, Section 9-312(a) of the UCC.

3.3 Subsequently Acquired Collateral . (a) If the Pledgor shall acquire (by purchase, stock dividend or similar distribution or otherwise) any additional Collateral at any time or from time to time after the date hereof, such Collateral shall automatically (and without any further action being required to be taken) be subject to the pledge and security interests created pursuant to Section 3.1 hereof and, furthermore, the Pledgor will promptly thereafter take (or cause to be taken) all action with respect to such Collateral in accordance with the procedures set forth in Section 3.2 hereof, and will promptly thereafter deliver to the Pledgee (in the case of any such additional Collateral consisting of additional Equity Interests) (i) a certificate executed by an authorized officer of the Pledgor describing such Collateral and certifying that the same has been duly pledged in favor of the Pledgee (for the benefit of the Secured Creditors) hereunder and (ii) such supplements to Annexes A through C hereto as are reasonably necessary to cause such annexes to be complete and accurate at such time.

(b) In addition, if any Pledgor shall acquire (by purchase, stock dividend or similar distribution or otherwise) any Capital Stock of any Subsidiary whose Capital Stock is required to be pledged to Pledgee pursuant to Section 7.1.9(b) of the Credit Agreement, at any time or from time to time after the date hereof, such Capital Stock shall automatically (and without any further action being required to be taken) be subject to the pledge and security interests created pursuant to Section 3.1 hereof and, furthermore, the respective Pledgor will promptly thereafter take (or cause to be taken) all action with respect to such Capital Stock in accordance with the procedures set forth in Section 3.2 hereof, and will promptly thereafter deliver to the Pledgee (i) a certificate executed by an authorized officer of such Pledgor describing such Capital Stock and certifying that the same has been duly pledged in favor of the Pledgee (for the benefit of the Secured Creditors) hereunder and (ii) such supplements to Annexes A through C hereto as are reasonably necessary to cause such annexes to be complete and accurate at such time.

3.4 Transfer Taxes . Each pledge of Collateral under Section 3.1 or Section 3.3 hereof shall be accompanied by any transfer tax stamps required in connection with the pledge of such Collateral.

3.5 Certain Representations and Warranties Regarding the Collateral . The Pledgor represents and warrants that on the date hereof: (i) the exact legal name of the Pledgor, the type of organization of the Pledgor, whether or not the Pledgor is a Registered Organization, the jurisdiction of organization of the Pledgor, the Pledgor's Location, the organizational identification number (if any) of the Pledgor, and whether or not the Pledgor is a Transmitting Utility, is listed on Annex A hereto; (ii) the Limited Liability Company Interests held by the Pledgor consist of the number and type of interests of the Limited Liability Companies described in Annex B hereto; (iii) each such Limited Liability Company Interest constitutes that percentage

of the issued and outstanding Equity Interest of the issuing Limited Liability Company as set forth in Annex B hereto; (iv) the Pledgor has complied with the respective procedure set forth in Section 3.2(a) hereof with respect to each item of Collateral described in Annex B hereto; and (v) on the date hereof, the Pledgor owns no other stock, or Limited Liability Company Interests that would otherwise constitute Collateral.

4. APPOINTMENT OF SUB-AGENTS; ENDORSEMENTS, ETC. If and to the extent necessary to enable the Pledgee to perfect its security interest in any of the Collateral or to exercise any of its remedies hereunder, the Pledgee shall have the right to appoint one or more sub-agents for the purpose of retaining physical possession of the Collateral, which may be held (in the discretion of the Pledgee) in the name of the Pledgor, endorsed or assigned in blank or in favor of the Pledgee or any nominee or nominees of the Pledgee or a sub-agent appointed by the Pledgee.

5. VOTING, ETC., WHILE NO EVENT OF DEFAULT. Unless and until there shall have occurred and be continuing an Event of Default, the Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to and attaching to any and all of the Collateral owned by it, and to give consents, waivers or ratifications in respect thereof; provided that, in each case, no vote shall be cast or any consent, waiver or ratification given or any action taken or omitted to be taken which would violate in any material respect, result in a breach of any covenant contained in, or be inconsistent with any of the terms of any Loan Document, or which could reasonably be expected to have a Material Adverse Effect (collectively, the "Voting Rights"). All such rights of the Pledgor to vote and to give consents, waivers and ratifications shall cease in case an Event of Default has occurred, and is continuing and the Pledgee shall have given notice to the Pledgor of its intent to exercise rights pursuant to Section 7 hereof (although no such notice shall be required if an Event of Default described in any of clauses (a) through (e) of Section 8.1.9 of the Credit Agreement shall have occurred and be continuing) and Section 7 hereof shall become applicable.

6. DIVIDENDS AND OTHER DISTRIBUTIONS. Unless and until there shall have occurred and be continuing an Event of Default and the Pledgee shall have given notice to the Pledgor of its intent to exercise rights pursuant to Section 7 hereof (although no such notice shall be required if an Event of Default described in any of clauses (a) through (e) of Section 8.1.9 of the Credit Agreement shall have occurred and be continuing), all cash dividends, cash distributions, cash Proceeds and other cash amounts payable in respect of the Collateral shall be paid to the Pledgor free of liens and security interests created hereby and by the other Loan Documents. The Pledgee shall be entitled to receive directly, and to retain as part of the Collateral:

(i) all other or additional stock, certificates, limited liability company interests, partnership interests, instruments or other securities or property (including, but not limited to, cash dividends other than as set forth above) paid or distributed by way of dividend or otherwise in respect of the Collateral;

(ii) all other or additional stock, certificates, limited liability company interests, partnership interests, instruments or other securities or property (including, but not limited to, cash (although such cash may be paid directly to the Pledgor so long as no

Event of Default then exists)) paid or distributed in respect of the Collateral by way of stock-split, spin-off, split-up, reclassification, combination of shares or similar rearrangement; and

(iii) all other or additional stock, certificates, limited liability company interests, partnership interests, instruments or other securities or property (including, but not limited to, cash (although such cash may be paid directly to the Pledgor so long as no Event of Default then exists)) which may be paid in respect of the Collateral by reason of any consolidation, merger, exchange of stock, conveyance of assets, liquidation or similar corporate or other reorganization.

All dividends, distributions or other payments which are received by the Pledgor contrary to the provisions of this Section 6 and Section 7 hereof shall be received in trust for the benefit of the Pledgee, shall be segregated from other property or funds of the Pledgor and shall be forthwith paid over to the Pledgee as Collateral in the same form as so received (with any necessary endorsement).

7. REMEDIES IN CASE OF AN EVENT OF DEFAULT. If there shall have occurred and be continuing an Event of Default and the Pledgee shall have given notice to the Pledgor of its intent to exercise rights pursuant to this Section 7 (although no such notice shall be required if an Event of Default described in any of clauses (a) through (e) of Section 8.1.9 of the Credit Agreement shall have occurred and be continuing), then and in every such case, the Pledgee shall be entitled to exercise all of the rights, powers and remedies (whether vested in it by this Agreement, any other Loan Document or by law) for the protection and enforcement of its rights in respect of the Collateral, and the Pledgee shall be entitled to exercise all the rights and remedies of a secured party under the UCC as in effect in any relevant jurisdiction and also shall be entitled, without limitation, to exercise the following rights, which the Pledgor hereby agrees to be commercially reasonable:

(i) to receive all amounts payable in respect of the Collateral otherwise payable under Section 6 hereof to the Pledgor;

(ii) to transfer all or any part of the Collateral into the Pledgee's name or the name of its nominee or nominees;

(iii) to vote all or any part of the Collateral (whether or not transferred into the name of the Pledgee) and give all consents, waivers and ratifications in respect of the Collateral and otherwise act with respect thereto as though it were the outright owner thereof (the Pledgor hereby irrevocably constituting and appointing the Pledgee the proxy and attorney-in-fact of the Pledgor, with full power of substitution to do so);

(iv) at any time and from time to time to sell, assign and deliver, or grant options to purchase, all or any part of the Collateral, or any interest therein, at any public or private sale, without demand of performance, advertisement or, notice of intention to sell or of the time or place of sale or adjournment thereof or to redeem or otherwise (all of which are hereby waived by the Pledgor), for cash, on credit or for other property, for immediate or future delivery without any assumption of credit risk, and for such price or

prices and on such terms as the Pledgee in its absolute discretion may determine, provided that at least 10 days' written notice of the time and place of any such sale shall be given to the Pledgor. The Pledgee shall not be obligated to make any such sale of Collateral regardless of whether any such notice of sale has theretofore been given. The Pledgor hereby waives and releases to the fullest extent permitted by law any right or equity of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling the Collateral and any other security or the Obligations or otherwise. At any such sale, unless prohibited by applicable law, the Pledgee on behalf of the Secured Creditors may bid for and purchase all or any part of the Collateral so sold free from any such right or equity of redemption. Neither the Pledgee nor any other Secured Creditor shall be liable for failure to collect or realize upon any or all of the Collateral or for any delay in so doing nor shall any of them be under any obligation to take any action whatsoever with regard thereto; and

(v) to set-off any and all Collateral against any and all Obligations, and to withdraw any and all cash or other Collateral from any and all accounts referred to Section 3.2(a)(v) hereof and to apply such cash and other Collateral to the payment of any and all Obligations.

8. REMEDIES, CUMULATIVE, ETC. Each and every right, power and remedy of the Pledgee provided for in this Agreement or in any other Loan Document, or now or hereafter existing at law or in equity or by statute shall be cumulative and concurrent and shall be in addition to every other such right, power or remedy. The exercise or beginning of the exercise by the Pledgee or any other Secured Creditor of any one or more of the rights, powers or remedies provided for in this Agreement or any other Loan Document or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Pledgee or any other Secured Creditor of all such other rights, powers or remedies, and no failure or delay on the part of the Pledgee or any other Secured Creditor to exercise any such right, power or remedy shall operate as a waiver thereof. No notice to or demand on the Pledgor in any case shall entitle it to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Pledgee or any other Secured Creditor to any other or further action in any circumstances without notice or demand. The Secured Creditors agree that this Agreement may be enforced only by the action of the Pledgee, acting upon the instructions of the Required Lender, and that no other Secured Creditor shall have any right individually to seek to enforce or to enforce this Agreement or to realize upon the security to be granted hereby, it being understood and agreed that such rights and remedies may be exercised by the Pledgee for the benefit of the Secured Creditors upon the terms of this Agreement.

9. APPLICATION OF PROCEEDS. (a) All moneys collected by the Pledgee upon any sale or other disposition of the Collateral, together with all other moneys received by the Pledgee hereunder, shall be applied as follows:

(i) first , to the payment of all amounts owing the Pledgee of the type described in clauses (i), (ii) (iii) and (iv) of the definition of "Obligations" contained in Section 1 hereof;

(ii) second , to the extent proceeds remain after the application pursuant to preceding clause (i), an amount equal to the outstanding Primary Obligations shall be paid to the Secured Creditors as provided in Section 9(e) hereof, with each Secured Creditor receiving an amount equal to its outstanding Primary Obligations or, if the proceeds are insufficient to pay in full all such Primary Obligations, its Pro Rata Share of such amount remaining to be distributed;

(iii) third , to the extent proceeds remain after the application pursuant to preceding clauses (i) and (ii), an amount equal to the outstanding Secondary Obligations shall be paid to the Secured Creditors as provided in Section 9(e) hereof, with each Secured Creditor receiving an amount equal to its outstanding Secondary Obligations or, if the proceeds are insufficient to pay in full all such Secondary Obligations, its Pro Rata Share of such amount remaining to be distributed; and

(iv) fourth , to the extent proceeds remain after the application pursuant to preceding clauses (i) through (iii), inclusive, and following the termination of this Agreement pursuant to Section 20(a) hereof, to the Pledgor or to whomever may be lawfully entitled to receive such surplus.

(b) For purposes of this Agreement, (x) "Pro Rata Share" shall mean, when calculating a Secured Creditor's portion of any distribution or amount, that amount (expressed as a percentage) equal to a fraction the numerator of which is the then unpaid amount of such Secured Creditor's Primary Obligations or Secondary Obligations, as the case may be, and the denominator of which is the then outstanding amount of all Primary Obligations or Secondary Obligations, as the case may be, (y) "Primary Obligations" shall mean all principal of, premium, if any, and interest on, all Loans, all Disbursements, all contingent reimbursement obligations equal to the Stated Amount of all outstanding Letters of Credit and all fees payable under the Credit Agreement, and (z) "Secondary Obligations" shall mean all Obligations other than Primary Obligations.

(c) When payments to Secured Creditors are based upon their respective Pro Rata Shares, the amounts received by such Secured Creditors hereunder shall be applied (for purposes of making determinations under this Section 9 only) (i) first, to their Primary Obligations and (ii) second, to their Secondary Obligations. If any payment to any Secured Creditor of its Pro Rata Share of any distribution would result in overpayment to such Secured Creditor, such excess amount shall instead be distributed in respect of the unpaid Primary Obligations or Secondary Obligations, as the case may be, of the other Secured Creditors, with each Secured Creditor whose Primary Obligations or Secondary Obligations, as the case may be, have not been paid in full to receive an amount equal to such excess amount multiplied by a fraction the numerator of which is the unpaid Primary Obligations or Secondary Obligations, as the case may be, of such Secured Creditor entitled to distribution and the denominator of which is the unpaid Primary Obligations or Secondary Obligations, as the case may be, of all Secured Creditors entitled to such distribution.

(d) Each of the Secured Creditors, by their acceptance of the benefits hereof and of the other Loan Documents, agrees and acknowledges that if the Secured Creditors are to receive a distribution on account of undrawn amounts with respect to Letters of Credit issued

under the Credit Agreement (which shall only occur after all outstanding Loans under the Credit Agreement and Disbursements have been paid in full), such amounts shall be paid to the Administrative Agent under the Credit Agreement and held by it, for the equal and ratable benefit of the Secured Creditors, as cash security for the repayment of Obligations owing to the Secured Creditors as such. If any amounts are held as cash security pursuant to the immediately preceding sentence, then upon the termination of all outstanding Letters of Credit under the Credit Agreement, and after the application of all such cash security to the repayment of all Obligations owing to the Secured Creditors after giving effect to the termination of all such Letters of Credit, if there remains any excess cash, such excess cash shall be distributed by the Pledgee in accordance with Section 9(a) hereof.

(e) All payments required to be made hereunder shall be made to the Administrative Agent for the account of the Secured Creditors.

(f) This Agreement is made with full recourse to the Pledgor and pursuant to and upon all the warranties, representations, covenants and agreements on the part of the Pledgor contained herein, in the Loan Documents and otherwise in writing in connection herewith or therewith. It is understood and agreed that the Pledgor shall remain liable with respect to its Obligations to the extent of any deficiency between the amount of the proceeds of the Collateral pledged by it hereunder and the aggregate amount of such Obligations.

10. PURCHASERS OF COLLATERAL. Upon any sale of the Collateral by the Pledgee hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt of the Pledgee or the officer making such sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Pledgee or such officer or be answerable in any way for the misapplication or nonapplication thereof.

11. INDEMNITY. The Pledgor agrees (i) to indemnify and hold harmless the Pledgee and each other Secured Creditor (in their capacity as such) and their respective successors, assigns, employees, advisors, agents and affiliates (individually an " Indemnitee," and collectively, the "Indemnitees") from and against any and all claims, demands, losses, judgments and liabilities (including liabilities for penalties) of whatsoever kind or nature, and (ii) to reimburse each Indemnitee for all reasonable costs and expenses, including reasonable attorneys' fees, in each case arising out of or resulting from this Agreement or the exercise by any Indemnitee of any right or remedy granted to it hereunder (but excluding any claims, demands, losses, judgments and liabilities or expenses to the extent incurred by reason of gross negligence or willful misconduct of such Indemnitee (as determined by a court of competent jurisdiction in a final and non-appealable decision)). In no event shall the Pledgee be liable, in the absence of gross negligence or willful misconduct on its part (as determined by a court of competent jurisdiction in a final and non-appealable decision), for any matter or thing in connection with this Agreement other than to account for monies actually received by it in accordance with the terms hereof. If and to the extent that the obligations of the Pledgor under this Section 11 are unenforceable for any reason, the Pledgor hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law. The indemnity obligations of the Pledgor contained in this Section 11 shall continue in full force and

effect notwithstanding the full payment of all the Notes issued under the Credit Agreement, the termination of all Letters of Credit, and the payment of all other Obligations and notwithstanding the discharge thereof.

12. PLEDGEE NOT A OFFICER, LIMITED LIABILITY COMPANY OR MEMBER. (a) Nothing herein shall be construed to make the Pledgee or any other Secured Creditor liable as a member of the Limited Liability Company and neither the Pledgee nor any other Secured Creditor by virtue of this Agreement or otherwise shall have any of the duties, obligations or liabilities of a member of the Limited Liability Company. The parties hereto expressly agree that, this Agreement shall not be construed as creating a partnership or joint venture among the Pledgee, any other Secured Creditor, the Pledgor and/or any other Person.

(b) The Pledgee shall have only those powers set forth herein and the Secured Creditors shall assume none of the duties, obligations or liabilities of a member of the Limited Liability Company or the Pledgor.

(c) The Pledgee and the other Secured Creditors shall not be obligated to perform or discharge any obligation of the Pledgor as a result of the pledge hereby effected.

(d) The acceptance by the Pledgee of this Agreement, with all the rights, powers, privileges and authority so created, shall not at any time or in any event obligate the Pledgee or any other Secured Creditor to appear in or defend any action or proceeding relating to the Collateral to which it is not a party, or to take any action hereunder or thereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Collateral.

13. FURTHER ASSURANCES; POWER-OF-ATTORNEY. (a) The Pledgor authorizes the Pledgee to cause to be filed, at the Pledgor's own expense, UCC financing statements, continuation statements or amendments thereto and other documents, in form reasonably acceptable to the Pledgee, in such offices as the Pledgee may deem reasonably necessary and wherever required by law in order to perfect and preserve the Pledgee's security interest in the Collateral, and agrees to do such further acts and things and to execute and deliver to the Pledgee such additional conveyances, assignments, agreements and instruments as the Pledgee may reasonably require or deem necessary to carry into effect the purposes of this Agreement or to further assure and confirm unto the Pledgee its rights, powers and remedies hereunder.

(b) The Pledgor hereby appoints the Pledgee as its attorney-in-fact with full authority in the place and stead of the Pledgor and in the name of the Pledgor or otherwise, to act from time to time solely after the occurrence and during the continuance of an Event of Default and upon notice to the Pledgor (although no such notice shall be required if an Event of Default described in any of clauses (a) through (e) of Section 8.1.9 of the Credit Agreement shall have occurred and be continuing), in the Pledgee's reasonable discretion, to take any action and to execute any instrument which the Pledgee may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, which appointment as attorney is coupled with an interest.

14. THE PLEDGEE. The Pledgee will hold in accordance with this Agreement all items of the Collateral at any time received under this Agreement. It is expressly understood and agreed by each Secured Creditor that by accepting the benefits of this Agreement, each such Secured Creditor acknowledges and agrees that the obligations of the Pledgee as holder of the Collateral and interests therein and with respect to the disposition thereof, and otherwise under this Agreement, are only those expressly set forth in this Agreement and in Article IX of the Credit Agreement. The Pledgee shall act hereunder on the terms and conditions set forth herein and in Article IX of the Credit Agreement.

15. TRANSFER BY THE PLEDGORS. The Pledgor will not sell or otherwise dispose of, grant any option with respect to, or mortgage, pledge or otherwise encumber any of the Collateral or any interest therein except as permitted by the respective Loan Documents.

16. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PLEDGORS. (a) The Pledgor represents, warrants and covenants that on the date hereof with respect to such Pledgor's respective portion of the Collateral that it is pledging herewith:

(i) it is the legal, beneficial and record owner of, and has good and marketable title to, all of its Collateral and that it has sufficient interest in all of its Collateral in which a security interest is purported to be created hereunder for such security interest to attach (subject, in each case, to no pledge, lien, mortgage, hypothecation, security interest, charge, option, Adverse Claim or other encumbrance whatsoever, except the liens and security interests created by this Agreement);

(ii) it has full power, authority and legal right to pledge all the Collateral pledged by it pursuant to this Agreement;

(iii) all of the Collateral has been duly and validly issued and acquired, is fully paid and non-assessable and is subject to no options to purchase or similar rights;

(iv) the Certificated Securities have been "certificated" and are "securities" within the meaning of Article 8 of the UCC;

(v) the pledge and collateral assignment and possession by the Pledgee of the Collateral consisting of Certificated Securities pursuant to this Agreement creates a valid and perfected first priority security interest in such Certificated Securities, and the proceeds thereof, subject to no prior Lien or encumbrance or to any agreement purporting to grant to any third party a Lien or encumbrance on the property or assets of the Pledgor which would include the Securities and the Pledgee is entitled to all the rights, priorities and benefits afforded by the UCC or other relevant law as enacted in any relevant jurisdiction to perfect security interests in respect of such Collateral; and

(vi) "control" (as defined in Section 8-106 of the UCC) has been obtained by the Pledgee over all Collateral with respect to which such "control" may, as of the date hereof, be obtained pursuant to Section 8-106 of the UCC.

(b) The Pledgor covenants and agrees that it will use its best efforts to defend the Pledgee's right, title and security interest in and to the Collateral and the proceeds thereof

against the claims and demands of all Persons whomsoever; and the Pledgor covenants and agrees that it will have like title to and right to pledge any other property at any time hereafter pledged to the Pledgee as Collateral hereunder and will likewise use its best efforts to defend the right thereto and security interest therein of the Pledgee and the other Secured Creditors.

(c) The Pledgor covenants and agrees that it shall promptly deliver to the Pledgee any note or other document or instrument entered into after the date hereof which evidences, constitutes, guarantees or secures any of the distributions or any right to receive a distribution, which notes or other documents and instruments shall be accompanied by such endorsements or assignments as the Pledgee may require to transfer title to the Pledgee.

17. CHANGES TO LEGAL NAMES; TYPE OF ORGANIZATION (AND WHETHER A REGISTERED ORGANIZATION AND/OR A TRANSMITTING UTILITY); JURISDICTION OF ORGANIZATION; LOCATION; ORGANIZATIONAL IDENTIFICATION NUMBERS; CHANGES THERETO; ETC. The Pledgor shall not change its legal name, its type of organization, its status as a Registered Organization (in the case of a Registered Organization), its status as a Transmitting Utility or as a Person which is not a Transmitting Utility, as the case may be, its jurisdiction of organization or, its Location, or its organizational identification number (if any), except that any such changes shall be permitted (so long as not in violation of the applicable requirements of the Loan Documents and so long as same do not involve (x) a Registered Organization ceasing to constitute same or (y) the Pledgor changing its jurisdiction of organization or Location from the United States or a State thereof to a jurisdiction of organization or Location, as the case may be, outside the United States or a State thereof) if (i) it shall have given to the Pledgee not less than fifteen (15) days' prior written notice of each change to the information listed on Annex A (as adjusted for any subsequent changes thereto previously made in accordance with this sentence), and (ii) in connection with such respective change or changes, it shall have taken all action reasonably requested by the Pledgee to maintain the security interests of the Pledgee in the Collateral intended to be granted hereby at all times fully perfected and in full force and effect. In addition, to the extent that the Pledgor does not have an organizational identification number on the date hereof and later obtains one, the Pledgor shall promptly thereafter notify the Pledgee of such organizational identification number and shall take all actions reasonably satisfactory to the Pledgee to the extent necessary to maintain the security interest of the Pledgee in the Collateral intended to be granted hereby fully perfected and in full force and effect.

18. PLEDGORS' OBLIGATIONS ABSOLUTE, ETC. The obligations of the Pledgor under this Agreement shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by any circumstance or occurrence whatsoever, including, without limitation: (i) any renewal, extension, amendment or modification of or addition or supplement to or deletion from any Loan Document or any other instrument or agreement referred to therein, or any assignment or transfer of any thereof; (ii) any waiver, consent, extension, indulgence or other action or inaction under or in respect of any such agreement or instrument including, without limitation, this Agreement; (iii) any furnishing of any additional security to the Pledgee or its assignee or any acceptance thereof or any security by the Pledgee or its assignee; (iv) any limitation on any party's liability or obligations under any such instrument or agreement or any invalidity or unenforceability, in whole or in part, of any such instrument or agreement or any

term thereof; or (v) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Pledgor or any Subsidiary of the Pledgor, or any action taken with respect to this Agreement by any trustee or receiver, or by any court, in any such proceeding, whether or not the Pledgor shall have notice or knowledge of any of the foregoing.

19. PRIVATE SALES. (a) If at any time when the Pledgee shall determine to exercise its right to sell all or any part of the Collateral pursuant to Section 7 hereof, and the Collateral or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Securities Act, as then in effect, the Pledgee may, in its sole and absolute discretion, sell such Collateral, as the case may be, or part thereof by private sale in such manner and under such circumstances as the Pledgee may deem necessary or advisable in order that such sale may legally be effected without such registration. Without limiting the generality of the foregoing, in any such event the Pledgee, in its sole and absolute discretion (i) may proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Collateral or part thereof shall have been filed under such Securities Act, (ii) may approach and negotiate with a single possible purchaser to effect such sale, and (iii) may restrict such sale to a purchaser who will represent and agree that such purchaser is purchasing for its own account, for investment, and not with a view to the distribution or sale of such Collateral or part thereof. In the event of any such sale, the Pledgee shall incur no responsibility or liability for selling all or any part of the Collateral at a price which the Pledgee, in its sole and absolute discretion, in good faith deems reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might be realized if the sale were deferred until after registration as aforesaid.

20. TERMINATION; RELEASE. (a) After the Termination Date, this Agreement and the security interest created hereby shall automatically terminate (provided that all indemnities set forth herein including, without limitation, in Section 11 hereof shall survive any such termination), and the Pledgee, at the request and expense of the Pledgor, will execute and deliver to the Pledgor a proper instrument or instruments acknowledging the satisfaction and termination of this Agreement, and will duly assign, transfer and deliver to the Pledgor (without recourse and without any representation or warranty) such of the Collateral as has not theretofore been sold or otherwise applied or released pursuant to this Agreement, together with any monies at the time held by the Pledgee or any of its sub-agents hereunder and, with respect to any Collateral consisting of an Uncertificated Security or a Limited Liability Company Interest (other than an Uncertificated Security or Limited Liability Company Interest credited on the books of a Clearing Corporation or Securities Intermediary), a termination of the agreement relating thereto executed and delivered by the issuer of such Uncertificated Security pursuant to Section 3.2(a)(ii) or by the respective partnership or limited liability company pursuant to Section 3.2(a)(iv)(2) . As used in this Agreement, "Termination Date" shall mean the date upon which all Commitments under the Credit Agreement have been terminated, no Note under the Credit Agreement is outstanding and all Loans thereunder have been repaid in full in accordance with the terms thereof, all Letters of Credit issued under the Credit Agreement have been terminated, and all other Obligations then due and payable have been paid in full in cash in accordance with the terms thereof.

(b) In the event that any part of the Collateral is sold or otherwise disposed of in connection with a sale or other disposition permitted by the Loan Documents (other than a sale or other disposition to the Pledgor or any Subsidiary thereof) or is otherwise released with the consent of the Required Lenders and the proceeds of such other sale or disposition or from such release are applied in accordance with the provisions of the Loan Documents to the extent required to be so applied, the Pledgee, at the request and expense of the Pledgor, will duly assign, transfer and deliver to the Pledgor (without recourse and without any representation or warranty) such of the Collateral (and releases therefore) as is then being (or has been) so sold or released and has not theretofore been released pursuant to this Agreement.

(c) At any time that the Pledgor desires that the Pledgee assign, transfer and deliver Collateral (and releases therefore) as provided in Section 20(a) or (b) hereof, the Pledgor shall deliver to the Pledgee a certificate signed by an authorized officer of the Pledgor stating that the release of the respective Collateral is permitted pursuant to such Section 20 (a) or (b) .

(d) The Pledgee shall have no liability whatsoever to any other Secured Creditor as the result of any release of Collateral by it in accordance with this Section 20 .

21. NOTICES, ETC. All notices and communications hereunder shall be in writing and sent or delivered by mail, telegraph, telex, telecopy, cable or overnight courier service and all such notices and communications shall, when mailed, telegraphed, telexed, telecopied, or cabled or sent by overnight courier, be effective when deposited in the mails, delivered to the telegraph company, cable company or overnight courier, as the case may be, or sent by telex or telecopier, except that notices and communications to the Pledgee or the Pledgor shall not be effective until received by the Pledgee or the Pledgor, as the case may be. All such notices and other communications shall be in writing and addressed as follows:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601
Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
Attn: General Counsel

with a copy to:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601
Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
Attn: Treasurer

and

Perkins Coie LLP
Suite 1700

131 South Dearborn Avenue
Chicago, Illinois 60603
Telephone No.: (312) 324-8650
Telecopier No.: (312) 324-9650
Attn: Bruce A. Bonjour

(a) if to the Pledgee, at:

60 Wall Street
New York, New York 10005
Attention: James Rolison
Telephone No.: (212) 250-3352
Telecopier No.: (646) 324-7091

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attention: Harvey R. Uris
Telephone No.: (212) 735-2212
Telecopier No.: (917) 777-2212

(b) if to any Secured Creditor, at such address as such Secured Creditor shall have specified in the Credit Agreement;

or at such other address or addressed to such other individual as shall have been furnished in writing by any Person described above to the party required to give notice hereunder.

22. WAIVER; AMENDMENT. Except as provided in Sections 20 and 30 hereof, none of the terms and conditions of this Agreement may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by the Pledgor directly affected thereby (it being understood that the addition or release of the Pledgor hereunder shall not constitute a change, waiver, discharge or termination affecting the Pledgor other than the Pledgor so added or released) and the Pledgee (with the written consent of the Required Lenders).

23. MISCELLANEOUS. This Agreement shall and shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of and be enforceable by each of the parties hereto and their respective successors and assigns, provided that no Pledgor may assign any of its rights or obligations except in accordance with the terms of the other Loan Documents.

24. HEADINGS DESCRIPTIVE. The headings of the several Sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

25. GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL. (a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE WHICH ARE LOCATED IN THE COUNTY OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE PLEDGOR HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. THE PLEDGOR HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER THE PLEDGOR, AND AGREES NOT TO PLEAD OR CLAIM IN ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT BROUGHT IN ANY OF THE AFORESAID COURTS THAT ANY SUCH COURT LACKS PERSONAL JURISDICTION OVER THE PLEDGOR. THE PLEDGOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE PLEDGOR AT ITS ADDRESS FOR NOTICES AS PROVIDED IN SECTION 21 ABOVE, SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING. THE PLEDGOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT THAT SUCH SERVICE OF PROCESS WAS IN ANY WAY INVALID OR INEFFECTIVE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE PLEDGEE UNDER THIS AGREEMENT, OR ANY SECURED CREDITOR, TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE PLEDGOR IN ANY OTHER JURISDICTION.

(b) THE PLEDGOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (a) ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

26. PLEDGOR'S DUTIES. It is expressly agreed, anything herein contained to the contrary notwithstanding, that the Pledgor shall remain liable to perform all of the obligations, if any, assumed by it with respect to the Collateral and the issuer of Collateral and the Pledgee shall not have any obligations or liabilities, except as expressly set forth herein, with respect to the Collateral or the issuer of Collateral by reason of or arising out of this Agreement, nor shall the Pledgee be required or obligated in any manner to perform or fulfill any of the obligations of the Pledgor under or with respect to any Collateral.

27. COUNTERPARTS. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A set of counterparts executed by all the parties hereto shall be lodged with the Pledgor and the Pledgee.

28. SEVERABILITY. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

29. RECOURSE. This Agreement is made with full recourse to the Pledgor and pursuant to and upon all the representations, warranties, covenants and agreements on the part of the Pledgor contained herein and in the other Loan Documents and otherwise in writing in connection herewith or therewith.

30. LIMITED OBLIGATIONS. It is the desire and intent of the Pledgor and the Secured Creditors that this Agreement shall be enforced against the Pledgor to the fullest extent permissible under the laws applied in each jurisdiction in which enforcement is sought.

* * * *

IN WITNESS WHEREOF, the Pledgor and the Pledgee have caused this Agreement to be executed by their duly elected officers duly authorized as of the date first above written.

PLEDGOR:

STRATEGIC HOTELS & RESORTS, INC., a Maryland corporation

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

Accepted and Agreed to:

PLEDGEE:

DEUTSCHE BANK TRUST COMPANY
AMERICAS

By: _____
Name:
Title:

By: _____
Name:
Title:

ANNEX A
to
PLEDGE AGREEMENT

SCHEDULE OF LEGAL NAMES, TYPE OF ORGANIZATION
(AND WHETHER A REGISTERED ORGANIZATION AND/OR
A TRANSMITTING UTILITY), JURISDICTION OF ORGANIZATION,
LOCATION AND ORGANIZATIONAL IDENTIFICATION NUMBERS

Exact Legal Name of Each Pledgor	Registered Organization? (Yes/No)	Jurisdiction of Organization	Pledgor's Location (for purposes of NY UCC §9-307)	Pledgor's Organization Identification Number (or if it has none, so indicate)	Transmitting Utility? (Yes/No)
Strategic Hotels & Resorts. Inc.	Yes	Maryland	Maryland	D07766413	No

ANNEX C
to
PLEDGE AGREEMENT

SCHEDULE OF LIMITED LIABILITY COMPANY INTERESTS

Date Acquired	Name of Issuing Entity	Type of Interest	Certificate No.	Number of Units	Sub-clause of Section 3.2(a)(i) of Pledge Agreement
June 29, 2004	Strategic Hotel Funding, L.L.C.	Membership	4	26,456,474	Yes
June 9, 2004	Strategic Hotel Funding, L.L.C.	Membership	11	2,640,000	Yes
September 29, 2004	Strategic Hotel Funding, L.L.C.	Membership	347	1,141,667	Yes
Authorized March 2005; Issued January 2006	Strategic Hotel Funding, L.L.C.	8.50% Series A Cumulative Redeemable Preferred Units	N/A	4,600,000	No
Authorized January 2006; Issued February 2006	Strategic Hotel Funding, L.L.C.	8.25% Series B Cumulative Redeemable Preferred Units	N/A	4,600,000	No
February 20, 2006	Strategic Hotel Funding, L.L.C.	Membership	620	28,897,082	Yes

Authorized May 17, 2006	Strategic Hotel Funding, L.L.C.	8.25% Series C Cumulative Redeemable Preferred Units Membership	N/A	5,750,000	No
Authorized 2006-2007	Strategic Hotel Funding, L.L.C.	Membership	N/A	16,446,683	No

ANNEX C
to
PLEDGE AGREEMENT

Form of Agreement Regarding Limited Liability Company Interests

AGREEMENT (as amended, modified or supplemented from time to time, this "Agreement"), dated as of _____, among the undersigned pledgor (the "Pledgor"), Deutsche Bank Trust Company Americas, as lender (the "Pledgee"), and Strategic Hotel Funding, L.L.C., as the issuer of the [Limited Liability Company Interests] (defined below) (the "Issuer").

W I T N E S S E T H :

WHEREAS, the Pledgor, certain of its affiliates and the Pledgee have entered into a Pledge Agreement, dated as of March 9, 2007 (as amended, modified or supplemented from time to time, the "Pledge Agreement"), under which, among other things, in order to secure the payment of the Obligations (as defined in the Pledge Agreement), the Pledgor will pledge to the Pledgee, and grant a security interest in favor of the Pledgee in, all of the right, title and interest of the Pledgor in and to any and all "uncertificated securities" (as defined in Section 8-102(a)(l8) of the Uniform Commercial Code, as adopted in the State of New York) ("Uncertificated Securities") Limited Liability Company Interests (as defined in the Pledge Agreement) issued from time to time by the Issuer, whether now existing or hereafter from time to time acquired by the Pledgor (with all of such Limited Liability Company Interests being herein collectively called the "Issuer Pledged Interests"); and

WHEREAS, the Pledgor desires the Issuer to enter into this Agreement in order to protect the security interest of the Pledgee under the Pledge Agreement in the Issuer Pledged Interests, to vest in the Pledgee control of the Issuer Pledged Interests and to provide for the rights of the parties under this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual promises and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Pledgor hereby irrevocably authorizes and directs the Issuer, and the Issuer hereby agrees, to comply with any and all instructions and orders originated by the Pledgee (and its successors and assigns) regarding any and all of the Issuer Pledged Interests without the further consent by the registered owner (including the Pledgor), and, after receiving a notice from the Pledgee stating that an "Event of Default" has occurred and is continuing (i) not to comply with any instructions or orders regarding any or all of the Issuer Pledged Interests originated by any person or entity other than the Pledgee (and its successors and assigns) or a court of competent jurisdiction and (ii) the Issuer will send any and all redemptions, distributions, interest or other payments in respect of the Issuer Pledged Interests from the Issuer for the account of the Pledgor only by wire transfers to such account as may be directed by Pledgee.

2. The Issuer hereby certifies that (i) no notice of any security interest, lien or other encumbrance or claim affecting the Issuer Pledged Interests (other than the security interest of the Pledgee) has been received by it, and (ii) the security interest of the Pledgee in the Issuer Pledged Interests has been registered in the books and records of the Issuer.

3. The Issuer hereby represents and warrants that (i) the pledge by the Pledgor of, and the granting by the Pledgor of a security interest in, the Issuer Pledged Interests to the Pledgee does not violate the charter, by-laws, partnership agreement, membership agreement or any other agreement governing the Issuer or the Issuer Pledged Interests, and (ii) the Issuer Pledged Interests are fully paid and nonassessable.

4. All notices, statements of accounts, reports, prospectuses, financial statements and other communications to be sent to the Pledgor by the Issuer in respect of the Issuer will also be sent to the Pledgee at the following address:

60 Wall Street
New York, New York 10005
Attention: James Rolison
Telephone No.: (212) 250-3352
Telecopier No.: (646) 324-7091

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attention: Harvey R. Uris
Telephone No.: (212) 735-2212
Telecopier No.: (917) 777-2212

5. Except as expressly provided otherwise in Sections 4 above, all notices shall be sent or delivered by mail, telegraph, telex, telecopy, cable or overnight courier service and all such notices and communications shall, when mailed, telegraphed, telexed, telecopied, or cabled or sent by overnight courier, be effective when deposited in the mails, delivered to the telegraph company, cable company or overnight courier, as the case may be, or sent by telex or telecopier, except that notices and communications to the Pledgee, the Pledgor or the Issuer shall not be effective until received by the Pledgee, the Pledgor or the Issuer, as the case may be. All notices and other communications shall be in writing and addressed as follows:

(a) if to the Pledgor, at:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601
Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
Attn: General Counsel

with a copy to:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601
Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
Attn: Treasurer

and

Perkins Coie LLP
Suite 1700
131 South Dearborn Avenue
Chicago, Illinois 60603
Telephone No.: (312) 324-8650
Telecopier No.: (312) 324-9650
Attn: Bruce A. Bonjour

(b) if to the Pledgee, at:

60 Wall Street
New York, New York 10005
Attention: James Rolison
Telephone No.: (212) 250-3352
Telecopier No.: (646) 324-7091

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attention: Harvey R. Uris
Telephone No.: (212) 735-2212
Telecopier No.: (917) 777-2212

(c) if to the Issuer, at:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601
Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
Attn: General Counsel

with a copy to:

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601
Telephone No.: (312) 658-5000
Telecopier No.: (312) 658-5799
Attn: Treasurer

and

Perkins Coie LLP
Suite 1700
131 South Dearborn Avenue
Chicago, Illinois 60603
Telephone No.: (312) 324-8650
Telecopier No.: (312) 324-9650
Attn: Bruce A. Bonjour

or at such other address as shall have been furnished in writing by any Person described above to the party required to give notice hereunder. As used in this Section 6, "Business Day" means any day other than a Saturday, Sunday, or other day in which banks in New York are authorized to remain closed.

6. This Agreement shall be binding upon the successors and assigns of the Pledgor and the Issuer and shall inure to the benefit of and be enforceable by the Pledgee and its successors and assigns. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one instrument. In the event that any provision of this Agreement shall prove to be invalid or unenforceable, such provision shall be deemed to be severable from the other provisions of this Agreement which shall remain binding on all parties hereto. None of the terms and conditions of this Agreement may be changed, waived, modified or varied in the manner whatsoever except in writing signed by the Pledgee, the Issuer and the Pledgor.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflict of laws.

IN WITNESS WHEREOF, the Pledgor, the Pledgee and the Issuer have caused this Agreement to be executed by their duly elected officers duly authorized as of the date first above written.

STRATEGIC HOTELS & RESORTS, INC., as Pledgor

By _____
Name:
Title:

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Pledgee

By _____
Name:
Title:

STRATEGIC HOTEL FUNDING, L.L.C., as Issuer

By _____
Name:
Title:

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EXHIBIT G-3

PLEDGE AND SECURITY AGREEMENT

PLEDGE AND SECURITY AGREEMENT, dated as of March 9, 2007 (this "Pledge Agreement"), by [_____], a Delaware limited liability company ("Loan Pledgor"), in favor of DEUTSCHE BANK TRUST COMPANY AMERICAS (together with its successors and/or assigns, "Lender")

W I T N E S S E T H

WHEREAS, Loan Pledgor, together with certain of its affiliates, have entered into a Credit Agreement, dated as of March 9, 2007 (the "Loan Agreement") providing for loan in the amount of $415,000,000; and

WHEREAS, Loan Pledgor is the owner and holder of that certain first mortgage loan (the "Pledged Loan ") in the aggregate principal amount of [$_____], made pursuant to that certain [_____] (the "Loan Agreement"), among Loan Pledgor, as lender, and [_____] ("Borrower"), as borrower and evidenced by a [$_____] Promissory Note, dated as of [_____], from Borrower to Loan Pledgor (the "Pledged Note"), a true, correct and complete copy of which is attached hereto on Exhibit B .

WHEREAS, pursuant to the terms of the Loan Agreement, Loan Pledgor is required to deliver this Pledge and Security Agreement.

NOW, THEREFORE, in order to induce the Lender to make the Loan and for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Loan Pledgor hereby agrees as follows:

1. Definitions . All capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto in the Loan Agreement.

2. Pledge of Collateral .

(a) As collateral security for the full and punctual payment of the Obligations (as such term is defined in the Loan Agreement), and to secure the faithful performance of each and every covenant, term, condition and agreement of the Loan Pledgor herein and in the other Loan Documents, the Loan Pledgor hereby mortgages, grants and pledges a continuing first priority lien on and security interest in, and, as a part of such grant and pledge, hereby collaterally transfers and assigns to Lender, all of Loan Pledgor's right, title and interest in and to the following (collectively, the "Collateral"):

(i) the Pledged Note, including without limitation, payments (whether, principal, premium, penalties, interest, contingent interest, additional interest, or

PLEDGE AND SECURITY AGREEMENT

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(i) the Pledged Note, including without limitation, payments (whether, principal, premium, penalties, interest, contingent interest, additional interest, or otherwise) and distributions to which the Loan Pledgor shall at any time be entitled in respect of the Pledged Note;

(ii) all of the Loan Pledgor's claims, rights, powers, privileges, authority, options, security interest, liens and remedies under or arising out or in respect of the Pledged Note;

(iii) the rights to exercise and enforce every right, power, remedy, authority, option and privilege of Loan Pledgor relating to the Pledged Note to execute any instruments and to take any and all other action on behalf of and in the name of Loan Pledgor in respect of the Pledged Note, to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, amendment, waiver or approval, together with full power and authority to demand, receive, enforce, collect or receipt for any of the foregoing or for any property related to the Pledged Note, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action in connection with any of the foregoing;

(iv) to the extent not otherwise included, all proceeds (as defined under the UCC) of any or all of the foregoing.

(b) In order to confirm and perfect such collateral assignment and security interest, and as a condition to the Lender making the Loan, Loan Pledgor has delivered to Lender on behalf of the Lender the following:

(i) true and complete originals of the executed Pledged Note, duly endorsed by allonge by an authorized representative of Loan Pledgor, in the form attached hereto as Exhibit A ;

(ii) any and all UCC Financing Statements as may be required in order to perfect the security interest created by this Pledge Agreement;

(iii) a signed notice requiring that all payments (whether principal, premium, penalties, interest, contingent interest, additional interest, damages or otherwise and including all insurance and/or condemnation proceeds) made pursuant to the Pledged Note be made payable directly to Lender (or such Person as Lender on behalf of the Lender shall designate) and to be sent directly to Lender promptly after Loan Pledgor receive notice of an Event of Default under the Loan Agreement;

3. Obligations Secured . This Pledge Agreement is made and delivered as continuing security for the Obligations (as defined in the Loan Agreement).

4. Representations, Warranties and Covenants of Loan Pledgor . Loan Pledgor represents and warrants that it is the sole legal, beneficial and equitable owner of, and has good and marketable title to, the Collateral free and clear of all liens, charges and encumbrances thereon whatsoever. Loan Pledgor covenants that it will warrant and defend title to the Collateral and the lien thereon assigned to Lender by this Pledge Agreement against all claims of all Persons claiming by, through or under Loan Pledgor and will maintain and preserve such lien.

5. Remedies .

(a) If an Event of Default shall occur and be continuing, Lender may, for its own account: enforce all the rights of the holder of the Collateral, give consent or approval to any matters provided for in the Collateral, take or omit to take any action, institute or withdraw any action or proceeding and otherwise deal with the Collateral as if it were the beneficial owner of the Collateral, and Lender is hereby appointed Loan Pledgor's attorney-in-fact for such purposes. The power and authority hereby given are declared by Loan Pledgor to constitute a power coupled with an interest.

(b) If an Event of Default shall occur and be continuing, Lender may, without obligation to resort to other security, have the right at any time (but upon at least 10 days prior written notice to Loan Pledgor, which the parties agree shall constitute commercially reasonable advance notice of scheduling a UCC foreclosure sale with respect to the Collateral) and from time to time to sell, assign and deliver, or grant options to purchase, all or any part of the Collateral, or any interest therein in such order or priority as Lender shall determine at any public or private sale, at any exchange, broker's board or any of Lender's offices or elsewhere, without demand of performance, advertisement of notice of intention to sell, or any other notice (all of which are hereby expressly waived by Loan Pledgor), except notice of the time or place of sale or adjournment thereof or such other notice as may be required by applicable law and cannot be waived in any fashion, for cash, or credit or for other property, for immediate or future delivery, without any assumption of credit risk, and, provided that same is not in violation of applicable law, for such price or prices and on such terms as Lender may determine. To the extent permitted by law, Loan Pledgor hereby waives and releases any right or equity of redemption with respect to the Collateral whether before or after sale hereunder, and all rights, if any, of marshalling the Collateral and any other security at the time held by Lender, and any right of valuation or appraisement. At any sale hereunder, unless prohibited by application of law, Lender may bid for and purchase all or any part of the Collateral so sold free from any right or equity of redemption, and may apply to the purchase price any amounts owing in respect of any Obligations. Any sale of the Collateral or any part thereof or any interest therein pursuant hereto shall forever be a perpetual bar against Loan Pledgor with respect thereto. No purchaser at any such sale shall be obligated to see to the proper application by Lender of the proceeds of any such sale. Subject to all of the foregoing provisions of this Section 5(b) , Loan Pledgor shall have the right to repurchase from a purchaser under this Section 5 all or any part of the Collateral. It is expressly acknowledged and agreed that Lender may exercise its rights with respect to less than all of the Collateral, leaving unexercised its rights with respect to the remainder of the Collateral and with the understanding that any such partial exercise shall in no way restrict or jeopardize Lender's right to exercise its rights with respect to all or any portion of the Collateral at a later time or times.

(c) If an Event of Default shall occur and be continuing, Lender shall have the right, without notice to Loan Pledgor, to collect all sums and payments of whatsoever nature payable or paid under the Collateral (including without limitation, principal, interest, escrows, proceeds of any fire, casualty or title insurance policy or awards made in any condemnation or eminent domain proceeding).

(d) If an Event of Default shall occur and be continuing, upon Lender's written demand, Loan Pledgor (i) will do any and all acts and things which may be necessary or advisable in Lender's reasonable opinion to enable Lender to consummate any proposed sale or other disposition of any of the Collateral pursuant to this Pledge Agreement; and (ii) will reimburse Lender for all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) of enforcing the remedies provided in this Section 5 .

(e) If, after an Event of Default has occurred, Lender shall elect to exercise its right to sell all or any of the Collateral pursuant to this Section 7 , Loan Pledgor agrees that Loan Pledgor will, at its own expense, execute and deliver, and cause the members of Loan Pledgor to execute and deliver, all such instruments and documents and do or cause to be done all such other acts and things as may be reasonably necessary, or in the reasonable opinion of Lender advisable, to make such sale of the Collateral or any part thereof valid and binding and in compliance with applicable law.

(f) Lender may exercise all of the rights and remedies of a secured party under the Uniform Commercial Code.

6. Loan Pledger's Release and Indemnity of Lender .

(a) Under no circumstances shall Lender be deemed to assume any responsibility for or obligation or duty with respect to any part or all of the Collateral of any nature or kind or any matter or proceeding arising out of or related thereto, but the same shall be at Loan Pledgor's sole risk at all times. Lender shall not be required to take any action of any kind to collect, preserve or protect its or Loan Pledgor's rights in the Collateral, or against any other party to the Pledged Loan Documents. Loan Pledgor hereby releases Lender from any claims, causes of action and demands at any time arising out of or with respect to any action taken by Lender in connection with the exercise of any rights or remedies under this Pledge Agreement, the Assignments or the other Loan Documents, the use of the Collateral or any actions taken or omitted to be taken by Lender with respect thereto

(b) Loan Pledgor shall protect, indemnify, save, defend, and hold harmless Lender, including its directors, officers, Lenders, and legal representatives (collectively, the " Indemnified Parties") from and against any and all liability, loss, damage, demands, assessments, actions, causes of action, costs or expenses whatsoever (including, without limitation, reasonable attorneys' fees and disbursements) and any and all claims, suits and judgments which any Indemnified Party may suffer, whether arising before or after Lender's foreclosure of the Collateral by any party as a result of any actions taken by Loan Pledgor in connection with the enforcement of any remedy or remedies available to Loan Pledgor under the Pledged Loan Documents (collectively, "Claims"), except to the extent such Claims arising from Lender's gross negligence, fraud, bad faith or willful misconduct. Promptly after Lender receives notice of the commencement of any claim in respect of which indemnification is sought hereunder, Lender shall promptly notify Loan Pledgor in writing thereof. If any such action or

other proceeding shall be brought against Lender, upon written notice (given reasonably promptly following Lender's notice to Loan Pledgor of such action or proceeding), Loan Pledgor shall be entitled to assume the defense thereof, at Loan Pledgor's expense, with counsel reasonably acceptable to Lender; provided, however, that Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Loan Pledgor expressly retains. Notwithstanding the foregoing, Lender shall have the right to employ separate counsel at Loan Pledgor's expense and to control its own defense of such action or proceeding if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between Lender and Loan Pledgor that would make such separate representation advisable; provided, however, in no event shall Loan Pledgor be required to pay fees and expenses under this indemnity that are not reasonable or that are for more than one separate firm of attorneys for Lender in any jurisdiction in any one legal action. Notwithstanding anything to the contrary provided in this Pledge Agreement or in any other Loan Document, the indemnification provided in this Section 6 shall be independent of, and shall survive, the repayment and discharge of the Loan, the release of the lien created under this Pledge Agreement, and/or the conveyance of title to the Collateral to Lender or any purchaser or designee in connection with a foreclosure of the Collateral, conveyance thereof in lieu of foreclosure or otherwise.

7. Termination . Upon the payment in full to Lender of all amounts due under the Loan Agreement, except as otherwise provided herein, this Pledge Agreement shall terminate, and such of the Collateral (including, without limitation, the Pledged Note) as have not theretofore been sold or otherwise applied pursuant to the terms of this Pledge Agreement shall be duly assigned, transferred and delivered to Loan Pledgor or as Loan Pledgor may direct in writing at the expense of Loan Pledgor and such delivery shall be without representation or warranty by Lender and wholly without recourse to Lender, and Lender shall promptly execute, upon termination of this Pledge Agreement, an instrument so evidencing such termination.

8. Further Assurances . Loan Pledgor agrees that at any time and from time to time, at the sole cost and expense of Loan Pledgor, Loan Pledgor will promptly execute and deliver all further instruments, notices and documents, and take all further action that may be reasonably necessary, or that Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce the rights and remedies hereunder with respect to the Collateral.

9. Notices . All notices hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

10. General . This Pledge Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto. All covenants of Loan Pledgor contained herein are for the benefit of Lender and its successors and assigns, which shall include any subsequent holder of the Note. Lender shall have the right to transfer its rights in and to the Collateral to any other Person that acquires an interest in all or any portion of the Loan. This Pledge Agreement and the rights of the parties hereto and of any subsequent holder hereof may not be changed orally, but only by an instrument in writing signed by the party against whom enforcement of such change, modification or discharge is sought.

11. Severability . If any word, phrase, sentence, paragraph, provision or section of this Pledge Agreement shall be held, declared, pronounced or rendered invalid, void, unenforceable or inoperative for any reason by any court of competent jurisdiction, Governmental Authority, statute, or otherwise, such holding, declaration, pronouncement or rendering shall not adversely affect any other word, phrase, sentence, paragraph, provision or section of this Pledge Agreement, which shall otherwise remain in full force and effect and be enforced in accordance with its terms.

12. Continuing Interest . This Pledge Agreement shall constitute and create a continuing pledge and security interest notwithstanding any settlement of account or other matters or things whatsoever and, in particular, but without limitation, shall not be considered satisfied by any intermediate partial payment or satisfaction of less than all of the Obligations and shall (i) remain in full force and effect until payment in full of the Obligations, (ii) be binding upon Loan Pledgor, its successors and assigns, (iii) inure to the benefit of Lender and its successors, transferees and assigns, and (iv) shall continue in full force and effect until such time as pursuant to Section 7 hereof this Pledge Agreement terminates. Without limiting the generality of the foregoing clause (iii), Lender may assign or otherwise transfer its rights in and to the Note to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Lender on behalf of such Lender herein and otherwise.

13. Counterparts . This Pledge Agreement may be executed in any number of counterparts, each of which for all purposes shall be deemed to be an original.

14. Waiver of Jury Trial . BY ITS SIGNATURE BELOW WRITTEN, EACH OF THE UNDERSIGNED HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS PLEDGE AGREEMENT, THE PROMISSORY NOTE HEREIN DESCRIBED OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

15. GOVERNING LAW . THIS PLEDGE AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, WITHOUT REGARD TO CHOICE OF LAW RULES. EQUITY PLEDGOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS PLEDGE AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE BOROUGH OF MANHATTAN (IN THE CITY, COUNTY AND STATE OF NEW YORK) OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON EQUITY PLEDGOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THE LOAN AGREEMENT. EQUITY PLEDGOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

WITNESS WHEREOF, the parties hereto have caused this Pledge Agreement to be executed and delivered on the day and year first above written.

LOAN PLEDGOR :

SHC MEXICO LENDER, LLC
a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

PLEDGEE :

DEUTSCHE BANK TRUST COMPANY AMERICAS,
a New York banking corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A

ALLONGE

As to the attached Promissory Note, dated as of_____, made, executed and delivered by_____, a _____, to_____, a_____(as the same may have been and may hereafter be amended, modified, restated and consolidated), and currently being held by_____, a_____("Assignor"), as successor lender, in the original principal amount of $_____.

WITHOUT RECOURSE, REPRESENTATION OR WARRANTY (except as set forth in that certain Pledge and Security Agreement dated as of the date hereof, by and between Assignor and Deutsche Bank Trust Company Americas) pay to the order of DEUTSCHE BANK TRUST COMPANY AMERICAS, a New York banking association.

STRATEGIC MEXICO LENDER, LLC
a Delaware limited liability company

By: _____
Name:
Title:

Dated as of this___ day
of_____, 200___ .

EXHIBIT B

PLEDGED NOTE

10

EXHIBIT H-1

GUARANTY

THIS GUARANTY, dated as of March 9, 2007 (as amended, modified, or supplemented from time to time, this "Guaranty"), is made by the undersigned ("Guarantor") to and for the benefit of the "Credit Parties" (as defined herein). Except as otherwise defined herein, terms used herein and defined in the Credit Agreement (as defined below) shall be used herein as therein defined.

W I T N E S S E T H :

WHEREAS, Strategic Hotel Funding, L.L.C. ("Borrower"), the lenders from time to time party thereto ("Lenders"), Deutsche Bank Trust Company Americas, as administrative agent ("Administrative Agent", and together with the Issuer, the Lenders and each Person (other than Borrower, Guarantor or any Subsidiary of either) party to a Credit Hedging Agreement or a Pari-Pasu Hedging Agreement, to the extent such party is a Lender or any affiliate thereof (even if such Lender subsequently ceases to be a Lender under the Credit Agreement for any reason), and their subsequent successors and assigns, the "Credit Parties") have entered into a Credit Agreement, dated as of March 9, 2007 (as amended, modified, or supplemented from time to time, the "Credit Agreement");

WHEREAS, Guarantor is the owner of a direct or indirect beneficial interest in the Borrower, will obtain material direct and indirect benefits from the extensions of credit to Borrower under the Credit Agreement and the entering into of Credit Hedging Agreements by Credit Parties and Pari-Pasu Hedging Agreements by the Lenders and the Pari-Pasu Hedging Counterparties;

WHEREAS, in order to induce the Lenders to enter into the Credit Agreement and to extend credit thereunder, and as a condition thereto, to induce the Lenders or any of their respective Affiliates to enter into Credit Hedging Agreements and Pari Pasu Hedging Agreements, and in recognition of the direct and indirect benefits to be received by Guarantor from the proceeds of the Loans, the issuance of the Letters of Credit and the entering into of Credit Hedging Agreements and Pari-Pasu Hedging Agreements, Guarantor desires to execute this Guaranty;

NOW, THEREFORE, in consideration of the foregoing and other benefits accruing to Guarantor, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby makes the following representations and warranties to the Credit Parties and hereby covenants and agrees with each Credit Party as follows:

1. Guarantor hereby absolutely irrevocably and unconditionally guarantees:

(a) to the Credit Parties the full, prompt and unconditional payment when due (whether at the stated maturity, by acceleration or otherwise) of (i) the principal of and interest on the Revolving Notes issued to, the Loans made to, any Additional Revolving Loan Commitments made to, and the issuance of Letters of Credit for the account of, Borrower under the Credit Agreement, (ii) all other obligations (including obligations which, but for any automatic stay under *Section 362(a)* of Title 11 of the United States Code, entitled "Bankruptcy", as amended from time to time and any successor statute or statutes (the "Bankruptcy Code"), would become due) and liabilities owing by Borrower to the Credit Parties under the Credit Agreement and the Loan Documents referred to therein (including, without limitation, indemnities, fees, and interest thereon) now existing or hereafter incurred under, arising out of or in connection with the Credit Agreement or any other Loan Document, and the due performance and compliance with the terms of the Loan Documents, (iii) all obligations (including obligations which, but for the automatic stay under *Section 362(a)* of the Bankruptcy Code, would become due) and liabilities of Borrower and Guarantor, whether now in existence or hereunder arising, owing under any Credit Hedging Agreement entered into by Borrower or Guarantor with any Lender or any affiliate thereof (even if such Lender subsequently ceases to be a Lender under the Credit Agreement for any reason) so long as such Lender or affiliate participates in such Credit Hedging Agreement, and their subsequent assigns, if any, and the due performance and compliance with all terms, conditions and agreements contained therein and (iv) all obligations (including obligations which, but for the automatic stay under *Section 362(a)* of the Bankruptcy Code, would become due) and liabilities of Borrower, whether now in existence or hereunder arising, owing under any Pari-Pasu Hedging Agreement entered into by Borrower or Strategic Hotels & Resorts, Inc. with any Counterparty or any affiliate thereof so long as such Counterparty or affiliate participates in such Pari-Pasu Hedging Agreement, and their subsequent assigns, if any, and the due performance and compliance with all terms, conditions and agreements contained therein (all such principal, interest, liabilities, and obligations, the "Guaranteed Obligations").

This Guaranty shall constitute a guaranty of payment, and not of collection and upon any failure of Borrower to pay the Guaranteed Obligations, the Credit Parties may, at their option, proceed directly and at once, without notice, against Guarantor to collect and recover the full amount of the liability to pay the Guaranteed Obligations hereunder or any portion thereof, without proceeding against Borrower or any other Person, or foreclosing upon, selling, or otherwise disposing of or collecting or applying against any of the collateral for the Loans.

2. Additionally, Guarantor, absolutely, unconditionally and irrevocably, guarantees the payment of any and all Guaranteed Obligations whether or not due or payable by Borrower upon the occurrence in respect of Borrower of any of the events specified in Section 8.1.9 of the Credit Agreement, and absolutely, unconditionally and irrevocably promises to pay such Guaranteed Obligations to the Credit Parties, on demand, in lawful money of the United States.

3. The liability of Guarantor hereunder is exclusive and independent of any security for or other guaranty of the indebtedness of Borrower whether executed by the Guarantor, any other guarantor, Borrower, or by any other party, and the liability of Guarantor hereunder shall not be affected or impaired by (a) any direction as to application of payment by Borrower or by any other party, (b) any other continuing or other guaranty, undertaking or maximum liability of a guarantor or of any other party as to the indebtedness of Borrower, (c) any payment on or in reduction of any such other guaranty or undertaking, (d) any dissolution, termination, or increase, decrease, or change in personnel by Borrower, or (e) any payment made to any Credit Party on the indebtedness which any Credit Party repays to Borrower pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium, or other debtor relief proceeding, and Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

4. The obligations of Guarantor hereunder are independent of the obligations of any other guarantor or Borrower, and a separate action or actions may be brought and prosecuted against Guarantor whether or not action is brought against any other guarantor or Borrower and whether or not any other guarantor of Borrower or Borrower be joined in any such action or actions.

5. Guarantor hereby waives notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives notices of the existence, creation, or incurring of additional Indebtedness, promptness, diligence, presentment, demand for performance, notice of non-performance, demand of payment, notice of intention to accelerate, notice of acceleration, protest, notice of dishonor or nonpayment of any such liabilities, suit or taking of other action by Administrative Agent or any other Credit Party against, and any other notice to, any party liable thereon (including Guarantor or any other guarantor of Borrower).

6. Any Credit Party may at any time and from time to time without the consent of, or notice to, Guarantor, without incurring responsibility to the Guarantor, without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions and in whole or in part:

(1) change the manner, place, or terms of payment of, and/or change or extend the time of payment of, renew, or alter, any of the Guaranteed Obligations, any security therefor, or any liability incurred directly or indirectly in respect thereof, and the guaranty herein made shall apply to the Guaranteed Obligations as so changed, extended, renewed, or altered;

(2) sell, exchange, release, surrender, realize upon, or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Guaranteed Obligations or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or any offset there against;

(3) exercise or refrain from exercising any rights against Borrower, any other guarantor, or others or otherwise act or refrain from acting;

(4) settle or compromise any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of Borrower to creditors of such Borrower (other than the Credit Parties);

(5) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of Borrower to the Credit Parties regardless of what liabilities of such Borrower remain unpaid;

(6) consent to or waive any breach of, or any act, omission or default under, any of the Loan Documents or any of the instruments or agreements referred to therein, or otherwise amend, modify, or supplement any of the Loan Documents or any of such other instruments or agreements; and/or

(7) act or fail to act in any manner referred to in this Guaranty which may deprive the Guarantor of its right to subrogation against Borrower to recover full indemnity for any payments made pursuant to this Guaranty.

7. No invalidity, irregularity, or unenforceability of all or any part of the Guaranteed Obligations or of any security therefor shall affect, impair, or be a defense to this Guaranty, and this Guaranty shall be primary, absolute, and unconditional notwithstanding the occurrence of any event or the existence of any other circumstances which might constitute a legal or equitable discharge of a surety or guarantor except payment in full of the Guaranteed Obligations.

8. This Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of any Credit Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly specified are cumulative and not exclusive of any rights or remedies which any Credit Party would otherwise have. No notice to or demand on Guarantor in any case shall entitle Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Credit Party to any other or further action in any circumstances without notice or demand. It is not necessary for any Credit Party to inquire into the capacity or powers of Borrower or any of its Subsidiaries or the officers, directors, partners, or agents acting or purporting to act on its behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

9. Any Indebtedness of Borrower to Guarantor now or hereafter existing, including, without limitation, any rights to subrogation which Guarantor may have as a result of any payment by Guarantor under this Guaranty, together with any interest thereon, shall be, and such Indebtedness is, hereby deferred, postponed and subordinated to the prior payment in full of the Guaranteed Obligations. Until payment in full of the Guaranteed Obligations, including interest accruing on the Revolving Notes after the commencement of a proceeding by or against Borrower under the Bankruptcy Code which interest the parties agree shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in cases under the Bankruptcy Code generally, Guarantor agrees not to accept any payment or satisfaction of any kind of Indebtedness of Borrower to Guarantor and hereby assigns such Indebtedness to the Administrative Agent, including the right to file proof of claim and to vote thereon in connection with any such proceeding under the Bankruptcy Code, including the right to vote on any plan of reorganization.

10. Guarantor:

(a) hereby waives any right (except as shall be required by applicable statute and cannot be waived) to require the Credit Parties to: (i) proceed against Borrower, any other guarantor of Borrower, or any other party; (ii) proceed against or exhaust any security held from Borrower, any other guarantor of Borrower, or any other party; or (iii) pursue any other remedy in the Credit Parties' power whatsoever. Guarantor waives any defense based on or arising out of any defense of Borrower, any other guarantor of Borrower, or any other party other than payment in full of the Guaranteed Obligations, including, without limitation, any defense based on or arising out of the disability of Borrower, any other guarantor of Borrower, or any other party, or the unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of Borrower other than payment in full of the Guaranteed Obligations of Borrower. The Credit Parties may, at their election, foreclose on any security held by the Administrative Agent or the other Credit Parties by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent such sale is permitted by applicable law), or exercise any other right or remedy the Credit Parties may have against Borrower or any other party, or any security, without affecting or impairing in any way the liability of Guarantor hereunder except to the extent the Guaranteed Obligations have been paid in full. Guarantor waives any defense arising out of any such election by the Administrative Agent and/or any other Credit Parties, even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of the Guarantor against Borrower, any other guarantor of Borrower, or any other party or any security.

(b) assumes all responsibility for being and keeping itself informed of Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope, and extent of the risks which Guarantor assumes and incurs hereunder, and agrees that the Credit Parties shall have no duty to advise Guarantor of information known to them regarding such circumstances or risks.

11. If and to the extent that Guarantor makes any payment to any Credit Party or to any other Person pursuant to or in respect of this Guaranty, then any claim which Guarantor may have against Borrower by reason thereof shall be subject and subordinate to the prior payment in full of the Guaranteed Obligations to each Credit Party. Prior to the transfer by Guarantor of any note or negotiable instrument evidencing any Indebtedness of Borrower to Guarantor, Guarantor shall mark such note or negotiable instrument with a legend that the same is subject to this subordination.

12. Guarantor covenants and agrees that on and after the date hereof and until the Commitments under the Credit Agreement have been terminated and all Guaranteed Obligations have been paid in full, Guarantor shall take, or will refrain from taking, as the case may be, all actions that are necessary to be taken or not taken so that no Event of Default is caused by the actions of Guarantor or any of its Subsidiaries.

13. Guarantor hereby agrees to pay, to the extent not paid by Borrower pursuant to Section 10.3 of the Credit Agreement, all out-of-pocket costs and expenses (including, without limitation, the reasonable fees and disbursements of counsel) of each Credit Party in connection with the enforcement of this Guaranty or the collection of the Guaranteed Obligations and in connection with any amendment, waiver, or consent relating to this Guaranty.

14. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of the Credit Parties and their successors and assigns to the extent permitted under the Credit Agreement.

15. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except with the written consent of the Required Lenders (or to the extent required by Section 10.1 of the Credit Agreement, each Lender, as the case may be) and Guarantor affected thereby (it being understood that the addition or release of Guarantor hereunder shall not constitute a change, waiver, discharge or termination affecting any Guarantor other than the Guarantor so added or released).

16. Guarantor acknowledges that an executed (or conformed) copy of each of the Loan Documents has been made available to its principal executive officers and such officers are familiar with the contents thereof.

17. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, each Credit Party is hereby authorized, at any time or from time to time, without notice to Guarantor or to any other Person, any such notice being expressly waived, to set off and to appropriate and apply any and all deposits (general or special) and any other indebtedness at any time held or owing by such Credit Party to or for the credit or the account of Guarantor, against and on account of the obligations and liabilities of Guarantor to such Credit Party under this Guaranty, irrespective of whether or not such Credit Party shall have made any demand hereunder; *provided* that said obligations, liabilities, deposits, or claims, or any of them, shall be

then due and owing. Each Credit Party agrees to promptly notify Guarantor after any such set off and application, *provided that* the failure to give such notice shall not affect the validity of such set off and application.

18. All notices, requests, demands, or other communications provided for hereunder made in writing (including communications by facsimile transmission) shall be deemed to have been duly given or made when delivered to the Person to which such notice, request, demand, or other communication is required or permitted to be given or made under this Guaranty, addressed to such party (i) in the case of any Credit Party, as provided in the Credit Agreement and (ii) in the case of Guarantor, at its address set forth in Schedule I to this Guaranty.

19. Guarantor hereby agrees that if at any time all or any part of any payment at any time received by a Credit Party from the Borrower under any of the Revolving Notes or other Loan Documents or from Guarantor under or with respect to this Guaranty is or must be rescinded or returned by such Credit Party for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of the Borrower or Guarantor), then Guarantor's obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence notwithstanding such previous receipt by such Credit Party, and Guarantor's obligations hereunder shall continue to be effective or reinstated, as the case may be, as to such payment, as though such previous payment to the Credit Party had never been made. In addition, if any court of competent jurisdiction determines that the incurrence by Guarantor of its obligations under this Guaranty or the payment by Guarantor of its obligations hereunder is or would be voidable as a fraudulent transfer or conveyance under *Section 548* of the Bankruptcy Code, any analogous state law, or any other law relating to debtor protection or creditors' rights, the obligation of Guarantor hereunder shall automatically be reduced to the maximum amount (if any) of the obligation that Guarantor could incur or pay without such incurrence or payment being subject to avoidance as a fraudulent transfer or conveyance.

20. (a) GOVERNING LAW . THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. GUARANTOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON GUARANTOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. GUARANTOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(b) JURY TRIAL WAIVER . GUARANTOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION

BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EACH GUARANTOR IN CONNECTION HEREWITH OR THEREWITH. GUARANTOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS, THE LENDERS, AND THE ISSUER ENTERING INTO THIS AGREEMENT AND EACH SUCH OTHER LOAN DOCUMENT.

(c) MARSHALING. GUARANTOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALING OF BORROWER'S ASSETS OR TO CAUSE ANY CREDIT PARTY TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS AGREEMENT AGAINST BORROWER OR TO PROCEED AGAINST GUARANTOR IN ANY PARTICULAR ORDER. GUARANTOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE TEN (10) DAYS AFTER DEMAND. GUARANTOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO GUARANTOR.

21. The Credit Parties agree that this Guaranty may be enforced only by the action of Administrative Agent acting upon the instructions of the Required Lenders and until the Credit Agreement is terminated, no other Credit Party shall have any right individually to seek to enforce or to enforce this Guaranty, it being understood and agreed that such rights and remedies may be exercised by Administrative Agent for the benefit of the Credit Parties upon the terms of this Guaranty.

22. This Guaranty may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

23. **THIS GUARANTY AND THE OTHER WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BY THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

24. Except with respect to Section 19 hereof, upon repayment in full of the Guaranteed Obligations, this Guaranty shall automatically terminate and cease to be of any further force or effect.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed and delivered as of the date first above written.

STRATEGIC HOTELS & RESORTS, INC., a Maryland corporation

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

Accepted and Agreed to:

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Administrative Agent for the Lenders

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

SCHEDULE I

NOTICE

c/o Strategic Hotels & Resorts, Inc.
77 West Wacker Drive, Suite 4600
Chicago Illinois 60601

Attention: Treasurer and
General Counsel

EXHIBIT H-2

SUBSIDIARY GUARANTY

THIS SUBSIDIARY GUARANTY, dated as of March 9, 2007 (as amended, modified, or supplemented from time to time, this "Guaranty"), is made by each of the undersigned (each, a " Guarantor" and together with any other entity that becomes a party hereto pursuant to Section 23 hereof, collectively, the "Guarantors ") to and for the benefit of the "Credit Parties" (as defined herein). Except as otherwise defined herein, terms used herein and defined in the Credit Agreement (as defined below) shall be used herein as therein defined.

W I T N E S S E T H :

WHEREAS, Strategic Hotel Funding, L.L.C. ("Borrower"), the lenders from time to time party thereto ("Lenders") and Deutsche Bank Trust Company Americas, as administrative agent ("Administrative Agent", and together with the Issuer, the Lenders and each Person (other than Borrower, Strategic Hotels & Resorts, Inc. or any Subsidiary of either) party to a Credit Hedging Agreement or a Pari-Pasu Hedging Agreement, to the extent such party is a Lender or any affiliate thereof, and their subsequent successors and assigns, the "Credit Parties ") have entered into a Credit Agreement, dated as of March 9, 2007 (as amended, modified, or supplemented from time to time, the "Credit Agreement ");

WHEREAS, each Guarantor is a Subsidiary of Borrower;

WHEREAS, it is a condition to the extensions of credit under the Credit Agreement that each Guarantor shall have executed and delivered this Guaranty; and

WHEREAS, each Guarantor will obtain material direct and indirect benefits from the extensions of credit to Borrower under the Credit Agreement and the entering into of Credit Hedging Agreements by the Credit Parties and Pari-Pasu Hedging Agreements by the Lenders and the Pari-Pasu Hedging Counterparties and, accordingly, desires to execute this Guaranty in order to satisfy the conditions described in the preceding paragraph;

NOW, THEREFORE, in consideration of the foregoing and other benefits accruing to each Guarantor, the receipt and sufficiency of which are hereby acknowledged, each Guarantor hereby makes the following representations and warranties to the Credit Parties and hereby covenants and agrees with each Credit Party as follows:

1. Each Guarantor hereby absolutely irrevocably and unconditionally, and jointly and severally, guarantees:

(a) to the Credit Parties the full, prompt and unconditional payment when due (whether at the stated maturity, by acceleration or otherwise) of (i) the principal of and interest on the Revolving Notes issued to, the Loans made to, any Additional Revolving Loan Commitments made to, and the issuance of Letters of Credit for the account of,

Borrower under the Credit Agreement, (ii) all other obligations (including obligations which, but for any automatic stay under *Section 362(a)* of Title 11 of the United States Code, entitled "Bankruptcy", as amended from time to time and any successor statute or statutes (the "Bankruptcy Code "), would become due) and liabilities owing by Borrower to the Credit Parties under the Credit Agreement and the Loan Documents referred to therein (including, without limitation, indemnities, fees, and interest thereon) now existing or hereafter incurred under, arising out of or in connection with the Credit Agreement or any other Loan Document, and the due performance and compliance with the terms of the Loan Documents, (iii) all obligations (including obligations which, but for the automatic stay under *Section 362(a)* of the Bankruptcy Code, would become due) and liabilities of Borrower, whether now in existence or hereunder arising, owing under any Credit Hedging Agreement entered into by Borrower or Strategic Hotels & Resorts, Inc. with any Lender or any affiliate thereof so long as such Lender or affiliate participates in such Credit Hedging Agreement, and their subsequent assigns, if any, and the due performance and compliance with all terms, conditions and agreements contained therein and (iv) all obligations (including obligations which, but for the automatic stay under *Section 362(a)* of the Bankruptcy Code, would become due) and liabilities of Borrower, whether now in existence or hereunder arising, owing under any Pari-Pasu Hedging Agreement entered into by Borrower or Strategic Hotels & Resorts, Inc. with any Counterparty or any affiliate thereof so long as such Counterparty or affiliate participates in such Pari-Pasu Hedging Agreement, and their subsequent assigns, if any, and the due performance and compliance with all terms, conditions and agreements contained therein (all such principal, interest, liabilities, and obligations, the "Guaranteed Obligations").

This Guaranty shall constitute a guaranty of payment, and not of collection and upon any failure of Borrower to pay the Guaranteed Obligations, the Credit Parties may, at their option, proceed directly and at once, without notice, against Guarantor to collect and recover the full amount of the liability to pay the Guaranteed Obligations hereunder or any portion thereof, without proceeding against Borrower or any other Person, or foreclosing upon, selling, or otherwise disposing of or collecting or applying against any of the collateral for the Loans.

2. Additionally, each Guarantor, jointly and severally, unconditionally and irrevocably, guarantees the payment of any and all Guaranteed Obligations whether or not due or payable by Borrower upon the occurrence in respect of Borrower of any of the events specified in Section 8.1.9 of the Credit Agreement, and unconditionally and irrevocably, jointly and severally, promises to pay such Guaranteed Obligations to the Credit Parties, on demand, in lawful money of the United States.

3. The liability of each Guarantor hereunder is exclusive and independent of any security for or other guaranty of the indebtedness of Borrower whether executed by such Guarantor, any other Guarantor, any other guarantor, Borrower, or by any other party, and the liability of each Guarantor hereunder shall not be affected or impaired by (a) any direction as to application of payment by Borrower or by any other party, (b) any other continuing or other guaranty,

undertaking or maximum liability of a guarantor or of any other party as to the indebtedness of Borrower, (c) any payment on or in reduction of any such other guaranty or undertaking, (d) any dissolution, termination, or increase, decrease, or change in personnel by Borrower, or (e) any payment made to any Credit Party on the indebtedness which any Credit Party repays to Borrower pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium, or other debtor relief proceeding, and each Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

4. The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor, any other guarantor or Borrower, and a separate action or actions may be brought and prosecuted against each Guarantor whether or not action is brought against any other Guarantor, any other guarantor or Borrower and whether or not any other Guarantor, any other guarantor of Borrower or Borrower be joined in any such action or actions.

5. Each Guarantor hereby waives notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives notices of the existence, creation, or incurring of additional Indebtedness, promptness, diligence, presentment, demand for performance, notice of non-performance, demand of payment, notice of intention to accelerate, notice of acceleration, protest, notice of dishonor or nonpayment of any such liabilities, suit or taking of other action by Administrative Agent or any other Credit Party against, and any other notice to, any party liable thereon (including such Guarantor or any other guarantor of Borrower).

6. Any Credit Party may at any time and from time to time without the consent of, or notice to, any Guarantor, without incurring responsibility to such Guarantor, without impairing or releasing the obligations of such Guarantor hereunder, upon or without any terms or conditions and in whole or in part:

(1) change the manner, place, or terms of payment of, and/or change or extend the time of payment of, renew, or alter, any of the Guaranteed Obligations, any security therefor, or any liability incurred directly or indirectly in respect thereof, and the guaranty herein made shall apply to the Guaranteed Obligations as so changed, extended, renewed, or altered;

(2) sell, exchange, release, surrender, realize upon, or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Guaranteed Obligations or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or any offset there against;

(3) exercise or refrain from exercising any rights against Borrower, any other guarantor, or others or otherwise act or refrain from acting;

(4) settle or compromise any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly

in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of Borrower to creditors of such Borrower (other than the Credit Parties);

(5) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of Borrower to the Credit Parties regardless of what liabilities of such Borrower remain unpaid;

(6) consent to or waive any breach of, or any act, omission or default under, any of the Loan Documents or any of the instruments or agreements referred to therein, or otherwise amend, modify, or supplement any of the Loan Documents or any of such other instruments or agreements; and/or

(7) act or fail to act in any manner referred to in this Guaranty which may deprive such Guarantor of its right to subrogation against Borrower to recover full indemnity for any payments made pursuant to this Guaranty.

7. No invalidity, irregularity, or unenforceability of all or any part of the Guaranteed Obligations or of any security therefor shall affect, impair, or be a defense to this Guaranty, and this Guaranty shall be primary, absolute, and unconditional notwithstanding the occurrence of any event or the existence of any other circumstances which might constitute a legal or equitable discharge of a surety or guarantor except payment in full of the Guaranteed Obligations.

8. This Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of any Credit Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly specified are cumulative and not exclusive of any rights or remedies which any Credit Party would otherwise have. No notice to or demand on any Guarantor in any case shall entitle such Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Credit Party to any other or further action in any circumstances without notice or demand. It is not necessary for any Credit Party to inquire into the capacity or powers of Borrower or any of its Subsidiaries or the officers, directors, partners, or agents acting or purporting to act on its behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

9. Any Indebtedness of Borrower to Guarantor, excluding Indebtedness arising in the ordinary course of business in connection with a centralized cash management system used by Borrower and some or all of its Affiliates, now or hereafter existing, including, without limitation, any rights to subrogation which Guarantor may have as a result of any payment by Guarantor under this Guaranty, together with any interest thereon, shall be, and such Indebtedness is, hereby deferred, postponed and subordinated to the prior payment in full of the

Guaranteed Obligations. Until payment in full of the Guaranteed Obligations, including interest accruing on the Revolving Notes after the commencement of a proceeding by or against Borrower under the Bankruptcy Code which interest the parties agree shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in cases under the Bankruptcy Code generally, Guarantor agrees not to accept any payment or satisfaction of any kind of Indebtedness of Borrower to Guarantor (other than the Indebtedness excluded in the preceding sentence) and hereby assigns such Indebtedness to the Administrative Agent, including the right to file proof of claim and to vote thereon in connection with any such proceeding under the Bankruptcy Code, including the right to vote on any plan of reorganization.

10. Each Guarantor:

(a) hereby waives any right (except as shall be required by applicable statute and cannot be waived) to require the Credit Parties to: (i) proceed against Borrower, any other Guarantor, any other guarantor of Borrower, or any other party; (ii) proceed against or exhaust any security held from Borrower, any other Guarantor, any other guarantor of Borrower, or any other party; or (iii) pursue any other remedy in the Credit Parties' power whatsoever. Each Guarantor waives any defense based on or arising out of any defense of Borrower, any other Guarantor, any other guarantor of Borrower, or any other party other than payment in full of the Guaranteed Obligations, including, without limitation, any defense based on or arising out of the disability of Borrower, any other Guarantor, any other guarantor of Borrower, or any other party, or the unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of Borrower other than payment in full of the Guaranteed Obligations of Borrower. The Credit Parties may, at their election, foreclose on any security held by the Administrative Agent or the other Credit Parties by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent such sale is permitted by applicable law), or exercise any other right or remedy the Credit Parties may have against Borrower or any other party, or any security, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Guaranteed Obligations have been paid in full. Each Guarantor waives any defense arising out of any such election by the Administrative Agent and/or any other Credit Parties, even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against Borrower, any other Guarantor, any other guarantor of Borrower, or any other party or any security.

(b) assumes all responsibility for being and keeping itself informed of Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope, and extent of the risks which any Guarantor assumes and incurs hereunder, and agrees that the Credit Parties shall have no duty to advise such Guarantor of information known to them regarding such circumstances or risks.

11. If and to the extent that any Guarantor makes any payment to any Credit Party or to any other Person pursuant to or in respect of this Guaranty, then any claim which such Guarantor may have against Borrower by reason thereof shall be subject and subordinate to the prior payment in full of the Guaranteed Obligations to each Credit Party. Prior to the transfer by any Guarantor of any note or negotiable instrument evidencing any Indebtedness of Borrower to such Guarantor, such Guarantor shall mark such note or negotiable instrument with a legend that the same is subject to this subordination.

12. Each Guarantor covenants and agrees that on and after the date hereof and until the Commitments under the Credit Agreement have been terminated and all Guaranteed Obligations have been paid in full, such Guarantor shall take, or will refrain from taking, as the case may be, all actions that are necessary to be taken or not taken so that no Event of Default is caused by the actions of such Guarantor or any of its Subsidiaries.

13. Each Guarantor hereby jointly and severally agrees to pay, to the extent not paid by Borrower pursuant to Section 10.3 of the Credit Agreement, all out-of-pocket costs and expenses (including, without limitation, the reasonable fees and disbursements of counsel) of each Credit Party in connection with the enforcement of this Guaranty or the collection of the Guaranteed Obligations and in connection with any amendment, waiver, or consent relating to this Guaranty.

14. This Guaranty shall be binding upon each Guarantor and its successors and assigns and shall inure to the benefit of the Credit Parties and their successors and assigns to the extent permitted under the Credit Agreement.

15. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except with the written consent of the Required Lenders (or to the extent required by Section 10.1 of the Credit Agreement, each Lender, as the case may be) and each Guarantor affected thereby (it being understood that the addition or release of any Guarantor hereunder shall not constitute a change, waiver, discharge or termination affecting any Guarantor other than the Guarantor so added or released). In the event that any Subsidiary Guarantor is released from the Guaranteed Obligations hereunder pursuant to Section 7.1.9 of the Credit Agreement, the Administrative Agent, at the request and expense of such Subsidiary Guarantor, shall execute and deliver an instrument acknowledging such Subsidiary Guarantor's release from this Guaranty.

16. Each Guarantor acknowledges that an executed (or conformed) copy of each of the Loan Documents has been made available to its principal executive officers and such officers are familiar with the contents thereof.

17. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, each Credit Party is hereby authorized, at any time or from time to time, without notice to any Guarantor or to any other Person, any such notice being expressly waived, to set off and to appropriate and apply any and all deposits (general or special) and any other indebtedness at any

time held or owing by such Credit Party to or for the credit or the account of any Guarantor, against and on account of the obligations and liabilities of such Guarantor to such Credit Party under this Guaranty, irrespective of whether or not such Credit Party shall have made any demand hereunder; *provided* that said obligations, liabilities, deposits, or claims, or any of them, shall be then due and owing. Each Credit Party agrees to promptly notify the relevant Guarantor after any such set off and application, *provided that* the failure to give such notice shall not affect the validity of such set off and application.

18. All notices, requests, demands, or other communications provided for hereunder made in writing (including communications by facsimile transmission) shall be deemed to have been duly given or made when delivered to the Person to which such notice, request, demand, or other communication is required or permitted to be given or made under this Guaranty, addressed to such party (i) in the case of any Credit Party, as provided in the Credit Agreement and (ii) in the case of each Guarantor, at its address set forth in Schedule I to this Guaranty.

19. Each Guarantor hereby agrees that if at any time all or any part of any payment at any time received by a Credit Party from the Borrower under any of the Revolving Notes or other Loan Documents or from any Guarantor under or with respect to this Guaranty is or must be rescinded or returned by such Credit Party for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of the Borrower or any such Guarantor), then each Guarantor's obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence notwithstanding such previous receipt by such Credit Party, and each Guarantor's obligations hereunder shall continue to be effective or reinstated, as the case may be, as to such payment, as though such previous payment to the Credit Party had never been made. In addition, if any court of competent jurisdiction determines that the incurrence by any Guarantor of its obligations under this Guaranty or the payment by a Guarantor of its obligations hereunder is or would be voidable as a fraudulent transfer or conveyance under *Section 548* of the Bankruptcy Code, any analogous state law, or any other law relating to debtor protection or creditors' rights, the obligation of that Guarantor hereunder shall automatically be reduced to the maximum amount (if any) of the obligation that the Guarantor could incur or pay without such incurrence or payment being subject to avoidance as a fraudulent transfer or conveyance. Each Guarantor's obligations hereunder shall not exceed its tangible net worth.

20. (a) GOVERNING LAW . THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH GUARANTOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON ANY GUARANTOR IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THIS AGREEMENT. EACH GUARANTOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(b) JURY TRIAL WAIVER . EACH GUARANTOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EACH GUARANTOR IN CONNECTION HEREWITH OR THEREWITH. EACH GUARANTOR AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS, THE LENDERS, AND THE ISSUER ENTERING INTO THIS AGREEMENT AND EACH SUCH OTHER LOAN DOCUMENT.

(c) MARSHALING. GUARANTOR WAIVES ANY RIGHT OR CLAIM OF RIGHT TO CAUSE A MARSHALING OF BORROWER'S ASSETS OR TO CAUSE ANY CREDIT PARTY TO PROCEED AGAINST ANY OF THE SECURITY FOR THE LOAN BEFORE PROCEEDING UNDER THIS AGREEMENT AGAINST BORROWER OR TO PROCEED AGAINST GUARANTOR IN ANY PARTICULAR ORDER. GUARANTOR AGREES THAT ANY PAYMENTS REQUIRED TO BE MADE HEREUNDER SHALL BECOME DUE AND PAYABLE TEN (10) DAYS AFTER DEMAND. GUARANTOR EXPRESSLY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES (INCLUDING ANY RIGHTS OF SUBROGATION) ACCORDED BY APPLICABLE LAW TO GUARANTOR.

21. The Credit Parties agree that this Guaranty may be enforced only by the action of Administrative Agent acting upon the instructions of the Required Lenders and until the Credit Agreement is terminated, no other Credit Party shall have any right individually to seek to enforce or to enforce this Guaranty, it being understood and agreed that such rights and remedies may be exercised by Administrative Agent for the benefit of the Credit Parties upon the terms of this Guaranty.

22. This Guaranty may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

23. It is understood and agreed that any Subsidiary of Borrower that is required to execute a counterpart of this Guaranty after the date hereof pursuant to the Credit Agreement shall become a Guarantor hereunder by executing a counterpart hereof and delivering the same to Administrative Agent.

24. **THIS GUARANTY AND THE OTHER WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BY THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

25. Except with respect to Section 19 hereof, upon repayment in full of the Guaranteed Obligations, this Guaranty shall automatically terminate and cease to be of any further force or effect.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, each Guarantor has caused this Guaranty to be executed and delivered as of the date first above written.

SHC DTRS, INC. , a Delaware corporation

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC EUROPE, L.L.C. , a Delaware limited liability company

By: STRATEGIC HOTEL FUNDING, L.L.C., its sole Member

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC AVENTINE II, L.L.C. , a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC ST. FRANCIS, L.L.C. , a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC LACUNA, L.L.C. , a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC WASHINGTON, L.L.C. , a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC MEXICO LENDER, L.L.C. , a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

SHC HALF MOON BAY MEZZANINE LLC ,
a Delaware limited liability company

By: _____
Name: Ryan M. Bowie
Title: Vice President and Treasurer

Accepted and Agreed to:

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Administrative Agent for the Lenders

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

SCHEDULE I

NOTICE

c/o Strategic Hotels & Resorts, L.L.C.
77 West Wacker Drive, Suite 4600
Chicago, Illinois 60601

Attention: Treasurer and
General Counsel

EXHIBIT I

[See attached]

OFFICER'S SOLVENCY CERTIFICATE

I, the undersigned, the chief financial officer of Strategic Hotel Funding, L.L.C., a limited liability company existing under the laws of the State of Delaware (the "Borrower "), do hereby certify that:

1. This Certificate is furnished to the Lenders pursuant to Section 5.1.12 of the Credit Agreement, dated as of March 9, 2007, among the Borrower, the various financial institutions as are or may become parties thereto and Deutsche Bank Trust Company Americas, as Administrative Agent (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"). Unless otherwise defined herein, capitalized terms used in this Certificate shall have the meanings set forth in the Credit Agreement.

2. For purposes of this Certificate, the terms below shall have the following meanings:

   (a) "Market Capitalization" – The total outstanding number of shares of Guarantor multiplied by the price of a share of Guarantor's stock as of the close of business on March 8, 2007.

   (b) "New Financing" – The Indebtedness being incurred, assumed or guaranteed by Borrower through Loans from the Lenders and the issuance of Letters of Credit by the Issuer under the Credit Agreement and/or the other Loan Documents.

3. For purposes of this Certificate, I, or officers of the Borrower under my direction and supervision, have performed the following procedures as of and for the periods set forth below.

   (a) I have reviewed the financial statements referred to in Section 6.5 of the Credit Agreement.

   (b) I have knowledge of and have reviewed to my satisfaction the Loan Documents and all the other respective documents relating thereto, and the respective schedules and exhibits thereto.

4. Based on and subject to the foregoing, I hereby certify on behalf of the Borrower that, after giving effect to the consummation of the transactions contemplated by the New Financing, the Credit Agreement and the related financing transactions (including the making of Loans and the issuance of Letters of Credit under the Credit Agreement), it is my opinion that each of:

   (i) the Market Capitalization of Guarantor is not less than $1,589,812,800;

(ii) Guarantor has no liabilities other than the amounts being drawn today under the Credit Agreement and those liabilities reflected in the financial statements of Guarantor previously delivered to the Administrative Agent (as such liabilities have been reduced in the ordinary course or paid off with the proceeds of the Loan), and liabilities incurred in the ordinary course and not materially different than the ones reflected on the most recent of such financial statements;

(iii) based on the Market Capitalization of Guarantor and the fact that Guarantor owns 98.8% of Borrower, the equity value of the ownership interest in Borrower is not less than $1,570,735,046;

(iv) Borrower has no liabilities other than the amounts being drawn today under the Credit Agreement and those liabilities reflected in the financial statements of Borrower previously delivered to the Administrative Agent (as such liabilities have been reduced in the ordinary course or paid off with the proceeds of the Loan), liabilities incurred in the ordinary course and not materially different than the ones reflected on the most recent of such financial statements, and as disclosed in Schedule I to the Credit Agreement.

(v) each of Borrower and Guarantor (taken as a whole), after giving effect to the New Financing and the consummation of the transactions contemplated by the Credit Agreement, is a going concern and does not lack sufficient capital for its needs and currently anticipated needs, without substantial unplanned disposition of assets outside the ordinary course of business, restructuring of debt, externally forced revisions of its operations or other similar actions.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, I have hereto set my hand this___ day of March, 2007.

STRATEGIC HOTEL FUNDING, L.L.C., a Delaware limited liability company

By: _____

Name: Ryan M. Bowie
Title: Vice President and Treasurer

EXHIBIT J

FORM OF ADDITIONAL

REVOLVING LOAN COMMITMENT AGREEMENT

[Name(s) of Lender(s)]

[Date]

Strategic Hotel Funding, L.L.C.
77 West Wacker Drive
Suite 4600
Chicago, Illinois 60601

Attention:

Re: Additional Revolving Loan Commitment

Ladies and Gentlemen:

Reference is hereby made to the Credit Agreement, dated as of March___ , 2007 (as amended, modified, restated and/or supplemented from time to time, the "Credit Agreement"), between Strategic Hotel Funding, L.L.C. (the "Borrower" or "you"), Deutsche Bank Trust Company Americas ("DBTCA"), as the administrative agent (in such capacity, the "Administrative Agent") and the various financial institutions as are or may become parties thereto as lenders (together with DBTCA, collectively the "Lenders" and individually, a "Lender "). Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings set forth in the Credit Agreement.

Each Lender (each, an "Additional Revolving Loan Lender") party to this letter agreement (this "Agreement") hereby severally agrees to provide the Additional Revolving Loan Commitment in the amount set forth opposite its name on Annex I attached hereto (for each such Additional Revolving Loan Lender, its "Additional Revolving Loan Commitment"). Each Additional Revolving Loan Commitment provided pursuant to this Agreement shall (x) be subject to the terms and conditions set forth in the Credit Agreement, including Section 2.8 thereof and (y) upon the effectiveness of this Agreement, increase the Revolving Loan Commitment of the respective Additional Revolving Loan Lender under the Credit Agreement as contemplated by Section 2.8 of the Credit Agreement and the definition of Additional Revolving Loan Commitment.

Each Additional Revolving Loan Lender and the Borrower acknowledge and agree that, with respect to the Additional Revolving Loan Commitment provided by such Additional Revolving Loan Lender pursuant to this Agreement, such Additional Revolving Loan Lender shall receive a fee equal to that amount set forth opposite its name on Annex I attached hereto, which fee shall be due and payable to such Additional Revolving Loan Lender on the effective date of this Agreement.

Each Additional Revolving Loan Lender, to the extent that it is not already a Lender under the Credit Agreement, (i) confirms that it is (I) a parent company and/or an affiliate of a Lender which is at least 50% owned by such Lender or its parent company, (II) in the event the Additional Revolving Loan Lender is a fund that invests in bank loans, a fund that invests in bank loans and is managed by the same investment advisor of a Lender or by an affiliate of such investment advisor or (III) an Eligible Assignee under Section 10.9 of the Credit Agreement, (ii) confirms that it has received a copy of the Credit Agreement and the other Loan Documents, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement and to become a Lender under the Credit Agreement, (iii) agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement, (iv) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement and the other Loan Documents as are delegated to the Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto, (v) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Credit Agreement and the other Loan Documents are required to be performed by it as a Lender, and (vi) to the extent legally entitled to do so, attaches the forms described in Section 10.9 of the Credit Agreement.

Borrower acknowledges and agrees that all Obligations with respect to Additional Revolving Loan Commitments shall be fully guaranteed pursuant to the Guaranty in accordance with the terms and provisions thereof.

The effective date of this Agreement shall be the date on which (i) the parties hereto have executed a counterpart of this Agreement and delivered same to the Administrative Agent, (ii) all fees and expenses required to be paid in connection herewith have been paid, (iii) the satisfaction of the conditions in Section 2.8 of the Credit Agreement and (iv) the other conditions precedent set forth in Annex II hereto (which shall be consistent with the requirements of Section 2.8 of the Credit Agreement and the Additional Loan Commitment Requirements) have been satisfied, which date shall be no later than _____ , ____ [insert a date on or prior to the 5 th Business Day after the date hereof].

You may accept this Agreement by signing the enclosed copies in the space provided below, and returning one copy of the same to us before the close of business on_____ , ____ . If you do not so accept this Agreement by such time, our Additional Revolving Loan Commitments set forth in this Agreement shall be deemed cancelled.

After the execution and delivery to the Administrative Agent of a fully executed copy of this Agreement (including by way of counterparts and by fax) by the parties hereto, this Agreement may only be changed, modified or varied by written instrument in accordance with the requirements for the modification of Loan Documents pursuant to Section 10.1 of the Credit Agreement.

* * *

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

Very truly yours,

[NAME OF LENDER]

By _____
Name:
Title:

Agreed and Accepted
this__ day of 7_____,____ :

STRATEGIC HOTEL FUNDING, L.L.C.

By: _____
Name:
Title:

DEUTSCHE BANK TRUST COMPANY
AMERICAS, as Administrative Agent

By: _____
Name:
Title:

ANNEX I

Name of Additional Revolving Loan Lender	Amount of Additional Revolving Loan Commitment	Fee
Total		

Conditions Precedent

Exhibit 10.95

LOAN AND SECURITY AGREEMENT

Dated as of March 9, 2007

Between

NEW SANTA MONICA BEACH HOTEL, L.L.C.
as Borrower

and

JPMORGAN CHASE BANK N.A.,
as Lender

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LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT dated as of March 9, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement** "), between NEW SANTA MONICA BEACH HOTEL, L.L.C., a Delaware limited liability company, (the "**Borrower**") having an office at c/o Strategic Hotel Funding, L.L.C., 77 West Wacker Drive, Suite 4600, Chicago, Illinois 60601, and JPMORGAN CHASE BANK N.A., a banking association chartered under the laws of the United States of America, having an address at 270 Park Avenue, New York, New York 10017 (together with its successors and assigns, " **Lender**").

WITNESSETH :

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW, THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions . For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"**Acceptable Counterparty**" shall mean a bank or other financial institution which has a long-term unsecured debt or counterparty rating of "A+" or higher by S&P and its equivalent by Moody's and, if the counterparty is rated by Fitch, by Fitch.

"**Acceptable Management Agreement**" shall mean, with respect to the Property, a new or amended management agreement with the Manager which agreement (as applicable) shall be upon terms and conditions entered into by Borrower, Operating Lessee, and/or Manager with respect to the Property in accordance with the terms of Section 5.2.14 hereof.

"**Acceptable Manager** " shall mean (i) the current Manager as of the Closing Date or any wholly-owned Affiliate (whether direct or indirect) of said current Manager, (ii) at any time after the Closing Date, any Pre-approved Manager listed on **Schedule IV** hereto, provided (x) each such property manager continues to be Controlled by substantially the same Persons Controlling such property manager as of the Closing Date (or if such Manager is a publicly traded company, such Manager continues to be publicly traded on an established securities market) and (y) there has been no material adverse change in the financial condition or results of operations of such property manager since the Closing Date, (iii) any other hotel management

company that manages a system of at least six (6) hotels or resorts of a class and quality of at least as comparable to the Property (as reasonably determined by Manager and Operating Lessee; provided , however , Operating Lessee shall obtain Lender's prior approval of such determination, not to be unreasonably withheld) and containing not fewer than 1,500 hotel rooms in the aggregate (including hotel/condominium units under management) in the aggregate, (iv) any Close Affiliate of any of the foregoing Persons or (v) any other reputable and experienced professional hotel management company with respect to which a Rating Agency Confirmation has been obtained.

"Accommodation Security Documents" shall mean the Security Instrument, the Assignment of Leases and UCC-1 Financing Statements which have been executed by Borrower and Operating Lessee in favor of Lender to secure Borrower's obligations under the Loan Documents.

"Account Agreement " shall mean the Account and Control Agreement, dated the date hereof, among Lender, Borrower and Cash Management Bank.

"Account Collateral " shall have the meaning set forth in Section 3.1.2 .

"Acknowledgment" shall mean the Acknowledgment, dated on or about the date hereof made by Counterparty, or as applicable, Acceptable Counterparty in the form of **Exhibit M** .

"Additional Non - Consolidation Opinion" shall have the meaning set forth in Section 4.1.29(c) .

"Affiliate" shall mean, with respect to any specified Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with, or any general partner or managing member in, such specified Person.

"Agreement" shall mean this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"ALTA" shall mean American Land Title Association, or any successor thereto.

"Alteration" shall mean any demolition, alteration, installation, improvement or decoration of or to the Property or any part thereof or the Improvements (including FF&E) thereon (other than any of the foregoing that (i) is permitted to be done and actually is done by or on behalf of the Manager without the consent of the Borrower (it being the intent of the parties that for this purpose amounts expended by Manager in respect of FF&E in the ordinary course of business from amounts reserved for FF&E under the Management Agreement shall be deemed not to be an Alteration), or (ii) is paid for out of any reserve account described in Article XVI.

"Approved Bank" shall have the meaning set forth in the Account Agreement.

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by Lender and an assignee, and accepted by Lender in accordance with Article XV and in substantially the form of **Exhibit J** or such other form customarily used by Lender in connection with the participation or syndication of mortgage loans at the time of such assignment.

"Assignment of Leases "shall mean that certain first priority Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated as of the date hereof, from Borrower and Operating Lessee, as assignor, to Lender, as assignee, assigning to Lender all of Borrower's and Operating Lessee's interest in and to the Leases, Rents, Hotel Revenue and Security Deposits as security for the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Bankruptcy Code" shall mean Title 11, U.S.C.A., as amended from time to time and any successor statute thereto.

"Beneficial" when used in the context of beneficial ownership has the analogous meaning to that specified in Rule 13d-3 under the Securities Exchange Act of 1934, as amended.

"Best of Borrower's Knowledge", shall mean the actual (as opposed to imputed or constructive) present knowledge of: Cory Warning and Ryan Bowie after due inquiry, and without creating any personal liability on the part of any said individuals. In the case where the term "Best of Borrower's Knowledge" is used in the context of representations or warranties of Borrower to be made after the date hereof, the term shall include the Person or Persons, as applicable, that occupy the capacities of said individuals on the date such representation or warranty to the extent that one or more of such individuals no longer occupy their current capacities.

"Borrower"has the meaning set forth in the first paragraph of this Agreement.

"Borrower's Account"shall mean an account with any Person subsequently identified in a written notice from Borrower to Lender, which Borrower's Account shall be under the sole dominion and control of Borrower.

"Budget"shall mean the operating budget for the Property prepared by Manager on Borrower's behalf, pursuant to the Management Agreement, for the applicable Fiscal Year or other period setting forth, in reasonable detail, Manager's estimates, consistent with the Management Agreement, of the anticipated results of operations of the Property, including revenues from all sources, all Operating Expenses, Management Fees and Capital Expenditures.

"Building Equipment "shall have the meaning set forth in the Security Instrument.

"Business Day"shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, California or in the state in which Servicer is located are not open for business. When used with respect to an Interest Determination Date, Business Day shall mean any day on which dealings in deposits in U.S. Dollars are transacted in the London interbank market.

"Capital Expenditures "shall mean any amount incurred in respect of capital items which in accordance with GAAP would not be included in Borrower's annual financial statements for an applicable period as an operating expense of the Property.

"Cash"shall mean the legal tender of the United States of America.

"Cash and Cash Equivalents"shall mean any one or a combination of the following: (i) Cash, and (ii) U.S. Government Obligations.

"Cash Management Bank "shall mean LaSalle Bank National Association or any successor Approved Bank acting as Cash Management Bank under the Account Agreement or other financial institution approved by the Lender and, if a Securitization has occurred, the Rating Agencies.

"Casualty" shall mean a fire, explosion, flood, collapse, earthquake or other casualty affecting the Property.

"Close Affiliate" shall mean with respect to any Person (the "First Person") any other Person (each, a "Second Person") which is an Affiliate of the First Person and in respect of which any of the following are true: (a) the Second Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in such First Person, (b) the First Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in such Second Person, or (c) a third Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in both the First Person and the Second Person.

"Closing Date"shall mean the date of this Agreement set forth in the first paragraph hereof.

"Code"shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Collateral Accounts "shall have the meaning set forth in Section 3.1.1 .

"Collection Account " shall have the meaning set forth in Section 3.1.1 .

"Condemnation"shall mean a taking or voluntary conveyance during the term hereof of all or any part of the Property or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority, whether or not the same shall have actually been commenced.

"**Consumer Price Index** " or "**CPI**" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York – Northern New Jersey – Long Island, NY – NJ – CT – PA; All Items; 1982-84 = 100. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made by Lender in the revised index which would

produce results equivalent, as nearly as possible, to those which would be obtained if the CPI had not been so revised. If the CPI becomes unavailable to the public because publication is discontinued, or otherwise, Lender shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by any other governmental agency reasonably acceptable to Borrower or, if no such index is available, then, subject to reasonable approval of Borrower, a comparable index published by a major bank, other financial institution, university or recognized financial publication shall be substituted.

"CPI Increase" shall mean the relevant figure multiplied by a fraction, the numerator of which shall be the CPI on each anniversary of the Closing Date and the denominator of which shall be the CPI on the Closing Date, which CPI Increase is calculated on each anniversary of the Closing Date.

"Control" shall mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise and (ii) the ownership, direct or indirect, of no less than 51% of the voting securities of such Person, and the terms Controlled, Controlling and Common Control shall have correlative meanings.

"Counterparty" shall mean the counterparty to the Interest Rate Cap Agreement and any counterparty under a Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement and, if applicable, any credit support provider identified in the Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement.

"Counterparty Opinion "shall have the meaning set forth in Section 9.3(f) .

"Current Debt Service Reserve Account"shall have the meaning set forth in Section 3.1.1 .

"Debt"shall mean, with respect to any Person at any time, (a) indebtedness or liability of such Person for borrowed money whether or not evidenced by bonds, debentures, notes or other instruments, or for the deferred purchase price of property or services; (b) obligations of such Person as lessee under leases which should have been or should be, in accordance with GAAP, recorded as capital leases; (c) current liabilities of such Person in respect of unfunded vested benefits under plans covered by Title IV of ERISA; (d) obligations issued for, or liabilities incurred on the account of, such Person; (e) obligations or liabilities of such Person arising under letters of credit, credit facilities or other acceptance facilities; (f) obligations of such Person under any guarantees or other agreement to become secondarily liable for any obligation of any other Person, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss; (g) obligations of such Person secured by any Lien on any property of such Person, whether or not the obligations have been assumed by such Person; or (h) obligations of such Person under any interest rate or currency exchange agreement.

"Debt Service" shall mean, with respect to any particular period of time, scheduled interest payments under the Note.

"Default" shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

"Default Rate" shall have the meaning set forth in the Note.

"Deferred Maintenance Conditions"shall mean, collectively, the deferred maintenance conditions and near term capital requirements, if any, described on **Schedule IX** attached hereto and made a part hereof.

"Disclosure Documents "shall have the meaning set forth in Section 14.4.1 .

"Disqualified Transferee "shall mean any Person or its Close Affiliate that, (i) has (within the past five (5) years) defaulted, or is now in default, beyond any applicable cure period, of its material obligations, under any material written agreement with Lender, any Affiliate of Lender, or, unless approved by the Rating Agencies, any other financial institution or other person providing or arranging financing; (ii) has been convicted in a criminal proceeding for a felony or a crime involving moral turpitude or that is an organized crime figure or is reputed (as determined by Lender in its sole discretion) to have substantial business or other affiliations with an organized crime figure; (iii) has at any time filed a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (iv) as to which an involuntary petition (which was not subsequently dismissed within one hundred twenty (120) days) has at any time been filed under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (v) has at any time filed an answer consenting to or acquiescing in any involuntary petition filed against it by any other person under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (vi) has at any time consented to or acquiesced in or joined in an application for the appointment of a custodian, receiver, trustee or examiner for itself or any of its property; (vii) has at any time made an assignment for the benefit of creditors, or has at any time admitted its insolvency or inability to pay its debts as they become due; or (viii) has been found by a court of competent jurisdiction or other governmental authority in a comparable proceeding to have violated any federal or state securities laws or regulations promulgated thereunder.

"Downgrade"shall have the meaning as set forth in Section 9.3(c) hereof.

"DSCR"shall mean, with respect to a particular period, the ratio of Net Operating Income to the aggregate amount of Debt Service that is payable in respect of such period, as computed by Lender from time to time pursuant to the terms hereof, using in all cases, an assumed loan constant (instead of actual debt service payable under such loan) per annum equal to the strike price of the Interest Rate Cap Agreement in effect on the date of such determination (which constant shall be calculated at all times using an actual/360 accrual convention). If no such period is specified, then the period shall be deemed to be the immediately preceding four (4) Fiscal Quarters.

"Eligible Account "has the meaning set forth in the Account Agreement.

"Eligible Collateral "shall mean U.S. Government Obligations, Letters of Credit or Cash and Cash Equivalents, or any combination thereof.

"Environmental Certificate"shall have the meaning set forth in Section 12.2.1 .

"Environmental Claim "shall mean any claim, action, cause of action, investigation or written notice by any Person alleging potential liability (including potential liability for investigatory costs, cleanup costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based upon or resulting from (a) the presence, threatened presence, release or threatened release into the environment of any Hazardous Materials from or at the Property, or (b) the violation, or alleged violation, of any Environmental Law relating to the Property.

"Environmental Event "shall have the meaning set forth in Section 12.2.1 .

"Environmental Indemnity "shall mean the Environmental Indemnity, dated the date hereof, made by Guarantor in favor of Lender.

"Environmental Law "shall have the meaning provided in the Environmental Indemnity.

"Environmental Reports" shall have the meaning set forth in Section 12.1 .

"ERISA"shall mean the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

"Event of Default "shall have the meaning set forth in Section 17.1(a) .

"Excess Cash Flow "shall have the meaning set forth in Section 3.1.5 .

"Exchange Act"shall have the meaning set forth in Section 14.4.1 .

"Exculpated Parties "shall have the meaning set forth in Section 18.1.1 .

"Excusable Delay" shall mean a delay due to acts of god, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Borrower, but Borrower's lack of funds in and of itself shall not be deemed a cause beyond the control of Borrower.

"Expansion"shall mean any expansion or reduction of the Property or any portion thereof or the Improvements thereon.

"Extension Interest Rate Cap Agreement"shall mean, following the Borrower's exercise of its option to extend the Maturity Date pursuant to Section 5 of the Note, an Interest Rate Cap Agreement or Agreements (together with the confirmations and schedules relating thereto), each from an Acceptable Counterparty and satisfying the requirements set forth

on **Exhibit I** hereto; provided that, to the extent any such interest rate cap agreement does not meet the foregoing requirements, an "Extension Interest Rate Cap Agreement" shall be such interest rate cap agreement as may be approved by each of the Rating Agencies (such approval to be evidenced by the receipt of a Rating Agency Confirmation).

"FF&E" shall mean furniture, fixtures and equipment of the type customarily utilized in hotel properties in California similar to the Property.

"FF&E Reserve Account"shall have the meaning set forth in Section 3.1.1 .

"Final Completion "shall mean, with respect to any specified work, the final completion of all such work, including the performance of all "punch list" items, as confirmed by an Officer's Certificate and, with respect to any Material Alteration or Material Expansion, a certificate of the Independent Architect, if applicable.

"Fiscal Quarter" shall mean each quarter within a Fiscal Year in accordance with GAAP.

"Fiscal Year"shall mean the period commencing on the Closing Date and ending on and including December 31 of the calendar year in which the Closing Date occurs and thereafter each twelve month period commencing on January 1 and ending on December 31 until the Debt is repaid in full, or such other common fiscal year of Borrower as Borrower may select from time to time with the prior consent of Lender, such consent not to be unreasonably withheld.

"Fitch"shall mean Fitch Ratings Inc.

"GAAP"shall mean the generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination, as appropriately modified by the Uniform System.

"Governmental Authority"shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Guarantor" shall mean, Strategic Hotel Funding, L.L.C., a Delaware limited liability company, which shall execute and deliver the Recourse Guaranty on the Closing Date.

"Hazardous Materials "shall have the meaning provided in the Environmental Indemnity.

"Holding Account" shall have the meaning set forth in Section 3.1.1 .

"Hotel Revenue"shall mean all revenues, income, Rents, issues, profits, termination or surrender fees, penalties and other amounts arising from the use or enjoyment of all or any portion of the Property, including, without limitation, the rental or surrender of any office space, retail space, parking space, halls, stores, and offices of every kind, the rental or licensing of signs, sign space or advertising space and all membership fees and dues, rentals, revenues, receipts, income, accounts, accounts receivable, cancellation fees, penalties, credit card receipts and other receivables relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, conference and banquet rooms, food and beverage facilities, health clubs, spas, vending machines, parking facilities, telecommunication and television systems, guest laundry, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System.

"Impositions"shall mean all taxes (including all ad valorem, sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible transaction, privilege or license or similar taxes), governmental assessments (including all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not commenced or completed within the term of this Agreement), water, sewer or other rents and charges, excises, levies, fees (including license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Property and/or any Rents and Hotel Revenue (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a Lien upon (a) Borrower (including all income, franchise, single business or other taxes imposed on Borrower for the privilege of doing business in the jurisdiction in which the Property is located), (b) the Property, or any other collateral delivered or pledged to Lender in connection with the Loan, or any part thereof, or any Rents or Hotel Revenue therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Property or the leasing or use of all or any part thereof. Nothing contained in this Agreement shall be construed to require Borrower to pay any tax, assessment, levy or charge imposed on (i) any tenant occupying any portion of the Property, (ii) any manager of the Property, including any Manager, or (iii) Servicer, Lender or any other third party in the nature of a capital levy, estate, inheritance, succession, income or net revenue tax.

"Improvements"shall have the meaning set forth in the Security Instrument.

"Increased Costs" shall have the meaning set forth in Section 2.4.1 .

"Indebtedness"shall mean, at any given time, the Principal Amount, together with all accrued and unpaid interest thereon and all other obligations and liabilities due or to become due to Lender pursuant hereto, under the Note or in accordance with the other Loan Documents and all other amounts, sums and expenses paid by or payable to Lender hereunder or pursuant to the Note or the other Loan Documents.

"Indemnified Parties "shall have the meaning set forth in Section 19.12(b) .

"Independent" shall mean, when used with respect to any Person, a Person who: (i) does not have any direct financial interest or any material indirect financial interest in Borrower or in any Affiliate of Borrower, (ii) is not connected with Borrower or any Affiliate of Borrower as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, supplier, customer or person performing similar functions and (iii) is not a member of the immediate family of a Person defined in (i) or (ii) above.

"Independent Architect"shall mean an architect, engineer or construction consultant selected by Borrower which is Independent, licensed to practice in the State and has at least five (5) years of architectural experience and which is reasonably acceptable to Lender.

"Independent Director ",**"Independent Manager"**, or**"Independent Member"** shall mean a natural person who is not at the time of initial appointment as a director, manager or member or at any time while serving as a director, member or manager of the Borrower and has not been at any time during the five (5) years preceding such initial appointment:

(a) a stockholder, director (with the exception of serving as an Independent Director of the Borrower), officer, trustee, employee, partner, member, attorney or counsel of Borrower, the Member (with exception of serving as a Special Member), or any Affiliate of either of them;

(b) a creditor, customer, supplier, or other person who derives any of its purchases or revenues from its activities with the Member, the Borrower or any Affiliate of either of them;

(c) a Person Controlling or under common Control with any Person excluded from serving as Independent Director under (a) or (b); or

(d) a member of the immediate family by blood or marriage of any Person excluded from serving as Independent Director under (a) or (b).

A natural person who satisfies the foregoing definition other than subparagraph (b) shall not be disqualified from serving as an Independent Director of the Borrower if such individual is an Independent Director, Independent Manager or Independent Member provided by a nationally-recognized company that provides professional independent directors (a "Professional Independent Director") and other corporate services in the ordinary course of its business. A natural person who otherwise satisfies the foregoing definition other than subparagraph (a) by reason of being the independent director of a Single Purpose Entity affiliated with the Borrower shall not be disqualified from serving as an Independent Director, Independent Manager or Independent Member of the Borrower if such individual is either (i) a Professional Independent Director or (ii) the fees that such individual earns from serving as independent director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. Notwithstanding the immediately preceding sentence, an Independent Director may not simultaneously serve as Independent Director, Independent Manager or Independent Member of the Borrower and independent director, independent member or independent manager of a special purpose entity that owns a direct or indirect equity interest in the Borrower or a direct or indirect interest in any co-borrower with the Borrower.

"Insurance Requirements" shall mean, collectively, (i) all material terms of any insurance policy required pursuant to this Agreement and (ii) all material regulations and then-current standards applicable to or affecting the Property or any part thereof or any use or condition thereof, which may, at any time, be recommended by the Board of Fire Underwriters, if any, having jurisdiction over the Property, or such other body exercising similar functions.

"Insurance Reserve Account" shall have the meaning set forth in Section 3.1.1(b) .

"Insurance Reserve Amount" shall have the meaning set forth in Section 16.2 .

"Insurance Reserve Trigger" shall mean Borrower's failure to deliver to Lender not less than five Business Days prior to each Payment Date (unless the prior notice to Lender provided evidence reasonably satisfactory to Lender that Borrower had prepaid such insurance premiums through a future Payment Date), evidence that all insurance premiums for the insurances required to be maintained pursuant to the terms of this Agreement have been paid in full.

"Intangible" shall have the meaning set forth in the Security Instrument.

"Interest Determination Date" shall have the meaning set forth in the Note.

"Interest Period" shall have the meaning set forth in the Note.

"Interest Rate Cap Agreement" shall mean an Interest Rate Agreement or Agreements (together with the confirmation and schedules relating thereto), or, with Lender's prior written consent (which shall not be unreasonably withheld, delayed or conditioned), a swap or other interest rate hedging instrument, each between a Counterparty and Borrower obtained by Borrower and collaterally assigned to Lender pursuant to this Agreement, and each satisfying the requirements set forth in **Exhibit I** and, in the case of a swap or other interest rate hedging agreement consented to by Lender, any additional requirements of the Rating Agencies).

"JPM" shall have the meaning set forth in Section 14.4.2(b) .

"JPM Group" shall have the meaning set forth in Section 14.4.2(b) .

"Land" shall have the meaning set forth in the Security Instrument.

"Late Payment Charge " shall have the meaning set forth in Section 2.2.3 .

"Lawsuit" shall that certain complaint filed by Outerbridge Access Association suing on behalf of Diane Cross and Diane Cross, an Individual, as Plaintiffs against DTRS Santa Monica DTRS Santa Monica, LLC d.b.a Loews Santa Monica Beach Hotel; New Santa Monica Beach Hotel, LLC; SHC Santa Monica Beach Hotel III, LLC; and Loews Hotels, Inc. and Does 1 through 10 as Defendants, filed in the Superior Court of the State of California for the County of Los Angeles on February 14, 2007, alleging discriminatory practices in public accommodations and negligence.

"Lease"shall mean any lease (other than the Operating Lease), sublease or subsublease, letting, license, concession, or other agreement (whether written or oral and whether now or hereafter in effect) (excluding club membership programs now or hereafter in effect entitling Persons to preferential access to the Property) pursuant to which any Person is granted by the Borrower or Operating Lessee a possessory interest in, or right to use or occupy all or any portion of any space in the Property or any facilities at the Property (other than typical short-term occupancy rights of hotel guests which are not the subject of a written agreement), and every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"Lease Modification" shall have the meaning set forth in Section 8.8.1 .

"Legal Requirements"shall mean all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, and irrespective of the nature of the work to be done, of every Governmental Authority including, without limitation, Environmental Laws and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Borrower or to the Property and the Improvements and the Building Equipment thereon, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Property and the Improvements and the Building Equipment thereon including, without limitation, building and zoning codes and ordinances and laws relating to handicapped accessibility.

"Lender"shall have the meaning set forth in the first paragraph of this Agreement.

"Letter of Credit"shall mean an irrevocable, unconditional, transferable (without the imposition of any fee except any fees which are expressly payable by the Borrower), clean sight draft letter of credit (either an evergreen letter of credit or one which does not expire until at least sixty (60) days after the Maturity Date (the "**LC Expiration Date**"), in favor of Lender and entitling Lender to draw thereon in New York, New York, based solely on a statement executed by an officer or authorized signatory of Lender and issued by an Approved Bank. If at any time (a) the institution issuing any such Letter of Credit shall cease to be an Approved Bank or (b) the Letter of Credit is due to expire prior to the LC Expiration Date, Lender shall have the right immediately to draw down the same in full and hold the proceeds thereof in accordance with the provisions of this Agreement, unless Borrower shall deliver a replacement Letter of Credit from an Approved Bank within (i) as to (a) above, twenty (20) days after Lender delivers written notice to Borrower that the institution issuing the Letter of Credit has ceased to be an Approved Bank or (ii) as to (b) above, at least twenty (20) days prior to the expiration date of said Letter of Credit.

"Liabilities" shall have the meaning set forth in Section 14.4.2(b) .

"LIBOR"shall have the meaning set forth in the Note.

"LIBOR Cap Strike Rate"shall mean 6.50%.

"LIBOR Margin" shall mean "LIBOR Margin" as defined in the Note.

"LIBOR Rate" shall have the meaning set forth in the Note.

"License" shall have the meaning set forth in Section 4.1.23 .

"Lien"shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance or charge on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and the filing of mechanic's, materialmen's and other similar liens and encumbrances.

"Loan"shall mean the loan in the amount of $118,250,000 made by Lender to Borrower pursuant to this Agreement.

"Loan Documents" shall mean, collectively, this Agreement, the Note, the Security Instrument, the Assignment of Leases, the Environmental Indemnity, the Subordination of Operating Lease, the Account Agreement, the Recourse Guaranty, the Manager Subordination Agreements and all other documents executed and/or delivered by Borrower in connection with the Loan including any certifications or representations delivered by or on behalf of Borrower, any Affiliate of Borrower, the Manager, or any Affiliate of the Manager (including, without limitation, any certificates in connection with any legal opinions delivered on the date hereof), together with all of the Accommodation Security Documents executed by the Operating Lessee.

"Loan to Value Ratio "shall mean the ratio, as of a particular date, in which the numerator is equal to the outstanding principal balance of the Loan and the denominator is equal to the appraised value of the Property as determined by Lender in its reasonable discretion.

"Management Agreement "shall mean that certain Management Agreement dated March 4, 1998 between SHCI Santa Monica Beach Hotel, L.L.C. ("**Original Owner")** and Loews Santa Monica Hotel, Inc. ("**Manager")** , as modified by (a) that certain Amendment No. 1 to Management Agreement dated April 12, 2000 between Original Owner and Manager; (b) that certain Assignment and Assumption Agreement dated as of January 29, 2003 between Original Owner and SHC Santa Monica Beach Hotel III, L.L.C. ("**SHC III** "); (c) that certain Assignment and Assumption Agreement dated as of June 29, 2004 between SHC III and Borrower; (d) that certain Lease Agreement dated as of June 29, 2004 between Borrower and Operating Lessee; (e) that certain Amendment No. 2 to Management agreement dated June 29, 2004 by and among Manager, Operating Lessee, and Strategic Hotel Capital, L.L.C. (as guarantor of the obligations of Operating Lessee and Borrower under the Management Agreement, pursuant to that certain Guaranty of Management Agreement dated as of March 4, 1998, as modified by that certain Consent to Assignment, Agreement and Estoppel dated as of January 29, 2003 and by that certain Consent to Assignment, Agreement and Estoppel dated as of June 29, 2004, "**SHC**"); and (f) that certain Amendment No. 3 to Management Agreement dated April 22, 2005 by and among Operating Lessee, Manager, and Guarantor (as successor guarantor to SHC as provided thereunder), as all of the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"Management Control" shall mean, with respect to any direct or indirect interest in the Borrower or the Property (not including Manager under an Approved Management Agreement), the power and authority to make and implement or cause to be made and implemented all material decisions with respect to the operation, management, financing and disposition of the specified interest.

"Management Fee" shall mean an amount equal to the management fees payable to the Manager pursuant to the terms of the Management Agreement for management services, incentive management fees, marketing fees and any other fees described in the Management Agreement, and any allocated franchise fees.

"Manager" shall mean, as of the Closing Date, Loews Santa Monica Hotel, Inc. or any replacement "Manager" appointed in accordance with Section 5.2.14 hereof.

"Manager Accounts " shall mean the "Operating Accounts" (as defined in the Management Agreement) and if applicable, the Manager FF&E Alternative Reserve Account, maintained by Manager in the name of Borrower or Operating Lessee with respect to the Property and in accordance with the terms of the Management Agreement.

"**Manager FF&E Alternative Reserve Account**" shall have the meaning set forth in Section 5.1.23(a)(ii) .

"Manager FF&E Reserve Account" shall mean the relevant reserve account used by Manager in respect of the "FF&E Reserve" as defined in the Management Agreement pursuant to the Management Agreement.

"Manager Subordination Agreements" shall mean that certain Consent to Assignment, Agreement and Estoppel and that certain Subordination, Non-Disturbance and Attornment Agreement dated the date hereof, among Lender, Borrower, Operating Lessee, and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Material Adverse Effect" shall mean any event or condition that has a material adverse effect on (i) the Property taken as a whole, (ii) the use, operation, or value of the Property, (iii) the business, profits, operations or financial condition of the Borrower or (iv) the ability of Borrower to repay the principal and interest of the Loan as it becomes due or to satisfy any of Borrower's obligations under the Loan Documents.

"Material Alteration " shall mean any Alteration (other than with respect to replacements of FF&E that are funded from reserves for FF&E reserved for hereunder or under the Management Agreement by the Manager) to be performed by or on behalf of Borrower at the Property, the total cost of which (including, without limitation, construction costs and costs of architects, engineers and other professionals), as reasonably estimated by an Independent Architect, exceeds the Threshold Amount.

"Material Casualty " shall mean a Casualty where the loss (i) is in an aggregate amount equal to or in excess of thirty percent (30%) of the outstanding Principal Amount of the Loan or (ii) has caused thirty percent (30%) or more of the hotel rooms or common areas

(including banquet and conference facilities) in the Property to be unavailable for its applicable use.

"Material Condemnation" shall mean a Condemnation where the loss (i) is in an aggregate amount equal to or in excess of thirty percent (30%) of the outstanding Principal Amount of the Loan or (ii) has caused thirty percent (30%) or more of the hotel rooms or common areas (including banquet and conference facilities) in the Property to be unavailable for its applicable use.

"Material Expansion" shall mean any Expansion to be performed by or on behalf of the Borrower at the Property, the total cost of which, as reasonably estimated by an Independent Architect, exceeds the Threshold Amount.

"Material Lease" shall mean any Lease (a) demising a premises within the Property that is more than 10,000 net rentable square feet or (b) that is for a term equal to or greater than sixty (60) months.

"Maturity Date" shall have the meaning set forth in the Note.

"Maturity Date Payment" shall have the meaning set forth in the Note.

"Maximum Legal Rate" shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

"Monetary Default " shall mean a Default (i) that can be cured with the payment of money or (ii) arising pursuant to Section 17.1(a)(vi) or (vii) .

"Monthly FF&E Reserve Amount" shall mean an amount determined by Lender (based upon the most recent monthly operating statements delivered pursuant hereto) equal to 4% of Hotel Revenue.

"Monthly Insurance Reserve Amount" shall have the meaning set forth in Section 16.2 .

"Monthly Tax Reserve Amount" shall have the meaning set forth in Section 16.1 .

"Moody's" shall mean Moody's Investors Service, Inc.

"Net Operating Income " shall mean, for any specified period, the excess of Operating Income over Operating Expenses for the trailing twelve (12) month period.

"New Lease" shall have the meaning set forth in Section 8.8.1 .

"Non - Consolidation Opinion" shall have the meaning provided in Section 2.5.5 .

"Non-Disturbance Agreement" shall have the meaning set forth in Section 8.8.9 .

"Note" shall mean that certain Note in the principal amount of One Hundred and Twenty Million Dollars ($118,250,000), made by Borrower in favor of Lender as of the date hereof, as the same may be amended, restated, replaced, substituted (including any components or subcomponents) or supplemented or otherwise modified from time to time.

"Obligations" shall have meaning set forth in the recitals of the Security Instrument.

"OFAC List" means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office Foreign Assets Control and accessible through the internet website www.treas.gov/ofac/t11sdn.pdf .

"Officer's Certificate" shall mean a certificate executed by an authorized signatory of Borrower that is familiar with the financial condition of Borrower and the operation of the Property or the particular matter which is the subject of such Officer's Certificate.

"Operating Asset" shall have the meaning set forth in the Security Instrument.

"Operating Expenses" shall mean, for any specified period, without duplication, all expenses of Borrower or Operating Lessee (or by Manager for the account of Borrower or Operating Lessee) during such period in connection with the ownership or operation of the Property, including costs (including labor) of providing services including rooms, food and beverage, telecommunications, garage and parking and other operating departments, as well as real estate and other business taxes, other rental expenses, insurance premiums, utilities costs, administrative and general costs, repairs and maintenance costs, Management Fees under the Management Agreement, other costs and expenses relating to the Property, required FF&E reserves, and legal expenses incurred in connection with the operation of the Property, determined, in each case on an accrual basis, in accordance with GAAP. "Operating Expenses" shall not include (i) depreciation or amortization or other noncash items, (ii) the principal of and interest on the Note, (iii) income taxes or other taxes in the nature of income taxes, (iv) any expenses (including legal, accounting and other professional fees, expenses and disbursements) incurred in connection with and allocable to the issuance of the Note, (v) the cost of any FF&E expenditures (other than amounts deposited into the applicable hotel operating account for FF&E expenditures, which shall be considered an "Operating Expense" as used herein) or any other capital expenditures, or (vi) the excess of insurance premiums over the Maximum Premium Amount (per annum) incurred by Borrower solely in connection with the purchase of terrorism insurance pursuant to Section 6.1(b)(xii) distributions to the shareholders of the Borrower. Expenses that are accrued as Operating Expenses during any period shall not be included in Operating Expenses when paid during any subsequent period.

"Operating Lease" means that certain lease agreement dated the date hereof between the Borrower, as lessor and the Operating Lessee, as lessee.

"Operating Lessee " means DTRS Santa Monica, L.L.C., a Delaware limited liability company, as lessee under the Operating Lease.

"Operating Income "shall mean for any specified period, all income received by Borrower or Operating Lessee (or by Manager for the account of Borrower or Operating Lessee) from any Person during such period in connection with the ownership or operation of the Property, determined on an accrual basis of accounting determined in accordance with GAAP, including the following:

(i) all amounts payable to Borrower, Operating Lessee or to Manager for the account of Borrower or Operating Lessee by any Person as Rent and/or Hotel Revenue;

(ii) all amounts payable to Borrower or Operating Lessee (or to Manager for the account of Borrower or Operating Lessee) pursuant to any reciprocal easement and/or operating agreements, covenants, conditions and restrictions, condominium documents and similar agreements affecting the Property and binding upon and/or benefiting Borrower and other third parties, but specifically excluding the Management Agreement;

(iii) condemnation awards to the extent that such awards are compensation for lost rent allocable to such specified period;

(iv) business interruption and loss of "rental value" insurance proceeds to the extent such proceeds are allocable to such specified period; and

(v) all investment income with respect to the Collateral Accounts.

Notwithstanding the foregoing clauses (i) through (v), Operating Income shall not include (A) any Proceeds (other than of the types described in clauses (iii) and (iv) above), (B) any proceeds resulting from the sale, exchange, transfer, financing or refinancing of all or any part of the Property (other than of the types described in clause (i) and (iii) above), (C) any repayments received from Tenants of principal loaned or advanced to Tenants by Borrower, (D) any type of income that would otherwise be considered Operating Income pursuant to the provisions above but is paid directly by any Tenant to a Person other than Borrower or Manager or its agent and (E) any fees or other amounts payable by a Tenant or another Person to Borrower that are reimbursable to Tenant or such other Person.

"Opinion of Counsel"shall mean opinions of counsel of law firm(s) licensed to practice in California and New York selected by Borrower and reasonably acceptable to Lender.

"Other Charges" shall mean maintenance charges, impositions other than Impositions, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof by any Governmental Authority, other than those required to be paid by a Tenant pursuant to its respective Lease.

"Other Taxes" shall have the meaning set forth in Section 2.4.3 .

"Payment Date"shall have the meaning set forth in the Note.

"Permitted Borrower Transferee"shall mean any entity (i) that is experienced in owning and operating (including acting as asset manager) properties similar to the Property,

(ii) (a) with a net worth together with its Close Affiliates, as of a date no more than six (6) months prior to the date of the transfer of at least $1 Billion (exclusive of the Property) and (b) who, immediately prior to such transfer, controls, together with its Close Affiliates real estate equity assets of at least $1 Billion, (iii) which, together with its Close Affiliates owns or has under management or acts as the exclusive fund manager or investment advisor, at the time of the transfer, not fewer than 20 first class full service resort hotels or business hotel properties (excluding the Property) containing not fewer than 5,000 hotel rooms in the aggregate and (iv) that is not a Disqualified Transferee.

"Permitted Borrower Transferee Alternative"shall mean any entity (i) that is experienced in owning and operating (including acting as asset manager of) properties similar to the Property, (ii) that either (a) has a net worth together with its Close Affiliates, as of a date no more than six (6) months prior to the date of the transfer of at least $300 Million (exclusive of the Property) and, immediately prior to such transfer, controls, together with its Close Affiliates real estate equity assets of at least $1 Billion or (b) together with its Close Affiliates owns or has under management or acts as the exclusive fund manager or investment advisor, at the time of the transfer, not fewer than 6 luxury resort hotels (excluding the Property) containing not fewer than 3,000 hotel rooms in the aggregate and (iii) that is not a Disqualified Transferee.

"Permitted Debt" shall mean collectively, (a) the Note and the other obligations, indebtedness and liabilities specifically provided for in any Loan Document and secured by this Agreement, the Security Instrument and the other Loan Documents, (b) trade payables and other liabilities incurred in the ordinary course of Borrower's business and payable by or on behalf of Borrower in respect of the operation of the Property, not secured by Liens on the Property (other than liens being properly contested in accordance with the provisions of this Agreement or the Security Instrument), such payables and liabilities (which shall not include taxes, accrued payroll and benefits, customer, membership and security deposits and deferred income), not to exceed at any one time outstanding two percent (2%) of the Principal Amount of the Loan, provided that (but subject to the remaining terms of this definition) each such amount shall be paid within sixty (60) days following the date on which each such amount is incurred, provided, that such two percent (2.0%) limitation shall not include normal and customary retainages related to Alterations that are reserved for by Borrower, (c) purchase money indebtedness, capital lease obligations or other obligations incurred in the ordinary course of Borrower's business, having scheduled annual debt service not to exceed $600,000, (d) contingent obligations to repay customer, membership and security deposits held in the ordinary course of Borrower's business, (e) obligations incurred in the ordinary course of Borrower's business for the financing of any applicable portfolio insurance premiums, (f) any Management Fees not yet due and payable under the Management Agreement, (g) taxes or other charges not yet due and payable or delinquent or which are being diligently contested in good faith in accordance with Section 5.1(b)(ii) hereof, (h) indebtedness relating to Liens in respect of property or assets imposed by law which were incurred in the ordinary course of business, such as carriers', warehousemen's, landlord's, mechanic's, materialmen's, repairmen's and other similar Liens arising in the ordinary course of business, and Liens for workers' compensation, unemployment insurance and similar programs, in each case arising in the ordinary course of business which are either not yet due and payable or being diligently contested in good faith in accordance with the requirements of the Loan Documents, (i) the Revolver Loan and (j) such other unsecured indebtedness approved by Lender in its sole discretion and with respect to which Borrower has received a

Rating Confirmation. Nothing contained herein shall be deemed to require Borrower to pay any amount, so long as Borrower is in good faith, and by proper legal proceedings, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) adequate reserves with respect thereto are maintained on the books of Borrower in accordance with GAAP, and (iii) such contest operates to suspend collection or enforcement, as the case may be, of the contested amount and such contest is maintained and prosecuted continuously and with diligence. Notwithstanding anything set forth herein, in no event shall Borrower be permitted under this provision to enter into a note (other than the Note and the other Loan Documents) or other instrument for borrowed money other than permitted purchase money indebtedness as described in this definition.

"Permitted Encumbrances" shall mean collectively, (a) the Liens and security interests created or permitted by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Policy, (c) Liens, if any, for Impositions imposed by any Governmental Authority not yet due or delinquent (other than any such Lien imposed pursuant to Section 401(a)(29) of the Code or by ERISA), and (d) Liens on personal property items that are the subject of clause (c) of the definition of Permitted Debt.

"Permitted Investments" shall have the meaning set forth in the Account Agreement.

"Person" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Physical Conditions Report" shall mean, with respect to the Property, collectively, the (i) seismic report and (ii) structural engineering report (prepared by an Independent Architect), both of which have been (a) addressed to Lender (b) prepared based on a scope of work determined by Lender in Lender's reasonable discretion, and (c) in form and content acceptable to Lender in Lender's reasonable discretion, together with any amendments or supplements thereto.

"Plan" shall have the meaning set forth in Section 4.1.10 .

"Pre-approved Manager " shall mean any entity set forth on **Schedule IV** .

"Pre-approved Transferee" shall mean any of the entities set forth on **Schedule III** hereof, or any Close Affiliates thereof, provided any of the foregoing entities or their Close Affiliates shall only be a "Pre-approved Transferee" if (i) such entity continues to be Controlled by substantially the same Persons Controlling such entity as of the Closing Date or if such Pre-approved Transferee is a publicly traded company, such Pre-approved Transferee continues to be publicly traded on an established securities market, (ii) there has been no material adverse change in the financial condition or results of operations of such entity since the Closing Date, (iii) such entity is not a Disqualified Transferee and (iv) if such entity as of the Closing

Date is rated (a) "Investment Grade", there has been no deterioration in such entity's long-term or short-term credit rating (if any) since the Closing Date below "BBB-" or (b) below "Investment Grade", there has been no deterioration in such entity's long-term or short-term credit rating (if any) since the Closing Date.

"Prepayment Fee" shall have the meaning set forth in the Note.

"Principal Amount "shall have the meaning set forth in the Note.

"Proceeds" shall mean amounts, awards or payments payable to Borrower (including, without limitation, amounts payable under any title insurance policies covering Borrower's ownership interest in the Property) or Lender with respect to any Condemnation or Casualty and specifically including insurance required to be maintained hereunder (after the deduction therefrom and payment to Borrower and Lender, respectively, of any and all reasonable expenses incurred by Borrower and Lender in the recovery thereof, including all attorneys' fees and disbursements, the fees of insurance experts and adjusters and the costs incurred in any litigation or arbitration with respect to any claim under such insurance policies or with respect to such Condemnation or Casualty).

"Prohibited Person"means any Person identified on the OFAC List or any other Person with whom a U.S. Person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States of America.

"Property" shall have the meaning set forth in the Security Instrument.

"Provided Information"shall have the meaning set forth in Section 14.1.1 .

"Rate Cap Collateral "shall have the meaning set forth in Section 9.2 .

"Rating Agencies" shall mean (a) prior to a Securitization, each of S&P, Moody's and Fitch and any other nationally-recognized statistical rating agency which has been approved by Lender and (b) after a Securitization has occurred, each such Rating Agency which has rated the Securities in the Securitization.

"Rating Agency Confirmation "shall mean, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency's sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

"Real Property" shall mean, collectively, the Land, the Improvements and the Appurtenances (as defined in the Security Instrument).

"Recourse Guaranty "shall mean that certain Guaranty of Recourse Obligations of Borrower, dated as of the date hereof, by Guarantor in favor of Lender, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"Register"shall have the meaning set forth in Section 15.4 .

"Regulatory Change "shall mean any change after the date of this Agreement in federal, state or foreign laws or regulations or the adoption or the making, after such date, of any interpretations, directives or requests applying to Lender, or any Person Controlling Lender or to a class of banks or companies Controlling banks of or under any federal, state or foreign laws or regulations (whether or not having the force of law) by any court or Governmental Authority or monetary authority charged with the interpretation or administration thereof.

"Relevant Portions"shall have the meaning set forth in Section 14.4.2(a) .

"Rents"shall mean all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower and/or Operating Lessee from any and all sources arising from or attributable to the Property and Proceeds, if any, from business interruption or other loss of income insurance.

"Restoration" shall have the meaning provided in Section 6.2.2 .

"**Retail/Service Facilities**" shall have the meaning provided in Section 8.7.10 .

"Replacement Interest Rate Cap Agreement"shall mean, in connection with a replacement of an Interest Rate Cap Agreement following a Downgrade of the Counterparty thereto, an interest rate cap agreement (together with the confirmation and schedules relating thereto) from an Acceptable Counterparty and satisfying the requirements set forth on **Exhibit I** hereto; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements a "Replacement Interest Cap Agreement" shall be such interest rate cap agreement approved by each of the Rating Agencies, such approval to be evidenced by the receipt of a Rating Agency Confirmation.

"**Revolver Loan** " shall mean that certain revolving credit facility from Deutsche Bank Trust Company Americas to Strategic Hotel Funding, L.L.C., evidenced by that certain Credit Agreement, dated as of March 9, 2007, between Deutsche Bank Trust Company Americas, as the administrative agent, various financial institutions, as lenders specified therein and Strategic Hotel Funding, L.L.C., as borrower (" **Credit Agreement**") as the same may hereafter be amended, restated, supplemented or otherwise modified or replaced, from time to time.

"S&P"shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"Securities" shall have the meaning set forth in Section 14.1 .

"Securities Act"shall have the meaning set forth in Section 14.4.1 .

"Securitization" shall have the meaning set forth in Section 14.1 .

"Security Instrument"shall mean that certain first priority Fee Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated the date hereof, executed and delivered by Borrower and certain of its affiliates to Lender and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Servicer"shall mean such Person designated in writing with an address for such Person by Lender, in its sole discretion, to act as Lender's agent hereunder with such powers as are specifically delegated to the Servicer by Lender, whether pursuant to the terms of this Agreement, the Account Agreement or otherwise, together with such other powers as are reasonably incidental thereto.

"Single Purpose Entity"shall mean a Person, other than an individual, which (i) is formed or organized solely for the purpose of owning, leasing, managing, holding, developing, using, operating and financing the Property, (ii) does not engage in any business unrelated to the Property and the ownership, development, use, operation and financing thereof, (iii) does not have any assets other than the Property and incidental personal property related to its interest in the Property or the operation, management and financing thereof or any indebtedness other than the Permitted Debt, (iv) maintains its own separate books and records and its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person (however the presentation of combined or consolidated financial condition or results of operation for purposes of financial statements prepared for the ultimate equity owners of multiple Single Purpose Entities shall be allowed), (v) holds itself out as being a Person, separate and apart from any other Person, (vi) except as otherwise permitted under Section 5.1.23 hereof, does not and will not commingle its funds or assets with those of any other Person, (vii) conducts its own business in its own name; (viii) maintains separate financial statements; provided, however, that any consolidated financial statements contain a note indicating that it and its Affiliates are separate legal entities and maintain records, books of account, and accounts separate and apart from any other Person and that their respective assets and credit are not available to satisfy each other's debts, (ix) pays its own liabilities out of its own funds, (x) observes all partnership, corporate or limited liability company formalities, as applicable, (xi) pays the salaries of its own employees, if any, out of its own funds and maintains a sufficient number of employees, if any, in light of its contemplated business operations, (xii) does not pledge its assets or guarantee or otherwise obligate itself with respect to the debts of any other Person or hold out itself or its credit as being available to satisfy the obligations of any other Person, (xiii) does not acquire obligations or securities of its partners, members or shareholders, (xiv) allocates fairly and reasonably shared expenses, including, without limitation, any overhead for shared office space, if any and for any services provided by employees of Affiliates, (xv) uses separate stationary, invoices, and checks bearing its own name, (xvi) maintains an arms-length relationship with its Affiliates, (xvii) does not pledge its assets for the benefit of any other Person (other than as permitted under clauses (a) and (d) of the

definition of Permitted Encumbrances) or make any cash loans or advances to any other Person, (xviii) uses commercially reasonable efforts to correct any known misunderstanding regarding its separate identity, (xix) maintains adequate capital in light of its contemplated business operations, and (xx) does not make or permit to remain outstanding any loan or advance to, and does not own or acquire any stock or securities of, any Person, except that the Borrower may invest in those investments expressly permitted herein. In addition, if such Person is a partnership, (1) all general partners of such Person shall be Single Purpose Entities; and (2) if such Person has more than one general partner, then the organizational documents shall provide that such Person shall continue (and not dissolve) for so long as a solvent general partner exists. In addition, if such Person is a corporation, then, at all times: (a) such Person shall have at least two (2) Independent Directors and (b) the board of directors of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including the Independent Directors, shall have participated in such vote. In addition, if such Person is a limited liability company, (a) such Person shall have at least two (2) Independent Managers or Independent Members, (b) if such Person is managed by a board of managers, the board of managers of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of managers unless all of the managers, including the Independent Managers, shall have participated in such vote, (c) if such Person is not managed by a board of managers, the members of such Person may not take any action requiring the affirmative vote of 100% of the members of such Person unless all of the members, including the Independent Members, shall have participated in such vote, (d) each managing member shall be a Single Purpose Entity and (e) its articles of organization, certificate of formation and/or operating agreement, as applicable, shall provide that until all of the Indebtedness and Obligations are paid in full such entity will not dissolve. In addition, the organizational documents of such Person shall provide that such Person (1) without the unanimous consent of all of the partners, directors or members, as applicable, shall not with respect to itself or to any other Person in which it has a direct or indirect legal or beneficial interest (a) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or other similar official for the benefit of the creditors of such Person or all or any portion of such Person's properties, or (b) take any action that might cause such Person to become insolvent, petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (2) will maintain its books, records, resolutions and agreements as official records, (3) will hold its assets in its own name, (4) will maintain its financial statements, accounting records and other organizational documents, books and records separate and apart from any other Person, provided, however, that any consolidated financial statements contain a note indicating that it and its Affiliates are separate legal entities and maintain records, books of account, and accounts separate and apart from any other Person and that their respective assets and credit are not available to satisfy each other's debts, (5) will not identify its partners, members or shareholders, or any Affiliates of any of them as a division or part of it, (6) will maintain an arms-length relationship with its Affiliates, (7) except for capital contributions or capital distributions, will only enter into a transaction with an Affiliate of the Borrower on commercially reasonable terms similar to those available to unaffiliated parties in an arm's-length transaction; (8) will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities); and (9) except as permitted by the Loan Documents, will not form, acquire or hold any subsidiary (whether corporation, partnership, limited liability company or other) or own any equity interest in any other entity other than the Property.

"Special Taxes" shall mean any and all present or future taxes, levies, imposts, deductions, charges or withholdings, or any liabilities with respect thereto, including those arising after the date hereof as result of the adoption of or any change in law, treaty, rule, regulation, guideline or determination of a Governmental Authority or any change in the interpretation or application thereof by a Governmental Authority but excluding, in the case of Lender, such taxes (including income taxes, franchise taxes and branch profit taxes) as are imposed on or measured by Lender's net income by the United States of America or any Governmental Authority of the jurisdiction under the laws under which Lender is organized or maintains a lending office.

"State"shall mean the State in which the Property or any part thereof is located.

"Sub-Account(s)"shall have the meaning set forth in Section 3.1.1 .

"Subordination of Operating Lease"shall mean that certain Operating Lease Subordination Agreement, dated the date hereof, among Lender, Borrower, Operating Lessee, and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Survey"shall mean a survey of the Property prepared by a surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Policy, and containing a certification of such surveyor satisfactory to Lender.

"Tax Reserve Account "shall have the meaning set forth in Section 3.1.1 .

"Tax Reserve Amount" shall have the meaning set forth in Section 16.1 .

"Tenant"shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property or permitted to use any portion of the facilities at the Property, other than the Manager and its employees, agents and assigns.

"Terrorism Coverage Required Amount"shall mean an aggregate amount equal to the full replacement cost of the Property and the Improvements (without deduction for physical depreciation) from time to time, or such lesser amounts approved by Lender in its sole discretion (or after a Securitization, upon receipt of a Rating Agency Confirmation).

"Threshold Amount "shall mean an amount equal to 10% of the Principal Amount of the Loan, being $11,825,000 as of the date of this Agreement.

"Title Company "shall mean First American Title Insurance Company.

"Title Policy" shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued by the Title Company with respect to the Property and insuring the lien of the Security Instrument.

"Transfer" shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise.

"UCC"or**" Uniform Commercial Code"**shall mean the Uniform Commercial Code as in effect in the State.

"Ultimate Equity Owner"shall mean Strategic Hotel Funding, L.L.C., a Delaware limited liability company.

"Underwriter Group "shall have the meaning set forth in Section 14.4.2(b) .

"Uniform System" shall mean the Uniform System of Accounts for Hotels, 9th Edition, International Association of Hospitality Accountants (1996), as from time to time amended.

"U.S. Government Obligations"shall mean any direct obligations of, or obligations guaranteed as to principal and interest by, the United States Government or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States. Any such obligation must be limited to instruments that have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change. If any such obligation is rated by S&P, it shall not have an "r" highlighter affixed to its rating. Interest must be fixed or tied to a single interest rate index plus a single fixed spread (if any), and move proportionately with said index. U.S. Government Obligations include, but are not limited to: U.S. Treasury direct or fully guaranteed obligations, Farmers Home Administration certificates of beneficial ownership, General Services Administration participation certificates, U.S. Maritime Administration guaranteed Title XI financing, Small Business Administration guaranteed participation certificates or guaranteed pool certificates, U.S. Department of Housing and Urban Development local authority bonds, and Washington Metropolitan Area Transit Authority guaranteed transit bonds. In no event shall any such obligation have a maturity in excess of 365 days.

Section 1.2 Principles of Construction . All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All accounting terms not specifically defined herein shall be construed in accordance with GAAP as modified by the Uniform System. When used herein, the term "financial statements" shall include the notes and schedules thereto. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the definitions given them in this Agreement when used in any other Loan Document or in any certificate or other document made or delivered pursuant thereto. All uses of the word "including" shall mean including, without limitation unless the context shall indicate otherwise. Unless otherwise specified, the words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise

specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

II. GENERAL TERMS

Section 2.1 Loan; Disbursement to Borrower .

2.1.1 The Loan . Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2 Disbursement to Borrower . Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed. Borrower acknowledges and agrees that the full proceeds of the Loan have been disbursed by Lender to Borrower on the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents . The Loan shall be evidenced by the Note and secured by the Security Instrument, the Assignment of Leases, this Agreement and the other Loan Documents.

2.1.4 Use of Proceeds . Borrower shall use the proceeds of the Loan to repay and discharge any existing mortgage loans secured by the Property, to provide any necessary or appropriate reserves, to make cash distributions to its members for, among other things, repayment of any existing mezzanine loans secured by direct or indirect interests in Borrower, and as may be otherwise set forth on the Loan closing statement executed by Borrower at closing.

Section 2.2 Interest; Loan Payments; Late Payment Charge .

2.2.1 Payment of Principal and Interest .

(i) Except as set forth in Section 2.2.1(ii) , interest shall accrue on the Principal Amount as set forth in the Note.

(ii) Upon the occurrence and during the continuance of an Event of Default and from and after the Maturity Date if the entire Principal Amount is not repaid on the Maturity Date, interest on the outstanding principal balance of the Loan and, to the extent permitted by law, overdue interest and other amounts due in respect of the Loan shall accrue at the Default Rate calculated from the date such payment was due without regard to any grace or cure periods contained herein. Interest at the Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Indebtedness (or that portion thereof that is then due). To the extent permitted by applicable law, interest at the Default Rate shall be added to the Indebtedness, shall itself accrue interest at the same rate as the Loan and shall be secured by the Security Instrument. This paragraph shall not be construed as an agreement or privilege to extend the date of the payment of the Indebtedness, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default, and Lender retains its rights under the Note to accelerate and to continue to demand payment of the Indebtedness upon the happening of any Event of Default.

2.2.2 Method and Place of Payment .

(a) On each Payment Date, Borrower shall pay or cause to be paid to Lender interest accruing pursuant to the Note for the entire Interest Period during which said Payment Date shall occur.

(b) All amounts advanced by Lender pursuant to the applicable provisions of the Loan Documents, other than the Principal Amount, together with any interest at the Default Rate or other charges as provided therein, shall be due and payable hereunder as provided in the Loan Documents. In the event any such advance or charge is not so repaid by Borrower, Lender may, at its option and upon notice to Borrower, first apply any payments received under the Note to repay such advances, together with any interest thereon, or other charges as provided in the Loan Documents, and the balance, if any, shall be applied in payment of any installment of interest or principal then due and payable.

(c) The Maturity Date Payment shall be due and payable in full on the Maturity Date.

2.2.3 Late Payment Charge . If any interest payment due under the Loan Documents is not paid by Borrower within five (5) days after the date on which it is due (or, if such fifth (5th) day is not a Business Day, then the Business Day immediately preceding such day), Borrower shall pay to Lender upon demand an amount equal to the lesser of three percent (3%) of such unpaid sum or the Maximum Legal Rate (the**"Late Payment Charge"**) in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by this Agreement, the Security Instrument and the other Loan Documents to the extent permitted by applicable law. Borrower acknowledges and agrees that the five day grace period with respect to the applicability of the Late Payment Charge (i) shall only apply to Borrower's first failure to make a monthly interest payment in any calendar year and (ii) shall not constitute a payment grace period and shall in no way limit Lender's rights under Article XVII .

2.2.4 Usury Savings . This Agreement and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Principal Amount of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the Principal Amount due under the Note at a rate in excess of the Maximum Legal Rate, then the LIBOR Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due under the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of

the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Prepayments .

2.3.1 Prepayments . No prepayments of the Indebtedness shall be permitted except as set forth in Section 4 of the Note. Borrower agrees and acknowledges after the closing of the Loan that prior to a material Event of Default (as determined by Lender in its sole and absolute discretion) (x) in the case of prepayments of the Loan in connection with a Casualty or Condemnation, principal will be applied (to the extent not used for restoration pursuant to the terms hereof) to the Note, any substitute or component notes (as applicable) sequentially starting with the most senior securitized tranche and (y) in the case of all prepayments of the Loan other than in accordance with the preceding clause (x), such prepayments will be applied to the Note, any substitute or component notes (as applicable) pro-rata (on the basis of their respective principal balances) among the securitized and any non-securitized portions of the Loan (and pro-rata within the securitized portions of the Loan). Notwithstanding the foregoing, upon the occurrence and during the continuance of a material Event of Default (as determined by Lender in its sole and absolute discretion), Borrower agrees and acknowledges that any principal prepayments of the Loan will be applied to the Note, any substitute or component notes (as applicable) sequentially, starting with the most senior securitized tranche (it being acknowledged that during the continuance of a material Event of Default all securitized portions of the Loan shall be paid in full prior to the payment of any non-securitized portions of the Loan).

2.3.2 Prepayments after Event of Default . If, following an Event of Default, Lender shall accelerate the Indebtedness and Borrower thereafter tenders payment of all or any part of the Indebtedness, or if all or any portion of the Indebtedness is recovered by Lender after such Event of Default, (a) such payment may be made only on the next occurring Payment Date together with all unpaid interest thereon as calculated through the end of the Interest Period during which such Payment Date occurs (even if such period extends beyond such Payment Date and calculated as if such payment had not been made on such Payment Date), and all other fees and sums payable hereunder or under the Loan Documents, including without limitation, interest that has accrued at the Default Rate and any Late Payment Charges), (b) such payment shall be deemed a voluntary prepayment by Borrower, and (c) Borrower shall pay, in addition to the Indebtedness, an amount equal to the Prepayment Fee, if applicable.

2.3.3 Release of Property . Lender shall, at the reasonable expense of Borrower, upon payment in full of the Principal Amount and interest on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of (i) this Agreement upon the Account Collateral and the Rate Cap Collateral and (ii) the Security Instrument on the Property or assign it, in whole or in part, to a new lender. In such event, Borrower shall submit to Lender, on a date prior to the date of such release or assignment sufficient to provide a reasonable period for review thereof, a release of lien or assignment of lien, as applicable, for such property for execution by Lender. Such release or assignment, as applicable, shall be in a form appropriate in each jurisdiction in which the Property is located and satisfactory to Lender in its reasonable discretion. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release or assignment, as applicable.

Section 2.4 Regulatory Change; Taxes .

2.4.1 Increased Costs . If, at any time prior to the first Securitization of the Loan, as a result of any Regulatory Change or compliance of Lender therewith, the basis of taxation of payments to Lender of the principal of or interest on the Loan is changed or Lender or the company Controlling Lender shall be subject to (i) any tax, duty, charge or withholding of any kind with respect to this Agreement (excluding federal taxation of the overall net income of Lender); or (ii) any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities, of Lender or any company Controlling Lender is imposed, modified or deemed applicable; or (iii) any other condition affecting loans to borrowers subject to LIBOR-based interest rates is imposed on Lender or any company Controlling Lender and Lender determines that, by reason thereof, the cost to Lender or any company Controlling Lender of making, maintaining or extending the Loan to Borrower is increased, or any amount receivable by Lender or any company Controlling Lender hereunder in respect of any portion of the Loan to Borrower is reduced, in each case by an amount deemed by Lender in good faith to be material (such increases in cost and reductions in amounts receivable being herein called **"Increased Costs"**), then Lender shall provide notice thereof to Borrower and Borrower agrees that it will pay to Lender upon Lender's written request such additional amount or amounts as will compensate Lender or any company Controlling Lender for such Increased Costs to the extent Lender determines that such Increased Costs are allocable to the Loan and provided that Lender is generally exercising rights similar to those set forth in this Section 2.4.1 against other borrowers similarly situated to Borrower. Lender will notify Borrower of any event occurring after the date hereof which will entitle Lender to compensation pursuant to this Section 2.4.1 as promptly as practicable after it obtains knowledge thereof and determines to request such compensation; provided , however , that, if Lender fails to deliver a notice within 90 days after the date on which an officer of Lender responsible for overseeing this Agreement knows or has reason to know of its right to additional compensation under this Section 2.4.1 , Lender shall only be entitled to additional compensation for any such Increased Costs incurred from and after the date that is 90 days prior to the date Borrower received such notice. If Lender requests compensation under this Section 2.4.1 , Borrower may, by notice to Lender, require that Lender furnish to Borrower a statement setting forth the basis for requesting such compensation and the method for determining the amount thereof, and a description as to why Section 2.4.5 is not applicable.

2.4.2 Special Taxes . At all times prior to the first Securitization of the Loan, Borrower shall make all payments hereunder free and clear of and without deduction for Special Taxes. If, at any time prior to the first Securitization of the Loan, Borrower shall be required by law to deduct any Special Taxes from or in respect of any sum payable hereunder or under any other Loan Document to Lender, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.4.2) Lender receives an amount equal to the sum it would have received had no sucih deductions been made, (ii) Borrower shall make such

deductions, and (iii) Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

2.4.3 Other Taxes . In addition, for all periods prior to the first Securitization of the Loan, Borrower agrees to pay any present or future stamp or documentary taxes or other excise or property taxes, charges, or similar levies which arise from any payment made hereunder, or from the execution, delivery or registration of, or otherwise with respect to, this Agreement, the other Loan Documents, or the Loan (hereinafter referred to as**"Other Taxes"**).

2.4.4 Indemnity . Borrower shall indemnify Lender for all periods prior to the first Securitization of the Loan, for the full amount of Special Taxes and Other Taxes (including any Special Taxes or Other Taxes imposed by any Governmental Authority on amounts payable under this Section 2.4.4) paid by Lender and any liability (including penalties, interest, and expenses) arising therefrom or with respect thereto, whether or not such Special Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within thirty (30) days after the date Lender makes written demand therefor.

2.4.5 Change of Office . To the extent that changing the jurisdiction of Lender's applicable office would have the effect of minimizing Special Taxes, Other Taxes or Increased Costs, Lender shall use reasonable efforts to make such a change, provided that same would not otherwise be disadvantageous to Lender.

2.4.6 Survival . Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this Section 2.4 shall survive the payment in full of principal and interest hereunder, and the termination of this Agreement.

Section 2.5 Conditions Precedent to Closing . The obligation of Lender to make the Loan hereunder is subject to the fulfillment by, or on behalf of, Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date; provided, however, that unless a condition precedent shall expressly survive the Closing Date pursuant to a separate agreement, by funding the Loan, Lender shall be deemed to have waived any such conditions not theretofore fulfilled or satisfied:

2.5.1 Representations and Warranties; Compliance with Conditions . The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

2.5.2 Delivery of Loan Documents; Title Policy; Reports; Leases .

(a) **Loan Documents** . Lender shall have received an original copy of this Agreement, the Note and all of the other Loan Documents, in each case, duly executed (and to the extent required, acknowledged) and delivered on behalf of Borrower and any other parties thereto.

(b) **Security Instrument, Assignment of Leases** . Lender shall have received evidence that original counterparts of the Security Instrument and Assignment of Leases, in proper form for recordation, have been delivered to the Title Company for recording, so as effectively to create, in the reasonable judgment of Lender, upon such recording valid and enforceable first priority Liens upon the Property, in favor of Lender (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents.

(c) **UCC Financing Statements** . Lender shall have received evidence that the UCC financing statements relating to the Security Instrument and this Agreement have been delivered to the Title Company for filing in the applicable jurisdictions.

(d) **Title Insurance** . Lender shall have received a pro forma Title Policy or a Title Policy issued by the Title Company and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such Title Policy shall (i) provide coverage in the amount of the Loan, (ii) insure Lender that the Security Instrument creates a valid, first priority Lien on the Property, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain the endorsements and affirmative coverages set forth on **Exhibit A** (or such other endorsements and affirmative coverages approved by Lender) and such additional endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The Title Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Policy have been paid.

(e) **Survey** . Lender shall have received a current or rectified Survey for the Property, containing the survey certification substantially in the form attached hereto as **Exhibit B** or such other form as approved by Lender. Such Survey shall reflect the same legal description contained in the Title Policy referred to in clause (d) above. The surveyor's seal shall be affixed to the Survey and the surveyor shall provide a certification for such Survey in form and substance acceptable to Lender.

(f) **Insurance** . Lender shall have received valid certificates of insurance for the policies of insurance required hereunder, satisfactory to Lender in its reasonable discretion, and evidence of the payment of all insurance premiums currently due and payable for the existing policy period.

(g) **Environmental Reports** . Lender shall have received an Environmental Report in respect of the Property satisfactory to Lender.

(h) **Zoning** . Lender shall have received an ALTA 3.1 zoning endorsement for the Title Policy.

(i) **Certificate of Occupancy** . Lender shall have received a copy of the valid certificates of occupancy for the Property or evidence acceptable to Lender that a certificate of occupancy is not required by applicable law.

(j) **Encumbrances** . Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first Lien as of the Closing Date on the Property (including extinguishing all existing mezzanine debt and Liens in connection with such debt), subject only to Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

2.5.3 Related Documents . Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

2.5.4 Delivery of Organizational Documents . On or before the Closing Date, Borrower shall deliver, or cause to be delivered, to Lender copies certified by an Officer's Certificate, of all organizational documentation related to Borrower, Operating Lessee and Guarantor and certain Affiliates of the foregoing as have been requested by Lender and/or the formation, structure, existence, good standing and/or qualification to do business of Borrower, Operating Lessee and Guarantor and such Affiliates, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender. Each of the organizational documents of Borrower shall contain provisions having a substantive effect materially similar to that of the language set forth in **Exhibit C** or such other language as approved by Lender. Lender hereby approves the organizational documents of Borrower delivered to Lender on the date hereof.

2.5.5 Opinions . Lender shall have received:

(a) a Non-Consolidation Opinion substantially in compliance with the requirements set forth in **Exhibit E** or in such other form approved by the Lender (the **"Non-Consolidation Opinion"**);

(b) the Opinion of Counsel substantially in compliance with the requirements set forth in **Exhibit D** or in such other form approved by the Lender; and

(c) from Counterparty the Counterparty Opinion substantially in compliance with the requirements set forth in **Exhibit F** or in such other form approved by the Lender.

2.5.6 Budgets . Borrower shall have delivered the Budget for the current Fiscal Year, which Budget shall be certified by an Officer's Certificate.

2.5.7 Completion of Proceedings . All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

2.5.8 Payments . All payments, deposits or escrows, if any, required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

2.5.9 Interest Rate Cap Agreement . Lender shall have received the original Interest Rate Cap Agreement which shall be in form and substance satisfactory to Lender and an original counterpart of the Acknowledgment executed and delivered by the Counterparty.

2.5.10 Account Agreement . Lender shall have received the original of the Account Agreement executed by each of Cash Management Bank, Operating Lessee, and Borrower.

2.5.11 Intentionally Deleted .

2.5.12 Leases and Rent Roll . Lender shall have received copies of all Leases, certified as requested by Lender. Lender shall have received a certified rent roll of the Property dated within thirty (30) days prior to the Closing Date.

2.5.13 Transaction Costs . Borrower shall have paid or reimbursed Lender for all title insurance premiums, recording and filing fees, costs of Environmental Reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses incurred in connection with the origination of the Loan.

2.5.14 Material Adverse Effect . No event or condition shall have occurred since the date of Borrower's most recent financial statements previously delivered to Lender which has or could reasonably be expected to have a Material Adverse Effect. The Operating Income and Operating Expenses of the Property and all other features of the transaction shall be as represented to Lender without material adverse change. Neither Borrower nor any of its constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

2.5.15 Tax Lot . Lender shall have received evidence that the Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

2.5.16 Physical Conditions Report . Lender shall have received a Physical Conditions Report (or re-certified Physical Conditions Report) with respect to the Property, which report shall be satisfactory in form and substance to Lender.

2.5.17 Appraisal . Lender shall have received an appraisal of the Property, which shall be satisfactory in form and substance to Lender.

2.5.18 Operating Lease . Lender shall have received the originals of the Operating Lease, executed by Operating Lessee and Borrower and the Subordination of Operating Lease, executed by Operating Lessee.

2.5.19 Management Agreement . Lender shall have received a certified copy of the Management Agreement which shall be satisfactory in form and substance to Lender.

2.5.20 Financial Statements . Lender shall have received certified copies of financial statements with respect to the Property for the three most recent Fiscal Years, each in form and substance satisfactory to Lender.

2.5.21 Further Documents . Lender or its counsel shall have received such other and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested including the Loan Documents in form and substance satisfactory to Lender and its counsel.

III. CASH MANAGEMENT

Section 3.1 Cash Management .

3.1.1 Establishment of Accounts . Borrower hereby confirms that, simultaneously with the execution of this Agreement, pursuant to the Account Agreement, Operating Lessee has established with Cash Management Bank, in the name of Borrower for the benefit of Lender, as secured party, a collection amount (the**"Collection Account"**), which has been established as an interest-bearing deposit account, and a holding account (the**"Holding Account"**), which has been established as a securities account. Both the Collection and the Holding Account and each sub-account of either such account and the funds deposited therein and the securities and other assets credited thereto shall serve as additional security for the Loan. Pursuant to the Account Agreement, Borrower shall irrevocably instruct and authorize Cash Management Bank to disregard any and all orders for withdrawal from the Collection Account or the Holding Account made by, or at the direction of, Borrower or Operating Lessee other than to transfer all amounts on deposit in the Collection Account on a daily basis to the Holding Account. Borrower agrees that, prior to the payment in full of the Indebtedness, the terms and conditions of the Account Agreement shall not be amended or modified without the prior written consent of Lender (which consent Lender may grant or withhold in its sole discretion), and if a Securitization has occurred, the delivery by Borrower of a Rating Agency Confirmation. In recognition of Lender's security interest in the funds deposited into the Collection Account and the Holding Account, Borrower shall identify both the Collection Account and the Holding Account with the name of Lender, as secured party. The Collection Account shall be named as follows: "Loews Santa Monica f/b/o JPMorgan Chase Bank N.A., as secured party Collection Account," account number 724557.1 The Holding Account shall be named as follows: "Loews Santa Monica f/b/o JPMorgan Chase Bank N.A., as secured party Holding Account," account number 724557.2 Borrower confirms that it has established with Cash Management Bank the following sub-accounts of the Holding Account (each, a**" Sub-Account"**and, collectively, the**"Sub-Accounts"**and together with the Holding Account and the Collection Account, the**" Collateral Accounts"**), which (i) may be ledger or book entry sub-accounts and need not be actual sub-accounts, (ii) shall each be linked to the Holding Account, (iii) shall each be a "Securities Account" pursuant to Article 8 of the UCC and (iv) shall each be an Eligible Account to which certain funds shall be allocated and from which disbursements shall be made pursuant to the terms of this Agreement:

(a) a sub-account for the retention of Account Collateral in respect of Impositions and Other Charges for the Property with the account number 724557.2 (the**"Tax Reserve Account "**);

(b) a sub-account for the retention of Account Collateral in respect of insurance premiums for the Property with the account number 724557.2 (the**"Insurance Reserve Account "**);

(c) a sub-account for the retention of Account Collateral in respect of FF&E with the account number 724557.2 (the "**FF&E Reserve Account**"); and

(d) a sub-account for the retention of Account Collateral in respect of current Debt Service on the Loan with the account number 724557.2 (the**"Current Debt Service Reserve Account "**).

3.1.2 Pledge of Account Collateral . To secure the full and punctual payment and performance of the Obligations, Borrower and Operating Lessee hereby collaterally assigns, grants a security interest in and pledges to Lender, to the extent not prohibited by applicable law (and shall cause Operating Lessee to execute the Accommodation Security Documents with respect thereto), a first priority continuing security interest in and to the following property of Borrower and/or Operating Lessee, as applicable, whether now owned or existing or hereafter acquired or arising and regardless of where located (all of the same, collectively, the**"Account Collateral"**):

(a) the Collateral Accounts and Manager Accounts and all cash, checks, drafts, securities entitlements, certificates, instruments and other property, including, without limitation, all deposits and/or wire transfers from time to time deposited or held in, credited to or made to Collateral Accounts;

(b) any and all amounts invested in Permitted Investments;

(c) all interest, dividends, cash, instruments, securities entitlements and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing or purchased with funds from the Collateral Accounts; and

(d) to the extent not covered by clauses (a), (b) or (c) above, all proceeds (as defined under the UCC) of any or all of the foregoing.

In addition to the rights and remedies herein set forth, Lender shall have all of the rights and remedies with respect to the Account Collateral available to a secured party at law or in equity, including, without limitation, the rights of a secured party under the UCC, as if such rights and remedies were fully set forth herein.

This Agreement shall constitute a security agreement for purposes of the Uniform Commercial Code and other applicable law.

3.1.3 Maintenance of Collateral Accounts . (a) Borrower agrees that the Collection Account is and shall be maintained (i) as a "deposit account" (as such term is defined in Section 9-102(a) of the UCC), (ii) in such a manner that Lender shall have control (within the meaning of Section 9-104(a) of the UCC) over the Collection Account and (iii) such that neither the Borrower, Operating Lessee, nor Manager shall have any right of withdrawal from the Account and, except as provided herein, no Account Collateral shall be released to the Borrower, Operating Lessee, or Manager from the Collection Account. Without limiting the Borrower's obligations under the immediately preceding sentence, Borrower shall only establish and maintain the Collection Account with a financial institution that has executed an agreement substantially in the form of the Account Agreement or in such other form acceptable to Lender in its sole discretion.

(b) Borrower agrees that each of the Holding Account and the Sub-Accounts is and shall be maintained (i) as a "securities account" (as such term is defined in Section 8-501(a) of the UCC), (ii) in such a manner that Lender shall have control (within the meaning of Section 8-106(d)(2) of the UCC) over the Holding Account and any Sub-Account, (iii) such that neither Borrower, Operating Lessee, nor Manager shall have any right of withdrawal from the Holding Account or the Sub-Accounts and, except as provided herein, no Account Collateral shall be released to Borrower from the Holding Account or the Sub-Accounts, (iv) in such a manner that the Cash Management Bank shall agree to treat all property credited to the Holding Account or the Sub-Accounts as "financial assets" and (v) such that all securities or other property underlying any financial assets credited to the Accounts shall be registered in the name of Cash Management Bank, indorsed to Cash Management Bank or in blank or credited to another securities account maintained in the name of Cash Management Bank and in no case will any financial asset credited to any of the Collateral Accounts be registered in the name of Borrower, payable to the order of Borrower or specially indorsed to Borrower except to the extent the foregoing have been specially indorsed to Cash Management Bank or in blank. Without limiting Borrower's obligations under the immediately preceding sentence, Borrower shall only establish and maintain the Holding Account with a financial institution that has executed an agreement substantially in the form of the Account Agreement or in such other form acceptable to Lender in its sole discretion.

(c) The Collateral Accounts shall be Eligible Accounts. The Collateral Accounts shall be subject to such applicable laws, and such applicable regulations of the Board of Governors of the Federal Reserve System and of any other banking or governmental authority, as may now or hereafter be in effect. Income and interest accruing on the Collateral Accounts or any investments held in such accounts shall be periodically added to the principal amount of such account and shall be held, disbursed and applied in accordance with the provisions of this Agreement and the Account Agreement. Borrower shall be the beneficial owner of the Collateral Accounts for federal income tax purposes and shall report all income on the Collateral Accounts.

3.1.4 Deposits into Sub-Accounts . On the date hereof, Borrower has deposited the following amounts into the Sub-Accounts:

(i) $0.00 into the Tax Reserve Account;

(ii) $0.00 into the Insurance Reserve Account;

(iii) $0.00 into the Current Debt Service Reserve Account; and

(iv) $0.00 into the FF&E Reserve Account.

3.1.5 Monthly Funding of Sub-Accounts . (a) Borrower hereby irrevocably authorizes Lender to transfer (and, pursuant to the Account Agreement shall irrevocably authorize Cash Management Bank to execute any corresponding instructions of Lender), and Lender shall transfer (or cause Cash Management Bank to transfer pursuant to disbursement instructions from Lender), from the Holding Account by 11:00 a.m. New York time on each Business Day, or as soon thereafter as sufficient funds are in the Holding Account to make the applicable transfers, funds in the following amounts and in the following order of priority:

(i) during the continuance of an Event of Default and at any such time that Manager does not reserve for or otherwise set aside and pay Impositions and Other Charges directly, funds in an amount equal to the Monthly Tax Reserve Amount and any other amounts required pursuant to Section 16.1 for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Tax Reserve Account;

(ii) during the continuance of an Event of Default and at any time when the insurance required to be maintained pursuant to this Agreement is provided under a blanket policy in accordance with Article VI hereof and the premiums in respect of such blanket policy are not paid or caused to be paid before such premiums become due and payable or at any time that Manager does not pay, reserve for or otherwise set aside and pay, premiums with respect to the Insurance Requirements, funds in an amount equal to the Monthly Insurance Reserve Amount for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Insurance Reserve Account, or following an Event of Default or an Insurance Reserve Trigger, funds sufficient (calculated on a monthly basis from the Insurance Reserve Trigger until the month in which the premium is due) to permit Lender to pay insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement and the Security Instrument on the respective due dates therefor (up to a maximum amount equal to the aggregate annual insurance premium required hereunder), and Lender shall so pay such funds to the insurance company having the right to receive such funds;

(iii) funds in an amount equal to the amount of Debt Service due on the Payment Date for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Current Debt Service Reserve Account;

(iv) at any such time that Manager does not reserve or otherwise set aside for FF&E in accordance with the terms of the Management Agreement, funds in an amount equal to the Monthly FF&E Reserve Amount for the month in which the Payment Date

immediately following the date of the transfer from the Holding Account occurs and transfer the same to the FF&E Reserve Account; and

(v) provided no Event of Default shall have occurred and is then continuing and subject to the provisions of Section 3.1.5(b) , funds in an amount equal to the balance (if any) remaining or deposited in the Holding Account after the foregoing deposits (such remainder being hereinafter referred to as**"Excess Cash Flow"**) and transfer the same to the Borrower's Account (or a third party account as directed by Borrower), free of any Lien or continuing security interest.

(b) Notwithstanding anything to the contrary contained herein or in the Security Instrument, but subject to Section 7.3 , to the extent that Borrower shall fail to pay any mortgage recording tax, costs, expenses or other amounts pursuant to Section 19.12 of this Agreement within the time period set forth therein, Lender shall have the right, at any time, upon five (5) Business Days' notice to Borrower, to withdraw from the Holding Account, an amount equal to such unpaid taxes, costs, expenses and/or other amounts and pay such amounts to the Person(s) entitled thereto.

3.1.6 Payments from Sub-Accounts . Borrower irrevocably authorizes Lender to make and, provided no Event of Default shall have occurred and be continuing, Lender hereby agrees to make, the following payments from the Sub-Accounts to the extent of the monies on deposit therefor:

(i) if notified (timely) by Borrower or otherwise determined by Lender in its reasonable discretion that Manager will not pay Impositions or Other Charges, funds from the Tax Reserve Account to Lender sufficient to permit Lender to pay (or otherwise to Borrower to reimburse Borrower for) (A) Impositions and (B) Other Charges, on the respective due dates therefor, and Lender shall so pay such funds to the Governmental Authority having the right to receive such funds (or shall reimburse Borrower or Operating Lessee upon confirmation of payment);

(ii) at any time when the insurance required to be maintained pursuant to this Agreement is provided under a blanket policy in accordance with Article VI hereof and the premiums in respect of such blanket policy are not paid or caused to be paid before such premiums become due and payable or at any time that Manager does not pay, reserve for or otherwise set aside and pay, premiums with respect to the Insurance Requirements and otherwise following an Insurance Reserve Trigger, funds from the Insurance Reserve Account to Lender sufficient to permit Lender to pay insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement and the Security Instrument, on the respective due dates therefor, and Lender shall so pay such funds to the insurance company having the right to receive such funds;

(iii) funds from the Current Debt Service Reserve Account to Lender sufficient to pay Debt Service on each Payment Date, and Lender, on each Payment Date, shall apply such funds to the payment of the Debt Service payable on such Payment Date; and

(iv) if notified (timely) by Borrower or otherwise determined by Lender in its reasonable discretion that Manager will not reserve for FF&E as required under the Management Agreement, and provided Borrower shall have complied with the procedures set forth in Section 16.6 , funds from the FF&E Reserve Account to the Borrower's Account to pay for FF&E.

If and to the extent Guarantor or any Close Affiliate (other than Borrower or Operating Lessee) makes a payment of any Imposition, any insurance premium under a blanket policy or capital expenditure or overhead charge which qualifies as an Operating Expense, with respect to the Property and such expense is provided for in the Budget, provided no Event of Default has occurred and is continuing, such Guarantor or Close Affiliate will be entitled to receive reimbursement from the Manager, Lender, or the applicable Sub-Account established under hereunder or under the Management Agreement and such payment shall not be required to be re-deposited into the Collection Account.

3.1.7 Cash Management Bank. (a) Lender shall have the right to replace the Cash Management Bank with a financial institution reasonably satisfactory to Borrower in the event that (i) the Cash Management Bank fails, in any material respect, to comply with the Account Agreement, (ii) the Cash Management Bank named herein is no longer the Cash Management Bank or (iii) the Cash Management Bank is no longer an Approved Bank. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right at Borrower's sole cost and expense to replace Cash Management Bank at any time, without notice to Borrower. Borrower shall cooperate with Lender in connection with the appointment of any replacement Cash Management Bank and the execution by the Cash Management Bank and the Borrower of an Account Agreement and delivery of same to Lender.

(b) So long as no Event of Default shall have occurred and be continuing, Borrower shall have the right at its sole cost and expense to replace the Cash Management Bank with a financial institution that is an Approved Bank, provided that such financial institution and Borrower shall execute and deliver to Lender an Account Agreement substantially similar to the Account Agreement executed as of the Closing Date.

3.1.8 Borrower's Account Representations, Warranties and Covenants . Borrower represents, warrants and covenants that (i) as of the date hereof, Borrower has caused Operating Lessee to direct all Tenants under the Leases to mail all checks and wire all funds with respect to any payments due under such Leases directly to Manager, (ii) Borrower shall cause Manager and Operating Lessee to deposit all amounts payable to Borrower or Operating Lessee pursuant to the Management Agreement directly into the Collection Account, (iii) Borrower and Operating Lessee shall pay or cause to be paid all Rents, Cash and Cash Equivalents or other items of Operating Income not otherwise collected by Manager within two Business Days after receipt thereof by Borrower, Operating Lessee or its Affiliates directly into the Collection Account and, until so deposited, any such amounts held by Borrower or Operating Lessee, shall be deemed to be Account Collateral and shall be held in trust by it for the benefit, and as the property, of Lender and shall not be commingled with any other funds or property of Borrower or Operating Lessee, (iv) other than the Manager Accounts, there are no accounts other than the Collateral Accounts maintained by Borrower or Operating Lessee with respect to the Property or the collection of Rents and credit card company receivables with respect to the

Property and (v) so long as the Loan shall be outstanding, neither Borrower, Operating Lessee, nor any other Person shall open any other operating accounts with respect to the Property or the collection of Rents or credit card company receivables with respect to the Property, except for the Collateral Accounts and the Manager Accounts; provided that, Borrower and Manager shall not be prohibited from utilizing one or more separate accounts for the disbursement or retention of funds that have been transferred to the Borrower's Account pursuant to Section 3.1.5 .

3.1.9 Account Collateral and Remedies . (a) Upon the occurrence and during the continuance of an Event of Default, without additional notice from Lender to Borrower, (i) Lender may, in addition to and not in limitation of Lender's other rights, make any and all withdrawals from, and transfers between and among, the Collateral Accounts as Lender shall determine in its sole and absolute discretion to pay any Obligations; (ii) all Excess Cash Flow shall be retained in the Holding Account or applicable Sub-Accounts and (iii) Lender may liquidate and transfer any amounts then invested in Permitted Investments to the Collateral Accounts to which they relate or reinvest such amounts in other Permitted Investments as Lender may reasonably determine is necessary to perfect or protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce Lender's rights and remedies hereunder with respect to any Account Collateral or to preserve the value of the Account Collateral.

(b) Upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of Borrower with respect to the Account Collateral, and do in the name, place and stead of Borrower, all such acts, things and deeds for and on behalf of and in the name of Borrower, which Borrower could or might do or which Lender may deem necessary or desirable to more fully vest in Lender the rights and remedies provided for herein and to accomplish the purposes of this Agreement. The foregoing powers of attorney are irrevocable and coupled with an interest. Upon the occurrence and during the continuance of an Event of Default, Lender may perform or cause performance of any such agreement, and any reasonable expenses of Lender incurred in connection therewith shall be paid by Borrower as provided in Section 5.1.16 .

(c) Borrower hereby expressly waives, to the fullest extent permitted by law, presentment, demand, protest or any notice of any kind (except as expressly required under the Loan Documents) in connection with this Agreement or the Account Collateral. Borrower acknowledges and agrees that ten (10) Business Days' prior written notice of the time and place of any public sale of the Account Collateral or any other intended disposition thereof shall be reasonable and sufficient notice to Borrower within the meaning of the UCC.

3.1.10 Transfers and Other Liens . Borrower agrees that it will not (i) sell or otherwise dispose of any of the Account Collateral except as may be expressly permitted under the Loan Documents, or (ii) create or permit to exist any Lien upon or with respect to all or any of the Account Collateral, except for the Lien granted to Lender under this Agreement.

3.1.11 Reasonable Care . Beyond the exercise of reasonable care in the custody thereof, Lender shall have no duty as to any Account Collateral in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any person or otherwise with respect thereto. Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Account Collateral in its possession if the Account Collateral is accorded treatment substantially equal to that which Lender accords its own property, it being understood that Lender shall not be liable or responsible for any loss or damage to any of the Account Collateral, or for any diminution in value thereof, by reason of the act or omission of Lender, its Affiliates, agents, employees or bailees, except to the extent that such loss or damage results from Lender's gross negligence or willful misconduct. In no event shall Lender be liable either directly or indirectly for losses or delays resulting from any event which may be the basis of an Excusable Delay, computer malfunctions, interruption of communication facilities, labor difficulties or other causes beyond Lender's reasonable control or for indirect, special or consequential damages except to the extent of Lender's gross negligence or willful misconduct. Notwithstanding the foregoing, Borrower acknowledges and agrees that (i) Lender does not have custody of the Account Collateral, (ii) Cash Management Bank has custody of the Account Collateral, (iii) the initial Cash Management Bank was chosen by Borrower and (iv) Lender has no obligation or duty to supervise Cash Management Bank or to see to the safe custody of the Account Collateral.

3.1.12 Lender's Liability . (a) Lender shall be responsible for the performance only of such duties with respect to the Account Collateral as are specifically set forth in this Section 3.1 or elsewhere in the Loan Documents, and no other duty shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act with respect to the Account Collateral which would cause it to incur any expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Borrower shall indemnify and hold Lender, its employees and officers harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender in connection with the transactions contemplated hereby with respect to the Account Collateral (excluding losses on Permitted Investments) except as such may be caused by the gross negligence or willful misconduct of Lender, its employees, officers or agents.

(b) Lender shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature believed by it in good faith to be genuine, and, in so acting, it may be assumed that any person purporting to give any of the foregoing in connection with the provisions hereof has been duly authorized to do so. Lender may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder and in good faith in accordance therewith.

3.1.13 Continuing Security Interest . This Agreement shall create a continuing security interest in the Account Collateral and shall remain in full force and effect until payment in full of the Indebtedness; provided, however, such security interest shall automatically terminate with respect to funds which were duly deposited into Borrower's Account in accordance with the terms hereof. Upon payment in full of the Indebtedness, this security interest shall automatically terminate without further notice from any party and Borrower shall be entitled to the return, upon its request, of such of the Account Collateral as

shall not have been sold or otherwise applied pursuant to the terms hereof and Lender shall execute such instruments and documents as may be reasonably requested by Borrower to evidence such termination and the release of the Account Collateral.

IV. REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations . Borrower represents and warrants as of the Closing Date that:

4.1.1 Organization . Each of Borrower, Guarantor and Operating Lessee is a limited liability company, and have been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Each of Borrower and Operating Lessee has duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Collectively, Borrower and Operating Lessee possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which each is now engaged, and the sole business of Borrower is the ownership of the Property. The organizational structure of Borrower upon the closing is accurately depicted by the schematic diagram attached hereto as **Exhibit H-1** . Borrower shall not itself, and shall not permit Operating Lessee to, change its name, identity, corporate structure or jurisdiction of organization unless it shall have given Lender seven (7) days prior written notice of any such change and shall have taken all steps reasonably requested by Lender to grant, perfect, protect and/or preserve the security interest granted hereunder to Lender.

4.1.2 Proceedings . Each of Borrower, Operating Lessee, and Guarantor, has full power to and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents have been duly executed and delivered by, or on behalf of, each of Borrower, Operating Lessee, and Guarantor, as applicable, and constitute legal, valid and binding obligations of Borrower, Operating Lessee, and Guarantor, as applicable, enforceable against Borrower, Operating Lessee, and Guarantor, as applicable, in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts . The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower, Operating Lessee, and Guarantor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower, Operating Lessee, and Guarantor, pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement or other agreement or instrument to which Borrower, Operating Lessee, and Guarantor, is a party or by which any of Borrower's, Operating Lessee's, and Guarantor's, property or assets is subject (unless consents from all applicable parties thereto have been obtained), nor will such action result in any violation of the provisions

of any statute or any order, rule or regulation of any Governmental Authority, and any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Borrower, Operating Lessee, and Guarantor, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4 Litigation . There are no lawsuits, administrative proceedings, arbitration proceedings, or other such legal proceedings that have been filed and served upon Borrower (or with respect to which Borrower has otherwise received proper notice) or, to the Best of Borrower's Knowledge, otherwise pending or threatened against or affecting Borrower, Operating Lessee, or the Property whose outcome, if determined against Borrower, Operating Lessee, or the Property, would have a Material Adverse Effect. To the Best of Borrower's Knowledge, **Schedule I** includes each pending action against Borrower, Operating Lessee, or otherwise affecting the Property that involves a claim or claims for either (a) monetary damages exceeding $250,000, or (b) injunctive relief or other equitable remedy that could have a Material Adverse Effect, excluding: (i) actions for monetary damages only that have been tendered to, and accepted without reservation of rights by, the liability insurance carrier for the Property, (ii) worker's compensation claims, and (iii) any proceedings by employees working at the Property where the amount claimed in such proceeding is less than $250,000; to the Best of Borrower's Knowledge, the aggregate amount of such claims described in subclause (iii) of this sentence is less than $1,000,000.

4.1.5 Agreements . Neither Borrower nor Operating Lessee is a party to any agreement or instrument or subject to any restriction which is reasonably likely to have a Material Adverse Effect. Neither Borrower nor Operating Lessee is in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower, Operating Lessee, or the Property is bound, which default is reasonably likely to have a Material Adverse Effect. Neither Borrower nor Operating Lessee has any material financial obligation (contingent or otherwise) under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower or Operating Lessee is a party or by which Borrower, Operating Lessee, or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property, including membership programs disclosed in writing to Lender on or prior to the date hereof, and (b) obligations under the Loan Documents.

4.1.6 Title . Borrower has good, marketable and insurable fee simple title to the Land and the Improvements, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Borrower or Operating Lessee, as applicable, has good and marketable title to the remainder of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, and Accommodation Security Documents, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first mortgage lien on the Land and the Improvements, subject only to Permitted Encumbrances and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. Except as may be indicated in

and insured over by the Title Policy, to the Best of Borrower's Knowledge, there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents. Borrower represents and warrants that none of the Permitted Encumbrances will have a Material Adverse Effect. Borrower shall preserve its right, title and interest in and to the Property for so long as the Note remains outstanding and will warrant and defend same and the validity and priority of the Lien hereof from and against any and all claims whatsoever other than the Permitted Encumbrances.

4.1.7 No Bankruptcy Filing . None of Borrower, Operating Lessee, or Guarantor, is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of such entity's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against Borrower or against Operating Lessee or Guarantor.

4.1.8 Full and Accurate Disclosure . To the Best of Borrower's Knowledge, no statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower which has not been disclosed which has a Material Adverse Effect, or to the Best of Borrower's Knowledge could reasonably be expected to have a Material Adverse Effect.

4.1.9 All Property . The Property constitutes all of the real property, personal property, equipment and fixtures currently (i) owned or leased by Borrower or Operating Lessee or (ii) used in the operation of the business located on the Property, other than items owned by Manager or any Tenants (excluding items owned by Operating Lessee).

4.1.10 ERISA . (A) Borrower does not maintain or contribute to and is not required to contribute to, an "employee benefit plan" as defined by Section 3(3) of ERISA, which is subject to Title IV of ERISA (other than a "multiemployer plan" as defined by Section 3(37) of ERISA), and Borrower (i) has no knowledge of any material liability which has been incurred or is expected to be incurred by Borrower which is reasonably likely to result in a Material Adverse Effect and is or remains unsatisfied for any taxes or penalties or unfunded contributions with respect to any "employee benefit plan" or any "plan," within the meaning of Section 4975(e)(1) of the Internal Revenue Code or any other benefit plan (other than a "multiemployer plan") maintained, contributed to, or required to be contributed to by Borrower or by any entity that is under common control with Borrower within the meaning Section 4001(a)(14) of ERISA (each, an "**ERISA Affiliate**") (each, a "**Plan**") or any plan that would be a Plan but for the fact that it is a multiemployer plan within the meaning of ERISA Section 3(37); and (ii) has made and shall continue to make when due all required contributions to all such Plans (other than Plans relating to ERISA Affiliates), if any, where the failure to so contribute is reasonably likely to result in a Material Adverse Effect. Each such Plan (other than Plans relating to ERISA Affiliates), if any, has been and will be administered in material compliance with its terms and the applicable provisions of ERISA, the Internal Revenue Code, and any other applicable federal or state law; and no action shall be taken or fail to be taken that would result in the disqualification or loss of tax-exempt status of any such Plan intended to be qualified and/or tax exempt; and

(a) With respect to any "multiemployer plan," (i) Borrower has not, since September 26, 1980, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA, (ii) Borrower has made and shall continue to make when due all required contributions to all such "multiemployer plans" and (iii) no ERISA Affiliate has, since September 26, 1980, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA which withdrawal is reasonably expected to have a Material Adverse Effect.

(b) Borrower is not an employee benefit plan, as defined in Section 3(3) of ERISA, whether or not subject to Title I of ERISA, none of the assets of Borrower constitutes or will constitute plan assets of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101 and transactions by or with Borrower is not subject to similar laws regulating investment of, and fiduciary obligations with respect to, plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect ("**Similar Laws** "), which prohibit or otherwise restrict the transactions contemplated by this Agreement.

4.1.11 Compliance . Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes except where the failure to so comply is not reasonably expected to result in a Material Adverse Effect. To the Best of Borrower's Knowledge, neither Borrower nor Operating Lessee is in default or in violation of any order, writ, injunction, decree or demand of any Governmental Authority. To the Best of Borrower's Knowledge, there has not been committed by Borrower or Operating Lessee any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

4.1.12 Financial Information . To the Best of Borrower's Knowledge, all financial data including, without limitation, the statements of cash flow and income and operating expense, that have been delivered by or on behalf of Borrower to Lender in respect of the Property (i) are true, complete and correct in all material respects, (ii) fairly represent the financial condition of the Property as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Neither Borrower nor Operating Lessee has any material contingent liabilities, liabilities for delinquent taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and could reasonably be expected to have a Material Adverse Effect, except as referred to or reflected in said financial statements and operating statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operations or business of Borrower or Operating Lessee from that set forth in said financial statements.

4.1.13 Condemnation . No Condemnation has been commenced or, to the Best of Borrower's Knowledge, is contemplated with respect to all or any portion of the Property.

4.1.14 Federal Reserve Regulations . None of the proceeds of the Loan will be used for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U, Regulation X or Regulation T or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry "margin stock" or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of Regulation U or Regulation X. As of the Closing Date, Borrower does not own any "margin stock."

4.1.15 Utilities and Public Access . The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. To the Best of Borrower's Knowledge, all utilities necessary to the existing use of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property. All roads necessary for the use of the Property for its current purposes have been completed and, if necessary, dedicated to public use.

4.1.16 Not a Foreign Person . Borrower is not a foreign person within the meaning of § 1445(f)(3) of the Code.

4.1.17 Separate Lots . The Property is comprised of one (1) or more contiguous parcels which constitute a separate tax lot or lots and does not constitute or include a portion of any other tax lot not a part of the Property.

4.1.18 Assessments . To the Best of Borrower's Knowledge, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

4.1.19 Enforceability . The Loan Documents are not subject to any existing right of rescission, set-off, counterclaim or defense by Borrower, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law)), and Borrower has not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.20 No Prior Assignment . There are no prior sales, transfers or assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding following the funding of the Loan, other than those being terminated or assigned to Lender concurrently herewith.

4.1.21 Insurance . Borrower has obtained and has delivered to Lender certified copies or certificates of all insurance policies required under this Agreement, reflecting

the insurance coverages, amounts and other requirements set forth in this Agreement. Borrower has not, and to the Best of Borrower's Knowledge no Person has, done by act or omission anything which would impair the coverage of any such policy.

4.1.22 Use of Property . The Property is used exclusively for hotel purposes and other appurtenant and related uses.

4.1.23 Certificate of Occupancy; Licenses . To the Best of Borrower's Knowledge, all material certifications, permits, licenses (including, without limitation, a license to serve alcohol on the Property) and approvals, including without limitation, certificates of completion and occupancy permits required of Borrower for the legal use, occupancy and operation of the Property for hotel purposes (collectively, the **"Licenses"**), have been obtained and are in full force and effect. Borrower shall keep and maintain all Licenses necessary for the operation of the Property for hotel purposes. The use being made of the Property is in conformity with the certificate of occupancy issued for the Property.

4.1.24 Flood Zone . Except as may be shown on the Survey with respect to portions of the Improvements other than buildings and enclosed structures, none of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards.

4.1.25 Physical Condition . To the Best of Borrower's Knowledge and except as expressly disclosed in the Physical Conditions Report, the Property, including, without limitation, all buildings, Improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; to the Best of Borrower's Knowledge and except as disclosed in the Physical Conditions Report, there exists no structural or other material defects or damages in or to the Property, whether latent or otherwise, and Borrower has not received any written notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

4.1.26 Boundaries . To the Best of Borrower's Knowledge and except as disclosed on the Survey, all of the Improvements lie wholly within the boundaries and building restriction lines of the Real Property, and no improvements on adjoining properties encroach upon the Real Property, and no easements or other encumbrances upon the Real Property encroach upon any of the Improvements, so as to have a Material Adverse Effect on the value or marketability of the Real Property except those which are insured against by the Title Policy.

4.1.27 Leases . The Property is not subject to any Leases other than the Leases described in the certified rent roll delivered in connection with the origination of the Loan. Such certified rent roll is true, complete and correct in all material respects as of the date set forth therein. No Person has any possessory interest in the Property or right to occupy the same (other than typical short-term occupancy rights of hotel guests which are not the subject of

a written agreement) except under and pursuant to the provisions of the Leases. All other current Leases are in full force and effect and to the Best of Borrower's Knowledge, there are no material defaults thereunder by either party (other than as expressly disclosed on the certified rent roll delivered to Lender or the Tenant estoppel certificates delivered to Lender in connection with the closing of the Loan) and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute material defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date, except as disclosed in the Tenant estoppel certificates delivered to Lender in connection with the closing of the Loan. There has been no prior sale, transfer or assignment, hypothecation or pledge by Borrower of any Lease or of the Rents received therein, which will be outstanding following the funding of the Loan, other than those being assigned to Lender concurrently herewith. No Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the property of which the leased premises are a part.

4.1.28 Filing and Recording Taxes . All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid and the granting and recording of the Security Instrument and the UCC financing statements required to be filed in connection with the Loan. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid, and, under current Legal Requirements, the Security Instrument is enforceable against Borrower in accordance with its terms by Lender (or any subsequent holder thereof) subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law.

4.1.29 Single Purpose Entity/Separateness . (a) Borrower hereby represents, warrants and covenants that each of Operating Lessee and Borrower is and always has been, since the date of its respective formation, a Single Purpose Entity and has not, since the date of its respective formation, conducted any business other than as permitted pursuant to Section 7 of their respective operating agreements each dated November 9, 2005 (as amended) and has not owned any property other than as permitted pursuant to Section 7 of their respective operating agreements each dated November 9, 2005 (as amended).

(b) Borrower hereby represents with respect to Borrower and Operating Lessee that it:

(i) is and always has been duly formed, validly existing, and in good standing in the state of its incorporation and in all other jurisdictions where it is qualified to do business;

(ii) has no judgments or liens of any nature against it except for tax liens not yet due;

(iii) is in compliance with all laws, regulations, and orders applicable to it and, except as otherwise disclosed in this Agreement, has received all permits necessary for it to operate;

(iv) is not involved in any dispute with any taxing authority;

(v) has paid all taxes which it owes;

(vi) has never owned any real property other than the Property and personal property necessary or incidental to its ownership or operation of the Property and has never engaged in any business other than the ownership and operation of the Property;

(vii) except for the Lawsuit, is not now, nor has ever been, party to any lawsuit, arbitration, summons, or legal proceeding that is still pending or that resulted in a judgment against it that has not been paid in full;

(viii) has provided Lender with complete financial statements that reflect a fair and accurate view of the entity's financial condition;

(ix) has obtained a current Phase I environmental site assessment (ESA) for the Property prepared consistent with ASTM Practice E 1527 and the ESA has not identified any recognized environmental conditions that require further investigation or remediation; and

(x) has no material contingent or actual obligations not related to the Property.

(c) Borrower hereby represents with respect to Borrower and Operating Lessee that from the date of their respective formation to the date of this Agreement that it:

(i) has not entered into any contract or agreement with any of its Affiliates, constituents, or owners, or any guarantors of any of its obligations or any Affiliate of any of the foregoing (individually, a "**Related Party**" and collectively, the " **Related Parties**"), except upon terms and conditions that are commercially reasonable and substantially similar to those available in an arm's-length transaction with an unrelated party;

(ii) except with respect to indebtedness for which it was co-obligated and which has been paid and satisfied in full (the "**Former Indebtedness**"), has paid all of its debts and liabilities from its assets;

(iii) has done or caused to be done all things necessary to observe all organizational formalities applicable to it and to preserve its existence;

(iv) has maintained all of its books, records, financial statements (except consolidated financial statements otherwise allowed by the definition of Single Purpose Entity) and bank accounts separate from those of any other Person ;

(v) has not had its assets listed as assets on the financial statement of any other Person, except consolidated financial statements otherwise allowed by the definition of Single Purpose Entity;

(vi) has filed its own tax returns (except to the extent that it has been a tax-disregarded entity not required to file tax returns under applicable law) and, if it is a corporation, has not filed a consolidated federal income tax return with any other Person;

(vii) has been, and at all times has held itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate or other Related Party);

(viii) has corrected any known misunderstanding regarding its status as a separate entity;

(ix) has conducted all of its business and held all of its assets in its own name;

(x) has not identified itself or any of its affiliates as a division or part of the other;

(xi) has maintained and utilized separate stationery, invoices and checks bearing its own name;

(xii) has not commingled its assets with those of any other Person and has held all of its assets in its own name;

(xiii) except for the Former Indebtedness, has not guaranteed or become obligated for the debts of any other Person;

(xiv) except for the Former Indebtedness, has not held itself out as being responsible for the debts or obligations of any other Person;

(xv) has allocated fairly and reasonably any overhead expenses that have been shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate or Related Party;

(xvi) except for the Former Indebtedness, has not pledged its assets to secure the obligations of any other Person and no such pledge remains outstanding except in connection with the Loan;

(xvii) has maintained adequate capital in light of its contemplated business operations;

(xviii) has maintained a sufficient number of employees in light of its contemplated business operations and has paid the salaries of its own employees from its own funds;

(xix) has not owned any subsidiary or any equity interest in any other entity;

(xx) has not incurred any indebtedness that is still outstanding other than indebtedness that is permitted under the Loan Documents; and

(xxi) has not had any of its obligations guaranteed by an affiliate, except for guarantees that have been either released or discharged (or that will be discharged as a result of the closing of the Loan) or guarantees that are expressly contemplated by the Loan Documents.

(xxii) Except for the Operating Lessee, none of the tenants holding leasehold interests with respect to the Property are affiliated with the Borrower.

All of the assumptions made in the Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto and any certificates delivered by Borrower in connection with the issuance of the Non-Consolidation Opinion, are true and correct in all material respects and any assumptions made in any subsequent non-consolidation opinion delivered in connection with the Loan Documents (an " **Additional Non-Consolidation Opinion**"), including, but not limited to, any exhibits attached thereto, are true and correct in all material respects. Borrower has complied with all of the assumptions made with respect to it in the Non-Consolidation Opinion. To the Best of Borrower's Knowledge, each entity other than Borrower with respect to which an assumption shall be made in any Additional Non-Consolidation Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Non-Consolidation Opinion.

4.1.30 Management Agreement . The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Manager is not an Affiliate of Borrower.

4.1.31 Illegal Activity . No portion of the Property has been or will be purchased with proceeds of any illegal activity.

4.1.32 Intentionally Deleted .

4.1.33 Tax Filings . Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower.

4.1.34 Solvency/Fraudulent Conveyance . Borrower (a) has not entered into the transaction contemplated by this Agreement or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) has received reasonably equivalent value in exchange for its obligations under the Loan Documents. After giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured. Borrower's assets do not and, immediately following the making

of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

4.1.35 Investment Company Act . Borrower is not (a) an investment company or a company Controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended, (b) a holding company or a subsidiary company of a holding company or an affiliate of either a holding company or a subsidiary company within the mean of the Public Utility Holding Company Act of 1935, as amended or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.36 Interest Rate Cap Agreement . The Interest Rate Cap Agreement is in full force and effect and enforceable against Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws generally affecting the enforcement of creditors' rights and subject as to enforceability to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.37 Labor . Except as described on **Schedule I** , no work stoppage, labor strike, slowdown or lockout is pending or threatened by employees and other laborers at the Property. Except as described on **Schedule I** , neither Borrower, Manager nor Operating Lessee (i) is involved in or, to the Best of Borrower's Knowledge, threatened with any material labor dispute, material grievance or litigation relating to labor matters involving any employees and other laborers at the Property, including, without limitation, violation of any federal, state or local labor, safety or employment laws (domestic or foreign) and/or charges of unfair labor practices or discrimination complaints, (ii) to the Best of Borrower's Knowledge, has engaged with respect to the Property, in any unfair labor practices within the meaning of the National Labor Relations Act or the Railway Labor Act, or (iii) is a party to, or bound by, any existing collective bargaining agreement or union contract with respect to employees and other laborers at the Property.

4.1.38 Brokers . Neither Borrower nor, to the Best of Borrower's Knowledge, Lender has dealt with any broker or finder with respect to the loan transactions contemplated by the Loan Documents and neither party has done any acts, had any negotiations or conversations, or made any agreements or promises which will in any way create or give rise to any obligation or liability for the payment by either party of any brokerage fee, charge, commission or other compensation to any Person with respect to the transactions contemplated by the Loan Documents. Borrower covenants and agrees that it shall pay as and when due any and all brokerage fees, charges, commissions or other compensation or reimbursement due to any broker of Borrower with respect to the transactions contemplated by the Loan Documents. Borrower and Lender shall each indemnify and hold harmless the other from and against any loss, liability, cost or expense, including any judgments, attorneys' fees, or costs of appeal, incurred by the other party and arising out of or relating to any claim for brokerage commissions or finder's fees alleged to be due as a result of the indemnifying party's agreements or actions.

The provisions of this Section 4.1.38 shall survive the expiration and termination of this Agreement and the payment of the Indebtedness.

4.1.39 No Other Debt . Borrower has not borrowed or received debt financing that has not heretofore or contemporaneously herewith been repaid in full, other than the Permitted Debt.

4.1.40 Taxpayer Identification Number . Borrower's Federal taxpayer identification number is 20-1231704. Operating Lessee's Federal taxpayer identification number is 20-1232420.

4.1.41 Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws . (i) None of Borrower or any Person who owns any equity interest in or Controls Borrower or, to the Best of Borrower's Knowledge, Guarantor or Ultimate Equity Owners, currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and Borrower has implemented procedures to ensure that no Person who now or hereafter owns any equity interest in Borrower, Ultimate Equity Owners or Guarantor is a Prohibited Person or Controlled by a Prohibited Person, and (ii) none of Borrower, Ultimate Equity Owners or Guarantor is in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time.

4.1.42 Knowledge Qualifications . Borrower represents that Ryan Bowie and Cory Warning are in a position to have meaningful knowledge with respect to the matters set forth in the Loan Documents which have been qualified to the knowledge of such Persons.

4.1.43 Leases . Borrower represents that it has heretofore delivered to Lender true and complete copies of all Leases and any and all amendments or modifications thereof.

4.1.44 FF&E . Manager is reserving for FF&E on a monthly basis not less than an amount equal to four percent (4%) of adjusted gross revenues with respect to the Property; such reserves are maintained in accordance with the terms of the Management Agreement and the requirements of Section 5.1.23 , either in (i) the Manager FF&E Reserve Account or (ii) the Manager FF&E Alternative Reserve Account (each subject to disbursements therefrom as permitted by the Management Agreement).

4.1.45 Survival of Representations . Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall be deemed given and made as of the date of the funding of the Loan and survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower or Guarantor unless a longer survival period is expressly stated in a Loan Document with respect to a specific representation or warranty, in which case, for such longer period. All representations, warranties, covenants

and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

V. BORROWER COVENANTS

Section 5.1 Affirmative Covenants . From the Closing Date and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of this Agreement and the Security Instrument in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender to comply with and to cause Operating Lessee to comply with, the following covenants, and in such connection, references in this Article V to Borrower shall alternatively mean Operating Lessee, as the context may require:

5.1.1 Performance by Borrower . Borrower shall observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, in accordance with the provisions of each Loan Document, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower, as applicable, without the prior written consent of Lender.

5.1.2 Existence; Compliance with Legal Requirements; Insurance . Subject to Borrower's right of contest pursuant to Section 7.3 , Borrower shall comply and cause the Property to be in compliance with all Legal Requirements applicable to the Borrower, Manager and the Property and the uses permitted upon the Property. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises necessary to comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall not knowingly permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, knowingly permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all material franchises and trade names and preserve all the remainder of its property used in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully set forth in the Security Instrument. Borrower shall keep the Property insured at all times to such extent and against such risks, and maintain liability and such other insurance, as set forth in this Agreement.

5.1.3 Litigation . Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower which, if determined adversely to Borrower, would have a Material Adverse Effect.

5.1.4 Single Purpose Entity . (a) Borrower shall remain a Single Purpose Entity.

(b) Except as permitted by the Loan Documents, Borrower shall continue to maintain its own deposit account or accounts, separate from those of any Affiliate, with commercial banking institutions. None of the funds of Borrower will be commingled with the funds of any other Affiliate, except pursuant to a cash management system maintained with Borrower's Affiliates in accordance with Section 5.1.23 hereof and under which the portion of the commingled funds owned by Borrower is readily ascertainable.

(c) To the extent that Borrower shares the same officers or other employees as any of its Affiliates, the salaries of and the expenses related to providing benefits to such officers and other employees shall be fairly allocated among such entities, and each such entity shall bear its fair share of the salary and benefit costs associated with all such common officers and employees.

(d) To the extent that Borrower jointly contracts with any of its Affiliates to do business with vendors or service providers or to share overhead expenses, the costs incurred in so doing shall be allocated fairly among such entities, and each such entity shall bear its fair share of such costs. To the extent that Borrower contracts or does business with vendors or service providers where the goods and services provided are partially for the benefit of any other Person, the costs incurred in so doing shall be fairly allocated to or among such entities for whose benefit the goods and services are provided, and each such entity shall bear its fair share of such costs. All material transactions between (or among) Borrower and any of its Affiliates shall be conducted on substantially the same terms (or on more favorable terms for Borrower) as would be conducted with third parties.

(e) To the extent that Borrower or any of its Affiliates have offices in the same location, there shall be a fair and appropriate allocation of overhead costs among them, and each such entity shall bear its fair share of such expenses.

(f) Borrower shall conduct its affairs strictly in accordance with its organizational documents, and observe all necessary, appropriate and customary corporate, limited liability company or partnership formalities, as applicable, including, but not limited to, obtaining any and all consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, without limitation, payroll and intercompany transaction accounts.

(g) In addition, Borrower shall: (i) maintain books and records separate from those of any other Person; (ii) maintain its assets in such a manner that it is not more costly or difficult to segregate, identify or ascertain such assets; (iii) hold regular meetings of its board of directors, shareholders, partners or members, as the case may be, and observe all other corporate, partnership or limited liability company, as the case may be, formalities; (iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; (v) prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group, provided, however, that any consolidated financial statements contain a note indicating that it and its Affiliates are separate legal entities and maintain records, books of account, and accounts separate and apart from any other Person and that their respective assets and credit are not available to satisfy each other's debts; (vi) transact all business with its Affiliates on an arm's-length basis and pursuant to enforceable agreements;

(vii) conduct business in its name and use separate stationery, invoices and checks bearing its own name; (viii) not commingle its assets or funds with those of any other Person; and (ix) not assume, guarantee or pay the debts or obligations of any other Person (however the presentation of combined or consolidated financial condition or results of operation for purposes of financial statements prepared for the ultimate equity owners of multiple Single Purpose Entities shall be allowed).

5.1.5 Consents . If Borrower is a corporation, the board of directors of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including the Independent Directors, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents). If Borrower is a limited liability company, (a) if such Person is managed by a board of managers, the board of managers of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of managers unless all of the managers, including the Independent Managers, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents), (b) if such Person is not managed by a board of managers, the members of such Person may not take any action requiring the affirmative vote of 100% of the members of such Person unless all of the members, including the Independent Members, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents). An affirmative vote of 100% of the directors, board of managers or members, as applicable, including without limitation the Independent Directors, of Borrower shall be required to (i) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings or to authorize Borrower to do so or (ii) file an involuntary bankruptcy petition against any Close Affiliate. Furthermore, Borrower's formation documents shall expressly state that for so long as the Loan is outstanding, Borrower shall not be permitted to (i) dissolve, liquidate, consolidate, merge or sell all or substantially all of Borrower's assets other than in connection with the repayment of the Loan or (ii) engage in any other business activity and such restrictions shall not be modified or violated for so long as the Loan is outstanding.

5.1.6 Access to Property . Borrower shall permit agents, representatives and employees of Lender and the Rating Agencies to inspect the Property or any part thereof during normal business hours on Business Days upon reasonable advance notice.

5.1.7 Notice of Default . Borrower shall promptly advise Lender (a) of any event or condition that has or is likely to have a Material Adverse Effect and (b) of the occurrence of any Default or Event of Default of which Borrower has knowledge.

5.1.8 Cooperate in Legal Proceedings . Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which would reasonably be expected to affect in any material adverse way the rights of Lender hereunder or under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings which may have a Material Adverse Effect.

5.1.9 Perform Loan Documents . Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required, under the Loan Documents executed and delivered by, or applicable to, Borrower.

5.1.10 Insurance . (a) Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any expenses incurred in connection therewith (including reasonable attorneys' fees and disbursements) out of such Proceeds.

(b) Borrower shall comply with all Insurance Requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by any Insurance Requirement, or would invalidate insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to Section 6.1 .

5.1.11 Further Assurances; Separate Notes . (a) Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement and the other Loan Documents and any security interest created or purported to be created thereunder, to protect and further the validity, priority and enforceability of this Agreement and the other Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder. At any time after the Closing Date, Borrower agrees that it shall, upon request, reasonably cooperate with Lender in connection with any request by Lender to reallocate the LIBOR Margin among the Notes or to sever the Note into two (2) or more separate substitute or component notes in an aggregate principal amount equal to the Principal Amount and to reapportion the Loan among such separate substitute notes, including, without limitation, by executing and delivering to Lender new substitute or component notes to replace the Note, amendments to or replacements of existing Loan Documents to reflect such severance and/or Opinions of Counsel with respect to such substitute or component notes, amendments and/or replacements, provided that Borrower shall bear no costs or expenses in connection therewith (other than administrative costs and expenses of Borrower and legal fees of counsel to the Borrower and Guarantor), and the holders of such substitute or component notes shall designate a lead lender or agent for such holders to whom Borrower may direct all communications with respect to the Loan. Any such substitute or component notes may have varying principal amounts and economic terms, provided , however , that (i) the maturity date of any such substitute or component notes shall be the same as the scheduled Maturity Date of the Note immediately prior to the issuance of such substitute notes, (ii) the substitute notes shall provide for amortization of the Principal Amount on a weighted average basis over a period not less than the amortization period provided under the Note, if any, immediately prior to the issuance of the substitute notes, (iii) the weighted average LIBOR Margin for the term of the substitute notes shall not exceed the LIBOR Margin under the Note immediately prior to the issuance of such substitute notes; and (iv) the economics of the Loan, taken as a whole, shall not change in a manner which is adverse to Borrower. Upon the occurrence and during the continuance of an Event of Default, Lender may apply payment of all sums due under such substitute notes in such order and priority as Lender shall elect in its sole and absolute discretion.

(b) Borrower further agrees that if, in connection with the Securitization, it is determined by the Rating Agencies that a portion of the Securitization would not receive an "investment grade" rating unless the principal amount of the Loan were to be decreased and, as a result, the principal amount of the Loan is decreased, then the Borrower shall take all actions as are necessary to effect the "resizing", including the reallocation of the LIBOR Margin of the Loan, and Borrower shall execute and deliver any and all necessary amendments or modifications to the Loan Documents. In connection with the foregoing, Borrower agrees, at Lender's sole cost and expense other than with respect to (1) Borrower's, Operating Lessee's, the Guarantor's, each Ultimate Equity Owners' and their Affiliate's counsel fees and (2) if the principal amount of the Loan is increased, an endorsement to the Title Policy reflecting an increase in the insured amount thereunder which shall be at Borrower's sole cost and expense, to execute and deliver such documents and other agreements reasonably required by Lender to "re-size" the Loan, including, without limitation, an amendment to this Agreement, the Note, the Security Instrument and the other Loan Documents. Borrower agrees to reimburse Lender for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Lender in connection with any "resizing" of the Loan. Notwithstanding the foregoing, Lender agrees that any "resizing" of the Loan shall not change the economics of the Loan in a manner which is adverse to Borrower .

(c) In addition, Borrower shall, at Borrower's sole cost and expense:

(i) furnish to Lender, to the extent not otherwise already furnished to Lender and reasonably acceptable to Lender, all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents;

(ii) execute and deliver, from time to time, such further instruments (including, without limitation, delivery of any financing statements under the UCC) as may be reasonably requested by Lender to confirm the Lien of the Security Instrument on any Building Equipment, Operating Asset or any Intangible;

(iii) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require;

(iv) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the carrying out of the terms and conditions of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time; and

(v) cause its New York counsel to re-issue the New York opinion delivered on the date hereof (in identical form and without updating) in favor of a trustee in a Securitization if such trustee is different that the trustee currently listed in such opinion.

5.1.12 Mortgage Taxes . Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender.

5.1.13 Operation . Borrower shall, and shall cause Manager to, (i) promptly perform and/or observe all of the covenants and agreements required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any "event of default" under the Management Agreement of which it is aware; (iii) enforce in a commercially reasonable manner the performance and observance of all of the covenants and agreements required to be performed and/or observed by the Manager under the Management Agreement.

5.1.14 Business and Operations . Borrower shall continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower shall qualify to do business and shall remain in good standing under the laws of the State in which the Property is located and as and to the extent required for the ownership, maintenance, management and operation of the Property.

5.1.15 Title to the Property . Borrower shall warrant and defend (a) its title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Security Instrument, the Assignment of Leases and this Agreement on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.16 Costs of Enforcement . In the event (a) that this Agreement or the Security Instrument is foreclosed upon in whole or in part or that this Agreement or the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any security agreement prior to or subsequent to this Agreement in which proceeding Lender is made a party, or a mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including reasonable attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.17 Estoppel Statement . (a) Borrower shall, from time to time, upon thirty (30) days' prior written request from Lender, execute, acknowledge and deliver to the Lender, an Officer's Certificate, stating that this Agreement and the other Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that this Agreement

and the other Loan Documents are in full force and effect as modified and setting forth such modifications), stating the amount of accrued and unpaid interest and the outstanding principal amount of the Note and containing such other information, qualified to the Best of Borrower's Knowledge, with respect to the Borrower, the Property and the Loan as Lender shall reasonably request. The estoppel certificate shall also state either that no Default exists hereunder or, if any Default shall exist hereunder, specify such Default and the steps being taken to cure such Default.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender, within thirty (30) days of Lender's request, tenant estoppel certificates from each Tenant under any Material Lease entered into after the Closing Date in substantially the form and substance of the estoppel certificate set forth in **Exhibit G** provided that Borrower shall not be required to deliver such certificates more frequently than one time in any calendar year; provided , however , that there shall be no limit on the number of times Borrower may be required to obtain such certificates if a Default hereunder or under any of the Loan Documents has occurred and is continuing.

5.1.18 Loan Proceeds . Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4 .

5.1.19 No Joint Assessment . Borrower shall not suffer, permit or initiate the joint assessment of the Property (a) with any other real property constituting a tax lot separate from the Property and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.1.20 No Further Encumbrances . Borrower shall do, or cause to be done, all things necessary to keep and protect the Property and all portions thereof unencumbered from any Liens, easements or agreements granting rights in or restricting the use or development of the Property, except for (a) Permitted Encumbrances, (b) Liens permitted pursuant to the Loan Documents, (c) Liens for Impositions prior to the imposition of any interest, charges or expenses for the non-payment thereof and (d) any Liens permitted pursuant to Leases.

5.1.21 Leases . Borrower shall promptly after receipt thereof deliver to Lender a copy of any notice received with respect to any Material Lease claiming that Borrower is in default in the performance or observance of any of the material terms, covenants or conditions of any of the Material Leases, if such default is reasonably likely to have a Material Adverse Effect.

5.1.22 Article 8 "Opt In" Language . Each organizational document of Borrower and each of the other entities identified in Section 4.1.29 hereof shall be modified to include the language set forth on **Exhibit R** .

5.1.23 FF&E . (a) Borrower and Operating Lessee (for purposes of this section, collectively referred to as "**Owner**") shall reserve for FF&E on a monthly basis not less than an amount equal to four percent (4%) of adjusted gross revenues with respect to the

Property, such reserves to be maintained either (i) by the Manager, in its capacity as agent for Owner, pursuant to and in accordance with the Management Agreement in the Manager FF&E Reserve Account or (ii) by Guarantor or an Affiliate, as agent for Owner (each of Guarantor or such an Affiliate, in such capacity, " **Owner's Agent**"), in an account at an Approved Bank (as defined in the Account Agreement) (the "**Manager FF&E Alternative Reserve Account** ") pursuant to and in accordance with subparagraph (b) below; and amounts in any such account maintained pursuant to either subparagraph (a)(i) or (a)(ii) above (x) shall be available for disbursements therefrom as permitted by the Management Agreement and shall be reserved solely for FF&E in respect of the Property, (y) shall be separately accounted for and solely used with respect to FF&E in respect of the Property, and (z) shall be otherwise subject to proper accounting and reporting procedures in respect of such funds separately and distinctly in respect of the Property; provided , however , such funds may be withdrawn at Owner's direction from either such account and be replaced by a Letter of Credit in equal amount. The parties acknowledge and agree that Owner will retain title to and ownership of all amounts on deposit in the Manager FF&E Reserve Account or Manager FF&E Alternative Reserve Account Manager nor Owner's Agent will acquire title to, legal or beneficial ownership of, any property interest in such amounts (except, with respect to the Manager, such rights as are provided for in the Management Agreement) (" **Account Funds**"). Owner will make known to third parties that, in performing its services hereunder, Manager or Owner's Agent, as the case may be, is acting solely as, in the case of the Manager, as an independent contractor pursuant to the Management Agreement and in the case of Owner's Agent, as the agent of Owner. Owner's Agent shall immediately correct any misunderstanding of any third party of which either becomes aware as to the separateness of Owner from Manager and Owner's Agent.

(b) If Section 5.1.23(a)(ii) applies, in exercising its obligations with respect to the Manager FF&E Alternative Reserve Account, Owner's Agent shall maintain a complete and accurate set of files, books and records of all transactions conducted by Owner's Agent with respect to the Manager FF&E Alternative Reserve Account. Owner's Agent shall make such files, books and records available to Owner and Lender, as either may reasonably require from time to time. The Manager FF&E Alternative Reserve Account may contain funds belonging to other entities (including those of Owner's Agent), but Owner's Agent shall cause such records to enable, at any and all times, the amount of Owner's funds in the Manager FF&E Alternative Reserve Account to be readily identified. Owner's Agent shall not permit any Affiliate of Owner or Owner's Agent to borrow or use funds in the Manager FF&E Alternative Reserve Account. Owner's Agent shall not use funds in the Manager FF&E Alternative Reserve Account belonging to any other entity to pay Owner's Obligations, nor shall it use any of Owner's Account Funds to pay the obligations of Owner's Agent or any of its Affiliates. Any and all transfers of ownership of any portion of Owner's funds in the Manager FF&E Alternative Reserve Account to or from Owner's Agent or letters of credit issued in substitution thereof shall be a distribution or capital contribution to or from Owner and its direct owner, and from such direct owner to intermediate owners, until such distribution reaches Owner's Agent as the final direct owner, and any such distribution shall be permitted under applicable law.

5.1.24 Deferred Maintenance Conditions . Borrower shall effect and complete the Deferred Maintenance Conditions within the timeframes set forth in Schedule IX attached hereto.

Section 5.2 Negative Covenants . From the Closing Date until payment and performance in full of all Obligations of Borrower under the Loan Documents or the earlier release of the Lien of this Agreement or the Security Instrument in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that it will not do (and will not permit Operating Lessee to do), or permit to be done, directly or indirectly, any of the following (and in such connection, references in this Article V to Borrower shall alternatively mean Operating Lessee, as the context may require):

5.2.1 Incur Debt . Incur, create or assume (or permit Operating Lessee to incur, create or assume) any Indebtedness other than Permitted Debt or Transfer all or any part of the Property or any interest therein, except as permitted in the Loan Documents;

5.2.2 Encumbrances . Except as permitted pursuant to Article VIII , (a) incur, create or assume or permit the incurrence, creation or assumption of any Indebtedness other than Permitted Debt secured by an interest in Borrower or Operating Lessee and (b) Transfer or permit the Transfer of any interest in such Persons;

5.2.3 Engage in Different Business . Engage, or permit Operating Lessee to engage, directly or indirectly, in any business other than that of entering into this Agreement and the other Loan Documents to which Borrower is a party and the use, ownership, management, leasing, renovation, financing, development, operation and maintenance of the Property and activities related thereto;

5.2.4 Make Advances . Make or permit Operating Lessee to make advances or make loans to any Person, or hold any investments, except as expressly permitted pursuant to the terms of this Agreement or any other Loan Document;

5.2.5 Partition . Partition or permit the partition of the Property, except as permitted hereunder;

5.2.6 Commingle . Commingle its assets or permit Operating Lessee to commingle its assets with the assets of any of Borrower's and/or Operating Lessee's Affiliates except as permitted by the definition of "Single Purpose Entity";

5.2.7 Guarantee Obligations . Guarantee or permit Operating Lessee to guarantee any obligations of any Person;

5.2.8 Transfer Assets . Transfer or permit Operating Lessee to transfer any asset other than in the ordinary course of business or Transfer any interest in the Property except as may be permitted hereby or in the other Loan Documents;

5.2.9 Amend Organizational Documents . Amend or modify any of its or Operating Lessee's organizational documents without Lender's consent, other than in connection with any Transfer permitted pursuant to Article VIII or to reflect any change in capital accounts, contributions, distributions, allocations or other provisions that do not and could not reasonably be expected to have a Material Adverse Effect and provided that each such Person remain a Single Purpose Entity;

5.2.10 Dissolve . Dissolve, wind-up, terminate, liquidate, merge with or consolidate into another Person, except following or simultaneously with a repayment of the Loan in full or as expressly permitted pursuant to this Agreement;

5.2.11 Bankruptcy . (i) File (or permit Operating Lessee to file) a bankruptcy or insolvency petition or otherwise institute insolvency proceedings, (ii) dissolve, liquidate, consolidate, merge or sell all or substantially all of Borrower's assets other than in connection with the repayment of the Loan, (iii) engage (or permit Operating Lessee to engage) in any other business activity or (iv) file or solicit the filing (or permit Operating Lessee to file or solicit the filing) of an involuntary bankruptcy petition against Borrower, or Operating Lessee, or any Close Affiliate of any such Person without obtaining the prior consent of all of the directors of Borrower, including, without limitation, the Independent Directors;

5.2.12 ERISA . Engage in any activity that would subject it to regulation under ERISA or qualify it as an "employee benefit plan" (within the meaning of Section 3(3) of ERISA) to which ERISA applies and Borrower's assets do not and will not constitute plan assets within the meaning of 29 C.F.R. Section 2510.3-101;

5.2.13 Distributions . From and after the occurrence and during the continuance of an Event of Default, make (or permit Operating Lessee to make) any distributions to or for the benefit of any of Borrower's, or Operating Lessee's shareholders, partners or members, as the case may be, or its or their Affiliates;

5.2.14 Manager . (a) Borrower represents, warrants and covenants on behalf of itself and Operating Lessee that the Property shall at all times be managed by an Acceptable Manager pursuant to an Acceptable Management Agreement.

(b) Notwithstanding any provision to the contrary contained herein or in the other Loan Documents, except as provided in this Section 5.2.14 or in connection with a release made in accordance with Section 2.3.4 , Borrower may not amend, modify, supplement, alter or waive any right under the Management Agreement (or permit any such action) without the receipt of a Rating Agency Confirmation. Without the receipt of a Rating Agency Confirmation, Borrower shall be permitted to waive any termination right by Borrower or Operating Lessee or make any nonmaterial modification, change, supplement, alteration or amendment to the Management Agreement and to waive any nonmaterial rights thereunder, provided that no such nonmaterial modification, change, supplement, alteration, amendment or waiver shall affect the cash management procedures set forth in the Management Agreement or the Loan Documents, decrease the cash flow of the Property, adversely affect the marketability of the Property, change the definitions of "default" or "event of default," change the definitions of "operating expense" or words of similar meaning to add additional items to such definitions, change any definitions or provisions so as to reduce the payments due the Borrower thereunder, change the timing of remittances to the Borrower thereunder, increase or decrease reserve requirements, change the term of the Management Agreement (other than by waiving termination rights) or increase any Management Fees payable under the Management Agreement.

(c) Borrower may enter into a new Management Agreement with an Acceptable Manager upon receipt of a Rating Agency Confirmation with respect to the

Management Agreement and delivery of an acceptable Non-Consolidation Opinion covering such replacement manager if such Person (i) is not covered by the Non-Consolidation Opinion or an Additional Non-Consolidation Opinion, and (ii) is an Affiliate of Borrower.

(d) Notwithstanding anything contained herein (i) approvals will not be required to enter into management agreements for Retail/Service Facilities that are not expected to have a Material Adverse Effect, and (ii) amendments to the Management Agreement relating to the Retail/Service Facilities will be deemed to be nonmaterial modifications permitted by Section 5.2.14(b) provided they are not expected to have a Material Adverse Effect, and provided , in respect of both subparagraphs (i) and (ii), the income from the relevant retail/service Lease does not exceed one percent (1%) of the Hotel Revenue.

(e) If any amendment, modification, change, supplement, alteration or waiver in connection with the Management Agreement is otherwise permitted by the terms of subparagraph (b) above, the Lender shall be deemed to have consented to such amendment, modification, change, supplement, alteration or waiver for purposes of any requirement under the Manager Subordination Agreements.

5.2.15 Management Fee . Borrower may not, without the prior written consent of Lender (which may be withheld in its sole and absolute discretion) take or permit to be taken any action that would increase the percentage amount of the Management Fee, or add a new type of fee payable to Manager relating to the Property, including, without limitation, the Management Fee.

5.2.16 Operating Lease . Without the prior written consent of Lender surrender or terminate the Operating Lease unless the other party thereto is in material default and the termination of such agreement would be commercially reasonable.

5.2.17 Modify Account Agreement . Without the prior consent of Lender, which shall not be unreasonably withheld, delayed or conditioned (and if a Securitization shall have occurred, a Rating Agency Confirmation obtained by Borrower), Borrower shall not execute any modification to the Account Agreement;

5.2.18 Zoning Reclassification . Except as contemplated by Section 2.3.4 , without the prior written consent of Lender, which consent shall not be unreasonably withheld, (a) initiate or consent to any zoning reclassification of any portion of the Property, (b) seek any variance under any existing zoning ordinance that would result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, or (c) allow any portion of the Property to be used in any manner that could result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation;

5.2.19 Intentionally Deleted .

5.2.20 Debt Cancellation . Cancel or otherwise forgive or release any material claim or debt owed to it by any Person, except for adequate consideration or in the ordinary course of its business and except for termination of a Lease as permitted by Section 8.8 ;

5.2.21 Misapplication of Funds . Distribute any revenue from the Property or any Proceeds in violation of the provisions of this Agreement, fail to remit amounts to the Collection Accounts or Holding Account, as applicable, as required by Section 3.1 , misappropriate any security deposit or portion thereof or apply the proceeds of the Loan in violation of Section 2.1.4 ; or

5.2.22 Single-Purpose Entity . Fail to be (or permit Operating Lessee) to fail to be a Single-Purpose Entity or take or suffer any action or inaction the result of which would be to cause such Person to cease to be a Single-Purpose Entity.

VI. INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

Section 6.1 Insurance Coverage Requirements . Borrower shall, at its sole cost and expense, during the term of this Agreement, comply with the following insurance obligations:

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall keep or cause to be kept the Property insured and obtain and maintain policies of insurance insuring against loss or damage by standard perils included within the classification "All Risks of Physical Loss." Such insurance (i) shall be in an aggregate amount equal to the then full replacement cost of the Property and the Improvements (without deduction for physical depreciation), or such lesser amounts approved by Lender in its sole discretion (or after a Securitization, upon receipt of a Rating Agency Confirmation), and (ii) shall have deductibles no greater than $500,000 (as escalated by the CPI Increase) (or, with respect to windstorm insurance, deductibles no greater than 10% of the full replacement cost of the Property. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" with a waiver of depreciation.

(b) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall also obtain and maintain or cause to be obtained and maintained the following policies of insurance:

(i) Flood insurance if any part of the Property is located in an area identified by the Federal Emergency Management Agency as an area federally designated a "100 year flood plain" (an " **Affected Property**" and collectively the "**Affected Properties** ") and (A) flood insurance is generally available at reasonable premiums and in such amount as generally required by institutional lenders for similar properties or (B) if not so available from a private carrier, from the federal government at commercially reasonable premiums to the extent available. In either case, the flood insurance shall be in an amount at least equal to the aggregate principal amount of the Loan outstanding from time to time or the maximum limit of coverage available with respect to the Property under said program, whichever is less; provided, however, notwithstanding the foregoing, Borrower hereby agrees to maintain at all times flood insurance in an amount equal to at least $50,000,000 in the aggregate and shared with all other properties covered by the blanket policy (if any) for the Affected Properties;

(ii) If the Property is determined to be in an area of high seismic activity with a probable maximum loss greater than or equal to twenty percent (20%), earthquake

insurance in amounts equal to one times (1x) the probable maximum loss of the Property as determined by the Lender, and in form and substance satisfactory to Lender with a deductible not to exceed five percent (5%) of the total insurable value of the Property;

(iii) Commercial general liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages and containing minimum limits per occurrence of $1,000,000 with a $2,000,000 general aggregate for any policy year. In addition, at least $50,000,000 excess and/or umbrella liability insurance shall be obtained and maintained for claims, including legal liability imposed upon Borrower and all related court costs and attorneys' fees and disbursements;

(iv) Rental loss and/or business interruption insurance in an amount sufficient to avoid any co-insurance penalty and equal to the greater of (A) the estimated gross revenues from the operation of the Property (including (x) the total payable under the Leases and all Rents and (y) the total of all other amounts to be received by Borrower or third parties that are the legal obligation of the Tenants), net of non-recurring expenses, for a period of up to the next succeeding eighteen (18) months, or (B) the projected Operating Expenses (including debt service) for the maintenance and operation of the Property for a period of up to the next succeeding eighteen (18) months as the same may be reduced or increased from time to time due to changes in such Operating Expenses and shall include an endorsement providing 12 months extended period of indemnity. The amount of such insurance shall be increased from time to time as and when the Rents increase or the estimates of (or the actual) gross revenue, as may be applicable, increases or decreases to the extent Rents or the estimates of gross revenue decrease;

(v) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in any of the Improvements (without exclusion for explosions) and insurance against loss of occupancy or use arising from any breakdown, in such amounts as are generally available at reasonable premiums and are generally required by institutional lenders for properties comparable to the Property;

(vi) Worker's compensation insurance with respect to all employees of Borrower as and to the extent required by any Governmental Authority or Legal Requirement and employer's liability coverage of at least $2,000,000 which is scheduled to the excess and/or umbrella liability insurance as referenced in clause (ii) above;

(vii) During any period of repair or restoration, completed value (non-reporting) builder's "all risk" insurance in an amount equal to not less than the full insurable value of the Property against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as Lender may request, in form and substance acceptable to Lender;

(viii) Coverage to compensate for the cost of demolition and the increased cost of construction for the Property;

(ix) Intentionally Deleted;

(x) Windstorm insurance in an amount equal to the probable maximum loss (as reasonably determined by Lender) of the Property per occurrence and in the aggregate and shared with other properties covered by the blanket insurance (if any) provided , that any credit enhancement proposed to be provided by or on behalf of Borrower in connection with the deductible on such windstorm insurance shall be subject to the prior receipt of a Rating Agency Confirmation;

(xi) Law and ordinance insurance coverage in an amount no less that set forth in the insurance policies as of the date hereof;

(xii) Provided that insurance coverage relating to the acts of terrorist groups or individuals is either (a) available at commercially reasonable rates and (b) commonly obtained by owners of commercial properties in the same geographic area and which are similar to the Property, Borrower shall be required to carry terrorism insurance throughout the term of the Loan (including any extension terms) in an amount equal to, with respect to "certified" and "non-certified" acts of terrorism, an amount equal to the Terrorism Coverage Required Amount (per occurrence). Lender agrees that terrorism insurance coverage may be provided under a blanket policy that is acceptable to Lender;

(xiii) Such other insurance as may from time to time be reasonably required by Lender in order to protect its interests; and

(xiv) All insurance required under this Section 6.1 may be provided by or on behalf of Borrower in a blanket policy covering the Property and other properties.

(c) All policies of insurance (the "**Policies**") required pursuant to this Section 6.1 shall be issued by companies approved by Lender and licensed or authorized to do business in the state where the Property is located. Further, unless otherwise approved by Lender in its reasonable discretion (prior to a Securitization) and the Rating Agencies in writing, the issuer(s) of the Policies required under this Section 6.1 shall have a claims paying ability rating of "A" or better by Standard & Poor's and "Aa2" or better by Moody's, except that the issuer(s) of the Policies required under Section 6.1(b)(viii) hereof shall have a claims paying ability rating of "A" or better by Standard & Poor's and "A2" or better by Moody's; provided, however, if the insurance provided hereunder is procured by a syndication of more then five (5) insurers then the foregoing requirements shall not be violated if at least (i) sixty percent (60%) of the coverage is with carriers having a claims paying ability rating of "A" or better by Standard & Poor's and "Aa2" or better by Moody's and (ii) each other carrier providing coverage has a claims paying ability rating of "BBB-" or better by Standard & Poor's and Fitch Ratings and "Baa3" or better by Moody's. The Policies (i) shall name Lender (or an agent on Lender's behalf) and its successors and/or assigns as their interest may appear as an additional insured or as a loss payee (except that in the case of general liability insurance, Lender (or an agent on Lender's behalf) shall be named an additional insured and not a loss payee); (ii) shall contain a Non-Contributory Standard Lender Clause and, except with respect to general liability insurance, a Lender's Loss Payable Endorsement, or their equivalents, naming Lender as the Person to which all payments made by such insurance company shall be paid; (iii) shall include effective waivers by the insurer of all claims for insurance premiums against all loss payees, additional insureds and named insureds (other than Borrower) and all rights of subrogation against any loss payee,

additional insured or named insured; (iv) shall be assigned to Lender; (v) except as otherwise provided above, shall be subject to a deductible, if any, not greater in any material respect than the deductible for such coverage on the date hereof; (vi) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest, including endorsements providing that neither Borrower, Lender nor any other party shall be a Contributor-insurer (except deductibles) under said Policies and that no material modification, reduction, cancellation or termination in amount of, or material change (other than an increase) in, coverage of any of the Policies shall be effective until at least thirty (30) days after receipt by each named insured, additional insured and loss payee of written notice thereof or ten (10) days after receipt of such notice with respect to nonpayment of premium; (vii) shall permit Lender to pay the premiums and continue any insurance upon failure of Borrower to pay premiums when due, upon the insolvency of Borrower or through foreclosure or other transfer of title to the Property (it being understood that Borrower's rights to coverage under such policies may not be assignable without the consent of the insurer); and (viii) shall provide that any proceeds shall be payable to Lender and that the insurance shall not be impaired or invalidated by virtue of (A) any act, failure to act, negligence of, or violation of declarations, warranties or conditions contained in such policy by Borrower, Lender or any other named insured, additional insured or loss payee, except for the willful misconduct of Lender knowingly in violation of the conditions of such policy, (B) the occupation, use, operation or maintenance of the Property for purposes more hazardous than permitted by the terms of the Policy, (C) any foreclosure or other proceeding or notice of sale relating to the Property, or (D) any change in the possession of the Property without a change in the identity of the holder of actual title to the Property (provided that with respect to items (C) and (D), any notice requirements of the applicable Policies are satisfied). Notwithstanding the foregoing, for purposes of this Section 6.1 hereof, Lender hereby approves the existing blanket insurance policies and any renewals thereof with the same insurance ratings and terms.

(d) **Insurance Premiums; Certificates of Insurance .**

(i) Borrower shall pay the premiums for such Policies (the "**Insurance Premiums**") as the same become due and payable and shall furnish to Lender the receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided , however , that Borrower is not required to furnish such evidence of payment to Lender if such Insurance Premiums are to be paid by Lender pursuant to the terms of this Agreement). Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested in writing by Lender or as may be requested in writing by the Rating Agencies, (except with respect to the Terrorism Insurance), taking into consideration changes in liability laws, changes in prudent customs and practices, and the like. In the event Borrower satisfy the requirements under this Section 6.1 through the use of a Policy covering properties in addition to the Property (a "**Blanket Policy**"), then (unless such policy is provided in substantially the same manner as it is as of the date hereof), Borrower shall provide evidence satisfactory to Lender that the Insurance Premiums for the Property is separately allocated under such Policy to the Property and that payment of such allocated amount (A) shall maintain the effectiveness of such Policy as to the Property and (B) shall otherwise provide the same protection as would a separate policy that complies with the terms of this Agreement as to the Property, notwithstanding the failure of payment of any other portion of the insurance premiums. If no such allocation is available, Lender shall have the right to increase the amount required to

be deposited into the Insurance Reserve Account in an amount sufficient to purchase a non-blanket Policy covering the Property from insurance companies which qualify under this Agreement.

(ii) Borrower shall deliver to Lender on or prior to the Closing Date certificates setting forth in reasonable detail the material terms (including any applicable notice requirements) of all Policies from the respective insurance companies (or their authorized agents) that issued the Policies, including that such Policies may not be canceled or modified in any material respect without thirty (30) days' prior notice to Lender, or ten (10) days' notice with respect to nonpayment of premium. Borrower shall deliver to Lender, concurrently with each change in any Policy, a certificate with respect to such changed Policy certified by the insurance company issuing that Policy, in substantially the same form and containing substantially the same information as the certificates required to be delivered by Borrower pursuant to the first sentence of this clause (d)(ii) and stating that all premiums then due thereon have been paid to the applicable insurers and that the same are in full force and effect (or if such certificate and/or other information described in clause (d)(ii) shall not be obtainable by Borrower, Borrower may deliver an Officer's Certificate to such effect in lieu thereof).

(e) **Renewal and Replacement of Policies .**

(i) Not less than three (3) Business Days prior to the expiration, termination or cancellation of any Policy, Borrower shall renew such policy or obtain a replacement policy or policies (or a binding commitment for such replacement policy or policies), which shall be effective no later than the date of the expiration, termination or cancellation of the previous policy, and shall deliver to Lender a certificate in respect of such policy or policies (A) containing the same information as the certificates required to be delivered by Borrower pursuant to clause (d)(ii) above, or a copy of the binding commitment for such policy or policies and (B) confirming that such policy complies with all requirements hereof.

(ii) If Borrower does not furnish to Lender the certificates as required under clause (e)(i) above, Lender may procure, but shall not be obligated to procure, such replacement policy or policies and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender for the cost of such Insurance Premiums promptly on demand.

(iii) Concurrently with the delivery of each replacement policy or a binding commitment for the same pursuant to this clause (e) , Borrower shall deliver to Lender a report or attestation from a duly licensed or authorized insurance broker or from the insurer, setting forth the particulars as to all insurance obtained by Borrower pursuant to this Section 6.1 and then in effect and stating that all Insurance Premiums then due thereon have been paid in full to the applicable insurers, that such insurance policies are in full force and effect and that, in the opinion of such insurance broker or insurer, such insurance otherwise complies with the requirements of this Section 6.1 (or if such report shall not be available after Borrower shall have used reasonable efforts to provide the same, Borrower will deliver to Lender an Officer's Certificate containing the information to be provided in such report).

(f) **Separate Insurance .** Borrower will not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to this Section 6.1 unless such insurance complies with clause (c) above.

(g) **Securitization .** Following any Securitization, Borrower shall name any trustee, servicer or special servicer designated by Lender as a loss payee, and any trustee, servicer and special servicer as additional insureds, with respect to any Policy for which Lender is to be so named hereunder.

Section 6.2 Condemnation and Insurance Proceeds .

6.2.1 Right to Adjust . (a) If the Property is damaged or destroyed, in whole or in part in any material respect, by a Casualty, Borrower shall give prompt written notice thereof to Lender, generally describing the nature and extent of such Casualty. Following the occurrence of a Casualty, Borrower, regardless of whether proceeds are available, shall in a reasonably prompt manner proceed to restore, repair, replace or rebuild the Property to the extent practicable to be of at least equal value and of substantially the same character as prior to the Casualty, all in accordance with the terms hereof applicable to Alterations.

(b) Subject to clause (e) below, in the event of a Casualty which is not a Material Casualty, Borrower may settle and adjust such claim; provided that such adjustment is carried out in a competent and timely manner. In such case, Borrower is hereby authorized to collect and receipt for Lender any Proceeds.

(c) Subject to clause (e) below, in the event of a Casualty where the loss exceeds the Threshold Amount, Borrower may settle and adjust such claim only with the consent of Lender (which consent shall not be unreasonably withheld, delayed or conditioned) and Lender shall have the opportunity to participate, at Borrower's cost, in any such adjustments.

(d) Except as provided in clause (b) above, the proceeds of any Policy shall be due and payable solely to Lender and held and applied in accordance with the terms hereof (or, if mistakenly paid to the Borrower, shall be held in trust by the Borrower for the benefit of Lender and shall be paid over to Lender by the Borrower within two (2) Business Days of receipt).

(e) Notwithstanding the terms of clauses (a) and (b) above, Lender shall have the sole authority to adjust any claim with respect to a Casualty and to collect all Proceeds if an Event of Default shall have occurred and is continuing.

6.2.2 Right of the Borrower to Apply to Restoration . In the event of (a) a Casualty that does not constitute a Material Casualty, or (b) a Condemnation that does not constitute a Material Condemnation, Lender shall permit the application of the Proceeds (after reimbursement of any expenses incurred by Lender) to reimburse or pay Borrower for the cost of restoring, repairing, replacing or rebuilding or otherwise curing title defects at the Property (the " **Restoration**"), in the manner required hereby, provided and on the condition that (1) no Event of Default shall have occurred and be then continuing and (2) in the reasonable judgment of Lender:

(i) the Property can be restored to an economic unit not materially less valuable (taking into account the effect of the termination of any Leases and the proceeds of any rental loss or business interruption insurance which the Borrower receives or is entitled to receive, in each case, due to such Casualty or Condemnation) and not materially less useful than the same was prior to the Casualty or Condemnation,

(ii) the Property, after such Restoration and stabilization, will adequately secure the outstanding balance of the Loan,

(iii) the Restoration can be completed by the earliest to occur of:

(A) the date on which the business interruption insurance carried by Borrower with respect to the Property shall expire;

(B) the 180th day prior to the Maturity Date (taking into account any extension thereof), and

(C) with respect to a Casualty, the expiration of the payment period on the rental loss or business interruption insurance coverage in respect of such Casualty; and

(iv) after receiving reasonably satisfactory evidence to such effect, during the period of the Restoration, the sum of (A) income derived from the Property, plus (B) proceeds of rental loss insurance or business interruption insurance, if any, payable together with such other monies as Borrower may irrevocably make available for the Restoration, will equal or exceed the sum of (x) 105% of Operating Expenses and (y) the Debt Service.

Notwithstanding the foregoing, if any of the conditions set forth in sub-clauses (1) and (2) of the proviso in this Section 6.2.2 is not satisfied, then, unless Lender shall otherwise elect, at its sole option, the Proceeds shall be applied in the following order of priority: (A) first, to prepay the principal of the Loan; (B) second, to pay the amount of (1) all accrued and unpaid interest in respect of the Principal Amount of the Indebtedness so prepaid through the date which is the final day of the Interest Period in which such prepayment is made (including, if an Event of Default has occurred and is then continuing, interest owed at the Default Rate), and (2) all other sums (excluding any Prepayment Fee) then due and owing under the Loan Documents and (C) third, to reimburse Lender for any fees and expenses of Lender incurred in connection therewith (it being agreed that, upon satisfaction in full of the entitlements under clauses (A), (B) and (C) of this sentence, Borrower shall be entitled to receive a release of the Lien of the Security Instrument and the other Loan Documents with respect to the Property in accordance with and subject to the terms of Section 2.3.3 hereof and any surplus Proceeds shall be paid over to the Borrower or as the Borrower directs. Notwithstanding the foregoing, or anything else to the contrary contained herein, all Proceeds with respect to the insurance determined pursuant to Section 6.1.4 shall be deposited directly into the Collection Account and shall be disbursed in accordance with Article III as if such Proceeds are applied in the manner amounts received from the Manager are applied

6.2.3 Material Casualty or Condemnation and Lender's Right to Apply Proceeds . In the event of a Material Casualty or a Material Condemnation, then Lender

shall have the option to (i) apply the Proceeds hereof in the following order of priority: (A) first, to prepay the principal of the Loan; (B) second, to pay the amount of (1) all accrued and unpaid interest in respect of the Principal Amount of the Indebtedness so prepaid through the date which is the final day of the Interest Period in which such prepayment is made (including, if an Event of Default has occurred and is then continuing, interest owed at the Default Rate), and (2) all other sums (excluding any Prepayment Fee) then due and owing under the Loan Documents; (C) third, to reimburse Lender for any fees and expenses of Lender incurred in connection therewith; and (D) fourth, it being agreed that, upon satisfaction in full of the entitlements under clauses (A), (B) and (C) of this sentence, Borrower shall be entitled to receive the balance of the Proceeds, if any and a release of the Lien of the Security Instrument and the other Loan Documents with respect to the Property in accordance with and subject to the terms of Section 2.3.3 hereof), or (ii) make such Proceeds available to reimburse Borrower for the cost of any Restoration in the manner set forth below in Section 6.2.4 hereof provided , however , that if the Management Agreement provides that the Operating Lessee or Borrower is required to use the Proceeds to restore the Property and Operating Lessee or Borrower does not have the right to terminate the Management Agreement pursuant to the terms of the Management Agreement as a result of such Casualty or Condemnation or otherwise, then the Lender shall be obligated to make such Proceeds available to the Borrower for the Restoration of such Property pursuant to Section 6.2.4 below. Notwithstanding anything to the contrary contained herein, in the event of a Material Casualty or a Material Condemnation, where Borrower cannot restore, repair, replace or rebuild the Property to be of at least substantially equal value and of substantially the same character as prior to the Material Casualty or Material Condemnation or title defect because the Property is a legally non-conforming use or as a result of any other Legal Requirement, Borrower hereby agrees that Lender may apply the Proceeds payable in connection therewith in accordance with clauses (A), (B) (C) and (D).

6.2.4 Manner of Restoration and Reimbursement . If Borrower is entitled pursuant to Sections 6.2.2 or 6.2.3 above to reimbursement out of Proceeds (and the conditions specified therein shall have been satisfied), such Proceeds shall be disbursed on a monthly basis upon Lender being furnished with (i) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Lender may reasonably require and approve, and (ii) all plans and specifications for such Restoration, such plans and specifications to be approved by Lender prior to commencement of any work (such approval not to be unreasonably withheld, delayed or conditioned). In addition, no payment made prior to the Final Completion of the Restoration (excluding punch-list items) shall exceed ninety percent (90%) of the aggregate value of the work performed from time to time; funds other than Proceeds shall be disbursed prior to disbursement of such Proceeds; and at all times, the undisbursed balance of such Proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the Restoration, free and clear of all Liens or claims for Lien. Prior to any disbursement, Lender shall have received evidence reasonably satisfactory to it of the estimated cost of completion of the Restoration (such estimate to be made by Borrower's architect or contractor and approved by Lender in its reasonable discretion), and Borrower shall have deposited with Lender Eligible Collateral in an amount equal to the excess (if any) of such estimated cost of completion over the net Proceeds. Any surplus which may remain out of

Proceeds received pursuant to a Casualty after payment of such costs of Restoration shall be paid to the Borrower or as the Borrower directs . Any surplus which may remain out of Proceeds received pursuant to a Condemnation shall be paid to the Borrower or as the Borrower directs.

6.2.5 Condemnation . (a) Borrower shall promptly give Lender written notice of the actual commencement or written threat of commencement of any Condemnation and shall deliver to Lender copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Borrower, regardless of whether Proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with the terms hereof applicable to Alterations.

(b) Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any Proceeds in respect of a Condemnation and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Section. Provided no Event of Default has occurred and is continuing, (x) in the event of a Condemnation which is not a Material Condemnation, Borrower may settle and compromise such Proceeds; provided that the same is effected in a competent and timely manner, and (y) in the event of a Condemnation, where the loss exceeds the Threshold Amount, Borrower may settle and compromise the Proceeds only with the consent of Lender (which consent shall not be unreasonably withheld, delayed or conditioned) and Lender shall have the opportunity to participate, at Borrower' cost, in any litigation and settlement discussions in respect thereof. Notwithstanding any Condemnation by any public or quasi-public authority (including any transfer made in lieu of or in anticipation of such a Condemnation), Borrower shall continue to pay the Indebtedness at the time and in the manner provided for in the Note, this Agreement and the other Loan Documents, and the Indebtedness shall not be reduced unless and until any Proceeds shall have been actually received and applied by Lender to discharge the Indebtedness, pay required interest and pay any other required amounts, in each case, pursuant to the terms of Sections 6.2.2 or 6.2.3 above. Lender shall not be limited to the interest paid on the Proceeds by the condemning authority but shall be entitled to receive out of the Proceeds interest at the rate or rates provided in the Note. Borrower shall cause any Proceeds that are payable to Borrower to be paid directly to Lender to be held and applied in accordance with the terms hereof.

VII. IMPOSITIONS, OTHER CHARGES, LIENS AND OTHER ITEMS

Section 7.1 Impositions and Other Charges . Subject to the third sentence of this Section 7.1 , Borrower shall pay, or shall cause Operating Lessee to pay all Impositions now or hereafter levied or assessed or imposed against the Property or any part thereof prior to the imposition of any interest, charges or expenses for the non-payment thereof and shall pay all Other Charges on or before the date they are due. Subject to Borrower's right of contest set forth in Section 7.3 , as set forth in the next two sentences and provided that there are sufficient funds available in the Tax Reserve Account, Lender, on behalf of Borrower, shall pay all Impositions and Other Charges which are attributable to or affect the Property or Borrower, prior to the date such Impositions or Other Charges shall become delinquent or late charges may be imposed thereon, directly to the applicable taxing authority with respect thereto. Lender shall, or Lender

shall direct the Cash Management Bank to, pay to the taxing authority such amounts to the extent funds in the Tax Reserve Account are sufficient to pay such Impositions. Nothing contained in this Agreement or the Security Instrument shall be construed to require Borrower to pay any tax, assessment, levy or charge imposed on Lender in the nature of a franchise, capital levy, estate, inheritance, succession, income or net revenue tax.

Section 7.2 No Liens . Subject to its right of contest set forth in Section 7.3 , Borrower shall at all times keep, or cause to be kept, the Property free from all Liens (other than Permitted Encumbrances) and shall pay when due and payable (or bond over) all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a Lien on the Property or any portion thereof and shall in any event cause the prompt, full and unconditional discharge of all Liens imposed on or against the Property or any portion thereof within forty-five (45) days after receiving written notice of the filing (whether from Lender, the lienor or any other Person) thereof. Borrower shall do or cause to be done, at the sole cost of Borrower, everything reasonably necessary to fully preserve the first priority of the Lien of the Security Instrument against the Property, subject to the Permitted Encumbrances. Upon the occurrence and during the continuance of an Event of Default with respect to its Obligations as set forth in this Article VII , Lender may (but shall not be obligated to) make such payment or discharge such Lien, and Borrower shall reimburse Lender within three (3) Business Days following demand for all such advances pursuant to Section 19.12 (together with interest thereon at the Default Rate).

Section 7.3 Contest . Nothing contained herein shall be deemed to require Borrower to pay, or cause to be paid, any Imposition or to satisfy any Lien, or to comply with any Legal Requirement or Insurance Requirement, so long as Borrower is in good faith, and by proper legal proceedings, where appropriate, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) Borrower shall keep Lender informed of the status of such contest at reasonable intervals, (iii) if neither Borrower nor Operating Lessee is providing security as provided in clause (vi) below, adequate reserves with respect thereto are maintained on Borrower's books in accordance with GAAP or in the Tax Reserve Account or Insurance Reserve Account, as applicable, (iv) either such contest operates to suspend collection or enforcement as the case may be, of the contested Imposition, Lien or Legal Requirement and such contest is maintained and prosecuted continuously and with diligence or the Imposition or Lien is bonded, (v) in the case of any Insurance Requirement, the failure of Borrower to comply therewith shall not impair the validity of any insurance required to be maintained by Borrower under Section 6.1 or the right to full payment of any claims thereunder, and (vi) in the case of Impositions and Liens which are not bonded in excess of $1,000,000 individually, or in the aggregate, during such contest, Borrower, shall deposit with or deliver to Lender either Cash and Cash Equivalents or a Letter or Letters of Credit in an amount equal to 125% of (A) the amount of Borrower's obligations being contested plus (B) any additional interest, charge, or penalty arising from such contest. Notwithstanding the foregoing, the creation of any such reserves or the furnishing of any bond or other security, Borrower promptly shall comply with any contested Legal Requirement or Insurance Requirement or shall pay any contested Imposition or Lien, and compliance therewith or payment thereof shall not be deferred, if, at any time the Property or any portion thereof shall be, in Lender's reasonable judgment, in imminent danger of being forfeited

or lost or Lender is likely to be subject to civil or criminal damages as a result thereof. If such action or proceeding is terminated or discontinued adversely to Borrower, Borrower shall deliver to Lender reasonable evidence of Borrower's compliance with such contested Imposition, Lien, Legal Requirements or Insurance Requirements, as the case may be.

VIII. TRANSFERS, INDEBTEDNESS AND SUBORDINATE LIENS

Section 8.1 Restrictions on Transfers and Indebtedness . (a) Except in connection with such action as is permitted by the subsequent provisions of this Article VIII , Borrower will not, without Lender's prior written consent and a Rating Agency Confirmation with respect to the transfer or other matter in question, (A), Transfer legal, Beneficial or direct or indirect equitable interests in all or any part of the Property, the Borrower or Operating Lessee, (B) permit or suffer any owner, directly or indirectly, of a legal, Beneficial or equitable interest in the Property, the Borrower or Operating Lessee to Transfer such interest, whether by transfer of stock or other legal, Beneficial or equitable interest in any entity or otherwise, (C) mortgage, hypothecate or otherwise encumber or grant a security interest in all or any part of the legal, Beneficial or equitable interests in all or any part of the Property, the Borrower or the Operating Lessee, or (D) file of record a declaration of condominium with respect to the Property. Notwithstanding any provision herein to the contrary, nothing contained herein shall be deemed to restrict or otherwise interfere with (i) the ability of the holders of direct or indirect legal, Beneficial or equitable interests in the Ultimate Equity Owner to Transfer such interests, whether in connection with an initial public offering of shares in Ultimate Equity Owner or otherwise or (ii) the ability of the holders of direct or indirect legal, Beneficial or equitable interests in the Borrower or Operating Lessee to pledge such interests to secure the Revolver Loan or the enforcement or foreclosure thereof pursuant to such pledge, provided, with respect to this subparagraph (ii) only, with respect to any pledge, (x) the Property will be directly owned by a Single Purpose Entity in compliance with the representations, warranties and covenants in Section 4.1.29 hereof, (y) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement and (z) such pledgee shall be one or more of the initial Lenders (as such term is defined in the Credit Agreement) or wholly owned (directly or indirectly) by such initial Lender(s).

(b) Borrower shall not incur, create or assume any Indebtedness without the consent of Lender; provided , however , Borrower may, without the consent of Lender, incur, create or assume Permitted Debt (other than the Revolver Loan) or allow or suffer such Permitted Debt to be incurred, created or assumed.

(c) Notwithstanding the foregoing, nothing herein shall prevent Borrower or any direct or indirect owner of any legal or Beneficial or equitable interest therein, to enter into a purchase and sale agreement or other similar arrangements to Transfer any interest in connection with any sale of the Property or other interest so long as a condition precedent to such Transfer is the payment, in full, of the Indebtedness.

Section 8.2 Sale of Building Equipment . Borrower may Transfer or dispose of Building Equipment which is being replaced or which is no longer necessary in connection with the operation of the Property free from the Lien of the Security Instrument provided that

such Transfer or disposal will not have a Material Adverse Effect on the value of the Property taken as a whole, will not materially impair the utility of the Property, and will not result in a reduction or abatement of, or right of offset against, the Rents payable under any Lease, in either case as a result thereof, and provided , further , that any new Building Equipment acquired by Borrower or Operating Lessee(and not so disposed of) shall be subject to the Lien of the Security Instrument. Lender shall, from time to time, upon receipt of an Officer's Certificate requesting the same and confirming satisfaction of the conditions set forth above, execute a written instrument in form reasonably satisfactory to Lender to confirm that such Building Equipment which is to be, or has been, sold or disposed of is free from the Lien of the Security Instrument.

Section 8.3 Immaterial Transfers and Easements, etc . Borrower and Operating Lessee may, without the consent of Lender, (i) make immaterial Transfers of portions of the Property to Governmental Authorities for dedication or public use (subject to the provisions of Section 6.2) or, portions of the Property to third parties for the purpose of erecting and operating additional structures whose use is integrated with the use of the Property, and (ii) grant easements, restrictions, covenants, reservations and rights of way in the ordinary course of business for access, water and sewer lines, telephone and telegraph lines, electric lines or other utilities or for other similar purposes, provided that no such Transfer, conveyance or encumbrance set forth in the foregoing clauses (i) and (ii) shall materially impair the utility and operation of the Property or have a Material Adverse Effect on the value of the Property taken as a whole. In connection with any Transfer permitted pursuant to this Section 8.3 , Lender shall execute and deliver any instrument reasonably necessary or appropriate, in the case of the Transfers referred to in clause (i) above, to release the portion of the Property affected by such Condemnation or such Transfer from the Lien of the Security Instrument or, in the case of clause (ii) above, to subordinate the Lien of the Security Instrument to such easements, restrictions, covenants, reservations and rights of way or other similar grants upon receipt by Lender of:

(a) thirty (30) days prior written notice thereof;

(b) a copy of the instrument or instruments of Transfer;

(c) an Officer's Certificate stating (x) with respect to any Transfer, the consideration, if any, being paid for the Transfer and (y) that such Transfer does not materially impair the utility and operation of the Property, materially reduce the value of the Property or have a Material Adverse Effect; and

(d) reimbursement of all of Lender's reasonable costs and expenses incurred in connection with such Transfer.

Section 8.4 Transfers of Interests in Borrower . In addition to any transfer permitted by any other provision of this Article VIII , each holder of any direct or indirect interest in the Borrower shall have the right to transfer (but not pledge, hypothecate or encumber) its equity interest in the Borrower to any Person who is not a Disqualified Transferee without Lender's consent or a Rating Agency Confirmation if Section 8.6 is complied with and, after giving effect to such transfer:

(a) (i) the Property will be directly owned by a Single Purpose Entity in compliance with the representations, warranties and covenants in Section 4.1.29 hereof (as if the Borrower shall have remade all of such representations, warranties and covenants as of, and after giving effect to, the transfer), and which shall have executed and delivered to Lender an assumption agreement in form and substance acceptable to Lender, evidencing the continuing agreement of the Borrower to abide and be bound by all the terms, covenants and conditions set forth in this Agreement, the Note, the Security Instrument and the other Loan Documents and all other outstanding obligations under the Loan, together with such legal opinions and title insurance endorsements as may be reasonably requested by Lender;

(b) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement;

(c) the Ultimate Equity Owner or a Close Affiliate of such entity owns directly or indirectly at least fifty-one percent (51%) of the equity interests in the Borrower and the Person that is the proposed transferee is not a Disqualified Transferee; provided that, after giving effect to any such transfer, in no event shall any Person other than Ultimate Equity Owner or a Close Affiliate of Ultimate Equity Owner exercise Management Control over the Borrower. In the event that Management Control shall be exercisable jointly by Ultimate Equity Owner or a Close Affiliate of Ultimate Equity Owner with any other Person or Persons, then the Ultimate Equity Owner or such Close Affiliate shall be deemed to have Management Control only if Ultimate Equity Owner or such Close Affiliate retains the ultimate right as between Ultimate Equity Owner or such Close Affiliate and the transferee to unilaterally make all material decisions with respect to the operation, management, financing and disposition of the Property;

(d) if there has been a Transfer of forty-nine percent (49%) or more of the direct membership interests, stock or other direct equity ownership interests in Borrower, Borrower shall have first delivered to Lender (and, after a Securitization, the Rating Agencies) an Officer's Certificate and legal opinion of the types described in Section 8.6 below; and

(e) Borrower shall cause the transferee, if Lender so requests and if such transferee is required to be a Single Purpose Entity pursuant to this Agreement, to deliver to S&P and to any other Rating Agency Lender requests its organizational documents solely for the purpose of Standard & Poor's and such other Rating Agency Lender requests confirming that such organizational documents comply with the single purpose bankruptcy remote entity requirements set forth herein.

Section 8.5 Loan Assumption . Without limiting the foregoing, Borrower and Operating Lessee shall have the right to sell, assign, convey or transfer (but not mortgage, hypothecate or otherwise encumber or grant a security interest in) legal or equitable title to all (but not less than all) of the Property only if:

(a) after giving effect to the proposed transaction:

the Property will be owned by a Single Purpose Entity wholly owned (directly or indirectly) by a Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or such other entity (specifically approved in writing by both Lender

and each Rating Agency) which will be in compliance with the representations, warranties and covenants contained in Section 4.1.29 hereof (as if such transferee shall have remade all of such representations, warranties and covenants as of, and after giving effect to, the proposed transaction); such Single Purpose Entity shall have executed and delivered to Lender an assumption agreement and such other agreements as Lender may reasonably request (collectively, the "**Assumption Agreement**") in form and substance acceptable to Lender, evidencing the proposed transferee's agreement to abide and be bound by all the terms, covenants and conditions set forth in this Agreement, the Note, the Security Instrument and the other Loan Documents and all other outstanding obligations under the Loan; the Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or such other approved entity shall assume the obligations of Guarantor under the Loan Documents (and such Single Purpose Entity and the applicable Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or other approved entity shall thereafter be subject to the provisions of this Article VIII), and the transferee shall cause to be delivered to Lender, such legal opinions and title insurance endorsements as may be reasonably requested by Lender;

(i) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement; and

(ii) no Event of Default shall have occurred and be continuing;

(b) the Assumption Agreement shall state the applicable transferee's agreement to abide by and be bound by the terms in the Note (or such other promissory notes to be executed by the transferee, such other promissory note or notes to be on the same terms as the Note), the Security Instrument, this Agreement (or such other loan agreement to be executed by such transferee, which shall contain terms substantially identical to the terms hereof) and such other Loan Documents (or other loan documents to be delivered by such transferee, which shall contain terms substantially identical to the terms of the applicable Loan Documents) whenever arising, and Borrower, and/or such transferee shall deliver such legal opinions and title insurance endorsements as may reasonably be requested by Lender;

(c) following execution of a contract for the sale of the Property and not less than thirty (30) days prior to the expected date of such proposed sale, Borrower shall submit notice of such sale to Lender. Borrower shall submit to Lender, not less than ten (10) days prior to the expected date of such sale, the Assumption Agreement for execution by Lender. Such documents shall be in a form appropriate for the jurisdiction in which the Property is located and shall be reasonably satisfactory to Lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such assumption, together with an Officer's Certificate certifying that (i) the assumption to be effected will be effected in compliance with the terms of this Agreement and (ii) will not impair or otherwise adversely affect the validity or priority of the Lien of the Security Instrument;

(d) prior to any such transaction, the proposed transferee shall deliver to Lender an Officer's Certificate stating that (x) such transferee is not an "employee benefit plan" within the meaning of Section 3(3) of ERISA that is subject Title I of ERISA or any other

Similar Law and (y) the underlying assets of the proposed transferee do not constitute assets of any such employee benefit plan for purposes of ERISA or any Similar Law;

(e) if the transfer is to (i) an entity other than a Single Purpose Entity wholly owned directly or indirectly by one or more Pre-approved Transferees, Permitted Borrower Transferees or Permitted Borrower Transferee Alternatives, a Rating Agency Confirmation shall have been received in respect of such proposed transfer (or, if the proposed transfer shall occur prior to a Securitization, such transfer shall be subject to Lender's consent in its sole discretion) and (ii) a Permitted Borrower Transferee Alternative, such transfer shall be subject to Lender's prior written consent in its reasonable discretion;

(f) the terms of Section 8.6 shall be complied with and Borrower shall cause the transferee to deliver to S&P and to any other Rating Agency Lender requests its organizational documents solely for the purpose of S&P and any other Rating Agency Lender requests confirming that such organizational documents comply with the single purpose bankruptcy remote entity requirements set forth herein; and

(g) Lender shall have received the payment of, or reimbursement for, all reasonable costs and expenses incurred by Lender and the Rating Agencies (and any servicer in connection with a Securitization) in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements).

Section 8.6 Notice Required; Legal Opinions . Not less than five (5) Business Days prior to the closing of any transaction permitted under the provisions of Sections 8.2 through 8.5 , Borrower shall deliver or cause to be delivered to Lender (A) an Officer's Certificate describing the proposed transaction and stating that such transaction is permitted hereunder and under the other Loan Documents, together with any documents upon which such Officer's Certificate is based, and (B) a legal opinion of counsel to Borrower or the transferee selected by either of them (to the extent approved by Lender and the Rating Agencies), in form and substance consistent with similar opinions then being required by the Rating Agencies and acceptable to the Rating Agencies, confirming, among other things, that the assets of the Borrower, and of its managing general partner or managing member, as applicable, will not be substantively consolidated with the assets of such owners or Controlling Persons of the Borrower as Lender or the Rating Agencies may specify, in the event of a bankruptcy or similar proceeding involving such owners or Controlling Persons.

Section 8.7 Leases .

8.7.1 New Leases and Lease Modifications . Except as otherwise provided in this Section 8.7 , Borrower shall not and shall not permit Operating Lessee to (i) enter into any Lease on terms other than "market" and rental rates (in Borrower's or Operating Lessee's good faith judgment), or (ii) enter into any Material Lease (a "**New Lease**"), or (iii) consent to the assignment of any Material Lease (unless required to do so by the terms of such Material Lease) that releases the original Tenant from its obligations under the Material Lease, or (iv) modify any Material Lease (including, without limitation, accept a surrender of any portion of the Property subject to a Material Lease (unless otherwise permitted or required by law), allow a reduction in the term of any Material Lease or a reduction in the Rent payable

under any Material Lease, change any renewal provisions of any Material Lease, materially increase the obligations of the landlord or materially decrease the obligations of any Tenant) or terminate any Material Lease (any such action referred to in clauses (iii) and (iv) being referred to herein as a "**Lease Modification**") without the prior written consent of Lender which consent shall not be unreasonably withheld, delayed or conditioned. Any New Lease or Lease Modification that requires Lender's consent shall be delivered to Lender for approval not less than ten (10) Business Days prior to the effective date of such New Lease or Lease Modification.

8.7.2 Leasing Conditions . Subject to terms of this Section 8.7 , provided no Event of Default shall have occurred and be continuing, Borrower may enter into a New Lease or Lease Modification, without Lender's prior written consent, that satisfies each of the following conditions (as evidenced by an Officer's Certificate delivered to Lender prior to Borrower's entry into such New Lease or Lease Modification):

(a) with respect to a New Lease or Lease Modification, the premises demised thereunder is not more than 10,000 net rentable square feet of the Property;

(b) the term of such New Lease or Lease Modification, as applicable, does not exceed 120 months, plus up to two (2) 60-month option terms (or equivalent combination of renewals);

(c) the New Lease or Lease Modification provides for "market" rental rates other terms and does not contain any terms which would adversely affect Lender's rights under the Loan Documents or that would have a Material Adverse Effect;

(d) the New Lease or Lease Modification, as applicable, provides that the premises demised thereby cannot be used for any of the following uses: any pornographic or obscene purposes, any commercial sex establishment, any pornographic, obscene, nude or semi-nude performances, modeling, materials, activities or sexual conduct or any other use that has or could reasonably be expected to have a Material Adverse Effect;

(e) the Tenant under such New Lease or Lease Modification, as applicable, is not an Affiliate of Borrower;

(f) the New Lease or Lease Modification, as applicable, does not prevent Proceeds from being held and disbursed by Lender in accordance with the terms hereof and does not entitle any Tenant to receive and retain Proceeds except those that may be specifically awarded to it in condemnation proceedings because of the Condemnation of its trade fixtures and its leasehold improvements which have not become part of the Property and such business loss as Tenant may specifically and separately establish; and

(g) the New Lease or Lease Modification, as applicable satisfies the requirements of Section 8.7.7 and Section 8.7.8 .

8.7.3 Delivery of New Lease or Lease Modification . Upon the execution of any New Lease or Lease Modification, as applicable, Borrower shall deliver to Lender an executed copy of the Lease.

8.7.4 Lease Amendments . Borrower agrees that it shall not have the right or power, as against Lender without its consent, to cancel, abridge, amend or otherwise modify any Lease unless such modification complies with this Section 8.7 .

8.7.5 Security Deposits . All security or other deposits of Tenants of the Property shall be treated as trust funds and shall, if required by law or the applicable Lease not be commingled with any other funds of Borrower, and such deposits shall be deposited, upon receipt of the same by Borrower in a separate trust account maintained by Borrower expressly for such purpose. Within ten (10) Business Days after written request by Lender, Borrower shall furnish to Lender reasonably satisfactory evidence of compliance with this Section 8.7.5 , together with a statement of all lease securities deposited with Borrower by the Tenants and the location and account number of the account in which such security deposits are held.

8.7.6 No Default Under Leases . Borrower shall (i) promptly perform and observe all of the material terms, covenants and conditions required to be performed and observed by Borrower under the Leases, if the failure to perform or observe the same would have a Material Adverse Effect; (ii) exercise, within ten (10) Business Days after a written request by Lender, any right to request from the Tenant under any Lease a certificate with respect to the status thereof and (iii) not collect any of the Rents, more than one (1) month in advance (except that Borrower may collect such security deposits and last month's Rents as are permitted by Legal Requirements and are commercially reasonable in the prevailing market and collect other charges in accordance with the terms of each Lease).

8.7.7 Subordination . All Lease Modifications and New Leases entered into by Borrower after the date hereof shall by their express terms be subject and subordinate to this Agreement and the Security Instrument (through a subordination provision contained in such Lease or otherwise) and shall provide that, if Lender agrees to a non-disturbance provision pursuant to Section 8.7.9 , the Person holding any rights thereunder shall attorn to Lender or any other Person succeeding to the interests of Lender upon the exercise of its remedies hereunder or any transfer in lieu thereof on the terms set forth in this Section 8.7 .

8.7.8 Attornment . Each Lease Modification and New Lease entered into from and after the date hereof shall provide that in the event of the enforcement by Lender of any remedy under this Agreement or the Security Instrument, if Lender agrees to a non-disturbance provision pursuant to Section 8.7.9 , the Tenant under such Lease shall, at the option of Lender or of any other Person succeeding to the interest of Lender as a result of such enforcement, attorn to Lender or to such Person and shall recognize Lender or such successor in the interest as lessor under such Lease without change in the provisions thereof; provided , however , Lender or such successor in interest shall not be liable for or bound by (i) any payment of an installment of rent or additional rent made more than thirty (30) days before the due date of such installment, (ii) any act or omission of or default by Borrower under any such Lease (but the Lender, or such successor, shall be subject to the continuing obligations of the landlord to the extent arising from and after such succession to the extent of Lender's, or such successor's, interest in the Property), (iii) any credits, claims, setoffs or defenses which any Tenant may have against Borrower, (iv) any obligation on Borrower's part, pursuant to such Lease, to perform any tenant improvement work or (v) any obligation on Borrower's part, pursuant to such Lease, to pay any sum of money to any Tenant. Each such New Lease shall also provide that, upon the

reasonable request by Lender or such successor in interest, the Tenant shall execute and deliver an instrument or instruments confirming such attornment.

8.7.9 Non-Disturbance Agreements . Lender shall enter into, and, if required by applicable law to provide constructive notice or requested by a Tenant, record in the county where the subject Property is located, a subordination, attornment and non-disturbance agreement, substantially in form and substance substantially similar to the form attached hereto as **Exhibit K** (a "**Non-Disturbance Agreement**"), with any Tenant (other than an Affiliate of Borrower) entering into a New Lease permitted hereunder or otherwise consented to by Lender within ten (10) Business Days after written request therefor by Borrower, provided that, such request is accompanied by an Officer's Certificate stating that such Lease complies in all material respects with this Section 8.7 . All reasonable third party costs and expenses incurred by Lender in connection with the negotiation, preparation, execution and delivery of any Non-Disturbance Agreement, including, without limitation, reasonable attorneys' fees and disbursements, shall be paid by Borrower (in advance, if requested by Lender).

8.7.10 Approvals for Retail/service Facilities . Notwithstanding anything contained herein (i) approvals will not be required for any gift shop Lease or other miscellaneous space in lobby or similar locations, and (ii) provided the other requirements of Section 8.7.2 on New Leases and Lease Modifications are otherwise satisfied, the restriction therein on New Leases or Lease Modifications with Affiliates will not apply to New Leases or Lease Modifications relating to portions of the Property used for retail or service facilities ("**Retail/Service Facilities**"),provided however , in respect of both subparagraphs (i) and (ii), the income from the relevant retail/service Lease does not exceed one percent (1%) of the Hotel Revenue.

IX. INTEREST RATE CAP AGREEMENT

Section 9.1 Interest Rate Cap Agreement . Borrower shall maintain the Interest Rate Cap Agreement with an Acceptable Counterparty in effect and having a term extending through the last day of the accrual period in which the applicable Maturity Date occurs, and an initial notional amount equal to the Loan Amount. The Interest Rate Cap Agreement shall have a strike rate equal to the LIBOR Cap Strike Rate. The notional amount of the Interest Rate Cap Agreement may be reduced from time to time in amounts equal to any prepayment of the principal of the Loan made in accordance with the Loan Documents, provided that the strike rate shall be equal to the LIBOR Cap Strike Rate.

Section 9.2 Pledge and Collateral Assignment . Borrower hereby pledges, assigns, transfers, delivers and grants a continuing first priority lien to Lender, as security for payment of all sums due in respect of the Loan and the performance of all other terms, conditions and covenants of this Agreement and any other Loan Document on Borrower's part to be paid and performed, in, to and under all of Borrower's right, title and interest whether now owned or hereafter acquired and whether now existing or hereafter arising (collectively, the "**Rate Cap Collateral**"): (i) in the Interest Rate Cap Agreement (as soon as such agreement is effective or when and if any replacement agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement); (ii) to receive any and all payments under the Interest Rate Cap Agreement (or, when and if any such agreement becomes effective,

any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), whether as contractual obligations, damages or otherwise; and (iii) to all claims, rights, powers, privileges, authority, options, security interests, liens and remedies, if any, under or arising out of the Interest Rate Cap Agreement (as soon as such agreement is effective or when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), in each case including all accessions and additions to, substitutions for and replacements, products and proceeds of any of the foregoing. Borrower shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be made directly to Lender) and notify the Counterparty of such assignment (either in such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement or by separate instrument). Borrower shall not, without obtaining the prior written consent of Lender, further pledge, transfer, deliver, assign or grant any security interest in the Interest Rate Cap Agreement (or, when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), or permit any Lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements or any other notice or instrument as may be required under the UCC, as appropriate, except those naming Lender as the secured party, to be filed with respect thereto.

Section 9.3 Covenants . (a) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be deposited immediately into the Holding Account pursuant to Section 3.1 . Borrower shall take all actions reasonably requested by Lender to enforce Borrower's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty thereunder and shall not waive, amend or otherwise modify any of its rights thereunder.

(b) Borrower shall defend Lender's right, title and interest in and to the Rate Cap Collateral pledged by Borrower pursuant hereto or in which it has granted a security interest pursuant hereto against the claims and demands of all other Persons.

In the event of (x) any downgrade, withdrawal or qualification (each, a**"Downgrade "**) of the rating of the Counterparty such that, thereafter, the Counterparty shall cease to be an Acceptable Counterparty and (y) the Counterparty shall fail to comply with the requirements contained in the Interest Rate Cap Agreement which are described in**"Exhibit I"** upon such occurrence, the Borrower shall either (i) obtain a Rating Agency Confirmation with respect to the Counterparty or (ii) replace the Interest Rate Cap Agreement with a Replacement Interest Cap Agreement, (x) having a term extending through the end of the Interest Period in which the Maturity Date occurs, (y) in a notional amount at least equal to the Principal Amount of the Loan then outstanding, and (z) having a strike rate equal to the LIBOR Cap Strike Rate.

(c) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement as and when required hereunder, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing the Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is paid by Borrower to Lender.

(d) Borrower shall not (i) without the prior written consent of Lender, modify, amend or supplement the terms of the Interest Rate Cap Agreement, (ii) without the prior written consent of Lender, except in accordance with the terms of the Interest Rate Cap Agreement, cause the termination of the Interest Rate Cap Agreement prior to its stated maturity date, (iii) without the prior written consent of Lender, except as aforesaid, waive or release any obligation of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) under the Interest Rate Cap Agreement, (iv) without the prior written consent of Lender, consent or agree to any act or omission to act on the part of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) which, without such consent or agreement, would constitute a default under the Interest Rate Cap Agreement, (v) fail to exercise promptly and diligently each and every material right which it may have under the Interest Rate Cap Agreement, (vi) take or intentionally omit to take any action or intentionally suffer or permit any action to be omitted or taken, the taking or omission of which would result in any right of offset against sums payable under the Interest Rate Cap Agreement or any defense by the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) to payment or (vii) fail to give prompt notice to Lender of any notice of default given by or to Borrower under or with respect to the Interest Rate Cap Agreement, together with a complete copy of such notice. If Borrower shall have received written notice that the Securitization shall have occurred, no consent by Lender provided for in this Section 9.3(e) shall be given by Lender unless Lender shall have received a Rating Agency Confirmation.

In connection with an Interest Rate Cap Agreement, Borrower shall obtain and deliver to Lender an Opinion of Counsel from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty upon which Lender and its successors and assigns may rely (the "**Counterparty Opinion**"), under New York law and, if the Counterparty is a non-U.S. entity, the applicable foreign law, substantially in compliance with the requirements set forth in **Exhibit F** or in such other form approved by the Lender.

Section 9.4 Representations and Warranties . Borrower hereby covenants with, and represents and warrants to, Lender as follows:

(a) The Interest Rate Cap Agreement constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(b) The Rate Cap Collateral is free and clear of all claims or security interests of every nature whatsoever, except such as are created pursuant to this Agreement and the other Loan Documents, and Borrower has the right to pledge and grant a security interest in the same as herein provided without the consent of any other Person other than any such consent that has been obtained and is in full force and effect.

(c) The Rate Cap Collateral has been duly and validly pledged hereunder. All consents and approvals required to be obtained by Borrower for the consummation of the transactions contemplated by this Agreement have been obtained.

(d) Giving effect to the aforesaid grant and assignment to Lender, Lender has, as of the date of this Agreement, and as to Rate Cap Collateral acquired from time to time after such date, shall have, a valid, and upon proper filing, perfected and continuing first priority lien upon and security interest in the Rate Cap Collateral; provided that no representation or warranty is made with respect to the perfected status of the security interest of Lender in the proceeds of Rate Cap Collateral consisting of "cash proceeds" or "non-cash proceeds" as defined in the UCC except if, and to the extent, the provisions of Section 9-306 of the UCC shall be complied with.

(e) Except for financing statements filed or to be filed in favor of Lender as secured party, there are no financing statements under the UCC covering any or all of the Rate Cap Collateral and Borrower shall not, without the prior written consent of Lender, until payment in full of all of the Obligations, execute and file in any public office, any enforceable financing statement or statements covering any or all of the Rate Cap Collateral, except financing statements filed or to be filed in favor of Lender as secured party.

Section 9.5 Payments . If Borrower at any time shall be entitled to receive any payments with respect to the Interest Rate Cap Agreement, such amounts shall, immediately upon becoming payable to Borrower, be deposited by Counterparty into the Holding Account.

Section 9.6 Remedies . Subject to the provisions of the Interest Rate Cap Agreement, if an Event of Default shall occur and then be continuing:

(a) Lender, without obligation to resort to any other security, right or remedy granted under any other agreement or instrument, shall have the right to, in addition to all rights, powers and remedies of a secured party pursuant to the UCC, at any time and from time to time, sell, resell, assign and deliver, in its sole discretion, any or all of the Rate Cap Collateral (in one or more parcels and at the same or different times) and all right, title and interest, claim and demand therein and right of redemption thereof, at public or private sale, for cash, upon credit or for future delivery, and in connection therewith Lender may grant options and may impose reasonable conditions such as requiring any purchaser to represent that any "securities" constituting any part of the Rate Cap Collateral are being purchased for investment only, Borrower hereby waiving and releasing any and all equity or right of redemption to the fullest extent permitted by the UCC or applicable law. If all or any of the Rate Cap Collateral is sold by Lender upon credit or for future delivery, Lender shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, Lender may resell such Rate Cap Collateral. It is expressly agreed that Lender may exercise its rights with respect to less than all of the Rate Cap Collateral, leaving unexercised its rights with respect to the remainder of the Rate Cap Collateral, provided , however , that such partial exercise shall in no way restrict or jeopardize Lender's right to exercise its rights with respect to all or any other portion of the Rate Cap Collateral at a later time or times.

(b) Lender may exercise, either by itself or by its nominee or designee, in the name of Borrower, all of Lender's rights, powers and remedies in respect of the Rate Cap Collateral, hereunder and under law.

(c) Borrower hereby irrevocably, in the name of Borrower or otherwise, authorizes and empowers Lender and assigns and transfers unto Lender, and constitutes and

appoints Lender its true and lawful attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Borrower and in the name of Borrower, upon the occurrence and during the continuance of an Event of Default, (i) to exercise and enforce every right, power, remedy, authority, option and privilege of Borrower under the Interest Rate Cap Agreement, including any power to subordinate or modify the Interest Rate Cap Agreement (but not, unless an Event of Default exists and is continuing, the right to terminate or cancel the Interest Rate Cap Agreement), or to give any notices, or to take any action resulting in such subordination, termination, cancellation or modification and (ii) in order to more fully vest in Lender the rights and remedies provided for herein, to exercise all of the rights, remedies and powers granted to Lender in this Agreement, and Borrower further authorizes and empowers Lender, as Borrower's attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Borrower and in the name of Borrower, upon the occurrence and during the continuance of an Event of Default, to give any authorization, to furnish any information, to make any demands, to execute any instruments and to take any and all other action on behalf of and in the name of Borrower which in the opinion of Lender may be necessary or appropriate to be given, furnished, made, exercised or taken under the Interest Rate Cap Agreement, in order to comply therewith, to perform the conditions thereof or to prevent or remedy any default by Borrower thereunder or to enforce any of the rights of Borrower thereunder. These powers-of-attorney are irrevocable and coupled with an interest, and any similar or dissimilar powers heretofore given by Borrower in respect of the Rate Cap Collateral to any other Person are hereby revoked.

(d) Upon the occurrence and during the continuance of an Event of Default, Lender may, without notice to, or assent by, Borrower or any other Person (to the extent permitted by law), but without affecting any of the Obligations, in the name of Borrower or in the name of Lender, notify the Counterparty, or if applicable, any other counterparty to the Interest Rate Cap Agreement, to make payment and performance directly to Lender; extend the time of payment and performance of, compromise or settle for cash, credit or otherwise, and upon any terms and conditions, any obligations owing to Borrower, or claims of Borrower, under the Interest Rate Cap Agreement; file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by Lender necessary or advisable for the purpose of collecting upon or enforcing the Interest Rate Cap Agreement; and execute any instrument and do all other things deemed necessary and proper by Lender to protect and preserve and realize upon the Rate Cap Collateral and the other rights contemplated hereby.

(e) Pursuant to the powers-of-attorney provided for above, Lender may take any action and exercise and execute any instrument which it may deem necessary or advisable to accomplish the purposes hereof; provided , however , that Lender shall not be permitted to take any action pursuant to said power-of-attorney that would conflict with any limitation on Lender's rights with respect to the Rate Cap Collateral. Without limiting the generality of the foregoing, Lender, after the occurrence of an Event of Default, shall have the right and power to receive, endorse and collect all checks and other orders for the payment of money made payable to Borrower representing: (i) any payment of obligations owed pursuant to the Interest Rate Cap Agreement, (ii) interest accruing on any of the Rate Cap Collateral or (iii) any other payment or distribution payable in respect of the Rate Cap Collateral or any part thereof, and for and in the name, place and stead of Borrower, to execute endorsements, assignments or other instruments of conveyance or transfer in respect of any property which is or may become a part of the Rate Cap Collateral hereunder.

(f) Lender may exercise all of the rights and remedies of a secured party under the UCC.

(g) Without limiting any other provision of this Agreement or any of Borrower's rights hereunder, and without waiving or releasing Borrower from any obligation or default hereunder, Lender shall have the right, but not the obligation, to perform any act or take any appropriate action, as it, in its reasonable judgment, may deem necessary to protect the security of this Agreement, to cure such Event of Default or to cause any term, covenant, condition or obligation required under this Agreement or the Interest Rate Cap Agreement to be performed or observed by Borrower to be promptly performed or observed on behalf of Borrower. All amounts advanced by, or on behalf of, Lender in exercising its rights under this Section 9.7(g) (including, but not limited to, reasonable legal expenses and disbursements incurred in connection therewith), together with interest thereon at the Default Rate from the date of each such advance, shall be payable by Borrower to Lender upon demand and shall be secured by this Agreement.

Section 9.7 Sales of Rate Cap Collateral . No demand, advertisement or notice, all of which are, to the fullest extent permitted by law, hereby expressly waived by Borrower, shall be required in connection with any sale or other disposition of all or any part of the Rate Cap Collateral, except that Lender shall give Borrower at least thirty (30) Business Days' prior written notice of the time and place of any public sale or of the time when and the place where any private sale or other disposition is to be made, which notice Borrower hereby agrees is reasonable, all other demands, advertisements and notices being hereby waived. To the extent permitted by law, Lender shall not be obligated to make any sale of the Rate Cap Collateral if it shall determine not to do so, regardless of the fact that notice of sale may have been given, and Lender may without notice or publication adjourn any public or private sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Upon each private sale of the Rate Cap Collateral of a type customarily sold in a recognized market and upon each public sale, unless prohibited by any applicable statute which cannot be waived, Lender (or its nominee or designee) may purchase any or all of the Rate Cap Collateral being sold, free and discharged from any trusts, claims, equity or right of redemption of Borrower, all of which are hereby waived and released to the extent permitted by law, and may make payment therefor by credit against any of the Obligations in lieu of cash or any other obligations. In the case of all sales of the Rate Cap Collateral, public or private, Borrower shall pay all reasonable costs and expenses of every kind for sale or delivery, including brokers' and attorneys' fees and disbursements and any tax imposed thereon. However, the proceeds of sale of Rate Cap Collateral shall be available to cover such costs and expenses, and, after deducting such costs and expenses from the proceeds of sale, Lender shall apply any residue to the payment of the Obligations in the order of priority as set forth in Section 11 of the Security Instrument.

Section 9.8 Public Sales Not Possible . Borrower acknowledges that the terms of the Interest Rate Cap Agreement may prohibit public sales, that the Rate Cap Collateral may not be of the type appropriately sold at public sales, and that such sales may be prohibited by law. In light of these considerations, Borrower agrees that private sales of the Rate Cap Collateral shall not be deemed to have been made in a commercially unreasonably manner by mere virtue of having been made privately.

Section 9.9 Receipt of Sale Proceeds . Upon any sale of the Rate Cap Collateral by Lender hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt by Lender or the officer making the sale or the proceeds of such sale shall be a sufficient discharge to the purchaser or purchasers of the Rate Cap Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Lender or such officer or be answerable in any way for the misapplication or non-application thereof.

Section 9.10 Extension Interest Rate Cap Agreement . If Borrower exercises any of its options to extend the Maturity Date pursuant to Section 5 of the Note, then, on or prior to the Maturity Date being extended, the Borrower shall obtain or have in place an Extension Interest Rate Cap Agreement (i) having a term through the end of the Interest Period in which the extended Maturity Date occurs, (ii) in a notional amount at least equal to the Principal Amount of the Loan as of the Maturity Date being extended, and (iii) having a strike rate equal to an amount such that the maximum interest rate paid by the Borrower after giving effect to payments made under such Extension Interest Rate Cap Agreement shall equal no more than the LIBOR Cap Strike Rate.

Section 9.11 Filing of Financing Statements Authorized . Borrower and Operating Lessee hereby authorize the filing of a form UCC-1 financing statement naming the Borrower and the Operating Lessee as debtors and the Lender as secured party in any office (including the office of the Secretary of State of the State of Delaware) covering all property of the Borrower and the Operating Lessee (including, but not limited to, the Account Collateral and the Rate Cap Collateral, but excluding Excess Cash Flow).

X. MAINTENANCE OF PROPERTY; ALTERATIONS

Section 10.1 Maintenance of Property . Borrower shall keep and maintain, or cause to be kept and maintained, the Property and every part thereof in good condition and repair, subject to ordinary wear and tear, and, subject to Excusable Delays and the provisions of this Agreement with respect to damage or destruction caused by a Casualty or Condemnation, shall not permit or commit any waste, impairment, or deterioration of any portion of the Property in any material respect. Borrower further covenants to do all other acts which from the character or use of the Property may be reasonably necessary to protect the security hereof, the specific enumerations herein not excluding the general. Borrower shall not demolish any Improvement on the Property except as the same may be necessary in connection with an Alteration or a restoration in connection with a Condemnation or Casualty, or as otherwise permitted herein, in each case in accordance with the terms and conditions hereof.

Section 10.2 Alterations and Expansions . Borrower shall not perform or undertake or consent to the performance or undertaking of any Alteration or Expansion, except in accordance with the following terms and conditions:

(a) The Alteration or Expansion shall be undertaken in accordance with the applicable provisions of this Agreement, the other Loan Documents, the Leases and all Legal Requirements.

(b) No Event of Default shall have occurred and be continuing or shall occur as a result of such action.

(c) A Material Alteration or Material Expansion, to the extent architects are customarily used for alterations or expansions of those types, but including any structural change to any of the Property or the Improvements, shall be conducted under the supervision of an Independent Architect and shall not be undertaken until ten (10) Business Days after there shall have been filed with Lender, for information purposes only and not for approval by Lender, detailed plans and specifications and cost estimates therefor, prepared and approved in writing by such Independent Architect. Such plans and specifications may be revised at any time and from time to time, provided that revisions of such plans and specifications shall be filed with Lender, for information purposes only.

(d) The Alteration or Expansion may not in and of itself, either during the Alteration or Expansion or upon completion, be reasonably expected to have a Material Adverse Effect with respect to the Property.

(e) All work done in connection with any Alteration or Expansion shall be performed with due diligence to Final Completion in a good and workmanlike manner, all materials used in connection with any Alteration or Expansion shall be not less than the standard of quality of the materials generally used at the Property as of the date hereof (or, if greater, the then-current customary quality in the sub-market in which the Property is located) and all work shall be performed and all materials used in accordance with all applicable Legal Requirements and Insurance Requirements.

(f) The cost of any Alteration or Expansion shall be promptly and fully paid for by Borrower, subject to the next succeeding sentence. No payment made prior to the Final Completion (excluding punch-list items) of an Alteration or Expansion or Restoration to any contractor, subcontractor, materialman, supplier, engineer, architect, project manager or other Person who renders services or furnishes materials in connection with such Alteration shall exceed ninety percent (90%) of the aggregate value of the work performed by such Person from time to time and materials furnished and incorporated into the Improvements.

(g) All work performed in connection with the cure of the Deferred Maintenance Conditions shall be performed in accordance with the terms and conditions set forth in clauses (a), (c), (e) and (f) of this Section 10.2 .

(h) With respect to any Material Alteration or Material Expansion:

(i) Borrower shall have delivered to Lender Eligible Collateral in an amount equal to at least the total estimated remaining unpaid costs of such Material Alteration or Material Expansion which is in excess of the Threshold Amount, which Eligible Collateral shall be held by Lender as security for the Indebtedness and released to Borrower as such work progresses in accordance with Section 10.2(h)(iii) ; provided , however , in the event that any Material Alteration or Material Expansion shall be made in conjunction with any Restoration with respect to which Borrower shall be entitled to use or apply Proceeds pursuant to Section 6.2 hereof (including any Proceeds remaining after completion of such Restoration), the amount of

the Eligible Collateral to be furnished pursuant hereto need not exceed the aggregate cost of such Restoration and such Material Alteration or Material Expansion (in either case, as estimated by the Independent Architect) less the sum of the amount of any Proceeds which the Borrower is entitled to withdraw pursuant to Section 6.2 hereof and the Threshold Amount;

(ii) Prior to commencement of construction of such Material Alteration or Material Expansion, Borrower shall deliver to Lender a schedule (with the concurrence of the Independent Architect) setting forth the projected stages of completion of such Alteration or Expansion and the corresponding amounts expected to be due and payable by or on behalf of Borrower in connection with such completion, such schedule to be updated quarterly by Borrower (and with the concurrence of the Independent Architect) during the performance of such Alteration or Expansion.

(iii) Any Eligible Collateral that a Borrower delivers to Lender pursuant hereto (and the proceeds of any such Eligible Collateral) shall be invested (to the extent such Eligible Collateral can be invested) by Lender in Permitted Investments for a period of time consistent with the date on which the Borrower notifies Lender that the Borrower expects to request a release of such Eligible Collateral in accordance with the next succeeding sentence. From time to time as the Alteration or Expansion progresses, the amount of any Eligible Collateral so furnished may, upon the written request of Borrower to Lender, be withdrawn by Borrower and paid or otherwise applied by or returned to Borrower in an amount equal to the amount Borrower would be entitled to so withdraw if Section 6.2.4 were applicable, and any Eligible Collateral so furnished which is a Letter of Credit may be reduced by Borrower in an amount equal to the amount Borrower would be entitled to so reduce if Section 6.2.4 hereof were applicable, subject, in each case, to the satisfaction of the conditions precedent to withdrawal of funds or reduction of the Letter of Credit set forth in Section 6.2.4 hereof. In connection with the above-described quarterly update of the projected stages of completion of the Material Alteration or Material Expansion (as concurred with by an Independent Architect), Borrower shall increase (or be permitted to decrease, as applicable) the Eligible Collateral then deposited with Lender as necessary to comply with Section 10.2(h)(i) hereof.

(iv) At any time after Final Completion of such Material Alterations or Material Expansions, the whole balance of any Cash deposited with Lender pursuant to Section 10.2(h) hereof then remaining on deposit may be withdrawn by Borrower and shall be paid by Lender to Borrower, and any Eligible Collateral so deposited shall, to the extent it has not been called upon, reduced or theretofore released, be released by Lender to Borrower, within ten (10) days after receipt by Lender of an application for such withdrawal and/or release together with an Officer's Certificate, and as to the following clauses (A) and (B) of this clause also a certificate of the Independent Architect, setting forth in substance as follows:

(A) that such Material Alteration(s) or Material Expansion(s) has been completed in all material respects in accordance with any plans and specifications therefor previously filed with Lender under Section 10.2(c) hereof;

(B) that to the knowledge of the certifying Person, (x) such Material Alteration(s) or Material Expansion(s) has been completed in compliance with all Legal Requirements, and (y) to the extent required for the legal use or occupancy of the portion of the

Property affected by such Alteration(s) or Expansion(s), the applicable Borrower has obtained a temporary or permanent certificate of occupancy (or similar certificate) or, if no such certificate is required, a statement to that effect;

(C) that to the knowledge of the certifying Person, all amounts that a Borrower is or may become liable to pay in respect of such Material Alteration(s) or Material Expansion(s) through the date of the certification have been paid in full or adequately provided for and, to the extent that such are customary and reasonably obtainable by prudent property owners in the area where the applicable Property is located, that Lien waivers have been obtained from the general contractor and subcontractors performing such Alteration(s) or Expansion(s) or at its sole cost and expense, Borrower shall cause a nationally recognized title insurance company to deliver to Lender an endorsement to the Title Policy, updating such policy and insuring over such Liens without further exceptions to such policy other than Permitted Encumbrances, or shall, at its sole cost and expense, cause a reputable title insurance company to deliver a lender's title insurance policy, in such form, in such amounts and with such endorsements as the Title Policy, which policy shall be dated the date of completion of the Material Alteration and shall contain no exceptions other than Permitted Encumbrances; provided , however , that if, for any reason, Borrower is unable to deliver the certification required by this clause (C) with respect to any costs or expenses relating to the Alteration (s) or Expansion(s), then, assuming Borrower is able to satisfy each of the other requirements set forth in clauses (A) and (B) above, Borrower shall be entitled to the release of the difference between the whole balance of such Eligible Collateral and the total of all costs and expenses to which Borrower is unable to certify; and

(D) that to the knowledge of the certifying Person, no Event of Default has occurred and is continuing.

XI. BOOKS AND RECORDS, FINANCIAL STATEMENTS, REPORTS AND OTHER INFORMATION

Section 11.1 Books and Records . Borrower shall keep and maintain on a fiscal year basis proper books and records separate from any other Person, in which accurate and complete entries shall be made of all dealings or transactions of or in relation to the Note, the Property and the business and affairs of Borrower and Operating Lessee relating to the Property which shall reflect all items of income and expense in connection with the operation on an individual basis of the Property and in connection with any services, equipment or furnishings provided in connection with the operation of the Property, in accordance with GAAP. Lender and its authorized representatives shall have the right at reasonable times and upon reasonable notice to examine the books and records of Borrower and Operating Lessee relating to the operation of the Property and to make such copies or extracts thereof as Lender may reasonably require. Notwithstanding any other provision of this Agreement or any other Loan Document, so long as the Borrower and Operating Lessee otherwise comply with the foregoing provisions of this Section 11.1 , any requirement for the presentation of audited financial statements or similar reports of the Borrower, the Property or the Operating Lessee shall be deemed satisfied if such audit financial statement or similar reports are contained in an audited financial statement or similar report which includes a separate combining schedule setting forth in reasonable detail the separate financial information which relates solely to the Borrower, the Operating Lessee and the Property.

Section 11.2 Financial Statements .

11.2.1 Monthly Reports . At the request of Lender, Borrower shall furnish to Lender, within thirty (30) days after the end of each calendar month, unaudited operating statements, aged accounts receivable reports, rent rolls, STAR Reports and PACE Reports; occupancy and ADR reports for the Property, in each case accompanied by an Officer's Certificate certifying (i) with respect to the operating statements, that to the Best of Borrower's Knowledge and the best of such officer's knowledge such statements are true, correct, accurate and complete and fairly present the results of the operations of Borrower and the Property, and (ii) with respect to the aged accounts receivable reports, rent rolls, occupancy and ADR reports, that such items are to the Best of Borrower's Knowledge and the best of such officer's knowledge true, correct and accurate and fairly present the results of the operations of Borrower and the Property. Borrower will also provide Lender copies of all flash reports within its possession as to monthly revenues of the Property upon request.

11.2.2 Quarterly Reports . Borrower will furnish, or cause to be furnished, to Lender on or before the forty-fifth (45 th) day after the end of each Fiscal Quarter, the following items, accompanied by an Officer's Certificate, certifying that to the Best of Borrower's Knowledge and the best of such officer's knowledge such items are true, correct, accurate and complete and fairly present the financial condition and results of the operations of Borrower and the Property in a manner consistent with GAAP (subject to normal periodic adjustments) to the extent applicable:

(a) quarterly and year to date financial statements prepared for such fiscal quarter with respect to the Borrower, including a balance sheet and operating statement for such quarter for the Borrower for such quarter;

(b) occupancy levels at the Property for such period, including average daily room rates and the average revenue per available room;

(c) concurrently with the provision of such reports, Borrower shall also furnish a report of Operating Income and Operating Expenses (as well as a calculation of Net Operating Income based thereon) with respect to the Borrower and the Property for the most recently completed quarter;

(d) a STAR Report and to the extent provided by Manager a PACE Report for the most recently completed quarter;

(e) a calculation of DSCR for the trailing four (4) Fiscal Quarters; and

(f) to the extent provided by Manager a report of aged accounts receivable relating to the Property as of the most recently completed quarter and a list of Security Deposits and the aggregate amount of all Security Deposits.

11.2.3 Annual Reports . Borrower shall furnish to Lender within ninety (90) days following the end of each Fiscal Year a complete copy of the annual financial statements of the Borrower, audited by a "Big Four" accounting firm or another independent certified public accounting firm acceptable to Lender in accordance with GAAP for such Fiscal Year and containing a balance sheet, a statement of operations and a statement of cash flows. The annual financial statements of the Borrower shall be accompanied by (i) an Officer's Certificate certifying that each such annual financial statement presents fairly, in all material respects, the financial condition and results of operation of the Property and has been prepared in accordance with GAAP and (ii) a management report, in form and substance reasonably satisfactory to Lender, discussing the reconciliation between the financial statements for such Fiscal Year and the most recent Budget. Together with the Borrower's annual financial statements, the Borrower shall furnish to Lender (A) an Officer's Certificate certifying as of the date thereof whether, to Borrower's knowledge, there exists a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same; and (B) an annual report, for the most recently completed fiscal year, containing:

(1) Capital Expenditures (including for this purpose any and all additions to, and replacements of, FF&E,) made in respect of the Property, including separate line items with respect to any project costing in excess of $500,000;

(2) occupancy levels for the Property for such period; and

(3) average daily room rates at the Property for such period.

11.2.4 Leasing Reports . Not later than forty-five (45) days after the end of each fiscal quarter of Borrower's operations, Borrower shall deliver to Lender a true and complete rent roll for the Property, dated as of the last month of such fiscal quarter, showing the percentage of gross leasable area of the Property, if any, leased as of the last day of the preceding calendar quarter, the current annual rent for the Property, the expiration date of each Lease, whether to Borrower's knowledge any portion of the Property has been sublet, and if it has, the name of the subtenant, and such rent roll shall be accompanied by an Officer's Certificate certifying that such rent roll is true, correct and complete in all material respects as of its date and stating whether Borrower, within the past three (3) months, has issued a notice of default with respect to any Lease which has not been cured and the nature of such default.

11.2.5 Management Agreement . Borrower shall deliver to Lender, within ten (10) Business Days of the receipt thereof by Borrower, a copy of all reports prepared by Manager pursuant to the Management Agreement, including, without limitation, the Budget and any inspection reports.

11.2.6 Budget . Not later than March 1 st of each Fiscal Year hereafter, Borrower shall prepare or cause to be prepared and deliver to Lender, for informational purposes only, a Budget in respect of the Property for the Fiscal Year in which such delivery date falls. If Borrower subsequently amends the Budget, Borrower shall promptly deliver the amended Budget to Lender.

11.2.7 Other Information . Borrower shall, promptly after written request by Lender or, if a Securitization shall have occurred, the Rating Agencies, furnish or cause to be furnished to Lender, in such manner and in such detail as may be reasonably requested by Lender, such reasonable additional information as may be reasonably requested with respect to the Property. The information required to be furnished by Borrower to Lender under this Section 11.2 shall be provided in both hard copy format and electronic format; provided that Borrower shall only be required to provide the information required under this Section 11.2.7 in electronic format if such information is so available in the ordinary course of the operations of the Borrower and Manager and without significant expense.

XII. ENVIRONMENTAL MATTERS

Section 12.1 Representations . Borrower hereby represents and warrants that except as set forth in the environmental reports and studies delivered to Lender (the **"Environmental Reports"**), (i) Borrower has not engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (ii) to the Best of Borrower's Knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (iii) to the Best of Borrower's Knowledge, no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (iv) to the Best of Borrower's Knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Borrower; and (v) to the Best of Borrower's Knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Borrower.

Section 12.2 Covenants . Compliance with Environmental Laws .

Subject to Borrower's right to contest under Section 7.3 , Borrower covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument, a Governmental Authority having jurisdiction over the Property requires remedial action to correct the presence of Hazardous Materials in, around, or under the Property (an**"Environmental Event** "), Borrower shall deliver prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Borrower has knowledge of the occurrence of an Environmental Event, Borrower shall deliver to Lender an Officer's Certificate (an**"Environmental Certificate"**) explaining the

Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Borrower shall promptly provide Lender with copies of all notices from any Governmental Authority which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Borrower in connection with any Environmental Law. For purposes of this paragraph, the term "notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials provided by any Governmental Entity pertinent to compliance of the Property and Borrower with such Environmental Laws.

Section 12.3 Environmental Reports . Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or an Event of Default, Lender shall have the right to direct Borrower to obtain consultants reasonably approved by Lender to perform a comprehensive environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. Borrower grants Lender, its agents, consultants and contractors the right to enter the Property as reasonable or appropriate for the circumstances for the purposes of performing such studies and the reasonable cost of such studies shall be due and payable by Borrower to Lender upon demand and shall be secured by the Lien of the Security Instrument. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Borrower's or any Tenant's, other occupant's or Manager's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 12.3 , Lender shall not be deemed to be exercising any control over the operations of Borrower or the handling of any environmental matter or hazardous wastes or substances of Borrower for purposes of incurring or being subject to liability therefor.

Section 12.4 Environmental Indemnification . Borrower shall protect, indemnify, save, defend, and hold harmless the Indemnified Parties from and against any and all liability, loss, damage, actions, causes of action, costs or expenses whatsoever (including reasonable attorneys' fees and expenses) and any and all claims, suits and judgments which any Indemnified Party may suffer, as a result of or with respect to: (a) any Environmental Claim relating to or arising from the Property; (b) the violation of any Environmental Law in connection with the Property; (c) any release, spill, or the presence of any Hazardous Materials affecting the Property; and (d) the presence at, in, on or under, or the release, escape, seepage, leakage, discharge or migration at or from, the Property of any Hazardous Materials, whether or not such condition was known or unknown to Borrower; provided that, in each case, Borrower shall be relieved of its obligation under this subsection if any of the matters referred to in clauses (a) through (d) above did not occur (but need not have been discovered) prior to (1) the foreclosure of the Security Instrument, (2) the delivery by Borrower to Lender or its designee of a deed-in-lieu of foreclosure with respect to the Property, or (3) Lender's or its designee's taking possession and control of the Property after the occurrence of an Event of Default hereunder. If any such action or other proceeding shall be brought against Lender, upon written notice from Borrower to Lender (given reasonably promptly following Lender's notice to Borrower of such

action or proceeding), Borrower shall be entitled to assume the defense thereof, at Borrower's expense, with counsel reasonably acceptable to Lender; provided , however , Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Borrower expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Borrower's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Borrower that would make such separate representation advisable. Borrower shall have no obligation to indemnify an Indemnified Party for damage or loss resulting from such Indemnified Party's gross negligence or willful misconduct.

Section 12.5 Recourse Nature of Certain Indemnifications . Notwithstanding anything to the contrary provided in this Agreement or in any other Loan Document, the indemnification provided in Section 12.4 shall be fully recourse to Borrower (but not its constituent parties) and shall be independent of, and shall survive, the discharge of the Indebtedness, the release of the Lien created by the Security Instrument, and/or the conveyance of title to the Property to Lender or any purchaser or designee in connection with a foreclosure of the Security Instrument or conveyance in lieu of foreclosure.

XIII. RESERVED

XIV. SECURITIZATION AND PARTICIPATION

Section 14.1 Sale of Note and Securitization . At the request of Lender and, to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to satisfy the market standards which may be reasonably required in the marketplace or by the Rating Agencies in connection with the sale of the Note or participation therein as part of the first successful securitization (such sale and/or securitization, the **" Securitization"**) of rated single or multi-class securities (the " **Securities**") secured by or evidencing ownership interests in the Note and this Agreement, including using reasonable efforts to do (or cause to be done) the following (but Borrower shall not in any event be required to incur, suffer or accept (except to a de minimis extent)) (i) any lesser rights or greater obligations or liability than as currently set forth in the Loan Documents and (ii) except as set forth in this Article XIV and other than payment by Borrower of any legal fees of Borrower and Guarantor, any expense or any liability:

14.1.1 Provided Information . (i) Provide, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Guarantor), such non-confidential financial and other information (but not projections) with respect to the Property and Borrower and Manager to the extent such information is reasonably available to Borrower or Manager, (ii) provide, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Guarantor), business plans (but not projections) and budgets relating to the Property, to the extent prepared by the Borrower or Manager and (iii) cooperate with the holder of the Note (and its representatives) in obtaining, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Guarantor), such site inspection, appraisals, market studies, environmental reviews and reports, engineering reports and other due diligence investigations of the Property, as may be reasonably requested by the

holder of the Note or reasonably requested by the Rating Agencies (all information provided pursuant to this Section 14.1 together with all other information heretofore provided to Lender in connection with the Loan, as such may be updated, at Borrower's request, in connection with a Securitization, or hereafter provided to Lender in connection with the Loan or a Securitization, being herein collectively called the "Provided Information");

14.1.2 Opinions of Counsel . Use reasonable efforts to cause to be rendered such customary updates or customary modifications to the Opinions of Counsel delivered at the closing of the Loan as may be reasonably requested by the holder of the Note or the Rating Agencies in connection with the Securitization. Borrower's failure to use reasonable efforts to deliver or cause to be delivered the opinion updates or modifications required hereby within twenty (20) Business Days after written request therefor shall constitute an **"Event of Default"** hereunder. To the extent any of the foregoing Opinions of Counsel were required to be delivered in connection with the closing of the Loan, any update thereof shall be at the expense of Lender and without cost to Borrower. Any such Opinions of Counsel that Borrower is reasonably required to cause to be delivered in connection with a Securitization (which the parties agree shall consist of a "Review Letter" and bring downs of the Opinions of Counsel delivered as of the date hereof which Borrower acknowledges will be required to be delivered by Borrower's counsel in connection with a Securitization taking into account the due diligence Borrower's counsel deems reasonably necessary to deliver such "Review Letter"). Borrower shall not be required to pay the cost of any reliance letters or new opinions to permit successor holders of the Loan or any interest therein to rely on the opinions delivered at Closing in connection with Securitization or assignments of the Loan.

14.1.3 Modifications to Loan Documents . Without cost to the Borrower (other than legal fees of counsel to the Borrower and Guarantor), execute such amendments to the organizational documents of Borrower, Security Instrument and Loan Documents as may be reasonably requested by Lender or the Rating Agencies in order to achieve the required rating or to effect the Securitization (including, without limitation, modifying the Payment Date, as defined in the Note, to a date other than as originally set forth in the Note), provided , that nothing contained in this Section 14.1.3 shall result in any economic or other adverse change in the transaction contemplated by the Security Instrument or the Loan Documents (unless Borrower is made whole by the holder of Note) or result in any operational changes that are burdensome to the Property, Operating Lessee, Manager or Borrower.

Section 14.2 Cooperation with Rating Agencies . Borrower shall, at Lender's expense (other than legal fees of counsel to the Borrower and Guarantor), (i) at Lender's request, meet with representatives of the Rating Agencies at reasonable times to discuss the business and operations of the Property, and (ii) cooperate with the reasonable requests of the Rating Agencies in connection with the Property. Until the Obligations are paid in full, Borrower shall provide the Rating Agencies with all financial reports required hereunder and such other information as they shall reasonably request, including copies of any default notices or other material notices delivered to and received from Lender hereunder, to enable them to continuously monitor the creditworthiness of Borrower and to permit an annual surveillance of the implied credit rating of the Securities.

Section 14.3 Securitization Financial Statements . Borrower acknowledges that all such financial information delivered by Borrower to Lender pursuant to Article XI may, at Lender's option, be delivered to the Rating Agencies.

Section 14.4 Securitization Indemnification .

14.4.1 Disclosure Documents . Borrower understands that certain of the Provided Information may be included in disclosure documents in connection with the Securitization, including a prospectus or private placement memorandum or a public registration statement (each, a**"Disclosure Document"**) and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the**"Securities Act "**) or the Securities and Exchange Act of 1934, as amended (the**" Exchange Act**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, upon request, Borrower shall reasonably cooperate with the holder of the Note in updating the Provided Information for inclusion or summary in the Disclosure Document by providing all current information pertaining to Borrower and the Property reasonably requested by Lender.

14.4.2 Indemnification Certificate . In connection with each of (x) a preliminary and a private placement memorandum, or (y) a preliminary and final prospectus, as applicable, Borrower agrees to provide, at Lender's reasonable request, an indemnification certificate (at no cost to Borrower other than legal fees of counsel to the Borrower and Guarantor):

(a) certifying that Borrower has carefully examined those portions of such memorandum or prospectus, as applicable, reasonably designated in writing by Lender for Borrower's review pertaining to Borrower, the Property, the Loan and/or the Provided Information and insofar as such sections or portions thereof specifically pertain to Borrower, the Property, the Provided Information or the Loan (such portions, the **"Relevant Portions"**), the Relevant Portions do not (except to the extent specified by Borrower if Borrower does not agree with the statements therein), as of the date of such certificate, to the Best of Borrower's Knowledge, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(b) indemnifying Lender and the Affiliates of JPMorgan Chase Bank N.A. (collectively,**"JPM"**) that have prepared the Disclosure Document relating to the Securitization, each of its directors, each of its officers who have signed the Disclosure Document and each person or entity who controls JPM within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the**"JPM Group** "), and JPM, together with the JPM Group, each of their respective directors and each person who controls JPM or the JPM Group, within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act (collectively, the**"Underwriter Group**") for any actual, out-of-pocket losses, third party claims, damages (excluding lost profits, diminution in value and other consequential damages) or liabilities arising out of third party claims (the**"Liabilities"**) to which any member of the Underwriter Group may become subject to the extent such Liabilities arise out of or are based

upon any untrue statement of any material fact contained in the Relevant Portions and in the Provided Information or arise out of or are based upon the omission by Borrower to state therein a material fact required to be stated in the Relevant Portions in order to make the statements in the Relevant Portions in light of the circumstances under which they were made, not misleading (except that (x) Borrower's obligation to indemnify in respect of any information contained in a preliminary or final registration statement, private placement memorandum or preliminary or final prospectus shall be limited to any untrue statement or omission of material fact therein known to Borrower to the extent in breach of Borrower's certification made pursuant to clause (a) above and (y) Borrower shall have no responsibility for the failure of any member of the Underwriting Group to accurately transcribe written information supplied by Borrower or to include such portions of the Provided Information).

(c) Borrower's liability under clauses (a) and (b) above shall be limited to Liabilities arising out of or based upon any such untrue statement or omission made in a Disclosure Document in reliance upon and in conformity with information furnished to Lender by, or furnished at the direction and on behalf of, Borrower in connection with the preparation of those portions of the registration statement, memorandum or prospectus pertaining to Borrower, the Property or the Loan, including financial statements of Borrower and operating statements with respect to the Property. This indemnity agreement will be in addition to any liability which Borrower may otherwise have.

(d) Promptly after receipt by an indemnified party under this Article XIV of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Article XIV , notify the indemnifying party in writing of the commencement thereof, but the omission to so notify the indemnifying party will not relieve the indemnifying party from any liability which the indemnifying party may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the indemnifying party. In the event that any action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party under this Article XIV of its assumption of such defense, the indemnifying party shall not be liable for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof; provided , however , if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or in conflict with those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties at the expense of the indemnifying party. The indemnifying party shall not be liable for the expenses of separate counsel unless an indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or in conflict with those available to another indemnified party.

(e) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Article XIV is for any reason held to be unenforceable by an indemnified party in respect of any actual, out-of-pocket losses, claims, damages or liabilities relating to third party claims (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Article XIV , the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such actual, out of pocket losses, third party claims, damages or liabilities (or action in respect thereof) (but excluding damages for lost profits, diminution in value of the Property and consequential damages); provided , however , that no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution for Liabilities arising therefrom from any person who was not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the JPM Group's and Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; (iii) the limited responsibilities and obligations of Borrower as specified herein; and (iv) any other equitable considerations appropriate in the circumstances.

Section 14.5 Retention of Servicer . Lender reserves the right to retain the Servicer. Lender has advised Borrower that the Servicer initially retained by Lender shall be Wachovia Securities and Borrower shall pay any reasonable servicing fees, special servicing fees, trustee fees and any administrative fees and expenses of the Servicer, including, without limitation, reasonable attorney and other third-party fees and disbursements in connection with a prepayment, release of the Property, assumption or modification of the Loan or enforcement of the Loan Documents. Borrower shall also pay the ongoing standard monthly servicing fee.

XV. ASSIGNMENTS AND PARTICIPATIONS

Section 15.1 Assignment and Acceptance . At no incremental cost or liability to Borrower, Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Note); provided that the parties to each such assignment shall execute and deliver to Lender, for its acceptance and recording in the Register (as hereinafter defined), an Assignment and Acceptance. In addition, at no incremental cost to Borrower, Lender may participate to one or more Persons all or any portion of its rights and obligations under this Agreement and the other Loan Documents (including without limitation, all or a portion of the Note) utilizing such documentation to evidence such participation and the parties' respective rights thereunder as Lender, in its sole discretion, shall elect.

Section 15.2 Effect of Assignment and Acceptance . Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Assignment and Acceptance, (i) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of Lender, as the case may be, hereunder and such assignee shall be deemed to have assumed such rights and obligations, and (ii) Lender shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such

Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement and the other Loan Documents (and, in the case of an Assignment and Acceptance covering all or the remaining portion of Lender's rights and obligations under this Agreement and the other Loan Documents, Lender shall cease to be a party hereto) accruing from and after the effective date of the Assignment and Acceptance, except with respect to (A) any payments made by Borrower to Lender pursuant to the terms of the Loan Documents after the effective date of the Assignment and Acceptance and (B) any letter of credit, cash deposit or other deposits or security (other than the Lien of the Security Instrument and the other Loan Documents) delivered to or for the benefit of or deposited with JPMorgan Chase Bank N.A., as Lender, for which JPMorgan Chase Bank N.A. shall remain responsible for the proper disposition thereof until such items are delivered to a party who is qualified as an Approved Bank and agrees to hold the same in accordance with the terms and provisions of the agreement pursuant to which such items were deposited.

Section 15.3 Content . By executing and delivering an Assignment and Acceptance, Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, this Agreement or any other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (ii) Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Documents or any other instrument or document furnished pursuant thereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes Lender to take such action as agent on its behalf and to exercise such powers and discretion under the Loan Documents as are delegated to Lender by the terms hereof together with such powers and discretion as are reasonably incidental thereto; and (vi) such assignee agrees that it will perform, in accordance with their terms, all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by Lender.

Section 15.4 Register . Borrower shall maintain a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of Lender and each assignee pursuant to this Article XV and the Principal Amount of the Loan owing to each such assignee from time to time (the **"Register"**). The entries in the Register shall, with respect to such assignees, be conclusive and binding for all purposes, absent manifest error. The Register shall be available for inspection by Lender or any assignee pursuant to this Article XV at any reasonable time and from time to time upon reasonable prior written notice.

Section 15.5 Substitute Notes . Upon its receipt of an Assignment and Acceptance executed by an assignee, together with any Note or Notes subject to such assignment, Lender shall, if such Assignment and Acceptance has been completed and is in substantially the form of **Exhibit J** hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register, and (iii) give prompt written notice thereof to Borrower. Within five (5) Business Days after its receipt of such notice, Borrower, at Lender's own expense, shall execute and deliver to Lender in exchange and substitution for the surrendered Note or Notes a new Note to the order of such assignee in an amount equal to the portion of the Loan assigned to it and a new Note to the order of Lender in an amount equal to the portion of the Loan retained by it hereunder. Such new Note or Notes shall be in an aggregate Principal Amount equal to the aggregate then outstanding principal amount of such surrendered Note or Notes, shall be dated the effective date of such Assignment and Acceptance and shall otherwise be in substantially the form of the Note (modified, however, to the extent necessary so as not to impose duplicative or increased obligations on Borrower and to delete obligations previously satisfied by Borrower). Notwithstanding the provisions of this Article XV , Borrower and Operating Lessee shall not be responsible or liable for any additional taxes, reserves, adjustments or other costs and expenses that are related to, or arise as a result of, any transfer of the Loan or any interest or participation therein that arise solely and exclusively from the transfer of the Loan or any interest or participation therein or from the execution of the new Note contemplated by this Section 15.5 , including, without limitation, any mortgage tax. Lender and/or the assignees, as the case may be, shall from time to time designate one agent through which Borrower shall request all approvals and consents required or contemplated by this Agreement and on whose statements Borrower, Operating Lessee and Guarantor may rely.

Section 15.6 Participations . Each assignee pursuant to this Article XV may sell participations to one or more Persons (other than Borrower or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Note held by it); provided, however, that (i) such assignee's obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) such assignee shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such assignee shall remain the holder of any such Note for all purposes of this Agreement and the other Loan Documents, and (iv) Borrower, Lender and the assignees pursuant to this Article XV shall continue to deal solely and directly with such assignee in connection with such assignee's rights and obligations under this Agreement and the other Loan Documents. In the event that more than one (1) party comprises Lender, Lender shall designate one party to act on the behalf of all parties comprising Lender in providing approvals and all other necessary consents under the Loan Documents and on whose statements Borrower, Operating Lessee and Guarantor may rely.

Section 15.7 Disclosure of Information . Any assignee pursuant to this Article XV may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Article XV , disclose to the assignee or participant or proposed assignee or participant, any information relating to Borrower furnished to such assignee by or on behalf of Borrower; provided , however , that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree in writing for the benefit of Borrower to preserve the confidentiality of any confidential information received by it.

Section 15.8 Security Interest in Favor of Federal Reserve Bank . Notwithstanding any other provision set forth in this Agreement or any other Loan Document, any assignee pursuant to this Article XV may at any time create a security interest in all or any portion of its rights under this Agreement or the other Loan Documents (including, without limitation, the amounts owing to it and the Note or Notes held by it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

XVI. RESERVE ACCOUNTS

Section 16.1 Tax Reserve Account . In accordance with the time periods set forth in Section 3.1 , if an Event of Default shall have occurred and be continuing, if required under Section 3.1 , Borrower shall deposit into the Tax Reserve Account an amount equal to (a) one-twelfth of the annual Impositions that Lender reasonably estimates, based on the most recent tax bill for the Property, will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Impositions at least twenty (20) days prior to the imposition of any interest, charges or expenses for the non-payment thereof and (b) one-twelfth of the annual Other Charges that Lender reasonably estimates will be payable during the next ensuing twelve (12) months (said monthly amounts in (a) and (b) above hereinafter called the " **Monthly Tax Reserve Amount**", and the aggregate amount of funds held in the Tax Reserve Account being the**"Tax Reserve Amount**"). As of the Closing Date, the Monthly Tax Reserve Amount is $0.00, but such amount is subject to adjustment by Lender in accordance with the provisions of Section 3.1 and this Section 16.1 . The Monthly Tax Reserve Amount shall be paid by Borrower to Lender on each Payment Date during the continuance of an Event of Default to the extent required to be paid hereunder. Lender will apply the Monthly Tax Reserve Amount to payments of Impositions and Other Charges required to be made by Borrower pursuant to Article V and Article VII and under the Security Instrument, subject to Borrower's right to contest Impositions in accordance with Section 7.3 . In making any payment relating to the Tax Reserve Account, Lender may do so according to any bill, statement or estimate procured from the appropriate public office, without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of funds in the Tax Reserve Account shall exceed the amounts due for Impositions and Other Charges pursuant to Article V and Article VII , Lender shall credit such excess against future payments to be made to the Tax Reserve Account. If at any time Lender reasonably determines that the Tax Reserve Amount is not or will not be sufficient to pay Impositions and Other Charges by the dates set forth above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to the imposition of any interest, charges or expenses for the non-payment of the Impositions and Other Charges. Upon payment of the Impositions and Other Charges, Lender shall reassess the amount necessary to be deposited in the Tax Reserve Account for the succeeding period, which calculation shall take into account any excess amounts remaining in the Tax Reserve Account.

Section 16.2 Insurance Reserve Account . If an Event of Default shall have occurred and be continuing and if required as provided in Section 3.1 hereof, Borrower will immediately pay to Lender for transfer by Lender to the Holding Account (or if Borrower fails to

so pay Lender, Lender will transfer from the Holding Account) an amount (the**"Insurance Reserve Amount "**) equal to payments of insurance premiums required to be made by Borrower to pay (or to reimburse Borrower or Operating Lessee for) the insurance required pursuant to Article VI and under the Security Instrument in accordance with the time periods set forth in Section 3.1 , an amount equal to one-twelfth of the insurance premiums that Lender reasonably estimates based on the most recent bill, will be payable for the renewal of the coverage afforded by the insurance policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such insurance premiums at least twenty (20) days prior to the expiration of the policies required to be maintained by Borrower pursuant to the terms hereof (said monthly amounts hereinafter called the "**Monthly Insurance Reserve Amount**"); provided, however, that immediately following an Insurance Reserve Trigger, Borrower will pay to Lender for transfer by Lender to the Insurance Reserve Account (or if Borrower fails to so pay Lender, Lender will transfer from the Holding Account) an amount equal to payments of insurance premiums required to be made by Borrower to pay (or to reimburse Borrower or Operating Lessee) for the insurance required pursuant to Article VI and under the Security Instrument. As of the Closing Date, the Monthly Insurance Reserve Amount is $0.00. The Monthly Insurance Reserve Amount, if same is payable pursuant to Section 3.1 and this Section 16.2 , shall be paid by Borrower to Lender on each Payment Date. Lender will apply the Monthly Insurance Reserve Amount to payments of insurance premiums required to be made by Borrower to pay for the insurance required pursuant to Article VI and under the Security Instrument. In making any payment relating to the Insurance Reserve Account, Lender may do so according to any bill, statement or estimate procured from the insurer or agent, without inquiry into the accuracy of such bill, statement or estimate or into the validity thereof. If at any time Lender reasonably determines that the Insurance Reserve Amount is not or will not be sufficient to pay insurance premiums (up to a maximum amount equal to the aggregate annual insurance premium required hereunder), Lender shall notify Borrower of such determination and Borrower shall increase the Insurance Reserve Amount by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to expiration of the applicable insurance policies. Upon payment of such insurance premiums, Lender shall reassess the amount necessary to be deposited in the Insurance Reserve Account for the succeeding period, which calculation shall take into account any excess amounts remaining in the Insurance Reserve Account.

Section 16.3 Intentionally Deleted .

Section 16.4 FF&E Reserve Account . In accordance with Section 3.1 , and during any period when Manager is not reserving for FF&E pursuant to the terms of the Management Agreement, upon the request of Borrower, Lender will, within fifteen (15) Business Days (or such shorter time as may be appropriate in Lender's reasonable discretion during emergency situations identified to Lender by Borrower in writing) after the receipt of such request and the satisfaction of the other conditions set forth in this Section, cause disbursements to Operating Lessee from the FF&E Reserve Account to pay or to reimburse Operating Lessee or Manager for actual costs incurred in connection with capital expenditures relating to FF&E at the Property (to the extent such expenditures are permitted hereunder), provided that (A) Lender has received invoices evidencing that the costs for which such disbursements are requested are due and payable and are in respect of capital expenditures relating to FF&E at the property, (B) Operating Lessee has applied any amounts previously received by it in accordance with this

Section for the expenses to which specific draws made hereunder relate and received any Lien waivers or other releases which would customarily be obtained with respect to the work in question and (C) Lender has received an Officer's Certificate confirming that the conditions in the foregoing clauses (A) and (B) have been satisfied and that the copies of invoices and evidence of Lien waivers (to the extent required above) attached to such Officer's Certificate are true, complete and correct.

Section 16.5 Letter of Credit Provisions .

16.5.1 Delivery of Letter of Credit . In lieu of maintaining on deposit all or any portion of the funds in the FF&E Reserve Account with Lender pursuant to Section 16.4 , Borrower shall have the right to deliver a Letter of Credit in the amount of all or any portion of the amounts on deposit with Lender from time to time under Sections 16.4 .

16.5.2 Reduction of Letter of Credit . In the event that Borrower elects to deliver the Letter of Credit to Lender under the terms of Section 16.4.1 , Lender agrees to permit the reduction from time to time of the outstanding amount of the Letter of Credit by (i) the amount of cash funds delivered to Lender as reserve funds by Borrower in place of such Letter of Credit, and (ii) the amount that Borrower would otherwise be entitled to receive as a disbursement from the applicable reserve account pursuant to Section 16.4 .

16.5.3 Security for Debt . Each Letter of Credit delivered under this Agreement shall be additional security for the payment of the Indebtedness. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, at its option, to draw on any Letter of Credit and to apply all or any part thereof to the payment of the items for which such Letter of Credit was established or to apply each such Letter of Credit to payment of the Indebtedness in such order, proportion or priority as Lender may determine.

16.5.4 Additional Rights of Lender . In addition to any other right Lender may have to draw upon a Letter of Credit pursuant to the terms and conditions of this Agreement, Lender shall have the additional rights to draw in full any Letter of Credit: (a) if Lender has received a notice from the issuing bank that the Letter of Credit will not be renewed and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (b) upon receipt of notice from the issuing bank that the Letter of Credit will be terminated (except if a substitute Letter of Credit is provided); or (c) if Lender has received notice that the bank issuing the Letter of Credit shall cease to be an Approved Bank (unless an alternative Approved Bank issues an equivalent Letter of Credit within fifteen (15) days of Borrower's receipt of notice of same). Notwithstanding anything to the contrary contained in the above, Lender is not obligated to draw any Letter of Credit upon the happening of an event specified in (a), (b) or (c) above and shall not be liable for any losses sustained by Borrower due to the insolvency of the bank issuing the Letter of Credit if Lender has not drawn the Letter of Credit.

XVII. DEFAULTS

Section 17.1 Event of Default . (a) Each of the following events shall constitute an event of default hereunder (an "**Event of Default**"):

(i) if (A) the Indebtedness is not paid in full on the Maturity Date (subject to the last sentence of Section 3.1.5(b)), (B) any Debt Service is not paid in full on the applicable Payment Date (subject to the last sentence of Section 3.1.5(b)), (C) any prepayment of principal due under this Agreement or the Note is not paid when due, (D) the Prepayment Fee is not paid when due, (E) any deposit to the Collection Account or any of the other Collateral Accounts is not made on the required deposit date therefor; or (F) except as to any amount included in (A), (B), (C), (D), and/or (E) of this clause (i), any other amount payable pursuant to this Agreement, the Note or any other Loan Document is not paid in full when due and payable in accordance with the provisions of the applicable Loan Document continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(ii) subject to Borrower's right to contest as set forth in Section 7.3 , if any of the Impositions or Other Charges are not paid prior to the imposition of any interest, penalty, charge or expense for the non-payment thereof;

(iii) if the insurance policies required by Section 6.1 are not kept in full force and effect, or if certificates of any of such insurance policies are not delivered to Lender within ten (10) Business Days following Lender's request therefor;

(iv) if, except as permitted pursuant to Article VIII , (a) any Transfer of any direct or indirect legal, beneficial or equitable interest in all or any portion of the Property, (b) any Transfer of any direct or indirect interest in Borrower or other Person restricted by the terms of Article VIII , (c) any Lien or encumbrance on all or any portion of the Property, (d) any pledge, hypothecation, creation of a security interest in or other encumbrance of any direct or indirect interests in Borrower or other Person restricted by the terms of Article VIII or (e) the filing of a declaration of condominium with respect to the Property other than as allowed hereunder;

(v) if (i) any representation or warranty made by Borrower in Section 4.1.23 shall have been false or misleading in any material respect as of the date the representation or warranty was made which incorrect, false or misleading statement is not cured within thirty (30) days after receipt by Borrower of notice from Lender in writing of such breach or (ii) if any other representation or warranty made by Borrower herein by Borrower, Guarantor, or any Affiliate of Borrower in any other Loan Document, or in any report, certificate (including, but not limited to, any certificate by Borrower delivered in connection with the issuance of the Non-Consolidation Opinion), financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made; provided , however , that if such representation or warranty which was false or misleading in any material respect is, by its nature, curable and is not reasonably likely to have a Material Adverse Effect, and such representation or warranty was not, to the Best of Borrower's Knowledge, false or misleading in any material respect which made, then same shall not constitute an Event of Default unless Borrower has not cured same within five (5) Business Days after receipt by Borrower of notice from Lender in writing of such breach;

(vi) if Borrower or Guarantor shall make an assignment for the benefit of creditors provided , however , if such assignment was with respect to Guarantor such Event of Default may be cured by the delivery to Lender by any other Guarantor that is not subject to such assignment, of an executed counterpart to the Recourse Guaranty assuming the several liability of the Guarantor with respect to which such assignment within five (5) days after such assignment;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Operating Lessee, or Guarantor or if Borrower, Operating Lessee or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Operating Lessee or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Operating Lessee, or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Operating Lessee, or Guarantor upon the same not being discharged, stayed or dismissed within ninety (90) days; provided, further, if such appointment, adjudication, petition or proceeding was with respect to Guarantor such Event of Default may be cured by the delivery to Lender by Guarantor that, not subject to such appointment, adjudication, petition or proceeding, of an executed counterpart to the Recourse Guaranty assuming the several liability of the Guarantor with respect to which such appointment, adjudication, petition or proceeding occurred within five (5) days after such occurrence;

(viii) if Borrower, Operating Lessee or Guarantor, as applicable, Transfers its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) with respect to any term, covenant or provision set forth herein (other than the other subsections of this Section 17.1) which specifically contains a notice requirement or grace period, if Borrower, Operating Lessee or Guarantor shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(x) if Borrower, having notified Lender of its election to extend the Maturity Date as set forth in Section 5 of the Note, fails to deliver the Replacement Interest Rate Cap Agreement to Lender prior to the first day of the extended term of the Loan and Borrower has not prepaid the Loan pursuant to the terms of the Note prior to such first day of the extended term;

(xi) if Borrower or Operating Lessee shall fail to comply with any covenants set forth in Article V or Section XI with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(xii) if Borrower shall fail to comply with any covenants set forth in Section 4 or Section 3(d) or Section 8 of the Security Instrument with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(xiii) Borrower, Operating Lessee or any Affiliate of any such Person shall fail to deposit any sums required to be deposited in the Holding Account or any Sub-Accounts thereof are not made pursuant to the requirements herein when due;

(xiv) if this Agreement or any other Loan Document or any Lien granted hereunder or thereunder, in whole or in part, shall terminate or shall cease to be effective or shall cease to be a legally valid, binding and enforceable obligation of Borrower or Guarantor, or any Lien securing the Loan shall, in whole or in part, cease to be a perfected first priority Lien, subject to the Permitted Encumbrances (except in any of the foregoing cases in accordance with the terms hereof or under any other Loan Document or by reason of any affirmative act of Lender);

(xv) if the Management Agreement is terminated and an Acceptable Manager is not appointed as a replacement manager pursuant to the provisions of Section 5.2.14 within sixty (60) days after such termination;

(xvi) if Borrower shall default beyond the expiration of any applicable cure period under any existing easement, covenant or restriction which affects the Property, the default of which shall have a Material Adverse Effect;

(xvii) There exists any fact or circumstance that reasonably could be expected to result in the (a) imposition of a Lien or security interest under Section 412(n) of the Code or under ERISA or (b) the complete or partial withdrawal by Borrower or any ERISA Affiliate from any "multiemployer plan" that is reasonably expected to result in any material liability to Borrower; provided , however that the existence of such fact or circumstance under clause (xvii)(b) shall not constitute an Event of Default if such material withdrawal liability (x) in the case of a withdrawal by an ERISA Affiliate that is reasonably expected to cause a Material Adverse Effect or any withdrawal by Borrower, is paid within thirty (30) days after the date incurred or is contested in accordance with Section 7.3 hereof or (y) in the case of a withdrawal by an ERISA Affiliate that is not reasonably expected to cause a Material Adverse Effect, is paid within the period required under applicable ERISA statutes or is contested in accordance with Section 7.3 hereof; or

(xviii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement or of any Loan Document not specified in subsections (i) to (xvii) above, for thirty (30) days after notice from Lender; provided , however , that if such Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided, further, that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days.

(b) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in clauses (a)(vi), (vii) or (viii) above) Lender may, without notice or demand, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action that Lender deems advisable to protect and enforce its rights against Borrower and in the Property, including, without limitation, (i) declaring immediately due and payable the entire Principal Amount together with interest thereon and all other sums due by Borrower under the Loan Documents, (ii) collecting interest on the Principal Amount at the Default Rate whether or not Lender elects to accelerate the Note and (iii) enforcing or availing itself of any or all rights or remedies set forth in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in subsections (a)(vi) or (a)(vii) above, the Indebtedness and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding. The foregoing provisions shall not be construed as a waiver by Lender of its right to pursue any other remedies available to it under this Agreement, the Security Instrument or any other Loan Document. Any payment hereunder may be enforced and recovered in whole or in part at such time by one or more of the remedies provided to Lender in the Loan Documents.

Section 17.2 Remedies . (a) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Indebtedness shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be subject to any one action or election of remedies law or rule and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Indebtedness or the Indebtedness has been paid in full.

(b) Upon the occurrence and during the continuance of an Event of Default, with respect to the Account Collateral, the Lender may:

(i) subject to the terms of the Subordination of Operating Lease and/or Manager Subordination Agreements, without notice to Borrower, except as required by law, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the

Account Collateral against the Obligations, Operating Expenses and/or Capital Expenditures for the Property or any part thereof;

(ii) in Lender's sole discretion, at any time and from time to time, exercise any and all rights and remedies available to it under this Agreement, and/or as a secured party under the UCC;

(iii) subject to the terms of the Subordination of Operating Lease and/or Manager Subordination Agreements, demand, collect, take possession of or receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Account Collateral (or any portion thereof) as Lender may determine in its sole discretion; and

(iv) take all other actions provided in, or contemplated by, this Agreement.

(c) With respect to Borrower, the Account Collateral, the Rate Cap Collateral and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Indebtedness, and Lender may seek satisfaction out of the Property or any part thereof, in its absolute discretion in respect of the Indebtedness. In addition, Lender shall have the right from time to time to partially foreclose this Agreement and the Security Instrument in any manner and for any amounts secured by this Agreement or the Security Instrument then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal or interest, Lender may foreclose this Agreement and the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose this Agreement and the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by this Agreement or the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to this Agreement and the Security Instrument to secure payment of sums secured by this Agreement and the Security Instrument and not previously recovered.

Section 17.3 Remedies Cumulative; Waivers . The rights, powers and remedies of Lender under this Agreement and the Security Instrument shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower or Guarantor shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or Guarantor or to impair any remedy, right or power consequent thereon.

Section 17.4 Costs of Collection . In the event that after an Event of Default: (i) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (ii) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents; or (iii) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Security Instrument or any of the Loan Documents; then Borrower shall pay to Lender all reasonable attorney's fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

XVIII. SPECIAL PROVISIONS

Section 18.1 Exculpation .

18.1.1 Exculpated Parties . Except as set forth in this Section 18.1 , the Recourse Guaranty and the Environmental Indemnity, no personal liability shall be asserted, sought or obtained by Lender or enforceable against (i) Borrower or Operating Lessee, (ii) any Affiliate of Borrower or Operating Lessee including any managing member, (iii) any Person owning, directly or indirectly, any legal or beneficial interest in Borrower, Operating Lessee or managing member or any Affiliate of Borrower, Operating Lessee or managing member, or (iv) any current or former direct or indirect partner, member, principal, officer, Controlling Person, beneficiary, trustee, advisor, shareholder, employee, agent, manager, Affiliate or director of any Persons described in clauses (i) through (iii) above (collectively, the " **Exculpated Parties**") and none of the Exculpated Parties shall have any personal liability (whether by suit, deficiency, judgment or otherwise) in respect of the Obligations, this Agreement, the Security Instrument, the Note, the Property or any other Loan Document, or the making, issuance or transfer thereof, all such liability, if any, being expressly waived by Lender. The foregoing limitation shall not in any way limit or affect Lender's right to any of the following and Lender shall not be deemed to have waived any of the following:

(a) Foreclosure of the lien of this Agreement and the Security Instrument in accordance with the terms and provisions set forth herein and in the Security Instrument;

(b) Action against any other security at any time given to secure the payment of the Note and the other Obligations;

(c) Exercise of any other remedy set forth in this Agreement or in any other Loan Document which is not inconsistent with the terms of this Section 18.1 ;

(d) Any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness secured by this Agreement and the Security Instrument or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents; or

(e) The liability of any given Exculpated Party with respect to any separate written guaranty or agreement given by any such Exculpated Party in connection with the Loan (including, without limitation, the Recourse Guaranty and the Environmental Indemnity).

18.1.2 Carveouts From Non-Recourse Limitations . Notwithstanding the foregoing or anything in this Agreement or any of the Loan Documents to the contrary, Borrower and Guarantor shall be liable for the payment, in accordance with the terms of this Agreement, the Note, the Security Instrument and the other Loan Documents, to Lender of:

(a) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of (i) the fraudulent acts of or intentional misrepresentations by Borrower or any Affiliate of Borrower and/or (ii) the failure of Borrower and/or Operating Lessee (as applicable) to have a valid and subsisting certificate of occupancy(s) for all or any portion of the Property if and to the extent such certificate of occupancy(s) is required to comply with all Legal Requirements;

(b) Proceeds which Borrower or any Affiliate of Borrower has received and to which Lender is entitled pursuant to the terms of this Agreement or any of the Loan Documents to the extent the same have not been applied toward payment of the Indebtedness, or used for the repair or replacement of the Property in accordance with the provisions of this Agreement;

(c) any membership deposits and any security deposits and advance deposits which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such deposits were applied or refunded in accordance with the terms and conditions of any of the Leases or membership agreement, as applicable, prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(d) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of all or any part of the Property, the Account Collateral or the Rate Cap Collateral being encumbered by a Lien (other than this Agreement and the Security Instrument) in violation of the Loan Documents;

(e) after the occurrence and during the continuance of an Event of Default, any Rents, issues, profits and/or income collected by Borrower, Operating Lessee or any Affiliate of Borrower or Operating Lessee (other than Rents and credit card receivables sent to the applicable Deposit Account or paid directly to Lender pursuant to any notice of direction delivered to tenants of the Property or credit card companies) and not applied to payment of the Obligations or used to pay normal and verifiable Operating Expenses of the Property or otherwise applied in a manner permitted under the Loan Documents;

(f) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of physical damage to the Property from intentional waste committed by Borrower or any Affiliate of Borrower;

(g) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity or in the Security Instrument concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(h) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of the failure of Borrower to comply with any of the provisions of Article XIV ;

(i) if Borrower fails to obtain Lender's prior written consent to any Transfer, if and as required by the Loan Agreement or the Security Instrument;

(j) any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, causes of action, suits, claims, demands and adjustments of any nature or description whatsoever) which may at any time be imposed upon, incurred by or awarded against Lender, in the event (and arising out of such circumstances) that (x) Borrower should raise any defense, counterclaim and/or allegation in any foreclosure action by Lender relative to the Property, the Account Collateral or the Rate Cap Collateral or any part thereof which is found by a court to have been raised by Borrower or Operating Lessee in bad faith or to be wholly without basis in fact or law, or (y) an involuntary case is commenced against Borrower or Operating Lessee under the Bankruptcy Code with the collusion of Borrower or Operating Lessee, Guarantor or any of their Affiliates or (z) an order for relief is entered with respect to the Borrower or Operating Lessee under the Bankruptcy Code through the actions of the Borrower or Operating Lessee, Guarantor or any of their Affiliates at a time when the Borrower is able to pay its debts as they become due unless Borrower and Guarantor shall have received an opinion of independent counsel that the directors of Borrower has a fiduciary duty to seek such an order for relief;

(k) any actual loss, damage, cost, or expense incurred by or on behalf of Lender by reason of Borrower, Operating Lessee, or their respective general partners failing to be and have been since the date of its respective formation, a Single Purpose Entity; and

(l) reasonable attorney's fees and expenses incurred by Lender in connection with any successful suit filed on account of any of the foregoing clauses (a) through (k).

XIX. MISCELLANEOUS

Section 19.1 Survival . This Agreement and all covenants, indemnifications, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Indebtedness is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the successors and assigns of Lender.

Section 19.2 Lender's Discretion . Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided or as is otherwise required by law) be in the sole discretion of Lender and shall be final and conclusive.

Section 19.3 Governing Law . (A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTE, AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND EACH OF BORROWER AND LENDER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH OF BORROWER AND LENDER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

CORPORATION SERVICE COMPANY
80 STATE STREET
ALBANY, NEW YORK 12207-2543

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH

SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 19.4 Modification, Waiver in Writing . No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Borrower shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 19.5 Delay Not a Waiver . Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 19.6 Notices . All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: JPMorgan Chase Bank, N.A.
c/o ARCap Servicing, Inc.
5221 N. O'Connor Blvd., Suite 600
Irving, Texas 75039
Attention: Wesley Wolf
Facsimile No.: (972) 868-5493

With a copy to:	Cadwalader, Wickersham & Taft LLP One World Financial Center New York, New York 10281 Attention: Fredric L. Altschuler, Esq. Telecopy: (212) 504-6666
If to Borrower:	Strategic Hotel Funding, L.L.C. 77 West Wacker Drive Suite 4600 Chicago, Illinois, 60601 Attention: Chief Financial Officer and General Counsel Telephone No.: (312) 658-5000 Telefax No.: (312) 658-5799
With a copy to:	Strategic Hotel Funding, L.L.C. 77 West Wacker Drive Suite 4600 Chicago, Illinois, 60601 Attention: Treasurer Telephone No.: (312) 658-5000 Telefax No.: (312) 658-5799
With a copy to:	Perkins Coie LLP 131 South Dearborn Avenue, Suite 1700 Chicago, IL 60603-5559 Attention: Bruce A. Bonjour, Esq. Telephone No.: (312) 324-8650 Telefax No.: (312) 324-9650

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, or (iii) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

Section 19.7 TRIAL BY JURY . EACH OF BORROWER, LENDER AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, THE SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO

OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, THE SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND BORROWER HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. BORROWER ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

Section 19.8 Headings . The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 19.9 Severability . Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 19.10 Preferences . To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 19.11 Waiver of Notice . Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 19.12 Expenses; Indemnity . (a) Except as may be otherwise expressly set forth in the Loan Documents, Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in

connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender pursuant to this Agreement); (ii) Lender's ongoing performance of and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters as required herein or under the other Loan Documents; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (v) the filing and recording fees and expenses, mortgage recording taxes, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a work-out or of any insolvency or bankruptcy proceedings and (viii) procuring insurance policies pursuant to Section 6.1.11 ; provided , however , that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise (A) by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender or (B) in connection with any action taken under Article IV or a Securitization, other than the Borrower's internal administrative costs. Any cost and expenses due and payable to Lender may be paid from any amounts in the Collection or the Holding Account if same are not paid by Borrower within ten (10) Business Days after receipt of written notice from Lender.

(b) Subject to the non-recourse provisions of Section 18.1 , Borrower shall protect, indemnify and save harmless Lender, and all officers, directors, stockholders, members, partners, employees, agents, successors and assigns thereof (collectively, the Indemnified Parties) from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including all reasonable attorneys' fees and expenses actually incurred) imposed upon or incurred by or asserted against the Indemnified Parties or the Property or any part of its interest therein, by reason of the occurrence or existence of any of the following (to the extent Proceeds payable on account of the following shall be inadequate; it being understood that in no event will the Indemnified Parties be required to actually pay or incur any costs or expenses as a condition to the effectiveness of the foregoing indemnity) prior to (i) the acceptance by Lender or its designee of a deed-in-lieu of foreclosure with respect to the Property, or (ii) an Indemnified Party or its designee taking possession or control of the Property or (iii) the foreclosure of the Security Instrument, except to the extent caused by the willful misconduct or gross negligence of the Indemnified Parties (other than such willful misconduct or gross negligence imputed to the Indemnified Parties because of their interest in the Property): (1) ownership of Borrower's interest in the Property, or any interest therein, or receipt of any Rents or other sum therefrom, (2) any accident, injury to or death of any persons or loss of or damage to property occurring on or about the Property or any Appurtenances thereto, (3) any

design, construction, operation, repair, maintenance, use, non-use or condition of the Property or Appurtenances thereto, including claims or penalties arising from violation of any Legal Requirement or Insurance Requirement, as well as any claim based on any patent or latent defect, whether or not discoverable by Lender, any claim the insurance as to which is inadequate, and any Environmental Claim, (4) any Default under this Agreement or any of the other Loan Documents or any failure on the part of Borrower to perform or comply with any of the terms of any Lease within the applicable notice or grace periods, (5) any performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (6) any negligence or tortious act or omission on the part of Borrower or any of its agents, contractors, servants, employees, sublessees, licensees or invitees, (7) any contest referred to in Section 7.3 hereof, (8) any obligation or undertaking relating to the performance or discharge of any of the terms, covenants and conditions of the landlord contained in the Leases, or (9) except as may be expressly limited herein, the presence at, in or under the Property or the Improvements of any Hazardous Materials in violation of any Environmental Law. Any amounts the Indemnified Parties are legally entitled to receive under this Section which are not paid within fifteen (15) Business Days after written demand therefor by the Indemnified Parties or Lender, setting forth in reasonable detail the amount of such demand and the basis therefor, shall bear interest from the date of demand at the Default Rate, and shall, together with such interest, be part of the Indebtedness and secured by the Security Instrument. In case any action, suit or proceeding is brought against the Indemnified Parties by reason of any such occurrence, Borrower shall at Borrower's expense resist and defend such action, suit or proceeding or will cause the same to be resisted and defended by counsel at Borrower's reasonable expense for the insurer of the liability or by counsel designated by Borrower (unless reasonably disapproved by Lender promptly after Lender has been notified of such counsel); provided , however , that nothing herein shall compromise the right of Lender (or any Indemnified Party) to appoint its own counsel at Borrower's expense for its defense with respect to any action which in its reasonable opinion presents a conflict or potential conflict between Lender and Borrower that would make such separate representation advisable; provided , further , that if Lender shall have appointed separate counsel pursuant to the foregoing, Borrower shall not be responsible for the expense of additional separate counsel of any Indemnified Party unless in the reasonable opinion of Lender a conflict or potential conflict exists between such Indemnified Party and Lender. So long as Borrower is resisting and defending such action, suit or proceeding as provided above in a prudent and commercially reasonable manner, Lender and the Indemnified Parties shall not be entitled to settle such action, suit or proceeding without Borrower's consent which shall not be unreasonably withheld, delayed or conditioned, and claim the benefit of this Section with respect to such action, suit or proceeding and Lender agrees that it will not settle any such action, suit or proceeding without the consent of Borrower; provided , however , that if Borrower is not diligently defending such action, suit or proceeding in a prudent and commercially reasonable manner as provided above, and Lender has provided Borrower with thirty (30) days' prior written notice, or shorter period if mandated by the requirements of applicable law, and opportunity to correct such determination, Lender may settle such action, suit or proceeding and claim the benefit of this Section 19.12 with respect to settlement of such action, suit or proceeding. Any Indemnified Party will give Borrower prompt notice after such Indemnified Party obtains actual knowledge of any potential claim by such Indemnified Party for indemnification hereunder. The Indemnified Parties shall not settle or compromise any action, proceeding or claim as to which it is indemnified hereunder without notice to Borrower.

Section 19.13 Exhibits and Schedules Incorporated . The Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 19.14 Offsets, Counterclaims and Defenses . Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 19.15 Liability of Assignees of Lender . No assignee of Lender shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any other Loan Document or any amendment or amendments hereto made at any time or times, heretofore or hereafter, any different than the liability of Lender hereunder. In addition, no assignee shall have at any time or times hereafter any personal liability, directly or indirectly, under or in connection with or secured by any agreement, lease, instrument, encumbrance, claim or right affecting or relating to the Property or to which the Property is now or hereafter subject any different than the liability of Lender hereunder. The limitation of liability provided in this Section 19.15 is (i) in addition to, and not in limitation of, any limitation of liability applicable to the assignee provided by law or by any other contract, agreement or instrument, and (ii) shall not apply to any assignee's gross negligence or willful misconduct.

Section 19.16 No Joint Venture or Partnership; No Third Party Beneficiaries . (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 19.17 Publicity . All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan

Documents or the financing evidenced by the Loan Documents, to Lender, or any of its Affiliates shall be subject to the prior written approval of Lender.

Section 19.18 Waiver of Marshalling of Assets . To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's shareholders and others with interests in Borrower and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Indebtedness without any prior or different resort for collection or of the right of Lender to the payment of the Indebtedness out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 19.19 Waiver of Counterclaim and Other Actions . Borrower hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, the Note, the Security Instrument or any Loan Document, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement, the Note, the Security Instrument or any Loan Document and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

Section 19.20 Conflict; Construction of Documents; Reliance . In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 19.21 Prior Agreements . This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Agreement and the other Loan Documents and unless specifically set forth in a writing contemporaneous herewith the

terms, conditions and provisions of any and all such prior agreements do not survive execution of this Agreement.

Section 19.22 Counterparts . This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 19.23 Joint and Several Liability . If Borrower or Guarantor consists of more than one person, the obligations and liabilities of each such person hereunder and under the other Loan Documents shall be joint and several.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

NEW SANTA MONICA BEACH HOTEL, L.L.C.,
a Delaware limited liability company

By: /s/ Ryan M. Bowie
Name: Ryan M. Bowie
Title: Vice President & Treasurer

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

By signing below, Operating Lessee agrees that in consideration of the substantial benefit that it will receive from Lender making the Loan to Borrower, to comply with all of the terms, conditions, obligations and restrictions affecting Operating Lessee set forth herein.

OPERATING LESSEE:

DTRS SANTA MONICA, L.L.C. ,
a Delaware limited liability company

By: /s/ Ryan M. Bowie
Name: Ryan M. Bowie
Title: Vice President & Treasurer

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

LENDER:

JPMORGAN CHASE BANK N.A.,
a banking association chartered under the laws of the United States of America

By: /s/ Charles Thomas
Name: Charles Thomas
Title: VP

EXHIBIT A

TITLE INSURANCE REQUIREMENTS, ENDORSEMENTS AND AFFIRMATIVE COVERAGES

1. General . Borrower and/or its counsel is responsible for ordering or updating any title insurance work. Lender requires a lender's title insurance policy insuring "JPMorgan Chase Bank, N.A., and its successors and assigns". The approved title underwriters, type and amount of insurance and required endorsements are described below. The list of endorsements is subject to review by Lender's counsel, local counsel and additional specific coverages may be required after review of the related title commitment.

2. Title Insurer . The Title Company or Title Companies must be approved by Lender and licensed to do business in the jurisdiction in which the Property is located. _____ has been pre-approved by Lender as a Title Company.

3. Title Agent . Unless Lender otherwise agrees, all title work shall be ordered and coordinated, and the closing of the Loan shall be conducted through _____ contact _____ Tel: _____.

4. Primary Title Insurance Requirements .

(a) Amount of Coverage : Not less than the Principal Amount of the Loan on the Closing Date.

(b) Effective Date : The later of the date of recording of the Security Instrument or the date of funding of the Loan. Borrower shall be required to provide a customary "gap" indemnity in order to enable the Title Company to provide "gap" coverage.

(c) Insured : "JPMorgan Chase Bank, N.A., and its successors and assigns".

(d) Legal Description : Metes and bounds description to be provided which must conform to that shown on the Survey, the Security Instrument and any other Loan Documents that require a legal description of the Property. A lot and block description shall be acceptable in place of a metes and bounds description in exceptional cases.

(e) Policy Form : An ALTA (or equivalent) lender's policy of title insurance in form and substance acceptable to Lender. Without limiting Lender's right to require specific coverages, endorsements or other title work, the Title Policy shall (i) be in the 1970 ALTA (as amended 84) form or, if not available, ALTA 1992 form (deleting arbitration and creditor rights exclusions) or, if not available, the form commonly used in the state where the Property is located, (ii) to the extent available, include the "extended coverage" provisions described in paragraph 5 below, (iii) include all applicable endorsements described in paragraph 6 below, and (iv) include Schedule B exceptions in a form and to the extent acceptable to Lender's counsel.

5. Extended Coverage Requirements . The Title Policy shall:

(a) not contain any exception for filed or unfilled mechanic, materialmen or similar liens;

(b) limit any general exception for real estate taxes and other charges to real estate or other similar taxes or assessments that are not yet due and payable or delinquent and are not a current lien on the Property;

(c) limit any general exception for the rights of persons in possession to the rights of specified tenants, as tenants only with no right or option to purchase, set forth on the rent roll for the Property and attached to the Title Policy; and

(d) not contain any general exception as to matters that an accurate Survey of the Property would disclose, but may contain specific exceptions to matters disclosed on the Survey to be delivered on the Closing Date, subject to review by Lender's counsel.

6. Required Endorsements . The following endorsements are required, to the extent available in the jurisdiction in which the Property is located:

- Restrictions, Encroachments, Minerals Endorsement ALTA Form 9 or equivalent.
- (If not available, the Title Policy must insure by way of affirmative coverage statements that there are no encroachments by any of the improvements onto easements, rights of way or other exceptions to streets or adjacent property, or insure against loss or damage resulting therefrom.)
- Deletion of Creditors Rights Exclusion Endorsement.
- Environmental Protection Lien Endorsement.
- (The Title Policy may make an exception only for specific state statutes that provide for potential subsequent liens that could take priority over the lien securing the Loan.)
- Direct Access to Public Road Endorsement.
- Usury Endorsement.
- Land Same As Survey/Legal Description Endorsement.
- Zoning Endorsement - ALTA 3.1 with coverage for number/type of parking spaces.

  In lieu of an ALTA 3.1 zoning endorsement, Lender may accept an unambiguous, clean letter from the appropriate zoning authority which satisfies the following :

  Zoning District . Confirms the applicable zoning district for the Property under the laws or ordinances of the applicable jurisdiction and that such zoning is the proper zoning for the improvements located on the Property.

Use Restrictions . Confirms that the current use of the Property is permitted under the zoning ordinance and that the Property is not a non-conforming use.

Dimensional Requirements . Confirms that the Property is in compliance with all dimensional requirements of the zoning code, including minimum lot area, maximum building height, maximum floor area ratio and setback or buffer requirements.

Parking Requirements . Confirms that the Property is in compliance with all parking and loading requirements, including the number of spaces and dimensional requirements for the parking spaces.

Rebuildability . If Property involves legal non-conforming use, confirms that, in the event of casualty, the Property may be rebuilt substantially in its current form (i.e., no loss of square footage, same building footprint) upon satisfaction of stated conditions and/or limitations.

- Subdivision Endorsement.
- Doing Business Endorsement.
- Deletion of Arbitration Endorsement.
- Separate Tax Lot Endorsement.
- Street Address Endorsement
- Contiguity Endorsement.
- Variable Rate Endorsement.
- Mortgage Recording Tax Endorsement.
- Any of the following endorsements customary in the state in which the Property is located or as required by the nature of the transaction:

  Tie-In Endorsement for Multiple Policies
  Mortgage Assignment Endorsement
  First Loss / Last Dollar Endorsement
  Non-Imputation Endorsement
  Blanket Un-located Easements Endorsement
  Closure Endorsement

EXHIBIT B

JPMORGAN CHASE BANK, N.A.
SURVEY REQUIREMENTS

The survey shall contain the following:

- The legal description of the Property;
- The courses and measured distances of the exterior boundary lines of the Property and the identification of owners of abutting parcels;
- The total acreage of the Property to the nearest tenth of an acre;
- The location of any existing improvements, the dimensions thereof at the ground surface level and their relationship to the facing exterior property lines, streets and set-back lines of the Property;
- The location, lines and widths of adjoining publicly dedicated and accepted streets showing the number and location of existing curb cuts, driveways, and fences;
- The location and dimensions of encroachments, if any, upon the Property;
- The location of all set-back lines, restrictions of record, other restrictions established by zoning or building code ordinance, utilities, easements, rights-of-way and other matters affecting title to the Property which are to be shown in Schedule B-2 of the Title Policy identifying each by reference to its recording data, where applicable;
- Evidence that adequate means of ingress and egress to and from the Property exist and that the Property does not serve any adjoining property for ingress, egress or any other purpose;
- If the Property is described as being on a recorded map or plat, a legend relating the survey to such map or plat;
- The street address of the Property;
- Parking areas at the Property and, if striped, the striping and type (e.g., handicapped, motorcycle, regular, etc.) and number of parking spaces at the Property;
- A statement as to whether the Property is located in a special flood or mudslide hazard area as determined by a review of a stated and identified Flood Hazard Boundary Map published by the Federal Insurance Administration of the U.S. Department of Housing and Urban Development;

- A vicinity map showing the property in reference to nearby highways or major street intersections.
- The exterior dimensions of all buildings at ground level and the square footage of the exterior footprint of all buildings, or gross floor area of all buildings, at ground level.
- The location of utilities serving or existing on the property as evidenced by on-site observation or as determined by records provided by client, utility companies and other appropriate sources (with reference as to the source of information) (for example)
  - railroad tracks and sidings;
  - manholes, catch basins, valve vaults or other surface indications of subterranean uses;
  - wire and cables (including their function) crossing the surveyed premises, all poles on or within ten feet of the surveyed premises, and the dimensions of all crosswires or overhangs affecting the surveyed premises; and
  - utility company installations on the surveyed premises.
- A certificate in substantially the following form:

  The undersigned being a registered surveyor of the State of [State] hereby certifies to JPMORGAN CHASE BANK, N.A., [NAME OF BORROWING ENTITY] and [INSERT NAME OF TITLE COMPANY], and each of their respective successors and assigns, as of the date below, as follows:

  This print of survey actually was made on the ground on [INSERT DATE SURVEY WAS MADE] in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by American Land Title Association (" ALTA") and American Congress on Surveying & Mapping ("ACSM ") and National Society of Professional Surveyors ("NSPS") in 1999, contains Items 1,2,3,4, 6,7(a), 7(b)(l), 8, 9, 10, 11, 13, 14 and 16 of Table A thereto, and correctly shows: (i) a fixed and determinable position and location of the land described herein (together with the buildings and improvements thereon, the "Mortgaged Property"), including the position of the point of beginning; (ii) the location of all buildings, structures and other improvements situated on the land; (iii) all driveways or other curb cuts along any street or alley upon which the land abuts; (iv) the location and name of all public and private streets or alleys located thereon or adjacent thereto, all of which are public unless otherwise noted; (v) the location,

dimension and recording data of all easements, rights-of-way and other matters of record thereon or with respect to which the undersigned has knowledge; (vi) the location and dimension of all unrecorded easements, paths, rights-of-way and party walls to the extent visible thereon or with respect to which the undersigned has knowledge; (vii) the location of applicable building restriction and setback lines required by local ordinances and regulations; and (viii) the location of all encroachments or overhangs onto or from the Mortgaged Property. Except as shown on this survey, there are no visible discrepancies, conflicts, shortages in area or boundary line conflicts. Except as shown on the survey, the Mortgaged Property does not serve any adjoining property for drainage, utilities or ingress or egress. The Mortgaged Property has access to and from a duly dedicated and accepted public roadway. This survey reflects boundary lines of the land, which "close" by engineering calculations. All utility services to the Mortgaged Property either enter the Mortgaged Property through adjoining public streets, or this survey shows the point of entry and location of any utilities which pass through or are located on adjoining private land to the extent visible or known to the undersigned. The Mortgaged Property does not lie within an area designated as a flood hazard area by any map or publication of the U.S. Department of Housing and Urban Development or the Federal Emergency Management Agency. The Mortgaged Property and only the Mortgaged Property constitutes one tax lot. All zoning use and density classifications are properly shown hereon. The undersigned has received and examined a copy of the Commitment for Title Insurance No. , dated , issued by , with respect to the Mortgaged Property, as well as a copy of each instrument listed therein. The location of each exception set forth in such Commitment, to the extent it can be located, has (with recording reference and reference to the exception number of the Commitment) been shown hereon. The undersigned further certifies that this survey meets the Accuracy Standards (as adopted by ALTA, ACSM and NSPS and in effect on the date of this certification) and [SELECT ONE OF THE FOLLOWING TWO PHRASES]:

[the Positional Uncertainties resulting from the survey measurements made on the survey do not exceed the allowable Positional Tolerance.]

[the survey measurements were made in accordance with the "Minimum Angle, Distance and Closure Requirements for Survey Measurements Which Control Land Boundaries for ALTA/ACSM Land Title Surveys."]

_____

, Licensed Surveyor

Date:_____

[seal]

EXHIBIT C

SINGLE PURPOSE ENTITY PROVISIONS

It is a requirement that the borrower be a bankruptcy remote, special purpose entity. A bankruptcy remote, special purpose entity is an entity which is unlikely to become insolvent as a result of its own activities and which is adequately insulated from the consequences of any other party's insolvency. Set forth below is language to be included in the organizational documents of corporations, limited partnerships and limited liability companies to evidence such entities' existence as bankruptcy remote, special purpose entities.

1. CORPORATION

If the Single Purpose Entity is a corporation, its certificate of incorporation will have to have the following provisions to be considered a special purpose entity:

A. Purpose

The corporation's purpose should be limited to owning and operating the mortgaged property (or interests in the Borrower).

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____, State of_____[_____interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the [General Corporation Law] of_____ necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

B. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's assets, transfer of ownership assets, incurrence of additional debt and amendment of the corporation's articles of incorporation.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Corporation shall not incur, assume, or guaranty any other indebtedness. The Corporation shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Corporation substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Corporation will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (ii) no amendment to this certificate of incorporation or to the Corporation's By Laws may be made without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary] and (ii) the Corporation shall not dissolve, terminate or liquidate."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

C. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to

the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

D. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an " Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the

direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purpose of this Article __ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for

administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

II. LIMITED PARTNERSHIP

If the Single Purpose Entity is a limited partnership, to be a special purpose entity, all of its general partners shall be special purpose entities. If such limited partnership has more than one general partner, then such limited partnership shall continue (and not dissolve) for so long as a solvent general partner exists. Consequently, both the limited partnership's partnership agreement and the certificate of incorporation of its general partner(s) will have to meet certain requirements to be considered special purpose entities. Such requirements are as follows:

A. Limited Partnership Agreement

a. Purpose

The limited partnership's purpose should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Partnership, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____, State of_____[_____interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the Uniform Limited Partnership Act of _____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The partnership shall be prohibited, except in certain circumstances, from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the partnership's assets, transfer of partnership interests, incurrence of additional debt and amendment of the partnership agreement.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The Partnership shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Partnership shall not incur, assume, or guaranty any other indebtedness. The Partnership shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Partnership) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Partnership substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article___ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Partnership's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this partnership and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Partnership will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the partners of the Partnership. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (i) no amendment to this partnership agreement may be made and (ii) the partnership shall not dissolve, liquidate or terminate without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]"

c. Indemnification

Indemnification of a partnership's partners should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Partnership in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the partnership must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in this partnership agreement, the Partnership shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate partnership records and books of account from those of any affiliate.

3. It shall not commingle assets with those of any affiliate.

4. It shall conduct its own business in its own name.

5. It shall observe all partnership formalities.

6. It shall maintain financial statements separate from any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

8. It shall maintain an arm's length relationship with any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity.

16. At all times have all of its general partners shall be special purpose corporate entities with at least two (2) Independent Directors."

For purposes of this Article___ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Partnership including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Partnership, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this partnership, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Independent Director " shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Partnership or any of its respective partners, members,

shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Partnership or managing member of the Partnership or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Partnership or of the managing member of the Partnership. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Dissolution

The limited partnership agreement should provide that the partnership will continue (and not dissolve) so long as a solvent general partner exists.

"Notwithstanding any provision or of any other document governing the formation, management or operation of the Partnership hereof to the contrary, the following shall govern: The Partnership shall not terminate solely as a consequence of the [Bankruptcy] of one or more of the general partners of the Partnership so long as there remains a solvent general partner of the Partnership."

In addition, dissolution of the partnership must not occur so long as the partnership remains mortgagor of the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Subject to applicable law, dissolution of the Partnership shall not occur so long as the Partnership remains mortgagor of the [Property] [use other term for the real estate if necessary] ."

B. Corporate General Partner

a. Purpose

The corporation's purpose should be limited to acting as general partner of the limited partnership whose purpose, as set forth above, generally should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as a general partner of a limited partnership (the "Partnership") whose purpose is to acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____, State of_____(the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the General Corporation Law of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in or causing the partnership to engage in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's or partnership's assets, transfer of ownership assets, transfer of partnership interests, incurrence of additional debt, amendment of the corporation's articles of incorporation and amendment of the partnership agreement.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur or cause the Partnership to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Corporation shall not and shall not cause the Partnership to incur, assume, or guaranty any other indebtedness. For so long as the Partnership remains mortgagor of the Property, the Corporation shall not cause the Partnership to dissolve. The Corporation shall not and shall not cause the Partnership to consolidate or merge with or into any other entity or conveyor transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Partnership) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Corporation or Partnership substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article___ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall

have been committed by this corporation or the Partnership and be continuing. For so long as a mortgage lien exists on the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Partnership to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the Property, (i) no amendment to this certificate of incorporation or to the Corporation's By Laws nor to the Partnership agreement of the Partnership may be made and (ii) neither the Corporation nor the Partnership shall be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the Property."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

c. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Partnership or the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the Corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an "Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or, except to the extent of its liability for the debt secured by such mortgage lien, become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purposes of this Article___ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

III. LIMITED LIABILITY COMPANY

If the Single Purpose Entity is a limited liability company, to be a special purpose entity, each managing member shall be a special purpose corporation. If such limited liability company has more than one managing member, then such limited liability company shall continue (and not dissolve) for so long as a solvent managing member exists. Consequently, both the Limited Liability Company's articles of organization and the certificate of incorporation of its outside member will have to meet certain requirements to be considered special purpose entities. Such requirements are as follows:

A. Articles of Organization

a. Purpose

The limited liability company's purpose should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Limited Liability Company, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____State of_____[_____interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the Limited Liability Company Act of_____ necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The limited liability company shall be prohibited, except in certain circumstances from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the limited liability company's assets, transfer of limited liability company interests, incurrence of additional debt and amendment of the articles of organization.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: The Limited Liability Company shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Limited Liability Company shall not incur, assume, or guaranty any other indebtedness. The Limited Liability Company shall not consolidate or merge with or into any other entity or conveyor transfer its properties and

assets substantially as an entirety to any entity unless (i) the entity (if other than the Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article_____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Limited Liability Company's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this limited liability company and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Limited Liability Company will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the members of the Limited Liability Company. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (i) no amendment to these articles of organization may be made and (ii) the Limited Liability Company shall not be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]."

c. Indemnification

Indemnification of a limited liability company's partners should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Limited Liability Company in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the limited liability company must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in these articles of organization, the Limited Liability Company shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliates and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate records and books of account from those of any affiliate.

3. It shall not commingle assets with those of any affiliate.

4. It shall conduct its own business in its own name.

5. It shall maintain financial statements separate from any affiliate.

6. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

7. It shall maintain an arm's length relationship with any affiliate.

8. It shall maintain adequate capital in light of its contemplated business operations.

9. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

10. It shall not acquire obligations or securities of its partners, members or shareholders.

11. It shall use stationery, invoices and checks separate from any affiliate.

12. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.

13. It shall hold itself out as an entity separate from any affiliate.

14. It shall correct any known misunderstanding regarding its separate identity.

15. At all times all managing members shall be a special purpose corporate member with at least two (2) Independent Directors."

For purposes of this Article___ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Limited Liability Company including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Limited Liability Company, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this limited liability company, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Independent Director " shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Limited Liability Company or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Limited Liability Company or managing member of the Limited Liability Company or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Limited Liability Company or of the managing member of the Limited Liability Company. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Dissolution

To the extent permitted by tax law the articles of organization should provide that the vote of a majority in interest of the remaining members is sufficient to continue the life of the limited liability company. If such vote is not obtained, for so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary] the limited liability company may not be permitted to liquidate the [Property] [use other term for the real estate if necessary] without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage lien has been paid in full or otherwise completely discharged. "

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: To the extent permissible under applicable federal and state tax law, the vote of a majority in interest of the remaining members is sufficient to continue the life of the Limited Liability Company. If such vote is not obtained, for so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary] the Limited Liability Company shall not liquidate the [Property] [use other term for the real estate if necessary] without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage liens has been paid in full or otherwise completely discharged.

f. Voting

When acting on matters subject to the vote of the members, notwithstanding that the limited liability company is not then insolvent, the members and the outside member must take into account the interest of the Limited Liability Company's creditors, as well as those of the members.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: When acting on matters subject to the vote of the members, notwithstanding that the Limited Liability Company is not then insolvent, all of the members shall take into account the interest of the Limited Liability Company's creditors, as well as those of the members."

B. Outside Corporate Member

a. Purpose

The outside corporate member's purpose should be limited to acting as corporate member of the limited liability company whose purpose, as set forth above, generally should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as the outside member of a limited liability company (the "Limited Liability Company") whose purpose is to acquire that certain parcel of real property, together with all improvements located thereon, in the City of _____, State of_____(the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the General Corporation Law of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in or causing the limited liability company to engage in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's or the limited liability company's assets, transfer of ownership assets, transfer of limited liability company interests, incurrence of additional debt, amendment of the corporation's articles of incorporation and amendment of the articles of organization.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur or cause the Limited Liability Company to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Corporation shall not and shall not cause the Limited Liability Company to incur, assume, or guaranty any other indebtedness. The Corporation shall not and shall not cause the Limited Liability Company to consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer of the

properties and assets of the Corporation or Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article___ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation or the Limited Liability Company and be continuing. For so long as a mortgage lien exists on the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Limited Liability Company to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the Property, without first obtaining approval of the mortgagee holding a first mortgage lien on the Property (i) no material amendment to this certificate of incorporation or to the Corporation's By Laws nor to the articles of organization of the Limited Liability Company may be made and (ii) neither the Corporation nor the Limited Liability Company shall dissolve, liquidate or terminate without first obtaining approval of the mortgagee holding a first mortgage lien on the Property."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

c. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Limited Liability Company or the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another

entity, the corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an " Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purpose of this Article __ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Voting

When voting on matters concerning the limited liability company, notwithstanding that the limited liability company is not then insolvent, the Corporation must take into account the interest of the Limited Liability Company's creditors, as well as those of its members.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: When voting on matters concerning the Limited Liability Company, notwithstanding that the Limited Liability Company is not then insolvent, the Corporation shall take into account the interest of the Limited Liability Company's creditors, as well as those of its members."

IV. OTHER STRUCTURES

The foregoing provisions do not exhaustively contemplate all ownership structures for a mortgaged property. Situations involving ownership structures not specifically contemplated by the provisions set forth on this Exhibit C shall nevertheless require Single Purpose Entities substantively to comply with the requirements to these provisions, modified as appropriate to accommodate the ownership structure in question.

EXHIBIT D

ENFORCEABILITY OPINION REQUIREMENTS

1. The Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Opinion shall be given by a professional law firm selected by Borrower and reasonably acceptable to Lender.

3. The Opinion shall be in form and substance acceptable to Lender and shall be given in relation to Borrower, Guarantor, Manager and any other relevant party to the Loan (each a " Loan Party"). Depending on the nature of the transaction, the Opinion shall address the applicable law of the State of New York, the State where the Property is located and each State where any Loan Party is organized (collectively, the "Relevant States"). To the extent that the Property is located in a jurisdiction outside of the State of New York and/or any Loan Party is organized under a jurisdiction outside the States of New York or Delaware, the appropriate opinions below should be given by local counsel. The Opinion shall be given on the basis of an examination of an executed original of each completed Loan Document in addition to such other documents or instruments counsel deems relevant.

4. The Opinion shall contain the following opinions:

Opinions with respect to the law of the State of Formation or Organization of the Loan Parties

(a) Each Loan Party is a [*Describe Legal Form*] duly organized, validly existing and in good standing under the laws of the State of [*State of Organization*] and is authorized to do business and in good standing in the State of [*State of Organization*].

(b) Each Loan Party has the requisite power to own its properties and to carry on its business as now being conducted and to enter into the transactions covered by the Loan Documents.

(c) The execution and delivery by each Loan Party of each Loan Document to which it is a party has been duly authorized by all necessary partnership, company and/or corporate action, as applicable. To the extent a party thereto, the Loan Documents have been duly executed and delivered by each Loan Party.

(d) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party does not:

(i) conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, the partnership agreement, partnership certificate, articles of incorporation, by-laws, trust agreement or trust certificate, as applicable, of such Loan Party;

(ii) contravene any law, statute or regulation of the United States of America or the [*State of Organization*] or any agency or political subdivision of either thereof;

(iii) violate any order, writ, injunction, or decree of which, after due inquiry, counsel has actual knowledge, issued by any court or governmental authority of the United States of America or the [*State of Organization*] or any agency or political subdivision of either thereof to which such Loan Party is subject; or

(iv) conflict with or result in any breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien other than the lien of the Loan Documents upon any of the assets or properties of such Loan Party pursuant to the terms of any material indenture, mortgage, deed of trust, agreement, contract or instrument to which such Loan Party is a party or by which it or any of its assets or properties is bound.

(e) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of [*Relevant State*] or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(f) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(g) To the extent the State of [*State of Organization*] UCC is applicable to the authorization of the Financing Statement, pursuant to the provisions of the Loan Agreement and the Security Instrument, Borrower has authorized the filing of the Financing Statement for purposes of Section 9-509 of the State of [*State of Organization*] UCC.

(h) To the extent the State of [*State of Organization*] UCC is applicable, the financing Statement includes not only all of the types of information required by Section 9-502(a) of the State of [*State of Organization*] UCC but also the types of information without which the Filing Office may refuse to accept the Financing Statement pursuant to Section 9-516 of the State of [*State of Organization*] UCC.

(i) To the extent the State of [*State of Organization*] UCC is applicable, the security interest of the Secured Party will be perfected in Borrower's rights in all UCC Collateral upon the later of the attachment of the security interest and the filing of the Financing Statement in the Filing Office; provided, however, we express no opinion with respect to (i) money, (ii) deposit accounts, (iii) letter of credit rights, (iv) goods covered by a certificate of title statute,

(v) as-extracted collateral, timber to be cut, or (vi) any property subject to a statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-3 10(a) of the State of [*State of Organization*]. "UCC Collateral" means the portion of the Property (as defined in the Security Instrument), the Rate Cap Collateral, the Account Collateral (as defined in the Loan Agreement) and the Collateral Accounts (as defined in the Account Agreement) to the extent the UCC governs a security interest in such collateral.

(j) You have asked whether Borrower is a "registered organization" as such term is defined in Section 9-1 02(a)(70) of the State of [*State of Organization*] UCC. Pursuant to Section 9-1 02(a)(70) of the State of [*State of Organization*] UCC, a "registered organization" must be (i) organized solely under the laws of a single State (or the United States) and (ii) the State (or the United States) must maintain a public record showing the organization to have been organized.

Opinions with respect to New York Law

(a) To the extent governed by New York law and to the extent a party thereto, the Loan Documents are the legal, valid and binding obligations of each Loan Party, enforceable against such Loan Party in accordance with their terms.

(b) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party does not:

(i) contravene any law, statute or regulation of the United States of America or the State of New York or any agency or political subdivision of either thereof;

(ii) violate any order, writ, injunction, or decree of which, after due inquiry, counsel has actual knowledge, issued by any court or governmental authority of the United States of America or the State of New York or any agency or political subdivision of either thereof to which such Loan Party is subject; or

(iii) conflict with or result in any breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien other than the lien of the Loan Documents upon any of the assets or properties of such Loan Party pursuant to the terms of any material indenture, mortgage, deed of trust, agreement, contract or instrument to which such Loan Party is a party or by which it or any of its assets or properties is bound.

(c) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of New York or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(d) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual

knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(e) The payment by Borrower and receipt by Lender of all principal and interest will not violate the usury laws of the State of New York or otherwise constitute unlawful interest.

(f) The provisions of the Loan Agreement and the Security Instrument are effective to create, in favor of Lender to secure the obligations purported to be secured thereby, a valid security interest in Borrower's rights in the UCC Collateral.

(g) Under New York UCC, the provisions of the Account Agreement are effective to perfect the security interest of Lender in Borrower's rights in the Collateral Accounts (as defined in the Account Agreement).

Opinions with respect to the law of States in which the Property is located

(a) Each Loan Party is authorized to do business and in good standing in the State of [*Relevant State*].

(b) To the extent governed by the laws of the State of [*Relevant States*], the Security Instrument and the Assignment of Leases are the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms.

(c) The Security Instrument is in proper form so as to comply with recording requirements of the State of [*Relevant State*]. The Security Instrument creates in favor of Lender valid liens on the portion of the Property that are located in the State of [*Relevant States*], securing payment of the Obligations (as defined in the Security Instrument), and no further action will be required for the valid creation of such liens. Upon recordation in the office of the [*Recording Office*] the Security Instrument will provide constructive notice of the terms thereof and the liens created thereby to third parties acquiring interests in the portion of the Property that are located in the State of [*Relevant States*] subsequent to such recordation.

(d) The Assignment of Leases is in proper form so as to comply with the recording requirements of the State of [*Relevant States*]. At the time the Assignment of Leases is delivered to the Recording Office for recording, it will take effect as to all creditors and subsequent purchasers for a valuable consideration without notice, and it shall be entitled to priority over any other similar instrument delivered to said Recording Office for recording after that time, in the absence of actual notice.

(e) Pursuant to the provisions of the Security Instrument Borrower has authorized the filing of the Fixture Financing Statement identifying the Fixture Collateral for purposes of Section 9-509 of the [*Relevant States*] UCC. "Fixture Collateral " means that portion

of the UCC Collateral which consists of "fixtures" (as defined in Article 9 of the UCC) to the extent the UCC governs a security interest in such collateral.

(f) The Fixture Financing Statement includes not only all the types of information required by Section 9-502(a) and 9-502(b) of the [*Relevant States*] UCC but also the types of information without which the Fixture Filing Office may refuse to accept the Fixture Financing Statement pursuant to Section 9-516 of the State of [*Relevant States*] UCC.

(g) Under the [*Relevant States*] UCC, the security interest of the Secured Party will be perfected in Borrower's rights in any Fixture Collateral located on the real property described on Schedule 1 to the Fixture Financing Statement upon the later of the attachment of the security interest and the filing of the Fixture Financing Statement in the Fixture Filing Office.

(h) Borrower has paid all recording tax due in connection with the recording of the Security Instrument and the Assignment of Leases. No additional deed of trust recording, intangibles tax, documentary stamp tax or similar taxes or charges, other than nominal recordation or filing fees, are required to be paid as a condition of the legality of enforceability of the Security Instrument or the Assignment of Leases.

(i) The State of [*Relevant States*] has no law pursuant to which a lien against any assets or properties of Borrower (whether real, personal, mixed, tangible or intangible) superior to the lien created by the Security Instrument could arise as a result of a violation of environmental laws or regulations of such State. No environmental law or regulation of the State of [Relevant States] would require any remedial or removal action or certification of non applicability as a condition to the granting of the Security Instrument, the foreclosure or other enforcement of the Loan Documents or the sale of any assets or properties of Borrower (whether real, personal, mixed, tangible or intangible) located in the State of [*Relevant States*].

(j) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of [*Relevant States*] or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(k) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(l) If the Obligations (as defined in the Security Instrument) were to be governed by the laws of the State of [*Relevant States*], the payment by Borrower and receipt by

Lender of all principal and interest will not violate the usury laws of the State of [*Relevant States*] or otherwise constitute unlawful interest.

(m) A federal court sitting in the State of [*Relevant States*] and applying the conflict of law rules of the State of [*Relevant States*], and the state courts in the State of [*Relevant States*], would give effect to the choice of law provisions contained in the Loan Documents. If counsel is not able to give this opinion as an unqualified opinion, an opinion that the Loan Agreement and Note would be enforceable under the law of the State of [*Relevant States*] if such law were held to apply will be required.

(n) The operation of any term of the Loan Documents, including, without limitation, the terms regarding late charges, default interest or prepayment premiums, or the lawful exercise of any right thereunder, shall not render the Loan Documents unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense.

5. The Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any servicer of the Loan, (iii) any purchaser of the Loan or any portion thereof in any Securitization, (iv) any Rating Agency involved in a Securitization of the Loan, (v) the issuer of securities in a Securitization of the Loan, and (vi) any trustee or servicer appointed in connection with a Securitization of the Loan.

EXHIBIT E

NON-CONSOLIDATION OPINION REQUIREMENTS

1. The Nonconsolidation Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Nonconsolidation Opinion shall be given by a professional law firm selected by Borrower and reasonably acceptable to Lender.

3. The Nonconsolidation Opinion shall be in form and substance acceptable to Lender and shall be given in relation to both Borrower and any other SPE Entity relevant to the Loan. The Nonconsolidation Opinion shall identify each entity (a "Relevant Entity") which owns more than a 49% direct or indirect interest in either Borrower and/or such SPE Entity. Depending on the circumstances and nature of the transaction structure, a non-affiliated entity, such as a third party property manager, shall be included as a Relevant Entity if required by the Rating Agencies.

4. The Nonconsolidation Opinion shall state that, in the event that any Relevant Entity were to be a debtor in a case under the Bankruptcy Code, it is counsel's opinion that, under present reported decisional authority and statutes applicable to federal bankruptcy cases, in a properly presented and argued case, a court would not, in the proper exercise of its equitable discretion, disregard the separate existence of Borrower or any SPE Entity so as to order substantive consolidation under the Bankruptcy Code of the assets and liabilities of such Relevant Entity with the assets and liabilities of either Borrower or any SPE Entity and treat such assets and liabilities as though either Borrower and such Relevant Entity or any SPE Entity and such Relevant Entity were one entity.

5. The Nonconsolidation Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any participant of Lender's interest in the Loan, (iii) any servicer of the Loan, (iv) any purchaser of the Loan or any portion thereof in any Securitization, (v) any Rating Agency involved in a Securitization of the Loan, (vi) the issuer of securities in a Securitization of the Loan, and (vii) any trustee or servicer appointed in connection with a Securitization of the Loan.

DELAWARE BANKRUPTCY OPINIONS

As a general rule, the following opinions are required with respect to any single-member Delaware limited liability companies (having independent members/managers) in the organizational structure:

1. An opinion of Delaware counsel that federal bankruptcy court would hold that Delaware law, and not federal law, governs the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of the limited liability company.

2. Opinions of Delaware counsel as follows:

a. The limited liability company agreement constitutes a legal, valid and binding agreement of its member, and is enforceable against such member, in accordance with its terms.

b. In order for a voluntary bankruptcy petition to be filed on behalf of the Company, the unanimous consent of all of the independent managers/members is required and the provision requiring such unanimous consent in the limited liability company agreement constitutes a legal, valid and binding agreement of the member, enforceable against the member, in accordance with its terms.

c. The bankruptcy or dissolution of the limited liability company's sole member will not, by itself, cause the limited liability company to be dissolved or its affairs to be wound up.

d. A judgment creditor of the member may not satisfy its claims against the member by asserting a claim against the assets of the limited liability company.

e. The limited liability company is a separate legal entity, and shall continue as such until the cancellation of the limited liability company certificate.

Contact information for a Delaware firm frequently retained by borrowers to obtain such opinions is set forth below:

RICHARDS, LAYTON & FINGER
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
Telephone: 302-658-6541
Facsimile: 302-658-6548
Fax Confirmation: 302-651-7796

Bernard J. Kelley
Telephone: 302-651-7674
Facsimile: 302-658-6548
E-mail: kelley@rlf.com

EXHIBIT F

COUNTERPARTY OPINION REQUIREMENTS

1. The Counterparty Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Counterparty Opinion may be given by a professional law firm selected by Counterparty and reasonably acceptable to Lender or by in-house counsel for Counterparty.

3. The Counterparty Opinion shall be in form and substance acceptable to Lender and shall contain the following opinions:

(a) Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under the Interest Rate Cap Agreement and the Acknowledgment.

(b) The execution and delivery of the Interest Rate Cap Agreement and the Acknowledgment by Counterparty, and any other agreement which Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its Property.

(c) All consents, authorizations and approvals required for the execution and delivery by Counterparty of the Interest Rate Cap Agreement, the Acknowledgment and any other agreement which the Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance.

(d) The Interest Rate Cap Agreement, the Acknowledgment and any other agreement which Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by Counterparty and constitutes the legal, valid and binding obligation of Counterparty, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4. If a Interest Rate Cap Guaranty is delivered in connection with the Interest Rate Cap Agreement, the Counterparty Opinion shall contain the following additional opinions:

(a) Interest Rate Cap Guarantor is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under, the Interest Rate Cap Guaranty.

(b) The execution and delivery of the Interest Rate Cap Guaranty by Interest Rate Cap Guarantor, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or bylaws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property.

(c) All consents, authorizations and approvals required for the execution and delivery by Interest Rate Cap Guarantor of the Interest Rate Cap Guaranty, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance.

(d) The Interest Rate Cap Guaranty, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, has been duly executed and delivered by Interest Rate Cap Guarantor and constitutes the legal, valid and binding obligation of Interest Rate Cap Guarantor, enforceable against Interest Rate Cap Guarantor in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

5. Depending on the nature of the transaction, the Counterparty Opinion shall contain such additional opinions on such other matters relating to the Interest Rate Cap Agreement, the Interest Rate Cap Guaranty and/or the Acknowledgment as Lender shall reasonably require, including, without limitation, the following additional opinions if the Counterparty or Interest Rate Cap Guarantor is a foreign entity:

(a) Jurisdiction where Counterparty and/or Interest Rate Cap Guarantor, as applicable, is located will respect and give effect to the choice of law provisions of the Interest Rate Cap Agreement and the Acknowledgment.

(b) A judgment obtained in the courts of the State of New York is enforceable in the jurisdiction where Counterparty and/or Interest Rate Cap Guarantor, as applicable, is located.

6. The Counterparty Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any participant of Lender's interest in the Loan, (iii) any servicer of the Loan, (iv) any purchaser of the Loan or any portion thereof in any Securitization, (v) any Rating Agency involved in a Securitization of the Loan, (vi) the issuer of securities in a Securitization of the Loan, and (vii) any trustee or servicer appointed in connection with a Securitization of the Loan.

EXHIBIT G

FORM OF TENANT ESTOPPEL LETTER

_____, 20__

JPMorgan Chase Bank, N.A.,
its successors and assigns
270 Park Avenue
New York, New York 10017-2014

Re:

Ladies and Gentlemen:

It is our understanding that you are about to make a loan to [_____], a [_____], the landlord, or successor-in-interest to the landlord under our lease, as evidenced by a loan agreement and secured by a mortgage on the captioned premises and, as a condition precedent thereof, you have required this certification by the undersigned.

The undersigned, as tenant under that certain lease made with_____, as landlord, dated_____[, which lease has been modified or amended as follows (list all modifications or amendments or, if none, so indicate) _____] (the "Lease"), hereby ratifies the Lease and certifies that:

1. the undersigned entered into occupancy of the premises described in the Lease on or about _____;

2. the lease commencement date was_____;

3. the square footage of the premises described in the Lease is_____ ;

4. the fixed rental in the monthly amount of $_____ was payable from_____;

5. the percentage rental payable monthly is $_____ ;

6. there are no rent abatements or free rent periods now or in the future [other than_____];

7. the amount of the current monthly expense reimbursements due under the Lease is equal to $_____ ;

8. the Lease is in full force and effect and, except as indicated above, has not been assigned, modified, supplemented or amended in any way and the undersigned has no notice of any assignment, pledge or hypothecation by the landlord of the Lease or of the rentals thereunder;

9. a true and complete copy of the Lease (including all amendments, modifications, supplements, side letters, surrender, space reduction or rent abatement agreements applicable to such Lease) is attached hereto as Exhibit A;

10. the Lease represents the entire agreement between the parties with respect to the above space in the above-mentioned building;

11. the term of the Lease [, as currently extended by means of the exercise of certain options contained therein,] expires on_____;

12. all construction and other obligations of a material nature to be performed by the landlord under the Lease have been satisfied, except as follows: (if none, so indicate);

13. any payments by the landlord to the undersigned for tenant improvements which are required under the Lease have been made;

14. on this date there are no existing defenses or offsets which the undersigned has against the enforcement of the Lease by the Landlord and the undersigned has no knowledge of any event which with the giving of notice, the passage of time or both would constitute a default under said Lease;

15. the undersigned is not entitled to any offsets, abatements, deductions or otherwise against the rent payable under the Lease from and after the date hereof, except as follows: (if none, so indicate);

16. no rental (including expense reimbursements), other than for the current month, has been paid in advance;

17. the amount of the security deposit presently held under the Lease is $_____ (if none, so indicate);

18. the rentals (including expense reimbursements) under the Lease have been paid through the month of _____.

This estoppel certificate is binding upon the undersigned and its successors and assigns and may be relied upon by you and your successors and assigns and, if the mortgage loan becomes the subject of a securitization, may also be relied upon by the credit rating agency, if any, rating the securities collateralized by the mortgage loan as well as any issuer of such securities, and any servicer and/or trustee acting in respect of such securitization.

Very truly yours,

_____

[INSERT NAME OF TENANT]

By: _____

Title:

EXHIBIT A

LEASE

EXHIBIT G - PAGE 4

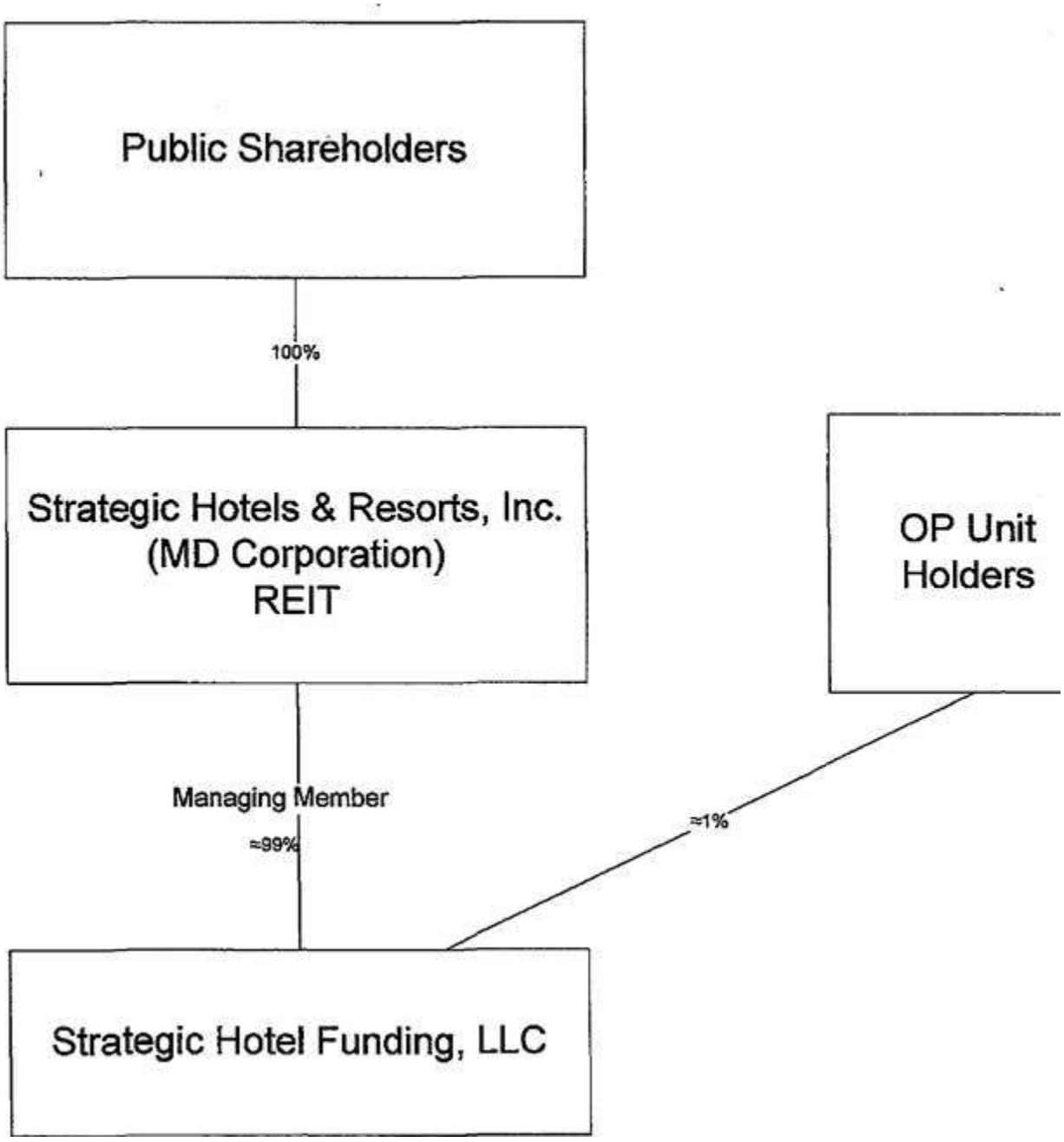
EXHIBIT H-1

BORROWER ORGANIZATIONAL STRUCTURE AT CLOSING

(attached hereto)

EXHIBIT H-1

Strategic Hotels & Resorts, Inc. and Subsidiaries



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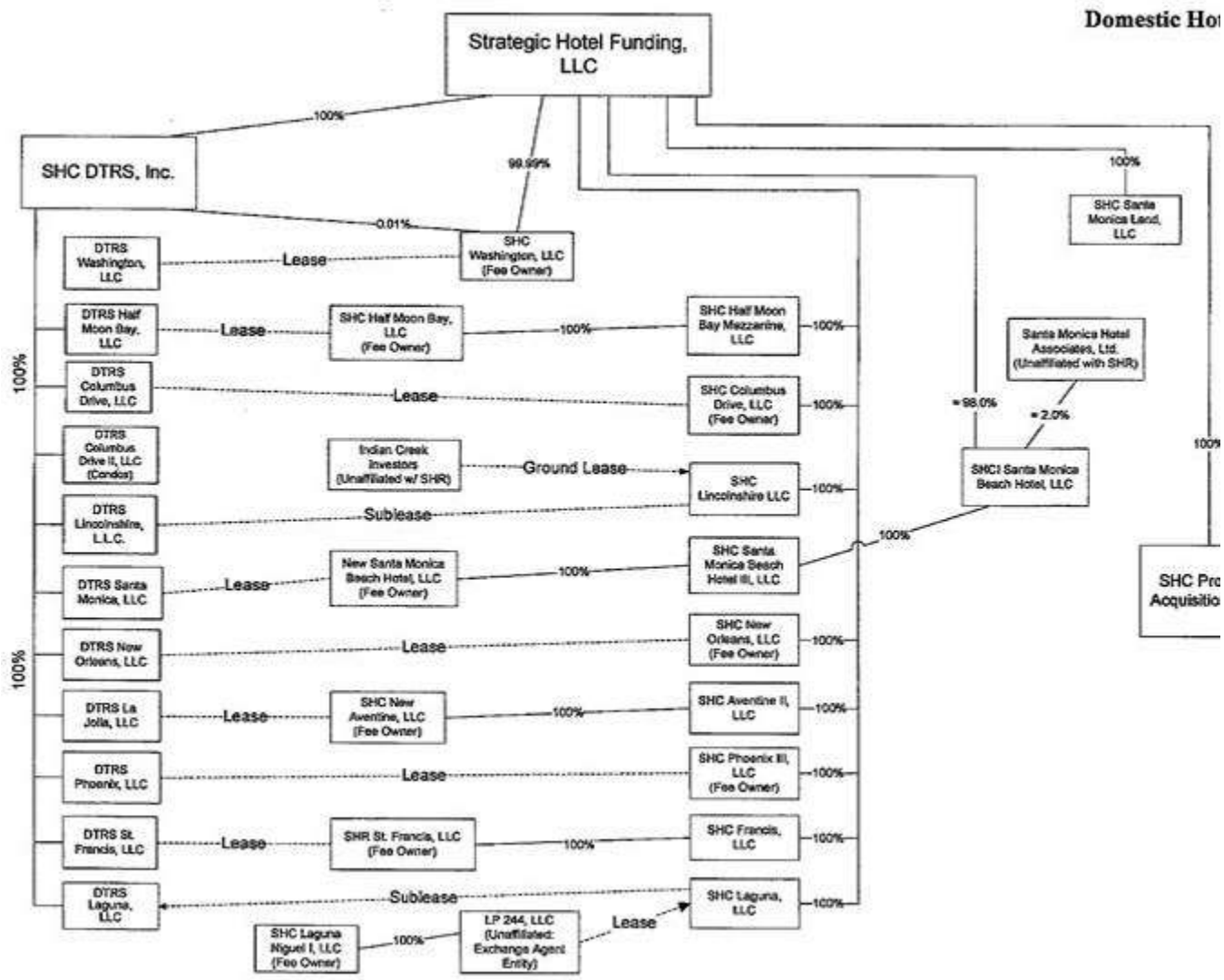

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EXHIBIT H-2

INTENTIONALLY DELETED

EXHIBIT H-2

EXHIBIT I

INTEREST RATE CAP AGREEMENT REQUIREMENTS

- The form of cap agreement should be the 1992 ISDA Agreement (Multicurrency Cross Border or Local Currency Single Jurisdiction) subject to the 2000 Definitions.
- Once the cap premium is paid by Borrower, it cannot default. (Paragraph 4 of the May 1989 ISDA Addendum to Schedule to Interest Rate and Currency Exchange Agreement or similar language must be incorporated by reference).
- "Cross Default" provision of Section 5(a)(vi) of the ISDA Master Agreement will not apply. Grace and cure periods in Section 5 of the ISDA Master Agreement will either (i) not apply or (ii) if applicable, any grace or cure periods must expire in time to ensure the availability of cap payments by cap provider on a timely basis for distribution to the holders of the rated securities.
- "Credit Event Upon Merger" provisions of Section 5(b)(iv) of the ISDA Master Agreement will not apply.
- "Automatic Early Termination" provision in Section 6(a) of the ISDA Master Agreement will not apply.
- Termination Events under Sections 5(b)(ii) and 5(b)(iii) of the ISDA Master Agreement either (i) will only constitute termination events exercisable by Borrower against cap provider or (ii) if exercisable by both parties, at the time of any event triggering a termination event under Sections 5(b)(ii) and/or 5(b)(iii), cap provider must either (a) transfer the cap to a replacement cap provider acceptable to each Rating Agency at cap provider's sole cost and expense, or (b) continue to perform its obligations under the cap agreement including, without limitation, the obligation to unconditionally "gross up" in the event that a withholding tax is imposed on payments being made by the cap provider.
- Borrower shall be precluded from payment of any out of pocket expenses required under Section 11 of the ISDA Master Agreement and incurred by cap provider related to the enforcement and protection of cap provider's rights under the cap agreement.
- Market Quotation and Second Method will be used for the purpose of computing amounts payable on early termination with a provision for loss if Market Quotation is not available.
- The parties shall be deemed to have no Affiliates for purposes of the ISDA Master Agreement.
- "Specified Entities" will not apply for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(iv) of the ISDA Master Agreement.
- Transaction will be governed by New York law.
- For the purposes of Section 6(e) of the ISDA Master Agreement, set off and counterclaim will not apply and all payments by cap provider shall be made without set off or counterclaim.

- If this transaction will be guaranteed by a parent to provide a required rating, the guarantee must be unconditional, irrevocable, continuing and a guarantee of payment, not collection, and otherwise satisfy Rating Agency requirements. Any act or omission of such guarantor that would constitute an event of default by the cap provider (other than a cross default) under Section 5 of the ISDA Master Agreement will constitute an event of default under the ISDA Master Agreement.
- The definition of LIBOR will be USD LIBOR BBA and must match the definition of LIBOR in the loan agreement.
- The definition of Business Day must match the definition of Business Day in the loan agreement. LIBOR must be determined on the LIBOR Determination Date.
- Payments must be made by the cap provider on or prior to the applicable Payment Date in respect of a period corresponding to the applicable Interest Period.
- The Termination Date of the cap must be no earlier than the last day of the Interest Period in which the Maturity Date under the loan agreement occurs.
- The Day Count Fraction in the cap must match that contained in the loan agreement.
- The Notional Amount in the cap must match the principal amount of the loan as of the date of the loan agreement.
- US Dollars are selected as the Termination Currency under the cap.
- Section 2(c)(ii) of the ISDA Master Agreement will apply to the Transaction.
- Cap provider and Borrower will represent that it is not a multi branch party.
- Cap provider will covenant that it will not petition Borrower into bankruptcy (or join in any such petition) for 365 days after all outstanding rated securities have been paid in full.
- If the ISDA Master Agreement (Multicurrency Cross Border) ("Cross Border Agreement") is utilized, additional scheduled items and provisions to address "indemnifiable taxes" and other related issues present in cross border transactions must be incorporated:
  - Section 2(d)(i)(4) of the Cross Border Agreement must be amended to require the cap provider to unconditionally "gross up" in the event that a withholding tax is imposed on payments being made by the cap provider.
  - The definition of "indemnifiable tax" must cover any and all withholding tax.
  - Section 2(d)(i)(4) of the Cross Border Agreement will be deleted such that cap provider is not excused from having to "gross up" due to Borrower's breach of a tax representation or failure to notify cap provider of a breach of a tax representation and (ii) Borrower makes no tax representations in the cap agreement or schedule.
  - Section 2(d)(ii) of the Cross Border Agreement must be amended to provide that there is no obligation by Borrower to make payments to the cap provider for any payments made by the cap provider without deduction for taxes (for which there is no obligation to gross up).

- Section 4(e) of the Cross Border Agreement must be amended to provide that there are no payment obligations by Borrower to cap provider for any indemnification resulting from stamp registration or other documentary tax levied by Borrower's taxing authority on the cap provider.

- Cap provider and any guarantor must provide a New York opinion of counsel satisfactory to the Rating Agencies regarding the cap. If cap provider or its guarantor is a non U.S. entity, a foreign opinion must be provided as well. The opinion(s) must include customary legal opinions including, without limitation, an opinion delivered by outside counsel opining that the cap agreement (including the confirmation, ISDA Master Agreement, schedule and collateral assignment agreement) is legal/valid/binding and enforceable against the cap provider and any guarantor.]

EXHIBIT J

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

Reference is made to that certain Loan and Security Agreement, dated as of_____200___ (as amended, supplemented or otherwise modified from time to time, the **Loan Agreement**) between [_____] (**Borrower**), and JPMorgan Chase Bank, N.A., a banking association chartered under the laws of the United States of America (**Lender**), and that certain Note, dated as of_____, 200___ (the **Note**), made by Borrower in favor of Lender. Terms defined in the Loan Agreement and not otherwise defined herein are used herein with the same meaning.

The **Assignor** and the **Assignee** referred to on Schedule 1 attached hereto agree as follows:

1. The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, an interest in and to the Assignor's rights and obligations under the Note and the Loan Agreement as of the date hereof equal to the percentage interest specified on Schedule 1 attached hereto. After giving effect to such sale and assignment, the amount of the Loan and the Note owing to the Assignee will be as set forth on Schedule 1 attached hereto.

2. The Assignor (i) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with the Loan Documents or any other instrument or document furnished pursuant thereto; (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Document or any other instrument or document furnished pursuant thereto; and (iv) attaches the Note or notes held by the Assignor and requests that the Lender exchange such Note or notes for a new note or notes payable to the order of the Assignee in an amount equal to the principal amount of the Loan assumed by the Assignee pursuant hereto or new notes payable to the order of the Assignee in an amount equal to the principal amount of the Loan assumed by the Assignee pursuant hereto and the Assignor in an amount equal to the principal amount of the Loan retained by the Assignor under the Note and the Loan Agreement, respectively, as specified on Schedule 1 attached hereto.

3. The Assignee (i) confirms that it has received a copy of the Note and the Loan Agreement, together with such financial statements and other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (ii) agrees that it will, independently and without reliance upon Lender or the Assignor based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan

Agreement or the Note; (iii) appoints and authorizes Lender to take such action as agent on its behalf and to exercise such powers and discretion under the Loan Documents as are delegated to Lender by the terms thereof, together with such powers and discretion as are reasonably incidental thereto; and (iv) agrees that it will perform in accordance with their terms all of the obligations that by the terms of the Loan Agreement and the Note are required to be performed by it as an assignee of an interest therein.

4. Following the execution of this Assignment and Acceptance, it will be delivered to Lender for acceptance and recording. The effective date for this Assignment and Acceptance (the **Effective Date)** shall be the date of acceptance hereof by the Lender, unless otherwise specified on Schedule 1 attached hereto.

5. Upon such acceptance and recording by Lender, as of the Effective Date, (i) the Assignee shall be a party to the Loan Agreement and the Note and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of an assignee thereof, and (ii) the Assignor shall, to the extent provided in the Loan Agreement and this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Agreement and the Note.

6. Upon such acceptance and recording by Lender, from and after the Effective Date, Lender shall make all payments under the Loan Agreement and the Note or notes in respect of the interest assigned hereby (including, without limitation, all payments of principal, interest and commitment fees with respect thereto) to the Assignee. The Assignor and Assignee shall make all appropriate adjustments in payments under the Loan Agreement and the Note or notes for periods prior to the Effective Date directly between themselves.

7. This Assignment and Acceptance shall be governed by, and construed in accordance with, the laws of the State of New York.

8. This Assignment and Acceptance may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of Schedule 1 to this Assignment and Acceptance by telecopier shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance.

***

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment and Acceptance and Schedule 1 to this Assignment and Acceptance to be executed by their officers thereunto duly authorized as of the date specified on Schedule 1 .

Schedule 1

As to the Loan in respect of which an interest is being assigned:

Percentage interest assigned: %

Aggregate outstanding principal amount of the Loan assigned: $

Principal amount of Note payable to Assignee: $

Principal amount of Note payable to Assignor: $

Effective Date (if other than date of acceptance by Lender): ,_____ ,____

[NAME OF ASSIGNOR], as Assignor

By: _____
Name:
Title:

Dated: _____ ,____

[NAME OF ASSIGNOR], as Assignor

By: _____
Name:
Title:

Dated: _____ ,____

Accepted this___ day of_____,____
[NAME OF LENDER]

By: _____
Name:
Title:

EXHIBIT K

FORM OF
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

_____,
Tenant

AND

JPMORGAN CHASE BANK, N.A.,
Lender

County: [ ]
Section: [ ]
Block: [ ]
Lot: [ ]

Premises:

Dated: as of _____,____

Record and return by mail to:
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
Attention: Frederic L. Altschuler, Esq.

SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made as of this___ day of_____ , 200___ , between JPMORGAN CHASE BANK, N.A., a banking association chartered under the laws of the United States of America, having an address at 270 Park Avenue, New York, New York 10017-2014 (hereinafter called "Lender"), and_____ , a_____ , having an address at_____(hereinafter called "Tenant").

W I T N E S S E T H :

WHEREAS, by a lease (the " Original Lease") dated_____ , 200___ between_____ (hereinafter called "Landlord"), as landlord, and Tenant, as tenant, as amended by lease amendment[s] dated_____ , 200 ___ , [_____, 200___ and_____ , 200___] (the Original Lease, as so amended, is hereinafter the "Lease"), a memorandum of which Lease was dated_____and was recorded in_____in Reel _____ , Page___ , [add recording data for memoranda of amendments, if applicable], Landlord leased to Tenant certain premises located in_____(the "Premises") on the property described in Schedule "A" annexed hereto and made a part hereof (the "Property"); and

WHEREAS, Lender is about to make a loan to Landlord, which loan shall be secured by, among other things, a mortgage or deed of trust (which mortgage or deed of trust, and all amendments, renewals, increases, modifications, replacements, substitutions, extensions, spreaders and consolidations thereof and all re-advances thereunder and addictions thereto, is referred to as the "Security Instrument") encumbering the Property; and

WHEREAS, Lender and Tenant desire to confirm their understanding and agreement with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. The Lease, and all of the terms, covenants, provisions and conditions thereof (including, without limitation, any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Property, or any portion thereof) is, shall be and shall at all times remain and continue to be subject and subordinate in all respects to the lien, terms, covenants, provisions and conditions of the Security Instrument and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Tenant shall execute and deliver any additional instruments which Lender may reasonably require to effect such subordination.

2. So long as (i) Tenant is not in default (beyond any period given in the Lease to Tenant to cure such default) in the payment of rent, percentage rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions

of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this Agreement and (iii) the Lease is in full force and effect: (a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease (except to the extent required so that Tenant's right to receive or set-off any monies or obligations owed or to be performed by any of Lender's predecessors-in-interest shall not be enforceable thereafter against Lender or any of Lender's successors-in-interest). Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Lender not to name or join Tenant as a party in a foreclosure proceeding with respect to the Security Instrument, Lender may so name or join Tenant without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

3. (A) After notice is given by Lender that the Security Instrument is in default and that the rentals under the Lease should be paid to Lender, Tenant will attorn to Lender and pay to Lender, or pay in accordance with the directions of Lender, all rentals and other monies due and to become due to Landlord under the Lease or otherwise in respect of the Premises. Such payments shall be made regardless of any right of set-off, counterclaim or other defense which Tenant may have against Landlord, whether as the tenant under the Lease or otherwise.

(B) In addition, if Lender (or its nominee or designee) shall succeed to the rights of Landlord under the Lease through possession or foreclosure action, delivery of a deed or otherwise, or another person purchases the Property or the portion thereof containing the Premises upon or following foreclosure of the Security Instrument or in connection with any bankruptcy case commenced by or against Landlord, then at the request of Lender (or its nominee or designee) or such purchaser (Lender, its nominees and designees, and such purchaser, and their respective successors and assigns, each being a " Successor-Landlord"), Tenant shall attorn to and recognize Successor-Landlord as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument that Successor-Landlord may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor-Landlord and Tenant upon all terms, conditions and covenants as are set forth in the Lease. If the Lease shall have terminated by operation of law or otherwise as a result of or in connection with a bankruptcy case commenced by or against Landlord or a foreclosure action or proceeding or delivery of a deed in lieu, upon request of Successor-Landlord, Tenant shall promptly execute and deliver a direct lease with Successor-Landlord which direct lease shall be on substantially the same terms and conditions as the Lease (subject, however, to the provisions of clauses (i)-(v) of this paragraph 3(B)) and shall be effective as of the day the Lease shall have terminated as aforesaid. Notwithstanding the continuation of the Lease, the attornment of Tenant thereunder or the execution of a direct lease between Successor-Landlord and Tenant as aforesaid, Successor-Landlord shall not:

(i) be liable for any previous act or omission of Landlord under the Lease;

(ii) be subject to any off-set, defense or counterclaim which shall have theretofore accrued to Tenant against Landlord;

(iii) be bound by any modification of the Lease or by any previous prepayment of rent or additional rent made more than one (1) month prior to the date same was due which Tenant might have paid to Landlord, unless such modification or prepayment shall have been expressly approved in writing by Lender;

(iv) be liable for any security deposited under the Lease unless such security has been physically delivered to Lender or Successor-Landlord; and

(v) be liable or obligated to comply with or fulfill any of the obligations of the Landlord under the Lease or any agreement relating thereto with respect to the construction of, or payment for, improvements on or above the Premises (or any portion thereof), leasehold improvements, tenant work letters and/or similar items.

4. Tenant agrees that without the prior written consent of Lender, it shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, (b) tender a surrender of the Lease, (c) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (d) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such consent shall be void as against the holder of the Security Instrument.

5. (A) Tenant shall promptly notify Lender of any default by Landlord under the Lease and of any act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction.

(B) In the event of a default by Landlord under the Lease which would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or to claim a partial or total eviction, or in the event of any other act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease, Tenant shall not exercise such right (i) until Tenant has given written notice of such default, act or omission to Lender and (ii) unless Lender has failed, within sixty (60) days after Lender receives such notice, to cure or remedy the default, act or omission or, if such default, act or omission shall be one which is not reasonably capable of being remedied by Lender within such sixty (60) day period, until a reasonable period for remedying such default, act or omission shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Security Instrument to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under the Lease or otherwise, after similar notice, to effect such remedy), provided that Lender shall with due diligence give Tenant written notice of its intention to and shall commence and continue to, remedy such default, act or omission. If Lender cannot reasonably remedy a default, act or omission of Landlord until after Lender obtains possession of the Premises, Tenant may not terminate or cancel the Lease or claim a partial or total eviction by reason of such default, act or omission

until the expiration of a reasonable period necessary for the remedy after Lender secures possession of the Premises. To the extent Lender incurs any expenses or other costs in curing or remedying such default, act or omission, including, without limitation, attorneys' fees and disbursements, Lender shall be subrogated to Tenant's rights against Landlord.

(C) Notwithstanding the foregoing, Lender shall have no obligation hereunder to remedy such default, act or omission.

6. To the extent that the Lease shall entitle Tenant to notice of the existence of any mortgage and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Lender.

7. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges and remedies of Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Lender were named therein as Landlord.

8. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor-Landlord shall acquire title to the Property or the portion thereof containing the Premises, Successor-Landlord shall have no obligation, nor incur any liability, beyond Successor-Landlord's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor-Landlord in the Property for the payment and discharge of any obligations imposed upon Successor-Landlord hereunder or under the Lease, and Successor-Landlord is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgement which may be obtained or secured by Tenant against Successor-Landlord, Tenant shall look solely to the estate or interest owned by Successor-Landlord in the Property, and Tenant will not collect or attempt to collect any such judgement out of any other assets of Successor-Landlord.

9. Notwithstanding anything to the contrary in the Lease, Tenant agrees for the benefit of Landlord and Lender that, except as permitted by, and fully in accordance with, applicable law, Tenant shall not generate, store, handle, discharge or maintain in, on or about any portion of the Property, any asbestos, polychlorinated biphenyls, or any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such (including, but not limited to, pesticides and petroleum products if they are defined, determined or identified as such) in any federal, state or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of any thereof, including any judicial or administrative interpretation of any thereof, including any judicial or administrative orders or judgments.

10. If the Lease provides that Tenant is entitled to expansion space, Successor-Landlord shall have no obligation nor any liability for failure to provide such expansion space if a prior landlord (including, without limitation, Landlord), by reason of a lease or leases entered into by such prior landlord with other tenants of the Property, has precluded the availability of such expansion space.

11. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.

12. (A) Tenant acknowledges and agrees that this Agreement satisfies and complies in all respects with the provisions of Article___ of the Lease and that this Agreement supersedes (but only to the extent inconsistent with) the provisions of such Article and any other provision of the Lease relating to the priority or subordination of the Lease and the interests or estates created thereby to the Security Instrument.

(B) Tenant agrees to enter into a subordination, non-disturbance and attornment agreement with any lender which shall succeed Lender as lender with respect to the Property, or any portion thereof, provided such agreement is substantially similar to this Agreement. Tenant does herewith irrevocably appoint and constitute Lender as its true and lawful attorney-in-fact in its name, place and stead to execute such subordination, non-disturbance and attornment agreement, without any obligation on the part of Lender to do so. This power, being coupled with an interest, shall be irrevocable as long as the Indebtedness secured by the Security Instrument remains unpaid. Lender agrees not to exercise its rights under the preceding two sentences if Tenant promptly enters into the subordination, non-disturbance and attornment agreement as required pursuant to the first sentence of this subparagraph (B).

13. (A) Any notice required or permitted to be given by Tenant to Landlord shall be simultaneously given also to Lender, and any right to Tenant dependent upon notice shall take effect only after notice is so given. Performance by Lender shall satisfy any conditions of the Lease requiring performance by Landlord, and Lender shall have a reasonable time to complete such performance as provided in Paragraph 5 hereof.

(B) All notices or other communications required or permitted to be given to Tenant or to Lender pursuant to the provisions of this Agreement shall be in writing and shall be deemed given only if mailed by United States registered mail, postage prepaid, or if sent by nationally recognized overnight delivery service (such as Federal Express or United States Postal Service Express Mail), addressed as follows: to Tenant, at the address first set forth above, Attention: _____; to Lender, at the address first set forth above, Attention:_____and General Counsel, with a copy to Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, New York 10281, Attention: Frederic L. Altschuler, Esq.; or to such other address or number as such party may hereafter designate by notice delivered in accordance herewith. All such notices shall be deemed given three (3) business days after delivery to the United States Post office registry clerk if given by registered mail, or on the next business day after delivery to an overnight delivery courier.

14. This Agreement may be modified only by an agreement in writing signed by the parties hereto, or their respective successors-in-interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The term "Lender" shall mean the then holder of the Security Instrument. The term "Landlord" shall mean the then holder of the landlord's interest in the Lease. The term " person" shall mean

an individual, joint venture, corporation, partnership, trust, limited liability company, unincorporated association or other entity. All references herein to the Lease shall mean the Lease as modified by this Agreement and to any amendments or modifications to the Lease which are consented to in writing by Lender. Any inconsistency between the Lease and the provisions of this Agreement shall be resolved, to the extent of such inconsistency, in favor of this Agreement.

15. Tenant hereby represents to Lender as follows:

(a) The Lease is in full force and effect and has not been further amended.

(b) There has been no assignment of the Lease or subletting of any portion of the premises demised under the Lease.

(c) There are no oral or written agreements or understandings between Landlord and Tenant relating to the premises demised under the Lease or the Lease transaction except as set forth in the Lease.

(d) The execution of the Lease was duly authorized and the Lease is in full force and effect and to the best of Tenant's knowledge there exists no default (beyond any applicable grace period) on the part of either Tenant or Landlord under the Lease.

(e) There has not been filed by or against nor to the best of the knowledge and belief of Tenant is there threatened against Tenant, any petition under the bankruptcy laws of the United States.

(f) To the best of Tenant's knowledge, there is no present assignment, hypothecation or pledge of the Lease or rents accruing under the Lease by Landlord, other than pursuant to the Security Instrument.

16. Whenever, from time to time, reasonably requested by Lender (but not more than three (3) times during any calendar year), Tenant shall execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications, in a form acceptable to Tenant, of all of the matters set forth in Paragraph 15 above, and any other information the Lender may reasonably require to confirm the current status of the Lease.

17. BOTH TENANT AND LENDER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

18. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

JPMORGAN CHASE BANK, N.A., a banking association chartered under the laws of the United States of America

By: _____
Name:
Title:

[TENANT]

By: _____
Name:
Title:

AGREED AND CONSENTED TO:

LANDLORD:

[_____]

By: _____
Name:
Title:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____ in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the_____ day of_____ in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____ in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the___ day of_____ in the year 200___ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

SCHEDULE A

Legal Description of Property

EXHIBIT K - PAGE 11

EXHIBIT L

INTENTIONALLY DELETED

EXHIBIT L

EXHIBIT M

COUNTERPARTY ACKNOWLEDGMENT

_____**(Counterparty)** has entered into a Confirmation and Agreement (together with the confirmation and schedules relating thereto, collectively, the **Interest Rate Cap Agreement**), dated as of_____ 200__ , between the Counterparty Interest Rate Cap transaction with_____**(Borrower)** . Attached hereto, is a true, correct and complete copy of the Interest Rate Cap Agreement. Counterparty acknowledges that it has been informed that Borrower, pursuant to a Loan and Security Agreement, dated_____(the **Loan Agreement**) has pledged and collaterally assigned its rights under the Interest Rate Cap Agreement to JPMorgan Chase Bank, N.A., a banking association chartered under the laws of the United States of America (together with its successors and assigns, **Lender**). Counterparty hereby consents to such pledge and assignment and agrees that it will make any payments to become payable under or pursuant to the Interest Rate Cap Agreement directly to an account at_____entitled " _____f/b/o JPMorgan Chase Bank, N.A., as secured party, Collection Account" (Account Number_____) , ABA #_____or to such other account designated in writing by Lender. Counterparty further agrees that all such payments shall be made without set-off, deduction, defense or counterclaim. Counterparty acknowledges that in the event it shall fail to make such payments directly to such account, it shall be deemed to have not made such payment pursuant to the Interest Rate Cap Agreement. Counterparty also agrees that it will not modify, amend or terminate the Interest Rate Cap Agreement without Lender's consent.

[ ]

By: _____
Name:
Title:

EXHIBIT M

EXHIBIT N

INTENTIONALLY DELETED

EXHIBIT N

EXHIBIT O

INTENTIONALLY DELETED

EXHIBIT O

EXHIBIT P

INTENTIONALLY DELETED

EXHIBIT P

EXHIBIT Q

INTENTIONALLY DELETED

EXHIBIT Q

EXHIBIT R

ARTICLE 8 "OPT IN" LANGUAGE

Section_____ . Shares and Share Certificates

a. Shares . A [Member's limited liability company interest in the Company] [Partner's limited partnership interest in the Partnership] shall be represented by the Shares issued to such [Member by the Company] [Partner of the Partnership]. All of a [Member's][Partner's] Shares, in the aggregate, represent such [Member's] [Partner's] entire [Partner by the Partnership] [limited liability company interest in the Company [limited partnership interest in the Partnership]. The [Member][Partner] hereby agrees that its interest in the [Company] [Partnership] and in its Shares shall for all purposes be personal property. A [Member] [Partner] has no interest in specific [Company] [Partnership] property. "Share" means a [limited liability company interest] [limited partnership interest] in the [Company] [Partnership] held by a [Member] [Partner].

b. Share Certificates .

i. Upon the issuance of Shares to any [Member] [Partner] in accordance with the provisions of this Agreement, the [Company][Partnership] shall issue one or more Share Certificates in the name of such [Member] [Partner]. Each such Share Certificate shall be denominated in terms of the number of Shares evidenced by such Share Certificate and shall be signed by the [Member] [Partner] on behalf of the [Company] [Partnership]. "Share Certificate" means a non-negotiable certificate issued by the [Company] [Partnership] substantially in the form of Schedule hereto, which evidences the ownership of one or more Shares. Each Share Certificate shall bear the following legend: "This certificate evidences an interest in_____and shall be a security interest for purposes of Article 8 of the Uniform commercial Code of the State of Delaware and the Uniform Commercial Code of any other Jurisdiction." This provision shall not be amended, and no such purported amendment to this provision shall be effective until all outstanding certificates have been surrendered for cancellation.

ii. The [Company] [Partnership] shall issue a new Share Certificate in place of any Share Certificate previously issued if the holder of the Shares represented by such Share Certificate, as reflected on the books and records of the [Company] [Partnership].

(1) makes proof by affidavit, in form and substance satisfactory to the [Company] [Partnership], that such previously issued Share Certificate has been lost, stolen or destroyed.

(2) requests the issuance of a new Share Certificate before the [Company] [Partnership] has notice that such previously issued Share Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(3) if requested by the [Company] [Partnership], delivers to the [Company] [Partnership] a bond, in form and substance satisfactory to the [Company] [Partnership], with such surety or sureties as the [Company] [Partnership] may direct, to indemnify the [Company] [Partnership] against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Share Certificate; and

(4) satisfies any other reasonable requirements imposed by the [Company] [Partnership].

iii. Subject to the restrictions set forth in [describe Loan Agreement/Mezzanine Loan Agreement restrictions] upon a [Member's] [Partner's]'s Transfer in accordance with the provisions of this Agreement of any or all Shares represented by a Share Certificate, the Transferee of such Shares shall deliver such Share Certificate to the [Company] [Partnership] for cancellation, and the [Company] [Partnership] shall thereupon issue a new Share Certificate to such Transferee for the number of Shares being Transferred and, if applicable, cause to be issued to such [Member] [Partner] a new Share Certificate for that number of Shares that were represented by the canceled Share Certificate and that are not being Transferred. "Transfer" means, with respect to any Shares, and when used as a verb, to sell or assign such Shares, and, when used as a noun, shall have a meaning that correlates to the foregoing. "Transferee" means an assignee or transferee. "Transferor" means the Person making a Transfer.

c. Free Transferability . Except as limited by the [describe Loan Agreement/Mezzanine Loan Agreement restrictions], to the fullest extent permitted by the Act, any [Member] [Partner] may, at any time or from time to time, without the consent of any other Person, Transfer, pledge or encumber any or all of its Shares. Subject to the restrictions of the [describe Loan Agreement/Mezzanine Loan Agreement restrictions], the Transferee of any Shares shall be admitted to the [Company] [Partnership] as a substitute member of the [Company] [Partnership] on the effective date of such Transfer upon (i) such Transferee's written acceptance of the terms and provisions of this Agreement and its written assumption of the obligations hereunder of the Transferor of such Shares, which shall be evidenced by such Transferee's execution and delivery to the [Company] [Partnership] of an Application for Transfer of Shares on the reverse side of the Share Certificate representing the Shares being transferred, and (ii) the recording of such Transferee's name as a Substitute [Member] [Partner] on the books and records of the [Company] [Partnership]. Any Transfer of any Shares pursuant to this Section shall be effective as of the later of (i) the close of business on the day on which such Transfer occurs, or (ii) the effective date and time of such Transfer that is designated in the Application for Transfer of Shares delivered by the Transferee to the [Company] [Partnership].

SCHEDULE I

LITIGATION SCHEDULE

Plaintiff(s)	Defendant(s)	Date of Incident
Outerbridge Access Association on behalf of Diane Cross	DTRS Santa Monica, L.L.C. d.b.a. Loews Santa Monica Beach Hotel; New Santa Monica Beach Hotel, L.L.C.; SHC Santa Monica Beach Hotel III, L.L.C.; and Loews Hotels, Inc.	7/8/2005

SCHEDULE I

SCHEDULE II

INTENTIONALLY DELETED

SCHEDULE II

SCHEDULE III

PRE-APPROVED TRANSFEREES

Strategic Hotel Funding, Inc.
KSL Capital Partners, LLC
Kohlberg Kravis Roberts & Co.
Hilton Hotels Corporation
FelCor Lodging Trust, Inc.
Rosewood Hotels & Resorts
Whitehall Street Real Estate Limited Partnership Funds
Host Marriott Corporation
Fairmont Hotels & Resorts
Four Seasons Hotel Inc.
The Blackstone Group, LP
Millennium and Copthorne Hotels, PLC
LaSalle Hotel Properties
Marriott International, Inc.
Starwood Hotels and Resorts Worldwide, Inc.
Government of Singapore Investment Corporation
Maritz Wolf LLC)
HRH Prince Alwaleed Bin Talal Bin Abdulaziz Al Saud)
InterContinental Hotels Group
Morgan Stanley Real Estate Fund (MSREF)
Walton Street Real Estate Fund
The Carlyle Group Real Estate Fund
Lehman Brothers Real Estate Fund
The Equitable Life Assurance and Annuity Association
Orient Express
Accor
Benchmark Hospitality)
NH Hotels
Mandarin
Peninsula
Raffles
Shangrila
Hyatt
Strategic Hotel Capital
LXR Luxury Resorts & Hotels
Vail Reports)
Destination Resorts
Westbrook Real Estate Fund
Lowe Hospitality
State of Ohio Pension Fund
Highland Hospitality

SCHEDULE III

SCHEDULE IV

PRE-APPROVED MANAGERS

KSL or any Affiliate
One & Only / Kerzner
Gaylord Entertainment
Loews Hotels
Hilton Hotels Corporation
Fairmont Hotels & Resorts
Millennium and Copthorne Hotels, PLC
Marriott International, Inc.
Four Seasons Hotels, Inc.
InterContinental Hotels Group
Orient Express
Mandarin
Peninsula
Raffles
Shangri-La
Hyatt
Omni
Boca Resorts
Destination Resorts
Lowe Hospitality
Montage Hotels
Intercontinental Hotel Group

SCHEDULE IV

SCHEDULE V

INTENTIONALLY DELETED

SCHEDULE V

SCHEDULE VI

INTENTIONALLY DELETED

SCHEDULE VI

SCHEDULE VII

INTENTIONALLY DELETED

SCHEDULE VII

SCHEDULE VIII

INTENTIONALLY DELETED

SCHEDULE VIII

SCHEDULE IX

DEFERRED MAINTENANCE

(attached hereto)

SCHEDULE IX

Table 6.1: Budget Cost Estimate To Correct Observed Present Deficiencies

Loews Santa Monica
1700 Ocean Avenue
Santa Monica, California 90401
February 28, 2007

DRAFT

TOTAL ESTIMATED COSTS/PRIORITY			
(90 Days)	(1 Year)	ADA	Optional
$105,500	$20,000	$3,000	$240,100
$128,500			

ESTIMATED COST/PRIORITY				1 2 3 4 Report Section/Item/Description	Qty	Unit	Unit Cost	
Immediate (90 Days)	Short Term (1 Year)	ADA	Optional					
				5.2.6 Structural Systems				
				1. There is some substantial cracking and efflorescence observed in the parking garage. This needs to be repaired.	1	LS	$ 20,000	$ 20,000
				5.2.8 Roofing				
				1. Small punctures in the urethane coating were observed in the area of the roof access door. The punctures should be repaired as an Immediate Repair. It was reported that this work is covered by the warranty. No costs are included in the Immediate Repair Table. Warranty				
				5.2.13 Heating, Ventilating And Air Conditioning				
				1. The two Bard wall-mounted air-conditioning units serving the telecom room are in poor condition and have undergone numerous repairs. They should be replaced immediately with two computer room split-system air-conditioning units designed to operate 24 hours/day.	2	EA	$ 4,000	$ 8,000

				ESTIMATED COST/PRIORITY			
				1	2	3	4
Report Section/Item/Description	Qty	Unit	Unit Cost	Immediate (90 Days)	Short Term (1 Year)	ADA	Optional
5.2.18 Lighting							
1. All incandescent lighting in guest rooms, guest room corridors and bathrooms should be replaced with new compact fluorescent lights to reduce energy costs. This can be reduced at least 75 percent of the total wattage used by incandescent lights. Compact fluorescent lamps have three times the lumen hours of incandescent bulbs.	1,200	EA	$ 8.00				$ 9,600
2. A major retrofit of the hotel interior lighting system is needed to save energy cost and comply with current code. All T-12 lamps and non energy-efficient magnetic ballast should be replaced with T-8 lamps, electronic ballast with 4100 deg K temp/color (cool white). The fixtures which need to be retrofitted are 1' x 4', 1' x 8', 2' x 2', 2' x 4' light fixtures in common areas.	690	EA	$150.00				$103,500
3. All existing old and obsolete Litholier system should be replaced with Lutron GP Dimming Panels and Grafik Eye 5000 series with central processor which integrates all types of lighting sources in the zones.	1	LS	$85,000				$ 85,000
4. All existing 4' and 8' strip lights should be replaced with guard, (2) T12 fluorescent lamps and magnetic ballast with new 4' and 8' strip lights, (2) T8 fluorescent lamps electronic ballasts in parking garage levels P1, P2 and P3.	560	EA	$ 75.00				$ 42,000
5.2.19 Fire Alarm Systems							
1. There is no CO monitoring system in the parking garage. Install new CO monitoring system and tie to existing garage exhaust fans, supply fans and smoke evaluation system in parking levels P1, P2, and P3.	65,000	SF	$ 1.50	$97,500			

				ESTIMATED COST/PRIORITY			
				1	2	3	4
Report Section/Item/Description	Qty	Unit	Unit Cost	Immediate (90 Days)	Short Term (1 Year)	ADA	Optional
5.2.22 Americans With Disabilities Act (ADA)							
1. An accessible counter needs to be provided at the registration desk.	1	LS	$3,000			$3,000	
TOTALS				**$105,500**	**$ 20,000**	**$3,000**	**$240,100**

Exhibit 10.97

LOAN AND SECURITY AGREEMENT

Dated as of March 9, 2007

Between

SHC HALF MOON BAY, LLC
as Borrower

and

COLUMN FINANCIAL, INC.,
as Lender

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SCHEDULE IX	DEFERRED MAINTENANCE

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT dated as of March 9, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Agreement** "), between SHC HALF MOON BAY, LLC, a Delaware limited liability company, (the "**Borrower**") having an office at c/o Strategic Hotel Funding, L.L.C., 77 West Wacker Drive, Suite 4600, Chicago, Illinois 60601, and COLUMN FINANCIAL, INC., a Delaware corporation, having an address at 11 Madison Avenue, New York, New York 10010 (together with its successors and assigns, "Lender").

WITNESSETH :

WHEREAS, Borrower desires to obtain the Loan (as hereinafter defined) from Lender;

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW, THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions . For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

"**Acceptable Counterparty**" shall mean a bank or other financial institution which has a long-term unsecured debt or counterparty rating of "A+" or higher by S&P and its equivalent by Moody's and, if the counterparty is rated by Fitch, by Fitch.

"**Acceptable Management Agreement**" shall mean, with respect to the Property, a new or amended management agreement with the Manager which agreement (as applicable) shall be upon terms and conditions entered into by Borrower, Operating Lessee, and/or Manager with respect to the Property in accordance with the terms of Section 5.2.14 hereof.

"**Acceptable Manager** " shall mean (i) the current Manager as of the Closing Date or any wholly-owned Affiliate (whether direct or indirect) of said current Manager, (ii) at any time after the Closing Date, any Pre-approved Manager listed on **Schedule IV** hereto, provided (x) each such property manager continues to be Controlled by substantially the same Persons Controlling such property manager as of the Closing Date (or if such Manager is a publicly traded company, such Manager continues to be publicly traded on an established securities market) and (y) there has been no material adverse change in the financial condition or results of operations of such property manager since the Closing Date, (iii) any other hotel management company that manages a system of at least six (6) hotels or resorts of a class and quality of at

least as comparable to the Property (as reasonably determined by Manager and Operating Lessee; provided , however , Operating Lessee shall obtain Lender's prior approval of such determination, not to be unreasonably withheld) and containing not fewer than 1,500 hotel rooms in the aggregate (including hotel/condominium units under management) in the aggregate, (iv) any Close Affiliate of any of the foregoing Persons or (v) any other reputable and experienced professional hotel management company with respect to which a Rating Agency Confirmation has been obtained.

"**Accommodation Security Documents**" shall mean the Security Instrument, the Assignment of Leases and UCC-1 Financing Statements which have been executed by Borrower and Operating Lessee in favor of Lender to secure Borrower's obligations under the Loan Documents.

"**Account Agreement** " shall mean the Account and Control Agreement, dated the date hereof, among Lender, Borrower and Cash Management Bank.

"**Account Collateral** " shall have the meaning set forth in Section 3.1.2 .

"**Acknowledgment**" shall mean the Acknowledgment, dated on or about the date hereof made by Counterparty, or as applicable, Acceptable Counterparty in the form of **Exhibit M** .

"**Additional Non-Consolidation Opinion**" shall have the meaning set forth in Section 4.1.29(c) .

"**Affiliate**" shall mean, with respect to any specified Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with, or any general partner or managing member in, such specified Person.

"**Agreement**" shall mean this Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**ALTA**" shall mean American Land Title Association, or any successor thereto.

"**Alteration**" shall mean any demolition, alteration, installation, improvement or decoration of or to the Property or any part thereof or the Improvements (including FF&E) thereon (other than any of the foregoing that (i) is permitted to be done and actually is done by or on behalf of the Manager without the consent of the Borrower (it being the intent of the parties that for this purpose amounts expended by Manager in respect of FF&E in the ordinary course of business from amounts reserved for FF&E under the Management Agreement shall be deemed not to be an Alteration), or (ii) is paid for out of any reserve account described in Article XVI.

"**Approved Bank** " shall have the meaning set forth in the Account Agreement.

"**Assignment and Acceptance**" shall mean an assignment and acceptance entered into by Lender and an assignee, and accepted by Lender in accordance with Article XV and in substantially the form of **Exhibit J** or such other form customarily used by Lender in connection with the participation or syndication of mortgage loans at the time of such assignment.

"**Assignment of Leases** " shall mean that certain first priority Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated as of the date hereof, from Borrower and Operating Lessee, as assignor, to Lender, as assignee, assigning to Lender all of Borrower's and Operating Lessee's interest in and to the Leases, Rents, Hotel Revenue and Security Deposits as security for the Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"**Bankruptcy Code** " shall mean Title 11, U.S.C.A., as amended from time to time and any successor statute thereto.

"**Beneficial**" when used in the context of beneficial ownership has the analogous meaning to that specified in Rule 13d-3 under the Securities Exchange Act of 1934, as amended.

"**Best of Borrower's Knowledge**", shall mean the actual (as opposed to imputed or constructive) present knowledge of: Cory Warning and Ryan Bowie after due inquiry, and without creating any personal liability on the part of any said individuals. In the case where the term "Best of Borrower's Knowledge" is used in the context of representations or warranties of Borrower to be made after the date hereof, the term shall include the Person or Persons, as applicable, that occupy the capacities of said individuals on the date such representation or warranty to the extent that one or more of such individuals no longer occupy their current capacities.

"**Borrower**" has the meaning set forth in the first paragraph of this Agreement.

"**Borrower's Account**" shall mean an account with any Person subsequently identified in a written notice from Borrower to Lender, which Borrower's Account shall be under the sole dominion and control of Borrower.

"**Budget**" shall mean the operating budget for the Property prepared by Manager on Borrower's behalf, pursuant to the Management Agreement, for the applicable Fiscal Year or other period setting forth, in reasonable detail, Manager's estimates, consistent with the Management Agreement, of the anticipated results of operations of the Property, including revenues from all sources, all Operating Expenses, Management Fees and Capital Expenditures.

"**Building Equipment**" shall have the meaning set forth in the Security Instrument.

"**Business Day** " shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, California or in the state in which Servicer is located are not open for business. When used with respect to an Interest Determination Date, Business Day shall mean any day on which dealings in deposits in U.S. Dollars are transacted in the London interbank market.

"**Capital Expenditures** " shall mean any amount incurred in respect of capital items which in accordance with GAAP would not be included in Borrower's annual financial statements for an applicable period as an operating expense of the Property.

"**Cash**" shall mean the legal tender of the United States of America.

"**Cash and Cash Equivalents**" shall mean any one or a combination of the following: (i) Cash, and (ii) U.S. Government Obligations.

"**Cash Management Bank** " shall mean LaSalle Bank National Association or any successor Approved Bank acting as Cash Management Bank under the Account Agreement or other financial institution approved by the Lender and, if a Securitization has occurred, the Rating Agencies.

"**Casualty**" shall mean a fire, explosion, flood, collapse, earthquake or other casualty affecting the Property.

"**Close Affiliate** " shall mean with respect to any Person (the "First Person") any other Person (each, a "Second Person") which is an Affiliate of the First Person and in respect of which any of the following are true: (a) the Second Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in such First Person, (b) the First Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in such Second Person, or (c) a third Person owns, directly or indirectly, at least 75% of all of the legal, Beneficial and/or equitable interest in both the First Person and the Second Person.

"**Closing Date**" shall mean the date of this Agreement set forth in the first paragraph hereof.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"**Collateral Accounts**" shall have the meaning set forth in Section 3.1.1 .

"**Collection Account** " shall have the meaning set forth in Section 3.1.1 .

"**Condemnation**" shall mean a taking or voluntary conveyance during the term hereof of all or any part of the Property or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any condemnation or other eminent domain proceeding by any Governmental Authority, whether or not the same shall have actually been commenced.

"**Consumer Price Index** " or "**CPI**" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York – Northern New Jersey – Long Island, NY – NJ – CT – PA; All Items; 1982-84 = 100. If the Bureau of Labor Statistics substantially revises the manner in which the CPI is determined, an adjustment shall be made by Lender in the revised index which would produce results equivalent, as nearly as possible, to those which would be obtained if the CPI had not been so revised. If the CPI becomes unavailable to the public because publication is discontinued, or otherwise, Lender shall substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by any other governmental agency reasonably acceptable to Borrower or, if no such index is available, then, subject to reasonable approval of Borrower, a comparable index published by a major bank, other financial institution, university or recognized financial publication shall be substituted.

"**CPI Increase** " shall mean the relevant figure multiplied by a fraction, the numerator of which shall be the CPI on each anniversary of the Closing Date and the denominator of which shall be the CPI on the Closing Date, which CPI Increase is calculated on each anniversary of the Closing Date.

"**Control**" shall mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise and (ii) the ownership, direct or indirect, of no less than 51% of the voting securities of such Person, and the terms Controlled, Controlling and Common Control shall have correlative meanings.

"**Counterparty** " shall mean the counterparty to the Interest Rate Cap Agreement and any counterparty under a Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement and, if applicable, any credit support provider identified in the Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement.

"**Counterparty Opinion** " shall have the meaning set forth in Section 9.3(f) .

"**Credit Suisse** " shall mean Credit Suisse Securities (USA) LLC and its successors in interest.

"**CS**" shall have the meaning set forth in Section 14.4.2(b) .

"**CS Group**" shall have the meaning set forth in Section 14.4.2(b) .

"**Current Debt Service Reserve Account**" shall have the meaning set forth in Section 3.1.1 .

"**Debt**" shall mean, with respect to any Person at any time, (a) indebtedness or liability of such Person for borrowed money whether or not evidenced by bonds, debentures, notes or other instruments, or for the deferred purchase price of property or services; (b) obligations of such Person as lessee under leases which should have been or should be, in accordance with GAAP, recorded as capital leases; (c) current liabilities of such Person in respect of unfunded vested benefits under plans covered by Title IV of ERISA; (d) obligations issued for, or liabilities incurred on the account of, such Person; (e) obligations or liabilities of such Person arising under letters of credit, credit facilities or other acceptance facilities; (f) obligations of such Person under any guarantees or other agreement to become secondarily liable for any obligation of any other Person, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss; (g) obligations of such Person secured by any Lien on any property of such Person, whether or not the obligations have been assumed by such Person; or (h) obligations of such Person under any interest rate or currency exchange agreement.

"**Debt Service** " shall mean, with respect to any particular period of time, scheduled interest payments under the Note.

"**Default**" shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

"**Default Rate** " shall have the meaning set forth in the Note.

"**Deferred Maintenance Conditions**" shall mean, collectively, the deferred maintenance conditions and near term capital requirements, if any, described on **Schedule IX** attached hereto and made a part hereof.

"**Disclosure Documents**" shall have the meaning set forth in Section 14.4.1 .

"**Disqualified Transferee**" shall mean any Person or its Close Affiliate that, (i) has (within the past five (5) years) defaulted, or is now in default, beyond any applicable cure period, of its material obligations, under any material written agreement with Lender, any Affiliate of Lender, or, unless approved by the Rating Agencies, any other financial institution or other person providing or arranging financing; (ii) has been convicted in a criminal proceeding for a felony or a crime involving moral turpitude or that is an organized crime figure or is reputed (as determined by Lender in its sole discretion) to have substantial business or other affiliations with an organized crime figure; (iii) has at any time filed a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (iv) as to which an involuntary petition (which was not subsequently dismissed within one hundred twenty (120) days) has at any time been filed under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (v) has at any time filed an answer consenting to or acquiescing in any involuntary petition filed against it by any other person under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (vi) has at any time consented to or acquiesced in or joined in an application for the appointment of a custodian, receiver, trustee or examiner for itself or any of its property; (vii) has at any time made an assignment for the benefit of creditors, or has at any time admitted its insolvency or inability to pay its debts as they become due; or (viii) has been found by a court of competent jurisdiction or other governmental authority in a comparable proceeding to have violated any federal or state securities laws or regulations promulgated thereunder.

"**Downgrade**" shall have the meaning as set forth in Section 9.3(c) hereof.

"**DSCR**" shall mean, with respect to a particular period, the ratio of Net Operating Income to the aggregate amount of Debt Service that is payable in respect of such period, as computed by Lender from time to time pursuant to the terms hereof, using in all cases, an assumed loan constant (instead of actual debt service payable under such loan) per annum equal to the strike price of the Interest Rate Cap Agreement in effect on the date of such determination (which constant shall be calculated at all times using an actual/360 accrual convention). If no such period is specified, then the period shall be deemed to be the immediately preceding four (4) Fiscal Quarters.

"**Eligible Account** " has the meaning set forth in the Account Agreement.

"**Eligible Collateral** " shall mean U.S. Government Obligations, Letters of Credit or Cash and Cash Equivalents, or any combination thereof.

"**Environmental Certificate**" shall have the meaning set forth in Section 12.2.1 .

"**Environmental Claim** " shall mean any claim, action, cause of action, investigation or written notice by any Person alleging potential liability (including potential liability for investigatory costs, cleanup costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based upon or resulting from (a) the presence, threatened presence, release or threatened release into the environment of any Hazardous Materials from or at the Property, or (b) the violation, or alleged violation, of any Environmental Law relating to the Property.

"**Environmental Event** " shall have the meaning set forth in Section 12.2.1 .

"**Environmental Indemnity**" shall mean the Environmental Indemnity, dated the date hereof, made by Guarantor in favor of Lender.

"**Environmental Law** " shall have the meaning provided in the Environmental Indemnity.

"**Environmental Reports** " shall have the meaning set forth in Section 12.1 .

"**ERISA**" shall mean the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

"**Event of Default** " shall have the meaning set forth in Section 17.1(a) .

"**Excess Cash Flow**" shall have the meaning set forth in Section 3.1.5 .

"**Exchange Act**" shall have the meaning set forth in Section 14.4.1 .

"**Exculpated Parties** " shall have the meaning set forth in Section 18.1.1 .

"**Excusable Delay** " shall mean a delay due to acts of god, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Borrower, but Borrower's lack of funds in and of itself shall not be deemed a cause beyond the control of Borrower.

"**Expansion**" shall mean any expansion or reduction of the Property or any portion thereof or the Improvements thereon.

"**Extension Interest Rate Cap Agreement**" shall mean, following the Borrower's exercise of its option to extend the Maturity Date pursuant to Section 5 of the Note, an Interest Rate Cap Agreement or Agreements (together with the confirmations and schedules relating thereto), each from an Acceptable Counterparty and satisfying the requirements set forth

on **Exhibit I** hereto; provided that, to the extent any such interest rate cap agreement does not meet the foregoing requirements, an "Extension Interest Rate Cap Agreement" shall be such interest rate cap agreement as may be approved by each of the Rating Agencies (such approval to be evidenced by the receipt of a Rating Agency Confirmation).

"**FF&E**" shall mean furniture, fixtures and equipment of the type customarily utilized in hotel properties in California similar to the Property.

"**FF&E Reserve Account**" shall have the meaning set forth in Section 3.1.1 .

"**Final Completion** " shall mean, with respect to any specified work, the final completion of all such work, including the performance of all "punch list" items, as confirmed by an Officer's Certificate and, with respect to any Material Alteration or Material Expansion, a certificate of the Independent Architect, if applicable.

"**Fiscal Quarter** " shall mean each quarter within a Fiscal Year in accordance with GAAP.

"**Fiscal Year**" shall mean the period commencing on the Closing Date and ending on and including December 31 of the calendar year in which the Closing Date occurs and thereafter each twelve month period commencing on January 1 and ending on December 31 until the Debt is repaid in full, or such other common fiscal year of Borrower as Borrower may select from time to time with the prior consent of Lender, such consent not to be unreasonably withheld.

"**Fitch**" shall mean Fitch Ratings Inc.

"**GAAP**" shall mean the generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination, as appropriately modified by the Uniform System.

"**Golf Club Agreement** " shall mean that certain Hotel, Golf Courses and Colony Club Operation and Access Agreement dated January 14, 1999 between Ocean Colony Partners, L.P., South Wavecrest, LLC and SHC Half Moon Bay, LLC (as assignee of Vestar-Athens/YCP II Half Moon Bay, L.L.C.).

"**Governmental Authority**" shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"**Guarantor**" shall mean, Strategic Hotel Funding, L.L.C., a Delaware limited liability company, which shall execute and deliver the Recourse Guaranty on the Closing Date.

"**Hazardous Materials** " shall have the meaning provided in the Environmental Indemnity.

"**Holding Account**" shall have the meaning set forth in Section 3.1.1 .

"**Hotel Revenue**" shall mean all revenues, income, Rents, issues, profits, termination or surrender fees, penalties and other amounts arising from the use or enjoyment of all or any portion of the Property, including, without limitation, the rental or surrender of any office space, retail space, parking space, halls, stores, and offices of every kind, the rental or licensing of signs, sign space or advertising space and all membership fees and dues, rentals, revenues, receipts, income, accounts, accounts receivable, cancellation fees, penalties, credit card receipts and other receivables relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, conference and banquet rooms, food and beverage facilities, health clubs, spas, vending machines, parking facilities, telecommunication and television systems, guest laundry, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System.

"**Impositions**" shall mean all taxes (including all ad valorem, sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible transaction, privilege or license or similar taxes), governmental assessments (including all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not commenced or completed within the term of this Agreement), water, sewer or other rents and charges, excises, levies, fees (including license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Property and/or any Rents and Hotel Revenue (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a Lien upon (a) Borrower (including all income, franchise, single business or other taxes imposed on Borrower for the privilege of doing business in the jurisdiction in which the Property is located), (b) the Property, or any other collateral delivered or pledged to Lender in connection with the Loan, or any part thereof, or any Rents or Hotel Revenue therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Property or the leasing or use of all or any part thereof. Nothing contained in this Agreement shall be construed to require Borrower to pay any tax, assessment, levy or charge imposed on (i) any tenant occupying any portion of the Property, (ii) any manager of the Property, including any Manager, or (iii) Servicer, Lender or any other third party in the nature of a capital levy, estate, inheritance, succession, income or net revenue tax.

"**Improvements**" shall have the meaning set forth in the Security Instrument.

"**Increased Costs** " shall have the meaning set forth in Section 2.4.1 .

"**Indebtedness**"shall mean, at any given time, the Principal Amount, together with all accrued and unpaid interest thereon and all other obligations and liabilities due or to become due to Lender pursuant hereto, under the Note or in accordance with the other Loan Documents and all other amounts, sums and expenses paid by or payable to Lender hereunder or pursuant to the Note or the other Loan Documents.

"**Indemnified Parties** " shall have the meaning set forth in Section 19.12(b) .

"**Independent**" shall mean, when used with respect to any Person, a Person who: (i) does not have any direct financial interest or any material indirect financial interest in Borrower or in any Affiliate of Borrower, (ii) is not connected with Borrower or any Affiliate of Borrower as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, supplier, customer or person performing similar functions and (iii) is not a member of the immediate family of a Person defined in (i) or (ii) above.

"**Independent Architect**" shall mean an architect, engineer or construction consultant selected by Borrower which is Independent, licensed to practice in the State and has at least five (5) years of architectural experience and which is reasonably acceptable to Lender.

"**Independent Director** ", "**Independent Manager**", or "**Independent Member** " shall mean a natural person who is not at the time of initial appointment as a director, manager or member or at any time while serving as a director, member or manager of the Borrower and has not been at any time during the five (5) years preceding such initial appointment:

(a) a stockholder, director (with the exception of serving as an Independent Director of the Borrower), officer, trustee, employee, partner, member, attorney or counsel of Borrower, the Member (with exception of serving as a Special Member), or any Affiliate of either of them;

(b) a creditor, customer, supplier, or other person who derives any of its purchases or revenues from its activities with the Member, the Borrower or any Affiliate of either of them;

(c) a Person Controlling or under common Control with any Person excluded from serving as Independent Director under (a) or (b); or

(d) a member of the immediate family by blood or marriage of any Person excluded from serving as Independent Director under (a) or (b).

A natural person who satisfies the foregoing definition other than subparagraph (b) shall not be disqualified from serving as an Independent Director of the Borrower if such individual is an Independent Director, Independent Manager or Independent Member provided by a nationally-recognized company that provides professional independent directors (a "Professional Independent Director") and other corporate services in the ordinary course of its business. A natural person who otherwise satisfies the foregoing definition other than subparagraph (a) by reason of being the independent director of a Single Purpose Entity affiliated with the Borrower shall not be disqualified from serving as an Independent Director, Independent Manager or Independent Member of the Borrower if such individual is either (i) a Professional Independent Director or (ii) the fees that such individual earns from serving as independent director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. Notwithstanding the immediately preceding sentence, an Independent Director may not simultaneously serve as Independent Director, Independent Manager or Independent Member of the Borrower and

independent director, independent member or independent manager of a special purpose entity that owns a direct or indirect equity interest in the Borrower or a direct or indirect interest in any co-borrower with the Borrower.

"Insurance Requirements" shall mean, collectively, (i) all material terms of any insurance policy required pursuant to this Agreement and (ii) all material regulations and then-current standards applicable to or affecting the Property or any part thereof or any use or condition thereof, which may, at any time, be recommended by the Board of Fire Underwriters, if any, having jurisdiction over the Property, or such other body exercising similar functions.

"Insurance Reserve Account" shall have the meaning set forth in Section 3.1.1(b) .

"Insurance Reserve Amount" shall have the meaning set forth in Section 16.2 .

"Insurance Reserve Trigger" shall mean Borrower's failure to deliver to Lender not less than five Business Days prior to each Payment Date (unless the prior notice to Lender provided evidence reasonably satisfactory to Lender that Borrower had prepaid such insurance premiums through a future Payment Date), evidence that all insurance premiums for the insurances required to be maintained pursuant to the terms of this Agreement have been paid in full.

"Intangible" shall have the meaning set forth in the Security Instrument.

"Interest Determination Date" shall have the meaning set forth in the Note.

"Interest Period" shall have the meaning set forth in the Note.

"Interest Rate Cap Agreement" shall mean an Interest Rate Agreement or Agreements (together with the confirmation and schedules relating thereto), or, with Lender's prior written consent (which shall not be unreasonably withheld, delayed or conditioned), a swap or other interest rate hedging instrument, each between a Counterparty and Borrower obtained by Borrower and collaterally assigned to Lender pursuant to this Agreement, and each satisfying the requirements set forth in **Exhibit I** and, in the case of a swap or other interest rate hedging agreement consented to by Lender, any additional requirements of the Rating Agencies).

"Land" shall have the meaning set forth in the Security Instrument.

"Late Payment Charge " shall have the meaning set forth in Section 2.2.3 .

"Lease" shall mean any lease (other than the Operating Lease and the Golf Club Agreement), sublease or subsublease, letting, license, concession, or other agreement (whether written or oral and whether now or hereafter in effect) (excluding club membership programs now or hereafter in effect entitling Persons to preferential access to the Property) pursuant to which any Person is granted by the Borrower or Operating Lessee a possessory interest in, or right to use or occupy all or any portion of any space in the Property or any facilities at the Property (other than typical short-term occupancy rights of hotel guests which are not the subject of a written agreement), and every modification, amendment or other agreement relating to such

lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"Lease Modification "shall have the meaning set forth in Section 8.8.1 .

"Legal Requirements" shall mean all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, and irrespective of the nature of the work to be done, of every Governmental Authority including, without limitation, Environmental Laws and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Borrower or to the Property and the Improvements and the Building Equipment thereon, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Property and the Improvements and the Building Equipment thereon including, without limitation, building and zoning codes and ordinances and laws relating to handicapped accessibility.

"Lender"shall have the meaning set forth in the first paragraph of this Agreement.

"Letter of Credit"shall mean an irrevocable, unconditional, transferable (without the imposition of any fee except any fees which are expressly payable by the Borrower), clean sight draft letter of credit (either an evergreen letter of credit or one which does not expire until at least sixty (60) days after the Maturity Date (the**"LC Expiration Date "**), in favor of Lender and entitling Lender to draw thereon in New York, New York, based solely on a statement executed by an officer or authorized signatory of Lender and issued by an Approved Bank. If at any time (a) the institution issuing any such Letter of Credit shall cease to be an Approved Bank or (b) the Letter of Credit is due to expire prior to the LC Expiration Date, Lender shall have the right immediately to draw down the same in full and hold the proceeds thereof in accordance with the provisions of this Agreement, unless Borrower shall deliver a replacement Letter of Credit from an Approved Bank within (i) as to (a) above, twenty (20) days after Lender delivers written notice to Borrower that the institution issuing the Letter of Credit has ceased to be an Approved Bank or (ii) as to (b) above, at least twenty (20) days prior to the expiration date of said Letter of Credit.

"Liabilities" shall have the meaning set forth in Section 14.4.2(b) .

"LIBOR"shall have the meaning set forth in the Note.

"LIBOR Cap Strike Rate"shall mean 6.5%.

"LIBOR Margin" shall mean "LIBOR Margin" as defined in the Note.

"LIBOR Rate" shall have the meaning set forth in the Note.

"License" shall have the meaning set forth in Section 4.1.23 .

"Lien" shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance or charge on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and the filing of mechanic's, materialmen's and other similar liens and encumbrances.

"Loan" shall mean the loan in the amount of $76,500,000 made by Lender to Borrower pursuant to this Agreement.

"Loan Documents" shall mean, collectively, this Agreement, the Note, the Security Instrument, the Assignment of Leases, the Environmental Indemnity, the Subordination of Operating Lease, the Account Agreement, the Recourse Guaranty, the Manager Subordination Agreements and all other documents executed and/or delivered by Borrower in connection with the Loan including any certifications or representations delivered by or on behalf of Borrower, any Affiliate of Borrower, the Manager, or any Affiliate of the Manager (including, without limitation, any certificates in connection with any legal opinions delivered on the date hereof), together with all of the Accommodation Security Documents executed by the Operating Lessee.

"Loan to Value Ratio " shall mean the ratio, as of a particular date, in which the numerator is equal to the outstanding principal balance of the Loan and the denominator is equal to the appraised value of the Property as determined by Lender in its reasonable discretion.

"Management Agreement " shall mean that certain (i) Operating Agreement dated October 8, 1998 between SHC Half Moon Bay, LLC (as assignee of Vestar-Athens/YCP II Half Moon Bay, L.L.C. and Vestar-Athens/YCP II HMB Operating Company, L.L.C.) and The Ritz-Carlton Hotel Company, L.L.C., as amended by that certain Amendment to Operating Agreement dated August 24, 2004 between SHC Half Moon Bay, LLC and The Ritz-Carlton Hotel Company, L.L.C. and (ii) Club Operating Agreement dated June 1, 2001 between SHC Half Moon Bay, LLC (as assignee of Vestar-Athens/YCP II Half Moon Bay, L.L.C. and Vestar-Athens/YCP II HMB Operating Company, L.L.C.) and The Ritz-Carlton Hotel Company, L.L.C., as each of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"Management Control " shall mean, with respect to any direct or indirect interest in the Borrower or the Property (not including Manager under an Approved Management Agreement), the power and authority to make and implement or cause to be made and implemented all material decisions with respect to the operation, management, financing and disposition of the specified interest.

"Management Fee" shall mean an amount equal to the management fees payable to the Manager pursuant to the terms of the Management Agreement for management services, incentive management fees, marketing fees and any other fees described in the Management Agreement, and any allocated franchise fees.

"Manager" shall mean, as of the Closing Date, The Ritz-Carlton Hotel Company, L.L.C., or any replacement "Manager" appointed in accordance with Section 5.2.14 hereof.

"Manager Accounts "shall mean the "Operating Accounts" (as defined in the Management Agreement) and if applicable, the Manager FF&E Alternative Reserve Account, maintained by Manager in the name of Borrower or Operating Lessee with respect to the Property and in accordance with the terms of the Management Agreement.

"**Manager FF&E Alternative Reserve Account**" shall have the meaning set forth in Section 5.1.23(a)(ii) .

"Manager FF&E Reserve Account"shall mean the relevant reserve account used by Manager in respect of the "FF&E Reserve" as defined in the Management Agreement pursuant to the Management Agreement.

"Manager Subordination Agreements"shall mean that certain Consent to Assignment, Agreement and Estoppel and that certain Subordination, Non-Disturbance and Attornment Agreement dated the date hereof, among Lender, Borrower, Operating Lessee, and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Material Adverse Effect"shall mean any event or condition that has a material adverse effect on (i) the Property taken as a whole, (ii) the use, operation, or value of the Property, (iii) the business, profits, operations or financial condition of the Borrower or (iv) the ability of Borrower to repay the principal and interest of the Loan as it becomes due or to satisfy any of Borrower's obligations under the Loan Documents.

"Material Alteration "shall mean any Alteration (other than with respect to replacements of FF&E that are funded from reserves for FF&E reserved for hereunder or under the Management Agreement by the Manager) to be performed by or on behalf of Borrower at the Property, the total cost of which (including, without limitation, construction costs and costs of architects, engineers and other professionals), as reasonably estimated by an Independent Architect, exceeds the Threshold Amount.

"Material Casualty "shall mean a Casualty where the loss (i) is in an aggregate amount equal to or in excess of thirty percent (30%) of the outstanding Principal Amount of the Loan or (ii) has caused thirty percent (30%) or more of the hotel rooms or common areas (including banquet and conference facilities) in the Property to be unavailable for its applicable use.

"Material Condemnation"shall mean a Condemnation where the loss (i) is in an aggregate amount equal to or in excess of thirty percent (30%) of the outstanding Principal Amount of the Loan or (ii) has caused thirty percent (30%) or more of the hotel rooms or common areas (including banquet and conference facilities) in the Property to be unavailable for its applicable use.

"Material Expansion"shall mean any Expansion to be performed by or on behalf of the Borrower at the Property, the total cost of which, as reasonably estimated by an Independent Architect, exceeds the Threshold Amount.

"Material Lease" shall mean any Lease (a) demising a premises within the Property that is more than 10,000 net rentable square feet or (b) that is for a term equal to or greater than sixty (60) months, provided, such definition specifically excludes the Golf Club Agreement.

"Maturity Date" shall have the meaning set forth in the Note.

"Maturity Date Payment"shall have the meaning set forth in the Note.

"Maximum Legal Rate"shall mean the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

"Monetary Default "shall mean a Default (i) that can be cured with the payment of money or (ii) arising pursuant to Section 17.1(a)(vi) or (vii) .

"Monthly FF&E Reserve Amount"shall mean an amount determined by Lender (based upon the most recent monthly operating statements delivered pursuant hereto) equal to 4% of Hotel Revenue.

"Monthly Insurance Reserve Amount"shall have the meaning set forth in Section 16.2 .

"Monthly Tax Reserve Amount"shall have the meaning set forth in Section 16.1 .

"Moody's" shall mean Moody's Investors Service, Inc.

"Net Operating Income "shall mean, for any specified period, the excess of Operating Income over Operating Expenses for the trailing twelve (12) month period.

"New Lease"shall have the meaning set forth in Section 8.8.1 .

"Non-Consolidation Opinion"shall have the meaning provided in Section 2.5.5 .

"Non-Disturbance Agreement"shall have the meaning set forth in Section 8.8.9 .

"Note"shall mean that certain Note in the principal amount of Seventy-Six Million Five Hundred Thousand Dollars ($76,500,000), made by Borrower in favor of Lender as of the date hereof, as the same may be amended, restated, replaced, substituted (including any components or subcomponents) or supplemented or otherwise modified from time to time.

"Obligations" shall have meaning set forth in the recitals of the Security Instrument.

"OFAC List" means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office Foreign Assets Control and accessible through the internet website www.treas.gov/ofac/t11sdn.pdf .

"Officer's Certificate"shall mean a certificate executed by an authorized signatory of Borrower that is familiar with the financial condition of Borrower and the operation of the Property or the particular matter which is the subject of such Officer's Certificate.

"Operating Asset" shall have the meaning set forth in the Security Instrument.

"Operating Expenses"shall mean, for any specified period, without duplication, all expenses of Borrower or Operating Lessee (or by Manager for the account of Borrower or Operating Lessee) during such period in connection with the ownership or operation of the Property, including costs (including labor) of providing services including rooms, food and beverage, telecommunications, garage and parking and other operating departments, as well as real estate and other business taxes, other rental expenses, insurance premiums, utilities costs, administrative and general costs, repairs and maintenance costs, Management Fees under the Management Agreement, other costs and expenses relating to the Property, required FF&E reserves, and legal expenses incurred in connection with the operation of the Property, determined, in each case on an accrual basis, in accordance with GAAP. "Operating Expenses" shall not include (i) depreciation or amortization or other noncash items, (ii) the principal of and interest on the Note, (iii) income taxes or other taxes in the nature of income taxes, (iv) any expenses (including legal, accounting and other professional fees, expenses and disbursements) incurred in connection with and allocable to the issuance of the Note, (v) the cost of any FF&E expenditures (other than amounts deposited into the applicable hotel operating account for FF&E expenditures, which shall be considered an "Operating Expense" as used herein) or any other capital expenditures, or (vi) the excess of insurance premiums over the Maximum Premium Amount (per annum) incurred by Borrower solely in connection with the purchase of terrorism insurance pursuant to Section 6.1(b)(xii) distributions to the shareholders of the Borrower. Expenses that are accrued as Operating Expenses during any period shall not be included in Operating Expenses when paid during any subsequent period.

"Operating Lease" means that certain lease agreement dated the date hereof between the Borrower, as lessor and the Operating Lessee, as lessee.

"Operating Lessee "means DTRS Half Moon Bay, LLC, a Delaware limited liability company, as lessee under the Operating Lease.

"Operating Income "shall mean for any specified period, all income received by Borrower or Operating Lessee (or by Manager for the account of Borrower or Operating Lessee) from any Person during such period in connection with the ownership or operation of the Property, determined on an accrual basis of accounting determined in accordance with GAAP, including the following:

(i) all amounts payable to Borrower, Operating Lessee or to Manager for the account of Borrower or Operating Lessee by any Person as Rent and/or Hotel Revenue;

(ii) all amounts payable to Borrower or Operating Lessee (or to Manager for the account of Borrower or Operating Lessee) pursuant to any reciprocal easement and/or operating agreements, covenants, conditions and restrictions, condominium documents and similar agreements affecting the Property and binding upon and/or benefiting Borrower and other third parties, but specifically excluding the Management Agreement;

(iii) condemnation awards to the extent that such awards are compensation for lost rent allocable to such specified period;

(iv) business interruption and loss of "rental value" insurance proceeds to the extent such proceeds are allocable to such specified period; and

(v) all investment income with respect to the Collateral Accounts.

Notwithstanding the foregoing clauses (i) through (v), Operating Income shall not include (A) any Proceeds (other than of the types described in clauses (iii) and (iv) above), (B) any proceeds resulting from the sale, exchange, transfer, financing or refinancing of all or any part of the Property (other than of the types described in clause (i) and (iii) above), (C) any repayments received from Tenants of principal loaned or advanced to Tenants by Borrower, (D) any type of income that would otherwise be considered Operating Income pursuant to the provisions above but is paid directly by any Tenant to a Person other than Borrower or Manager or its agent and (E) any fees or other amounts payable by a Tenant or another Person to Borrower that are reimbursable to Tenant or such other Person.

"Opinion of Counsel" shall mean opinions of counsel of law firm(s) licensed to practice in California and New York selected by Borrower and reasonably acceptable to Lender.

"Other Charges" shall mean maintenance charges, impositions other than Impositions, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof by any Governmental Authority, other than those required to be paid by a Tenant pursuant to its respective Lease.

"Other Taxes" shall have the meaning set forth in Section 2.4.3 .

"**Outstanding Manager Issues**" means (a) the failure of Manager to accurately report revenues and expenses for years 2005 and 2006 as described in Section 4.1.45(a) and (b) the dispute with the owner of the golf course adjoining the Property as to golf fees as described in Section 4.1.45(b) .

"Payment Date" shall have the meaning set forth in the Note.

"Permitted Borrower Transferee" shall mean any entity (i) that is experienced in owning and operating (including acting as asset manager) properties similar to the Property, (ii) (a) with a net worth together with its Close Affiliates, as of a date no more than six (6) months prior to the date of the transfer of at least $1 Billion (exclusive of the Property) and (b) who, immediately prior to such transfer, controls, together with its Close Affiliates real estate equity assets of at least $1 Billion, (iii) which, together with its Close Affiliates owns or has

under management or acts as the exclusive fund manager or investment advisor, at the time of the transfer, not fewer than 20 first class full service resort hotels or business hotel properties (excluding the Property) containing not fewer than 5,000 hotel rooms in the aggregate and (iv) that is not a Disqualified Transferee.

"Permitted Borrower Transferee Alternative"shall mean any entity (i) that is experienced in owning and operating (including acting as asset manager of) properties similar to the Property, (ii) that either (a) has a net worth together with its Close Affiliates, as of a date no more than six (6) months prior to the date of the transfer of at least $300 Million (exclusive of the Property) and, immediately prior to such transfer, controls, together with its Close Affiliates real estate equity assets of at least $1 Billion or (b) together with its Close Affiliates owns or has under management or acts as the exclusive fund manager or investment advisor, at the time of the transfer, not fewer than 6 luxury resort hotels (excluding the Property) containing not fewer than 3,000 hotel rooms in the aggregate and (iii) that is not a Disqualified Transferee.

"Permitted Debt" shall mean collectively, (a) the Note and the other obligations, indebtedness and liabilities specifically provided for in any Loan Document and secured by this Agreement, the Security Instrument and the other Loan Documents, (b) trade payables and other liabilities incurred in the ordinary course of Borrower's business and payable by or on behalf of Borrower in respect of the operation of the Property, not secured by Liens on the Property (other than liens being properly contested in accordance with the provisions of this Agreement or the Security Instrument), such payables and liabilities (which shall not include taxes, accrued payroll and benefits, customer, membership and security deposits and deferred income), not to exceed at any one time outstanding two percent (2%) of the Principal Amount of the Loan, provided that (but subject to the remaining terms of this definition) each such amount shall be paid within sixty (60) days following the date on which each such amount is incurred, provided, that such two percent (2.0%) limitation shall not include normal and customary retainages related to Alterations that are reserved for by Borrower, (c) purchase money indebtedness, capital lease obligations or other obligations incurred in the ordinary course of Borrower's business, having scheduled annual debt service not to exceed $600,000, (d) contingent obligations to repay customer, membership and security deposits held in the ordinary course of Borrower's business, (e) obligations incurred in the ordinary course of Borrower's business for the financing of any applicable portfolio insurance premiums, (f) any Management Fees not yet due and payable under the Management Agreement, (g) taxes or other charges not yet due and payable or delinquent or which are being diligently contested in good faith in accordance with Section 5.1(b)(ii) hereof, (h) indebtedness relating to Liens in respect of property or assets imposed by law which were incurred in the ordinary course of business, such as carriers', warehousemen's, landlord's, mechanic's, materialmen's, repairmen's and other similar Liens arising in the ordinary course of business, and Liens for workers' compensation, unemployment insurance and similar programs, in each case arising in the ordinary course of business which are either not yet due and payable or being diligently contested in good faith in accordance with the requirements of the Loan Documents, (i) the Revolver Loan and (j) such other unsecured indebtedness approved by Lender in its sole discretion and with respect to which Borrower has received a Rating Confirmation. Nothing contained herein shall be deemed to require Borrower to pay any amount, so long as Borrower is in good faith, and by proper legal proceedings, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or

proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) adequate reserves with respect thereto are maintained on the books of Borrower in accordance with GAAP, and (iii) such contest operates to suspend collection or enforcement, as the case may be, of the contested amount and such contest is maintained and prosecuted continuously and with diligence. Notwithstanding anything set forth herein, in no event shall Borrower be permitted under this provision to enter into a note (other than the Note and the other Loan Documents) or other instrument for borrowed money other than permitted purchase money indebtedness as described in this definition.

"Permitted Encumbrances" shall mean collectively, (a) the Liens and security interests created or permitted by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Policy, (c) Liens, if any, for Impositions imposed by any Governmental Authority not yet due or delinquent (other than any such Lien imposed pursuant to Section 401(a)(29) of the Code or by ERISA), and (d) Liens on personal property items that are the subject of clause (c) of the definition of Permitted Debt.

"Permitted Investments" shall have the meaning set forth in the Account Agreement.

"Person" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Physical Conditions Report" shall mean, with respect to the Property, collectively, the (i) seismic report and (ii) structural engineering report (prepared by an Independent Architect), both of which have been (a) addressed to Lender (b) prepared based on a scope of work determined by Lender in Lender's reasonable discretion, and (c) in form and content acceptable to Lender in Lender's reasonable discretion, together with any amendments or supplements thereto.

"Plan" shall have the meaning set forth in Section 4.1.10 .

"Pre-approved Manager " shall mean any entity set forth on **Schedule IV** .

"Pre-approved Transferee" shall mean any of the entities set forth on **Schedule III** hereof, or any Close Affiliates thereof, provided any of the foregoing entities or their Close Affiliates shall only be a "Pre-approved Transferee" if (i) such entity continues to be Controlled by substantially the same Persons Controlling such entity as of the Closing Date or if such Pre-approved Transferee is a publicly traded company, such Pre-approved Transferee continues to be publicly traded on an established securities market, (ii) there has been no material adverse change in the financial condition or results of operations of such entity since the Closing Date, (iii) such entity is not a Disqualified Transferee and (iv) if such entity as of the Closing Date is rated (a) "Investment Grade", there has been no deterioration in such entity's long-term or short-term credit rating (if any) since the Closing Date below "BBB-" or (b) below "Investment Grade", there has been no deterioration in such entity's long-term or short-term credit rating (if any) since the Closing Date.

"Prepayment Fee" shall have the meaning set forth in the Note.

"Principal Amount "shall have the meaning set forth in the Note.

"Proceeds" shall mean amounts, awards or payments payable to Borrower (including, without limitation, amounts payable under any title insurance policies covering Borrower's ownership interest in the Property) or Lender with respect to any Condemnation or Casualty and specifically including insurance required to be maintained hereunder (after the deduction therefrom and payment to Borrower and Lender, respectively, of any and all reasonable expenses incurred by Borrower and Lender in the recovery thereof, including all attorneys' fees and disbursements, the fees of insurance experts and adjusters and the costs incurred in any litigation or arbitration with respect to any claim under such insurance policies or with respect to such Condemnation or Casualty).

"Prohibited Person"means any Person identified on the OFAC List or any other Person with whom a U.S. Person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States of America.

"Property" shall have the meaning set forth in the Security Instrument.

"Provided Information"shall have the meaning set forth in Section 14.1.1 .

"Rate Cap Collateral "shall have the meaning set forth in Section 9.2 .

"Rating Agencies" shall mean (a) prior to a Securitization, each of S&P, Moody's and Fitch and any other nationally-recognized statistical rating agency which has been approved by Lender and (b) after a Securitization has occurred, each such Rating Agency which has rated the Securities in the Securitization.

"Rating Agency Confirmation "shall mean, collectively, a written affirmation from each of the Rating Agencies that the credit rating of the Securities given by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency's sole and absolute discretion. In the event that, at any given time, no such Securities shall have been issued and are then outstanding, then the term Rating Agency Confirmation shall be deemed instead to require the written approval of Lender based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation if any such Securities were outstanding.

"Real Property" shall mean, collectively, the Land, the Improvements and the Appurtenances (as defined in the Security Instrument).

"Recourse Guaranty "shall mean that certain Guaranty of Recourse Obligations of Borrower, dated as of the date hereof, by Guarantor in favor of Lender, as the same may be amended, supplemented, restated or otherwise modified from time to time.

"Register"shall have the meaning set forth in Section 15.4 .

"Regulatory Change "shall mean any change after the date of this Agreement in federal, state or foreign laws or regulations or the adoption or the making, after such date, of any interpretations, directives or requests applying to Lender, or any Person Controlling Lender or to a class of banks or companies Controlling banks of or under any federal, state or foreign laws or regulations (whether or not having the force of law) by any court or Governmental Authority or monetary authority charged with the interpretation or administration thereof.

"Relevant Portions"shall have the meaning set forth in Section 14.4.2(a) .

"Rents"shall mean all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower and/or Operating Lessee from any and all sources arising from or attributable to the Property and Proceeds, if any, from business interruption or other loss of income insurance.

"Restoration" shall have the meaning provided in Section 6.2.2 .

"**Retail/Service Facilities**" shall have the meaning provided in Section 8.7.10 .

"Replacement Interest Rate Cap Agreement"shall mean, in connection with a replacement of an Interest Rate Cap Agreement following a Downgrade of the Counterparty thereto, an interest rate cap agreement (together with the confirmation and schedules relating thereto) from an Acceptable Counterparty and satisfying the requirements set forth on **Exhibit I** hereto; provided that to the extent any such interest rate cap agreement does not meet the foregoing requirements a "Replacement Interest Cap Agreement" shall be such interest rate cap agreement approved by each of the Rating Agencies, such approval to be evidenced by the receipt of a Rating Agency Confirmation.

"**Revolver Loan** " shall mean that certain revolving credit facility from Deutsche Bank Trust Company Americas to Strategic Hotel Funding, L.L.C., evidenced by that certain Credit Agreement, dated as of March 9, 2007, between Deutsche Bank Trust Company Americas, as the administrative agent, various financial institutions, as lenders specified therein and Strategic Hotel Funding, L.L.C., as borrower (" **Credit Agreement**") as the same may hereafter be amended, restated, supplemented or otherwise modified or replaced, from time to time.

"S&P"shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"Securities" shall have the meaning set forth in Section 14.1 .

"Securities Act"shall have the meaning set forth in Section 14.4.1 .

"Securitization" shall have the meaning set forth in Section 14.1 .

"Security Instrument" shall mean that certain first priority Fee Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated the date hereof, executed and delivered by Borrower and certain of its affiliates to Lender and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Servicer" shall mean such Person designated in writing with an address for such Person by Lender, in its sole discretion, to act as Lender's agent hereunder with such powers as are specifically delegated to the Servicer by Lender, whether pursuant to the terms of this Agreement, the Account Agreement or otherwise, together with such other powers as are reasonably incidental thereto.

"Single Purpose Entity" shall mean a Person, other than an individual, which (i) is formed or organized solely for the purpose of owning, leasing, managing, holding, developing, using, operating and financing the Property, (ii) does not engage in any business unrelated to the Property and the ownership, development, use, operation and financing thereof, (iii) does not have any assets other than the Property and incidental personal property related to its interest in the Property or the operation, management and financing thereof or any indebtedness other than the Permitted Debt, (iv) maintains its own separate books and records and its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person (however the presentation of combined or consolidated financial condition or results of operation for purposes of financial statements prepared for the ultimate equity owners of multiple Single Purpose Entities shall be allowed), (v) holds itself out as being a Person, separate and apart from any other Person, (vi) except as otherwise permitted under Section 5.1.23 hereof, does not and will not commingle its funds or assets with those of any other Person, (vii) conducts its own business in its own name; (viii) maintains separate financial statements; provided, however, that any consolidated financial statements contain a note indicating that it and its Affiliates are separate legal entities and maintain records, books of account, and accounts separate and apart from any other Person and that their respective assets and credit are not available to satisfy each other's debts, (ix) pays its own liabilities out of its own funds, (x) observes all partnership, corporate or limited liability company formalities, as applicable, (xi) pays the salaries of its own employees, if any, out of its own funds and maintains a sufficient number of employees, if any, in light of its contemplated business operations, (xii) does not pledge its assets or guarantee or otherwise obligate itself with respect to the debts of any other Person or hold out itself or its credit as being available to satisfy the obligations of any other Person, (xiii) does not acquire obligations or securities of its partners, members or shareholders, (xiv) allocates fairly and reasonably shared expenses, including, without limitation, any overhead for shared office space, if any and for any services provided by employees of Affiliates, (xv) uses separate stationary, invoices, and checks bearing its own name, (xvi) maintains an arms-length relationship with its Affiliates, (xvii) does not pledge its assets for the benefit of any other Person (other than as permitted under clauses (a) and (d) of the definition of Permitted Encumbrances) or make any cash loans or advances to any other Person, (xviii) uses commercially reasonable efforts to correct any known misunderstanding regarding its separate identity, (xix) maintains adequate capital in light of its contemplated business operations, and (xx) does not make or permit to remain outstanding any loan or advance to, and does not own or acquire any stock or securities of, any Person, except that the Borrower may invest in those investments expressly permitted herein. In addition, if such Person is a

partnership, (1) all general partners of such Person shall be Single Purpose Entities; and (2) if such Person has more than one general partner, then the organizational documents shall provide that such Person shall continue (and not dissolve) for so long as a solvent general partner exists. In addition, if such Person is a corporation, then, at all times: (a) such Person shall have at least two (2) Independent Directors and (b) the board of directors of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including the Independent Directors, shall have participated in such vote. In addition, if such Person is a limited liability company, (a) such Person shall have at least two (2) Independent Managers or Independent Members, (b) if such Person is managed by a board of managers, the board of managers of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of managers unless all of the managers, including the Independent Managers, shall have participated in such vote, (c) if such Person is not managed by a board of managers, the members of such Person may not take any action requiring the affirmative vote of 100% of the members of such Person unless all of the members, including the Independent Members, shall have participated in such vote, (d) each managing member shall be a Single Purpose Entity and (e) its articles of organization, certificate of formation and/or operating agreement, as applicable, shall provide that until all of the Indebtedness and Obligations are paid in full such entity will not dissolve. In addition, the organizational documents of such Person shall provide that such Person (1) without the unanimous consent of all of the partners, directors or members, as applicable, shall not with respect to itself or to any other Person in which it has a direct or indirect legal or beneficial interest (a) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or other similar official for the benefit of the creditors of such Person or all or any portion of such Person's properties, or (b) take any action that might cause such Person to become insolvent, petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (2) will maintain its books, records, resolutions and agreements as official records, (3) will hold its assets in its own name, (4) will maintain its financial statements, accounting records and other organizational documents, books and records separate and apart from any other Person, provided, however, that any consolidated financial statements contain a note indicating that it and its Affiliates are separate legal entities and maintain records, books of account, and accounts separate and apart from any other Person and that their respective assets and credit are not available to satisfy each other's debts, (5) will not identify its partners, members or shareholders, or any Affiliates of any of them as a division or part of it, (6) will maintain an arms-length relationship with its Affiliates, (7) except for capital contributions or capital distributions, will only enter into a transaction with an Affiliate of the Borrower on commercially reasonable terms similar to those available to unaffiliated parties in an arm's-length transaction; (8) will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities); and (9) except as permitted by the Loan Documents, will not form, acquire or hold any subsidiary (whether corporation, partnership, limited liability company or other) or own any equity interest in any other entity other than the Property.

"Special Taxes" shall mean any and all present or future taxes, levies, imposts, deductions, charges or withholdings, or any liabilities with respect thereto, including those arising after the date hereof as result of the adoption of or any change in law, treaty, rule, regulation, guideline or determination of a Governmental Authority or any change in the interpretation or application thereof by a Governmental Authority but excluding, in the case of

Lender, such taxes (including income taxes, franchise taxes and branch profit taxes) as are imposed on or measured by Lender's net income by the United States of America or any Governmental Authority of the jurisdiction under the laws under which Lender is organized or maintains a lending office.

"State" shall mean the State in which the Property or any part thereof is located.

"Sub-Account(s)" shall have the meaning set forth in Section 3.1.1 .

"Subordination of Operating Lease" shall mean that certain Operating Lease Subordination Agreement, dated the date hereof, among Lender, Borrower, Operating Lessee, and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Survey" shall mean a survey of the Property prepared by a surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Policy, and containing a certification of such surveyor satisfactory to Lender.

"Tax Reserve Account " shall have the meaning set forth in Section 3.1.1 .

"Tax Reserve Amount" shall have the meaning set forth in Section 16.1 .

"Tenant" shall mean any Person leasing, subleasing or otherwise occupying any portion of the Property or permitted to use any portion of the facilities at the Property, other than the Manager and its employees, agents and assigns.

"Terrorism Coverage Required Amount" shall mean an aggregate amount equal to the full replacement cost of the Property and the Improvements (without deduction for physical depreciation) from time to time, or such lesser amounts approved by Lender in its sole discretion (or after a Securitization, upon receipt of a Rating Agency Confirmation).

"Threshold Amount " shall mean an amount equal to 10% of the Principal Amount of the Loan, being $7,650,000 as of the date of this Agreement, provided however, that during the term of the Loan, in the event Strategic Hotel Funding, L.L.C. is not the Guarantor or Strategic Hotel Funding, L.L.C. is not the guarantor under the Recourse Guaranty or the indemnitor under the Environmental Indemnity, then the Threshold Amount shall mean an amount equal to 5% of the Principal Amount of the Loan, being $3,825,000 as of the date of this Agreement.

"Title Company" shall mean First American Title Insurance Company.

"Title Policy" shall mean an ALTA mortgagee title insurance policy in a form acceptable to Lender (or, if the Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued by the Title Company with respect to the Property and insuring the lien of the Security Instrument.

"Transfer" shall mean to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise

dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise.

"UCC" or **" Uniform Commercial Code"** shall mean the Uniform Commercial Code as in effect in the State.

"Ultimate Equity Owner" shall mean Strategic Hotel Funding, L.L.C., a Delaware limited liability company.

"Underwriter Group " shall have the meaning set forth in Section 14.4.2(b) .

"Uniform System" shall mean the Uniform System of Accounts for Hotels, 9th Edition, International Association of Hospitality Accountants (1996), as from time to time amended.

"U.S. Government Obligations" shall mean any direct obligations of, or obligations guaranteed as to principal and interest by, the United States Government or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States. Any such obligation must be limited to instruments that have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change. If any such obligation is rated by S&P, it shall not have an "r" highlighter affixed to its rating. Interest must be fixed or tied to a single interest rate index plus a single fixed spread (if any), and move proportionately with said index. U.S. Government Obligations include, but are not limited to: U.S. Treasury direct or fully guaranteed obligations, Farmers Home Administration certificates of beneficial ownership, General Services Administration participation certificates, U.S. Maritime Administration guaranteed Title XI financing, Small Business Administration guaranteed participation certificates or guaranteed pool certificates, U.S. Department of Housing and Urban Development local authority bonds, and Washington Metropolitan Area Transit Authority guaranteed transit bonds. In no event shall any such obligation have a maturity in excess of 365 days.

Section 1.2 Principles of Construction . All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All accounting terms not specifically defined herein shall be construed in accordance with GAAP as modified by the Uniform System. When used herein, the term "financial statements" shall include the notes and schedules thereto. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the definitions given them in this Agreement when used in any other Loan Document or in any certificate or other document made or delivered pursuant thereto. All uses of the word "including" shall mean including, without limitation unless the context shall indicate otherwise. Unless otherwise specified, the words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

II. GENERAL TERMS

Section 2.1 Loan; Disbursement to Borrower .

2.1.1 The Loan . Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept the Loan on the Closing Date.

2.1.2 Disbursement to Borrower . Borrower may request and receive only one borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed. Borrower acknowledges and agrees that the full proceeds of the Loan have been disbursed by Lender to Borrower on the Closing Date.

2.1.3 The Note, Security Instrument and Loan Documents . The Loan shall be evidenced by the Note and secured by the Security Instrument, the Assignment of Leases, this Agreement and the other Loan Documents.

2.1.4 Use of Proceeds . Borrower shall use the proceeds of the Loan to repay and discharge any existing mortgage loans secured by the Property, to provide any necessary or appropriate reserves, to make cash distributions to its members for, among other things, repayment of any existing mezzanine loans secured by direct or indirect interests in Borrower, and as may be otherwise set forth on the Loan closing statement executed by Borrower at closing.

Section 2.2 Interest; Loan Payments; Late Payment Charge .

2.2.1 Payment of Principal and Interest .

(i) Except as set forth in Section 2.2.1(ii) , interest shall accrue on the Principal Amount as set forth in the Note.

(ii) Upon the occurrence and during the continuance of an Event of Default and from and after the Maturity Date if the entire Principal Amount is not repaid on the Maturity Date, interest on the outstanding principal balance of the Loan and, to the extent permitted by law, overdue interest and other amounts due in respect of the Loan shall accrue at the Default Rate calculated from the date such payment was due without regard to any grace or cure periods contained herein. Interest at the Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Indebtedness (or that portion thereof that is then due). To the extent permitted by applicable law, interest at the Default Rate shall be added to the Indebtedness, shall itself accrue interest at the same rate as the Loan and shall be secured by the Security Instrument. This paragraph shall not be construed as an agreement or privilege to extend the date of the payment of the Indebtedness, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default, and Lender retains its rights under the Note to accelerate and to continue to demand payment of the Indebtedness upon the happening of any Event of Default.

2.2.2 Method and Place of Payment .

(a) On each Payment Date, Borrower shall pay or cause to be paid to Lender interest accruing pursuant to the Note for the entire Interest Period during which said Payment Date shall occur.

(b) All amounts advanced by Lender pursuant to the applicable provisions of the Loan Documents, other than the Principal Amount, together with any interest at the Default Rate or other charges as provided therein, shall be due and payable hereunder as provided in the Loan Documents. In the event any such advance or charge is not so repaid by Borrower, Lender may, at its option and upon notice to Borrower, first apply any payments received under the Note to repay such advances, together with any interest thereon, or other charges as provided in the Loan Documents, and the balance, if any, shall be applied in payment of any installment of interest or principal then due and payable.

(c) The Maturity Date Payment shall be due and payable in full on the Maturity Date.

2.2.3 Late Payment Charge . If any interest payment due under the Loan Documents is not paid by Borrower within five (5) days after the date on which it is due (or, if such fifth (5th) day is not a Business Day, then the Business Day immediately preceding such day), Borrower shall pay to Lender upon demand an amount equal to the lesser of four percent (4%) of such unpaid sum or the Maximum Legal Rate (the **"Late Payment Charge"**) in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by this Agreement, the Security Instrument and the other Loan Documents to the extent permitted by applicable law. Borrower acknowledges and agrees that the five day grace period with respect to the applicability of the Late Payment Charge (i) shall only apply to Borrower's first failure to make a monthly interest payment in any calendar year and (ii) shall not constitute a payment grace period and shall in no way limit Lender's rights under Article XVII .

2.2.4 Usury Savings . This Agreement and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Principal Amount of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the Principal Amount due under the Note at a rate in excess of the Maximum Legal Rate, then the LIBOR Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due under the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Prepayments .

2.3.1 Prepayments . No prepayments of the Indebtedness shall be permitted except as set forth in Section 4 of the Note. Borrower agrees and acknowledges after the closing of the Loan that prior to a material Event of Default (as determined by Lender in its sole and absolute discretion) (x) in the case of prepayments of the Loan in connection with a Casualty or Condemnation, principal will be applied (to the extent not used for restoration pursuant to the terms hereof) to the Note, any substitute or component notes (as applicable) sequentially starting with the most senior securitized tranche and (y) in the case of all prepayments of the Loan other than in accordance with the preceding clause (x), such prepayments will be applied to the Note, any substitute or component notes (as applicable) pro-rata (on the basis of their respective principal balances) among the securitized and any non-securitized portions of the Loan (and pro-rata within the securitized portions of the Loan). Notwithstanding the foregoing, upon the occurrence and during the continuance of a material Event of Default (as determined by Lender in its sole and absolute discretion), Borrower agrees and acknowledges that any principal prepayments of the Loan will be applied to the Note, any substitute or component notes (as applicable) sequentially, starting with the most senior securitized tranche (it being acknowledged that during the continuance of a material Event of Default all securitized portions of the Loan shall be paid in full prior to the payment of any non-securitized portions of the Loan).

2.3.2 Prepayments after Event of Default . If, following an Event of Default, Lender shall accelerate the Indebtedness and Borrower thereafter tenders payment of all or any part of the Indebtedness, or if all or any portion of the Indebtedness is recovered by Lender after such Event of Default, (a) such payment may be made only on the next occurring Payment Date together with all unpaid interest thereon as calculated through the end of the Interest Period during which such Payment Date occurs (even if such period extends beyond such Payment Date and calculated as if such payment had not been made on such Payment Date), and all other fees and sums payable hereunder or under the Loan Documents, including without limitation, interest that has accrued at the Default Rate and any Late Payment Charges), (b) such payment shall be deemed a voluntary prepayment by Borrower, and (c) Borrower shall pay, in addition to the Indebtedness, an amount equal to the Prepayment Fee, if applicable.

2.3.3 Release of Property . Lender shall, at the reasonable expense of Borrower, upon payment in full of the Principal Amount and interest on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of (i) this Agreement upon the Account Collateral and the Rate Cap Collateral and (ii) the Security Instrument on the Property or assign it, in whole or in part, to a new lender. In such event, Borrower shall submit to Lender, on a date prior to the date of such release or assignment sufficient to provide a reasonable period for review thereof, a release of lien or assignment of lien, as applicable, for such property for execution by Lender. Such release or assignment, as applicable, shall be in a form appropriate in each jurisdiction in which the Property is located and satisfactory to Lender in its reasonable discretion. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release or assignment, as applicable.

Section 2.4 Regulatory Change; Taxes .

2.4.1 Increased Costs . If, at any time prior to the first Securitization of the Loan, as a result of any Regulatory Change or compliance of Lender therewith, the basis of taxation of payments to Lender of the principal of or interest on the Loan is changed or Lender or the company Controlling Lender shall be subject to (i) any tax, duty, charge or withholding of any kind with respect to this Agreement (excluding federal taxation of the overall net income of Lender); or (ii) any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities, of Lender or any company Controlling Lender is imposed, modified or deemed applicable; or (iii) any other condition affecting loans to borrowers subject to LIBOR-based interest rates is imposed on Lender or any company Controlling Lender and Lender determines that, by reason thereof, the cost to Lender or any company Controlling Lender of making, maintaining or extending the Loan to Borrower is increased, or any amount receivable by Lender or any company Controlling Lender hereunder in respect of any portion of the Loan to Borrower is reduced, in each case by an amount deemed by Lender in good faith to be material (such increases in cost and reductions in amounts receivable being herein called **"Increased Costs"**), then Lender shall provide notice thereof to Borrower and Borrower agrees that it will pay to Lender upon Lender's written request such additional amount or amounts as will compensate Lender or any company Controlling Lender for such Increased Costs to the extent Lender determines that such Increased Costs are allocable to the Loan and provided that Lender is generally exercising rights similar to those set forth in this Section 2.4.1 against other borrowers similarly situated to Borrower. Lender will notify Borrower of any event occurring after the date hereof which will entitle Lender to compensation pursuant to this Section 2.4.1 as promptly as practicable after it obtains knowledge thereof and determines to request such compensation; provided, however, that, if Lender fails to deliver a notice within 90 days after the date on which an officer of Lender responsible for overseeing this Agreement knows or has reason to know of its right to additional compensation under this Section 2.4.1 , Lender shall only be entitled to additional compensation for any such Increased Costs incurred from and after the date that is 90 days prior to the date Borrower received such notice. If Lender requests compensation under this Section 2.4.1 , Borrower may, by notice to Lender, require that Lender furnish to Borrower a statement setting forth the basis for requesting such compensation and the method for determining the amount thereof, and a description as to why Section 2.4.5 is not applicable.

2.4.2 Special Taxes . At all times prior to the first Securitization of the Loan, Borrower shall make all payments hereunder free and clear of and without deduction for Special Taxes. If, at any time prior to the first Securitization of the Loan, Borrower shall be required by law to deduct any Special Taxes from or in respect of any sum payable hereunder or under any other Loan Document to Lender, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.4.2) Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions, and (iii) Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

2.4.3 Other Taxes . In addition, for all periods prior to the first Securitization of the Loan, Borrower agrees to pay any present or future stamp or documentary taxes or other

excise or property taxes, charges, or similar levies which arise from any payment made hereunder, or from the execution, delivery or registration of, or otherwise with respect to, this Agreement, the other Loan Documents, or the Loan (hereinafter referred to as " Other Taxes").

2.4.4 Indemnity . Borrower shall indemnify Lender for all periods prior to the first Securitization of the Loan, for the full amount of Special Taxes and Other Taxes (including any Special Taxes or Other Taxes imposed by any Governmental Authority on amounts payable under this Section 2.4.4) paid by Lender and any liability (including penalties, interest, and expenses) arising therefrom or with respect thereto, whether or not such Special Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within thirty (30) days after the date Lender makes written demand therefor.

2.4.5 Change of Office . To the extent that changing the jurisdiction of Lender's applicable office would have the effect of minimizing Special Taxes, Other Taxes or Increased Costs, Lender shall use reasonable efforts to make such a change, provided that same would not otherwise be disadvantageous to Lender.

2.4.6 Survival . Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this Section 2.4 shall survive the payment in full of principal and interest hereunder, and the termination of this Agreement.

Section 2.5 Conditions Precedent to Closing . The obligation of Lender to make the Loan hereunder is subject to the fulfillment by, or on behalf of, Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date; provided , however , that unless a condition precedent shall expressly survive the Closing Date pursuant to a separate agreement, by funding the Loan, Lender shall be deemed to have waived any such conditions not theretofore fulfilled or satisfied:

2.5.1 Representations and Warranties; Compliance with Conditions . The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

2.5.2 Delivery of Loan Documents; Title Policy; Reports; Leases .

(a) **Loan Documents** . Lender shall have received an original copy of this Agreement, the Note and all of the other Loan Documents, in each case, duly executed (and to the extent required, acknowledged) and delivered on behalf of Borrower and any other parties thereto.

(b) **Security Instrument, Assignment of Leases** . Lender shall have received evidence that original counterparts of the Security Instrument and Assignment of Leases, in proper form for recordation, have been delivered to the Title Company for recording, so as effectively to create, in the reasonable judgment of Lender, upon such recording valid and

enforceable first priority Liens upon the Property, in favor of Lender (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents.

(c) **UCC Financing Statements** . Lender shall have received evidence that the UCC financing statements relating to the Security Instrument and this Agreement have been delivered to the Title Company for filing in the applicable jurisdictions.

(d) **Title Insurance** . Lender shall have received a pro forma Title Policy or a Title Policy issued by the Title Company and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such Title Policy shall (i) provide coverage in the amount of the Loan, (ii) insure Lender that the Security Instrument creates a valid, first priority Lien on the Property, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain the endorsements and affirmative coverages set forth on **Exhibit A** (or such other endorsements and affirmative coverages approved by Lender) and such additional endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The Title Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Policy have been paid.

(e) **Survey** . Lender shall have received a current or rectified Survey for the Property, containing the survey certification substantially in the form attached hereto as **Exhibit B** or such other form as approved by Lender. Such Survey shall reflect the same legal description contained in the Title Policy referred to in clause (d) above. The surveyor's seal shall be affixed to the Survey and the surveyor shall provide a certification for such Survey in form and substance acceptable to Lender.

(f) **Insurance** . Lender shall have received valid certificates of insurance for the policies of insurance required hereunder, satisfactory to Lender in its reasonable discretion, and evidence of the payment of all insurance premiums currently due and payable for the existing policy period.

(g) **Environmental Reports** . Lender shall have received an Environmental Report in respect of the Property satisfactory to Lender.

(h) **Zoning** . Lender shall have received an ALTA 3.1 zoning endorsement for the Title Policy.

(i) **Certificate of Occupancy** . Lender shall have received a copy of the valid certificates of occupancy for the Property or evidence acceptable to Lender that a certificate of occupancy is not required by applicable law.

(j) **Encumbrances** . Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first Lien as of the Closing Date on the Property (including extinguishing all existing mezzanine debt and Liens in connection with such debt), subject only to Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

2.5.3 Related Documents . Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

2.5.4 Delivery of Organizational Documents . On or before the Closing Date, Borrower shall deliver, or cause to be delivered, to Lender copies certified by an Officer's Certificate, of all organizational documentation related to Borrower, Operating Lessee and Guarantor and certain Affiliates of the foregoing as have been requested by Lender and/or the formation, structure, existence, good standing and/or qualification to do business of Borrower, Operating Lessee and Guarantor and such Affiliates, as Lender may request in its sole discretion, including, without limitation, good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender. Each of the organizational documents of Borrower shall contain provisions having a substantive effect materially similar to that of the language set forth in **Exhibit C** or such other language as approved by Lender. Lender hereby approves the organizational documents of Borrower delivered to Lender on the date hereof.

2.5.5 Opinions . Lender shall have received:

(a) a Non-Consolidation Opinion substantially in compliance with the requirements set forth in **Exhibit E** or in such other form approved by the Lender (the**"Non-Consolidation Opinion"**);

(b) the Opinion of Counsel substantially in compliance with the requirements set forth in **Exhibit D** or in such other form approved by the Lender; and

(c) from Counterparty the Counterparty Opinion substantially in compliance with the requirements set forth in **Exhibit F** or in such other form approved by the Lender.

2.5.6 Budgets . Borrower shall have delivered the Budget for the current Fiscal Year, which Budget shall be certified by an Officer's Certificate.

2.5.7 Completion of Proceedings . All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

2.5.8 Payments . All payments, deposits or escrows, if any, required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

2.5.9 Interest Rate Cap Agreement . Lender shall have received the original Interest Rate Cap Agreement which shall be in form and substance satisfactory to Lender and an original counterpart of the Acknowledgment executed and delivered by the Counterparty.

2.5.10 Account Agreement . Lender shall have received the original of the Account Agreement executed by each of Cash Management Bank, Operating Lessee, and Borrower.

2.5.11 Intentionally Deleted .

2.5.12 Leases and Rent Roll . Lender shall have received copies of all Leases, certified as requested by Lender. Lender shall have received a certified rent roll of the Property dated within thirty (30) days prior to the Closing Date.

2.5.13 Transaction Costs . Borrower shall have paid or reimbursed Lender for all title insurance premiums, recording and filing fees, costs of Environmental Reports, Physical Conditions Reports, appraisals and other reports, the reasonable fees and costs of Lender's counsel and all other third party out-of-pocket expenses incurred in connection with the origination of the Loan.

2.5.14 Material Adverse Effect . No event or condition shall have occurred since the date of Borrower's most recent financial statements previously delivered to Lender which has or could reasonably be expected to have a Material Adverse Effect. The Operating Income and Operating Expenses of the Property and all other features of the transaction shall be as represented to Lender without material adverse change. Neither Borrower nor any of its constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

2.5.15 Tax Lot . Lender shall have received evidence that the Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Lender.

2.5.16 Physical Conditions Report . Lender shall have received a Physical Conditions Report (or re-certified Physical Conditions Report) with respect to the Property, which report shall be satisfactory in form and substance to Lender.

2.5.17 Appraisal . Lender shall have received an appraisal of the Property, which shall be satisfactory in form and substance to Lender.

2.5.18 Operating Lease . Lender shall have received the originals of the Operating Lease, executed by Operating Lessee and Borrower and the Subordination of Operating Lease, executed by Operating Lessee.

2.5.19 Management Agreement . Lender shall have received a certified copy of the Management Agreement which shall be satisfactory in form and substance to Lender.

2.5.20 Financial Statements . Lender shall have received certified copies of financial statements with respect to the Property for the three most recent Fiscal Years, each in form and substance satisfactory to Lender.

2.5.21 Further Documents . Lender or its counsel shall have received such other and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested including the Loan Documents in form and substance satisfactory to Lender and its counsel.

III. CASH MANAGEMENT

Section 3.1 Cash Management .

3.1.1 Establishment of Accounts . Borrower hereby confirms that, simultaneously with the execution of this Agreement, pursuant to the Account Agreement, Operating Lessee has established with Cash Management Bank, in the name of Borrower for the benefit of Lender, as secured party, a collection amount (the**"Collection Account"**), which has been established as an interest-bearing deposit account, and a holding account (the**"Holding Account"**), which has been established as a securities account. Both the Collection and the Holding Account and each sub-account of either such account and the funds deposited therein and the securities and other assets credited thereto shall serve as additional security for the Loan. Pursuant to the Account Agreement, Borrower shall irrevocably instruct and authorize Cash Management Bank to disregard any and all orders for withdrawal from the Collection Account or the Holding Account made by, or at the direction of, Borrower or Operating Lessee other than to transfer all amounts on deposit in the Collection Account on a daily basis to the Holding Account. Borrower agrees that, prior to the payment in full of the Indebtedness, the terms and conditions of the Account Agreement shall not be amended or modified without the prior written consent of Lender (which consent Lender may grant or withhold in its sole discretion), and if a Securitization has occurred, the delivery by Borrower of a Rating Agency Confirmation. In recognition of Lender's security interest in the funds deposited into the Collection Account and the Holding Account, Borrower shall identify both the Collection Account and the Holding Account with the name of Lender, as secured party. The Collection Account shall be named as follows: "Ritz-Carlton Half Moon Bay f/b/o Column Financial, Inc., as secured party Collection Account," account number 724556.1 The Holding Account shall be named as follows: "Ritz-Carlton Half Moon Bay f/b/o Column Financial, Inc., as secured party Holding Account," account number 724556.2 Borrower confirms that it has established with Cash Management Bank the following sub-accounts of the Holding Account (each, a**" Sub-Account"**and, collectively, the**"Sub-Accounts"**and together with the Holding Account and the Collection Account, the**" Collateral Accounts"**), which (i) may be ledger or book entry sub-accounts and need not be actual sub-accounts, (ii) shall each be linked to the Holding Account, (iii) shall each be a "Securities Account" pursuant to Article 8 of the UCC and (iv) shall each be an Eligible Account to which certain funds shall be allocated and from which disbursements shall be made pursuant to the terms of this Agreement:

(a) a sub-account for the retention of Account Collateral in respect of Impositions and Other Charges for the Property with the account number 724556.2 (the**"Tax Reserve Account "**);

(b) a sub-account for the retention of Account Collateral in respect of insurance premiums for the Property with the account number 724556.2 (the**"Insurance Reserve Account "**);

(c) a sub-account for the retention of Account Collateral in respect of FF&E with the account number 724556.2 (the "**FF&E Reserve Account**"); and

(d) a sub-account for the retention of Account Collateral in respect of current Debt Service on the Loan with the account number 724556.2 (the**"Current Debt Service Reserve Account "**).

3.1.2 Pledge of Account Collateral . To secure the full and punctual payment and performance of the Obligations, Borrower and Operating Lessee hereby collaterally assigns, grants a security interest in and pledges to Lender, to the extent not prohibited by applicable law (and shall cause Operating Lessee to execute the Accommodation Security Documents with respect thereto), a first priority continuing security interest in and to the following property of Borrower and/or Operating Lessee, as applicable, whether now owned or existing or hereafter acquired or arising and regardless of where located (all of the same, collectively, the "**Account Collateral**"):

(a) the Collateral Accounts and Manager Accounts and all cash, checks, drafts, securities entitlements, certificates, instruments and other property, including, without limitation, all deposits and/or wire transfers from time to time deposited or held in, credited to or made to Collateral Accounts;

(b) any and all amounts invested in Permitted Investments;

(c) all interest, dividends, cash, instruments, securities entitlements and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing or purchased with funds from the Collateral Accounts; and

(d) to the extent not covered by clauses (a), (b) or (c) above, all proceeds (as defined under the UCC) of any or all of the foregoing.

In addition to the rights and remedies herein set forth, Lender shall have all of the rights and remedies with respect to the Account Collateral available to a secured party at law or in equity, including, without limitation, the rights of a secured party under the UCC, as if such rights and remedies were fully set forth herein.

This Agreement shall constitute a security agreement for purposes of the Uniform Commercial Code and other applicable law.

3.1.3 Maintenance of Collateral Accounts . (a) Borrower agrees that the Collection Account is and shall be maintained (i) as a "deposit account" (as such term is defined in Section 9-102(a) of the UCC), (ii) in such a manner that Lender shall have control (within the meaning of Section 9-104(a) of the UCC) over the Collection Account and (iii) such that neither the Borrower, Operating Lessee, nor Manager shall have any right of withdrawal from the Account and, except as provided herein, no Account Collateral shall be released to the Borrower, Operating Lessee, or Manager from the Collection Account. Without limiting the Borrower's obligations under the immediately preceding sentence, Borrower shall only establish and maintain the Collection Account with a financial institution that has executed an agreement substantially in the form of the Account Agreement or in such other form acceptable to Lender in its sole discretion.

(b) Borrower agrees that each of the Holding Account and the Sub-Accounts is and shall be maintained (i) as a "securities account" (as such term is defined in Section 8-501(a) of the UCC), (ii) in such a manner that Lender shall have control (within the meaning of Section 8-106(d)(2) of the UCC) over the Holding Account and any Sub-Account, (iii) such that neither Borrower, Operating Lessee, nor Manager shall have any right of withdrawal from the Holding Account or the Sub-Accounts and, except as provided herein, no Account Collateral shall be released to Borrower from the Holding Account or the Sub-Accounts, (iv) in such a manner that the Cash Management Bank shall agree to treat all property credited to the Holding Account or the Sub-Accounts as "financial assets" and (v) such that all securities or other property underlying any financial assets credited to the Accounts shall be registered in the name of Cash Management Bank, indorsed to Cash Management Bank or in blank or credited to another securities account maintained in the name of Cash Management Bank and in no case will any financial asset credited to any of the Collateral Accounts be registered in the name of Borrower, payable to the order of Borrower or specially indorsed to Borrower except to the extent the foregoing have been specially indorsed to Cash Management Bank or in blank. Without limiting Borrower's obligations under the immediately preceding sentence, Borrower shall only establish and maintain the Holding Account with a financial institution that has executed an agreement substantially in the form of the Account Agreement or in such other form acceptable to Lender in its sole discretion.

(c) The Collateral Accounts shall be Eligible Accounts. The Collateral Accounts shall be subject to such applicable laws, and such applicable regulations of the Board of Governors of the Federal Reserve System and of any other banking or governmental authority, as may now or hereafter be in effect. Income and interest accruing on the Collateral Accounts or any investments held in such accounts shall be periodically added to the principal amount of such account and shall be held, disbursed and applied in accordance with the provisions of this Agreement and the Account Agreement. Borrower shall be the beneficial owner of the Collateral Accounts for federal income tax purposes and shall report all income on the Collateral Accounts.

3.1.4 Deposits into Sub-Accounts . On the date hereof, Borrower has deposited the following amounts into the Sub-Accounts:

(i) $0.00 into the Tax Reserve Account;

(ii) $0.00 into the Insurance Reserve Account;

(iii) $0.00 into the Current Debt Service Reserve Account; and

(iv) $0.00 into the FF&E Reserve Account.

3.1.5 Monthly Funding of Sub-Accounts . (a) Borrower hereby irrevocably authorizes Lender to transfer (and, pursuant to the Account Agreement shall irrevocably authorize Cash Management Bank to execute any corresponding instructions of Lender), and Lender shall transfer (or cause Cash Management Bank to transfer pursuant to disbursement

instructions from Lender), from the Holding Account by 11:00 a.m. New York time on each Business Day, or as soon thereafter as sufficient funds are in the Holding Account to make the applicable transfers, funds in the following amounts and in the following order of priority:

(i) during the continuance of an Event of Default and at any such time that Manager does not reserve for or otherwise set aside and pay Impositions and Other Charges directly, funds in an amount equal to the Monthly Tax Reserve Amount and any other amounts required pursuant to Section 16.1 for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Tax Reserve Account;

(ii) during the continuance of an Event of Default and at any time when the insurance required to be maintained pursuant to this Agreement is provided under a blanket policy in accordance with Article VI hereof and the premiums in respect of such blanket policy are not paid or caused to be paid before such premiums become due and payable or at any time that Manager does not pay, reserve for or otherwise set aside and pay, premiums with respect to the Insurance Requirements, funds in an amount equal to the Monthly Insurance Reserve Amount for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Insurance Reserve Account, or following an Event of Default or an Insurance Reserve Trigger, funds sufficient (calculated on a monthly basis from the Insurance Reserve Trigger until the month in which the premium is due) to permit Lender to pay insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement and the Security Instrument on the respective due dates therefor (up to a maximum amount equal to the aggregate annual insurance premium required hereunder), and Lender shall so pay such funds to the insurance company having the right to receive such funds;

(iii) funds in an amount equal to the amount of Debt Service due on the Payment Date for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the Current Debt Service Reserve Account;

(iv) at any such time that Manager does not reserve or otherwise set aside for FF&E in accordance with the terms of the Management Agreement, funds in an amount equal to the Monthly FF&E Reserve Amount for the month in which the Payment Date immediately following the date of the transfer from the Holding Account occurs and transfer the same to the FF&E Reserve Account; and

(v) provided no Event of Default shall have occurred and is then continuing and subject to the provisions of Section 3.1.5(b) , funds in an amount equal to the balance (if any) remaining or deposited in the Holding Account after the foregoing deposits (such remainder being hereinafter referred to as**"Excess Cash Flow"**) and transfer the same to the Borrower's Account (or a third party account as directed by Borrower), free of any Lien or continuing security interest.

(b) Notwithstanding anything to the contrary contained herein or in the Security Instrument, but subject to Section 7.3 , to the extent that Borrower shall fail to pay any mortgage recording tax, costs, expenses or other amounts pursuant to Section 19.12 of this Agreement within the time period set forth therein, Lender shall have the right, at any time, upon five (5) Business Days' notice to Borrower, to withdraw from the Holding Account, an amount equal to such unpaid taxes, costs, expenses and/or other amounts and pay such amounts to the Person(s) entitled thereto.

3.1.6 Payments from Sub-Accounts . Borrower irrevocably authorizes Lender to make and, provided no Event of Default shall have occurred and be continuing, Lender hereby agrees to make, the following payments from the Sub-Accounts to the extent of the monies on deposit therefor:

(i) if notified (timely) by Borrower or otherwise determined by Lender in its reasonable discretion that Manager will not pay Impositions or Other Charges, funds from the Tax Reserve Account to Lender sufficient to permit Lender to pay (or otherwise to Borrower to reimburse Borrower for) (A) Impositions and (B) Other Charges, on the respective due dates therefor, and Lender shall so pay such funds to the Governmental Authority having the right to receive such funds (or shall reimburse Borrower or Operating Lessee upon confirmation of payment);

(ii) at any time when the insurance required to be maintained pursuant to this Agreement is provided under a blanket policy in accordance with Article VI hereof and the premiums in respect of such blanket policy are not paid or caused to be paid before such premiums become due and payable or at any time that Manager does not pay, reserve for or otherwise set aside and pay, premiums with respect to the Insurance Requirements and otherwise following an Insurance Reserve Trigger, funds from the Insurance Reserve Account to Lender sufficient to permit Lender to pay insurance premiums for the insurance required to be maintained pursuant to the terms of this Agreement and the Security Instrument, on the respective due dates therefor, and Lender shall so pay such funds to the insurance company having the right to receive such funds;

(iii) funds from the Current Debt Service Reserve Account to Lender sufficient to pay Debt Service on each Payment Date, and Lender, on each Payment Date, shall apply such funds to the payment of the Debt Service payable on such Payment Date; and

(iv) if notified (timely) by Borrower or otherwise determined by Lender in its reasonable discretion that Manager will not reserve for FF&E as required under the Management Agreement, and provided Borrower shall have complied with the procedures set forth in Section 16.6 , funds from the FF&E Reserve Account to the Borrower's Account to pay for FF&E.

If and to the extent Guarantor or any Close Affiliate (other than Borrower or Operating Lessee) makes a payment of any Imposition, any insurance premium under a blanket policy or capital expenditure or overhead charge which qualifies as an Operating Expense, with respect to the Property and such expense is provided for in the Budget, provided no Event of Default has occurred and is continuing, such Guarantor or Close Affiliate will be entitled to

receive reimbursement from the Manager, Lender, or the applicable Sub-Account established under hereunder or under the Management Agreement and such payment shall not be required to be re-deposited into the Collection Account.

3.1.7 Cash Management Bank . (a) Lender shall have the right to replace the Cash Management Bank with a financial institution reasonably satisfactory to Borrower in the event that (i) the Cash Management Bank fails, in any material respect, to comply with the Account Agreement, (ii) the Cash Management Bank named herein is no longer the Cash Management Bank or (iii) the Cash Management Bank is no longer an Approved Bank. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right at Borrower's sole cost and expense to replace Cash Management Bank at any time, without notice to Borrower. Borrower shall cooperate with Lender in connection with the appointment of any replacement Cash Management Bank and the execution by the Cash Management Bank and the Borrower of an Account Agreement and delivery of same to Lender.

(b) So long as no Event of Default shall have occurred and be continuing, Borrower shall have the right at its sole cost and expense to replace the Cash Management Bank with a financial institution that is an Approved Bank, provided that such financial institution and Borrower shall execute and deliver to Lender an Account Agreement substantially similar to the Account Agreement executed as of the Closing Date.

3.1.8 Borrower's Account Representations, Warranties and Covenants . Borrower represents, warrants and covenants that (i) as of the date hereof, Borrower has caused Operating Lessee to direct all Tenants under the Leases to mail all checks and wire all funds with respect to any payments due under such Leases directly to Manager, (ii) Borrower shall cause Manager and Operating Lessee to deposit all amounts payable to Borrower or Operating Lessee pursuant to the Management Agreement directly into the Collection Account, (iii) Borrower and Operating Lessee shall pay or cause to be paid all Rents, Cash and Cash Equivalents or other items of Operating Income not otherwise collected by Manager within two Business Days after receipt thereof by Borrower, Operating Lessee or its Affiliates directly into the Collection Account and, until so deposited, any such amounts held by Borrower or Operating Lessee, shall be deemed to be Account Collateral and shall be held in trust by it for the benefit, and as the property, of Lender and shall not be commingled with any other funds or property of Borrower or Operating Lessee, (iv) other than the Manager Accounts, there are no accounts other than the Collateral Accounts maintained by Borrower or Operating Lessee with respect to the Property or the collection of Rents and credit card company receivables with respect to the Property and (v) so long as the Loan shall be outstanding, neither Borrower, Operating Lessee, nor any other Person shall open any other operating accounts with respect to the Property or the collection of Rents or credit card company receivables with respect to the Property, except for the Collateral Accounts and the Manager Accounts; provided that, Borrower and Manager shall not be prohibited from utilizing one or more separate accounts for the disbursement or retention of funds that have been transferred to the Borrower's Account pursuant to Section 3.1.5 .

3.1.9 Account Collateral and Remedies . (a) Upon the occurrence and during the continuance of an Event of Default, without additional notice from Lender to Borrower, (i) Lender may, in addition to and not in limitation of Lender's other rights, make any and all withdrawals from, and transfers between and among, the Collateral Accounts as Lender shall

determine in its sole and absolute discretion to pay any Obligations; (ii) all Excess Cash Flow shall be retained in the Holding Account or applicable Sub-Accounts and (iii) Lender may liquidate and transfer any amounts then invested in Permitted Investments to the Collateral Accounts to which they relate or reinvest such amounts in other Permitted Investments as Lender may reasonably determine is necessary to perfect or protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce Lender's rights and remedies hereunder with respect to any Account Collateral or to preserve the value of the Account Collateral.

(b) Upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of Borrower with respect to the Account Collateral, and do in the name, place and stead of Borrower, all such acts, things and deeds for and on behalf of and in the name of Borrower, which Borrower could or might do or which Lender may deem necessary or desirable to more fully vest in Lender the rights and remedies provided for herein and to accomplish the purposes of this Agreement. The foregoing powers of attorney are irrevocable and coupled with an interest. Upon the occurrence and during the continuance of an Event of Default, Lender may perform or cause performance of any such agreement, and any reasonable expenses of Lender incurred in connection therewith shall be paid by Borrower as provided in Section 5.1.16 .

(c) Borrower hereby expressly waives, to the fullest extent permitted by law, presentment, demand, protest or any notice of any kind (except as expressly required under the Loan Documents) in connection with this Agreement or the Account Collateral. Borrower acknowledges and agrees that ten (10) Business Days' prior written notice of the time and place of any public sale of the Account Collateral or any other intended disposition thereof shall be reasonable and sufficient notice to Borrower within the meaning of the UCC.

3.1.10 Transfers and Other Liens . Borrower agrees that it will not (i) sell or otherwise dispose of any of the Account Collateral except as may be expressly permitted under the Loan Documents, or (ii) create or permit to exist any Lien upon or with respect to all or any of the Account Collateral, except for the Lien granted to Lender under this Agreement.

3.1.11 Reasonable Care . Beyond the exercise of reasonable care in the custody thereof, Lender shall have no duty as to any Account Collateral in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any person or otherwise with respect thereto. Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Account Collateral in its possession if the Account Collateral is accorded treatment substantially equal to that which Lender accords its own property, it being understood that Lender shall not be liable or responsible for any loss or damage to any of the Account Collateral, or for any diminution in value thereof, by reason of the act or omission of Lender, its Affiliates, agents, employees or bailees, except to the extent that such loss or damage results from Lender's gross negligence or willful misconduct. In no event shall Lender be liable either directly or indirectly for losses or delays resulting from any event which may be the basis of an Excusable Delay, computer malfunctions, interruption of communication facilities, labor difficulties or other causes beyond Lender's reasonable control or

for indirect, special or consequential damages except to the extent of Lender's gross negligence or willful misconduct. Notwithstanding the foregoing, Borrower acknowledges and agrees that (i) Lender does not have custody of the Account Collateral, (ii) Cash Management Bank has custody of the Account Collateral, (iii) the initial Cash Management Bank was chosen by Borrower and (iv) Lender has no obligation or duty to supervise Cash Management Bank or to see to the safe custody of the Account Collateral.

3.1.12 Lender's Liability . (a) Lender shall be responsible for the performance only of such duties with respect to the Account Collateral as are specifically set forth in this Section 3.1 or elsewhere in the Loan Documents, and no other duty shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act with respect to the Account Collateral which would cause it to incur any expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Borrower shall indemnify and hold Lender, its employees and officers harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender in connection with the transactions contemplated hereby with respect to the Account Collateral (excluding losses on Permitted Investments) except as such may be caused by the gross negligence or willful misconduct of Lender, its employees, officers or agents.

(b) Lender shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature believed by it in good faith to be genuine, and, in so acting, it may be assumed that any person purporting to give any of the foregoing in connection with the provisions hereof has been duly authorized to do so. Lender may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder and in good faith in accordance therewith.

3.1.13 Continuing Security Interest . This Agreement shall create a continuing security interest in the Account Collateral and shall remain in full force and effect until payment in full of the Indebtedness; provided , however , such security interest shall automatically terminate with respect to funds which were duly deposited into Borrower's Account in accordance with the terms hereof. Upon payment in full of the Indebtedness, this security interest shall automatically terminate without further notice from any party and Borrower shall be entitled to the return, upon its request, of such of the Account Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof and Lender shall execute such instruments and documents as may be reasonably requested by Borrower to evidence such termination and the release of the Account Collateral.

IV. REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations . Borrower represents and warrants as of the Closing Date that:

4.1.1 Organization . Each of Borrower, Guarantor and Operating Lessee is a limited liability company, and have been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Each of Borrower and

Operating Lessee has duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Collectively, Borrower and Operating Lessee possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which each is now engaged, and the sole business of Borrower is the ownership of the Property. The organizational structure of Borrower upon the closing is accurately depicted by the schematic diagram attached hereto as **Exhibit H-1** . Borrower shall not itself, and shall not permit Operating Lessee to, change its name, identity, corporate structure or jurisdiction of organization unless it shall have given Lender seven (7) days prior written notice of any such change and shall have taken all steps reasonably requested by Lender to grant, perfect, protect and/or preserve the security interest granted hereunder to Lender.

4.1.2 Proceedings . Each of Borrower, Operating Lessee, and Guarantor, has full power to and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents have been duly executed and delivered by, or on behalf of, each of Borrower, Operating Lessee, and Guarantor, as applicable, and constitute legal, valid and binding obligations of Borrower, Operating Lessee, and Guarantor, as applicable, enforceable against Borrower, Operating Lessee, and Guarantor, as applicable, in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts . The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower, Operating Lessee, and Guarantor, as applicable, will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower, Operating Lessee, and Guarantor, pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement or other agreement or instrument to which Borrower, Operating Lessee, and Guarantor, is a party or by which any of Borrower's, Operating Lessee's, and Guarantor's, property or assets is subject (unless consents from all applicable parties thereto have been obtained), nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority, and any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Borrower, Operating Lessee, and Guarantor, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4 Litigation . There are no lawsuits, administrative proceedings, arbitration proceedings, or other such legal proceedings that have been filed and served upon Borrower (or with respect to which Borrower has otherwise received proper notice) or, to the Best of Borrower's Knowledge, otherwise pending or threatened against or affecting Borrower, Operating Lessee, or the Property whose outcome, if determined against Borrower, Operating Lessee, or the Property, would have a Material Adverse Effect. To the Best of Borrower's Knowledge, **Schedule I** includes each pending action against Borrower, Operating Lessee, or otherwise affecting the Property that involves a claim or claims for either (a) monetary damages exceeding $250,000, or (b) injunctive relief or other equitable remedy that could have a Material

Adverse Effect, excluding: (i) actions for monetary damages only that have been tendered to, and accepted without reservation of rights by, the liability insurance carrier for the Property, (ii) worker's compensation claims, and (iii) any proceedings by employees working at the Property where the amount claimed in such proceeding is less than $250,000; to the Best of Borrower's Knowledge, the aggregate amount of such claims described in subclause (iii) of this sentence is less than $1,000,000.

4.1.5 Agreements . Neither Borrower nor Operating Lessee is a party to any agreement or instrument or subject to any restriction which is reasonably likely to have a Material Adverse Effect. Neither Borrower nor Operating Lessee is in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower, Operating Lessee, or the Property is bound, which default is reasonably likely to have a Material Adverse Effect. Neither Borrower nor Operating Lessee has any material financial obligation (contingent or otherwise) under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower or Operating Lessee is a party or by which Borrower, Operating Lessee, or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property, including membership programs disclosed in writing to Lender on or prior to the date hereof, and (b) obligations under the Loan Documents.

4.1.6 Title . Borrower has good, marketable and insurable fee simple title to the Land and the Improvements, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Borrower or Operating Lessee, as applicable, has good and marketable title to the remainder of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, and Accommodation Security Documents, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first mortgage lien on the Land and the Improvements, subject only to Permitted Encumbrances and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. Except as may be indicated in and insured over by the Title Policy, to the Best of Borrower's Knowledge, there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents. Borrower represents and warrants that none of the Permitted Encumbrances will have a Material Adverse Effect. Borrower shall preserve its right, title and interest in and to the Property for so long as the Note remains outstanding and will warrant and defend same and the validity and priority of the Lien hereof from and against any and all claims whatsoever other than the Permitted Encumbrances.

4.1.7 No Bankruptcy Filing . None of Borrower, Operating Lessee, or Guarantor, is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of such entity's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against Borrower or against Operating Lessee or Guarantor.

4.1.8 Full and Accurate Disclosure . To the Best of Borrower's Knowledge, no statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower which has not been disclosed which has a Material Adverse Effect, or to the Best of Borrower's Knowledge could reasonably be expected to have a Material Adverse Effect.

4.1.9 All Property . The Property constitutes all of the real property, personal property, equipment and fixtures currently (i) owned or leased by Borrower or Operating Lessee or (ii) used in the operation of the business located on the Property, other than items owned by Manager or any Tenants (excluding items owned by Operating Lessee).

4.1.10 ERISA . (A) Borrower does not maintain or contribute to and is not required to contribute to, an "employee benefit plan" as defined by Section 3(3) of ERISA, which is subject to Title IV of ERISA (other than a "multiemployer plan" as defined by Section 3(37) of ERISA), and Borrower (i) has no knowledge of any material liability which has been incurred or is expected to be incurred by Borrower which is reasonably likely to result in a Material Adverse Effect and is or remains unsatisfied for any taxes or penalties or unfunded contributions with respect to any "employee benefit plan" or any "plan," within the meaning of Section 4975(e)(1) of the Internal Revenue Code or any other benefit plan (other than a "multiemployer plan") maintained, contributed to, or required to be contributed to by Borrower or by any entity that is under common control with Borrower within the meaning Section 4001(a)(14) of ERISA (each, an**"ERISA Affiliate"**) (each, a**"Plan"**) or any plan that would be a Plan but for the fact that it is a multiemployer plan within the meaning of ERISA Section 3(37); and (ii) has made and shall continue to make when due all required contributions to all such Plans (other than Plans relating to ERISA Affiliates), if any, where the failure to so contribute is reasonably likely to result in a Material Adverse Effect. Each such Plan (other than Plans relating to ERISA Affiliates), if any, has been and will be administered in material compliance with its terms and the applicable provisions of ERISA, the Internal Revenue Code, and any other applicable federal or state law; and no action shall be taken or fail to be taken that would result in the disqualification or loss of tax-exempt status of any such Plan intended to be qualified and/or tax exempt; and

(a) With respect to any "multiemployer plan," (i) Borrower has not, since September 26, 1980, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA, (ii) Borrower has made and shall continue to make when due all required contributions to all such "multiemployer plans" and (iii) no ERISA Affiliate has, since September 26, 1980, made or suffered a "complete withdrawal" or a "partial withdrawal," as such terms are respectively defined in Sections 4203 and 4205 of ERISA which withdrawal is reasonably expected to have a Material Adverse Effect.

(b) Borrower is not an employee benefit plan, as defined in Section 3(3) of ERISA, whether or not subject to Title I of ERISA, none of the assets of Borrower constitutes or will constitute plan assets of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101 and transactions by or with Borrower is not subject to similar laws regulating investment of, and fiduciary obligations with respect to, plans similar to the provisions of

Section 406 of ERISA or Section 4975 of the Code currently in effect ("**Similar Laws**"), which prohibit or otherwise restrict the transactions contemplated by this Agreement.

4.1.11 Compliance . Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes except where the failure to so comply is not reasonably expected to result in a Material Adverse Effect. To the Best of Borrower's Knowledge, neither Borrower nor Operating Lessee is in default or in violation of any order, writ, injunction, decree or demand of any Governmental Authority. To the Best of Borrower's Knowledge, there has not been committed by Borrower or Operating Lessee any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

4.1.12 Financial Information . To the Best of Borrower's Knowledge, all financial data including, without limitation, the statements of cash flow and income and operating expense, that have been delivered by or on behalf of Borrower to Lender in respect of the Property (i) are true, complete and correct in all material respects, (ii) fairly represent the financial condition of the Property as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Neither Borrower nor Operating Lessee has any material contingent liabilities, liabilities for delinquent taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and could reasonably be expected to have a Material Adverse Effect, except as referred to or reflected in said financial statements and operating statements. Since the date of such financial statements, there has been no material adverse change in the financial condition, operations or business of Borrower or Operating Lessee from that set forth in said financial statements.

4.1.13 Condemnation . No Condemnation has been commenced or, to the Best of Borrower's Knowledge, is contemplated with respect to all or any portion of the Property.

4.1.14 Federal Reserve Regulations . None of the proceeds of the Loan will be used for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U, Regulation X or Regulation T or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry "margin stock" or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of Regulation U or Regulation X. As of the Closing Date, Borrower does not own any "margin stock."

4.1.15 Utilities and Public Access . The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. To the Best of Borrower's Knowledge, all utilities necessary to the existing use of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property. All roads necessary for the use of the Property for its current purposes have been completed and, if necessary, dedicated to public use.

4.1.16 Not a Foreign Person . Borrower is not a foreign person within the meaning of § 1445(f)(3) of the Code.

4.1.17 Separate Lots . The Property is comprised of one (1) or more contiguous parcels which constitute a separate tax lot or lots and does not constitute or include a portion of any other tax lot not a part of the Property.

4.1.18 Assessments . To the Best of Borrower's Knowledge, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

4.1.19 Enforceability . The Loan Documents are not subject to any existing right of rescission, set-off, counterclaim or defense by Borrower, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law)), and Borrower has not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.20 No Prior Assignment . There are no prior sales, transfers or assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding following the funding of the Loan, other than those being terminated or assigned to Lender concurrently herewith.

4.1.21 Insurance . Borrower has obtained and has delivered to Lender certified copies or certificates of all insurance policies required under this Agreement, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. Borrower has not, and to the Best of Borrower's Knowledge no Person has, done by act or omission anything which would impair the coverage of any such policy.

4.1.22 Use of Property . The Property is used exclusively for hotel purposes and other appurtenant and related uses.

4.1.23 Certificate of Occupancy; Licenses . To the Best of Borrower's Knowledge, all material certifications, permits, licenses (including, without limitation, a license to serve alcohol on the Property) and approvals, including without limitation, certificates of completion and occupancy permits required of Borrower for the legal use, occupancy and operation of the Property for hotel purposes (collectively, the **"Licenses"**), have been obtained and are in full force and effect. Borrower shall keep and maintain all Licenses necessary for the operation of the Property for hotel purposes. The use being made of the Property is in conformity with the certificate of occupancy issued for the Property.

4.1.24 Flood Zone . Except as may be shown on the Survey with respect to portions of the Improvements other than buildings and enclosed structures, none of the Improvements on the Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards.

4.1.25 Physical Condition . To the Best of Borrower's Knowledge and except as expressly disclosed in the Physical Conditions Report, the Property, including, without limitation, all buildings, Improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; to the Best of Borrower's Knowledge and except as disclosed in the Physical Conditions Report, there exists no structural or other material defects or damages in or to the Property, whether latent or otherwise, and Borrower has not received any written notice from any insurance company or bonding company of any defects or inadequacies in the Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

4.1.26 Boundaries . To the Best of Borrower's Knowledge and except as disclosed on the Survey, all of the Improvements lie wholly within the boundaries and building restriction lines of the Real Property, and no improvements on adjoining properties encroach upon the Real Property, and no easements or other encumbrances upon the Real Property encroach upon any of the Improvements, so as to have a Material Adverse Effect on the value or marketability of the Real Property except those which are insured against by the Title Policy.

4.1.27 Leases . The Property is not subject to any Leases other than the Leases described in the certified rent roll delivered in connection with the origination of the Loan. Such certified rent roll is true, complete and correct in all material respects as of the date set forth therein. No Person has any possessory interest in the Property or right to occupy the same (other than typical short-term occupancy rights of hotel guests which are not the subject of a written agreement) except under and pursuant to the provisions of the Leases. All other current Leases are in full force and effect and to the Best of Borrower's Knowledge, there are no material defaults thereunder by either party (other than as expressly disclosed on the certified rent roll delivered to Lender or the Tenant estoppel certificates delivered to Lender in connection with the closing of the Loan) and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute material defaults thereunder. No Rent has been paid more than one (1) month in advance of its due date, except as disclosed in the Tenant estoppel certificates delivered to Lender in connection with the closing of the Loan. There has been no prior sale, transfer or assignment, hypothecation or pledge by Borrower of any Lease or of the Rents received therein, which will be outstanding following the funding of the Loan, other than those being assigned to Lender concurrently herewith. No Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the property of which the leased premises are a part.

4.1.28 Filing and Recording Taxes . All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid and the granting and recording of the Security Instrument and the UCC financing statements required to be filed in connection with the Loan. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution,

delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instrument, have been paid, and, under current Legal Requirements, the Security Instrument is enforceable against Borrower in accordance with its terms by Lender (or any subsequent holder thereof) subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law.

4.1.29 Single Purpose Entity/Separateness. (a) Borrower hereby represents, warrants and covenants that each of Operating Lessee and Borrower is and always has been, since the date of its respective formation, a Single Purpose Entity and has not, since the date of its respective formation, conducted any business other than as permitted pursuant to Section 7 of their respective operating agreements each dated November 9, 2005 (as amended) and has not owned any property other than as permitted pursuant to Section 7 of their respective operating agreements each dated November 9, 2005 (as amended).

(b) Borrower hereby represents with respect to Borrower and Operating Lessee that it:

(i) is and always has been duly formed, validly existing, and in good standing in the state of its incorporation and in all other jurisdictions where it is qualified to do business;

(ii) has no judgments or liens of any nature against it except for tax liens not yet due;

(iii) is in compliance with all laws, regulations, and orders applicable to it and, except as otherwise disclosed in this Agreement, has received all permits necessary for it to operate;

(iv) is not involved in any dispute with any taxing authority;

(v) has paid all taxes which it owes;

(vi) has never owned any real property other than the Property and personal property necessary or incidental to its ownership or operation of the Property and has never engaged in any business other than the ownership and operation of the Property;

(vii) is not now, nor has ever been, party to any lawsuit, arbitration, summons, or legal proceeding that is still pending or that resulted in a judgment against it that has not been paid in full;

(viii) has provided Lender with complete financial statements that reflect a fair and accurate view of the entity's financial condition;

(ix) has obtained a current Phase I environmental site assessment (ESA) for the Property prepared consistent with ASTM Practice E 1527 and the ESA has not identified any recognized environmental conditions that require further investigation or remediation; and

(x) has no material contingent or actual obligations not related to the Property.

(c) Borrower hereby represents with respect to Borrower and Operating Lessee that from the date of their respective formation to the date of this Agreement that it:

(i) has not entered into any contract or agreement with any of its Affiliates, constituents, or owners, or any guarantors of any of its obligations or any Affiliate of any of the foregoing (individually, a "**Related Party**" and collectively, the " **Related Parties**"), except upon terms and conditions that are commercially reasonable and substantially similar to those available in an arm's-length transaction with an unrelated party;

(ii) except with respect to indebtedness for which it was co-obligated and which has been paid and satisfied in full (the

"**Former Indebtedness** "), has paid all of its debts and liabilities from its assets;

(iii) has done or caused to be done all things necessary to observe all organizational formalities applicable to it and to preserve its existence;

(iv) has maintained all of its books, records, financial statements (except consolidated financial statements otherwise allowed by the definition of Single Purpose Entity) and bank accounts separate from those of any other Person;

(v) has not had its assets listed as assets on the financial statement of any other Person, except consolidated financial statements otherwise allowed by the definition of Single Purpose Entity;

(vi) has filed its own tax returns (except to the extent that it has been a tax-disregarded entity not required to file tax returns under applicable law) and, if it is a corporation, has not filed a consolidated federal income tax return with any other Person;

(vii) has been, and at all times has held itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate or other Related Party);

(viii) has corrected any known misunderstanding regarding its status as a separate entity;

(ix) has conducted all of its business and held all of its assets in its own name;

(x) has not identified itself or any of its affiliates as a division or part of the other;

(xi) has maintained and utilized separate stationery, invoices and checks bearing its own name;

(xii) has not commingled its assets with those of any other Person and has held all of its assets in its own name;

(xiii) except for the Former Indebtedness, has not guaranteed or become obligated for the debts of any other Person;

(xiv) except for the Former Indebtedness, has not held itself out as being responsible for the debts or obligations of any other Person;

(xv) has allocated fairly and reasonably any overhead expenses that have been shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate or Related Party;

(xvi) except for the Former Indebtedness, has not pledged its assets to secure the obligations of any other Person and no such pledge remains outstanding except in connection with the Loan;

(xvii) has maintained adequate capital in light of its contemplated business operations;

(xviii) has maintained a sufficient number of employees in light of its contemplated business operations and has paid the salaries of its own employees from its own funds;

(xix) has not owned any subsidiary or any equity interest in any other entity;

(xx) has not incurred any indebtedness that is still outstanding other than indebtedness that is permitted under the Loan Documents; and

(xxi) has not had any of its obligations guaranteed by an affiliate, except for guarantees that have been either released or discharged (or that will be discharged as a result of the closing of the Loan) or guarantees that are expressly contemplated by the Loan Documents.

(xxii) Except for the Operating Lessee, none of the tenants holding leasehold interests with respect to the Property are affiliated with the Borrower.

All of the assumptions made in the Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto and any certificates delivered by Borrower in connection with the issuance of the Non-Consolidation Opinion, are true and correct in all material respects and any assumptions made in any subsequent non-consolidation opinion delivered in connection with the Loan Documents (an **"Additional Non-Consolidation Opinion"**), including, but not limited to, any exhibits attached thereto, are true and correct in all material respects. Borrower has complied with all of the assumptions made with respect to it in the Non-Consolidation Opinion. To the Best of Borrower's Knowledge, each entity other than Borrower with respect to which an assumption shall be made in any Additional Non-Consolidation Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Non-Consolidation Opinion.

4.1.30 Management Agreement . The Management Agreement is in full force and effect and there is no default thereunder by Borrower or Operating Lessee and, except as disclosed to Lender in writing, by Manager and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder by Borrower or Operating Lessee. The Manager is not an Affiliate of Borrower.

4.1.31 Illegal Activity . No portion of the Property has been or will be purchased with proceeds of any illegal activity.

4.1.32 Gold Club Agreement . The Golf Club Agreement is in full force and effect and, except as disclosed to Lender in writing, neither Borrower nor, to the Best of Borrower's Knowledge, any other party to the Golf Club Agreement, is in default thereunder, and to the Best of Borrower's Knowledge, except as disclosed to Lender in writing, there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder.

4.1.33 Tax Filings . Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower.

4.1.34 Solvency/Fraudulent Conveyance . Borrower (a) has not entered into the transaction contemplated by this Agreement or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) has received reasonably equivalent value in exchange for its obligations under the Loan Documents. After giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

4.1.35 Investment Company Act . Borrower is not (a) an investment company or a company Controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended, (b) a holding company or a subsidiary company of a holding company or an affiliate of either a holding company or a subsidiary company within the mean of the Public Utility Holding Company Act of 1935, as amended or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.36 Interest Rate Cap Agreement . The Interest Rate Cap Agreement is in full force and effect and enforceable against Borrower in accordance with its terms, subject to

applicable bankruptcy, insolvency or similar laws generally affecting the enforcement of creditors' rights and subject as to enforceability to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.37 Labor . Except as described on **Schedule I** , no work stoppage, labor strike, slowdown or lockout is pending or threatened by employees and other laborers at the Property. Except as described on **Schedule I** , neither Borrower, Manager nor Operating Lessee (i) is involved in or, to the Best of Borrower's Knowledge, threatened with any material labor dispute, material grievance or litigation relating to labor matters involving any employees and other laborers at the Property, including, without limitation, violation of any federal, state or local labor, safety or employment laws (domestic or foreign) and/or charges of unfair labor practices or discrimination complaints, (ii) to the Best of Borrower's Knowledge, has engaged with respect to the Property, in any unfair labor practices within the meaning of the National Labor Relations Act or the Railway Labor Act, or (iii) is a party to, or bound by, any existing collective bargaining agreement or union contract with respect to employees and other laborers at the Property.

4.1.38 Brokers . Neither Borrower nor, to the Best of Borrower's Knowledge, Lender has dealt with any broker or finder with respect to the loan transactions contemplated by the Loan Documents and neither party has done any acts, had any negotiations or conversations, or made any agreements or promises which will in any way create or give rise to any obligation or liability for the payment by either party of any brokerage fee, charge, commission or other compensation to any Person with respect to the transactions contemplated by the Loan Documents. Borrower covenants and agrees that it shall pay as and when due any and all brokerage fees, charges, commissions or other compensation or reimbursement due to any broker of Borrower with respect to the transactions contemplated by the Loan Documents. Borrower and Lender shall each indemnify and hold harmless the other from and against any loss, liability, cost or expense, including any judgments, attorneys' fees, or costs of appeal, incurred by the other party and arising out of or relating to any claim for brokerage commissions or finder's fees alleged to be due as a result of the indemnifying party's agreements or actions. The provisions of this Section 4.1.38 shall survive the expiration and termination of this Agreement and the payment of the Indebtedness.

4.1.39 No Other Debt . Borrower has not borrowed or received debt financing that has not heretofore or contemporaneously herewith been repaid in full, other than the Permitted Debt.

4.1.40 Taxpayer Identification Number . Borrower's Federal taxpayer identification number is 65-1230711. Operating Lessee's Federal taxpayer identification number is 65-1230714.

4.1.41 Compliance with Anti-Terrorism, Embargo and Anti-Money Laundering Laws . (i) None of Borrower or any Person who owns any equity interest in or Controls Borrower or, to the Best of Borrower's Knowledge, Guarantor or Ultimate Equity Owners, currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and Borrower has implemented procedures to ensure that no Person who now or hereafter owns any equity interest in Borrower, Ultimate Equity Owners or Guarantor is a Prohibited Person or

Controlled by a Prohibited Person, and (ii) none of Borrower, Ultimate Equity Owners or Guarantor is in violation of any Legal Requirements relating to anti-money laundering or anti-terrorism, including, without limitation, Legal Requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time.

4.1.42 Knowledge Qualifications . Borrower represents that Ryan Bowie and Cory Warning are in a position to have meaningful knowledge with respect to the matters set forth in the Loan Documents which have been qualified to the knowledge of such Persons.

4.1.43 Leases . Borrower represents that it has heretofore delivered to Lender true and complete copies of all Leases and any and all amendments or modifications thereof.

4.1.44 FF&E . Manager is reserving for FF&E on a monthly basis not less than an amount equal to four percent (4%) of adjusted gross revenues with respect to the Property; such reserves are maintained in accordance with the terms of the Management Agreement and the requirements of Section 5.1.23 , either in (i) the Manager FF&E Reserve Account or (ii) the Manager FF&E Alternative Reserve Account (each subject to disbursements therefrom as permitted by the Management Agreement).

4.1.45 Outstanding Manger Issues . Borrower hereby represents and warrants that:

(a) an issue has arisen as to reporting by the Manager of the Half Moon Bay Resort of Hotel Revenue and expenses for the Property. It appears that for the years 2005 and 2006 various payments for hotel Operating Expenses may not have been fully reflected by the Manager as expenses for the respective years, and that certain guest charges may not have been fully charged and included in revenues for the respective years. The Manager is in the process of implementing changes to avoid these issues in the future.

(b) the Borrower has been in discussions with the owner of the adjoining golf course in respect of the Golf Club Agreement. The golf course owner and Borrower do not agree as to the balance of payments due from the hotel to the golf course for rounds played by guests in 2004-2006, with the golf course owner believing that approximately $55,000 remains unpaid. In addition, the golf course owner has taken the position that although in the past guests could charge their golf fees directly to their hotel account and agreed upon discounts on golf play were paid directly to the hotel, in the future guests may have to directly pay the golf course for their fees, and the discounts be provided directly to the guests. A new general manager of the hotel is to continue discussions with the golf course owner to resolve these matters.

4.1.46 Survival of Representations . Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall be deemed given and made as of the date of the funding of the Loan and survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower or Guarantor unless a longer

survival period is expressly stated in a Loan Document with respect to a specific representation or warranty, in which case, for such longer period. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

V. BORROWER COVENANTS

Section 5.1 Affirmative Covenants . From the Closing Date and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of this Agreement and the Security Instrument in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender to comply with and to cause Operating Lessee to comply with, the following covenants, and in such connection, references in this Article V to Borrower shall alternatively mean Operating Lessee, as the context may require:

5.1.1 Performance by Borrower . Borrower shall observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, in accordance with the provisions of each Loan Document, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower, as applicable, without the prior written consent of Lender.

5.1.2 Existence; Compliance with Legal Requirements; Insurance . Subject to Borrower's right of contest pursuant to Section 7.3 , Borrower shall comply and cause the Property to be in compliance with all Legal Requirements applicable to the Borrower, Manager and the Property and the uses permitted upon the Property. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises necessary to comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall not knowingly permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, knowingly permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all material franchises and trade names and preserve all the remainder of its property used in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully set forth in the Security Instrument. Borrower shall keep the Property insured at all times to such extent and against such risks, and maintain liability and such other insurance, as set forth in this Agreement.

5.1.3 Litigation . Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened in writing against Borrower which, if determined adversely to Borrower, would have a Material Adverse Effect.

5.1.4 Single Purpose Entity . (a) Borrower shall remain a Single Purpose Entity.

(b) Except as permitted by the Loan Documents, Borrower shall continue to maintain its own deposit account or accounts, separate from those of any Affiliate, with commercial banking institutions. None of the funds of Borrower will be commingled with the funds of any other Affiliate, except pursuant to a cash management system maintained with Borrower's Affiliates in accordance with Section 5.1.23 hereof and under which the portion of the commingled funds owned by Borrower is readily ascertainable.

(c) To the extent that Borrower shares the same officers or other employees as any of its Affiliates, the salaries of and the expenses related to providing benefits to such officers and other employees shall be fairly allocated among such entities, and each such entity shall bear its fair share of the salary and benefit costs associated with all such common officers and employees.

(d) To the extent that Borrower jointly contracts with any of its Affiliates to do business with vendors or service providers or to share overhead expenses, the costs incurred in so doing shall be allocated fairly among such entities, and each such entity shall bear its fair share of such costs. To the extent that Borrower contracts or does business with vendors or service providers where the goods and services provided are partially for the benefit of any other Person, the costs incurred in so doing shall be fairly allocated to or among such entities for whose benefit the goods and services are provided, and each such entity shall bear its fair share of such costs. All material transactions between (or among) Borrower and any of its Affiliates shall be conducted on substantially the same terms (or on more favorable terms for Borrower) as would be conducted with third parties.

(e) To the extent that Borrower or any of its Affiliates have offices in the same location, there shall be a fair and appropriate allocation of overhead costs among them, and each such entity shall bear its fair share of such expenses.

(f) Borrower shall conduct its affairs strictly in accordance with its organizational documents, and observe all necessary, appropriate and customary corporate, limited liability company or partnership formalities, as applicable, including, but not limited to, obtaining any and all consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, without limitation, payroll and intercompany transaction accounts.

(g) In addition, Borrower shall: (i) maintain books and records separate from those of any other Person; (ii) maintain its assets in such a manner that it is not more costly or difficult to segregate, identify or ascertain such assets; (iii) hold regular meetings of its board of directors, shareholders, partners or members, as the case may be, and observe all other corporate, partnership or limited liability company, as the case may be, formalities; (iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; (v) prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group, provided, however, that any consolidated financial statements contain a note indicating that it and its Affiliates are separate legal entities and

maintain records, books of account, and accounts separate and apart from any other Person and that their respective assets and credit are not available to satisfy each other's debts; (vi) transact all business with its Affiliates on an arm's-length basis and pursuant to enforceable agreements; (vii) conduct business in its name and use separate stationery, invoices and checks bearing its own name; (viii) not commingle its assets or funds with those of any other Person; and (ix) not assume, guarantee or pay the debts or obligations of any other Person (however the presentation of combined or consolidated financial condition or results of operation for purposes of financial statements prepared for the ultimate equity owners of multiple Single Purpose Entities shall be allowed).

5.1.5 Consents . If Borrower is a corporation, the board of directors of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including the Independent Directors, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents). If Borrower is a limited liability company, (a) if such Person is managed by a board of managers, the board of managers of such Person may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of managers unless all of the managers, including the Independent Managers, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents), (b) if such Person is not managed by a board of managers, the members of such Person may not take any action requiring the affirmative vote of 100% of the members of such Person unless all of the members, including the Independent Members, shall have participated in such vote if such vote relates to a Material Action (as such term is defined in the Borrower's organizational documents). An affirmative vote of 100% of the directors, board of managers or members, as applicable, including without limitation the Independent Directors, of Borrower shall be required to (i) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings or to authorize Borrower to do so or (ii) file an involuntary bankruptcy petition against any Close Affiliate. Furthermore, Borrower's formation documents shall expressly state that for so long as the Loan is outstanding, Borrower shall not be permitted to (i) dissolve, liquidate, consolidate, merge or sell all or substantially all of Borrower's assets other than in connection with the repayment of the Loan or (ii) engage in any other business activity and such restrictions shall not be modified or violated for so long as the Loan is outstanding.

5.1.6 Access to Property . Borrower shall permit agents, representatives and employees of Lender and the Rating Agencies to inspect the Property or any part thereof during normal business hours on Business Days upon reasonable advance notice.

5.1.7 Notice of Default . Borrower shall promptly advise Lender (a) of any event or condition that has or is likely to have a Material Adverse Effect and (b) of the occurrence of any Default or Event of Default of which Borrower has knowledge.

5.1.8 Cooperate in Legal Proceedings . Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which would reasonably be expected to affect in any material adverse way the rights of Lender hereunder or under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings which may have a Material Adverse Effect.

5.1.9 Perform Loan Documents . Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required, under the Loan Documents executed and delivered by, or applicable to, Borrower.

5.1.10 Insurance . (a) Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any expenses incurred in connection therewith (including reasonable attorneys' fees and disbursements) out of such Proceeds.

(b) Borrower shall comply with all Insurance Requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by any Insurance Requirement, or would invalidate insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to Section 6.1 .

5.1.11 Further Assurances; Separate Notes . (a) Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement and the other Loan Documents and any security interest created or purported to be created thereunder, to protect and further the validity, priority and enforceability of this Agreement and the other Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder. At any time after the Closing Date, Borrower agrees that it shall, upon request, reasonably cooperate with Lender in connection with any request by Lender to reallocate the LIBOR Margin among the Notes or to sever the Note into two (2) or more separate substitute or component notes in an aggregate principal amount equal to the Principal Amount and to reapportion the Loan among such separate substitute notes, including, without limitation, by executing and delivering to Lender new substitute or component notes to replace the Note, amendments to or replacements of existing Loan Documents to reflect such severance and/or Opinions of Counsel with respect to such substitute or component notes, amendments and/or replacements, provided that Borrower shall bear no costs or expenses in connection therewith (other than administrative costs and expenses of Borrower and legal fees of counsel to the Borrower and Guarantor), and the holders of such substitute or component notes shall designate a lead lender or agent for such holders to whom Borrower may direct all communications with respect to the Loan. Any such substitute or component notes may have varying principal amounts and economic terms, provided, however, that (i) the maturity date of any such substitute or component notes shall be the same as the scheduled Maturity Date of the Note immediately prior to the issuance of such substitute notes, (ii) the substitute notes shall provide for amortization of the Principal Amount on a weighted average basis over a period not less than the amortization period provided under the Note, if any, immediately prior to the issuance of the substitute notes, (iii) the weighted average LIBOR Margin for the term of the substitute notes shall not exceed the LIBOR Margin under the Note

immediately prior to the issuance of such substitute notes; and (iv) the economics of the Loan, taken as a whole, shall not change in a manner which is adverse to Borrower. Upon the occurrence and during the continuance of an Event of Default, Lender may apply payment of all sums due under such substitute notes in such order and priority as Lender shall elect in its sole and absolute discretion.

(b) Borrower further agrees that if, in connection with the Securitization, it is determined by the Rating Agencies that a portion of the Securitization would not receive an "investment grade" rating unless the principal amount of the Loan were to be decreased and, as a result, the principal amount of the Loan is decreased, then the Borrower shall take all actions as are necessary to effect the "resizing", including the reallocation of the LIBOR Margin of the Loan, and Borrower shall execute and deliver any and all necessary amendments or modifications to the Loan Documents. In connection with the foregoing, Borrower agrees, at Lender's sole cost and expense other than with respect to (1) Borrower's, Operating Lessee's, the Guarantor's, each Ultimate Equity Owners' and their Affiliate's counsel fees and (2) if the principal amount of the Loan is increased, an endorsement to the Title Policy reflecting an increase in the insured amount thereunder which shall be at Borrower's sole cost and expense, to execute and deliver such documents and other agreements reasonably required by Lender to "re-size" the Loan, including, without limitation, an amendment to this Agreement, the Note, the Security Instrument and the other Loan Documents. Borrower agrees to reimburse Lender for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Lender in connection with any "resizing" of the Loan. Notwithstanding the foregoing, Lender agrees that any "resizing" of the Loan shall not change the economics of the Loan in a manner which is adverse to Borrower .

(c) In addition, Borrower shall, at Borrower's sole cost and expense:

(i) furnish to Lender, to the extent not otherwise already furnished to Lender and reasonably acceptable to Lender, all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents;

(ii) execute and deliver, from time to time, such further instruments (including, without limitation, delivery of any financing statements under the UCC) as may be reasonably requested by Lender to confirm the Lien of the Security Instrument on any Building Equipment, Operating Asset or any Intangible;

(iii) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require;

(iv) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the carrying out of the terms and conditions of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time; and

(v) cause its New York counsel to re-issue the New York opinion delivered on the date hereof (in identical form and without updating) in favor of a trustee in a Securitization if such trustee is different that the trustee currently listed in such opinion.

5.1.12 Mortgage Taxes . Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender.

5.1.13 Operation . Borrower shall, and shall cause Manager to, (i) promptly perform and/or observe all of the covenants and agreements required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any "event of default" under the Management Agreement of which it is aware; (iii) enforce in a commercially reasonable manner the performance and observance of all of the covenants and agreements required to be performed and/or observed by the Manager under the Management Agreement.

5.1.14 Business and Operations . Borrower shall continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower shall qualify to do business and shall remain in good standing under the laws of the State in which the Property is located and as and to the extent required for the ownership, maintenance, management and operation of the Property.

5.1.15 Title to the Property . Borrower shall warrant and defend (a) its title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Liens of the Security Instrument, the Assignment of Leases and this Agreement on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.16 Costs of Enforcement . In the event (a) that this Agreement or the Security Instrument is foreclosed upon in whole or in part or that this Agreement or the Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any security agreement prior to or subsequent to this Agreement in which proceeding Lender is made a party, or a mortgage prior to or subsequent to the Security Instrument in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including reasonable attorneys' fees and costs, incurred by Lender or

Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.17 Estoppel Statement . (a) Borrower shall, from time to time, upon thirty (30) days' prior written request from Lender, execute, acknowledge and deliver to the Lender, an Officer's Certificate, stating that this Agreement and the other Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that this Agreement and the other Loan Documents are in full force and effect as modified and setting forth such modifications), stating the amount of accrued and unpaid interest and the outstanding principal amount of the Note and containing such other information, qualified to the Best of Borrower's Knowledge, with respect to the Borrower, the Property and the Loan as Lender shall reasonably request. The estoppel certificate shall also state either that no Default exists hereunder or, if any Default shall exist hereunder, specify such Default and the steps being taken to cure such Default.

(b) Borrower shall use commercially reasonable efforts to deliver to Lender, within thirty (30) days of Lender's request, tenant estoppel certificates from each Tenant under any Material Lease entered into after the Closing Date in substantially the form and substance of the estoppel certificate set forth in **Exhibit G** provided that Borrower shall not be required to deliver such certificates more frequently than one time in any calendar year; provided , however , that there shall be no limit on the number of times Borrower may be required to obtain such certificates if a Default hereunder or under any of the Loan Documents has occurred and is continuing.

5.1.18 Loan Proceeds . Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4 .

5.1.19 No Joint Assessment . Borrower shall not suffer, permit or initiate the joint assessment of the Property (a) with any other real property constituting a tax lot separate from the Property and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.1.20 No Further Encumbrances . Borrower shall do, or cause to be done, all things necessary to keep and protect the Property and all portions thereof unencumbered from any Liens, easements or agreements granting rights in or restricting the use or development of the Property, except for (a) Permitted Encumbrances, (b) Liens permitted pursuant to the Loan Documents, (c) Liens for Impositions prior to the imposition of any interest, charges or expenses for the non-payment thereof and (d) any Liens permitted pursuant to Leases.

5.1.21 Leases . Borrower shall promptly after receipt thereof deliver to Lender a copy of any notice received with respect to any Material Lease claiming that Borrower is in default in the performance or observance of any of the material terms, covenants or conditions of any of the Material Leases, if such default is reasonably likely to have a Material Adverse Effect.

5.1.22 Article 8 "Opt In" Language . Each organizational document of Borrower and each of the other entities identified in Section 4.1.29 hereof shall be modified to include the language set forth on **Exhibit R** .

5.1.23 FF&E . (a) Borrower and Operating Lessee (for purposes of this section, collectively referred to as "**Owner**") shall reserve for FF&E on a monthly basis not less than an amount equal to four percent (4%) of adjusted gross revenues with respect to the Property, such reserves to be maintained either (i) by the Manager, in its capacity as agent for Owner, pursuant to and in accordance with the Management Agreement in the Manager FF&E Reserve Account or (ii) by Guarantor or an Affiliate, as agent for Owner (each of Guarantor or such an Affiliate, in such capacity, " **Owner's Agent**"), in an account at an Approved Bank (as defined in the Account Agreement) (the "**Manager FF&E Alternative Reserve Account** ") pursuant to and in accordance with subparagraph (b) below; and amounts in any such account maintained pursuant to either subparagraph (a)(i) or (a)(ii) above (x) shall be available for disbursements therefrom as permitted by the Management Agreement and shall be reserved solely for FF&E in respect of the Property, (y) shall be separately accounted for and solely used with respect to FF&E in respect of the Property, and (z) shall be otherwise subject to proper accounting and reporting procedures in respect of such funds separately and distinctly in respect of the Property; provided, however , such funds may be withdrawn at Owner's direction from either such account and be replaced by a Letter of Credit in equal amount. The parties acknowledge and agree that Owner will retain title to and ownership of all amounts on deposit in the Manager FF&E Reserve Account or Manager FF&E Alternative Reserve Account Manager nor Owner's Agent will acquire title to, legal or beneficial ownership of, any property interest in such amounts (except, with respect to the Manager, such rights as are provided for in the Management Agreement) ("**Account Funds** "). Owner will make known to third parties that, in performing its services hereunder, Manager or Owner's Agent, as the case may be, is acting solely as, in the case of the Manager, as an independent contractor pursuant to the Management Agreement and in the case of Owner's Agent, as the agent of Owner. Owner's Agent shall immediately correct any misunderstanding of any third party of which either becomes aware as to the separateness of Owner from Manager and Owner's Agent.

(b) If Section 5.1.23(a)(ii) applies, in exercising its obligations with respect to the Manager FF&E Alternative Reserve Account, Owner's Agent shall maintain a complete and accurate set of files, books and records of all transactions conducted by Owner's Agent with respect to the Manager FF&E Alternative Reserve Account. Owner's Agent shall make such files, books and records available to Owner and Lender, as either may reasonably require from time to time. The Manager FF&E Alternative Reserve Account may contain funds belonging to other entities (including those of Owner's Agent), but Owner's Agent shall cause such records to enable, at any and all times, the amount of Owner's funds in the Manager FF&E Alternative Reserve Account to be readily identified. Owner's Agent shall not permit any Affiliate of Owner or Owner's Agent to borrow or use funds in the Manager FF&E Alternative Reserve Account. Owner's Agent shall not use funds in the Manager FF&E Alternative Reserve Account belonging to any other entity to pay Owner's Obligations, nor shall it use any of Owner's Account Funds to pay the obligations of Owner's Agent or any of its Affiliates. Any and all transfers of ownership of any portion of Owner's funds in the Manager FF&E Alternative Reserve Account to or from Owner's Agent or letters of credit issued in substitution thereof shall be a distribution or capital contribution to or from Owner and its direct owner, and from such

direct owner to intermediate owners, until such distribution reaches Owner's Agent as the final direct owner, and any such distribution shall be permitted under applicable law.

5.1.24 Deferred Maintenance Conditions . Borrower shall effect and complete the Deferred Maintenance Conditions within the timeframes set forth in Schedule IX attached hereto.

Section 5.2 Negative Covenants . From the Closing Date until payment and performance in full of all Obligations of Borrower under the Loan Documents or the earlier release of the Lien of this Agreement or the Security Instrument in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that it will not do (and will not permit Operating Lessee to do), or permit to be done, directly or indirectly, any of the following (and in such connection, references in this Article V to Borrower shall alternatively mean Operating Lessee, as the context may require):

5.2.1 Incur Debt . Incur, create or assume (or permit Operating Lessee to incur, create or assume) any Indebtedness other than Permitted Debt or Transfer all or any part of the Property or any interest therein, except as permitted in the Loan Documents;

5.2.2 Encumbrances . Except as permitted pursuant to Article VIII , (a) incur, create or assume or permit the incurrence, creation or assumption of any Indebtedness other than Permitted Debt secured by an interest in Borrower or Operating Lessee and (b) Transfer or permit the Transfer of any interest in such Persons;

5.2.3 Engage in Different Business . Engage, or permit Operating Lessee to engage, directly or indirectly, in any business other than that of entering into this Agreement and the other Loan Documents to which Borrower is a party and the use, ownership, management, leasing, renovation, financing, development, operation and maintenance of the Property and activities related thereto;

5.2.4 Make Advances . Make or permit Operating Lessee to make advances or make loans to any Person, or hold any investments, except as expressly permitted pursuant to the terms of this Agreement or any other Loan Document;

5.2.5 Partition . Partition or permit the partition of the Property, except as permitted hereunder;

5.2.6 Commingle . Commingle its assets or permit Operating Lessee to commingle its assets with the assets of any of Borrower's and/or Operating Lessee's Affiliates except as permitted by the definition of "Single Purpose Entity";

5.2.7 Guarantee Obligations . Guarantee or permit Operating Lessee to guarantee any obligations of any Person;

5.2.8 Transfer Assets . Transfer or permit Operating Lessee to transfer any asset other than in the ordinary course of business or Transfer any interest in the Property except as may be permitted hereby or in the other Loan Documents;

5.2.9 Amend Organizational Documents . Amend or modify any of its or Operating Lessee's organizational documents without Lender's consent, other than in connection with any Transfer permitted pursuant to Article VIII or to reflect any change in capital accounts, contributions, distributions, allocations or other provisions that do not and could not reasonably be expected to have a Material Adverse Effect and provided that each such Person remain a Single Purpose Entity;

5.2.10 Dissolve . Dissolve, wind-up, terminate, liquidate, merge with or consolidate into another Person, except following or simultaneously with a repayment of the Loan in full or as expressly permitted pursuant to this Agreement;

5.2.11 Bankruptcy . (i) File (or permit Operating Lessee to file) a bankruptcy or insolvency petition or otherwise institute insolvency proceedings, (ii) dissolve, liquidate, consolidate, merge or sell all or substantially all of Borrower's assets other than in connection with the repayment of the Loan, (iii) engage (or permit Operating Lessee to engage) in any other business activity or (iv) file or solicit the filing (or permit Operating Lessee to file or solicit the filing) of an involuntary bankruptcy petition against Borrower, or Operating Lessee, or any Close Affiliate of any such Person without obtaining the prior consent of all of the directors of Borrower, including, without limitation, the Independent Directors;

5.2.12 ERISA . Engage in any activity that would subject it to regulation under ERISA or qualify it as an "employee benefit plan" (within the meaning of Section 3(3) of ERISA) to which ERISA applies and Borrower's assets do not and will not constitute plan assets within the meaning of 29 C.F.R. Section 2510.3-101;

5.2.13 Distributions . From and after the occurrence and during the continuance of an Event of Default, make (or permit Operating Lessee to make) any distributions to or for the benefit of any of Borrower's, or Operating Lessee's shareholders, partners or members, as the case may be, or its or their Affiliates;

5.2.14 Manager . (a) Borrower represents, warrants and covenants on behalf of itself and Operating Lessee that the Property shall at all times be managed by an Acceptable Manager pursuant to an Acceptable Management Agreement.

(b) Notwithstanding any provision to the contrary contained herein or in the other Loan Documents, except as provided in this Section 5.2.14 or in connection with a release made in accordance with Section 2.3.4 , Borrower may not amend, modify, supplement, alter or waive any right under the Management Agreement (or permit any such action) without the receipt of a Rating Agency Confirmation. Without the receipt of a Rating Agency Confirmation, Borrower shall be permitted to waive any termination right by Borrower or Operating Lessee or make any nonmaterial modification, change, supplement, alteration or amendment to the Management Agreement and to waive any nonmaterial rights thereunder, provided that no such nonmaterial modification, change, supplement, alteration, amendment or waiver shall affect the cash management procedures set forth in the Management Agreement or the Loan Documents, decrease the cash flow of the Property, adversely affect the marketability of the Property, change the definitions of "default" or "event of default," change the definitions of "operating expense" or words of similar meaning to add additional items to such definitions, change any definitions or

provisions so as to reduce the payments due the Borrower thereunder, change the timing of remittances to the Borrower thereunder, increase or decrease reserve requirements, change the term of the Management Agreement (other than by waiving termination rights) or increase any Management Fees payable under the Management Agreement.

(c) Borrower may enter into a new Management Agreement with an Acceptable Manager upon receipt of a Rating Agency Confirmation with respect to the Management Agreement and delivery of an acceptable Non-Consolidation Opinion covering such replacement manager if such Person (i) is not covered by the Non-Consolidation Opinion or an Additional Non-Consolidation Opinion, and (ii) is an Affiliate of Borrower.

(d) Notwithstanding anything contained herein (i) approvals will not be required to enter into management agreements for Retail/Service Facilities that are not expected to have a Material Adverse Effect, and (ii) amendments to the Management Agreement relating to the Retail/Service Facilities will be deemed to be nonmaterial modifications permitted by Section 5.2.14(b) provided they are not expected to have a Material Adverse Effect.

(e) If any amendment, modification, change, supplement, alteration or waiver in connection with the Management Agreement is otherwise permitted by the terms of subparagraph (b) above, the Lender shall be deemed to have consented to such amendment, modification, change, supplement, alteration or waiver for purposes of any requirement under the Manager Subordination Agreements.

5.2.15 Management Fee . Borrower may not, without the prior written consent of Lender (which may be withheld in its sole and absolute discretion) take or permit to be taken any action that would increase the percentage amount of the Management Fee, or add a new type of fee payable to Manager relating to the Property, including, without limitation, the Management Fee.

5.2.16 Operating Lease . Without the prior written consent of Lender surrender or terminate the Operating Lease unless the other party thereto is in material default and the termination of such agreement would be commercially reasonable.

5.2.17 Modify Account Agreement . Without the prior consent of Lender, which shall not be unreasonably withheld, delayed or conditioned (and if a Securitization shall have occurred, a Rating Agency Confirmation obtained by Borrower), Borrower shall not execute any modification to the Account Agreement;

5.2.18 Zoning Reclassification . Except as contemplated by Section 2.3.4 , without the prior written consent of Lender, which consent shall not be unreasonably withheld, (a) initiate or consent to any zoning reclassification of any portion of the Property, (b) seek any variance under any existing zoning ordinance that would result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, or (c) allow any portion of the Property to be used in any manner that could result in the use of the Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation;

5.2.19 Golf Club Agreement . Borrower agrees that without the prior consent of Lender, Borrower will not execute modifications to the Golf Club Agreement if such modifications will have a material adverse effect on the use, operation or value (including the cash flow) of the Property, taken as a whole, or the ability of Borrower to pay its obligations in respect of the Loan.

5.2.20 Debt Cancellation . Cancel or otherwise forgive or release any material claim or debt owed to it by any Person, except for adequate consideration or in the ordinary course of its business and except for termination of a Lease as permitted by Section 8.8 ;

5.2.21 Misapplication of Funds . Distribute any revenue from the Property or any Proceeds in violation of the provisions of this Agreement, fail to remit amounts to the Collection Accounts or Holding Account, as applicable, as required by Section 3.1 , misappropriate any security deposit or portion thereof or apply the proceeds of the Loan in violation of Section 2.1.4 ; or

5.2.22 Single-Purpose Entity . Fail to be (or permit Operating Lessee) to fail to be a Single-Purpose Entity or take or suffer any action or inaction the result of which would be to cause such Person to cease to be a Single-Purpose Entity.

VI. INSURANCE; CASUALTY; CONDEMNATION; RESTORATION

Section 6.1 Insurance Coverage Requirements . Borrower shall, at its sole cost and expense, during the term of this Agreement, comply with the following insurance obligations:

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall keep or cause to be kept the Property insured and obtain and maintain policies of insurance insuring against loss or damage by standard perils included within the classification "All Risks of Physical Loss." Such insurance (i) shall be in an aggregate amount equal to the then full replacement cost of the Property and the Improvements (without deduction for physical depreciation), or such lesser amounts approved by Lender in its sole discretion (or after a Securitization, upon receipt of a Rating Agency Confirmation), and (ii) shall have deductibles no greater than $500,000 (as escalated by the CPI Increase) (or, with respect to windstorm insurance, deductibles no greater than 10% of the full replacement cost of the Property. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" with a waiver of depreciation.

(b) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall also obtain and maintain or cause to be obtained and maintained the following policies of insurance:

(i) Flood insurance if any part of the Property is located in an area identified by the Federal Emergency Management Agency as an area federally designated a "100 year flood plain" (an " **Affected Property**" and collectively the "**Affected Properties** ") and (A) flood insurance is generally available at reasonable premiums and in such amount as generally required by institutional lenders for similar properties or (B) if not so available from a private carrier, from the federal government at commercially reasonable premiums to the extent available. In either case, the flood insurance shall be in an amount at least equal to the aggregate

principal amount of the Loan outstanding from time to time or the maximum limit of coverage available with respect to the Property under said program, whichever is less; provided, however, notwithstanding the foregoing, Borrower hereby agrees to maintain at all times flood insurance in an amount equal to at least $50,000,000 in the aggregate and shared with all other properties covered by the blanket policy (if any) for the Affected Properties;

(ii) If the Property is determined to be in an area of high seismic activity with a probable maximum loss greater than or equal to twenty percent (20%), earthquake insurance in amounts equal to one times (1x) the probable maximum loss of the Property as determined by the Lender, and in form and substance satisfactory to Lender with a deductible not to exceed five percent (5%) of the total insurable value of the Property;

(iii) Commercial general liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages and containing minimum limits per occurrence of $1,000,000 with a $2,000,000 general aggregate for any policy year. In addition, at least $50,000,000 excess and/or umbrella liability insurance shall be obtained and maintained for claims, including legal liability imposed upon Borrower and all related court costs and attorneys' fees and disbursements;

(iv) Rental loss and/or business interruption insurance in an amount sufficient to avoid any co-insurance penalty and equal to the greater of (A) the estimated gross revenues from the operation of the Property (including (x) the total payable under the Leases and all Rents and (y) the total of all other amounts to be received by Borrower or third parties that are the legal obligation of the Tenants), net of non-recurring expenses, for a period of up to the next succeeding eighteen (18) months, or (B) the projected Operating Expenses (including debt service) for the maintenance and operation of the Property for a period of up to the next succeeding eighteen (18) months as the same may be reduced or increased from time to time due to changes in such Operating Expenses and shall include an endorsement providing 12 months extended period of indemnity. The amount of such insurance shall be increased from time to time as and when the Rents increase or the estimates of (or the actual) gross revenue, as may be applicable, increases or decreases to the extent Rents or the estimates of gross revenue decrease;

(v) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in any of the Improvements (without exclusion for explosions) and insurance against loss of occupancy or use arising from any breakdown, in such amounts as are generally available at reasonable premiums and are generally required by institutional lenders for properties comparable to the Property;

(vi) Worker's compensation insurance with respect to all employees of Borrower as and to the extent required by any Governmental Authority or Legal Requirement and employer's liability coverage of at least $2,000,000 which is scheduled to the excess and/or umbrella liability insurance as referenced in clause (ii) above;

(vii) During any period of repair or restoration, completed value (non-reporting) builder's "all risk" insurance in an amount equal to not less than the full insurable

value of the Property against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as Lender may request, in form and substance acceptable to Lender;

(viii) Coverage to compensate for the cost of demolition and the increased cost of construction for the Property;

(ix) Intentionally Deleted;

(x) Windstorm insurance in an amount equal to the probable maximum loss (as reasonably determined by Lender) of the Property per occurrence and in the aggregate and shared with other properties covered by the blanket insurance (if any) provided , that any credit enhancement proposed to be provided by or on behalf of Borrower in connection with the deductible on such windstorm insurance shall be subject to the prior receipt of a Rating Agency Confirmation;

(xi) Law and ordinance insurance coverage in an amount no less that set forth in the insurance policies as of the date hereof;

(xii) Provided that insurance coverage relating to the acts of terrorist groups or individuals is either (a) available at commercially reasonable rates and (b) commonly obtained by owners of commercial properties in the same geographic area and which are similar to the Property, Borrower shall be required to carry terrorism insurance throughout the term of the Loan (including any extension terms) in an amount equal to, with respect to "certified" and "non-certified" acts of terrorism, an amount equal to the Terrorism Coverage Required Amount (per occurrence). Lender agrees that terrorism insurance coverage may be provided under a blanket policy that is acceptable to Lender;

(xiii) Such other insurance as may from time to time be reasonably required by Lender in order to protect its interests; and

(xiv) All insurance required under this Section 6.1 may be provided by or on behalf of Borrower in a blanket policy covering the Property and other properties.

(c) All policies of insurance (the "**Policies**") required pursuant to this Section 6.1 shall be issued by companies approved by Lender and licensed or authorized to do business in the state where the Property is located. Further, unless otherwise approved by Lender in its reasonable discretion (prior to a Securitization) and the Rating Agencies in writing, the issuer(s) of the Policies required under this Section 6.1 shall have a claims paying ability rating of "A" or better by Standard & Poor's and "Aa2" or better by Moody's, except that the issuer(s) of the Policies required under Section 6.1(b)(viii) hereof shall have a claims paying ability rating of "A" or better by Standard & Poor's and "A2" or better by Moody's; provided, however, if the insurance provided hereunder is procured by a syndication of more then five (5) insurers then the foregoing requirements shall not be violated if at least (i) sixty percent (60%) of the coverage is with carriers having a claims paying ability rating of "A" or better by Standard & Poor's and "Aa2" or better by Moody's and (ii) each other carrier providing coverage has a claims paying ability rating of "BBB-" or better by Standard & Poor's and Fitch Ratings and "Baa3" or better by Moody's. The Policies (i) shall name Lender (or an agent on Lender's behalf) and its

successors and/or assigns as their interest may appear as an additional insured or as a loss payee (except that in the case of general liability insurance, Lender (or an agent on Lender's behalf) shall be named an additional insured and not a loss payee); (ii) shall contain a Non-Contributory Standard Lender Clause and, except with respect to general liability insurance, a Lender's Loss Payable Endorsement, or their equivalents, naming Lender as the Person to which all payments made by such insurance company shall be paid; (iii) shall include effective waivers by the insurer of all claims for insurance premiums against all loss payees, additional insureds and named insureds (other than Borrower) and all rights of subrogation against any loss payee, additional insured or named insured; (iv) shall be assigned to Lender; (v) except as otherwise provided above, shall be subject to a deductible, if any, not greater in any material respect than the deductible for such coverage on the date hereof; (vi) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest, including endorsements providing that neither Borrower, Lender nor any other party shall be a Contributor-insurer (except deductibles) under said Policies and that no material modification, reduction, cancellation or termination in amount of, or material change (other than an increase) in, coverage of any of the Policies shall be effective until at least thirty (30) days after receipt by each named insured, additional insured and loss payee of written notice thereof or ten (10) days after receipt of such notice with respect to nonpayment of premium; (vii) shall permit Lender to pay the premiums and continue any insurance upon failure of Borrower to pay premiums when due, upon the insolvency of Borrower or through foreclosure or other transfer of title to the Property (it being understood that Borrower's rights to coverage under such policies may not be assignable without the consent of the insurer); and (viii) shall provide that any proceeds shall be payable to Lender and that the insurance shall not be impaired or invalidated by virtue of (A) any act, failure to act, negligence of, or violation of declarations, warranties or conditions contained in such policy by Borrower, Lender or any other named insured, additional insured or loss payee, except for the willful misconduct of Lender knowingly in violation of the conditions of such policy, (B) the occupation, use, operation or maintenance of the Property for purposes more hazardous than permitted by the terms of the Policy, (C) any foreclosure or other proceeding or notice of sale relating to the Property, or (D) any change in the possession of the Property without a change in the identity of the holder of actual title to the Property (provided that with respect to items (C) and (D), any notice requirements of the applicable Policies are satisfied). Notwithstanding the foregoing, for purposes of this Section 6.1 hereof, Lender hereby approves the existing blanket insurance policies and any renewals thereof with the same insurance ratings and terms.

(d) **Insurance Premiums; Certificates of Insurance** .

(i) Borrower shall pay the premiums for such Policies (the "**Insurance Premiums**") as the same become due and payable and shall furnish to Lender the receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided , however , that Borrower is not required to furnish such evidence of payment to Lender if such Insurance Premiums are to be paid by Lender pursuant to the terms of this Agreement). Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested in writing by Lender or as may be requested in writing by the Rating Agencies, (except with respect to the Terrorism Insurance), taking into consideration changes in liability laws, changes in prudent customs and practices, and the like. In the event Borrower satisfy the requirements under this Section 6.1 through the use of a Policy covering properties in

addition to the Property (a "**Blanket Policy**"), then (unless such policy is provided in substantially the same manner as it is as of the date hereof), Borrower shall provide evidence satisfactory to Lender that the Insurance Premiums for the Property is separately allocated under such Policy to the Property and that payment of such allocated amount (A) shall maintain the effectiveness of such Policy as to the Property and (B) shall otherwise provide the same protection as would a separate policy that complies with the terms of this Agreement as to the Property, notwithstanding the failure of payment of any other portion of the insurance premiums. If no such allocation is available, Lender shall have the right to increase the amount required to be deposited into the Insurance Reserve Account in an amount sufficient to purchase a non-blanket Policy covering the Property from insurance companies which qualify under this Agreement.

(ii) Borrower shall deliver to Lender on or prior to the Closing Date certificates setting forth in reasonable detail the material terms (including any applicable notice requirements) of all Policies from the respective insurance companies (or their authorized agents) that issued the Policies, including that such Policies may not be canceled or modified in any material respect without thirty (30) days' prior notice to Lender, or ten (10) days' notice with respect to nonpayment of premium. Borrower shall deliver to Lender, concurrently with each change in any Policy, a certificate with respect to such changed Policy certified by the insurance company issuing that Policy, in substantially the same form and containing substantially the same information as the certificates required to be delivered by Borrower pursuant to the first sentence of this clause (d)(ii) and stating that all premiums then due thereon have been paid to the applicable insurers and that the same are in full force and effect (or if such certificate and/or other information described in clause (d)(ii) shall not be obtainable by Borrower, Borrower may deliver an Officer's Certificate to such effect in lieu thereof).

(e) **Renewal and Replacement of Policies** .

(i) Not less than three (3) Business Days prior to the expiration, termination or cancellation of any Policy, Borrower shall renew such policy or obtain a replacement policy or policies (or a binding commitment for such replacement policy or policies), which shall be effective no later than the date of the expiration, termination or cancellation of the previous policy, and shall deliver to Lender a certificate in respect of such policy or policies (A) containing the same information as the certificates required to be delivered by Borrower pursuant to clause (d)(ii) above, or a copy of the binding commitment for such policy or policies and (B) confirming that such policy complies with all requirements hereof.

(ii) If Borrower does not furnish to Lender the certificates as required under clause (e)(i) above, Lender may procure, but shall not be obligated to procure, such replacement policy or policies and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender for the cost of such Insurance Premiums promptly on demand.

(iii) Concurrently with the delivery of each replacement policy or a binding commitment for the same pursuant to this clause (e) , Borrower shall deliver to Lender a report or attestation from a duly licensed or authorized insurance broker or from the insurer, setting forth the particulars as to all insurance obtained by Borrower pursuant to this Section 6.1 and then in effect and stating that all Insurance Premiums then due thereon have been paid in full

to the applicable insurers, that such insurance policies are in full force and effect and that, in the opinion of such insurance broker or insurer, such insurance otherwise complies with the requirements of this Section 6.1 (or if such report shall not be available after Borrower shall have used reasonable efforts to provide the same, Borrower will deliver to Lender an Officer's Certificate containing the information to be provided in such report).

(f) **Separate Insurance .** Borrower will not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to this Section 6.1 unless such insurance complies with clause (c) above.

(g) **Securitization .** Following any Securitization, Borrower shall name any trustee, servicer or special servicer designated by Lender as a loss payee, and any trustee, servicer and special servicer as additional insureds, with respect to any Policy for which Lender is to be so named hereunder.

Section 6.2 Condemnation and Insurance Proceeds .

6.2.1 Right to Adjust . (a) If the Property is damaged or destroyed, in whole or in part in any material respect, by a Casualty, Borrower shall give prompt written notice thereof to Lender, generally describing the nature and extent of such Casualty. Following the occurrence of a Casualty, Borrower, regardless of whether proceeds are available, shall in a reasonably prompt manner proceed to restore, repair, replace or rebuild the Property to the extent practicable to be of at least equal value and of substantially the same character as prior to the Casualty, all in accordance with the terms hereof applicable to Alterations.

(b) Subject to clause (e) below, in the event of a Casualty which is not a Material Casualty, Borrower may settle and adjust such claim; provided that such adjustment is carried out in a competent and timely manner. In such case, Borrower is hereby authorized to collect and receipt for Lender any Proceeds.

(c) Subject to clause (e) below, in the event of a Casualty where the loss exceeds the Threshold Amount, Borrower may settle and adjust such claim only with the consent of Lender (which consent shall not be unreasonably withheld, delayed or conditioned) and Lender shall have the opportunity to participate, at Borrower's cost, in any such adjustments.

(d) Except as provided in clause (b) above, the proceeds of any Policy shall be due and payable solely to Lender and held and applied in accordance with the terms hereof (or, if mistakenly paid to the Borrower, shall be held in trust by the Borrower for the benefit of Lender and shall be paid over to Lender by the Borrower within two (2) Business Days of receipt).

(e) Notwithstanding the terms of clauses (a) and (b) above, Lender shall have the sole authority to adjust any claim with respect to a Casualty and to collect all Proceeds if an Event of Default shall have occurred and is continuing.

6.2.2 Right of the Borrower to Apply to Restoration . In the event of (a) a Casualty that does not constitute a Material Casualty, or (b) a Condemnation that does not constitute a Material Condemnation, Lender shall permit the application of the Proceeds (after

reimbursement of any expenses incurred by Lender) to reimburse or pay Borrower for the cost of restoring, repairing, replacing or rebuilding or otherwise curing title defects at the Property (the "**Restoration**"), in the manner required hereby, provided and on the condition that (1) no Event of Default shall have occurred and be then continuing and (2) in the reasonable judgment of Lender:

(i) the Property can be restored to an economic unit not materially less valuable (taking into account the effect of the termination of any Leases and the proceeds of any rental loss or business interruption insurance which the Borrower receives or is entitled to receive, in each case, due to such Casualty or Condemnation) and not materially less useful than the same was prior to the Casualty or Condemnation,

(ii) the Property, after such Restoration and stabilization, will adequately secure the outstanding balance of the Loan,

(iii) the Restoration can be completed by the earliest to occur of:

(A) the date on which the business interruption insurance carried by Borrower with respect to the Property shall expire;

(B) the 180th day prior to the Maturity Date (taking into account any extension thereof), and

(C) with respect to a Casualty, the expiration of the payment period on the rental loss or business interruption insurance coverage in respect of such Casualty; and

(iv) after receiving reasonably satisfactory evidence to such effect, during the period of the Restoration, the sum of (A) income derived from the Property, plus (B) proceeds of rental loss insurance or business interruption insurance, if any, payable together with such other monies as Borrower may irrevocably make available for the Restoration, will equal or exceed the sum of (x) 105% of Operating Expenses and (y) the Debt Service.

Notwithstanding the foregoing, if any of the conditions set forth in sub-clauses (1) and (2) of the proviso in this Section 6.2.2 is not satisfied, then, unless Lender shall otherwise elect, at its sole option, the Proceeds shall be applied in the following order of priority: (A) first, to prepay the principal of the Loan; (B) second, to pay the amount of (1) all accrued and unpaid interest in respect of the Principal Amount of the Indebtedness so prepaid through the date which is the final day of the Interest Period in which such prepayment is made (including, if an Event of Default has occurred and is then continuing, interest owed at the Default Rate), and (2) all other sums (excluding any Prepayment Fee) then due and owing under the Loan Documents and (C) third, to reimburse Lender for any fees and expenses of Lender incurred in connection therewith (it being agreed that, upon satisfaction in full of the entitlements under clauses (A), (B) and (C) of this sentence, Borrower shall be entitled to receive a release of the Lien of the Security Instrument and the other Loan Documents with respect to the Property in accordance with and subject to the terms of Section 2.3.3 hereof and any surplus Proceeds shall be paid over to the Borrower or as the Borrower directs. Notwithstanding the foregoing, or anything else to

the contrary contained herein, all Proceeds with respect to the insurance determined pursuant to Section 6.1.4 shall be deposited directly into the Collection Account and shall be disbursed in accordance with Article III as if such Proceeds are applied in the manner amounts received from the Manager are applied

6.2.3 Material Casualty or Condemnation and Lender's Right to Apply Proceeds . In the event of a Material Casualty or a Material Condemnation, then Lender shall have the option to (i) apply the Proceeds hereof in the following order of priority: (A) first, to prepay the principal of the Loan; (B) second, to pay the amount of (1) all accrued and unpaid interest in respect of the Principal Amount of the Indebtedness so prepaid through the date which is the final day of the Interest Period in which such prepayment is made (including, if an Event of Default has occurred and is then continuing, interest owed at the Default Rate), and (2) all other sums (excluding any Prepayment Fee) then due and owing under the Loan Documents; (C) third, to reimburse Lender for any fees and expenses of Lender incurred in connection therewith; and (D) fourth, it being agreed that, upon satisfaction in full of the entitlements under clauses (A), (B) and (C) of this sentence, Borrower shall be entitled to receive the balance of the Proceeds, if any and a release of the Lien of the Security Instrument and the other Loan Documents with respect to the Property in accordance with and subject to the terms of Section 2.3.3 hereof), or (ii) make such Proceeds available to reimburse Borrower for the cost of any Restoration in the manner set forth below in Section 6.2.4 hereof provided , however , that if the Management Agreement provides that the Operating Lessee or Borrower is required to use the Proceeds to restore the Property and Operating Lessee or Borrower does not have the right to terminate the Management Agreement pursuant to the terms of the Management Agreement as a result of such Casualty or Condemnation or otherwise, then the Lender shall be obligated to make such Proceeds available to the Borrower for the Restoration of such Property pursuant to Section 6.2.4 below. Notwithstanding anything to the contrary contained herein, in the event of a Material Casualty or a Material Condemnation, where Borrower cannot restore, repair, replace or rebuild the Property to be of at least substantially equal value and of substantially the same character as prior to the Material Casualty or Material Condemnation or title defect because the Property is a legally non-conforming use or as a result of any other Legal Requirement, Borrower hereby agrees that Lender may apply the Proceeds payable in connection therewith in accordance with clauses (A), (B) (C) and (D).

6.2.4 Manner of Restoration and Reimbursement . If Borrower is entitled pursuant to Sections 6.2.2 or 6.2.3 above to reimbursement out of Proceeds (and the conditions specified therein shall have been satisfied), such Proceeds shall be disbursed on a monthly basis upon Lender being furnished with (i) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Lender may reasonably require and approve, and (ii) all plans and specifications for such Restoration, such plans and specifications to be approved by Lender prior to commencement of any work (such approval not to be unreasonably withheld, delayed or conditioned). In addition, no payment made prior to the Final Completion of the Restoration (excluding punch-list items) shall exceed ninety percent (90%) of the aggregate value of the work performed from time to time; funds other than Proceeds shall be disbursed prior to disbursement of such Proceeds; and at all times, the undisbursed balance of such Proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose,

shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the Restoration, free and clear of all Liens or claims for Lien. Prior to any disbursement, Lender shall have received evidence reasonably satisfactory to it of the estimated cost of completion of the Restoration (such estimate to be made by Borrower's architect or contractor and approved by Lender in its reasonable discretion), and Borrower shall have deposited with Lender Eligible Collateral in an amount equal to the excess (if any) of such estimated cost of completion over the net Proceeds. Any surplus which may remain out of Proceeds received pursuant to a Casualty after payment of such costs of Restoration shall be paid to the Borrower or as the Borrower directs . Any surplus which may remain out of Proceeds received pursuant to a Condemnation shall be paid to the Borrower or as the Borrower directs.

6.2.5 Condemnation . (a) Borrower shall promptly give Lender written notice of the actual commencement or written threat of commencement of any Condemnation and shall deliver to Lender copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Borrower, regardless of whether Proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with the terms hereof applicable to Alterations.

(b) Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any Proceeds in respect of a Condemnation and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Section. Provided no Event of Default has occurred and is continuing, (x) in the event of a Condemnation which is not a Material Condemnation, Borrower may settle and compromise such Proceeds; provided that the same is effected in a competent and timely manner, and (y) in the event of a Condemnation, where the loss exceeds the Threshold Amount, Borrower may settle and compromise the Proceeds only with the consent of Lender (which consent shall not be unreasonably withheld, delayed or conditioned) and Lender shall have the opportunity to participate, at Borrower' cost, in any litigation and settlement discussions in respect thereof. Notwithstanding any Condemnation by any public or quasi-public authority (including any transfer made in lieu of or in anticipation of such a Condemnation), Borrower shall continue to pay the Indebtedness at the time and in the manner provided for in the Note, this Agreement and the other Loan Documents, and the Indebtedness shall not be reduced unless and until any Proceeds shall have been actually received and applied by Lender to discharge the Indebtedness, pay required interest and pay any other required amounts, in each case, pursuant to the terms of Sections 6.2.2 or 6.2.3 above. Lender shall not be limited to the interest paid on the Proceeds by the condemning authority but shall be entitled to receive out of the Proceeds interest at the rate or rates provided in the Note. Borrower shall cause any Proceeds that are payable to Borrower to be paid directly to Lender to be held and applied in accordance with the terms hereof.

VII. IMPOSITIONS, OTHER CHARGES, LIENS AND OTHER ITEMS

Section 7.1 Impositions and Other Charges . Subject to the third sentence of this Section 7.1 , Borrower shall pay, or shall cause Operating Lessee to pay all Impositions now or hereafter levied or assessed or imposed against the Property or any part thereof prior to the imposition of any interest, charges or expenses for the non-payment thereof and shall pay all

Other Charges on or before the date they are due. Subject to Borrower's right of contest set forth in Section 7.3 , as set forth in the next two sentences and provided that there are sufficient funds available in the Tax Reserve Account, Lender, on behalf of Borrower, shall pay all Impositions and Other Charges which are attributable to or affect the Property or Borrower, prior to the date such Impositions or Other Charges shall become delinquent or late charges may be imposed thereon, directly to the applicable taxing authority with respect thereto. Lender shall, or Lender shall direct the Cash Management Bank to, pay to the taxing authority such amounts to the extent funds in the Tax Reserve Account are sufficient to pay such Impositions. Nothing contained in this Agreement or the Security Instrument shall be construed to require Borrower to pay any tax, assessment, levy or charge imposed on Lender in the nature of a franchise, capital levy, estate, inheritance, succession, income or net revenue tax.

Section 7.2 No Liens . Subject to its right of contest set forth in Section 7.3 , Borrower shall at all times keep, or cause to be kept, the Property free from all Liens (other than Permitted Encumbrances) and shall pay when due and payable (or bond over) all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a Lien on the Property or any portion thereof and shall in any event cause the prompt, full and unconditional discharge of all Liens imposed on or against the Property or any portion thereof within forty-five (45) days after receiving written notice of the filing (whether from Lender, the lienor or any other Person) thereof. Borrower shall do or cause to be done, at the sole cost of Borrower, everything reasonably necessary to fully preserve the first priority of the Lien of the Security Instrument against the Property, subject to the Permitted Encumbrances. Upon the occurrence and during the continuance of an Event of Default with respect to its Obligations as set forth in this Article VII , Lender may (but shall not be obligated to) make such payment or discharge such Lien, and Borrower shall reimburse Lender within three (3) Business Days following demand for all such advances pursuant to Section 19.12 (together with interest thereon at the Default Rate).

Section 7.3 Contest . Nothing contained herein shall be deemed to require Borrower to pay, or cause to be paid, any Imposition or to satisfy any Lien, or to comply with any Legal Requirement or Insurance Requirement, so long as Borrower is in good faith, and by proper legal proceedings, where appropriate, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) Borrower shall keep Lender informed of the status of such contest at reasonable intervals, (iii) if neither Borrower nor Operating Lessee is providing security as provided in clause (vi) below, adequate reserves with respect thereto are maintained on Borrower's books in accordance with GAAP or in the Tax Reserve Account or Insurance Reserve Account, as applicable, (iv) either such contest operates to suspend collection or enforcement as the case may be, of the contested Imposition, Lien or Legal Requirement and such contest is maintained and prosecuted continuously and with diligence or the Imposition or Lien is bonded, (v) in the case of any Insurance Requirement, the failure of Borrower to comply therewith shall not impair the validity of any insurance required to be maintained by Borrower under Section 6.1 or the right to full payment of any claims thereunder, and (vi) in the case of Impositions and Liens which are not bonded in excess of $1,000,000 individually, or in the aggregate, during such contest, Borrower, shall deposit with or deliver to Lender either Cash and Cash Equivalents or a Letter or Letters of Credit in an amount equal to 125% of (A) the amount

of Borrower's obligations being contested plus (B) any additional interest, charge, or penalty arising from such contest. Notwithstanding the foregoing, the creation of any such reserves or the furnishing of any bond or other security, Borrower promptly shall comply with any contested Legal Requirement or Insurance Requirement or shall pay any contested Imposition or Lien, and compliance therewith or payment thereof shall not be deferred, if, at any time the Property or any portion thereof shall be, in Lender's reasonable judgment, in imminent danger of being forfeited or lost or Lender is likely to be subject to civil or criminal damages as a result thereof. If such action or proceeding is terminated or discontinued adversely to Borrower, Borrower shall deliver to Lender reasonable evidence of Borrower's compliance with such contested Imposition, Lien, Legal Requirements or Insurance Requirements, as the case may be.

VIII. TRANSFERS, INDEBTEDNESS AND SUBORDINATE LIENS

Section 8.1 Restrictions on Transfers and Indebtedness . (a) Except in connection with such action as is permitted by the subsequent provisions of this Article VIII , Borrower will not, without Lender's prior written consent and a Rating Agency Confirmation with respect to the transfer or other matter in question, (A), Transfer legal, Beneficial or direct or indirect equitable interests in all or any part of the Property, the Borrower or Operating Lessee, (B) permit or suffer any owner, directly or indirectly, of a legal, Beneficial or equitable interest in the Property, the Borrower or Operating Lessee to Transfer such interest, whether by transfer of stock or other legal, Beneficial or equitable interest in any entity or otherwise, (C) mortgage, hypothecate or otherwise encumber or grant a security interest in all or any part of the legal, Beneficial or equitable interests in all or any part of the Property, the Borrower or the Operating Lessee, or (D) file of record a declaration of condominium with respect to the Property. Notwithstanding any provision herein to the contrary, nothing contained herein shall be deemed to restrict or otherwise interfere with (i) the ability of the holders of direct or indirect legal, Beneficial or equitable interests in the Ultimate Equity Owner to Transfer such interests, whether in connection with an initial public offering of shares in Ultimate Equity Owner or otherwise or (ii) the ability of the holders of direct or indirect legal, Beneficial or equitable interests in the Borrower or Operating Lessee to pledge such interests to secure the Revolver Loan or the enforcement or foreclosure thereof pursuant to such pledge, provided, with respect to this subparagraph (ii) only, with respect to any pledge, (x) the Property will be directly owned by a Single Purpose Entity in compliance with the representations, warranties and covenants in Section 4.1.29 hereof, (y) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement and (z) such pledgee shall be one or more of the initial Lenders (as such term is defined in the Credit Agreement) or wholly owned (directly or indirectly) by such initial Lender(s).

(b) Borrower shall not incur, create or assume any Indebtedness without the consent of Lender; provided , however , Borrower may, without the consent of Lender, incur, create or assume Permitted Debt (other than the Revolver Loan) or allow or suffer such Permitted Debt to be incurred, created or assumed.

(c) Notwithstanding the foregoing, nothing herein shall prevent Borrower or any direct or indirect owner of any legal or Beneficial or equitable interest therein, to enter into a purchase and sale agreement or other similar arrangements to Transfer any interest in connection with any sale of the Property or other interest so long as a condition precedent to such Transfer is the payment, in full, of the Indebtedness.

Section 8.2 Sale of Building Equipment . Borrower may Transfer or dispose of Building Equipment which is being replaced or which is no longer necessary in connection with the operation of the Property free from the Lien of the Security Instrument provided that such Transfer or disposal will not have a Material Adverse Effect on the value of the Property taken as a whole, will not materially impair the utility of the Property, and will not result in a reduction or abatement of, or right of offset against, the Rents payable under any Lease, in either case as a result thereof, and provided , further , that any new Building Equipment acquired by Borrower or Operating Lessee(and not so disposed of) shall be subject to the Lien of the Security Instrument. Lender shall, from time to time, upon receipt of an Officer's Certificate requesting the same and confirming satisfaction of the conditions set forth above, execute a written instrument in form reasonably satisfactory to Lender to confirm that such Building Equipment which is to be, or has been, sold or disposed of is free from the Lien of the Security Instrument.

Section 8.3 Immaterial Transfers and Easements, etc . Borrower and Operating Lessee may, without the consent of Lender, (i) make immaterial Transfers of portions of the Property to Governmental Authorities for dedication or public use (subject to the provisions of Section 6.2) or, portions of the Property to third parties for the purpose of erecting and operating additional structures whose use is integrated with the use of the Property, and (ii) grant easements, restrictions, covenants, reservations and rights of way in the ordinary course of business for access, water and sewer lines, telephone and telegraph lines, electric lines or other utilities or for other similar purposes, provided that no such Transfer, conveyance or encumbrance set forth in the foregoing clauses (i) and (ii) shall materially impair the utility and operation of the Property or have a Material Adverse Effect on the value of the Property taken as a whole. In connection with any Transfer permitted pursuant to this Section 8.3 , Lender shall execute and deliver any instrument reasonably necessary or appropriate, in the case of the Transfers referred to in clause (i) above, to release the portion of the Property affected by such Condemnation or such Transfer from the Lien of the Security Instrument or, in the case of clause (ii) above, to subordinate the Lien of the Security Instrument to such easements, restrictions, covenants, reservations and rights of way or other similar grants upon receipt by Lender of:

(a) thirty (30) days prior written notice thereof;

(b) a copy of the instrument or instruments of Transfer;

(c) an Officer's Certificate stating (x) with respect to any Transfer, the consideration, if any, being paid for the Transfer and (y) that such Transfer does not materially impair the utility and operation of the Property, materially reduce the value of the Property or have a Material Adverse Effect; and

(d) reimbursement of all of Lender's reasonable costs and expenses incurred in connection with such Transfer.

Section 8.4 Transfers of Interests in Borrower . In addition to any transfer permitted by any other provision of this Article VIII , each holder of any direct or indirect interest in the Borrower shall have the right to transfer (but not pledge, hypothecate or encumber) its equity interest in the Borrower to any Person who is not a Disqualified Transferee without Lender's consent or a Rating Agency Confirmation if Section 8.6 is complied with and, after giving effect to such transfer:

(a) (i) the Property will be directly owned by a Single Purpose Entity in compliance with the representations, warranties and covenants in Section 4.1.29 hereof (as if the Borrower shall have remade all of such representations, warranties and covenants as of, and after giving effect to, the transfer), and which shall have executed and delivered to Lender an assumption agreement in form and substance acceptable to Lender, evidencing the continuing agreement of the Borrower to abide and be bound by all the terms, covenants and conditions set forth in this Agreement, the Note, the Security Instrument and the other Loan Documents and all other outstanding obligations under the Loan, together with such legal opinions and title insurance endorsements as may be reasonably requested by Lender;

(b) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement;

(c) the Ultimate Equity Owner or a Close Affiliate of such entity owns directly or indirectly at least fifty-one percent (51%) of the equity interests in the Borrower and the Person that is the proposed transferee is not a Disqualified Transferee; provided that, after giving effect to any such transfer, in no event shall any Person other than Ultimate Equity Owner or a Close Affiliate of Ultimate Equity Owner exercise Management Control over the Borrower. In the event that Management Control shall be exercisable jointly by Ultimate Equity Owner or a Close Affiliate of Ultimate Equity Owner with any other Person or Persons, then the Ultimate Equity Owner or such Close Affiliate shall be deemed to have Management Control only if Ultimate Equity Owner or such Close Affiliate retains the ultimate right as between Ultimate Equity Owner or such Close Affiliate and the transferee to unilaterally make all material decisions with respect to the operation, management, financing and disposition of the Property;

(d) if there has been a Transfer of forty-nine percent (49%) or more of the direct membership interests, stock or other direct equity ownership interests in Borrower, Borrower shall have first delivered to Lender (and, after a Securitization, the Rating Agencies) an Officer's Certificate and legal opinion of the types described in Section 8.6 below; and

(e) Borrower shall cause the transferee, if Lender so requests and if such transferee is required to be a Single Purpose Entity pursuant to this Agreement, to deliver to S&P and to any other Rating Agency Lender requests its organizational documents solely for the purpose of Standard & Poor's and such other Rating Agency Lender requests confirming that such organizational documents comply with the single purpose bankruptcy remote entity requirements set forth herein.

Section 8.5 Loan Assumption . Without limiting the foregoing, Borrower and Operating Lessee shall have the right to sell, assign, convey or transfer (but not mortgage, hypothecate or otherwise encumber or grant a security interest in) legal or equitable title to all (but not less than all) of the Property only if:

(a) after giving effect to the proposed transaction:

the Property will be owned by a Single Purpose Entity wholly owned (directly or indirectly) by a Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or such other entity (specifically approved in writing by both Lender and each Rating Agency) which will be in compliance with the representations, warranties and covenants contained in Section 4.1.29 hereof (as if such transferee shall have remade all of such representations, warranties and covenants as of, and after giving effect to, the proposed transaction); such Single Purpose Entity shall have executed and delivered to Lender an assumption agreement and such other agreements as Lender may reasonably request (collectively, the "**Assumption Agreement**") in form and substance acceptable to Lender, evidencing the proposed transferee's agreement to abide and be bound by all the terms, covenants and conditions set forth in this Agreement, the Note, the Security Instrument and the other Loan Documents and all other outstanding obligations under the Loan; the Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or such other approved entity shall assume the obligations of Guarantor under the Loan Documents (and such Single Purpose Entity and the applicable Permitted Borrower Transferee, Permitted Borrower Transferee Alternative, Pre-approved Transferee or other approved entity shall thereafter be subject to the provisions of this Article VIII), and the transferee shall cause to be delivered to Lender, such legal opinions and title insurance endorsements as may be reasonably requested by Lender;

(i) an Acceptable Manager shall continue to act as Manager for the Property pursuant to the existing Management Agreement or an Acceptable Management Agreement; and

(ii) no Event of Default shall have occurred and be continuing;

(b) the Assumption Agreement shall state the applicable transferee's agreement to abide by and be bound by the terms in the Note (or such other promissory notes to be executed by the transferee, such other promissory note or notes to be on the same terms as the Note), the Security Instrument, this Agreement (or such other loan agreement to be executed by such transferee, which shall contain terms substantially identical to the terms hereof) and such other Loan Documents (or other loan documents to be delivered by such transferee, which shall contain terms substantially identical to the terms of the applicable Loan Documents) whenever arising, and Borrower, and/or such transferee shall deliver such legal opinions and title insurance endorsements as may reasonably be requested by Lender;

(c) following execution of a contract for the sale of the Property and not less than thirty (30) days prior to the expected date of such proposed sale, Borrower shall submit notice of such sale to Lender. Borrower shall submit to Lender, not less than ten (10) days prior to the expected date of such sale, the Assumption Agreement for execution by Lender. Such documents shall be in a form appropriate for the jurisdiction in which the Property is located and shall be reasonably satisfactory to Lender. In addition, Borrower shall provide all other

documentation Lender reasonably requires to be delivered by Borrower in connection with such assumption, together with an Officer's Certificate certifying that (i) the assumption to be effected will be effected in compliance with the terms of this Agreement and (ii) will not impair or otherwise adversely affect the validity or priority of the Lien of the Security Instrument;

(d) prior to any such transaction, the proposed transferee shall deliver to Lender an Officer's Certificate stating that (x) such transferee is not an "employee benefit plan" within the meaning of Section 3(3) of ERISA that is subject Title I of ERISA or any other Similar Law and (y) the underlying assets of the proposed transferee do not constitute assets of any such employee benefit plan for purposes of ERISA or any Similar Law;

(e) if the transfer is to (i) an entity other than a Single Purpose Entity wholly owned directly or indirectly by one or more Pre-approved Transferees, Permitted Borrower Transferees or Permitted Borrower Transferee Alternatives, a Rating Agency Confirmation shall have been received in respect of such proposed transfer (or, if the proposed transfer shall occur prior to a Securitization, such transfer shall be subject to Lender's consent in its sole discretion) and (ii) a Permitted Borrower Transferee Alternative, such transfer shall be subject to Lender's prior written consent in its reasonable discretion;

(f) the terms of Section 8.6 shall be complied with and Borrower shall cause the transferee to deliver to S&P and to any other Rating Agency Lender requests its organizational documents solely for the purpose of S&P and any other Rating Agency Lender requests confirming that such organizational documents comply with the single purpose bankruptcy remote entity requirements set forth herein; and

(g) Lender shall have received the payment of, or reimbursement for, all reasonable costs and expenses incurred by Lender and the Rating Agencies (and any servicer in connection with a Securitization) in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements).

Section 8.6 Notice Required; Legal Opinions . Not less than five (5) Business Days prior to the closing of any transaction permitted under the provisions of Sections 8.2 through 8.5 , Borrower shall deliver or cause to be delivered to Lender (A) an Officer's Certificate describing the proposed transaction and stating that such transaction is permitted hereunder and under the other Loan Documents, together with any documents upon which such Officer's Certificate is based, and (B) a legal opinion of counsel to Borrower or the transferee selected by either of them (to the extent approved by Lender and the Rating Agencies), in form and substance consistent with similar opinions then being required by the Rating Agencies and acceptable to the Rating Agencies, confirming, among other things, that the assets of the Borrower, and of its managing general partner or managing member, as applicable, will not be substantively consolidated with the assets of such owners or Controlling Persons of the Borrower as Lender or the Rating Agencies may specify, in the event of a bankruptcy or similar proceeding involving such owners or Controlling Persons.

Section 8.7 Leases .

8.7.1 New Leases and Lease Modifications . Except as otherwise provided in this Section 8.7 , Borrower shall not and shall not permit Operating Lessee to (i) enter into any Lease on terms other than "market" and rental rates (in Borrower's or Operating Lessee's good faith judgment), or (ii) enter into any Material Lease (a "**New Lease**"), or (iii) consent to the assignment of any Material Lease (unless required to do so by the terms of such Material Lease) that releases the original Tenant from its obligations under the Material Lease, or (iv) modify any Material Lease (including, without limitation, accept a surrender of any portion of the Property subject to a Material Lease (unless otherwise permitted or required by law), allow a reduction in the term of any Material Lease or a reduction in the Rent payable under any Material Lease, change any renewal provisions of any Material Lease, materially increase the obligations of the landlord or materially decrease the obligations of any Tenant) or terminate any Material Lease (any such action referred to in clauses (iii) and (iv) being referred to herein as a " **Lease Modification**") without the prior written consent of Lender which consent shall not be unreasonably withheld, delayed or conditioned. Any New Lease or Lease Modification that requires Lender's consent shall be delivered to Lender for approval not less than ten (10) Business Days prior to the effective date of such New Lease or Lease Modification.

8.7.2 Leasing Conditions . Subject to terms of this Section 8.7 , provided no Event of Default shall have occurred and be continuing, Borrower may enter into a New Lease or Lease Modification, without Lender's prior written consent, that satisfies each of the following conditions (as evidenced by an Officer's Certificate delivered to Lender prior to Borrower's entry into such New Lease or Lease Modification):

(a) with respect to a New Lease or Lease Modification, the premises demised thereunder is not more than 10,000 net rentable square feet of the Property;

(b) the term of such New Lease or Lease Modification, as applicable, does not exceed 120 months, plus up to two (2) 60-month option terms (or equivalent combination of renewals);

(c) the New Lease or Lease Modification provides for "market" rental rates other terms and does not contain any terms which would adversely affect Lender's rights under the Loan Documents or that would have a Material Adverse Effect;

(d) the New Lease or Lease Modification, as applicable, provides that the premises demised thereby cannot be used for any of the following uses: any pornographic or obscene purposes, any commercial sex establishment, any pornographic, obscene, nude or semi-nude performances, modeling, materials, activities or sexual conduct or any other use that has or could reasonably be expected to have a Material Adverse Effect;

(e) the Tenant under such New Lease or Lease Modification, as applicable, is not an Affiliate of Borrower;

(f) the New Lease or Lease Modification, as applicable, does not prevent Proceeds from being held and disbursed by Lender in accordance with the terms hereof and does not entitle any Tenant to receive and retain Proceeds except those that may be specifically

awarded to it in condemnation proceedings because of the Condemnation of its trade fixtures and its leasehold improvements which have not become part of the Property and such business loss as Tenant may specifically and separately establish; and

(g) the New Lease or Lease Modification, as applicable satisfies the requirements of Section 8.7.7 and Section 8.7.8 .

8.7.3 Delivery of New Lease or Lease Modification . Upon the execution of any New Lease or Lease Modification, as applicable, Borrower shall deliver to Lender an executed copy of the Lease.

8.7.4 Lease Amendments . Borrower agrees that it shall not have the right or power, as against Lender without its consent, to cancel, abridge, amend or otherwise modify any Lease unless such modification complies with this Section 8.7 .

8.7.5 Security Deposits . All security or other deposits of Tenants of the Property shall be treated as trust funds and shall, if required by law or the applicable Lease not be commingled with any other funds of Borrower, and such deposits shall be deposited, upon receipt of the same by Borrower in a separate trust account maintained by Borrower expressly for such purpose. Within ten (10) Business Days after written request by Lender, Borrower shall furnish to Lender reasonably satisfactory evidence of compliance with this Section 8.7.5 , together with a statement of all lease securities deposited with Borrower by the Tenants and the location and account number of the account in which such security deposits are held.

8.7.6 No Default Under Leases . Borrower shall (i) promptly perform and observe all of the material terms, covenants and conditions required to be performed and observed by Borrower under the Leases, if the failure to perform or observe the same would have a Material Adverse Effect; (ii) exercise, within ten (10) Business Days after a written request by Lender, any right to request from the Tenant under any Lease a certificate with respect to the status thereof and (iii) not collect any of the Rents, more than one (1) month in advance (except that Borrower may collect such security deposits and last month's Rents as are permitted by Legal Requirements and are commercially reasonable in the prevailing market and collect other charges in accordance with the terms of each Lease).

8.7.7 Subordination . All Lease Modifications and New Leases entered into by Borrower after the date hereof shall by their express terms be subject and subordinate to this Agreement and the Security Instrument (through a subordination provision contained in such Lease or otherwise) and shall provide that, if Lender agrees to a non-disturbance provision pursuant to Section 8.7.9 , the Person holding any rights thereunder shall attorn to Lender or any other Person succeeding to the interests of Lender upon the exercise of its remedies hereunder or any transfer in lieu thereof on the terms set forth in this Section 8.7 .

8.7.8 Attornment . Each Lease Modification and New Lease entered into from and after the date hereof shall provide that in the event of the enforcement by Lender of any remedy under this Agreement or the Security Instrument, if Lender agrees to a non-disturbance provision pursuant to Section 8.7.9 , the Tenant under such Lease shall, at the option of Lender or of any other Person succeeding to the interest of Lender as a result of such enforcement, attorn to

Lender or to such Person and shall recognize Lender or such successor in the interest as lessor under such Lease without change in the provisions thereof; provided , however , Lender or such successor in interest shall not be liable for or bound by (i) any payment of an installment of rent or additional rent made more than thirty (30) days before the due date of such installment, (ii) any act or omission of or default by Borrower under any such Lease (but the Lender, or such successor, shall be subject to the continuing obligations of the landlord to the extent arising from and after such succession to the extent of Lender's, or such successor's, interest in the Property), (iii) any credits, claims, setoffs or defenses which any Tenant may have against Borrower, (iv) any obligation on Borrower's part, pursuant to such Lease, to perform any tenant improvement work or (v) any obligation on Borrower's part, pursuant to such Lease, to pay any sum of money to any Tenant. Each such New Lease shall also provide that, upon the reasonable request by Lender or such successor in interest, the Tenant shall execute and deliver an instrument or instruments confirming such attornment.

8.7.9 Non-Disturbance Agreements . Lender shall enter into, and, if required by applicable law to provide constructive notice or requested by a Tenant, record in the county where the subject Property is located, a subordination, attornment and non-disturbance agreement, substantially in form and substance substantially similar to the form attached hereto as **Exhibit K** (a "**Non - Disturbance Agreement**"), with any Tenant (other than an Affiliate of Borrower) entering into a New Lease permitted hereunder or otherwise consented to by Lender within ten (10) Business Days after written request therefor by Borrower, provided that, such request is accompanied by an Officer's Certificate stating that such Lease complies in all material respects with this Section 8.7 . All reasonable third party costs and expenses incurred by Lender in connection with the negotiation, preparation, execution and delivery of any Non-Disturbance Agreement, including, without limitation, reasonable attorneys' fees and disbursements, shall be paid by Borrower (in advance, if requested by Lender).

8.7.10 Approvals for Retail/service Facilities . Notwithstanding anything contained herein (i) approvals will not be required for any gift shop Lease or other miscellaneous space in lobby or similar locations, and (ii) provided the other requirements of Section 8.7.2 on New Leases and Lease Modifications are otherwise satisfied, the restriction therein on New Leases or Lease Modifications with Affiliates will not apply to New Leases or Lease Modifications relating to portions of the Property used for retail or service facilities ("**Retail/Service Facilities**").

IX. INTEREST RATE CAP AGREEMENT

Section 9.1 Interest Rate Cap Agreement . Borrower shall maintain the Interest Rate Cap Agreement with an Acceptable Counterparty in effect and having a term extending through the last day of the accrual period in which the applicable Maturity Date occurs, and an initial notional amount equal to the Loan Amount. The Interest Rate Cap Agreement shall have a strike rate equal to the LIBOR Cap Strike Rate. The notional amount of the Interest Rate Cap Agreement may be reduced from time to time in amounts equal to any prepayment of the principal of the Loan made in accordance with the Loan Documents, provided that the strike rate shall be equal to the LIBOR Cap Strike Rate.

Section 9.2 Pledge and Collateral Assignment . Borrower hereby pledges, assigns, transfers, delivers and grants a continuing first priority lien to Lender, as security for payment of all sums due in respect of the Loan and the performance of all other terms, conditions and covenants of this Agreement and any other Loan Document on Borrower's part to be paid and performed, in, to and under all of Borrower's right, title and interest whether now owned or hereafter acquired and whether now existing or hereafter arising (collectively, the "**Rate Cap Collateral**"): (i) in the Interest Rate Cap Agreement (as soon as such agreement is effective or when and if any replacement agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement); (ii) to receive any and all payments under the Interest Rate Cap Agreement (or, when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), whether as contractual obligations, damages or otherwise; and (iii) to all claims, rights, powers, privileges, authority, options, security interests, liens and remedies, if any, under or arising out of the Interest Rate Cap Agreement (as soon as such agreement is effective or when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), in each case including all accessions and additions to, substitutions for and replacements, products and proceeds of any of the foregoing. Borrower shall deliver to Lender an executed counterpart of such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement (which shall, by its terms, authorize the assignment to Lender and require that payments be made directly to Lender) and notify the Counterparty of such assignment (either in such Interest Rate Cap Agreement, Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement or by separate instrument). Borrower shall not, without obtaining the prior written consent of Lender, further pledge, transfer, deliver, assign or grant any security interest in the Interest Rate Cap Agreement (or, when and if any such agreement becomes effective, any Replacement Interest Rate Cap Agreement or Extension Interest Rate Cap Agreement), or permit any Lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements or any other notice or instrument as may be required under the UCC, as appropriate, except those naming Lender as the secured party, to be filed with respect thereto.

Section 9.3 Covenants . (a) Borrower shall comply with all of its obligations under the terms and provisions of the Interest Rate Cap Agreement. All amounts paid by the Counterparty under the Interest Rate Cap Agreement to Borrower or Lender shall be deposited immediately into the Holding Account pursuant to Section 3.1 . Borrower shall take all actions reasonably requested by Lender to enforce Borrower's rights under the Interest Rate Cap Agreement in the event of a default by the Counterparty thereunder and shall not waive, amend or otherwise modify any of its rights thereunder.

(b) Borrower shall defend Lender's right, title and interest in and to the Rate Cap Collateral pledged by Borrower pursuant hereto or in which it has granted a security interest pursuant hereto against the claims and demands of all other Persons.

In the event of (x) any downgrade, withdrawal or qualification (each, a "**Downgrade** ") of the rating of the Counterparty such that, thereafter, the Counterparty shall cease to be an Acceptable Counterparty and (y) the Counterparty shall fail to comply with the requirements contained in the Interest Rate Cap Agreement which are described in "**Exhibit I** " upon such occurrence, the Borrower shall either (i) obtain a Rating Agency Confirmation with

respect to the Counterparty or (ii) replace the Interest Rate Cap Agreement with a Replacement Interest Cap Agreement, (x) having a term extending through the end of the Interest Period in which the Maturity Date occurs, (y) in a notional amount at least equal to the Principal Amount of the Loan then outstanding, and (z) having a strike rate equal to the LIBOR Cap Strike Rate.

(c) In the event that Borrower fails to purchase and deliver to Lender the Interest Rate Cap Agreement as and when required hereunder, Lender may purchase the Interest Rate Cap Agreement and the cost incurred by Lender in purchasing the Interest Rate Cap Agreement shall be paid by Borrower to Lender with interest thereon at the Default Rate from the date such cost was incurred by Lender until such cost is paid by Borrower to Lender.

(d) Borrower shall not (i) without the prior written consent of Lender, modify, amend or supplement the terms of the Interest Rate Cap Agreement, (ii) without the prior written consent of Lender, except in accordance with the terms of the Interest Rate Cap Agreement, cause the termination of the Interest Rate Cap Agreement prior to its stated maturity date, (iii) without the prior written consent of Lender, except as aforesaid, waive or release any obligation of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) under the Interest Rate Cap Agreement, (iv) without the prior written consent of Lender, consent or agree to any act or omission to act on the part of the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) which, without such consent or agreement, would constitute a default under the Interest Rate Cap Agreement, (v) fail to exercise promptly and diligently each and every material right which it may have under the Interest Rate Cap Agreement, (vi) take or intentionally omit to take any action or intentionally suffer or permit any action to be omitted or taken, the taking or omission of which would result in any right of offset against sums payable under the Interest Rate Cap Agreement or any defense by the Counterparty (or any successor or substitute party to the Interest Rate Cap Agreement) to payment or (vii) fail to give prompt notice to Lender of any notice of default given by or to Borrower under or with respect to the Interest Rate Cap Agreement, together with a complete copy of such notice. If Borrower shall have received written notice that the Securitization shall have occurred, no consent by Lender provided for in this Section 9.3(e) shall be given by Lender unless Lender shall have received a Rating Agency Confirmation.

In connection with an Interest Rate Cap Agreement, Borrower shall obtain and deliver to Lender an Opinion of Counsel from counsel (which counsel may be in-house counsel for the Counterparty) for the Counterparty upon which Lender and its successors and assigns may rely (the "**Counterparty Opinion**"), under New York law and, if the Counterparty is a non-U.S. entity, the applicable foreign law, substantially in compliance with the requirements set forth in **Exhibit F** or in such other form approved by the Lender.

Section 9.4 Representations and Warranties . Borrower hereby covenants with, and represents and warrants to, Lender as follows:

(a) The Interest Rate Cap Agreement constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(b) The Rate Cap Collateral is free and clear of all claims or security interests of every nature whatsoever, except such as are created pursuant to this Agreement and the other Loan Documents, and Borrower has the right to pledge and grant a security interest in the same as herein provided without the consent of any other Person other than any such consent that has been obtained and is in full force and effect.

(c) The Rate Cap Collateral has been duly and validly pledged hereunder. All consents and approvals required to be obtained by Borrower for the consummation of the transactions contemplated by this Agreement have been obtained.

(d) Giving effect to the aforesaid grant and assignment to Lender, Lender has, as of the date of this Agreement, and as to Rate Cap Collateral acquired from time to time after such date, shall have, a valid, and upon proper filing, perfected and continuing first priority lien upon and security interest in the Rate Cap Collateral; provided that no representation or warranty is made with respect to the perfected status of the security interest of Lender in the proceeds of Rate Cap Collateral consisting of "cash proceeds" or "non-cash proceeds" as defined in the UCC except if, and to the extent, the provisions of Section 9-306 of the UCC shall be complied with.

(e) Except for financing statements filed or to be filed in favor of Lender as secured party, there are no financing statements under the UCC covering any or all of the Rate Cap Collateral and Borrower shall not, without the prior written consent of Lender, until payment in full of all of the Obligations, execute and file in any public office, any enforceable financing statement or statements covering any or all of the Rate Cap Collateral, except financing statements filed or to be filed in favor of Lender as secured party.

Section 9.5 Payments . If Borrower at any time shall be entitled to receive any payments with respect to the Interest Rate Cap Agreement, such amounts shall, immediately upon becoming payable to Borrower, be deposited by Counterparty into the Holding Account.

Section 9.6 Remedies . Subject to the provisions of the Interest Rate Cap Agreement, if an Event of Default shall occur and then be continuing:

(a) Lender, without obligation to resort to any other security, right or remedy granted under any other agreement or instrument, shall have the right to, in addition to all rights, powers and remedies of a secured party pursuant to the UCC, at any time and from time to time, sell, resell, assign and deliver, in its sole discretion, any or all of the Rate Cap Collateral (in one or more parcels and at the same or different times) and all right, title and interest, claim and demand therein and right of redemption thereof, at public or private sale, for cash, upon credit or for future delivery, and in connection therewith Lender may grant options and may impose reasonable conditions such as requiring any purchaser to represent that any "securities" constituting any part of the Rate Cap Collateral are being purchased for investment only, Borrower hereby waiving and releasing any and all equity or right of redemption to the fullest extent permitted by the UCC or applicable law. If all or any of the Rate Cap Collateral is sold by Lender upon credit or for future delivery, Lender shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, Lender may resell such Rate Cap Collateral. It is expressly agreed that Lender may exercise its rights with respect to less than all of the Rate Cap Collateral, leaving unexercised its rights with respect to the

remainder of the Rate Cap Collateral, provided, however, that such partial exercise shall in no way restrict or jeopardize Lender's right to exercise its rights with respect to all or any other portion of the Rate Cap Collateral at a later time or times.

(b) Lender may exercise, either by itself or by its nominee or designee, in the name of Borrower, all of Lender's rights, powers and remedies in respect of the Rate Cap Collateral, hereunder and under law.

(c) Borrower hereby irrevocably, in the name of Borrower or otherwise, authorizes and empowers Lender and assigns and transfers unto Lender, and constitutes and appoints Lender its true and lawful attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Borrower and in the name of Borrower, upon the occurrence and during the continuance of an Event of Default, (i) to exercise and enforce every right, power, remedy, authority, option and privilege of Borrower under the Interest Rate Cap Agreement, including any power to subordinate or modify the Interest Rate Cap Agreement (but not, unless an Event of Default exists and is continuing, the right to terminate or cancel the Interest Rate Cap Agreement), or to give any notices, or to take any action resulting in such subordination, termination, cancellation or modification and (ii) in order to more fully vest in Lender the rights and remedies provided for herein, to exercise all of the rights, remedies and powers granted to Lender in this Agreement, and Borrower further authorizes and empowers Lender, as Borrower's attorney-in-fact, and as its agent, irrevocably, with full power of substitution for Borrower and in the name of Borrower, upon the occurrence and during the continuance of an Event of Default, to give any authorization, to furnish any information, to make any demands, to execute any instruments and to take any and all other action on behalf of and in the name of Borrower which in the opinion of Lender may be necessary or appropriate to be given, furnished, made, exercised or taken under the Interest Rate Cap Agreement, in order to comply therewith, to perform the conditions thereof or to prevent or remedy any default by Borrower thereunder or to enforce any of the rights of Borrower thereunder. These powers-of-attorney are irrevocable and coupled with an interest, and any similar or dissimilar powers heretofore given by Borrower in respect of the Rate Cap Collateral to any other Person are hereby revoked.

(d) Upon the occurrence and during the continuance of an Event of Default, Lender may, without notice to, or assent by, Borrower or any other Person (to the extent permitted by law), but without affecting any of the Obligations, in the name of Borrower or in the name of Lender, notify the Counterparty, or if applicable, any other counterparty to the Interest Rate Cap Agreement, to make payment and performance directly to Lender; extend the time of payment and performance of, compromise or settle for cash, credit or otherwise, and upon any terms and conditions, any obligations owing to Borrower, or claims of Borrower, under the Interest Rate Cap Agreement; file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by Lender necessary or advisable for the purpose of collecting upon or enforcing the Interest Rate Cap Agreement; and execute any instrument and do all other things deemed necessary and proper by Lender to protect and preserve and realize upon the Rate Cap Collateral and the other rights contemplated hereby.

(e) Pursuant to the powers-of-attorney provided for above, Lender may take any action and exercise and execute any instrument which it may deem necessary or advisable to accomplish the purposes hereof; provided , however , that Lender shall not be permitted to take

any action pursuant to said power-of-attorney that would conflict with any limitation on Lender's rights with respect to the Rate Cap Collateral. Without limiting the generality of the foregoing, Lender, after the occurrence of an Event of Default, shall have the right and power to receive, endorse and collect all checks and other orders for the payment of money made payable to Borrower representing: (i) any payment of obligations owed pursuant to the Interest Rate Cap Agreement, (ii) interest accruing on any of the Rate Cap Collateral or (iii) any other payment or distribution payable in respect of the Rate Cap Collateral or any part thereof, and for and in the name, place and stead of Borrower, to execute endorsements, assignments or other instruments of conveyance or transfer in respect of any property which is or may become a part of the Rate Cap Collateral hereunder.

(f) Lender may exercise all of the rights and remedies of a secured party under the UCC.

(g) Without limiting any other provision of this Agreement or any of Borrower's rights hereunder, and without waiving or releasing Borrower from any obligation or default hereunder, Lender shall have the right, but not the obligation, to perform any act or take any appropriate action, as it, in its reasonable judgment, may deem necessary to protect the security of this Agreement, to cure such Event of Default or to cause any term, covenant, condition or obligation required under this Agreement or the Interest Rate Cap Agreement to be performed or observed by Borrower to be promptly performed or observed on behalf of Borrower. All amounts advanced by, or on behalf of, Lender in exercising its rights under this Section 9.7(g) (including, but not limited to, reasonable legal expenses and disbursements incurred in connection therewith), together with interest thereon at the Default Rate from the date of each such advance, shall be payable by Borrower to Lender upon demand and shall be secured by this Agreement.

Section 9.7 Sales of Rate Cap Collateral . No demand, advertisement or notice, all of which are, to the fullest extent permitted by law, hereby expressly waived by Borrower, shall be required in connection with any sale or other disposition of all or any part of the Rate Cap Collateral, except that Lender shall give Borrower at least thirty (30) Business Days' prior written notice of the time and place of any public sale or of the time when and the place where any private sale or other disposition is to be made, which notice Borrower hereby agrees is reasonable, all other demands, advertisements and notices being hereby waived. To the extent permitted by law, Lender shall not be obligated to make any sale of the Rate Cap Collateral if it shall determine not to do so, regardless of the fact that notice of sale may have been given, and Lender may without notice or publication adjourn any public or private sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Upon each private sale of the Rate Cap Collateral of a type customarily sold in a recognized market and upon each public sale, unless prohibited by any applicable statute which cannot be waived, Lender (or its nominee or designee) may purchase any or all of the Rate Cap Collateral being sold, free and discharged from any trusts, claims, equity or right of redemption of Borrower, all of which are hereby waived and released to the extent permitted by law, and may make payment therefor by credit against any of the Obligations in lieu of cash or any other obligations. In the case of all sales of the Rate Cap Collateral, public or private, Borrower shall pay all reasonable costs and expenses of every kind for sale or delivery, including brokers' and attorneys' fees and disbursements and any tax imposed thereon. However, the proceeds of sale

of Rate Cap Collateral shall be available to cover such costs and expenses, and, after deducting such costs and expenses from the proceeds of sale, Lender shall apply any residue to the payment of the Obligations in the order of priority as set forth in Section 11 of the Security Instrument.

Section 9.8 Public Sales Not Possible . Borrower acknowledges that the terms of the Interest Rate Cap Agreement may prohibit public sales, that the Rate Cap Collateral may not be of the type appropriately sold at public sales, and that such sales may be prohibited by law. In light of these considerations, Borrower agrees that private sales of the Rate Cap Collateral shall not be deemed to have been made in a commercially unreasonably manner by mere virtue of having been made privately.

Section 9.9 Receipt of Sale Proceeds . Upon any sale of the Rate Cap Collateral by Lender hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt by Lender or the officer making the sale or the proceeds of such sale shall be a sufficient discharge to the purchaser or purchasers of the Rate Cap Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Lender or such officer or be answerable in any way for the misapplication or non-application thereof.

Section 9.10 Extension Interest Rate Cap Agreement . If Borrower exercises any of its options to extend the Maturity Date pursuant to Section 5 of the Note, then, on or prior to the Maturity Date being extended, the Borrower shall obtain or have in place an Extension Interest Rate Cap Agreement (i) having a term through the end of the Interest Period in which the extended Maturity Date occurs, (ii) in a notional amount at least equal to the Principal Amount of the Loan as of the Maturity Date being extended, and (iii) having a strike rate equal to an amount such that the maximum interest rate paid by the Borrower after giving effect to payments made under such Extension Interest Rate Cap Agreement shall equal no more than the LIBOR Cap Strike Rate.

Section 9.11 Filing of Financing Statements Authorized . Borrower and Operating Lessee hereby authorize the filing of a form UCC-1 financing statement naming the Borrower and the Operating Lessee as debtors and the Lender as secured party in any office (including the office of the Secretary of State of the State of Delaware) covering all property of the Borrower and the Operating Lessee (including, but not limited to, the Account Collateral and the Rate Cap Collateral, but excluding Excess Cash Flow).

X. MAINTENANCE OF PROPERTY; ALTERATIONS

Section 10.1 Maintenance of Property . Borrower shall keep and maintain, or cause to be kept and maintained, the Property and every part thereof in good condition and repair, subject to ordinary wear and tear, and, subject to Excusable Delays and the provisions of this Agreement with respect to damage or destruction caused by a Casualty or Condemnation, shall not permit or commit any waste, impairment, or deterioration of any portion of the Property in any material respect. Borrower further covenants to do all other acts which from the character or use of the Property may be reasonably necessary to protect the security hereof, the specific enumerations herein not excluding the general. Borrower shall not demolish any Improvement on the Property except as the same may be necessary in connection with an Alteration or a restoration in connection with a Condemnation or Casualty, or as otherwise permitted herein, in each case in accordance with the terms and conditions hereof.

Section 10.2 Alterations and Expansions . Borrower shall not perform or undertake or consent to the performance or undertaking of any Alteration or Expansion, except in accordance with the following terms and conditions:

(a) The Alteration or Expansion shall be undertaken in accordance with the applicable provisions of this Agreement, the other Loan Documents, the Leases and all Legal Requirements.

(b) No Event of Default shall have occurred and be continuing or shall occur as a result of such action.

(c) A Material Alteration or Material Expansion, to the extent architects are customarily used for alterations or expansions of those types, but including any structural change to any of the Property or the Improvements, shall be conducted under the supervision of an Independent Architect and shall not be undertaken until ten (10) Business Days after there shall have been filed with Lender, for information purposes only and not for approval by Lender, detailed plans and specifications and cost estimates therefor, prepared and approved in writing by such Independent Architect. Such plans and specifications may be revised at any time and from time to time, provided that revisions of such plans and specifications shall be filed with Lender, for information purposes only.

(d) The Alteration or Expansion may not in and of itself, either during the Alteration or Expansion or upon completion, be reasonably expected to have a Material Adverse Effect with respect to the Property.

(e) All work done in connection with any Alteration or Expansion shall be performed with due diligence to Final Completion in a good and workmanlike manner, all materials used in connection with any Alteration or Expansion shall be not less than the standard of quality of the materials generally used at the Property as of the date hereof (or, if greater, the then-current customary quality in the sub-market in which the Property is located) and all work shall be performed and all materials used in accordance with all applicable Legal Requirements and Insurance Requirements.

(f) The cost of any Alteration or Expansion shall be promptly and fully paid for by Borrower, subject to the next succeeding sentence. No payment made prior to the Final Completion (excluding punch-list items) of an Alteration or Expansion or Restoration to any contractor, subcontractor, materialman, supplier, engineer, architect, project manager or other Person who renders services or furnishes materials in connection with such Alteration shall exceed ninety percent (90%) of the aggregate value of the work performed by such Person from time to time and materials furnished and incorporated into the Improvements.

(g) All work performed in connection with the cure of the Deferred Maintenance Conditions shall be performed in accordance with the terms and conditions set forth in clauses (a), (c), (e) and (f) of this Section 10.2 .

(h) With respect to any Material Alteration or Material Expansion:

(i) Borrower shall have delivered to Lender Eligible Collateral in an amount equal to at least the total estimated remaining unpaid costs of such Material Alteration or Material Expansion which is in excess of the Threshold Amount, which Eligible Collateral shall be held by Lender as security for the Indebtedness and released to Borrower as such work progresses in accordance with Section 10.2(h)(iii) ; provided , however , in the event that any Material Alteration or Material Expansion shall be made in conjunction with any Restoration with respect to which Borrower shall be entitled to use or apply Proceeds pursuant to Section 6.2 hereof (including any Proceeds remaining after completion of such Restoration), the amount of the Eligible Collateral to be furnished pursuant hereto need not exceed the aggregate cost of such Restoration and such Material Alteration or Material Expansion (in either case, as estimated by the Independent Architect) less the sum of the amount of any Proceeds which the Borrower is entitled to withdraw pursuant to Section 6.2 hereof and the Threshold Amount;

(ii) Prior to commencement of construction of such Material Alteration or Material Expansion, Borrower shall deliver to Lender a schedule (with the concurrence of the Independent Architect) setting forth the projected stages of completion of such Alteration or Expansion and the corresponding amounts expected to be due and payable by or on behalf of Borrower in connection with such completion, such schedule to be updated quarterly by Borrower (and with the concurrence of the Independent Architect) during the performance of such Alteration or Expansion.

(iii) Any Eligible Collateral that a Borrower delivers to Lender pursuant hereto (and the proceeds of any such Eligible Collateral) shall be invested (to the extent such Eligible Collateral can be invested) by Lender in Permitted Investments for a period of time consistent with the date on which the Borrower notifies Lender that the Borrower expects to request a release of such Eligible Collateral in accordance with the next succeeding sentence. From time to time as the Alteration or Expansion progresses, the amount of any Eligible Collateral so furnished may, upon the written request of Borrower to Lender, be withdrawn by Borrower and paid or otherwise applied by or returned to Borrower in an amount equal to the amount Borrower would be entitled to so withdraw if Section 6.2.4 were applicable, and any Eligible Collateral so furnished which is a Letter of Credit may be reduced by Borrower in an amount equal to the amount Borrower would be entitled to so reduce if Section 6.2.4 hereof were applicable, subject, in each case, to the satisfaction of the conditions precedent to withdrawal of funds or reduction of the Letter of Credit set forth in Section 6.2.4 hereof. In connection with the above-described quarterly update of the projected stages of completion of the Material Alteration or Material Expansion (as concurred with by an Independent Architect), Borrower shall increase (or be permitted to decrease, as applicable) the Eligible Collateral then deposited with Lender as necessary to comply with Section 10.2(h)(i) hereof.

(iv) At any time after Final Completion of such Material Alterations or Material Expansions, the whole balance of any Cash deposited with Lender pursuant to Section 10.2(h) hereof then remaining on deposit may be withdrawn by Borrower and shall be paid by Lender to Borrower, and any Eligible Collateral so deposited shall, to the

extent it has not been called upon, reduced or theretofore released, be released by Lender to Borrower, within ten (10) days after receipt by Lender of an application for such withdrawal and/or release together with an Officer's Certificate, and as to the following clauses (A) and (B) of this clause also a certificate of the Independent Architect, setting forth in substance as follows:

(A) that such Material Alteration(s) or Material Expansion(s) has been completed in all material respects in accordance with any plans and specifications therefor previously filed with Lender under Section 10.2(c) hereof;

(B) that to the knowledge of the certifying Person, (x) such Material Alteration(s) or Material Expansion(s) has been completed in compliance with all Legal Requirements, and (y) to the extent required for the legal use or occupancy of the portion of the Property affected by such Alteration(s) or Expansion(s), the applicable Borrower has obtained a temporary or permanent certificate of occupancy (or similar certificate) or, if no such certificate is required, a statement to that effect;

(C) that to the knowledge of the certifying Person, all amounts that a Borrower is or may become liable to pay in respect of such Material Alteration(s) or Material Expansion(s) through the date of the certification have been paid in full or adequately provided for and, to the extent that such are customary and reasonably obtainable by prudent property owners in the area where the applicable Property is located, that Lien waivers have been obtained from the general contractor and subcontractors performing such Alteration(s) or Expansion(s) or at its sole cost and expense, Borrower shall cause a nationally recognized title insurance company to deliver to Lender an endorsement to the Title Policy, updating such policy and insuring over such Liens without further exceptions to such policy other than Permitted Encumbrances, or shall, at its sole cost and expense, cause a reputable title insurance company to deliver a lender's title insurance policy, in such form, in such amounts and with such endorsements as the Title Policy, which policy shall be dated the date of completion of the Material Alteration and shall contain no exceptions other than Permitted Encumbrances; provided , however , that if, for any reason, Borrower is unable to deliver the certification required by this clause (C) with respect to any costs or expenses relating to the Alteration (s) or Expansion(s), then, assuming Borrower is able to satisfy each of the other requirements set forth in clauses (A) and (B) above, Borrower shall be entitled to the release of the difference between the whole balance of such Eligible Collateral and the total of all costs and expenses to which Borrower is unable to certify; and

(D) that to the knowledge of the certifying Person, no Event of Default has occurred and is continuing.

XI. BOOKS AND RECORDS, FINANCIAL STATEMENTS, REPORTS AND OTHER INFORMATION

Section 11.1 Books and Records . Borrower shall keep and maintain on a fiscal year basis proper books and records separate from any other Person, in which accurate and complete entries shall be made of all dealings or transactions of or in relation to the Note, the Property and the business and affairs of Borrower and Operating Lessee relating to the Property

which shall reflect all items of income and expense in connection with the operation on an individual basis of the Property and in connection with any services, equipment or furnishings provided in connection with the operation of the Property, in accordance with GAAP. Lender and its authorized representatives shall have the right at reasonable times and upon reasonable notice to examine the books and records of Borrower and Operating Lessee relating to the operation of the Property and to make such copies or extracts thereof as Lender may reasonably require. Notwithstanding any other provision of this Agreement or any other Loan Document, so long as the Borrower and Operating Lessee otherwise comply with the foregoing provisions of this Section 11.1 , any requirement for the presentation of audited financial statements or similar reports of the Borrower, the Property or the Operating Lessee shall be deemed satisfied if such audit financial statement or similar reports are contained in an audited financial statement or similar report which includes a separate combining schedule setting forth in reasonable detail the separate financial information which relates solely to the Borrower, the Operating Lessee and the Property.

Section 11.2 Financial Statements .

11.2.1 Monthly Reports . At the request of Lender, Borrower shall furnish to Lender, within thirty (30) days after the end of each calendar month, unaudited operating statements, aged accounts receivable reports, rent rolls, STAR Reports and PACE Reports; occupancy and ADR reports for the Property, in each case accompanied by an Officer's Certificate certifying (i) with respect to the operating statements, that to the Best of Borrower's Knowledge and the best of such officer's knowledge such statements are true, correct, accurate and complete and fairly present the results of the operations of Borrower and the Property, and (ii) with respect to the aged accounts receivable reports, rent rolls, occupancy and ADR reports, that such items are to the Best of Borrower's Knowledge and the best of such officer's knowledge true, correct and accurate and fairly present the results of the operations of Borrower and the Property. Borrower will also provide Lender copies of all flash reports within its possession as to monthly revenues of the Property upon request.

11.2.2 Quarterly Reports . Borrower will furnish, or cause to be furnished, to Lender on or before the forty-fifth (45 th) day after the end of each Fiscal Quarter, the following items, accompanied by an Officer's Certificate, certifying that to the Best of Borrower's Knowledge and the best of such officer's knowledge such items are true, correct, accurate and complete and fairly present the financial condition and results of the operations of Borrower and the Property in a manner consistent with GAAP (subject to normal periodic adjustments) to the extent applicable:

(a) quarterly and year to date financial statements prepared for such fiscal quarter with respect to the Borrower, including a balance sheet and operating statement for such quarter for the Borrower for such quarter;

(b) occupancy levels at the Property for such period, including average daily room rates and the average revenue per available room;

(c) concurrently with the provision of such reports, Borrower shall also furnish a report of Operating Income and Operating Expenses (as well as a calculation of Net

Operating Income based thereon) with respect to the Borrower and the Property for the most recently completed quarter;

(d) a STAR Report and to the extent provided by Manager a PACE Report for the most recently completed quarter;

(e) a calculation of DSCR for the trailing four (4) Fiscal Quarters; and

(f) to the extent provided by Manager a report of aged accounts receivable relating to the Property as of the most recently completed quarter and a list of Security Deposits and the aggregate amount of all Security Deposits.

11.2.3 Annual Reports . Borrower shall furnish to Lender within ninety (90) days following the end of each Fiscal Year a complete copy of the annual financial statements of the Borrower, audited by a "Big Four" accounting firm or another independent certified public accounting firm acceptable to Lender in accordance with GAAP for such Fiscal Year and containing a balance sheet, a statement of operations and a statement of cash flows. The annual financial statements of the Borrower shall be accompanied by (i) an Officer's Certificate certifying that each such annual financial statement presents fairly, in all material respects, the financial condition and results of operation of the Property and has been prepared in accordance with GAAP and (ii) a management report, in form and substance reasonably satisfactory to Lender, discussing the reconciliation between the financial statements for such Fiscal Year and the most recent Budget. Together with the Borrower's annual financial statements, the Borrower shall furnish to Lender (A) an Officer's Certificate certifying as of the date thereof whether, to Borrower's knowledge, there exists a Default or Event of Default, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same; and (B) an annual report, for the most recently completed fiscal year, containing:

(1) Capital Expenditures (including for this purpose any and all additions to, and replacements of, FF&E,) made in respect of the Property, including separate line items with respect to any project costing in excess of $500,000;

(2) occupancy levels for the Property for such period; and

(3) average daily room rates at the Property for such period.

11.2.4 Leasing Reports . Not later than forty-five (45) days after the end of each fiscal quarter of Borrower's operations, Borrower shall deliver to Lender a true and complete rent roll for the Property, dated as of the last month of such fiscal quarter, showing the percentage of gross leasable area of the Property, if any, leased as of the last day of the preceding calendar quarter, the current annual rent for the Property, the expiration date of each Lease, whether to Borrower's knowledge any portion of the Property has been sublet, and if it has, the name of the subtenant, and such rent roll shall be accompanied by an Officer's Certificate certifying that such rent roll is true, correct and complete in all material respects as of its date and stating whether Borrower, within the past three (3) months, has issued a notice of default with respect to any Lease which has not been cured and the nature of such default.

11.2.5 Management Agreement . Borrower shall deliver to Lender, within ten (10) Business Days of the receipt thereof by Borrower, a copy of all reports prepared by Manager pursuant to the Management Agreement, including, without limitation, the Budget and any inspection reports.

11.2.6 Budget . Not later than March 1st of each Fiscal Year hereafter, Borrower shall prepare or cause to be prepared and deliver to Lender, for informational purposes only, a Budget in respect of the Property for the Fiscal Year in which such delivery date falls. If Borrower subsequently amends the Budget, Borrower shall promptly deliver the amended Budget to Lender.

11.2.7 Other Information . Borrower shall, promptly after written request by Lender or, if a Securitization shall have occurred, the Rating Agencies, furnish or cause to be furnished to Lender, in such manner and in such detail as may be reasonably requested by Lender, such reasonable additional information as may be reasonably requested with respect to the Property. The information required to be furnished by Borrower to Lender under this Section 11.2 shall be provided in both hard copy format and electronic format; provided that Borrower shall only be required to provide the information required under this Section 11.2.7 in electronic format if such information is so available in the ordinary course of the operations of the Borrower and Manager and without significant expense.

XII. ENVIRONMENTAL MATTERS

Section 12.1 Representations . Borrower hereby represents and warrants that except as set forth in the environmental reports and studies delivered to Lender (the **"Environmental Reports"**), (i) Borrower has not engaged in or knowingly permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (ii) to the Best of Borrower's Knowledge, no tenant, occupant or user of the Property, or any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property, or any portion thereof, for the purpose of or in any material way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, in or about the Property, or transported any Hazardous Materials to, from or across the Property, except in all cases in material compliance with Environmental Laws and only in the course of legitimate business operations at the Property; (iii) to the Best of Borrower's Knowledge, no Hazardous Materials are presently constructed, deposited, stored, or otherwise located on, under, in or about the Property except in material compliance with Environmental Laws; (iv) to the Best of Borrower's Knowledge, no Hazardous Materials have migrated from the Property upon or beneath other properties which would reasonably be expected to result in material liability for Borrower; and (v) to the Best of Borrower's Knowledge, no Hazardous Materials have migrated or threaten to migrate from other properties upon, about or beneath the Property which would reasonably be expected to result in material liability for Borrower.

Section 12.2 Covenants . Compliance with Environmental Laws .

Subject to Borrower's right to contest under Section 7.3 , Borrower covenants and agrees with Lender that it shall comply with all Environmental Laws. If at any time during the continuance of the Lien of the Security Instrument, a Governmental Authority having jurisdiction over the Property requires remedial action to correct the presence of Hazardous Materials in, around, or under the Property (an "**Environmental Event**"), Borrower shall deliver prompt notice of the occurrence of such Environmental Event to Lender. Within thirty (30) days after Borrower has knowledge of the occurrence of an Environmental Event, Borrower shall deliver to Lender an Officer's Certificate (an "**Environmental Certificate**") explaining the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Borrower shall promptly provide Lender with copies of all notices from any Governmental Authority which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Borrower in connection with any Environmental Law. For purposes of this paragraph, the term "notice" shall mean any summons, citation, directive, order, claim, pleading, letter, application, filing, report, findings, declarations or other materials provided by any Governmental Entity pertinent to compliance of the Property and Borrower with such Environmental Laws.

Section 12.3 Environmental Reports . Upon the occurrence and during the continuance of an Environmental Event with respect to the Property or an Event of Default, Lender shall have the right to direct Borrower to obtain consultants reasonably approved by Lender to perform a comprehensive environmental audit of the Property. Such audit shall be conducted by an environmental consultant chosen by Lender and may include a visual survey, a record review, an area reconnaissance assessing the presence of hazardous or toxic waste or substances, PCBs or storage tanks at the Property, an asbestos survey of the Property, which may include random sampling of the Improvements and air quality testing, and such further site assessments as Lender may reasonably require due to the results obtained from the foregoing. Borrower grants Lender, its agents, consultants and contractors the right to enter the Property as reasonable or appropriate for the circumstances for the purposes of performing such studies and the reasonable cost of such studies shall be due and payable by Borrower to Lender upon demand and shall be secured by the Lien of the Security Instrument. Lender shall not unreasonably interfere with, and Lender shall direct the environmental consultant to use its commercially reasonable efforts not to hinder, Borrower's or any Tenant's, other occupant's or Manager's operations upon the Property when conducting such audit, sampling or inspections. By undertaking any of the measures identified in and pursuant to this Section 12.3 , Lender shall not be deemed to be exercising any control over the operations of Borrower or the handling of any environmental matter or hazardous wastes or substances of Borrower for purposes of incurring or being subject to liability therefor.

Section 12.4 Environmental Indemnification . Borrower shall protect, indemnify, save, defend, and hold harmless the Indemnified Parties from and against any and all liability, loss, damage, actions, causes of action, costs or expenses whatsoever (including reasonable attorneys' fees and expenses) and any and all claims, suits and judgments which any Indemnified Party may suffer, as a result of or with respect to: (a) any Environmental Claim relating to or arising from the Property; (b) the violation of any Environmental Law in connection with the Property; (c) any release, spill, or the presence of any Hazardous Materials

affecting the Property; and (d) the presence at, in, on or under, or the release, escape, seepage, leakage, discharge or migration at or from, the Property of any Hazardous Materials, whether or not such condition was known or unknown to Borrower; provided that, in each case, Borrower shall be relieved of its obligation under this subsection if any of the matters referred to in clauses (a) through (d) above did not occur (but need not have been discovered) prior to (1) the foreclosure of the Security Instrument, (2) the delivery by Borrower to Lender or its designee of a deed-in-lieu of foreclosure with respect to the Property, or (3) Lender's or its designee's taking possession and control of the Property after the occurrence of an Event of Default hereunder. If any such action or other proceeding shall be brought against Lender, upon written notice from Borrower to Lender (given reasonably promptly following Lender's notice to Borrower of such action or proceeding), Borrower shall be entitled to assume the defense thereof, at Borrower's expense, with counsel reasonably acceptable to Lender; provided , however , Lender may, at its own expense, retain separate counsel to participate in such defense, but such participation shall not be deemed to give Lender a right to control such defense, which right Borrower expressly retains. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ separate counsel at Borrower's expense if, in the reasonable opinion of legal counsel, a conflict or potential conflict exists between the Indemnified Party and Borrower that would make such separate representation advisable. Borrower shall have no obligation to indemnify an Indemnified Party for damage or loss resulting from such Indemnified Party's gross negligence or willful misconduct.

Section 12.5 Recourse Nature of Certain Indemnifications . Notwithstanding anything to the contrary provided in this Agreement or in any other Loan Document, the indemnification provided in Section 12.4 shall be fully recourse to Borrower (but not its constituent parties) and shall be independent of, and shall survive, the discharge of the Indebtedness, the release of the Lien created by the Security Instrument, and/or the conveyance of title to the Property to Lender or any purchaser or designee in connection with a foreclosure of the Security Instrument or conveyance in lieu of foreclosure.

XIII. RESERVED

XIV. SECURITIZATION AND PARTICIPATION

Section 14.1 Sale of Note and Securitization . At the request of Lender and, to the extent not already required to be provided by Borrower under this Agreement, Borrower shall use reasonable efforts to satisfy the market standards which may be reasonably required in the marketplace or by the Rating Agencies in connection with the sale of the Note or participation therein as part of the first successful securitization (such sale and/or securitization, the **" Securitization "**) of rated single or multi-class securities (the **" Securities "**) secured by or evidencing ownership interests in the Note and this Agreement, including using reasonable efforts to do (or cause to be done) the following (but Borrower shall not in any event be required to incur, suffer or accept (except to a de minimis extent)) (i) any lesser rights or greater obligations or liability than as currently set forth in the Loan Documents and (ii) except as set forth in this Article XIV and other than payment by Borrower of any legal fees of Borrower and Guarantor, any expense or any liability:

14.1.1 Provided Information . (i) Provide, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Guarantor), such non-confidential financial and other information (but not projections) with respect to the Property and Borrower and Manager to the extent such information is reasonably available to Borrower or Manager, (ii) provide, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Guarantor), business plans (but not projections) and budgets relating to the Property, to the extent prepared by the Borrower or Manager and (iii) cooperate with the holder of the Note (and its representatives) in obtaining, at the sole expense of the holder of the Note (other than legal fees of counsel to the Borrower and Guarantor), such site inspection, appraisals, market studies, environmental reviews and reports, engineering reports and other due diligence investigations of the Property, as may be reasonably requested by the holder of the Note or reasonably requested by the Rating Agencies (all information provided pursuant to this Section 14.1 together with all other information heretofore provided to Lender in connection with the Loan, as such may be updated, at Borrower's request, in connection with a Securitization, or hereafter provided to Lender in connection with the Loan or a Securitization, being herein collectively called the "**Provided Information**");

14.1.2 Opinions of Counsel . Use reasonable efforts to cause to be rendered such customary updates or customary modifications to the Opinions of Counsel delivered at the closing of the Loan as may be reasonably requested by the holder of the Note or the Rating Agencies in connection with the Securitization. Borrower's failure to use reasonable efforts to deliver or cause to be delivered the opinion updates or modifications required hereby within twenty (20) Business Days after written request therefor shall constitute an "**Event of Default**" hereunder. To the extent any of the foregoing Opinions of Counsel were required to be delivered in connection with the closing of the Loan, any update thereof shall be at the expense of Lender and without cost to Borrower. Any such Opinions of Counsel that Borrower is reasonably required to cause to be delivered in connection with a Securitization (which the parties agree shall consist of a "Review Letter" and bring downs of the Opinions of Counsel delivered as of the date hereof which Borrower acknowledges will be required to be delivered by Borrower's counsel in connection with a Securitization taking into account the due diligence Borrower's counsel deems reasonably necessary to deliver such "Review Letter"). Borrower shall not be required to pay the cost of any reliance letters or new opinions to permit successor holders of the Loan or any interest therein to rely on the opinions delivered at Closing in connection with Securitization or assignments of the Loan.

14.1.3 Modifications to Loan Documents . Without cost to the Borrower (other than legal fees of counsel to the Borrower and Guarantor), execute such amendments to the organizational documents of Borrower, Security Instrument and Loan Documents as may be reasonably requested by Lender or the Rating Agencies in order to achieve the required rating or to effect the Securitization (including, without limitation, modifying the Payment Date, as defined in the Note, to a date other than as originally set forth in the Note), provided , that nothing contained in this Section 14.1.3 shall result in any economic or other adverse change in the transaction contemplated by the Security Instrument or the Loan Documents (unless Borrower is made whole by the holder of Note) or result in any operational changes that are burdensome to the Property, Operating Lessee, Manager or Borrower.

Section 14.2 Cooperation with Rating Agencies . Borrower shall, at Lender's expense (other than legal fees of counsel to the Borrower and Guarantor), (i) at Lender's request, meet with representatives of the Rating Agencies at reasonable times to discuss the business and operations of the Property, and (ii) cooperate with the reasonable requests of the Rating Agencies in connection with the Property. Until the Obligations are paid in full, Borrower shall provide the Rating Agencies with all financial reports required hereunder and such other information as they shall reasonably request, including copies of any default notices or other material notices delivered to and received from Lender hereunder, to enable them to continuously monitor the creditworthiness of Borrower and to permit an annual surveillance of the implied credit rating of the Securities.

Section 14.3 Securitization Financial Statements . Borrower acknowledges that all such financial information delivered by Borrower to Lender pursuant to Article XI may, at Lender's option, be delivered to the Rating Agencies.

Section 14.4 Securitization Indemnification .

14.4.1 Disclosure Documents . Borrower understands that certain of the Provided Information may be included in disclosure documents in connection with the Securitization, including a prospectus or private placement memorandum or a public registration statement (each, a **"Disclosure Document"**) and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the **"Securities Act "**) or the Securities and Exchange Act of 1934, as amended (the **" Exchange Act"**), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, upon request, Borrower shall reasonably cooperate with the holder of the Note in updating the Provided Information for inclusion or summary in the Disclosure Document by providing all current information pertaining to Borrower and the Property reasonably requested by Lender.

14.4.2 Indemnification Certificate . In connection with each of (x) a preliminary and a private placement memorandum, or (y) a preliminary and final prospectus, as applicable, Borrower agrees to provide, at Lender's reasonable request, an indemnification certificate (at no cost to Borrower other than legal fees of counsel to the Borrower and Guarantor):

(a) certifying that Borrower has carefully examined those portions of such memorandum or prospectus, as applicable, reasonably designated in writing by Lender for Borrower's review pertaining to Borrower, the Property, the Loan and/or the Provided Information and insofar as such sections or portions thereof specifically pertain to Borrower, the Property, the Provided Information or the Loan (such portions, the **"Relevant Portions"**), the Relevant Portions do not (except to the extent specified by Borrower if Borrower does not agree with the statements therein), as of the date of such certificate, to the Best of Borrower's Knowledge, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(b) indemnifying Lender and the Affiliates of Credit Suisse (collectively, "**CS**") that have prepared the Disclosure Document relating to the Securitization, each of its directors, each of its officers who have signed the Disclosure Document and each person or entity who controls CS within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "**CS Group**"), and CS, together with the CS Group, each of their respective directors and each person who controls CS or the CS Group, within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act (collectively, the " **Underwriter Group**") for any actual, out-of-pocket losses, third party claims, damages (excluding lost profits, diminution in value and other consequential damages) or liabilities arising out of third party claims (the " **Liabilities**") to which any member of the Underwriter Group may become subject to the extent such Liabilities arise out of or are based upon any untrue statement of any material fact contained in the Relevant Portions and in the Provided Information or arise out of or are based upon the omission by Borrower to state therein a material fact required to be stated in the Relevant Portions in order to make the statements in the Relevant Portions in light of the circumstances under which they were made, not misleading (except that (x) Borrower's obligation to indemnify in respect of any information contained in a preliminary or final registration statement, private placement memorandum or preliminary or final prospectus shall be limited to any untrue statement or omission of material fact therein known to Borrower to the extent in breach of Borrower's certification made pursuant to clause (a) above and (y) Borrower shall have no responsibility for the failure of any member of the Underwriting Group to accurately transcribe written information supplied by Borrower or to include such portions of the Provided Information).

(c) Borrower's liability under clauses (a) and (b) above shall be limited to Liabilities arising out of or based upon any such untrue statement or omission made in a Disclosure Document in reliance upon and in conformity with information furnished to Lender by, or furnished at the direction and on behalf of, Borrower in connection with the preparation of those portions of the registration statement, memorandum or prospectus pertaining to Borrower, the Property or the Loan, including financial statements of Borrower and operating statements with respect to the Property. This indemnity agreement will be in addition to any liability which Borrower may otherwise have.

(d) Promptly after receipt by an indemnified party under this Article XIV of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Article XIV , notify the indemnifying party in writing of the commencement thereof, but the omission to so notify the indemnifying party will not relieve the indemnifying party from any liability which the indemnifying party may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the indemnifying party. In the event that any action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party. After notice from the indemnifying party to such indemnified party under this Article XIV of its assumption of such defense, the indemnifying party shall not be liable for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense

thereof; provided , however , if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there are any legal defenses available to it and/or other indemnified parties that are different from or in conflict with those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties at the expense of the indemnifying party. The indemnifying party shall not be liable for the expenses of separate counsel unless an indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or in conflict with those available to another indemnified party.

(e) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Article XIV is for any reason held to be unenforceable by an indemnified party in respect of any actual, out-of-pocket losses, claims, damages or liabilities relating to third party claims (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Article XIV , the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such actual, out of pocket losses, third party claims, damages or liabilities (or action in respect thereof) (but excluding damages for lost profits, diminution in value of the Property and consequential damages); provided , however , that no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution for Liabilities arising therefrom from any person who was not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the CS Group's and Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; (iii) the limited responsibilities and obligations of Borrower as specified herein; and (iv) any other equitable considerations appropriate in the circumstances.

Section 14.5 Retention of Servicer . Lender reserves the right to retain the Servicer. Lender has advised Borrower that the Servicer initially retained by Lender shall be Wachovia Securities and Borrower shall pay any reasonable servicing fees, special servicing fees, trustee fees and any administrative fees and expenses of the Servicer, including, without limitation, reasonable attorney and other third-party fees and disbursements in connection with a prepayment, release of the Property, assumption or modification of the Loan or enforcement of the Loan Documents. Borrower shall also pay the ongoing standard monthly servicing fee.

XV. ASSIGNMENTS AND PARTICIPATIONS

Section 15.1 Assignment and Acceptance . At no incremental cost or liability to Borrower, Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Note); provided that the parties to each such assignment shall execute and deliver to Lender, for its acceptance and recording in the Register (as hereinafter defined), an Assignment and Acceptance. In addition, at no incremental cost to Borrower, Lender may participate to one or more Persons all or any portion of its rights and obligations under this

Agreement and the other Loan Documents (including without limitation, all or a portion of the Note) utilizing such documentation to evidence such participation and the parties' respective rights thereunder as Lender, in its sole discretion, shall elect.

Section 15.2 Effect of Assignment and Acceptance . Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Assignment and Acceptance, (i) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of Lender, as the case may be, hereunder and such assignee shall be deemed to have assumed such rights and obligations, and (ii) Lender shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement and the other Loan Documents (and, in the case of an Assignment and Acceptance covering all or the remaining portion of Lender's rights and obligations under this Agreement and the other Loan Documents, Lender shall cease to be a party hereto) accruing from and after the effective date of the Assignment and Acceptance, except with respect to (A) any payments made by Borrower to Lender pursuant to the terms of the Loan Documents after the effective date of the Assignment and Acceptance and (B) any letter of credit, cash deposit or other deposits or security (other than the Lien of the Security Instrument and the other Loan Documents) delivered to or for the benefit of or deposited with Column Financial, Inc., as Lender, for which Column Financial, Inc. shall remain responsible for the proper disposition thereof until such items are delivered to a party who is qualified as an Approved Bank and agrees to hold the same in accordance with the terms and provisions of the agreement pursuant to which such items were deposited.

Section 15.3 Content . By executing and delivering an Assignment and Acceptance, Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, this Agreement or any other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (ii) Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Documents or any other instrument or document furnished pursuant thereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes Lender to take such action as agent on its behalf and to exercise such powers and discretion under the Loan Documents as are delegated to Lender by the terms hereof together with such powers and discretion as are reasonably incidental thereto; and (vi) such assignee agrees that it will perform, in accordance with their terms, all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by Lender.

Section 15.4 Register . Borrower shall maintain a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of Lender and each assignee pursuant to this Article XV and the Principal Amount of the Loan owing to each such assignee from time to time (the "**Register**"). The entries in the Register shall, with respect to such assignees, be conclusive and binding for all purposes, absent manifest error. The Register shall be available for inspection by Lender or any assignee pursuant to this Article XV at any reasonable time and from time to time upon reasonable prior written notice.

Section 15.5 Substitute Notes . Upon its receipt of an Assignment and Acceptance executed by an assignee, together with any Note or Notes subject to such assignment, Lender shall, if such Assignment and Acceptance has been completed and is in substantially the form of **Exhibit J** hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register, and (iii) give prompt written notice thereof to Borrower. Within five (5) Business Days after its receipt of such notice, Borrower, at Lender's own expense, shall execute and deliver to Lender in exchange and substitution for the surrendered Note or Notes a new Note to the order of such assignee in an amount equal to the portion of the Loan assigned to it and a new Note to the order of Lender in an amount equal to the portion of the Loan retained by it hereunder. Such new Note or Notes shall be in an aggregate Principal Amount equal to the aggregate then outstanding principal amount of such surrendered Note or Notes, shall be dated the effective date of such Assignment and Acceptance and shall otherwise be in substantially the form of the Note (modified, however, to the extent necessary so as not to impose duplicative or increased obligations on Borrower and to delete obligations previously satisfied by Borrower). Notwithstanding the provisions of this Article XV , Borrower and Operating Lessee shall not be responsible or liable for any additional taxes, reserves, adjustments or other costs and expenses that are related to, or arise as a result of, any transfer of the Loan or any interest or participation therein that arise solely and exclusively from the transfer of the Loan or any interest or participation therein or from the execution of the new Note contemplated by this Section 15.5 , including, without limitation, any mortgage tax. Lender and/or the assignees, as the case may be, shall from time to time designate one agent through which Borrower shall request all approvals and consents required or contemplated by this Agreement and on whose statements Borrower, Operating Lessee and Guarantor may rely.

Section 15.6 Participations . Each assignee pursuant to this Article XV may sell participations to one or more Persons (other than Borrower or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Note held by it); provided , however , that (i) such assignee's obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) such assignee shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such assignee shall remain the holder of any such Note for all purposes of this Agreement and the other Loan Documents, and (iv) Borrower, Lender and the assignees pursuant to this Article XV shall continue to deal solely and directly with such assignee in connection with such assignee's rights and obligations under this Agreement and the other Loan Documents. In the event that more than one (1) party comprises Lender, Lender shall

designate one party to act on the behalf of all parties comprising Lender in providing approvals and all other necessary consents under the Loan Documents and on whose statements Borrower, Operating Lessee and Guarantor may rely.

Section 15.7 Disclosure of Information . Any assignee pursuant to this Article XV may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Article XV , disclose to the assignee or participant or proposed assignee or participant, any information relating to Borrower furnished to such assignee by or on behalf of Borrower; provided , however , that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree in writing for the benefit of Borrower to preserve the confidentiality of any confidential information received by it.

Section 15.8 Security Interest in Favor of Federal Reserve Bank . Notwithstanding any other provision set forth in this Agreement or any other Loan Document, any assignee pursuant to this Article XV may at any time create a security interest in all or any portion of its rights under this Agreement or the other Loan Documents (including, without limitation, the amounts owing to it and the Note or Notes held by it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

XVI. RESERVE ACCOUNTS

Section 16.1 Tax Reserve Account . In accordance with the time periods set forth in Section 3.1 , if an Event of Default shall have occurred and be continuing, if required under Section 3.1 , Borrower shall deposit into the Tax Reserve Account an amount equal to (a) one-twelfth of the annual Impositions that Lender reasonably estimates, based on the most recent tax bill for the Property, will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Impositions at least twenty (20) days prior to the imposition of any interest, charges or expenses for the non-payment thereof and (b) one-twelfth of the annual Other Charges that Lender reasonably estimates will be payable during the next ensuing twelve (12) months (said monthly amounts in (a) and (b) above hereinafter called the " **Monthly Tax Reserve Amount**", and the aggregate amount of funds held in the Tax Reserve Account being the "**Tax Reserve Amoun t** "). As of the Closing Date, the Monthly Tax Reserve Amount is $0.00, but such amount is subject to adjustment by Lender in accordance with the provisions of Section 3.1 and this Section 16.1 . The Monthly Tax Reserve Amount shall be paid by Borrower to Lender on each Payment Date during the continuance of an Event of Default to the extent required to be paid hereunder. Lender will apply the Monthly Tax Reserve Amount to payments of Impositions and Other Charges required to be made by Borrower pursuant to Article V and Article VII and under the Security Instrument, subject to Borrower's right to contest Impositions in accordance with Section 7.3 . In making any payment relating to the Tax Reserve Account, Lender may do so according to any bill, statement or estimate procured from the appropriate public office, without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of funds in the Tax Reserve Account shall exceed the amounts due for Impositions and Other Charges pursuant to Article V and Article VII , Lender shall credit such excess against future payments to be made to the Tax Reserve Account. If at any time Lender reasonably determines that the Tax Reserve Amount is not or will not be

sufficient to pay Impositions and Other Charges by the dates set forth above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to the imposition of any interest, charges or expenses for the non-payment of the Impositions and Other Charges. Upon payment of the Impositions and Other Charges, Lender shall reassess the amount necessary to be deposited in the Tax Reserve Account for the succeeding period, which calculation shall take into account any excess amounts remaining in the Tax Reserve Account.

Section 16.2 Insurance Reserve Account . If an Event of Default shall have occurred and be continuing and if required as provided in Section 3.1 hereof, Borrower will immediately pay to Lender for transfer by Lender to the Holding Account (or if Borrower fails to so pay Lender, Lender will transfer from the Holding Account) an amount (the "**Insurance Reserve Amount**") equal to payments of insurance premiums required to be made by Borrower to pay (or to reimburse Borrower or Operating Lessee for) the insurance required pursuant to Article VI and under the Security Instrument in accordance with the time periods set forth in Section 3.1 , an amount equal to one-twelfth of the insurance premiums that Lender reasonably estimates based on the most recent bill, will be payable for the renewal of the coverage afforded by the insurance policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such insurance premiums at least twenty (20) days prior to the expiration of the policies required to be maintained by Borrower pursuant to the terms hereof (said monthly amounts hereinafter called the "**Monthly Insurance Reserve Amount**"); provided, however, that immediately following an Insurance Reserve Trigger, Borrower will pay to Lender for transfer by Lender to the Insurance Reserve Account (or if Borrower fails to so pay Lender, Lender will transfer from the Holding Account) an amount equal to payments of insurance premiums required to be made by Borrower to pay (or to reimburse Borrower or Operating Lessee) for the insurance required pursuant to Article VI and under the Security Instrument. As of the Closing Date, the Monthly Insurance Reserve Amount is $0.00. The Monthly Insurance Reserve Amount, if same is payable pursuant to Section 3.1 and this Section 16.2 , shall be paid by Borrower to Lender on each Payment Date. Lender will apply the Monthly Insurance Reserve Amount to payments of insurance premiums required to be made by Borrower to pay for the insurance required pursuant to Article VI and under the Security Instrument. In making any payment relating to the Insurance Reserve Account, Lender may do so according to any bill, statement or estimate procured from the insurer or agent, without inquiry into the accuracy of such bill, statement or estimate or into the validity thereof. If at any time Lender reasonably determines that the Insurance Reserve Amount is not or will not be sufficient to pay insurance premiums (up to a maximum amount equal to the aggregate annual insurance premium required hereunder), Lender shall notify Borrower of such determination and Borrower shall increase the Insurance Reserve Amount by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to expiration of the applicable insurance policies. Upon payment of such insurance premiums, Lender shall reassess the amount necessary to be deposited in the Insurance Reserve Account for the succeeding period, which calculation shall take into account any excess amounts remaining in the Insurance Reserve Account.

Section 16.3 Intentionally Deleted .

Section 16.4 FF&E Reserve Account . In accordance with Section 3.1 , and during any period when Manager is not reserving for FF&E pursuant to the terms of the Management Agreement, upon the request of Borrower, Lender will, within fifteen (15) Business Days (or such shorter time as may be appropriate in Lender's reasonable discretion during emergency situations identified to Lender by Borrower in writing) after the receipt of such request and the satisfaction of the other conditions set forth in this Section, cause disbursements to Operating Lessee from the FF&E Reserve Account to pay or to reimburse Operating Lessee or Manager for actual costs incurred in connection with capital expenditures relating to FF&E at the Property (to the extent such expenditures are permitted hereunder), provided that (A) Lender has received invoices evidencing that the costs for which such disbursements are requested are due and payable and are in respect of capital expenditures relating to FF&E at the property, (B) Operating Lessee has applied any amounts previously received by it in accordance with this Section for the expenses to which specific draws made hereunder relate and received any Lien waivers or other releases which would customarily be obtained with respect to the work in question and (C) Lender has received an Officer's Certificate confirming that the conditions in the foregoing clauses (A) and (B) have been satisfied and that the copies of invoices and evidence of Lien waivers (to the extent required above) attached to such Officer's Certificate are true, complete and correct.

Section 16.5 Letter of Credit Provisions .

16.5.1 Delivery of Letter of Credit . In lieu of maintaining on deposit all or any portion of the funds in the FF&E Reserve Account with Lender pursuant to Section 16.4 , Borrower shall have the right to deliver a Letter of Credit in the amount of all or any portion of the amounts on deposit with Lender from time to time under Sections 16.4 .

16.5.2 Reduction of Letter of Credit . In the event that Borrower elects to deliver the Letter of Credit to Lender under the terms of Section 16.4.1 , Lender agrees to permit the reduction from time to time of the outstanding amount of the Letter of Credit by (i) the amount of cash funds delivered to Lender as reserve funds by Borrower in place of such Letter of Credit, and (ii) the amount that Borrower would otherwise be entitled to receive as a disbursement from the applicable reserve account pursuant to Section 16.4 .

16.5.3 Security for Debt . Each Letter of Credit delivered under this Agreement shall be additional security for the payment of the Indebtedness. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, at its option, to draw on any Letter of Credit and to apply all or any part thereof to the payment of the items for which such Letter of Credit was established or to apply each such Letter of Credit to payment of the Indebtedness in such order, proportion or priority as Lender may determine.

16.5.4 Additional Rights of Lender . In addition to any other right Lender may have to draw upon a Letter of Credit pursuant to the terms and conditions of this Agreement, Lender shall have the additional rights to draw in full any Letter of Credit: (a) if Lender has received a notice from the issuing bank that the Letter of Credit will not be renewed and a substitute Letter of Credit is not provided at least thirty (30) days prior to the date on which the outstanding Letter of Credit is scheduled to expire; (b) upon receipt of notice from the issuing bank that the Letter of Credit will be terminated (except if a substitute Letter of Credit is

provided); or (c) if Lender has received notice that the bank issuing the Letter of Credit shall cease to be an Approved Bank (unless an alternative Approved Bank issues an equivalent Letter of Credit within fifteen (15) days of Borrower's receipt of notice of same). Notwithstanding anything to the contrary contained in the above, Lender is not obligated to draw any Letter of Credit upon the happening of an event specified in (a), (b) or (c) above and shall not be liable for any losses sustained by Borrower due to the insolvency of the bank issuing the Letter of Credit if Lender has not drawn the Letter of Credit.

XVII. DEFAULTS

Section 17.1 Event of Default . (a) Each of the following events shall constitute an event of default hereunder (an "**Event of Default**"):

(i) if (A) the Indebtedness is not paid in full on the Maturity Date (subject to the last sentence of Section 3.1.5(b)), (B) any Debt Service is not paid in full on the applicable Payment Date (subject to the last sentence of Section 3.1.5(b)), (C) any prepayment of principal due under this Agreement or the Note is not paid when due, (D) the Prepayment Fee is not paid when due, (E) any deposit to the Collection Account or any of the other Collateral Accounts is not made on the required deposit date therefor; or (F) except as to any amount included in (A), (B), (C), (D), and/or (E) of this clause (i), any other amount payable pursuant to this Agreement, the Note or any other Loan Document is not paid in full when due and payable in accordance with the provisions of the applicable Loan Document continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(ii) subject to Borrower's right to contest as set forth in Section 7.3 , if any of the Impositions or Other Charges are not paid prior to the imposition of any interest, penalty, charge or expense for the non-payment thereof;

(iii) if the insurance policies required by Section 6.1 are not kept in full force and effect, or if certificates of any of such insurance policies are not delivered to Lender within ten (10) Business Days following Lender's request therefor;

(iv) if, except as permitted pursuant to Article VIII , (a) any Transfer of any direct or indirect legal, beneficial or equitable interest in all or any portion of the Property, (b) any Transfer of any direct or indirect interest in Borrower or other Person restricted by the terms of Article VIII , (c) any Lien or encumbrance on all or any portion of the Property, (d) any pledge, hypothecation, creation of a security interest in or other encumbrance of any direct or indirect interests in Borrower or other Person restricted by the terms of Article VIII or (e) the filing of a declaration of condominium with respect to the Property other than as allowed hereunder;

(v) if (i) any representation or warranty made by Borrower in Section 4.1.23 shall have been false or misleading in any material respect as of the date the representation or warranty was made which incorrect, false or misleading statement is not cured within thirty (30) days after receipt by Borrower of notice from Lender in writing of such breach or (ii) if any other representation or warranty made by Borrower herein by

Borrower, Guarantor, or any Affiliate of Borrower in any other Loan Document, or in any report, certificate (including, but not limited to, any certificate by Borrower delivered in connection with the issuance of the Non-Consolidation Opinion), financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made; provided , however , that if such representation or warranty which was false or misleading in any material respect is, by its nature, curable and is not reasonably likely to have a Material Adverse Effect, and such representation or warranty was not, to the Best of Borrower's Knowledge, false or misleading in any material respect which made, then same shall not constitute an Event of Default unless Borrower has not cured same within five (5) Business Days after receipt by Borrower of notice from Lender in writing of such breach;

(vi) if Borrower or Guarantor shall make an assignment for the benefit of creditors provided , however , if such assignment was with respect to Guarantor such Event of Default may be cured by the delivery to Lender by any other Guarantor that is not subject to such assignment, of an executed counterpart to the Recourse Guaranty assuming the several liability of the Guarantor with respect to which such assignment within five (5) days after such assignment;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Operating Lessee, or Guarantor or if Borrower, Operating Lessee or Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Operating Lessee or Guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Operating Lessee, or Guarantor shall be instituted; provided , however , if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Operating Lessee, or Guarantor upon the same not being discharged, stayed or dismissed within ninety (90) days; provided , further , if such appointment, adjudication, petition or proceeding was with respect to Guarantor such Event of Default may be cured by the delivery to Lender by Guarantor that, not subject to such appointment, adjudication, petition or proceeding, of an executed counterpart to the Recourse Guaranty assuming the several liability of the Guarantor with respect to which such appointment, adjudication, petition or proceeding occurred within five (5) days after such occurrence;

(viii) if Borrower, Operating Lessee or Guarantor, as applicable, Transfers its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) with respect to any term, covenant or provision set forth herein (other than the other subsections of this Section 17.1) which specifically contains a notice requirement or grace period, if Borrower, Operating Lessee or Guarantor shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(x) if Borrower, having notified Lender of its election to extend the Maturity Date as set forth in Section 5 of the Note, fails to deliver the Replacement Interest Rate Cap Agreement to Lender prior to the first day of the extended term of the Loan and Borrower has not prepaid the Loan pursuant to the terms of the Note prior to such first day of the extended term;

(xi) if Borrower or Operating Lessee shall fail to comply with any covenants set forth in Article V or Section XI with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(xii) if Borrower shall fail to comply with any covenants set forth in Section 4 or Section 3(d) or Section 8 of the Security Instrument with such failure continuing for ten (10) Business Days after Lender delivers written notice thereof to Borrower;

(xiii) Borrower, Operating Lessee or any Affiliate of any such Person shall fail to deposit any sums required to be deposited in the Holding Account or any Sub-Accounts thereof are not made pursuant to the requirements herein when due;

(xiv) if this Agreement or any other Loan Document or any Lien granted hereunder or thereunder, in whole or in part, shall terminate or shall cease to be effective or shall cease to be a legally valid, binding and enforceable obligation of Borrower or Guarantor, or any Lien securing the Loan shall, in whole or in part, cease to be a perfected first priority Lien, subject to the Permitted Encumbrances (except in any of the foregoing cases in accordance with the terms hereof or under any other Loan Document or by reason of any affirmative act of Lender);

(xv) if the Management Agreement is terminated and an Acceptable Manager is not appointed as a replacement manager pursuant to the provisions of Section 5.2.14 within sixty (60) days after such termination;

(xvi) if Borrower shall default beyond the expiration of any applicable cure period under any existing easement, covenant or restriction which affects the Property, the default of which shall have a Material Adverse Effect;

(xvii) There exists any fact or circumstance that reasonably could be expected to result in the (a) imposition of a Lien or security interest under Section 412(n) of the Code or under ERISA or (b) the complete or partial withdrawal by Borrower or any ERISA Affiliate from any "multiemployer plan" that is reasonably expected to result in any material liability to Borrower; provided , however that the existence of such fact or circumstance under clause (xvii)(b) shall not constitute an Event of Default if such material withdrawal liability (x) in the case of a withdrawal by an ERISA Affiliate that is reasonably expected to cause a Material Adverse Effect or any withdrawal by Borrower, is paid within thirty (30) days after the date incurred or is contested in accordance with Section 7.3 hereof or (y) in the case of a withdrawal by an ERISA Affiliate that is not reasonably expected to cause a Material Adverse Effect, is paid within the period required under applicable ERISA statutes or is contested in accordance with Section 7.3 hereof; or

(xviii) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement or of any Loan Document not specified in subsections (i) to (xvii) above, for thirty (30) days after notice from Lender; provided , however , that if such Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided, further, that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days.

(b) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in clauses (a)(vi), (vii) or (viii) above) Lender may, without notice or demand, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action that Lender deems advisable to protect and enforce its rights against Borrower and in the Property, including, without limitation, (i) declaring immediately due and payable the entire Principal Amount together with interest thereon and all other sums due by Borrower under the Loan Documents, (ii) collecting interest on the Principal Amount at the Default Rate whether or not Lender elects to accelerate the Note and (iii) enforcing or availing itself of any or all rights or remedies set forth in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in subsections (a)(vi) or (a)(vii) above, the Indebtedness and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding. The foregoing provisions shall not be construed as a waiver by Lender of its right to pursue any other remedies available to it under this Agreement, the Security Instrument or any other Loan Document. Any payment hereunder may be enforced and recovered in whole or in part at such time by one or more of the remedies provided to Lender in the Loan Documents.

Section 17.2 Remedies . (a) Unless waived in writing by Lender, upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Indebtedness shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be subject to any one action or election of remedies law or rule and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and

effect until Lender has exhausted all of its remedies against the Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Indebtedness or the Indebtedness has been paid in full.

(b) Upon the occurrence and during the continuance of an Event of Default, with respect to the Account Collateral, the Lender may:

(i) subject to the terms of the Subordination of Operating Lease and/or Manager Subordination Agreements, without notice to Borrower, except as required by law, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Account Collateral against the Obligations, Operating Expenses and/or Capital Expenditures for the Property or any part thereof;

(ii) in Lender's sole discretion, at any time and from time to time, exercise any and all rights and remedies available to it under this Agreement, and/or as a secured party under the UCC;

(iii) subject to the terms of the Subordination of Operating Lease and/or Manager Subordination Agreements, demand, collect, take possession of or receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Account Collateral (or any portion thereof) as Lender may determine in its sole discretion; and

(iv) take all other actions provided in, or contemplated by, this Agreement.

(c) With respect to Borrower, the Account Collateral, the Rate Cap Collateral and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Indebtedness, and Lender may seek satisfaction out of the Property or any part thereof, in its absolute discretion in respect of the Indebtedness. In addition, Lender shall have the right from time to time to partially foreclose this Agreement and the Security Instrument in any manner and for any amounts secured by this Agreement or the Security Instrument then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal or interest, Lender may foreclose this Agreement and the Security Instrument to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose this Agreement and the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by this Agreement or the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to this Agreement and the Security Instrument to secure payment of sums secured by this Agreement and the Security Instrument and not previously recovered.

Section 17.3 Remedies Cumulative; Waivers . The rights, powers and remedies of Lender under this Agreement and the Security Instrument shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or

otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower or Guarantor shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or Guarantor or to impair any remedy, right or power consequent thereon.

Section 17.4 Costs of Collection . In the event that after an Event of Default: (i) the Note or any of the Loan Documents is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (ii) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Note or any of the Loan Documents; or (iii) an attorney is retained to protect or enforce the lien or any of the terms of this Agreement, the Security Instrument or any of the Loan Documents; then Borrower shall pay to Lender all reasonable attorney's fees, costs and expenses actually incurred in connection therewith, including costs of appeal, together with interest on any judgment obtained by Lender at the Default Rate.

XVIII. SPECIAL PROVISIONS

Section 18.1 Exculpation .

18.1.1 Exculpated Parties . Except as set forth in this Section 18.1 , the Recourse Guaranty and the Environmental Indemnity, no personal liability shall be asserted, sought or obtained by Lender or enforceable against (i) Borrower or Operating Lessee, (ii) any Affiliate of Borrower or Operating Lessee including any managing member, (iii) any Person owning, directly or indirectly, any legal or beneficial interest in Borrower, Operating Lessee or managing member or any Affiliate of Borrower, Operating Lessee or managing member, or (iv) any current or former direct or indirect partner, member, principal, officer, Controlling Person, beneficiary, trustee, advisor, shareholder, employee, agent, manager, Affiliate or director of any Persons described in clauses (i) through (iii) above (collectively, the " **Exculpated Parties**") and none of the Exculpated Parties shall have any personal liability (whether by suit, deficiency, judgment or otherwise) in respect of the Obligations, this Agreement, the Security Instrument, the Note, the Property or any other Loan Document, or the making, issuance or transfer thereof, all such liability, if any, being expressly waived by Lender. The foregoing limitation shall not in any way limit or affect Lender's right to any of the following and Lender shall not be deemed to have waived any of the following:

(a) Foreclosure of the lien of this Agreement and the Security Instrument in accordance with the terms and provisions set forth herein and in the Security Instrument;

(b) Action against any other security at any time given to secure the payment of the Note and the other Obligations;

(c) Exercise of any other remedy set forth in this Agreement or in any other Loan Document which is not inconsistent with the terms of this Section 18.1 ;

(d) Any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Indebtedness secured by this Agreement and the Security Instrument or to require that all collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Loan Documents; or

(e) The liability of any given Exculpated Party with respect to any separate written guaranty or agreement given by any such Exculpated Party in connection with the Loan (including, without limitation, the Recourse Guaranty and the Environmental Indemnity).

18.1.2 Carveouts From Non-Recourse Limitations . Notwithstanding the foregoing or anything in this Agreement or any of the Loan Documents to the contrary, Borrower and Guarantor shall be liable for the payment, in accordance with the terms of this Agreement, the Note, the Security Instrument and the other Loan Documents, to Lender of:

(a) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of or in connection with (i) the fraudulent acts of or intentional misrepresentations by Borrower or any Affiliate of Borrower and/or (ii) the failure of Borrower and/or Operating Lessee (as applicable) to have a valid and subsisting certificate of occupancy(s) for all or any portion of the Property if and to the extent such certificate of occupancy(s) is required to comply with all Legal Requirements and/or (iii) the Outstanding Manager Issues;

(b) Proceeds which Borrower or any Affiliate of Borrower has received and to which Lender is entitled pursuant to the terms of this Agreement or any of the Loan Documents to the extent the same have not been applied toward payment of the Indebtedness, or used for the repair or replacement of the Property in accordance with the provisions of this Agreement;

(c) any membership deposits and any security deposits and advance deposits which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such deposits were applied or refunded in accordance with the terms and conditions of any of the Leases or membership agreement, as applicable, prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(d) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of all or any part of the Property, the Account Collateral or the Rate Cap Collateral being encumbered by a Lien (other than this Agreement and the Security Instrument) in violation of the Loan Documents;

(e) after the occurrence and during the continuance of an Event of Default, any Rents, issues, profits and/or income collected by Borrower, Operating Lessee or any Affiliate of Borrower or Operating Lessee (other than Rents and credit card receivables sent to the applicable Deposit Account or paid directly to Lender pursuant to any notice of direction delivered to tenants of the Property or credit card companies) and not applied to payment of the Obligations or used to pay normal and verifiable Operating Expenses of the Property or otherwise applied in a manner permitted under the Loan Documents;

(f) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of physical damage to the Property from intentional waste committed by Borrower or any Affiliate of Borrower;

(g) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity or in the Security Instrument concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(h) any loss, damage, cost or expense incurred by or on behalf of Lender by reason of the failure of Borrower to comply with any of the provisions of Article XIV ;

(i) if Borrower fails to obtain Lender's prior written consent to any Transfer, if and as required by the Loan Agreement or the Security Instrument;

(j) any and all liabilities, obligations, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, causes of action, suits, claims, demands and adjustments of any nature or description whatsoever) which may at any time be imposed upon, incurred by or awarded against Lender, in the event (and arising out of such circumstances) that (x) Borrower should raise any defense, counterclaim and/or allegation in any foreclosure action by Lender relative to the Property, the Account Collateral or the Rate Cap Collateral or any part thereof which is found by a court to have been raised by Borrower or Operating Lessee in bad faith or to be wholly without basis in fact or law, or (y) an involuntary case is commenced against Borrower or Operating Lessee under the Bankruptcy Code with the collusion of Borrower or Operating Lessee, Guarantor or any of their Affiliates or (z) an order for relief is entered with respect to the Borrower or Operating Lessee under the Bankruptcy Code through the actions of the Borrower or Operating Lessee, Guarantor or any of their Affiliates at a time when the Borrower is able to pay its debts as they become due unless Borrower and Guarantor shall have received an opinion of independent counsel that the directors of Borrower has a fiduciary duty to seek such an order for relief;

(k) any actual loss, damage, cost, or expense incurred by or on behalf of Lender by reason of Borrower, Operating Lessee, or their respective general partners failing to be and have been since the date of its respective formation, a Single Purpose Entity; and

(l) reasonable attorney's fees and expenses incurred by Lender in connection with any successful suit filed on account of any of the foregoing clauses (a) through (k).

XIX. MISCELLANEOUS

Section 19.1 Survival . This Agreement and all covenants, indemnifications, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Indebtedness is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the successors and assigns of Lender.

Section 19.2 Lender's Discretion . Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided or as is otherwise required by law) be in the sole discretion of Lender and shall be final and conclusive.

Section 19.3 Governing Law . (A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTE, AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND EACH OF BORROWER AND LENDER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH OF BORROWER AND LENDER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

CORPORATION SERVICE COMPANY
80 STATE STREET
ALBANY, NEW YORK 12207-2543

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH

SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 19.4 Modification, Waiver in Writing . No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Borrower shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 19.5 Delay Not a Waiver . Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 19.6 Notices . All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery or (c) telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender:	Column Financial, Inc. 11 Madison Avenue New York, New York 10010 Attention: Edmund Taylor Facsimile No. (212) 325-8106
With a copy to:	Column Financial, Inc. One Madison Avenue New York, New York 10019 Attention: Legal and Compliance Department Facsimile No. (212) 325-8282
With a copy to:	Cadwalader, Wickersham & Taft LLP One World Financial Center New York, New York 10281 Attention: Fredric L. Altschuler, Esq. Telecopy: (212) 504-6666
If to Borrower:	Strategic Hotel Funding, L.L.C. 77 West Wacker Drive Suite 4600 Chicago, Illinois, 60601 Attention: Chief Financial Officer and General Counsel Telephone No.: (312) 658-5000 Telefax No.: (312) 658-5799
With a copy to:	Strategic Hotel Funding, L.L.C. 77 West Wacker Drive Suite 4600 Chicago, Illinois, 60601 Attention: Treasurer Telephone No.: (312) 658-5000 Telefax No.: (312) 658-5799
With a copy to:	Perkins Coie LLP 131 South Dearborn Avenue, Suite 1700 Chicago, IL 60603-5559 Attention: Bruce A. Bonjour, Esq. Telephone No.: (312) 324-8650 Telefax No.: (312) 324-9650

All notices, elections, requests and demands under this Agreement shall be effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one (1) Business Day after being deposited with a nationally recognized overnight courier service as required above, or (iii) on the day sent if sent by facsimile with confirmation on or before 5:00 p.m. New York time on any Business Day or on the next Business Day if so delivered after 5:00 p.m. New York time or on any day other than a Business Day. Rejection or

other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

Section 19.7 TRIAL BY JURY . EACH OF BORROWER, LENDER AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT, THE SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, THE SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND BORROWER HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. BORROWER ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

Section 19.8 Headings . The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 19.9 Severability . Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 19.10 Preferences . To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 19.11 Waiver of Notice . Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 19.12 Expenses; Indemnity . (a) Except as may be otherwise expressly set forth in the Loan Documents, Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender pursuant to this Agreement); (ii) Lender's ongoing performance of and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters as required herein or under the other Loan Documents; (iv) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (v) the filing and recording fees and expenses, mortgage recording taxes, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vi) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; (vii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a work-out or of any insolvency or bankruptcy proceedings and (viii) procuring insurance policies pursuant to Section 6.1.11 ; provided , however , that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise (A) by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender or (B) in connection with any action taken under Article IV or a Securitization, other than the Borrower's internal administrative costs. Any cost and expenses due and payable to Lender may be paid from any amounts in the Collection or the Holding Account if same are not paid by Borrower within ten (10) Business Days after receipt of written notice from Lender.

(b) Subject to the non-recourse provisions of Section 18.1 , Borrower shall protect, indemnify and save harmless Lender, and all officers, directors, stockholders, members, partners, employees, agents, successors and assigns thereof (collectively, the Indemnified Parties) from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including all reasonable attorneys' fees and expenses actually incurred)

imposed upon or incurred by or asserted against the Indemnified Parties or the Property or any part of its interest therein, by reason of the occurrence or existence of any of the following (to the extent Proceeds payable on account of the following shall be inadequate; it being understood that in no event will the Indemnified Parties be required to actually pay or incur any costs or expenses as a condition to the effectiveness of the foregoing indemnity) prior to (i) the acceptance by Lender or its designee of a deed-in-lieu of foreclosure with respect to the Property, or (ii) an Indemnified Party or its designee taking possession or control of the Property or (iii) the foreclosure of the Security Instrument, except to the extent caused by the willful misconduct or gross negligence of the Indemnified Parties (other than such willful misconduct or gross negligence imputed to the Indemnified Parties because of their interest in the Property): (1) ownership of Borrower's interest in the Property, or any interest therein, or receipt of any Rents or other sum therefrom, (2) any accident, injury to or death of any persons or loss of or damage to property occurring on or about the Property or any Appurtenances thereto, (3) any design, construction, operation, repair, maintenance, use, non-use or condition of the Property or Appurtenances thereto, including claims or penalties arising from violation of any Legal Requirement or Insurance Requirement, as well as any claim based on any patent or latent defect, whether or not discoverable by Lender, any claim the insurance as to which is inadequate, and any Environmental Claim, (4) any Default under this Agreement or any of the other Loan Documents or any failure on the part of Borrower to perform or comply with any of the terms of any Lease within the applicable notice or grace periods, (5) any performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (6) any negligence or tortious act or omission on the part of Borrower or any of its agents, contractors, servants, employees, sublessees, licensees or invitees, (7) any contest referred to in Section 7.3 hereof, (8) any obligation or undertaking relating to the performance or discharge of any of the terms, covenants and conditions of the landlord contained in the Leases, or (9) except as may be expressly limited herein, the presence at, in or under the Property or the Improvements of any Hazardous Materials in violation of any Environmental Law. Any amounts the Indemnified Parties are legally entitled to receive under this Section which are not paid within fifteen (15) Business Days after written demand therefor by the Indemnified Parties or Lender, setting forth in reasonable detail the amount of such demand and the basis therefor, shall bear interest from the date of demand at the Default Rate, and shall, together with such interest, be part of the Indebtedness and secured by the Security Instrument. In case any action, suit or proceeding is brought against the Indemnified Parties by reason of any such occurrence, Borrower shall at Borrower's expense resist and defend such action, suit or proceeding or will cause the same to be resisted and defended by counsel at Borrower's reasonable expense for the insurer of the liability or by counsel designated by Borrower (unless reasonably disapproved by Lender promptly after Lender has been notified of such counsel); provided , however , that nothing herein shall compromise the right of Lender (or any Indemnified Party) to appoint its own counsel at Borrower's expense for its defense with respect to any action which in its reasonable opinion presents a conflict or potential conflict between Lender and Borrower that would make such separate representation advisable; provided , further , that if Lender shall have appointed separate counsel pursuant to the foregoing, Borrower shall not be responsible for the expense of additional separate counsel of any Indemnified Party unless in the reasonable opinion of Lender a conflict or potential conflict exists between such Indemnified Party and Lender. So long as Borrower is resisting and defending such action, suit or proceeding as provided above in a prudent and commercially reasonable manner, Lender and the Indemnified Parties shall not be

entitled to settle such action, suit or proceeding without Borrower's consent which shall not be unreasonably withheld, delayed or conditioned, and claim the benefit of this Section with respect to such action, suit or proceeding and Lender agrees that it will not settle any such action, suit or proceeding without the consent of Borrower; provided , however , that if Borrower is not diligently defending such action, suit or proceeding in a prudent and commercially reasonable manner as provided above, and Lender has provided Borrower with thirty (30) days' prior written notice, or shorter period if mandated by the requirements of applicable law, and opportunity to correct such determination, Lender may settle such action, suit or proceeding and claim the benefit of this Section 19.12 with respect to settlement of such action, suit or proceeding. Any Indemnified Party will give Borrower prompt notice after such Indemnified Party obtains actual knowledge of any potential claim by such Indemnified Party for indemnification hereunder. The Indemnified Parties shall not settle or compromise any action, proceeding or claim as to which it is indemnified hereunder without notice to Borrower.

Section 19.13 Exhibits and Schedules Incorporated . The Exhibits and Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 19.14 Offsets, Counterclaims and Defenses . Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 19.15 Liability of Assignees of Lender . No assignee of Lender shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any other Loan Document or any amendment or amendments hereto made at any time or times, heretofore or hereafter, any different than the liability of Lender hereunder. In addition, no assignee shall have at any time or times hereafter any personal liability, directly or indirectly, under or in connection with or secured by any agreement, lease, instrument, encumbrance, claim or right affecting or relating to the Property or to which the Property is now or hereafter subject any different than the liability of Lender hereunder. The limitation of liability provided in this Section 19.15 is (i) in addition to, and not in limitation of, any limitation of liability applicable to the assignee provided by law or by any other contract, agreement or instrument, and (ii) shall not apply to any assignee's gross negligence or willful misconduct.

Section 19.16 No Joint Venture or Partnership; No Third Party Beneficiaries . (a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 19.17 Publicity . All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, or any of its Affiliates shall be subject to the prior written approval of Lender.

Section 19.18 Waiver of Marshalling of Assets . To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's shareholders and others with interests in Borrower and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Indebtedness without any prior or different resort for collection or of the right of Lender to the payment of the Indebtedness out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 19.19 Waiver of Counterclaim and Other Actions . Borrower hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Agreement, the Note, the Security Instrument or any Loan Document, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Agreement, the Note, the Security Instrument or any Loan Document and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

Section 19.20 Conflict; Construction of Documents; Reliance . In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under

any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 19.21 Prior Agreements . This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, are superseded by the terms of this Agreement and the other Loan Documents and unless specifically set forth in a writing contemporaneous herewith the terms, conditions and provisions of any and all such prior agreements do not survive execution of this Agreement.

Section 19.22 Counterparts . This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 19.23 Joint and Several Liability . If Borrower or Guarantor consists of more than one person, the obligations and liabilities of each such person hereunder and under the other Loan Documents shall be joint and several.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

SHC HALF MOON BAY, LLC,
a Delaware limited liability company

By: /s/ Ryan M. Bowie
Name: Ryan M. Bowie
Title: Vice President & Treasurer

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

By signing below, Operating Lessee agrees that in consideration of the substantial benefit that it will receive from Lender making the Loan to Borrower, to comply with all of the terms, conditions, obligations and restrictions affecting Operating Lessee set forth herein.

OPERATING LESSEE:

DTRS HALF MOON BAY, LLC,
a Delaware limited liability company

By: /s/ Ryan M. Bowie
Name: Ryan M. Bowie
Title: Vice President & Treasurer

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

LENDER:

COLUMN FINANCIAL, INC.,
a Delaware corporation

By: /s/ Priscilla Horning
Name: Priscilla Horning
Title: Vice President

EXHIBIT A

TITLE INSURANCE REQUIREMENTS, ENDORSEMENTS AND AFFIRMATIVE COVERAGES

1. General . Borrower and/or its counsel is responsible for ordering or updating any title insurance work. Lender requires a lender's title insurance policy insuring "Column Financial, Inc., and its successors and assigns". The approved title underwriters, type and amount of insurance and required endorsements are described below. The list of endorsements is subject to review by Lender's counsel, local counsel and additional specific coverages may be required after review of the related title commitment.

2. Title Insurer . The Title Company or Title Companies must be approved by Lender and licensed to do business in the jurisdiction in which the Property is located._____has been pre-approved by Lender as a Title Company.

3. Title Agent . Unless Lender otherwise agrees, all title work shall be ordered and coordinated, and the closing of the Loan shall be conducted through_____contact_____Tel:_____.

4. Primary Title Insurance Requirements .

(a) Amount of Coverage : Not less than the Principal Amount of the Loan on the Closing Date.

(b) Effective Date : The later of the date of recording of the Security Instrument or the date of funding of the Loan. Borrower shall be required to provide a customary "gap" indemnity in order to enable the Title Company to provide "gap" coverage.

(c) Insured : "Column Financial, Inc., and its successors and assigns".

(d) Legal Description : Metes and bounds description to be provided which must conform to that shown on the Survey, the Security Instrument and any other Loan Documents that require a legal description of the Property. A lot and block description shall be acceptable in place of a metes and bounds description in exceptional cases.

(e) Policy Form : An ALTA (or equivalent) lender's policy of title insurance in form and substance acceptable to Lender. Without limiting Lender's right to require specific coverages, endorsements or other title work, the Title Policy shall (i) be in the 1970 ALTA (as amended 84) form or, if not available, ALTA 1992 form (deleting arbitration and creditor rights exclusions) or, if not available, the form commonly used in the state where the Property is located, (ii) to the extent available, include the "extended coverage" provisions described in paragraph 5 below, (iii) include all applicable endorsements described in paragraph 6 below, and (iv) include Schedule B exceptions in a form and to the extent acceptable to Lender's counsel.

5. Extended Coverage Requirements . The Title Policy shall:

(a) not contain any exception for filed or unfilled mechanic, materialmen or similar liens;

(b) limit any general exception for real estate taxes and other charges to real estate or other similar taxes or assessments that are not yet due and payable or delinquent and are not a current lien on the Property;

(c) limit any general exception for the rights of persons in possession to the rights of specified tenants, as tenants only with no right or option to purchase, set forth on the rent roll for the Property and attached to the Title Policy; and

(d) not contain any general exception as to matters that an accurate Survey of the Property would disclose, but may contain specific exceptions to matters disclosed on the Survey to be delivered on the Closing Date, subject to review by Lender's counsel.

6. Required Endorsements . The following endorsements are required, to the extent available in the jurisdiction in which the Property is located:

- Restrictions, Encroachments, Minerals Endorsement ALTA Form 9 or equivalent.
- (If not available, the Title Policy must insure by way of affirmative coverage statements that there are no encroachments by any of the improvements onto easements, rights of way or other exceptions to streets or adjacent property, or insure against loss or damage resulting therefrom.)
- Deletion of Creditors Rights Exclusion Endorsement.
- Environmental Protection Lien Endorsement.
- (The Title Policy may make an exception only for specific state statutes that provide for potential subsequent liens that could take priority over the lien securing the Loan.)
- Direct Access to Public Road Endorsement.
- Usury Endorsement.
- Land Same As Survey/Legal Description Endorsement.
- Zoning Endorsement - ALTA 3.1 with coverage for number/type of parking spaces.

  In lieu of an ALTA 3.1 zoning endorsement, Lender may accept an unambiguous, clean letter from the appropriate zoning authority which satisfies the following :

  Zoning District . Confirms the applicable zoning district for the Property under the laws or ordinances of the applicable jurisdiction and that such zoning is the proper zoning for the improvements located on the Property.

Use Restrictions . Confirms that the current use of the Property is permitted under the zoning ordinance and that the Property is not a nonconforming use.

Dimensional Requirements . Confirms that the Property is in compliance with all dimensional requirements of the zoning code, including minimum lot area, maximum building height, maximum floor area ratio and setback or buffer requirements.

Parking Requirements . Confirms that the Property is in compliance with all parking and loading requirements, including the number of spaces and dimensional requirements for the parking spaces.

Rebuildability . If Property involves legal non-conforming use, confirms that, in the event of casualty, the Property may be rebuilt substantially in its current form (i.e., no loss of square footage, same building footprint) upon satisfaction of stated conditions and/or limitations.

- Subdivision Endorsement.
- Doing Business Endorsement.
- Deletion of Arbitration Endorsement.
- Separate Tax Lot Endorsement.
- Street Address Endorsement
- Contiguity Endorsement.
- Variable Rate Endorsement.
- Mortgage Recording Tax Endorsement.
- Any of the following endorsements customary in the state in which the Property is located or as required by the nature of the transaction:

  Tie-In Endorsement for Multiple Policies
  Mortgage Assignment Endorsement
  First Loss / Last Dollar Endorsement
  Non-Imputation Endorsement
  Blanket Un-located Easements Endorsement
  Closure Endorsement

EXHIBIT B

COLUMN FINANCIAL, INC.
SURVEY REQUIREMENTS

The survey shall contain the following:

- The legal description of the Property;
- The courses and measured distances of the exterior boundary lines of the Property and the identification of owners of abutting parcels;
- The total acreage of the Property to the nearest tenth of an acre;
- The location of any existing improvements, the dimensions thereof at the ground surface level and their relationship to the facing exterior property lines, streets and set-back lines of the Property;
- The location, lines and widths of adjoining publicly dedicated and accepted streets showing the number and location of existing curb cuts, driveways, and fences;
- The location and dimensions of encroachments, if any, upon the Property;
- The location of all set-back lines, restrictions of record, other restrictions established by zoning or building code ordinance, utilities, easements, rights-of-way and other matters affecting title to the Property which are to be shown in Schedule B-2 of the Title Policy identifying each by reference to its recording data, where applicable;
- Evidence that adequate means of ingress and egress to and from the Property exist and that the Property does not serve any adjoining property for ingress, egress or any other purpose;
- If the Property is described as being on a recorded map or plat, a legend relating the survey to such map or plat;
- The street address of the Property;
- Parking areas at the Property and, if striped, the striping and type (e.g., handicapped, motorcycle, regular, etc.) and number of parking spaces at the Property;
- A statement as to whether the Property is located in a special flood or mudslide hazard area as determined by a review of a stated and identified Flood Hazard Boundary Map published by the Federal Insurance Administration of the U.S. Department of Housing and Urban Development;

- A vicinity map showing the property in reference to nearby highways or major street intersections.
- The exterior dimensions of all buildings at ground level and the square footage of the exterior footprint of all buildings, or gross floor area of all buildings, at ground level.
- The location of utilities serving or existing on the property as evidenced by on-site observation or as determined by records provided by client, utility companies and other appropriate sources (with reference as to the source of information) (for example)
    - railroad tracks and sidings;
    - manholes, catch basins, valve vaults or other surface indications of subterranean uses;
    - wire and cables (including their function) crossing the surveyed premises, all poles on or within ten feet of the surveyed premises, and the dimensions of all crosswires or overhangs affecting the surveyed premises; and
    - utility company installations on the surveyed premises.
- A certificate in substantially the following form:

  The undersigned being a registered surveyor of the State of [State] hereby certifies to COLUMN FINANCIAL, INC., [NAME OF BORROWING ENTITY] and [INSERT NAME OF TITLE COMPANY], and each of their respective successors and assigns, as of the date below, as follows:

  This print of survey actually was made on the ground on [INSERT DATE SURVEY WAS MADE] in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by American Land Title Association (" ALTA") and American Congress on Surveying & Mapping ("ACSM ") and National Society of Professional Surveyors ("NSPS") in 1999, contains Items 1,2,3,4, 6,7(a), 7(b) (l), 8,9, 10, 11, 13, 14 and 16 of Table A thereto, and correctly shows: (i) a fixed and determinable position and location of the land described herein (together with the buildings and improvements thereon, the "Mortgaged Property"), including the position of the point of beginning; (ii) the location of all buildings, structures and other improvements situated on the land; (iii) all driveways or other curb cuts along any street or alley upon which the land abuts; (iv) the location and name of all public and private streets or alleys located thereon or adjacent thereto, all of which are public unless otherwise noted; (v) the location, dimension and recording data of all easements, rights-of-way and other

matters of record thereon or with respect to which the undersigned has knowledge; (vi) the location and dimension of all unrecorded easements, paths, rights-of-way and party walls to the extent visible thereon or with respect to which the undersigned has knowledge; (vii) the location of applicable building restriction and setback lines required by local ordinances and regulations; and (viii) the location of all encroachments or overhangs onto or from the Mortgaged Property. Except as shown on this survey, there are no visible discrepancies, conflicts, shortages in area or boundary line conflicts. Except as shown on the survey, the Mortgaged Property does not serve any adjoining property for drainage, utilities or ingress or egress. The Mortgaged Property has access to and from a duly dedicated and accepted public roadway. This survey reflects boundary lines of the land, which "close" by engineering calculations. All utility services to the Mortgaged Property either enter the Mortgaged Property through adjoining public streets, or this survey shows the point of entry and location of any utilities which pass through or are located on adjoining private land to the extent visible or known to the undersigned. The Mortgaged Property does not lie within an area designated as a flood hazard area by any map or publication of the U.S. Department of Housing and Urban Development or the Federal Emergency Management Agency. The Mortgaged Property and only the Mortgaged Property constitutes one tax lot. All zoning use and density classifications are properly shown hereon. The undersigned has received and examined a copy of the Commitment for Title Insurance No._____, dated_____, issued by_____, with respect to the Mortgaged Property, as well as a copy of each instrument listed therein. The location of each exception set forth in such Commitment, to the extent it can be located, has (with recording reference and reference to the exception number of the Commitment) been shown hereon. The undersigned further certifies that this survey meets the Accuracy Standards (as adopted by ALTA, ACSM and NSPS and in effect on the date of this certification) and [SELECT ONE OF THE FOLLOWING TWO PHRASES]:

[the Positional Uncertainties resulting from the survey measurements made on the survey do not exceed the allowable Positional Tolerance.]

[the survey measurements were made in accordance with the "Minimum Angle, Distance and Closure Requirements for Survey Measurements Which Control Land Boundaries for ALTA/ACSM Land Title Surveys."]

_____

, Licensed Surveyor

Date: _____

[seal]

EXHIBIT C

SINGLE PURPOSE ENTITY PROVISIONS

It is a requirement that the borrower be a bankruptcy remote, special purpose entity. A bankruptcy remote, special purpose entity is an entity which is unlikely to become insolvent as a result of its own activities and which is adequately insulated from the consequences of any other party's insolvency. Set forth below is language to be included in the organizational documents of corporations, limited partnerships and limited liability companies to evidence such entities' existence as bankruptcy remote, special purpose entities.

I. CORPORATION

If the Single Purpose Entity is a corporation, its certificate of incorporation will have to have the following provisions to be considered a special purpose entity:

A. Purpose

The corporation's purpose should be limited to owning and operating the mortgaged property (or interests in the Borrower).

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____, State of_____[_____interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the [General Corporation Law] of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

B. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's assets, transfer of ownership assets, incurrence of additional debt and amendment of the corporation's articles of incorporation.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Corporation shall not incur, assume, or guaranty any other indebtedness. The Corporation shall not consolidate or merge with or into any other entity or conveyor transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Corporation substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article ___ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Corporation will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (ii) no amendment to this certificate of incorporation or to the Corporation's By Laws may be made without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary] and (ii) the Corporation shall not dissolve, terminate or liquidate."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

C. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to

the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

D. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an " Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital in light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purpose of this Article __ , the following terms shall have the following meanings:

"a ffiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for

administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

II. LIMITED PARTNERSHIP

If the Single Purpose Entity is a limited partnership, to be a special purpose entity, all of its general partners shall be special purpose entities. If such limited partnership has more than one general partner, then such limited partnership shall continue (and not dissolve) for so long as a solvent general partner exists. Consequently, both the limited partnership's partnership agreement and the certificate of incorporation of its general partner(s) will have to meet certain requirements to be considered special purpose entities. Such requirements are as follows:

A. Limited Partnership Agreement

a. Purpose

The limited partnership's purpose should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Partnership, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____ , State of_____ [_____ interests in [insert Borrower or other applicable entity's name]] (the " Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the Uniform Limited Partnership Act of_____necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The partnership shall be prohibited, except in certain circumstances, from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the partnership's assets, transfer of partnership interests, incurrence of additional debt and amendment of the partnership agreement.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The Partnership shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Partnership shall not incur, assume, or guaranty any other indebtedness. The Partnership shall not consolidate or merge with or into any other entity or conveyor transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Partnership) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Partnership substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article ___ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Partnership's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this partnership and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Partnership will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the partners of the Partnership. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (i) no amendment to this partnership agreement may be made and (ii) the partnership shall not dissolve, liquidate or terminate without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]."

c. Indemnification

Indemnification of a partnership's partners should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Partnership in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the partnership must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary] , in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in this partnership agreement, the Partnership shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate partnership records and books of account from those of any affiliate.

3. It shall not commingle assets with those of any affiliate.

4. It shall conduct its own business in its own name.

5. It shall observe all partnership formalities.

6. It shall maintain financial statements separate from any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

8. It shall maintain an arm's length relationship with any affiliate.

9. It shall maintain adequate capital III light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity.

16. At all times have all of its general partners shall be special purpose corporate entities with at least two (2) Independent Directors."

For purposes of this Article___ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Partnership including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Partnership, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this partnership, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Independent Director " shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Partnership or any of its respective partners, members,

shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Partnership or managing member of the Partnership or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Partnership or of the managing member of the Partnership. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including. any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Dissolution

The limited partnership agreement should provide that the partnership will continue (and not dissolve) so long as a solvent general partner exists.

"Notwithstanding any provision or of any other document governing the formation, management or operation of the Partnership hereof to the contrary, the following shall govern: The Partnership shall not terminate solely as a consequence of the [Bankruptcy] of one or more of the general partners of the Partnership so long as there remains a solvent general partner of the Partnership."

In addition, dissolution of the partnership must not occur so long as the partnership remains mortgagor of the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Subject to applicable law, dissolution of the Partnership shall not occur so long as the Partnership remains mortgagor of the [Property] [use other term for the real estate if necessary]."

B. Corporate General Partner

a. Purpose

The corporation's purpose should be limited to acting as general partner of the limited partnership whose purpose, as set forth above, generally should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as a general partner of a limited partnership (the "Partnership") whose purpose is to acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____ , State of_____ (the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the General Corporation Law of_____ necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in or causing the partnership to engage in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's or partnership's assets, transfer of ownership assets, transfer of partnership interests, incurrence of additional debt, amendment of the corporation's articles of incorporation and amendment of the partnership agreement.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur or cause the Partnership to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Corporation shall not and shall not cause the Partnership to incur, assume, or guaranty any other indebtedness. For so long as the Partnership remains mortgagor of the Property, the Corporation shall not cause the Partnership to dissolve. The Corporation shall not and shall not cause the Partnership to consolidate or merge with or into any other entity or conveyor transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Partnership) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Corporation or Partnership substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article ___ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall

have been committed by this corporation or the Partnership and be continuing. For so long as a mortgage lien exists on the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Partnership to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the Property, (i) no amendment to this certificate of incorporation or to the Corporation's By Laws nor to the Partnership agreement of the Partnership may be made and (ii) neither the Corporation nor the Partnership shall be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the Property."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

c. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Partnership or the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the Corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an "Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital In light of its contemplated business operations.

10. It shall not guarantee or, except to the extent of its liability for the debt secured by such mortgage lien, become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purposes of this Article____ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with· respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

III. LIMITED LIABILITY COMPANY

If the Single Purpose Entity is a limited liability company, to be a special purpose entity, each managing member shall be a special purpose corporation. If such limited liability company has more than one managing member, then such limited liability company shall continue (and not dissolve) for so long as a solvent managing member exists. Consequently, both the Limited Liability Company's articles of organization and the certificate of incorporation of its outside member will have to meet certain requirements to be considered special purpose entities. Such requirements are as follows:

A. Articles of Organization

a. Purpose

The limited liability company's purpose should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Limited Liability Company, is to engage solely in the following activities:

1. To acquire that certain parcel of real property, together with all improvements located thereon, in the City of_____ State of_____ **[**_____interests in [insert Borrower or other applicable entity's name]] (the "Property").

2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

3. To exercise all powers enumerated in the Limited Liability Company Act of_____ necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The limited liability company shall be prohibited, except in certain circumstances from engaging in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the limited liability company's assets, transfer of limited liability company interests, incurrence of additional debt and amendment of the articles of organization.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: The Limited Liability Company shall only incur indebtedness in an amount necessary to acquire, operate and maintain the [Property] [use other term for the real estate if necessary]. For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Limited Liability Company shall not incur, assume, or guaranty any other indebtedness. The Limited Liability Company shall not consolidate or merge with or into any other entity or conveyor transfer its properties and

assets substantially as an entirety to any entity unless (i) the entity (if other than the Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article_____ and in Article [insert section setting forth Separateness —Covenants], and (c) shall expressly assume the due and punctual performance of the Limited Liability Company's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this limited liability company and be continuing. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], the Limited Liability Company will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the members of the Limited Liability Company. For so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary], (i) no amendment to these articles of organization may be made and (ii) the Limited Liability Company shall not be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]."

c. Indemnification

Indemnification of a limited liability company's partners should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the [Property] [use other term for the real estate if necessary] and shall not constitute a claim against the Limited Liability Company in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the limited liability company must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: For so long as any mortgage lien exists on the [Property] [use other term for the real estate if necessary], in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in these articles of organization, the Limited Liability Company shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliates and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate records and books of account from those of any affiliate.

3. It shall not commingle assets with those of any affiliate.

4. It shall conduct its own business in its own name.

5. It shall maintain financial statements separate from any affiliate.

6. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

7. It shall maintain an arm's length relationship with any affiliate.

8. It shall maintain adequate capital III light of its contemplated business operations.

9. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.

10. It shall not acquire obligations or securities of its partners, members or shareholders.

11. It shall use stationery, invoices and checks separate from any affiliate.

12. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.

13. It shall hold itself out as an entity separate from any affiliate.

14. It shall correct any known misunderstanding regarding its separate identity.

15. At all times all managing members shall be a special purpose corporate member with at least two (2) Independent Directors."

For purposes of this Article____ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Limited Liability Company including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Limited Liability Company, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this limited liability company, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Independent Director " shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Limited Liability Company or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Limited Liability Company or managing member of the Limited Liability Company or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Limited Liability Company or of the managing member of the Limited Liability Company. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Dissolution

To the extent permitted by tax law the articles of organization should provide that the vote of a majority in interest of the remaining members is sufficient to continue the life of the limited liability company. Ifsuch vote is not obtained, for so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary] the limited liability company may not be permitted to liquidate the [Property] [use other term for the real estate ifnecessary] withoutjirst obtaining approval of the mortgagee holding a jirst mortgage lien on the [Property] [use other term for the real estate ifnecessary]. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage lien has been paid in full or otherwise completely discharged."

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: To the extent permissible under applicable federal and state tax law, the vote of a majority in interest of the remaining members is sufficient to continue the life of the Limited Liability Company. If such vote is not obtained, for so long as a mortgage lien exists on the [Property] [use other term for the real estate if necessary] the Limited Liability Company shall not liquidate the [Property] [use other term for the real estate if necessary] without first obtaining approval of the mortgagee holding a first mortgage lien on the [Property] [use other term for the real estate if necessary]. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage liens has been paid in full or otherwise completely discharged.

f. Voting

When acting on matters subject to the vote of the members, notwithstanding that the limited liability company is not then insolvent, the members and the outside member must take into account the interest ofthe Limited Liability Company's creditors, as well as those ofthe members.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the following shall govern: When acting on matters subject to the vote of the members, notwithstanding that the Limited Liability Company is not then insolvent, all of the members shall take into account the interest of the Limited Liability Company's creditors, as well as those of the members."

B. Outside Corporate Member

a. Purpose

The outside corporate member's purpose should be limited to acting as corporate member of the limited liability company whose purpose, as set forth above, generally should be limited to owning and operating the mortgaged property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as the outside member of a limited liability company (the "Limited Liability Company") whose purpose is to acquire that certain parcel of real property, together with all improvements located thereon, in the City of _____ , State of_____ (the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the General Corporation Law of_____ necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

b. Certain Prohibited Activities

The corporation shall be prohibited, except in certain circumstances, from engaging in or causing the limited liability company to engage in certain activities, including various types of insolvency proceedings, dissolution, liquidation, consolidation, merger, sale of all or substantially all of the corporation's or the limited liability company's assets, transfer of ownership assets, transfer of limited liability company interests, incurrence of additional debt, amendment of the corporation's articles of incorporation and amendment of the articles of organization.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The Corporation shall only incur or cause the Limited Liability Company to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Corporation shall not and shall not cause the Limited Liability Company to incur, assume, or guaranty any other indebtedness. The Corporation shall not and shall not cause the Limited Liability Company to consolidate or merge with or into any other entity or conveyor transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer of the

properties and assets of the Corporation or Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article _____ and in Article [insert section setting forth Separateness Covenants], and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation or the Limited Liability Company and be continuing. For so long as a mortgage lien exists on the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Limited Liability Company to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on the Property, without first obtaining approval of the mortgagee holding a first mortgage lien on the Property (i) no material amendment to this certificate of incorporation or to the Corporation's By Laws nor to the articles of organization of the Limited Liability Company may be made and (ii) neither the Corporation nor the Limited Liability Company shall dissolve, liquidate or terminate without first obtaining approval of the mortgagee holding a first mortgage lien on the Property."

"The Board of Directors may not take any action requiring the unanimous affirmative vote of 100% of the members of the Board of Directors unless all directors including the Independent Directors shall have participated in such vote."

c. Indemnification

Indemnification of a corporation's directors and officers should be fully subordinated to obligations respecting the Property.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Limited Liability Company or the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations."

d. Separateness Covenants

In order to demonstrate that it is a bankruptcy remote entity not at risk of having its assets substantively consolidated with those of another entity, the corporation must observe certain covenants designed to make evident the special purpose entity's separateness from its affiliates.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities. The Board of Directors shall include at least two (2) individuals who are Independent Directors. As used herein, an " Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or managing member of the Corporation or any of their respective partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation or of the managing member of the Corporation. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall maintain adequate capital In light of its contemplated business operations.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

11. It shall not acquire obligations or securities of its partners, members or shareholders.

12. It shall use stationery, invoices and checks separate from its parent and any affiliate.

13. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate or make any loans or advances to any other person.

14. It shall hold itself out as an entity separate from its parent and any affiliate.

15. It shall correct any known misunderstanding regarding its separate identity."

For purpose of this Article __ , the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the Corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

e. Voting

When voting on matters concerning the limited liability company, notwithstanding that the limited liability company is not then insolvent, the Corporation must take into account the interest of the Limited Liability Company's creditors, as well as those of its members.

"Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: When voting on matters concerning the Limited Liability Company, notwithstanding that the Limited Liability Company is not then insolvent, the Corporation shall take into account the interest of the Limited Liability Company's creditors, as well as those of its members."

IV. OTHER STRUCTURES

The foregoing provisions do not exhaustively contemplate all ownership structures for a mortgaged property. Situations involving ownership structures not specifically contemplated by the provisions set forth on this Exhibit C shall nevertheless require Single Purpose Entities substantively to comply with the requirements to these provisions, modified as appropriate to accommodate the ownership structure in question.

EXHIBIT D

ENFORCEABILITY OPINION REQUIREMENTS

1. The Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Opinion shall be given by a professional law firm selected by Borrower and reasonably acceptable to Lender.

3. The Opinion shall be in form and substance acceptable to Lender and shall be given in relation to Borrower, Guarantor, Manager and any other relevant party to the Loan (each a " Loan Party"). Depending on the nature of the transaction, the Opinion shall address the applicable law of the State of New York, the State where the Property is located and each State where any Loan Party is organized (collectively, the "Relevant States"). To the extent that the Property is located in a jurisdiction outside of the State of New York and/or any Loan Party is organized under a jurisdiction outside the States of New York or Delaware, the appropriate opinions below should be given by local counsel. The Opinion shall be given on the basis of an examination of an executed original of each completed Loan Document in addition to such other documents or instruments counsel deems relevant.

4. The Opinion shall contain the following opinions:

Opinions with respect to the law of the State of Formation or Organization of the Loan Parties

(a) Each Loan Party is a [*Describe Legal Form*] duly organized, validly existing and in good standing under the laws of the State of [*State of Organization*] and is authorized to do business and in good standing in the State of [*State of Organization*].

(b) Each Loan Party has the requisite power to own its properties and to carry on its business as now being conducted and to enter into the transactions covered by the Loan Documents.

(c) The execution and delivery by each Loan Party of each Loan Document to which it is a party has been duly authorized by all necessary partnership, company and/or corporate action, as applicable. To the extent a party thereto, the Loan Documents have been duly executed and delivered by each Loan Party.

(d) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party does not:

(i) conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, the partnership agreement, partnership certificate, articles of incorporation, by-laws, trust agreement or trust certificate, as applicable, of such Loan Party;

(ii) contravene any law, statute or regulation of the United States of America or the *[State of Organization]* or any agency or political subdivision of either thereof;

(iii) violate any order, writ, injunction, or decree of which, after due inquiry, counsel has actual knowledge, issued by any court or governmental authority of the United States of America or the *[State of Organization]* or any agency or political subdivision of either thereof to which such Loan Party is subject; or

(iv) conflict with or result in any breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien other than the lien of the Loan Documents upon any of the assets or properties of such Loan Party pursuant to the terms of any material indenture, mortgage, deed of trust, agreement, contract or instrument to which such Loan Party is a party or by which it or any of its assets or properties is bound.

(e) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of *[Relevant State]* or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(f) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(g) To the extent the State of *[State of Organization]* UCC is applicable to the authorization of the Financing Statement, pursuant to the provisions of the Loan Agreement and the Security Instrument, Borrower has authorized the filing of the Financing Statement for purposes of Section 9-509 of the State of *[State of Organization]* UCC.

(h) To the extent the State of *[State of Organization]* UCC is applicable, the financing Statement includes not only all of the types of information required by Section 9-502(a) of the State of *[State of Organization]* UCC but also the types of information without which the Filing Office may refuse to accept the Financing Statement pursuant to Section 9-516 of the State of *[State of Organization]* UCC.

(i) To the extent the State of *[State of Organization]* UCC is applicable, the security interest of the Secured Party will be perfected in Borrower's rights in all UCC Collateral upon the later of the attachment of the security interest and the filing of the Financing Statement in the Filing Office; provided, however, we express no opinion with respect to (i) money, (ii) deposit accounts, (iii) letter of credit rights, (iv) goods covered by a certificate of title statute,

(v) as-extracted collateral, timber to be cut, or (vi) any property subject to a statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-3 10(a) of the State of *[State of Organization]*."UCC Collateral" means the portion of the Property (as defined in the Security Instrument), the Rate Cap Collateral, the Account Collateral (as defined in the Loan Agreement) and the Collateral Accounts (as defined in the Account Agreement) to the extent the UCC governs a security interest in such collateral.

(j) You have asked whether Borrower is a "registered organization" as such term is defined in Section 9-1 02(a)(70) of the State of *[State of Organization]* UCC. Pursuant to Section 9-102(a)(70) of the State of *[State of Organization]* UCC, a "registered organization" must be (i) organized solely under the laws of a single State (or the United States) and (ii) the State (or the United States) must maintain a public record showing the organization to have been organized.

Opinions with respect to New York Law

(a) To the extent governed by New York law and to the extent a party thereto, the Loan Documents are the legal, valid and binding obligations of each Loan Party, enforceable against such Loan Party in accordance with their terms.

(b) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party does not:

(i) contravene any law, statute or regulation of the United States of America or the State of New York or any agency or political subdivision of either thereof;

(ii) violate any order, writ, injunction, or decree of which, after due inquiry, counsel has actual knowledge, issued by any court or governmental authority of the United States of America or the State of New York or any agency or political subdivision of either thereof to which such Loan Party is subject; or

(iii) conflict with or result in any breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien other than the lien of the Loan Documents upon any of the assets or properties of such Loan Party pursuant to the terms of any material indenture, mortgage, deed of trust, agreement, contract or instrument to which such Loan Party is a party or by which it or any of its assets or properties is bound.

(c) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of New York or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(d) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual

knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents.

(e) The payment by Borrower and receipt by Lender of all principal and interest will not violate the usury laws of the State of New York or otherwise constitute unlawful interest.

(f) The provisions of the Loan Agreement and the Security Instrument are effective to create, in favor of Lender to secure the obligations purported to be secured thereby, a valid security interest in Borrower's rights in the UCC Collateral.

(g) Under New York UCC, the provisions of the Account Agreement are effective to perfect the security interest of Lender in Borrower's rights in the Collateral Accounts (as defined in the Account Agreement).

Opinions with respect to the law of States in which the Property is located

(a) Each Loan Party is authorized to do business and in good standing in the State of [*Relevant State*].

(b) To the extent governed by the laws of the State of [*Relevant States*], the Security Instrument and the Assignment of Leases are the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms.

(c) The Security Instrument is in proper form so as to comply with recording requirements of the State of [*Relevant State*]. The Security Instrument creates in favor of Lender valid liens on the portion of the Property that are located in the State of [*Relevant States*], securing payment of the Obligations (as defined in the Security Instrument), and no further action will be required for the valid creation of such liens. Upon recordation in the office of the [*Recording Office*] the Security Instrument will provide constructive notice of the terms thereof and the liens created thereby to third parties acquiring interests in the portion of the Property that are located in the State of [*Relevant States*] subsequent to such recordation.

(d) The Assignment of Leases is in proper form so as to comply with the recording requirements of the State of [*Relevant States*]. At the time the Assignment of Leases is delivered to the Recording Office for recording, it will take effect as to all creditors and subsequent purchasers for a valuable consideration without notice, and it shall be entitled to priority over any other similar instrument delivered to said Recording Office for recording after that time, in the absence of actual notice.

(e) Pursuant to the provisions of the Security Instrument Borrower has authorized the filing of the Fixture Financing Statement identifying the Fixture Collateral for purposes of Section 9-509 of the [*Relevant States*] UCC. "Fixture Collateral " means that portion of the UCC Collateral which consists of "fixtures" (as defined in Article 9 of the UCC) to the extent the UCC governs a security interest in such collateral.

(f) The Fixture Financing Statement includes not only all the types of information required by Section 9-502(a) and 9-502(b) of the *[Relevant States]* UCC but also the types of information without which the Fixture Filing Office may refuse to accept the Fixture Financing Statement pursuant to Section 9-516 of the State of *[Relevant States]* UCC.

(g) Under the *[Relevant States]* UCC, the security interest of the Secured Party will be perfected in Borrower's rights in any Fixture Collateral located on the real property described on Schedule 1 to the Fixture Financing Statement upon the later of the attachment of the security interest and the filing of the Fixture Financing Statement in the Fixture Filing Office.

(h) Borrower has paid all recording tax due in connection with the recording of the Security Instrument and the Assignment of Leases. No additional deed of trust recording, intangibles tax, documentary stamp tax or similar taxes or charges, other than nominal recordation or filing fees, are required to be paid as a condition of the legality of enforceability of the Security Instrument or the Assignment of Leases.

(i) The State of [*Relevant States*] has no law pursuant to which a lien against any assets or properties of Borrower (whether real, personal, mixed, tangible or intangible) superior to the lien created by the Security Instrument could arise as a result of a violation of environmental laws or regulations of such State. No environmental law or regulation of the State of [*Relevant States*] would require any remedial or removal action or certification of nonapplicability as a condition to the granting of the Security Instrument, the foreclosure or other enforcement of the Loan Documents or the sale of any assets or properties of Borrower (whether real, personal, mixed, tangible or intangible) located in the State of [*Relevant States*].

(j) No order, consent, approval, license or authorization of, or filing, recording or registration with, any governmental or public body or authority of the United States of America or the State of *[Relevant States]* or any agency or political subdivision of either thereof is required in connection with the execution and delivery of any of the Loan Documents, the validity, binding effect or enforceability of any of the Loan Documents or the consummation of the transactions contemplated thereby.

(k) There are no actions, suits or proceedings by or before any court, governmental or regulatory authority or agency of which, after due inquiry, we have actual knowledge pending or threatened against or affecting any Loan Party or Borrower's rights with respect to the Property wherein an adverse ruling or decision, individually or collectively with other such actions, suits or proceedings, is reasonably likely (i) to affect materially and adversely the ability of any Loan Party to consummate the transactions contemplated by the Loan Documents or to perform its obligations under any of the Loan Documents, or (ii) to result in a challenge to the legality, validity, binding effect or enforceability of any of the Loan Documents

(l) If the Obligations (as defined in the Security Instrument) were to be governed by the laws of the State of *[Relevant States],* the payment by Borrower and receipt by Lender of all principal and interest will not violate the usury laws of the State of *[Relevant States]* or otherwise constitute unlawful interest.

(m) A federal court sitting in the State of *[Relevant States]* and applying the conflict of law rules of the State of *[Relevant States],* and the state courts in the State of *[Relevant States],* would give effect to the choice of law provisions contained in the Loan Documents. If counsel is not able to give this opinion as an unqualified opinion, an opinion that the Loan Agreement and Note would be enforceable under the law of the State of *[Relevant States]* if such law were held to apply will be required.

(n) The operation of any term of the Loan Documents, including, without limitation, the terms regarding late charges, default interest or prepayment premiums, or the lawful exercise of any right thereunder, shall not render the Loan Documents unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense.

5. The Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any servicer of the Loan, (iii) any purchaser of the Loan or any portion thereof in any Securitization, (iv) any Rating Agency involved in a Securitization of the Loan, (v) the issuer of securities in a Securitization of the Loan, and (vi) any trustee or servicer appointed in connection with a Securitization of the Loan.

EXHIBIT E

NON-CONSOLIDATION OPINION REQUIREMENTS

1. The Nonconsolidation Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Nonconsolidation Opinion shall be given by a professional law firm selected by Borrower and reasonably acceptable to Lender.

3. The Nonconsolidation Opinion shall be in form and substance acceptable to Lender and shall be given in relation to both Borrower and any other SPE Entity relevant to the Loan. The Nonconsolidation Opinion shall identify each entity (a "Relevant Entity") which owns more than a 49% direct or indirect interest in either Borrower and/or such SPE Entity. Depending on the circumstances and nature of the transaction structure, a non-affiliated entity, such as a third party property manager, shall be included as a Relevant Entity if required by the Rating Agencies.

4. The Nonconsolidation Opinion shall state that, in the event that any Relevant Entity were to be a debtor in a case under the Bankruptcy Code, it is counsel's opinion that, under present reported decisional authority and statutes applicable to federal bankruptcy cases, in a properly presented and argued case, a court would not, in the proper exercise of its equitable discretion, disregard the separate existence of Borrower or any SPE Entity so as to order substantive consolidation under the Bankruptcy Code of the assets and liabilities of such Relevant Entity with the assets and liabilities of either Borrower or any SPE Entity and treat such assets and liabilities as though either Borrower and such Relevant Entity or any SPE Entity and such Relevant Entity were one entity.

5. The Nonconsolidation Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any participant of Lender's interest in the Loan, (iii) any servicer of the Loan, (iv) any purchaser of the Loan or any portion thereof in any Securitization, (v) any Rating Agency involved in a Securitization of the Loan, (vi) the issuer of securities in a Securitization of the Loan, and (vii) any trustee or servicer appointed in connection with a Securitization of the Loan.

DELAWARE BANKRUPTCY OPINIONS

As a general rule, the following opinions are required with respect to any single-member Delaware limited liability companies (having independent members/managers) in the organizational structure:

1. An opinion of Delaware counsel that federal bankruptcy court would hold that Delaware law, and not federal law, governs the determination of what persons or entities have authority to file a voluntary bankruptcy petition on behalf of the limited liability company.

2. Opinions of Delaware counsel as follows:

a. The limited liability company agreement constitutes a legal, valid and binding agreement of its member, and is enforceable against such member, in accordance with its terms.

b. In order for a voluntary bankruptcy petition to be filed on behalf of the Company, the unanimous consent of all of the independent managers/members is required and the provision requiring such unanimous consent in the limited liability company agreement constitutes a legal, valid and binding agreement of the member, enforceable against the member, in accordance with its terms.

c. The bankruptcy or dissolution of the limited liability company's sole member will not, by itself, cause the limited liability company to be dissolved or its affairs to be wound up.

d. A judgment creditor of the member may not satisfy its claims against the member by asserting a claim against the assets of the limited liability company.

e. The limited liability company is a separate legal entity, and shall continue as such until the cancellation of the limited liability company certificate.

Contact information for a Delaware firm frequently retained by borrowers to obtain such opinions is set forth below:

RICHARDS, LAYTON & FINGER
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
Telephone: 302-658-6541
Facsimile: 302-658-6548
Fax Confirmation: 302-651-7796

Bernard J. Kelley
Telephone: 302-651-7674
Facsimile: 302-658-6548
E-mail: kelley@rlf.com

EXHIBIT F

COUNTERPARTY OPINION REQUIREMENTS

1. The Counterparty Opinion shall be delivered on the Closing Date and shall satisfy all applicable requirements of the Rating Agencies in relation thereto.

2. The Counterparty Opinion may be given by a professional law firm selected by Counterparty and reasonably acceptable to Lender or by in-house counsel for Counterparty.

3. The Counterparty Opinion shall be in form and substance acceptable to Lender and shall contain the following opinions:

(a) Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under the Interest Rate Cap Agreement and the Acknowledgment.

(b) The execution and delivery of the Interest Rate Cap Agreement and the Acknowledgment by Counterparty, and any other agreement which Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its Property.

(c) All consents, authorizations and approvals required for the execution and delivery by Counterparty of the Interest Rate Cap Agreement, the Acknowledgment and any other agreement which the Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance.

(d) The Interest Rate Cap Agreement, the Acknowledgment and any other agreement which Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by Counterparty and constitutes the legal, valid and binding obligation of Counterparty, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4. If a Interest Rate Cap Guaranty is delivered in connection with the Interest Rate Cap Agreement, the Counterparty Opinion shall contain the following additional opinions:

(a) Interest Rate Cap Guarantor is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation and has the organizational power and authority to execute and deliver, and to perform its obligations under, the Interest Rate Cap Guaranty.

(b) The execution and delivery of the Interest Rate Cap Guaranty by Interest Rate Cap Guarantor, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or bylaws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property.

(c) All consents, authorizations and approvals required for the execution and delivery by Interest Rate Cap Guarantor of the Interest Rate Cap Guaranty, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance.

(d) The Interest Rate Cap Guaranty, and any other agreement which Interest Rate Cap Guarantor has executed and delivered pursuant thereto, has been duly executed and delivered by Interest Rate Cap Guarantor and constitutes the legal, valid and binding obligation of Interest Rate Cap Guarantor, enforceable against Interest Rate Cap Guarantor in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

5. Depending on the nature of the transaction, the Counterparty Opinion shall contain such additional opinions on such other matters relating to the Interest Rate Cap Agreement, the Interest Rate Cap Guaranty and/or the Acknowledgment as Lender shall reasonably require, including, without limitation, the following additional opinions if the Counterparty or Interest Rate Cap Guarantor is a foreign entity:

(a) Jurisdiction where Counterparty and/or Interest Rate Cap Guarantor, as applicable, is located will respect and give effect to the choice of law provisions of the Interest Rate Cap Agreement and the Acknowledgment.

(b) A judgment obtained in the courts of the State of New York is enforceable in the jurisdiction where Counterparty and/or Interest Rate Cap Guarantor, as applicable, is located.

6. The Counterparty Opinion shall be addressed to Lender and its successors and assigns and shall state that it may be relied upon by (i) any assignee of Lender's interest in the Loan, (ii) any participant of Lender's interest in the Loan, (iii) any servicer of the Loan, (iv) any purchaser of the Loan or any portion thereof in any Securitization, (v) any Rating Agency involved in a Securitization of the Loan, (vi) the issuer of securities in a Securitization of the Loan, and (vii) any trustee or servicer appointed in connection with a Securitization of the Loan.

EXHIBIT G

FORM OF TENANT ESTOPPEL LETTER

_____, 20__

Column Financial, Inc.,
its successors and assigns
11 Madison Avenue
New York, New York 10010

Re:

Ladies and Gentlemen:

It is our understanding that you are about to make a loan to [_____], a [_____], the landlord, or successor-in-interest to the landlord under our lease, as evidenced by a loan agreement and secured by a mortgage on the captioned premises and, as a condition precedent thereof, you have required this certification by the undersigned.

The undersigned, as tenant under that certain lease made with_____, as landlord, dated_____[, which lease has been modified or amended as follows (list all modifications or amendments or, if none, so indicate) _____] (the "Lease"), hereby ratifies the Lease and certifies that:

1. the undersigned entered into occupancy of the premises described in the Lease on or about_____;

2. the lease commencement date was_____;

3. the square footage of the premises described in the Lease is_____;

4. the fixed rental in the monthly amount of $_____was payable from_____;

5. the percentage rental payable monthly is $_____;

6. there are no rent abatements or free rent periods now or in the future [other than_____];

7. the amount of the current monthly expense reimbursements due under the Lease is equal to $_____;

8. the Lease is in full force and effect and, except as indicated above, has not been assigned, modified, supplemented or amended in any way and the undersigned has no notice of any assignment, pledge or hypothecation by the landlord of the Lease or of the rentals thereunder;

9. a true and complete copy of the Lease (including all amendments, modifications, supplements, side letters, surrender, space reduction or rent abatement agreements applicable to such Lease) is attached hereto as Exhibit A;

10. the Lease represents the entire agreement between the parties with respect to the above space in the above-mentioned building;

11. the term of the Lease [, as currently extended by means of the exercise of certain options contained therein,] expires on_____;

12. all construction and other obligations of a material nature to be performed by the landlord under the Lease have been satisfied, except as follows: (if none, so indicate);

13. any payments by the landlord to the undersigned for tenant improvements which are required under the Lease have been made;

14. on this date there are no existing defenses or offsets which the undersigned has against the enforcement of the Lease by the Landlord and the undersigned has no knowledge of any event which with the giving of notice, the passage of time or both would constitute a default under said Lease;

15. the undersigned is not entitled to any offsets, abatements, deductions or otherwise against the rent payable under the Lease from and after the date hereof, except as follows: (if none, so indicate);

16. no rental (including expense reimbursements), other than for the current month, has been paid in advance;

17. the amount of the security deposit presently held under the Lease is $_____(if none, so indicate);

18. the rentals (including expense reimbursements) under the Lease have been paid through the month of _____.

This estoppel certificate is binding upon the undersigned and its successors and assigns and may be relied upon by you and your successors and assigns and, if the mortgage loan becomes the subject of a securitization, may also be relied upon by the credit rating agency, if any, rating the securities collateralized by the mortgage loan as well as any issuer of such securities, and any servicer and/or trustee acting in respect of such securitization.

Very truly yours,

_____

[INSERT NAME OF TENANT]

By: _____

Title:

EXHIBIT A

LEASE

EXHIBIT G - PAGE 4

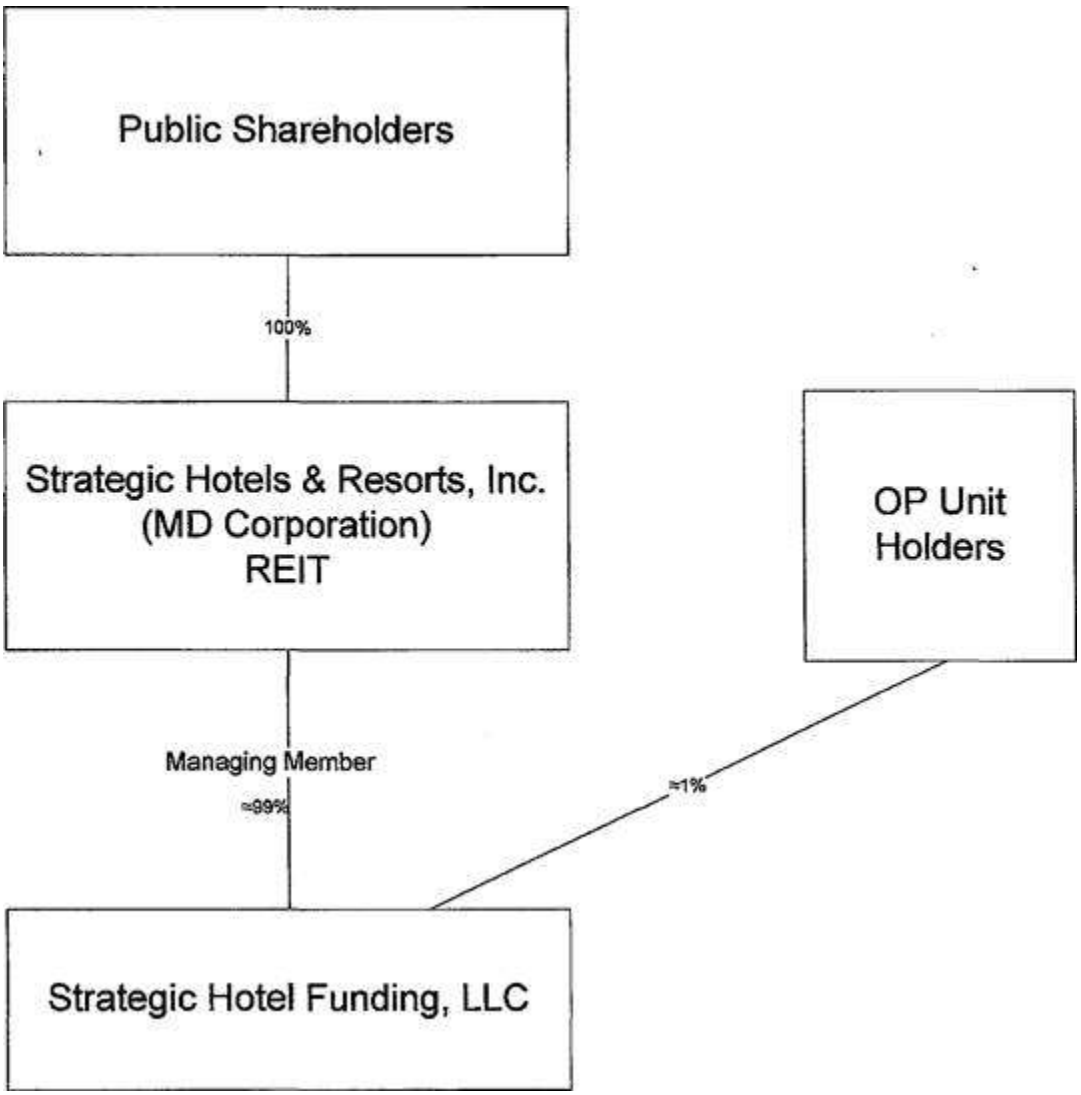
EXHIBIT H-1

BORROWER ORGANIZATIONAL STRUCTURE AT CLOSING

(attached hereto)

EXHIBIT H-1

Strategic Hotels & Resorts, Inc. and Subsidiaries



SHR as of 1/12/2007 1

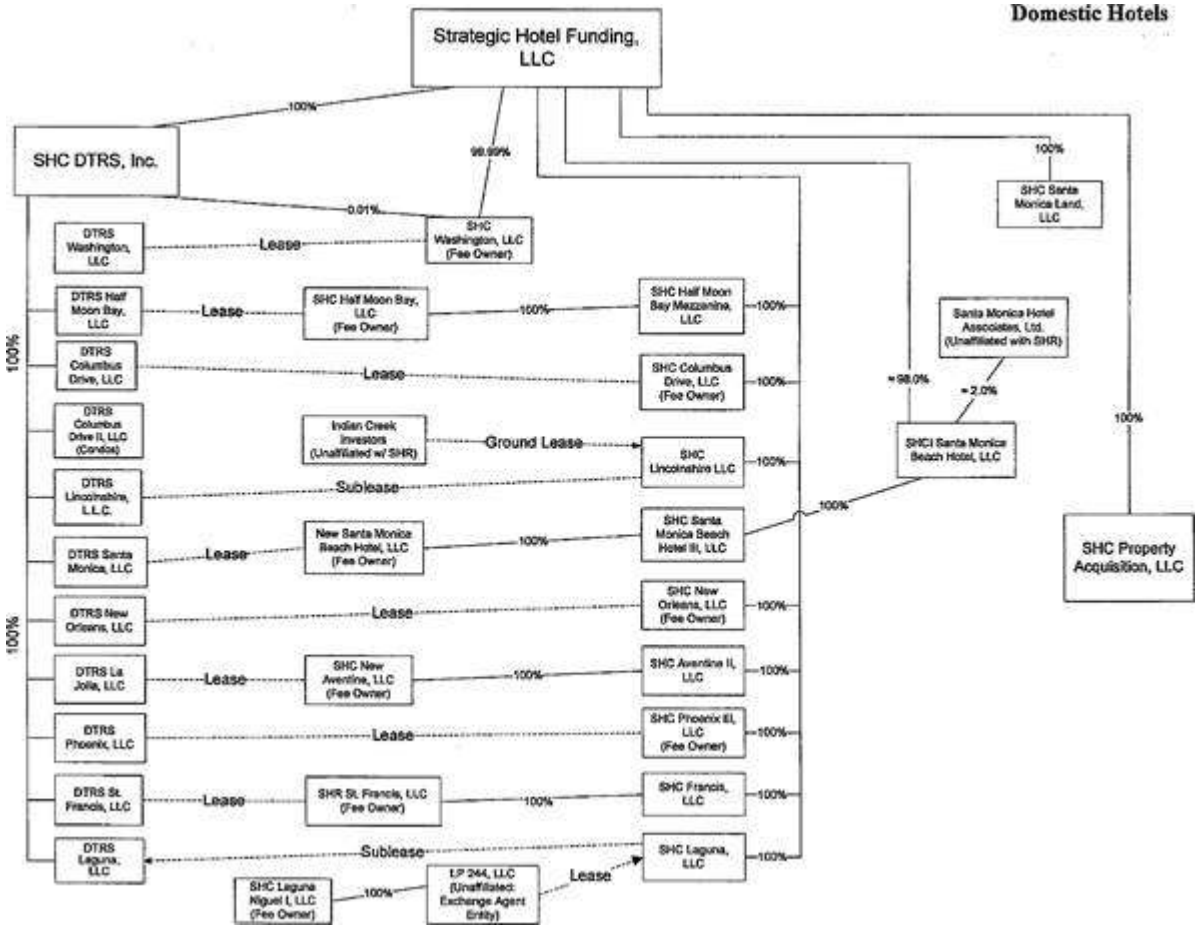

Domestic Hotels
Strategic Hotel Funding, LLC
SHC DTRS, Inc.
100%
99.99%
0.01%
100%
SHC Santa Monica Land, LLC
DTRS Washington, LLC
Lease
SHC Washington, LLC (Fee Owner)
DTRS Half Moon Bay, LLC
Lease
SHC Half Moon Bay, LLC (Fee Owner)
100%
SHC Half Moon Bay Mezzanine, LLC
100%
Santa Monica Hotel Associates, Ltd. (Unaffiliated with SHR)
DTRS Columbus Drive, LLC
Lease
SHC Columbus Drive, LLC (Fee Owner)
100%
~98.0%
~2.0%
DTRS Columbus Drive II, LLC (Condos)
Indian Creek Investors (Unaffiliated w/ SHR)
Ground Lease
SHC Lincolnshire LLC
100%
SHCI Santa Monica Beach Hotel, LLC
100%
DTRS Lincolnshire, L.L.C.
Sublease
DTRS Santa Monica, LLC
Lease
New Santa Monica Beach Hotel, LLC (Fee Owner)
100%
SHC Santa Monica Beach Hotel III, LLC
100%
SHC Property Acquisition, LLC
DTRS New Orleans, LLC
Lease
SHC New Orleans, LLC (Fee Owner)
100%
DTRS La Jolla, LLC
Lease
SHC New Aventine, LLC (Fee Owner)
100%
SHC Aventine II, LLC
100%
DTRS Phoenix, LLC
Lease
SHC Phoenix III, LLC (Fee Owner)
100%
DTRS St. Francis, LLC
Lease
SHR St. Francis, LLC (Fee Owner)
100%
SHC Francis, LLC
100%
DTRS Laguna, LLC
Sublease
SHC Laguna, LLC
100%
SHC Laguna Niguel I, LLC (Fee Owner)
100%
LP 244, LLC (Unaffiliated Exchange Agent Entity)
Lease

EXHIBIT H-2

INTENTIONALLY DELETED

EXHIBIT H-2

EXHIBIT I

INTEREST RATE CAP AGREEMENT REQUIREMENTS

- The form of cap agreement should be the 1992 ISDA Agreement (Multicurrency Cross Border or Local Currency Single Jurisdiction) subject to the 2000 Definitions.
- Once the cap premium is paid by Borrower, it cannot default. (Paragraph 4 of the May 1989 ISDA Addendum to Schedule to Interest Rate and Currency Exchange Agreement or similar language must be incorporated by reference).
- "Cross Default" provision of Section 5(a)(vi) of the ISDA Master Agreement will not apply. Grace and cure periods in Section 5 of the ISDA Master Agreement will either (i) not apply or (ii) if applicable, any grace or cure periods must expire in time to ensure the availability of cap payments by cap provider on a timely basis for distribution to the holders of the rated securities.
- "Credit Event Upon Merger" provisions of Section 5(b)(iv) of the ISDA Master Agreement will not apply.
- "Automatic Early Termination" provision in Section 6(a) of the ISDA Master Agreement will not apply.
- Termination Events under Sections 5(b)(ii) and 5(b)(iii) of the ISDA Master Agreement either (i) will only constitute termination events exercisable by Borrower against cap provider or (ii) if exercisable by both parties, at the time of any event triggering a termination event under Sections 5(b)(ii) and/or 5(b)(iii), cap provider must either (a) transfer the cap to a replacement cap provider acceptable to each Rating Agency at cap provider's sole cost and expense, or (b) continue to perform its obligations under the cap agreement including, without limitation, the obligation to unconditionally "gross up" in the event that a withholding tax is imposed on payments being made by the cap provider.
- Borrower shall be precluded from payment of any out of pocket expenses required under Section 11 of the ISDA Master Agreement and incurred by cap provider related to the enforcement and protection of cap provider's rights under the cap agreement.
- Market Quotation and Second Method will be used for the purpose of computing amounts payable on early termination with a provision for loss if Market Quotation is not available.
- The parties shall be deemed to have no Affiliates for purposes of the ISDA Master Agreement.
- "Specified Entities" will not apply for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(iv) of the ISDA Master Agreement.
- Transaction will be governed by New York law.
- For the purposes of Section 6(e) of the ISDA Master Agreement, set off and counterclaim will not apply and all payments by cap provider shall be made without set off or counterclaim.

- If this transaction will be guaranteed by a parent to provide a required rating, the guarantee must be unconditional, irrevocable, continuing and a guarantee of payment, not collection, and otherwise satisfy Rating Agency requirements. Any act or omission of such guarantor that would constitute an event of default by the cap provider (other than a cross default) under Section 5 of the ISDA Master Agreement will constitute an event of default under the ISDA Master Agreement.
- The definition of LIBOR will be USD LIBOR BBA and must match the definition of LIBOR in the loan agreement.
- The definition of Business Day must match the definition of Business Day in the loan agreement. LIBOR must be determined on the LIBOR Determination Date.
- Payments must be made by the cap provider on or prior to the applicable Payment Date in respect of a period corresponding to the applicable Interest Period.
- The Termination Date of the cap must be no earlier than the last day of the Interest Period in which the Maturity Date under the loan agreement occurs.
- The Day Count Fraction in the cap must match that contained in the loan agreement.
- The Notional Amount in the cap must match the principal amount of the loan as of the date of the loan agreement.
- US Dollars are selected as the Termination Currency under the cap.
- Section 2(c)(ii) of the ISDA Master Agreement will apply to the Transaction.
- Cap provider and Borrower will represent that it is not a multi branch party.
- Cap provider will covenant that it will not petition Borrower into bankruptcy (or join in any such petition) for 365 days after all outstanding rated securities have been paid in full.
- If the ISDA Master Agreement (Multicurrency Cross Border) ("Cross Border Agreement") is utilized, additional scheduled items and provisions to address "indemnifiable taxes" and other related issues present in cross border transactions must be incorporated:
    - Section 2(d)(i)(4) of the Cross Border Agreement must be amended to require the cap provider to unconditionally "gross up" in the event that a withholding tax is imposed on payments being made by the cap provider.
    - The definition of "indemnifiable tax" must cover any and all withholding tax.
    - Section 2(d)(i)(4) of the Cross Border Agreement will be deleted such that cap provider is not excused from having to "gross up" due to Borrower's breach of a tax representation or failure to notify cap provider of a breach of a tax representation and (ii) Borrower makes no tax representations in the cap agreement or schedule.
    - Section 2(d)(ii) of the Cross Border Agreement must be amended to provide that there is no obligation by Borrower to make payments to the cap provider for any payments made by the cap provider without deduction for taxes (for which there is no obligation to gross up).

- Section 4(e) of the Cross Border Agreement must be amended to provide that there are no payment obligations by Borrower to cap provider for any indemnification resulting from stamp registration or other documentary tax levied by Borrower's taxing authority on the cap provider.

- Cap provider and any guarantor must provide a New York opinion of counsel satisfactory to the Rating Agencies regarding the cap. If cap provider or its guarantor is a non U.S. entity, a foreign opinion must be provided as well. The opinion(s) must include customary legal opinions including, without limitation, an opinion delivered by outside counsel opining that the cap agreement (including the confirmation, ISDA Master Agreement, schedule and collateral assignment agreement) is legal/valid/binding and enforceable against the cap provider and any guarantor.]

EXHIBIT J

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

Reference is made to that certain Loan and Security Agreement, dated as of _____200__ (as amended, supplemented or otherwise modified from time to time, the **Loan Agreement**) between [_____] (**Borrower**), and Column Financial, Inc., a Delaware corporation (**Lender**), and that certain Note, dated as of _____, 200__ (the **Note**), made by Borrower in favor of Lender. Terms defined in the Loan Agreement and not otherwise defined herein are used herein with the same meaning.

The **Assignor** and the **Assignee** referred to on Schedule 1 attached hereto agree as follows:

1. The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, an interest in and to the Assignor's rights and obligations under the Note and the Loan Agreement as of the date hereof equal to the percentage interest specified on Schedule 1 attached hereto. After giving effect to such sale and assignment, the amount of the Loan and the Note owing to the Assignee will be as set forth on Schedule 1 attached hereto.

2. The Assignor (i) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with the Loan Documents or any other instrument or document furnished pursuant thereto; (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Document or any other instrument or document furnished pursuant thereto; and (iv) attaches the Note or notes held by the Assignor and requests that the Lender exchange such Note or notes for a new note or notes payable to the order of the Assignee in an amount equal to the principal amount of the Loan assumed by the Assignee pursuant hereto or new notes payable to the order of the Assignee in an amount equal to the principal amount of the Loan assumed by the Assignee pursuant hereto and the Assignor in an amount equal to the principal amount of the Loan retained by the Assignor under the Note and the Loan Agreement, respectively, as specified on Schedule 1 attached hereto.

3. The Assignee (i) confirms that it has received a copy of the Note and the Loan Agreement, together with such financial statements and other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (ii) agrees that it will, independently and without reliance upon Lender or the Assignor based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Agreement or the Note; (iii) appoints and authorizes Lender to take such action as agent on its

behalf and to exercise such powers and discretion under the Loan Documents as are delegated to Lender by the terms thereof, together with such powers and discretion as are reasonably incidental thereto; and (iv) agrees that it will perform in accordance with their terms all of the obligations that by the terms of the Loan Agreement and the Note are required to be performed by it as an assignee of an interest therein.

4. Following the execution of this Assignment and Acceptance, it will be delivered to Lender for acceptance and recording. The effective date for this Assignment and Acceptance (the **Effective Date)** shall be the date of acceptance hereof by the Lender, unless otherwise specified on Schedule 1 attached hereto.

5. Upon such acceptance and recording by Lender, as of the Effective Date, (i) the Assignee shall be a party to the Loan Agreement and the Note and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of an assignee thereof, and (ii) the Assignor shall, to the extent provided in the Loan Agreement and this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Agreement and the Note.

6. Upon such acceptance and recording by Lender, from and after the Effective Date, Lender shall make all payments under the Loan Agreement and the Note or notes in respect of the interest assigned hereby (including, without limitation, all payments of principal, interest and commitment fees with respect thereto) to the Assignee. The Assignor and Assignee shall make all appropriate adjustments in payments under the Loan Agreement and the Note or notes for periods prior to the Effective Date directly between themselves.

7. This Assignment and Acceptance shall be governed by, and construed in accordance with, the laws of the State of New York.

8. This Assignment and Acceptance may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of Schedule 1 to this Assignment and Acceptance by telecopier shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance.

***

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment and Acceptance and Schedule 1 to this Assignment and Acceptance to be executed by their officers thereunto duly authorized as of the date specified on Schedule 1 .

Schedule 1

As to the Loan in respect of which an interest is being assigned:

Percentage interest assigned: ____ %

Aggregate outstanding principal amount of the Loan assigned: $ ____

Principal amount of Note payable to Assignee: $ ____

Principal amount of Note payable to Assignor: $ ____

Effective Date (if other than date of acceptance by Lender): _____ ,____

[NAME OF ASSIGNOR], as Assignor

By: _____
Name:
Title:

Dated: _____ ,____

[NAME OF ASSIGNOR], as Assignor

By: _____
Name:
Title:

Dated: _____ ,____

Accepted this___ day_____of,____
[NAME OF LENDER]

By: _____
Name:
Title:

EXHIBIT K

FORM OF
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

_____ ,
Tenant

AND

COLUMN FINANCIAL, INC.,
Lender

County: [_____]
Section: [_____]
Block: [_____]
Lot: [_____]

Premises:

Dated: as of_____,____

Record and return by mail to:
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
Attention: Frederic L. Altschuler, Esq.

SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made as of this___ day of_____, 200__ , between COLUMN FINANCIAL, INC., a Delaware corporation, having an address at 11 Madison Avenue, New York, New York 10010 (hereinafter called "Lender"), and_____, a_____, having an address at_____(hereinafter called "Tenant").

W I T N E S S E T H :

WHEREAS, by a lease (the " Original Lease") dated_____, 200__ between_____(hereinafter called "Landlord"), as landlord, and Tenant, as tenant, as amended by lease amendment[s] dated_____, 200__ , [_____, 200__ and_____, 200__] (the Original Lease, as so amended, is hereinafter the "Lease"), a memorandum of which Lease was dated_____and was recorded in_____in Reel_____ , Page___ , [add recording data for memoranda of amendments, if applicable], Landlord leased to Tenant certain premises located in _____(the "Premises") on the property described in Schedule "A" annexed hereto and made a part hereof (the "Property"); and

WHEREAS, Lender is about to make a loan to Landlord, which loan shall be secured by, among other things, a mortgage or deed of trust (which mortgage or deed of trust, and all amendments, renewals, increases, modifications, replacements, substitutions, extensions, spreaders and consolidations thereof and all re-advances thereunder and addictions thereto, is referred to as the "Security Instrument") encumbering the Property; and

WHEREAS, Lender and Tenant desire to confirm their understanding and agreement with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. The Lease, and all of the terms, covenants, provisions and conditions thereof (including, without limitation, any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Property, or any portion thereof) is, shall be and shall at all times remain and continue to be subject and subordinate in all respects to the lien, terms, covenants, provisions and conditions of the Security Instrument and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Tenant shall execute and deliver any additional instruments which Lender may reasonably require to effect such subordination.

2. So long as (i) Tenant is not in default (beyond any period given in the Lease to Tenant to cure such default) in the payment of rent, percentage rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this

Agreement and (iii) the Lease is in full force and effect: (a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease (except to the extent required so that Tenant's right to receive or set-off any monies or obligations owed or to be performed by any of Lender's predecessors-in-interest shall not be enforceable thereafter against Lender or any of Lender's successors-in-interest). Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Lender not to name or join Tenant as a party in a foreclosure proceeding with respect to the Security Instrument, Lender may so name or join Tenant without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

3. (A) After notice is given by Lender that the Security Instrument is in default and that the rentals under the Lease should be paid to Lender, Tenant will attorn to Lender and pay to Lender, or pay in accordance with the directions of Lender, all rentals and other monies due and to become due to Landlord under the Lease or otherwise in respect of the Premises. Such payments shall be made regardless of any right of set-off, counterclaim or other defense which Tenant may have against Landlord, whether as the tenant under the Lease or otherwise.

(B) In addition, if Lender (or its nominee or designee) shall succeed to the rights of Landlord under the Lease through possession or foreclosure action, delivery of a deed or otherwise, or another person purchases the Property or the portion thereof containing the Premises upon or following foreclosure of the Security Instrument or in connection with any bankruptcy case commenced by or against Landlord, then at the request of Lender (or its nominee or designee) or such purchaser (Lender, its nominees and designees, and such purchaser, and their respective successors and assigns, each being a " Successor-Landlord"), Tenant shall attorn to and recognize Successor-Landlord as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument that Successor-Landlord may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor-Landlord and Tenant upon all terms, conditions and covenants as are set forth in the Lease. If the Lease shall have terminated by operation of law or otherwise as a result of or in connection with a bankruptcy case commenced by or against Landlord or a foreclosure action or proceeding or delivery of a deed in lieu, upon request of Successor-Landlord, Tenant shall promptly execute and deliver a direct lease. with Successor-Landlord which direct lease shall be on substantially the same terms and conditions as the Lease (subject, however, to the provisions of clauses (i)-(v) of this paragraph 3(B)) and shall be effective as of the day the Lease shall have terminated as aforesaid. Notwithstanding the continuation of the Lease, the attornment of Tenant thereunder or the execution of a direct lease between Successor-Landlord and Tenant as aforesaid, Successor-Landlord shall not:

(i) be liable for any previous act or omission of Landlord under the Lease;

(ii) be subject to any off-set, defense or counterclaim which shall have theretofore accrued to Tenant against Landlord;

(iii) be bound by any modification of the Lease or by any previous prepayment of rent or additional rent made more than one (1) month prior to the date same was due which Tenant might have paid to Landlord, unless such modification or prepayment shall have been expressly approved in writing by Lender;

(iv) be liable for any security deposited under the Lease unless such security has been physically delivered to Lender or Successor-Landlord; and

(v) be liable or obligated to comply with or fulfill any of the obligations of the Landlord under the Lease or any agreement relating thereto with respect to the construction of, or payment for, improvements on or above the Premises (or any portion thereof), leasehold improvements, tenant work letters and/or similar items.

4. Tenant agrees that without the prior written consent of Lender, it shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, (b) tender a surrender of the Lease, (c) make a prepayment of any rent or additional rent more than one (l) month in advance of the due date thereof, or (d) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such consent shall be void as against the holder of the Security Instrument.

5. (A) Tenant shall promptly notify Lender of any default by Landlord under the Lease and of any act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction.

(B) In the event of a default by Landlord under the Lease which would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or to claim a partial or total eviction, or in the event of any other act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease, Tenant shall not exercise such right (i) until Tenant has given written notice of such default, act or omission to Lender and (ii) unless Lender has failed, within sixty (60) days after Lender receives such notice, to cure or remedy the default, act or omission or, if such default, act or omission shall be one which is not reasonably capable of being remedied by Lender within such sixty (60) day period, until a reasonable period for remedying such default, act or omission shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Security Instrument to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under the Lease or otherwise, after similar notice, to effect such remedy), provided that Lender shall with due diligence give Tenant written notice of its intention to and shall commence and continue to, remedy such default, act or omission. If Lender cannot reasonably remedy a default, act or omission of Landlord until after Lender obtains possession of the Premises, Tenant may not terminate or cancel the Lease or claim a partial or total eviction by reason of such default, act or omission

until the expiration of a reasonable period necessary for the remedy after Lender secures possession of the Premises. To the extent Lender incurs any expenses or other costs in curing or remedying such default, act or omission, including, without limitation, attorneys' fees and disbursements, Lender shall be subrogated to Tenant's rights against Landlord.

(C) Notwithstanding the foregoing, Lender shall have no obligation hereunder to remedy such default, act or omission.

6. To the extent that the Lease shall entitle Tenant to notice of the existence of any mortgage and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Lender.

7. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges and remedies of Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Lender were named therein as Landlord.

8. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor-Landlord shall acquire title to the Property or the portion thereof containing the Premises, Successor-Landlord shall have no obligation, nor incur any liability, beyond Successor-Landlord's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor-Landlord in the Property for the payment and discharge of any obligations imposed upon Successor-Landlord hereunder or under the Lease, and Successor-Landlord is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgement which may be obtained or secured by Tenant against Successor-Landlord, Tenant shall look solely to the estate or interest owned by Successor-Landlord in the Property, and Tenant will not collect or attempt to collect any such judgement out of any other assets of Successor-Landlord.

9. Notwithstanding anything to the contrary in the Lease, Tenant agrees for the benefit of Landlord and Lender that, except as permitted by, and fully in accordance with, applicable law, Tenant shall not generate, store, handle, discharge or maintain in, on or about any portion of the Property, any asbestos, polychlorinated biphenyls, or any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such (including, but not limited to, pesticides and petroleum products if they are defined, determined or identified as such) in any federal, state or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of any thereof, including any judicial or administrative interpretation of any thereof, including any judicial or administrative orders or judgments.

10. If the Lease provides that Tenant is entitled to expansion space, Successor-Landlord shall have no obligation nor any liability for failure to provide such expansion space if a prior landlord (including, without limitation, Landlord), by reason of a lease or leases entered into by such prior landlord with other tenants of the Property, has precluded the availability of such expansion space.

11. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.

12. (A) Tenant acknowledges and agrees that this Agreement satisfies and complies in all respects with the provisions of Article___ of the Lease and that this Agreement supersedes (but only to the extent inconsistent with) the provisions of such Article and any other provision of the Lease relating to the priority or subordination of the Lease and the interests or estates created thereby to the Security Instrument.

(B) Tenant agrees to enter into a subordination, non-disturbance and attornment agreement with any lender which shall succeed Lender as lender with respect to the Property, or any portion thereof, provided such agreement is substantially similar to this Agreement. Tenant does herewith irrevocably appoint and constitute Lender as its true and lawful attorney-in-fact in its name, place and stead to execute such subordination, non-disturbance and attornment agreement, without any obligation on the part of Lender to do so. This power, being coupled with an interest, shall be irrevocable as long as the Indebtedness secured by the Security Instrument remains unpaid. Lender agrees not to exercise its rights under the preceding two sentences if Tenant promptly enters into the subordination, non-disturbance and attornment agreement as required pursuant to the first sentence of this subparagraph (B).

13. (A) Any notice required or permitted to be given by Tenant to Landlord shall be simultaneously given also to Lender, and any right to Tenant dependent upon notice shall take effect only after notice is so given. Performance by Lender shall satisfy any conditions of the Lease requiring performance by Landlord, and Lender shall have a reasonable time to complete such performance as provided in Paragraph 5 hereof.

(B) All notices or other communications required or permitted to be given to Tenant or to Lender pursuant to the provisions of this Agreement shall be in writing and shall be deemed given only if mailed by United States registered mail, postage prepaid, or if sent by nationally recognized overnight delivery service (such as Federal Express or United States Postal Service Express Mail), addressed as follows: to Tenant, at the address first set forth above, Attention: _____; to Lender, at the address first set forth above, Attention:_____and General Counsel, with a copy to Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, New York 10281, Attention: Frederic L. Altschuler, Esq.; or to such other address or number as such party may hereafter designate by notice delivered in accordance herewith. All such notices shall be deemed given three (3) business days after delivery to the United States Post office registry clerk if given by registered mail, or on the next business day after delivery to an overnight delivery courier.

14. This Agreement may be modified only by an agreement in writing signed by the parties hereto, or their respective successors-in-interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The term "Lender" shall mean the then holder of the Security Instrument. The term "Landlord" shall mean the then holder of the landlord's interest in the Lease. The term " person" shall mean

an individual, joint venture, corporation, partnership, trust, limited liability company, unincorporated association or other entity. All references herein to the Lease shall mean the Lease as modified by this Agreement and to any amendments or modifications to the Lease which are consented to in writing by Lender. Any inconsistency between the Lease and the provisions of this Agreement shall be resolved, to the extent of such inconsistency, in favor of this Agreement.

15. Tenant hereby represents to Lender as follows:

(a) The Lease is in full force and effect and has not been further amended.

(b) There has been no assignment of the Lease or subletting of any portion of the premises demised under the Lease.

(c) There are no oral or written agreements or understandings between Landlord and Tenant relating to the premises demised under the Lease or the Lease transaction except as set forth in the Lease.

(d) The execution of the Lease was duly authorized and the Lease is in full force and effect and to the best of Tenant's knowledge there exists no default (beyond any applicable grace period) on the part of either Tenant or Landlord under the Lease.

(e) There has not been filed by or against nor to the best of the knowledge and belief of Tenant is there threatened against Tenant, any petition under the bankruptcy laws of the United States.

(f) To the best of Tenant's knowledge, there is no present assignment, hypothecation or pledge of the Lease or rents accruing under the Lease by Landlord, other than pursuant to the Security Instrument.

16. Whenever, from time to time, reasonably requested by Lender (but not more than three (3) times during any calendar year), Tenant shall execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications, in a form acceptable to Tenant, of all of the matters set forth in Paragraph 15 above, and any other information the Lender may reasonably require to confirm the current status of the Lease.

17. BOTH TENANT AND LENDER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

18. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

COLUMN FINANCIAL, INC.

By: _____
Name:
Title:

[TENANT]

By: _____
Name:
Title:

AGREED AND CONSENTED TO:

LANDLORD:

[_____]

By: _____
Name:
Title:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the_____ day of_____ in the year 200__ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the_____ day of_____ in the year 200__ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the_____ day of_____ in the year 200__ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the_____ day of_____ in the year 200__ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

[Notary Seal] My commission expires:

SCHEDULE A

Legal Description of Property

EXHIBIT K - PAGE 11

EXHIBIT L

INTENTIONALLY DELETED

EXHIBIT L

EXHIBIT M

COUNTERPARTY ACKNOWLEDGMENT

_____**(Counterparty)** has entered into a Confirmation and Agreement (together with the confirmation and schedules relating thereto, collectively, the **Interest Rate Cap Agreement),** dated as of_____200_ , between the Counterparty Interest Rate Cap transaction with_____**(Borrower).** Attached hereto, is a true, correct and complete copy of the Interest Rate Cap Agreement. Counterparty acknowledges that it has been informed that Borrower, pursuant to a Loan and Security Agreement, dated_____(the **Loan Agreement)** has pledged and collaterally assigned its rights under the Interest Rate Cap Agreement to Column Financial, Inc., a Delaware corporation (together with its successors and assigns, **Lender).** Counterparty hereby consents to such pledge and assignment and agrees that it will make any payments to become payable under or pursuant to the Interest Rate Cap Agreement directly to an account at _____entitled " _____f/b/o Column Financial, Inc., as secured party, Collection Account" (Account Number_____), ABA #_____or to such other account designated in writing by Lender. Counterparty further agrees that all such payments shall be made without set-off, deduction, defense or counterclaim. Counterparty acknowledges that in the event it shall fail to make such payments directly to such account, it shall be deemed to have not made such payment pursuant to the Interest Rate Cap Agreement. Counterparty also agrees that it will not modify, amend or terminate the Interest Rate Cap Agreement without Lender's consent.

[_____]

By: _____
Name:
Title:

EXHIBIT M

EXHIBIT N

INTENTIONALLY DELETED

EXHIBIT N

EXHIBIT O

INTENTIONALLY DELETED

EXHIBIT O

EXHIBIT P

INTENTIONALLY DELETED

EXHIBIT P

EXHIBIT Q

INTENTIONALLY DELETED

EXHIBIT Q

EXHIBIT R

ARTICLE 8 "OPT IN" LANGUAGE

Section ___ . Shares and Share Certificates

a. Shares . A [Member's limited liability company interest in the Company] [Partner's limited partnership interest in the Partnership] shall be represented by the Shares issued to such [Member by the Company] [Partner of the Partnership]. All of a [Member's][Partner's] Shares, in the aggregate, represent such [Member's] [Partner's] entire [Partner by the Partnership] [limited liability company interest in the Company [limited partnership interest in the Partnership]. The [Member] [Partner] hereby agrees that its interest in the [Company] [Partnership] and in its Shares shall for all purposes be personal property. A [Member] [Partner] has no interest in specific [Company] [Partnership] property. "Share" means a [limited liability company interest] [limited partnership interest] in the [Company] [Partnership] held by a [Member] [Partner].

b. Share Certificates .

i. Upon the issuance of Shares to any [Member] [Partner] in accordance with the provisions of this Agreement, the [Company][Partnership] shall issue one or more Share Certificates in the name of such [Member][Partner]. Each such Share Certificate shall be denominated in terms of the number of Shares evidenced by such Share Certificate and shall be signed by the [Member] [Partner] on behalf of the [Company] [Partnership]. "Share Certificate" means a non-negotiable certificate issued by the [Company] [Partnership] substantially in the form of Schedule hereto, which evidences the ownership of one or more Shares. Each Share Certificate shall bear the following legend: "This certificate evidences an interest in_____and shall be a security interest for purposes of Article 8 of the Uniform commercial Code of the State of Delaware and the Uniform Commercial Code of any other Jurisdiction." This provision shall not be amended, and no such purported amendment to this provision shall be effective until all outstanding certificates have been surrendered for cancellation.

ii. The [Company] [Partnership] shall issue a new Share Certificate in place of any Share Certificate previously issued if the holder of the Shares represented by such Share Certificate, as reflected on the books and records of the [Company] [Partnership].

(1) makes proof by affidavit, in form and substance satisfactory to the [Company] [Partnership], that such previously issued Share Certificate has been lost, stolen or destroyed.

(2) requests the issuance of a new Share Certificate before the [Company] [Partnership] has notice that such previously issued Share Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(3) if requested by the [Company] [Partnership], delivers to the [Company][Partnership] a bond, in form and substance satisfactory to the [Company] [Partnership], with such surety or sureties as the [Company] [Partnership] may direct, to indemnify the [Company] [Partnership] against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Share Certificate; and

(4) satisfies any other reasonable requirements imposed by the [Company] [Partnership].

iii. Subject to the restrictions set forth in [describe Loan Agreement/Mezzanine Loan Agreement restrictions] upon a [Member's] [Partner's]'s Transfer in accordance with the provisions of this Agreement of any or all Shares represented by a Share Certificate, the Transferee of such Shares shall deliver such Share Certificate to the [Company] [Partnership] for cancellation, and the [Company] [Partnership] shall thereupon issue a new Share Certificate to such Transferee for the number of Shares being Transferred and, if applicable, cause to be issued to such [Member][Partner] a new Share Certificate for that number of Shares that were represented by the canceled Share Certificate and that are not being Transferred. "Transfer" means, with respect to any Shares, and when used as a verb, to sell or assign such Shares, and, when used as a noun, shall have a meaning that correlates to the foregoing. "Transferee" means an assignee or transferee. "Transferor" means the Person making a Transfer.

c. Free Transferability . Except as limited by the [describe Loan Agreement/Mezzanine Loan Agreement restrictions], to the fullest extent permitted by the Act, any [Member] [Partner] may, at any time or from time to time, without the consent of any other Person, Transfer, pledge or encumber any or all of its Shares. Subject to the restrictions of the [describe Loan Agreement/Mezzanine Loan Agreement restrictions], the Transferee of any Shares shall be admitted to the [Company] [Partnership] as a substitute member of the [Company] [Partnership] on the effective date of such Transfer upon (i) such Transferee's written acceptance of the terms and provisions of this Agreement and its written assumption of the obligations hereunder of the Transferor of such Shares, which shall be evidenced by such Transferee's execution and delivery to the [Company] [Partnership] of an Application for Transfer of Shares on the reverse side of the Share Certificate representing the Shares being transferred, and (ii) the recording of such Transferee's name as a Substitute [Member] [Partner] on the books and records of the [Company] [Partnership]. Any Transfer of any Shares pursuant to this Section ___ shall be effective as of the later of (i) the close of business on the day on which such Transfer occurs, or (ii) the effective date and time of such Transfer that is designated in the Application for Transfer of Shares delivered by the Transferee to the [Company] [Partnership].

SCHEDULE I

LITIGATION SCHEDULE

None.

SCHEDULE I

SCHEDULE II

INTENTIONALLY DELETED

SCHEDULE II

SCHEDULE III

PRE-APPROVED TRANSFEREES

KSL Capital Partners
Kohlberg Kravis Roberts & Co.
Hilton Hotels Corporation
FelCor Lodging Trust
Whitehall Street Real Estate Limited Partnership Funds
Host Hotels & Resorts
Fairmont Hotels & Resorts
Four Seasons Hotel
The Blackstone Group
LaSalle Hotel Properties
Sunstone Hotel Investors
Government of Singapore Investment Corporation
Morgan Stanley Real Estate Fund (MSREF)
Walton Street Real Estate Fund
The Carlyle Group Real Estate Fund
Lehman Brothers Real Estate Fund
Orient Express
Westbrook Real Estate Fund

SCHEDULE III

SCHEDULE IV

PRE-APPROVED MANAGERS (Approved Brands)

Loews Hotels (Loews)
Hilton Hotels Corporation (Conrad Hilton)
Fairmont Hotels & Resorts (Fairmont; Raffles)
Marriott International, Inc.(Marriott, JW Marriott, Ritz-Carlton)
Starwood (Westin, St. Regis, Luxury Collection)
Hyatt (Grand Hyatt, Hyatt Regency, Park Hyatt)
Intercontinental Hotel Group (InterContinental)

KSL Resorts
Four Seasons (Four Seasons)
Orient Express (Orient Express)
Mandarin (Mandarin Oriental)
Peninsula (Peninsula)
Shangri-La (Shangri-La)

SCHEDULE IV

SCHEDULE V

INTENTIONALLY DELETED

SCHEDULE V

SCHEDULE VI

INTENTIONALLY DELETED

SCHEDULE VI

SCHEDULE VII

INTENTIONALLY DELETED

SCHEDULE VII

SCHEDULE VIII

INTENTIONALLY DELETED

SCHEDULE VIII

SCHEDULE IX

DEFERRED MAINTENANCE

(attached hereto)

SCHEDULE IX

Table 6.1: Budget Cost Estimate To Correct Observed Present Deficiencies

Ritz Carlton Half Moon Bay
One Miramontes Point Road
Half Moon Bay, California
March 8, 2007

TOTAL ESTIMATED COSTS/PRIORITY			
(90 Days)	(1 Year)	ADA	Optional
$ 27,000	$ 147,350	$ 675	$ 0
$175,025			

Report Section/Item/Description	Qty	Unit	Unit Cost	ESTIMATED COST/PRIORITY 1 Immediate (90 Days)	2 Short Term (1 Year)	3 ADA	4 Optional
5.2.3 Paving							
1. There is some alligatoring and deterioration of the paving adjacent to the Colony Club and Ocean House which needs to be repaired.	6,000	SF	$ 3.00		$ 18,000		
2. The asphalt in the guest house will need to be sealcoated and striped in the near future.	40,000	SF	$ 0.35		$ 14,000		
3. The parking spaces in upper floors of the parking garage are badly faded and need to be restriped.	175	EA	$ 26		$ 4,550		
5.2.6 Structural Systems							
1. Handrails at the east side of the parking structure need to be painted due to corrosion.	1	LS	$ 1,800		$ 1,800		
5.2.8 Roofing							
1. Gutters and downspouts at the guest houses are in poor condition and need to be replaced. This is the portion of the ongoing work which needs to be completed.	3	EA	$ 4,000		$ 12,000		
5.2.11 Special Construction							
1. Tennis Courts need to be resurfaced.	1	LS	$27,000	$ 27,000			

				ESTIMATED COST/PRIORITY			
				1	2	3	4
Report Section/Item/Description	Qty	Unit	Unit Cost	Immediate (90 Days)	Short Term (1 Year)	ADA	Optional
5.2.15 Fire Protection							
1. The garage fire sprinkler system piping and heads are showing signs of corrosion and will need to be replaced. This system is scheduled for replacement this year.	1	LS	$85,000		$ 85,000		
5.2.16 Electrical Service & Switchgear							
1. The condition of the outdoor equipment on the roofs and the service yard are in fair to poor condition. The conduits and enclosures show signs of corrosion. The generator and exterior mounted equipment also show signs of corrosion and rust. Also, the panels on the roof show signs of corrosion. All outdoor connections should be tightened and cleaned of rust and oxidation.	1	LS	$12,000		$ 12,000		
5.2.19 Fire Alarm Systems							
1. Per the Marriott life safety system report dated August 23, minor corrections were requested. It is unknown if this was completed. These need to be corrected.		Maintenance					
5.2.22 Americans With Disabilities Act (ADA)							
1. The parking garage has four handicapped spaces total, including one van space. Only two of these spaces are accessible by the public because the rest of these spaces are accessible by the valets only. Of the two Coastal Access spaces available to the public, one is missing vertical signage. This signage needs to be added.	1	EA	$ 175			$ 175	
2. Also, the handicapped reserved spaces accessible spaces at the guest houses and at the Colony Club have faded and need to be repainted.	10	EA	$ 50			$ 500	
TOTALS				**$ 27,000**	**$ 147,350**	**$ 675**	**$ 0**

Table 6.2: Replacement Reserve Schedule

Ritz Carlton Half Moon Bay
One Miramontes Point Road
Half Moon Bay, California
March 8, 2007

EUL = Expected Useful life (Years) V=Varies
EFF AGE = Effective Age (Years)
RUL = Remaining Useful Life (Years)

Number of Guest Rooms: 26

Report Section/Item Description	EUL	EFF AGE	RUL	Qty	Un	Unit Cost	ESTIMATED COSTS PER YEAR 1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	TOT
5.2.3 Paving																	
1. All asphalt will need to be sealcoated and striped every five years.	5	0	5	81,600	SF	$0.35					$28,560					$28,560	$5
2. The parking spaces in upper floors of the parking garage need to be restriped every five years.	5	0	5	175	EA	$26					$4,550					$4,550	$
5.2.7 Exterior Walls																	
1. Exterior wood siding will need to be painted every five years.	5	0	5	150,000	SF	$1.50					$225,000					$225,000	$45
2. Exterior windows and doors will need to be caulked in three years, and every ten years after that.	10	7	3	600	EA	$100.00			$60,000								$6
5.2.8 Roofing																	
1. Painting of the coping at the parapet walls will be needed every five years.	5	0	5	1	LS	$20,000					$20,000					$20,000	$4
5.2.9 Interior Elements																	
1. Common area (corridor) carpet was replaced approximately 1 year ago and will need to be replaced in five years.	5	1	4	4,500	SY	$35.00				$157,500					$157,500		$31
2. Suite carpet was replaced this year and will need to be replaced in six years.	6	0	6	2,500	SF	$30.00						$75,000					$7

Report Section/Item Description	EUL	EFF AGE	RUL	Qty	Un	Unit Cost	ESTIMATED COSTS PER YEAR 1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	TO
3. Room carpet is original and will need to be replaced in seven years.	7	5	2	9,800	SY	$30.00		$294,000							$294,000		$
4. Replacement of wall coverings and paint will need to start in six years.	V			45,000	SF/YR	$3.72						$167,400	$167,400	$167,400	$167,400	$167,400	$
5. Guest room casegoods will need to be replaced during the term.				Discretionary													
5.2.13 Heating, Ventilating And Air Conditioning																	
1. Drawings show that the 140 Ton chiller should have been ordered with epoxy coated components, but it was not. There is a substantial level of rusting on this unit. The maintenance report indicated many items that needed to be repaired due to corrosion. The expected remaining life of this chiller unit is 2-3 years.	23	20	3	2	EA	$180,000			$360,000								$
5.2.16 Electrical Service & Switchgear																	
1. The generator will need to be replaced in years 3-5.	30	25	5	1	EA	$90,000					$90,000						

Report Section/Item Description	EUL	EFF AGE	RUL	Qty	Un	Unit Cost	ESTIMATED COSTS PER YEAR 1 2008	2 2009	3 2010	4 2011	5 2012	6 2013	7 2014	8 2015	9 2016	10 2017	TO
5.2.18 Lighting																	
1. Exterior lighting should be updated as part of ongoing improvements	20	18	2	1	LS	$370,000		$370,000									$
ANNUAL REQUIREMENTS (UNINFLATED)							$0	$664,000	$420,000	$157,500	$368,110	$242,400	$167,400	$167,400	$618,900	$445,510	$3
INFLATION RATE @ 2.50%							1.0250	1.0506	1.0769	1.1038	1.1314	1.1597	1.1887	1.2184	1.2489	1.2801	
ANNUAL REQUIREMENTS (INFLATED)							$0	$697,615	$452,294	$173,851	$416,483	$281,110	$198,986	$203,961	$772,921	$570,290	$3
															AVG $/YEAR		$
															AVG $/SF/YEAR		
														AVG $/GUEST ROOM/YEAR			$

Exhibit 10.101

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

SHC MICHIGAN AVENUE MEZZANINE II, LLC

Dated as of August 31, 2007

THE UNITS EVIDENCED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATE OR FOREIGN JURISDICTION. SUCH UNITS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE OR FOREIGN SECURITIES LAWS, PURSUANT TO REGISTRATION THEREUNDER OR EXEMPTION THEREFROM. IN ADDITION, TRANSFER OR OTHER DISPOSITION OF SUCH UNITS IS FURTHER RESTRICTED AS PROVIDED IN THIS AGREEMENT. PURCHASERS OF UNITS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME

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AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
SHC MICHIGAN AVENUE MEZZANINE II, LLC

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (as amended from time to time in accordance with the terms hereof, this "Agreement") dated as of August___ , 2007 (the "Effective Date") of SHC Michigan Avenue Mezzanine II, LLC, a Delaware limited liability company (the " Company"), is made by and among DND Hotel JV Pte Ltd, a Singapore company ("RECO"), and CIMS Limited Partnership, an Illinois limited partnership ("SHR"). Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in Article I hereof.

RECITALS

WHEREAS, prior to the Effective Date, SHR was the sole member of the Company pursuant to that certain Limited Liability Company Agreement dated as of April 1, 2005 (the "Original Agreement").

WHEREAS, in connection with the transactions contemplated by the Purchase Agreement, SHR desires to admit RECO as a Member of the Company and to amend and restate the Original Agreement as set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
GENERAL

Section 1.1 Formation of Limited Liability Company . The Company was formed under and pursuant to the Act on March 17, 2005 by the execution and filing of a certificate of formation of the Company (the "Certificate") with the Secretary of State of the State of Delaware.

Section 1.2 Amendment and Restatement of Original Agreement . The original agreement is hereby amended and restated in its entirety as set forth in this Agreement.

Section 1.3 Name . The name of the Company is "SHC Michigan Avenue Mezzanine II, LLC" or such other name or names as the Board of Directors may from time to time designate; provided that the name shall always contain the words "Limited Liability Company," "LLC" or "L.L.C.

Section 1.4 Purpose . The business and purpose of the Company is to (i) engage, either directly or through one or more Subsidiaries, in any lawful act or activity for which limited liability companies may be organized under the Act and (ii) do all things as may be necessary, appropriate, proper, advisable, convenient or incidental to or for the furtherance of the foregoing purpose and that is not prohibited by the Act or the law of any jurisdictions in which the Company engages in business.

Section 1.5 Term . The term of the Company commenced on the date that the Certificate was filed with the Secretary of State of the State of Delaware and shall continue until the date on which the Company is dissolved pursuant to Article IX .

Section 1.6 Place of Business . The principal place of business of the Company is 77 West Wacker Drive, Suite 4600, Chicago, Illinois 60601, or such other place or places as may be determined from time to time by the Board of Directors; provided , however , that as of September 7, 2007 the principal place of business of the Company shall be 200 W. Madison, Suite 1700, Chicago, Illinois 60606. The Company may also maintain additional offices in such other places as may be determined from time to time by the Board of Directors.

Section 1.7 Registered Office and Registered Agent . The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware 19808. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware 19808.

Section 1.8 Qualification . The Board of Directors shall cause the Company to continue to be qualified and existing as a limited liability company under the Act and shall cause it to be qualified and registered as such in other jurisdictions if the Board of Directors shall determine that it is appropriate for the Company to be so qualified or to be so registered.

Section 1.9 No State-Law Partnership . The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and, if applicable, state or other tax purposes, and neither this Agreement nor any other document entered into by the Company or any Member shall be construed to suggest otherwise. The Members intend that the Company shall be treated as a partnership for federal and, if applicable, state and other income tax purposes, and that each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment.

ARTICLE II
DEFINITIONS

Section 2.1 Definitions . As used in this Agreement, the following terms shall have the following meanings:

"Act" means the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101, et seq. , as amended from time to time, and any successor to that act.

"Actions" has the meaning set forth in Section 3.10 .

"Adjusted Capital Account" means, with respect to any Member, the balance, if any, in such Member's Capital Account as of the end of the relevant Company taxable year, after giving effect to a credit, if any, to such Capital Account of any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5).

"Affiliate" means, with respect to a Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes hereof, the Company and its Subsidiaries shall not be deemed an Affiliate of any Member.

"Agreement" has the meaning set forth in the Preamble.

"Asset Manager" means SHC DTRS, Inc., a Delaware corporation.

"Asset Management Agreement" means the asset management agreement, dated as of the Effective Date, between the REIT Subsidiary and the Asset Manager, as amended from time to time.

"Bad Act" means, with respect to a Member, the commission or occurrence of any of the following: (i) such Member is the subject of a criminal indictment or an equivalent criminal proceeding before any court or tribunal for a felony or for a crime involving moral turpitude or dishonesty (or an attempt of dishonesty) or for criminal activity that is punishable by imprisonment; (ii) such Member (or one of the officers of the Company) engages in any activity with respect to the Hotel, its operations, the Company or any of its Subsidiaries (a) that is committed in bad faith or in a manner that constitutes gross negligence, fraud or willful misconduct, or (b) that constitutes a felony and such party intentionally engaged in such activity knowing that the activity was unlawful at such time; (iii) such Member (or one of the officers of the Company) commits an intentional breach of this Agreement or the Asset Management Agreement; or (iv) upon the voluntary or involuntary bankruptcy, dissolution or insolvency of such Member.

"Board of Directors" or " Board" has the meaning set forth in Section 3.1 .

"Capital Account" means, with respect to any Member, the capital account maintained for such Member in accordance with the following provisions:

(a) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 7.6 or 7.7 hereof with respect to such Member's Interests, and the amount of any Company liabilities which are assumed by such Member or which are secured by any Company property distributed to such Member with respect to its Interests.

(b) To each Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company property distributed to such Member pursuant to any provision of this Agreement with respect to such Member's Interests, such Member's distributive share of Losses and any items in the nature of expenses or losses which are specially

allocated pursuant to Section 7.6 or 7.7 hereof with respect to its Interests, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company with respect to its Interests.

(c) In the event all or a portion of an interest in the Company which arises from Interests is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(d) In determining the amount of any liability for purposes of clauses (a) and (b) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations. Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), including syndication expenses as described in Regulations Section 1.709-2(b), shall be allocated among the Members in proportion to their respective Capital Contributions. Such expenditures shall be taken into account under this Agreement at the time they would be taken into account under the Company's method of accounting if they were deductible expenditures. In the event the Board of Directors shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or the Members), are computed in order to comply with such Regulations, the Board of Directors may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Article IX hereof upon the dissolution of the Company. The Board of Directors also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, to the extent provided in and consistent with Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Sections 1.704-1(b) and 1.704-2.

"Capital Contribution" means, with respect to any Class A Member, the amount of cash and the fair market value of any property, determined without regard to the provisions of Code Section 7701(g), contributed (or deemed to be contributed) to the Company with respect to the Class A Interests, as set forth on the Register.

"Capital Event" has the meaning set forth in Section 7.3 .

"Capital Event Distribution" has the meaning set forth in Section 7.3 .

"Certificate" has the meaning set forth in Section 1.1 .

"Change of Control Notice" has the meaning set forth in Section 8.2 .

"Class A Interests" means the Interests held by the Class A Members having such rights and preferences as are set forth herein.

"Class A Member" means any holder of Class A Interests. The initial Class A Members are SHR and RECO.

"Class B Interest" means the Interests held by the Class B Member having such rights and preferences as are set forth herein.

"Class B Member" means the holder of Class B Interests, which shall initially be SHR.

"Class B Preference Amount" means $21,034,000, but subject in all respects to a combined calculation under certain circumstances as contemplated in Section 7.4 hereof.

"Code" the Internal Revenue Code of 1986, as amended from time to time.

"Company" has the meaning set forth in the Preamble.

"Company Minimum Gain" has the meaning attributed to partnership minimum gain" as set forth in Treasury Regulations §§ 1.704-2(b)(2) and 1.704-2(d).

"Deadlock" shall be deemed to occur on the date following any thirty (30) day period during which the Board of Directors has attempted in good faith to resolve its inability to agree on one of the Major Decisions identified in Sections 3.3(a) through 3.3(j) hereof (assuming such matter has not been resolved as of such date), which thirty (30) day period commenced upon written notice by SHR or RECO to the other party declaring a Deadlock or upon the date of the Board of Directors meeting in which the matter was placed on the agenda and considered, but no decision was reached.

"Director" shall have the meaning set forth in Section 3.1 . Each Director shall be considered a "manager" for purposes of the Act.

"Disposition" means a Capital Event with respect to the Company, other than a Capital Event that arises solely from a refinancing transaction.

"Distribution" means a distribution of cash by the Company to a Member pursuant to this Agreement.

"Effective Date" has the meaning set forth in the Preamble.

"Emergency Costs" means all costs and expenses required to (a) correct a condition that if not corrected would endanger imminently the preservation or safety of the Hotel or the safety of tenants, guests or other persons lawfully on or using the Hotel, (b) avoid the imminent suspension of any necessary service in or to the Hotel, (c) prevent any of the Members or their Affiliates from being subjected imminently to criminal or substantial civil penalties or damages resulting from the failure of the Hotel, the Company or any of its Subsidiaries to comply with applicable law, or (d) to avoid a material breach of the Hotel Management Agreement for failure to meet Brand Standards (as defined in the Hotel Management Agreement) or a material breach of any other agreement to which the Company or any of its Subsidiaries is a party.

"Fiscal Quarter" means each calendar quarter in each Fiscal Year.

"Fiscal Year" means (a) the 12-month period commencing on January 1 and ending on December 31, (b) any portion of the period described in clause (a) for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss or deduction or (c) such other period as may be required pursuant to Section 706 of the Code and the Regulations thereunder.

"GAAP" means United States generally accepted accounting principles, consistently applied.

"RECO" has the meaning set forth in the Preamble.

"Gross Asset Value" means, for any asset, such asset's adjusted basis for federal income tax purposes, as adjusted from time to time to reflect the adjustments that are required or permitted by, or are consistent with, Regulations Section 1.704-1(b)(2)(iv)(d) through (g), (i) through (n) and (p) through (r); provided , however , that:

(a) the initial fair market value of any asset contributed by a Member to the Company shall be its fair market value as determined by the Board of Directors; and

(b) the Capital Account adjustments permitted pursuant to an event described in Regulations Sections 1.704-1(b)(2)(iv)(f) and (m) shall be made unless the Company reasonably determines that such adjustments would not reflect the relative economic interests of the Members in the Company.

"Hotel" means the hotel located at 505 North Michigan Avenue, Chicago, Illinois and commonly known as the Chicago InterContinental Hotel, including all land, improvements, fixtures, and appurtenances owned by the Company or any of its Subsidiaries.

"Hotel Management Agreement" means that certain Management Agreement to manage the Hotel, by and among the TRS Lessee and the Hotel Manager, as amended from time to time.

"Hotel Manager" means the Manager of the Hotel, as defined in the Hotel Management Agreement.

"Indemnified Costs" has the meaning set forth in Section 3.10 .

"Indemnified Party" has the meaning set forth in Section 3.10 .

"Initial Capital Contributions " has the meaning set forth in Section 6.1(a) .

"Initial Percentage Interest" means, with respect to each Class A Member, its Percentage Interest determined based on Initial Capital Contributions.

"Interests" means a limited liability company interest in the Company with such rights, preferences and obligations as are set forth herein.

"Internal Rate of Return" or " IRR" means the cash-on-cash internal rate of return, determined in good faith by the Board of Directors in accordance with standard financial practice.

"Lender" has the meaning set forth in Section 8.1(c) .

"Liquidation Date" means the date which is the earlier of (a) the date upon which the Company is considered "terminated" under Code Section 708(b)(1)(A) or (b) the date upon which the Company ceases to be a going concern (even though it may continue in existence for the purpose of winding up its affairs, paying its debts and distributing any remaining balance to its Members).

"Liquidation Period" has the meaning set forth in Section 9.4 .

"Liquidation/Sale Event" has the meaning set forth in Section 8.4(b) .

"Liquidation/Sale Procedure" has the meaning set forth in Section 8.4(b) .

"Liquidator" has the meaning set forth in Section 9.2 .

"Member" means any holder of Interests from time to time admitted as a member of the Company.

"Necessary Expenditures" means, with respect to the Company or any of its direct or indirect Subsidiaries to the extent then due or coming due, (a) all expenditures required to fund any Planned Renovation, (b) all Emergency Costs, (c) all fees, expenses and reimbursements owed under the Asset Management Agreement, (d) expenditures and amounts due under the Hotel Management Agreement, (e) insurance payments, real estate tax payments, principal, interest or other payments with respect to indebtedness, utility costs, costs of repairs and maintenance, costs required for compliance with federal, state and local laws, codes, rules or regulations (including without limitation filing tax return and obtaining and/or renewing permits or licenses), and (f) any other operating expenses or capital expenses set forth in any budget approved by the Board of Directors in accordance with Section 3.3 hereof.

"Net Financing Proceeds" means the net proceeds actually received by the Company (directly or through distributions from its Subsidiaries) from any financing, refinancing or borrowing, after deducting (A) any expenses incurred in connection therewith, (B) any amounts applied towards the payment of any existing indebtedness or of other obligations or expenses of the Company or its Subsidiaries and (C) any reserves deemed necessary by the Board of Directors.

"Net Sales Proceeds" means the net proceeds actually received by the Company (directly or through distributions from its Subsidiaries) from (i) a Sale of all or any material portion of the Hotel, or (ii) or Sale of a material portion of the Interests or other equity securities of the Company or any of its Subsidiaries or a liquidation of the Company or any of its Subsidiaries,

after deducting (A) any fees, expenses or commissions incurred in connection therewith, (B) any amounts payable under the Asset Management Agreement in connection with such transaction, (C) any amounts applied towards the payment of any indebtedness or other obligations or expenses of the Company or its Subsidiaries, and (D) any reserves reasonably deemed necessary by the Board of Directors.

"Operating Cash Flow" means, other than Net Financing Proceeds, Net Sales Proceeds and Capital Contributions and other proceeds from issuances of Interests, an amount equal to all cash proceeds actually received by the Company from any source (directly or through distributions from its Subsidiaries), reduced by the sum of (A) cash expenditures by the Company and its Subsidiaries for costs and expenses in connection with the Company's and its Subsidiaries' businesses, including without limitation asset management fees, taxes, and interest paid with respect to indebtedness, (B) all cash expenditures by the Company and its Subsidiaries during such period for capital improvements and/or replacements in accordance with the terms and conditions hereof and (C) such reserves as are established in good faith by the Board of Directors.

"Operating Distributions" has the meaning set forth in Section 7.2 .

"Other Asset Management Agreement " means the Asset Management Agreement, as defined in the Other Holding LLC Agreement.

"Other Disposition" means a Capital Event under the Other Holding LLC Agreement, other than a Capital Event that arises solely from a refinancing transaction.

"Other Holding LLC" means SHC Aventine II, L.L.C., a Delaware limited liability company.

"Other Holding LLC Agreement" means the amended and restated limited liability company agreement of the Other Holding LLC, as amended from time to time.

"Other Hotel" shall mean the Hyatt Regency La Jolla at Aventine located in San Diego, California.

"Other REIT Subsidiary" means New Aventine Mezzanine I, Inc., a Delaware corporation.

"Percentage Interest" means, with respect to each Class A Member, the quotient, expressed as a percentage, equal to (x) the aggregate Capital Contributions made by such Class A Member divided by (y) the aggregate Capital Contributions made by all Class A Members.

"Person" means any individual, partnership, corporation, trust, limited liability company, association, joint venture, estate, governmental entity or other legal person.

"Planned Renovation" means the agreed upon renovation of the Hotel described on **Exhibit A** hereto.

"Profits" and "Losses" means any reference to any item of income, gain, loss or deduction thereof mean, for each Company taxable year, an amount equal to the Company's taxable income or loss for such Company taxable year, determined in accordance with Code Section 703(a) (but including in taxable income or loss, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 702(a)), with the following adjustments:

(a) any income of the Company exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as expenditures described in Code Section 705(a)(2)(B) pursuant to Regulations Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be subtracted from such taxable income or loss;

(c) in the event the Gross Asset Value of any Company asset is adjusted in accordance with the definition of "Gross Asset Value" above, the amount of such adjustment shall, except to the extent subject to special allocation pursuant to Section 7.6 or Section 7.7(c), be taken into account as an item of income, gain, loss or deduction from the disposition of such asset for purposes of computing Profits or Losses; and

(d) notwithstanding any other provisions of this definition of "Profits" and "Losses" amounts specially allocated pursuant to Section 7.6 or Section 7.7(c) shall not be included in the computation of Profits and Losses for the year for purposes of the allocations set forth in Section 7.5 .

"Purchase Agreement" means that certain Agreement for Sale and Purchase of Membership Interests dated as of May 29, 2007 between SHR and RECO, as amended from time to time.

"Register" means the register of Interests and Members maintained by the Board of Directors, as further described in Section 6.2 .

"Regulatory Allocations" has the meaning set forth in Section 7.6(b) .

"REIT Subsidiary" means SHC Michigan Avenue Mezzanine I, Inc., a Delaware corporation.

"Sale" means the sale, exchange, transfer or other disposition.

"Securities Act" means the Securities Act of 1933, as amended.

"SHR" has the meaning set forth in the Preamble.

"SHR Change in Control" shall mean a "Change of Control" with respect to Strategic Hotels & Resorts, Inc., as defined in that certain Strategic Hotel Capital, Inc. 2004 Incentive Plan (excluding the definition that may be included in any Award Agreement as defined in such 2004 Incentive Plan).

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of the Person or a combination thereof or (b) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing director or general partner of such limited liability company, partnership, association or other business entity.

"Tax Matters Member" has the meaning set forth in Section 7.9 .

"Terminable Event" means, with respect to any Member, any of the following: (a) the failure by the other Member to make a Mandatory Contribution when due in accordance with this Agreement (provided that if RECO has failed to make a Mandatory Contribution due to the application of the RECO Capital Limit, any corresponding failure of SHR to make such Mandatory Contribution shall not constitute a Terminable Event); (c) the occurrence or commission of a Bad Act with respect to the other Member; (d) upon receipt by such Member of a Foreclosure Notice as contemplated in Section 8.1(c) ; or (e) with respect to RECO, the occurrence of a SHR Change in Control within eighteen (18) months after the Effective Date.

"Transfer" means any sale, transfer, assignment, pledge, mortgage, exchange, hypothecation, grant of a security interest or other direct or indirect disposition or encumbrance of an interest (including by operation of law) or the acts thereof. The terms "Transferee," "Transferred," and other forms of the word "Transfer" shall have correlative meanings.

"Treasury Regulations" or " Regulations" means the applicable provisions of the federal income tax final or temporary regulations promulgated under the Code, as amended from time to time, including the corresponding provisions of any succeeding regulations.

"Wholly-Owned Affiliate" shall mean, with respect to SHR, any entity wholly owned, directly or indirectly, by Strategic Hotels & Resorts, Inc. or, with respect to RECO, any entity wholly owned, directly or indirectly, by the Minister for Finance (Inc.) Singapore, as the case may be.

ARTICLE III
MANAGEMENT

Section 3.1 General . The business and affairs of the Company shall be managed exclusively by a board of one or more directors designated by the Members as set forth herein (each, a "Director" and collectively, the "Board of Directors" or the " Board") and by such officers of the Company, if any, as may be appointed from time to time by the Board of Directors in accordance with this Agreement. Except where the approval of the Members is expressly required by this Agreement or by non-waivable provisions of the Delaware Act, the Board of Directors shall have full and complete authority, power and discretion to direct, manage and control the business, affairs and properties of the Company.

Section 3.2 Composition of Board of Directors .

(a) The Board of Directors shall at all times consist of three (3) Directors to be designated by the Class A Members as follows: (i) two (2) Directors designated by SHR, who shall initially be Robert T. McAllister and Paula C. Maggio; and (ii) one (1) Director designated by RECO, who shall initially be Adam Gallistel. The Director designated by RECO is referred to as the "RECO Director".

(b) Each Director shall serve until the earlier of his resignation, replacement, removal or death. Any member of the Board of Directors may resign at any time by giving written notice to the Company. Any Director(s) may be removed at any time, with or without cause, but only by the Member entitled to designate such Director(s) in accordance with Section 3.2(a) above. If a vacancy occurs for any reason in the office of the Board of Directors, the Member that designated the departing Director shall promptly elect a replacement for such Director.

Section 3.3 Major Decisions . Except as otherwise expressly set forth in this Agreement, none of the following decisions or actions involving the conduct of the business and affairs of the Company or any of its Subsidiaries (the "Major Decisions") shall be made or taken without the unanimous approval of the Board of Directors.

(a) (1) a Sale of all or substantially all of the assets of the Company or its Subsidiaries or of all or substantially all of the real and personal property constituting the Hotel, (2) a Sale (whether by merger, consolidation, reorganization, recapitalization or otherwise) of at least a majority of the then outstanding voting securities of the Company or its Subsidiaries to any Person, except as expressly contemplated by Article VIII hereof and (3) any determination of the sales price and other material terms of the transactions described in items (1) and (2) above (including whether to accept consideration in a form other than cash). For the avoidance of doubt, an SHR Change in Control shall not constitute a Major Decision subject to unanimous approval of the Board of Directors.

(b) (1) acquiring a business or entity (whether by merger, recapitalization, consolidation, acquisition of assets or securities, or other otherwise); (2) entering into any joint venture, joint operating or similar arrangement; or (3) forming a Subsidiary;

(c) except with respect to Necessary Expenditures, any expansion of the Hotel or other capital expenditures that exceed the Reserve for FF&E (as defined in the Hotel Management Agreement) by an amount greater than $500,000 in the aggregate with respect to the Hotel in any Fiscal Year;

(d) incurrence, issuance, refinancing or guarantee of indebtedness by the Company or any of its Subsidiaries, or amending or modifying any material terms of such indebtedness, other than (1) draws under any working capital line of credit or similar credit facility in an amount not in excess of the amount of working capital required for the operation of the Hotel in accordance with the Management Agreement or (2) to the extent no such line of credit or other credit facility is in place, indebtedness not in excess of $500,000.

(e) (1) any material amendment to the Hotel Management Agreement or any amendment to the Asset Management Agreement, (2) termination of the Hotel Management Agreement or the Asset Management Agreement in accordance with their respective terms or otherwise with the consent of the other party thereto and the selection of a new hotel manager or asset manager in connection with any termination or (3) approval of any assignment by the Hotel Manager or the Asset Manager, as applicable, of its rights and/or obligations under the Hotel Management Agreement or the Asset Management Agreement;

(f) any material and fundamental change with respect to the operation of the Hotel or the nature of the Hotel's business;

(g) issuing Interests or other equity interests of the Company to any Person or requiring any additional Capital Contributions from the Members, except in each case with respect to Necessary Expenditures as contemplated in this Agreement;

(h) taking any action that could reasonably be expected to cause the REIT Subsidiary to lose its status as a REIT;

(i) filing any petition or consenting to the filing of any petition, or taking any action that would cause the Company or any of its Subsidiaries to be subject to any bankruptcy or similar proceedings;

(j) causing a liquidation or dissolution of the Company or any of its Subsidiaries;

(k) (1) approval of the operating and capital budget for the Company, if any (excluding the operating and capital budget for the Hotel, which is subject to review or approval in accordance with item (2) of this subsection), and (2) approval of the annual capital budget for the Hotel (it being understood that each of the Members shall be entitled to review and comment on any operating budgets, but the approval of such operating budgets shall not be a Major Decision);

(l) purchasing directors and officers insurance or other insurance for the benefit of the Indemnified Parties;

(m) entering into or amending any agreements or arrangements between or among the Company or any of its Subsidiaries and any of their respective Members, officers, directors or, Affiliates, or any of their respective Affiliates (each, a "Related Party "), or the payment of any fees or other compensation to any Related Party, except in

each case as expressly contemplated by this Agreement, the Purchase Agreement, the Asset Management Agreement, the Hotel Management Agreement or any other written agreement entered into on the Effective Date and executed or otherwise approved by each of the Class A Members;

(n) the settlement or compromise of any claim by or against third parties in excess of $500,000 with respect to the Hotel;

(o) selection of the accountants and independent auditors for the Company or its Subsidiaries;

(p) entering into any loan agreement or other material agreement outside the ordinary course of business;

(q) notwithstanding Section 7.8(b) , making any tax election that would reasonably be expected to have a material adverse affect on RECO's United States federal income tax liability; or

(r) entering into any agreement or commitment to take any of the foregoing actions.

Section 3.4 Meeting of the Board of Directors . The Board of Directors may hold meetings, both regular and special, within or outside the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by any Director on not less than 10 days' notice to each Director by telephone, facsimile, mail, e-mail, telegram or any other means of communication.

Section 3.5 Quorum: Acts of the Board . At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business and, except as otherwise required by any other provision of this Agreement, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Any action permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if the Directors having the requisite voting power to approve such action consent thereto in writing.

Section 3.6 Electronic Communications . Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in meetings of the Board of Directors, or any committee, by means of telephone conference or similar communications equipment that allows all individuals participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 3.7 Committees of Directors .

(a) The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of one or more of the Directors of the Company. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

(b) Subject to the terms of Section 3.3, any such committee, to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Company. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 3.8 Outside Activities . Each Director, officer, Member and any Person who is an Affiliate of any of the foregoing may engage or hold interests in other business ventures of every kind and description for his, her or its own account, whether or not such business ventures are in direct or indirect competition with the business of the Company and whether or not the Company has any interest therein. Neither the Company nor any of the Members shall have any rights by virtue of this Agreement in such independent business ventures or to the income or profits derived therefrom.

Section 3.9 Exculpation .

(a) No Director, officer, Tax Matters Member or Liquidator nor any of their respective agents, partners, members, employees, directors, managers, owners, counsel or Affiliates, in their respective capacity as such, shall have any duty to the Company or any Member except as set forth herein or in other written agreements executed in connection herewith. No Director, Tax Matters Member or Liquidator nor any of their respective agents, partners, members, employees, directors, managers, owners, counsel or Affiliates, acting as such, shall (i) be personally liable for the debts, obligations, or liabilities of the Company, including any such debts, obligations, or liabilities arising under a judgment decree or order of a court or arbitrator; (ii) be obligated to restore any deficit Capital Account; (iii) be required to return all or any portion of any Capital Contribution returned pursuant to Article VII ; or (iv) be required to lend any funds to the Company.

(b) No Director, officer, Tax Matters Member, Liquidator nor any of their respective agents, partners, members, employees, directors, managers, owners, counsel or Affiliates shall be liable, responsible, or accountable in damages or otherwise to the Company or any Member for any action taken or failure to act (even if such action or failure to act constituted negligence on such Person's part) on behalf of the Company within the scope of the authority conferred on such Person by this Agreement or by law, unless such act or failure to act constituted gross negligence or willful misconduct.

Section 3.10 Indemnification . The Company shall indemnify and hold harmless, to the fullest extent permitted by law, (i) each Member, in its capacity as such, (ii) each current or former Director or officer of the Company, in his, her or its capacity as such, (iii) the Tax Matters Member, in his, her or its capacity as such, (v) a Liquidator acting pursuant to Section 9.2 , in its capacity as such, and (v) each director, officer, agent, partner, member, employee, owner or consultant of each Member, Director, Tax Matters Member or Liquidator, in each case in its capacity as such (individually, an " Indemnified Party"), as follows:

(a) The Company shall indemnify and hold harmless, to the fullest extent permitted by law, any Indemnified Party from and against any and all losses, claims, damages, liabilities, expenses (including legal fees and other professional fees and expenses), judgments, fines, surcharges, tax penalties, settlements, and other amounts (" Indemnified Costs") arising from all claims, demands, actions, suits, or proceedings ("Actions"), whether civil, criminal, administrative, or investigative, in which the Indemnified Party may be involved, or threatened to be involved, as a party or otherwise in any way related to or arising out of this Agreement, the Company or the management or administration of the Company or in connection with the business or affairs of the Company or the activities of such Indemnified Party on behalf of the Company; provided, however, that no such Person shall be indemnified hereunder for any Indemnified Costs that proximately result from such Person's gross negligence or willful misconduct.

(b) The Company shall pay or reimburse, to the fullest extent allowed by law and consistent with Section 3.10(a) , in advance of the final disposition of the proceeding, Indemnified Costs incurred by the Indemnified Party in connection with any Action that is the subject of Section 3.10(a) ; provided, however, that the Indemnified Party shall provide to the Company written confirmation that the Indemnified Party will return any amounts so advanced by the Company to the extent that it is subsequently determined that the Indemnified Party was not entitled to receive such amounts advanced. It shall not be a condition of any such undertaking that it be secured, and the financial capacity of the Indemnified Party shall not be considered in connection with this Section 3.10(b) .

(c) Notwithstanding any other provision of this Section 3.10 , the Company shall pay or reimburse actual out-of-pocket Indemnified Costs incurred by an Indemnified Party in connection with such Person's appearance as a witness or other participation in a proceeding or investigation involving or affecting the Company at a time when the Indemnified Party is not a named defendant or respondent in the proceeding.

(d) Subject to Section 3.3 , the Board of Directors may cause the Company to purchase and maintain insurance or other arrangements on behalf of the Indemnified Parties against any liability asserted against any Indemnified Party and incurred by any Indemnified Party in that capacity or arising out of the Indemnified Party's status in that capacity, regardless of whether the Company would have the power to indemnify the Indemnified Party against that liability under this Section 3.10 . The indemnification provided by this Section 3.10 shall be in addition to any other rights to which the Indemnified Parties may be entitled under any agreement, vote of the Members, as a matter of law, or otherwise, and shall inure to the benefit of the heirs, successors, assigns, and administrators of the Indemnified Party.

(e) An Indemnified Party shall not be denied indemnification in whole or in part under this Section 3.10 because the Indemnified Party had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(f) The indemnification provided by this Section 3.10 shall be recoverable only out of the assets of the Company, and no Member shall have any obligation to make any Capital Contributions therefor or otherwise have personal liability on account thereof.

(g) The amount of any indemnification payable under this Section 3.10 shall be calculated so as to account for (i) any associated tax benefits and burdens to the Indemnified Party resulting from the matter (including those resulting from any such indemnity) and (ii) the receipt of insurance proceeds or other proceeds paid by Persons not affiliated with the Indemnified Party to the extent that such proceeds are paid without reservation, are actually received and specifically relate to the claim otherwise covered by the indemnity provisions herein. The parties agree to respond within a reasonable time to any inquiry by the Company as to the status of any such insurance or other third-party payment. Each party hereto who is an Indemnified Party agrees to act in good faith to pursue diligently any bona fide potential payer of insurance or, in the absence of a valid business reason, any bona fide potential third-party payer. The Company shall be subrogated to any claims or rights of any Indemnified Party as against any other Person(s) with respect to any Indemnified Costs paid by the Company. Each Indemnified Party shall cooperate with the Company to a reasonable extent, at the Company's expense, in the assertion by the Company of any such claim against such other Persons.

(h) Each Member hereby acknowledges and agrees that, in accordance with Section 18-1101 of the Delaware Act, no Director (in his or her capacity as such) shall have any liability to the Company or any other Director or any Member for breach of fiduciary duties; provided that this sentence shall not be construed to limit or eliminate liability for any act or omission that constitutes a bad faith or intentional violation of the implied contractual covenant of good faith and fair dealing.

Section 3.11 Appointment of Officers; Authority of Officers .

(a) Election of Officers . The Board of Directors hereby appoints the individuals set forth on **Exhibit B** hereto to serve as the officers of the Company, subject to removal and/or replacement by the Board of Directors in accordance with this Agreement. Any removal or replacement of the foregoing individuals shall not require an amendment to this Agreement.

(b) Authority of Officers . Subject in all cases to the ultimate authority of the Board of Directors and/or the rights and responsibilities granted to the Asset Manager, the officers shall manage the day-to-day business and affairs of the Company in the ordinary course of its business, in each case, unless the Board of Directors shall have previously restricted (specifically or generally) such powers. For the avoidance of doubt and without limiting the extent of any rights and/or powers vested in the Board of Directors hereunder, (i) at no time shall actions or decisions relating to Major Decisions be deemed to have been delegated to the officers, (ii) all decisions, determinations,

actions, approvals and/or consents relating to Major Decisions shall require the approval of the Board of Directors in accordance with Section 3.3 , and (iii) no officers of the Company shall have power or authority with respect to any Major Decisions in the absence of such approval of the Board of Directors. Subject to and without express or implied limitation of the foregoing, the officers of the Company shall have the following powers and responsibilities, it being understood that the Board of Directors may revoke, alter and/or diminish any of the following powers and responsibilities without amending this Agreement:

(i) President . The President, if any, shall be the chief executive officer of the Company, shall preside at all meetings of the Board, shall be responsible for the general and active management of the business of the Company and shall see that all orders and resolutions of the Board are carried into effect. The President or any other Officer authorized by the President or the Board shall execute all bonds, mortgages and other contracts, except: (i) where required or permitted by law or this Agreement to be otherwise signed and executed; or (ii) where signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Company.

(ii) Vice President . In the absence of the President or in the event of the President's inability to act, the Vice President, if any (or in the event there be more than one Vice President, the Vice Presidents), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents, if any, shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

(iii) Secretary and Assistant Secretary . The Secretary, if any, shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall attend all meetings of the Board and record all the proceedings of the meetings of the Company and of the Board in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or shall cause to be given, notice of all meetings of the Member, if any, and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Secretary shall serve. The Assistant Secretary, or if there be more than one, the Assistant Secretaries, shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

(iv) Treasurer and Assistant Treasurer . The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board of

Directors. The Treasurer shall disburse the funds of the Company as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and to the Board of Directors, at its regular meetings or when the Board of Directors so requires, an account of all of the Treasurer's transactions and of the financial condition of the Company. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers, shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

(c) Officers as Agents . The officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Board of Directors not inconsistent with this Agreement or the Asset Management Agreement, are agents of the Company for the purpose of the Company's business and, the actions of the officers taken in accordance with such powers shall bind the Company.

Section 3.12 Tax Covenants . Notwithstanding anything to the contrary contained herein or in any other agreement between the parties hereto:

(a) The Company shall not engage in commercial activity as such term is defined in Section 892 of the Code.

(b) The Company shall take all actions necessary to ensure that the REIT Subsidiary does not pay dividends in 2007 or in 2008 in a manner that would result in the shareholders being treated as receiving such dividend in 2007 pursuant to Section 857(b)(9) of the Code; rather, the Company shall cause the REIT Subsidiary to declare and pay dividends after April 30, 2008 pursuant to Section 858 of the Code with respect to the 2007 taxable year.

(c) The Company will not incur any "effectively connected income" within the meaning of Section 864 of the Code.

(d) If the Company receives a properly executed Internal Revenue Service Form W-8EXP and for as long as such form is valid, the Company will not withhold any tax pursuant to Chapter 3 of the Code on any amounts accrued or payable to RECO, including with respect to capital gain dividends paid by the REIT Subsidiary.

(e) The Company acknowledges that the REIT Subsidiary is intended to qualify at all times as a "real estate investment trust" within the meaning of Section 856 of the Code. Accordingly, the Company shall use its commercially reasonable efforts to conduct the operations and otherwise administer the REIT Subsidiary at all times in a manner that will enable it to satisfy all the requirements for real estate investment trust status under Sections 856 through 860 of the Code, and to avoid, to the extent possible, the imposition of any entity-level federal or state income or excise taxes (other than income taxes imposed on any "taxable REIT subsidiary" of any REIT and other than excise tax pursuant to Section 858 of the Code on the dividend referred to in Section 3.12(b)).

In particular, the Company shall use commercially reasonable efforts to administer the REIT Subsidiary in accordance with the following limitations: (i) in no event shall any shareholder of the REIT Subsidiary be required to contribute funds to the REIT Subsidiary in order to permit the REIT Subsidiary to satisfy the foregoing distribution requirement; and (ii) the SHR shall use commercially reasonable efforts to cause the REIT Subsidiary not to engage in any "prohibited transactions" within the meaning of Section 857(b)(6)(B)(iii) of the Code. If the REIT Subsidiary's available funds are insufficient to meet the foregoing distribution requirement, the Company may cause the REIT Subsidiary to make a "consent dividend" within the meaning of Section 565 of the Code. In no event shall the Company be required to contribute funds to the REIT Subsidiary in order to permit the REIT Subsidiary to satisfy the foregoing requirements.

(f) SHR shall have the sole responsibility and obligation to oversee, implement and enforce the policies and decisions of the Board of Directors with respect to the covenants and agreements expressly set forth in this Section 3.12 . SHR shall discharge its duties expressly set forth in this Section 3.12 in good faith and in accordance with good industry practice, all applicable laws and this Agreement. SHR may delegate some or all of the duties set forth in this Section 3.12 to the Asset Manager, provided that such delegation shall not discharge SHR's responsibilities or obligations hereunder. Any Person not Affiliated with SHR that deals with SHR in connection with the performance of its duties under this Section 3.12 may rely absolutely on any action, failure to act, or execution and delivery of any instrument by SHR on behalf of the Company as having been authorized by requisite action of the Company.

ARTICLE IV
RIGHTS AND OBLIGATIONS OF THE MEMBERS

Section 4.1 Limitation of Liability . Except as otherwise required by applicable law and as expressly set forth in this Agreement, no Member shall have any personal liability whatever in such Member's capacity as a Member, whether to the Company, to any other Members, to the creditors of the Company, or to any third party, for the debts, liabilities, commitments or other obligations of the Company or for any losses of the Company. Each Member shall only be liable to make any payments expressly set forth herein.

Section 4.2 Rights and Duties . The Members (in their capacity as such) shall not participate in the management or control of the Company's business, transact any business for the Company or have the power to act for or bind the Company. A Member may not resign from the Company prior to the dissolution and winding up of the Company, except upon a Transfer of all of its Interests expressly permitted under this Agreement. Upon any such resignation, the Member shall not be entitled to receive the fair value of the Member's Interests under Section 18-604 of the Delaware Act.

ARTICLE V
MEETINGS AND VOTING OF MEMBERS

Section 5.1 Meetings . There shall be no mandatory regular meetings of the Members.

Section 5.2 Special Meetings . Special meetings of the Class A Members, for any purpose or purposes, may be called by any Director or any Class A Member.

Section 5.3 Time and Place, Notice, Etc. Special meetings of the Class A Members may be held at the principal office of the Company, or at such other place as shall be determined by the Persons calling the meeting pursuant to Section 5.2 . Notice of any special meeting shall set forth the time of the meeting and shall be sent to each Class A Member as set forth in Section 12.1 at least 10 days before the day on which the meeting is to be held, or if sent by fax or delivered personally or by telephone, not later than 5 days before the day on which the meeting is to be held.

Section 5.4 Quorum . At each meeting of the Class A Members, the holders of at least two-thirds of the outstanding Class A Interests, present in person or by proxy, shall constitute a quorum for the transaction of any business which may be taken at such a meeting.

Section 5.5 Voting . Except as otherwise expressly provided herein or as expressly required by law, all decisions to be made by the Class A Members shall require the affirmative vote of the holders of at least two-thirds of the outstanding Class A Interests. Other than the Class A Members, no Member shall have any voting rights.

Section 5.6 Meeting Through Use of Communications Equipment . Members shall have the right to participate in meetings by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participants shall constitute presence in person at the meeting.

Section 5.7 Proxies . At any meeting of the Class A Members, a Class A Member may vote by proxy executed in writing by such Class A Member or by its duly authorized representative.

Section 5.8 Written Consent . Any action permitted to be taken at any meeting of the Class A Members may be taken without a meeting if Class A Members having the requisite voting power to approve such action consent thereto in writing.

ARTICLE VI
CONTRIBUTIONS, UNITS AND CAPITAL ACCOUNTS

Section 6.1 Contributions and Commitments .

(a) Initial Capital Contributions . In consideration of the issuance by the Company of Interests according to the relative ownership percentages as set forth in on the Register, each of the Members has contributed or shall be deemed to have contributed (in the form of cash or such other form of consideration acceptable to the Company) an initial Capital Contribution to the Company ("Initial Capital Contribution") equal to the amount set forth opposite such Member's name on the Register. Except as set forth in Section 6.1(b) , no Member shall be required to make any additional Capital Contributions.

(b) Mandatory Capital Contributions . If the Board of Directors determines that additional capital is required to fund any Necessary Expenditures, then the Board of Directors shall deliver a notice (a "Mandatory Capital Notice") to each Class A Member describing the Necessary Expenditures and setting forth each Class A Member's mandatory Capital Contribution for such Necessary Expenditures, which in all cases shall be pro rata in accordance with Initial Percentage Interests (a "Mandatory Contribution"). Each Member shall make its respective Mandatory Contribution to the Company within the 15 days after receipt of the Mandatory Capital Notice. Mandatory Contributions shall be made by certified or cashier's check or by wire transfer of immediately available funds to an account designated in writing in the Mandatory Capital Notice or otherwise by the Board of Directors. Upon a failure by any Member to make a Mandatory Contribution when due, the Company and/or the other Members shall have all available remedies at law, in equity or otherwise set forth in this Agreement (including without limitation the exercise of Liquidity Rights and the issuance of any New Securities as contemplated below). In the event that the sum of (1) the Initial Capital Contributions and all Mandatory Capital Contributions made by RECO to the Company plus (2) the Initial Capital Contributions and all Mandatory Capital Contributions (each as defined in the Other Holding LLC Agreement) made by RECO to the Other Holding LLC exceeds $88,000,000 in the aggregate (the "RECO Capital Limit"), then RECO may, but shall not be obligated to, fund its Mandatory Contributions in excess of the RECO Capital Limit; provided that in the event of any failure by RECO to fund its pro rata portion of Mandatory Contributions in excess of the RECO Capital Limit, SHR may, in addition to any rights or remedies set forth in Section 8.3 hereof and without any approval of RECO or the RECO Director but subject to the participation rights set forth in the next sentence, cause the Board of Directors (excluding the RECO Director) to cause the Company to fund all capital requirements in excess of the RECO Capital Limit (including SHR's Mandatory Contribution called at the same time as RECO's Mandatory Contribution in excess of the RECO Capital Limit) by issuing any form of debt or equity securities of the Company, the REIT Subsidiary or any of its direct or indirect Subsidiaries that are treated as a corporation for U.S. federal income tax purposes (the "New Securities") to SHR, any of its Affiliates or to any third party. The New Securities shall have such rights, preferences, priorities, interest, dividend rates and/or other terms and conditions as determined by SHR in its sole and absolute discretion. Notwithstanding the foregoing, not later than simultaneous with or promptly after issuance of any New Securities, SHR shall offer to RECO (by written notice) the right to purchase its pro rata portion of such New Securities based on its Percentage Interest. Within 10 days after receipt of such notice from SHR, RECO may elect, by written notice to SHR, to purchase all (but not less than all) of such New Securities offered by SHR in accordance with the preceding sentence. If RECO fails to timely deliver such election notice, it shall have no right to participate in the offering of any such New Securities. For the avoidance of doubt, the determination as to whether to deliver a Mandatory Capital Notice (and the delivery thereof) and/or to issue New Securities as set forth herein (or to establish the terms thereof) shall not constitute a Major Decision.

Section 6.2 Register of Interests . The Board of Directors shall maintain the Register setting forth the name and address of each Member, the aggregate Capital Contributions and Percentage Interest of each Member, the type of Interests owned by the Members and such other

information as deemed appropriate by the Board of Directors. The initial form of Register is attached hereto as **Exhibit C** . The Board of Directors may update the Register from time to time as necessary to accurately reflect the information therein, including the payment of any additional Capital Contributions. Any reference in the Agreement to the Register shall be deemed a reference to the Register as in effect from time to time. No action of any Member shall be required to amend or update the Register.

Section 6.3 Capital Account Maintenance . An individual Capital Account shall be maintained for each Member.

Section 6.4 No Obligation of Members to Restore Deficit . The Members shall have no liability to the Company, to any other Member, or to the creditors of the Company on account of any deficit balance in such Member's Capital Account. Subject to Section 3.3 hereof, any Member, with the approval of the Board of Directors, may make loans to the Company and any such loan shall not be considered a Capital Contribution.

Section 6.5 No Interest on Capital Contributions . No interest shall be paid to the Members with respect to their contributions to the capital of the Company.

Section 6.6 Company Funds and Property . All funds received by the Company will be utilized for Company purposes. Title to all property contributed to the Company or acquired by the Company shall be held in the name of the Company. No Member shall have any ownership interest in such property in its individual right, and each Member's interest in the Company shall be personal property for all purposes. Until required for the Company's business, all Company funds shall be deposited and maintained in such accounts in such financial institutions as shall be selected by the Board of Directors from time to time. Company funds shall not be commingled with the funds of any other Person.

ARTICLE VII
DISTRIBUTIONS; ALLOCATIONS

Section 7.1 Distributions Generally . All Operating Distributions and Capital Event Distributions shall be distributed as set in this Article VII . The Board of Directors shall in all cases, in its good faith discretion, determine whether and to what extent any Distributions shall be made to the Members, out of funds legally available therefor, but in each case subject to the rights and preferences of each class of Interests set forth herein. Operating Distributions, if any, shall be made to the Members on a quarterly basis, and Capital Event Distributions, if any, shall be made to the Members promptly after actual receipt of the proceeds of the corresponding Capital Event, provided, in no event shall any distributions be made hereunder to any Member until after April 30, 2008. The determination of whether amounts to be distributed are classified as Operating Cash Flow, Net Financing Proceeds or Net Sales Proceeds shall be made by the Board of Directors in its good faith discretion.

Section 7.2 Operating Distributions . All distributions of Operating Cash Flow (such distributions being referred to herein as "Operating Distributions"), as determined by the Board of Directors shall be made to the holders of Class A Interests, pro rata based upon their respective Percentage Interests.

Section 7.3 Capital Event Distributions . Subject to Section 7.4 , all distributions of Net Financing Proceeds and Net Sales Proceeds (such distributions being referred to herein as "Capital Event Distributions", and each transaction giving rise to such distributions, including without limitation any Liquidation/Sale Event, being referred to herein as a "Capital Event"), as determined by the Board of Directors, out of legally available funds, shall be made to the holders of Interests in the following order of priority:

(i) First, 100% to the holders of Class A Interests, pro rata in accordance with their respective Percentage Interests, until each such holder has been distributed under Section 7.2 and this Section 7.3 (i) an aggregate amount equal to its Capital Contributions plus a 10% Internal Rate of Return thereon;

(ii) Second, (A) 20% to the holder of Class B Interests; and (B) 80% to the holders of Class A Interests, pro rata in accordance with their respective Percentage Interests, until each such holder of Class A Interests has been distributed under Section 7.2 , Section 7.3(i) and this Section 7.3(ii)(B) an aggregate amount equal to its Capital Contributions plus a 12.5% Internal Rate of Return thereon;

(iii) Third, 100% to the holder of Class B Interests until such holder has received, in the aggregate under this Section 7.3(iii) , an amount equal to the Class B Preference Amount; and

(iv) Fourth, (A) 20% to the holder of Class B Interests; and (B) 80% to the holders of Class A Interests, pro rata in accordance with their respective Percentage Interests.

The amount otherwise payable under Section 7.3(ii)(A) as a result of any Capital Event shall be adjusted by deducting therefrom the aggregate amount previously paid as Operating Incentive Fees (as defined in the Asset Management Agreement) with respect to the Hotel. The calculation and priority of Capital Event Distributions is illustrated in further detail in the sample calculations attached hereto as **Exhibit D** .

Notwithstanding anything to the contrary herein, if a Disposition has occurred hereunder prior to any Other Disposition, and Capital Event Distributions are payable to the holder of Class B Interests pursuant to this Section 7.3 as a result of such Disposition, then such Capital Event Distribution shall not be distributed to the Class B Member unless and until the Class B Member provides an affiliate guaranty, a letter of credit or similar assurance in a form reasonably acceptable to the Members in favor of RECO or the Other Holding LLC (with RECO as a third party beneficiary with unilateral enforcement rights) to secure payment of any potential Class B Overpayment that may arise under the Other Holding LLC Agreement.

Section 7.4 Effect of Certain Other Dispositions . Upon a Disposition hereunder, if an Other Disposition has occurred prior to, or is occurring simultaneous with, such Disposition, then, notwithstanding anything to the contrary herein, the amounts distributable to the holders of Class A Interests and Class B Interests hereunder from the Net Sales Proceeds related to such Disposition (the "Final Distributions") shall be determined in accordance with the following:

(a) The Final Distributions shall be calculated and distributed by the Board of Directors on a combined basis with distributions under the Other Holding LLC Agreement, such that the Final Distributions take into account all amounts paid or payable hereunder and under the Other Holding LLC Agreement (including without limitation proceeds from sales of Interests hereunder or thereunder) as if all such amounts were paid or payable hereunder, with the Capital Contributions for each holder being equal to the sum of its Capital Contributions (as defined herein), plus its Capital Contributions (as defined in the Other Holding LLC Agreement) and the Class B Preference Amount being equal to $46,034,000.

(b) If, after giving effect to the calculation described in subsection (a) above, the holder of Class B Interests or the holder of Class B Interests of the Other Holding LLC have received distributions but the maximum amount payable to the Class A Interest holders under Section 7.3(ii)(B) has not been paid, there shall be deemed to be a "Class B Overpayment ." In such event, the Class B Member shall pay to the Company (for distribution to the holders(s) of Class A Interests pro rata based on their Percentage Interests), or shall have deducted from distributions otherwise payable to the Class B Member in respect of its Class A Interests, an amount up to the amount of the Class B Overpayment in order to provide for the combined distributions hereunder and under the Other Holding LLC Agreement as contemplated herein. The application of this combined calculation and distribution shall be as determined by the Board of Directors in good faith and is illustrated in further detail in the sample calculations attached hereto as **Exhibit D** .

Section 7.5 Allocation of Profits and Losses . Subject to the allocation rules set forth in Section 7.6 and Section 7.7 , Profits and Losses shall be allocated among the Members for each Company taxable year or period as follows :

(a) Profits .

(i) First, to the Members, to the extent of, in proportion to, and in the reverse order of cumulative Losses previously allocated to each such Member in past tax years or periods under Section 7.5(b)(iii) hereof (but only to the extent incurred after the Effective Date) in excess of cumulative Profits previously allocated under this Section 7.5(a)(i) ;

(ii) Second, to the Members, to the extent of, in proportion to, and in the reverse order of cumulative Losses previously allocated to each such Member in past tax years or periods under Section 7.5(b)(ii) hereof (but only to the extent incurred after the Effective Date) in excess of cumulative Profits previously allocated under this Section 7.5(a)(ii) ;

(iii) Third, to the Members, to the extent of any amounts distributed to such Members during the relevant tax year or period pursuant to Sections 7.2 and 7.3 ; and

(iv) Finally, any remaining Profits shall be allocated to the Members, in proportion to the number of Class A Interests held by each Member.

(b) Losses .

(i) First, to the Members, to the extent of, in proportion to, and in the reverse order of cumulative Profits allocated to them pursuant to Section 7.5(a)(iii) above, in excess of cumulative Losses previously allocated under this to Section 7.5(b)(i) , provided, that no Member shall be allocated Loss pursuant to this Section 7.5(b)(i) to the extent such allocation would create a negative Adjusted Capital Account balance;

(ii) Second, to the Members, to the extent of, and in proportion to, their relative positive Adjusted Capital Account balances after taking into account the allocation rules set forth in Section 7.6 and Section 7.7 and allocations pursuant Section 7.5(b)(i) above; and

(iii) Finally, the balance (if any) of Loss shall be allocated to the Members, in proportion to the number of Class A Interests held by each Member.

Section 7.6 Special Allocations . The following special allocations shall be made in the following order and priority:

(a) The provisions of this Agreement relating to the allocations of items of income, gain, loss and deduction are intended to comply with Regulations Sections 1.704-1 and 1.704-2. In the event that subsequent events (including a loan by a Member to the Company) cause the allocations set forth in Section 7.5 not to be in accordance with the Regulations, then notwithstanding any other provision of this Agreement, the Company may make such modifications to this Agreement (including the addition of special allocation provisions specified by Regulations Section 1.704-2) that are necessary to cause such allocations to have substantial economic effect within the meaning of Regulations Section 1.704-1(b)(2) or to be deemed to be in accordance with the Members' interests in the Company under Regulations Section 1.704-1. Without limiting the foregoing, this Section 7.6(a) is intended to cause the Company to have a "qualified income offset" in compliance with Regulations Section 1.704-1(b)(2)(ii)(d) and shall be applied and interpreted in accordance with such Regulation; provided that an allocation pursuant to the qualified income offset shall be made only after all other allocations provided for in this Section 7.6 have been tentatively made as if such qualified income offset were not in this Agreement. Consistent with this Section 7.6(a) , "nonrecourse deductions," as defined in Regulations Section 1.704-2(b), shall be allocated to the Members, pro rata, in accordance with such Treasury Regulations.

(b) The allocations set forth in Section 7.6(a) (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding any other provisions of this Article VII (other than the Regulatory Allocations), all Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to

the greatest extent possible, the net amount of all allocations pursuant to this Article VII to each Member shall be equal to the net amount that would have been allocated to each such Member in each Company taxable year or period if the Regulatory Allocations had not occurred. Allocations pursuant to this Section 7.6(b) shall only be made with respect to Regulatory Allocations to the extent the Company determines that such allocations are consistent with the overall economic sharing arrangement among the Members, as reflected in this Agreement.

Section 7.7 Other Allocation Rules .

(a) In the event Members are admitted to the Company pursuant to this Agreement on different dates, the Company items of income, gain, loss, deduction and credit allocated to the Members for each Company taxable year or period during which Members are so admitted shall be allocated among the Members for such Company taxable year using any convention permitted by Code Section 706 and selected by the Tax Matters Member.

(b) In the event a Member transfers its Interest during a Company taxable year, the allocation of Company items of income, gain, loss, deduction and credit allocated to such Member and its Transferee for such Company taxable year shall be made between such Member and its Transferee in accordance with Code Section 706 using any convention permitted by Code Section 706 and selected by the Tax Matters Member.

(c) In the event the Gross Asset Value of any Company asset is adjusted in accordance with subsection (b) of the definition of “Gross Asset Value” above, the amount of such adjustment shall be taken into account as an item of income, gain, loss or deduction from the disposition of such asset and specially allocated Member by Member so that, to the greatest extent possible, the Capital Account attributable to each Member as a percentage of the total of all Capital Accounts is equal to the same percentage as the number of Interests held by such Member represents of the total number of Interests outstanding.

Section 7.8 Tax Allocations; Code 704(c) Allocations . Except as otherwise provided in this Section 7.8 , all items of Company income, gain, loss, deduction and credit for federal and applicable state and local income tax purposes shall be allocated among the Members in as nearly the same manner as they share correlative Profits, Losses or Company items of income, gain, loss or deduction, as the case may be, for the Company taxable year. Allocations pursuant to this Section 7.8 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member’s Capital Account or share of Profits, Losses or other items or distributions pursuant to any provision of this Agreement.

(a) In accordance with Code Section 704(c) and the Regulations thereunder, but solely for income tax purposes, income, gain, loss and deduction with respect to any asset contributed to the capital of the Company (including income, gain, loss and deduction determined with respect to the alternative minimum tax) shall be allocated among the Members so as to take account of any variation between the adjusted basis of

such asset to the Company for federal income tax purposes (including such adjusted basis for alternative minimum tax purposes) and its initial Gross Asset Value, including special allocations to a contributing Member that are required under Code Section 704(c) to be made upon distribution of such asset to any of the non-contributing Members; provided , however , that if any Member contributed assets with an adjusted tax basis in excess of the initial Gross Asset Value for such assets, the Company shall take into account such variation only in determining the amount of items allocated to the contributing Member, and except as provided in the Regulations, in determining the amount of items allocated to the non-contributing Member, the tax basis of the contributed assets in the hands of the Company shall be treated as being equal to its initial Gross Asset Value. Further, in the event the Gross Asset Value of any Company asset is adjusted pursuant to paragraph (b) of the definition of "Gross Asset Value" contained herein, such that "reverse section 704(c) allocations" are required under Regulations Section 1.704-3(a)(6), then, solely for federal income tax purposes, subsequent allocations of income, gain, loss and deduction with respect to such asset (including income, gain, loss and deduction determined with respect to the alternative minimum tax) shall take account of any variation between the adjusted basis of such asset (including such adjusted basis for alternative minimum tax purposes) and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(b) Any elections or other decisions relating to allocations under this Section 7.8 , including the selection of any allocation method permitted under Regulations Section 1.704-3, shall be made as approved by the Tax Matters Member.

(c) If any taxable item of income or gain is computed differently from the taxable item of income or gain which results for purposes of the alternative minimum tax, then, to the extent possible, without changing the overall allocations of items for purposes of either the Members' Capital Accounts or the regular income tax, (i) each Member shall be allocated items of taxable income or gain for alternative minimum tax purposes taking into account the prior allocations of originating tax preferences or alternative minimum tax adjustments to such Member (and its predecessors) and (ii) other Company items of income or gain for alternative minimum tax purposes of the same character that would have been recognized, but for the originating tax preferences or alternative minimum tax adjustments, shall be allocated away from those Members that are allocated amounts pursuant to clause (i) so that, to the extent possible, the other Members are allocated the same amount, and type, of alternative minimum tax income and gain that would have been allocated to them had the originating tax preferences or alternative minimum tax adjustments not occurred.

Section 7.9 Tax Matters Member; Tax Elections . SHR shall be the "tax matters partner" of the Company as defined in Code Section 6231(a)(7) (the "Tax Matters Member") and has and shall have all the powers and obligations of a tax matters partner pursuant to the Code. All elections, filings and determinations required or permitted to be made by the Company under the tax laws of the United States, the several States or any other relevant jurisdiction shall be timely determined and made by the Tax Matters Member. The Tax Matters Member shall provide each Member with prompt notice with respect to any administrative or judicial actions taken with respect to any tax matters and with respect to any material decisions or actions taken by the Tax Matters Member pursuant to this Section 7.9 .

Section 7.10 Tax Withholding . Subject to Section 3.12(d) , the Company may take any and all actions that it determines to be necessary or appropriate to insure that the Company satisfies any and all withholding and tax payment obligations under Section 1441, 1445, 1446 or any other provision of the Code, applicable state law or other applicable law. Without limiting the generality of the foregoing, subject to Section 3.12(d) , the Company may withhold any amount of taxes that it determines is required to be withheld from amounts otherwise distributable to any Member pursuant to this Article VII; provided, however, that such amount shall be deemed to have been distributed to such Member for purposes of applying this Agreement. In the event that the Company withholds or pays tax in respect of any Member for any period in excess of the amount of cash otherwise distributable to such Member for such period (or there is a determination by any taxing authority that the Company should have withheld or paid any tax for any period in excess of the tax, if any, that the Company actually withheld or paid for such period), then at the sole election of the Board of Directors, either (i) the Member shall make a cash payment to the Company equal to the full amount of such excess (and the amount paid shall be added to the Member's Capital Account but shall not be deemed to be a Capital Contribution hereunder) or (ii) the Company shall reduce subsequent distributions that would otherwise be made to such Member until the Company has recovered the amount of such excess, provided that the amount of such reduction shall be deemed to have been distributed for all purposes of this Agreement, but such deemed distribution shall not further reduce the Member's Capital Account.

Section 7.11 Tax Elections . The Company may, in the reasonable discretion of the Board of Directors, elect pursuant to Section 754 of the Code, and similar provisions of applicable state income tax laws, to adjust the basis of the Company property as allowed by Sections 734(b) and 743(b) of the Code (or such similar state law provisions). The election, if made, will be filed with the Company information income tax return for the first taxable year to which the election applies. The Company may also, in the reasonable discretion of the Board of Directors, make elections pursuant to Sections 179 (concerning expensing of certain assets), 709(b) (concerning amortization of organization fees), and any other provision of the Code.

ARTICLE VIII
SALE AND TRANSFER OF INTERESTS; LIQUIDITY RIGHTS

Section 8.1 Restrictions on Transfer .

(a) General . Except as expressly permitted in Section 8.1(b) or 8.1(c) , no Member may Transfer all or any portion of its Interests without the unanimous written consent of the Board of Directors. Any attempted Transfer in contravention of the provisions of this Article II shall be null and void *ab initio* , such that the purported transferor shall continue to be the holder of the subject Interests for all purposes and the purported transferee shall not be deemed the holder thereof as a result of such purported Transfer, and the Company shall not give effect to such Transfer or otherwise recognize any rights of such purported transferee. For the avoidance of doubt, an SHR Change in Control shall not constitute a Transfer for purposes of this Agreement, and shall not require any consent or approval from RECO or the Board of Directors.

(b) Permitted Transfers . Notwithstanding the general restriction on Transfer set forth in Section 8.1(a) , a Member may transfer any or all of its Interests to a Wholly-Owned Affiliate; provided that (i) no Transfer shall be made by any Member to any Wholly-Owned Affiliate that would constitute a Prohibited Assignment (as defined in the Hotel Management Agreement); (ii) such Wholly-Owned Affiliate must agree in an instrument reasonably satisfactory to the other Member to be bound by this Agreement; and (iii) such Transfer is made in compliance with all applicable securities laws.

(c) Pledges . Notwithstanding anything to the contrary set forth in this Agreement, SHR or RECO may pledge (such Member granting the pledge, the "Pledging Member" and the other Member, the "Non-Pledging Member") its respective direct or indirect equity interests in the Company to a lender or financing source. Notwithstanding the foregoing, no such pledge shall be permitted (i) to the extent that such pledge (or the exercise by such lender or financing source of its rights under the pledge) would constitute a Prohibited Assignment under the Hotel Management Agreement or (ii) unless the Lender (as hereinafter defined) agrees to provide to the Non-Pledging Member at the same time a copy of any default or foreclosure notice delivered by such Lender to the Pledging Member. Notwithstanding anything to the contrary contained in this Agreement, if any Member has pledged its Interests in the Company to a lender or financing source (a "Lender") and such Lender has delivered a notice of foreclosure with respect to such Interests (the " Foreclosure Notice"), the Non-Pledging Member shall be entitled to Transfer its Interests without the consent of the Pledging Member, unless the foreclosure action initiated by the Lender has been withdrawn prior to the execution by the Non-Pledging Member of a letter of intent or agreement providing for a Transfer of its Interest to a qualified purchaser with access to sufficient capital to consummate the proposed purchase.

Section 8.2 Change of Control . If an SHR Change in Control occurs within the period beginning on the Effective Date and ending on the date that is eighteen (18) months after the Effective Date, SHR shall provide notice of such SHR Change in Control within thirty (30) days after the occurrence thereof (such notice being a " Change of Control Notice"). For the purposes hereof, an SHR Change in Control shall be deemed to have occurred upon the execution by the parties thereto of any definitive purchase agreement, merger agreement or similar definitive agreement, which upon consummation of the transactions contemplated thereby, will result in an SHR Change in Control.

Section 8.3 Liquidity Rights .

(a) Each Member shall have the right (the "Liquidity Right"): (i) from and after the fourth anniversary of the Effective Date; (ii) upon the occurrence of a Deadlock; and (iii) upon the occurrence of a Terminable Event with respect to such Member, exercisable by written notice (the "Liquidity Notice") to the other Member (the "Notice Member"), to require the Company and/or the Notice Member to purchase all (but not less than all) of its Interests. In the case of a Liquidity Right that is triggered as a result

of the occurrence or existence of a Deadlock or a Terminable Event, then the Member giving the Liquidity Notice (the "Electing Member") must exercise such Liquidity Right within 180 days after the occurrence of such Deadlock or Terminable Event. The Liquidity Notice shall set forth the Electing Member's minimum acceptable sale price for the Hotel on an unencumbered basis (the "Floor Value"). Upon receipt of such Liquidity Notice, the Company shall conduct a market test to determine the actual fair market value of the Hotel (the "Actual Value") in accordance with Section 8.6 hereof.

(b) If the Actual Value, as determined in accordance with Section 8.6 , is less than the Floor Value, then the Electing Member may withdraw its request to exercise its Liquidity Right. After any such withdrawal, the Electing Member who made the withdrawal may not exercise any Liquidity Rights under this Section 8.3 until one full calendar year has elapsed after the determination of the Actual Value unless a separate and distinct Deadlock or Terminable Event occurs during such one year period. If the Actual Value, as determined in accordance with Section 8.6 , is equal to or greater than the Floor Value (or is less than the Floor Value but the Electing Member has not withdrawn its request to exercise its Liquidity Right), then either: (i) the Notice Member may elect in its sole discretion to acquire all of the Interests of the Electing Member at the Buyout Price (as defined below), and the Electing Member shall thereafter be bound to consummate such sale at the Buyout Price; or (ii) the Notice Member may elect to proceed with a Sale of the Hotel or a Sale of the Company and/or its Subsidiaries in accordance with the sale procedures set forth in Section 8.4 (either such Sale transaction described in this item (ii) being referred to as a "Forced Sale").

(c) If the Notice Member elects to acquire the Interests of the Electing Member as contemplated in subsection (b)(i) above, then the closing of such purchase and sale shall occur within 90 days following the date that the Buyout Price is established in accordance with Section 8.6 . If the Notice Member elects to consummate a Forced Sale as contemplated in subsection (b)(ii) above, then such Forced Sale shall be conducted in accordance with the sale procedures set forth in Section 8.4 below.

Section 8.4 Sale Procedures .

(a) If the Notice Member elects to proceed with a Forced Sale in accordance with Section 8.3 or the Members otherwise mutually agree to consummate a Sale of the Hotel or a Sale of the Company and/or its Subsidiaries in accordance with Section 3.3 (as applicable, an "Approved Sale"), such transaction shall be conducted by SHR in accordance with customary procedures for the sale of a luxury hotel. SHR shall have the sole right to approve the terms and conditions of any such Approved Sale and to control the sale process; provided that: (i) in the case of a Forced Sale, RECO shall have the right to approve any alterations to the sale consideration or other material economic terms, which approval shall not be unreasonably withheld or delayed; and (ii) in the case of any Approved Sale other than a Forced Sale, such transaction and certain terms thereof shall be subject to Board approval as a Major Decision in accordance with Section 3.3(a) hereof. Further, in the event of any Approved Sale or Forced Sale, RECO shall, as reasonably required in connection with the consummation of such transaction, take all actions required of it in order to consummate such transaction including without

limitation, as applicable, (i) executing any documents or instruments reasonably requested by the proposed purchaser; (ii) providing the same or substantially similar representations, warranties, covenants, releases and indemnities as SHR or its Affiliates are providing in such transaction; (iii) agreeing to any escrows, holdback amounts or deposits required by the purchaser on a pro rata basis, but otherwise on the same or substantially similar terms as SHR or its Affiliates; (iv) at the closing of such transaction, conveying good title to its Interests, free and clear of all claims and encumbrances created by, through or under such holder or on its behalf (other than any contemplated by this Agreement and any restrictions on transfer applicable under state and/or federal securities laws), against delivery to such holder of the consideration for the Interests of such holder being sold; and (v) approving, at a Members' meeting or by written consent, the transaction as a Member and waiving, if applicable, any dissenters and/or appraisal rights.

(b) Notwithstanding anything to the contrary herein, in the event of any Sale of the Hotel, Sale of the Company (in each case whether in an Approved Sale or a Forced Sale) or other Liquidity Right contemplated by this Agreement, as well as any dissolution or liquidation of the Company as contemplated in Article IX (each, a "Liquidation/Sale Event "), such transaction or proceeding shall in all cases be structured as follows: (i) first, the Company shall be dissolved and liquidated and the common stock of the REIT Subsidiary shall be distributed to the Members (together with the other assets of the Company, if any) in accordance with the rights and preferences set forth in Section 7.3 , and (ii) second, the common stock of the REIT Subsidiary then owned by the selling Member shall be redeemed by the REIT Subsidiary or transferred to the acquiring Member, an Affiliate thereof or a third party (in each case at the applicable price set forth in this Agreement) (collectively, the " Liquidation/Sale Procedure"). Any and all additional administrative fees and expenses (including without limitation fees and expenses of accountants, attorneys and other professionals) incurred by SHR and/or the Company to accommodate the Liquidation/Sale Procedure shall be borne solely by RECO. Upon the consummation of any Liquidation/Sale Event, the selling Member shall provide customary representations, warranties and indemnities with respect to its transfer of Common Stock of the REIT Subsidiary.

Section 8.5 Sale Proceeds . In any Approved Sale or Forced Sale, the aggregate consideration received by the Members shall be distributed among the Members as if such consideration were received by the Company, the debts and obligations of the Company paid in full (including without limitation any prepayment penalties with respect to outstanding indebtedness and all asset management fees payable to the Asset Manager under the Asset Management Agreement), and the proceeds distributed pursuant to Section 7.3 hereof.

Section 8.6 Market Test Procedures and Determination of Buyout Price .

(a) The Actual Value of the Hotel shall be established as follows. SHR and RECO shall attempt to agree upon a broker or investment banking firm (the "Broker") to conduct the sale process. If SHR and RECO are unable to agree to the appointment of the Broker within a reasonable period of time, but not to exceed 30 days, then SHR shall promptly provide RECO with a list of 3 reputable, nationally recognized Brokers and

RECO shall promptly select the Broker from such list. The Broker shall implement a bona fide, competitive auction or other sale process to secure indications of interest from qualified purchasers for the purchase of the entire Hotel on a debt-free basis (the " Auction"). Such sale process shall be conducted within a specified period of time reasonably determined by the Broker, but not to exceed 6 months. Upon completion of the Auction and the receipt of final indications of interests from qualified purchasers with access to sufficient capital to consummate the proposed purchase, the parties shall determine the average of the 3 highest final bids received in the Auction (or if less than 3 bids were received, the average of all final bids received). Such average amount shall be the "Actual Value"; provided that any such final bids that are less than 90% of the highest final bid shall be excluded for purposes of calculating such average. Each of SHR and RECO shall cooperate as necessary to ensure that the Broker and the bidders have access to such information and documentation as is reasonably necessary for conducting the Auction.

(b) The "Buyout Price" shall be determined by calculating the amount that would be distributed to the Electing Member if the Hotel were sold for the Actual Value determined as set forth above, the other assets of the Company (if any) were sold at their book values, and the proceeds were applied, paid or distributed to the Members as provided in Section 7.3 hereof, after payment in full of all indebtedness and liabilities of the Company (including without limitation any break-up or other fees payable to any bidder or to the Broker in connection with the Auction, any prepayment penalties with respect to outstanding indebtedness, a reasonable estimate of all transaction fees and transfer taxes that would have been payable if the Hotel were actually sold to a third party purchaser, and all asset management fees payable to the Asset Manager).

(c) To the extent that any action or transaction listed as a Major Decision in Section 3.3 is necessary or appropriate to satisfy the Liquidity Right of an Electing Member, including any debt or equity financing in connection therewith, then: (i) such action or transaction shall not be deemed a Major Decision and shall not be subject to unanimous approval of the Board of Directors; and (ii) any reasonable costs or expenses incurred in connection with such transaction (including without limitation any financing fees, attorneys fees, accounting fees and other professional fees and expenses) shall be borne by the Company or its Subsidiaries and taken into account in determining the Buyout Price.

ARTICLE IX
DISSOLUTION, LIQUIDATION AND TERMINATION

Section 9.1 Events of Dissolution . The Company shall be dissolved, and wound up pursuant to Section 9.2 , upon the earlier to occur of (it being understood that the following events are the only events that can cause the dissolution and liquidation of the Company):

(a) the tenth (10th) anniversary of the Effective Date;

(b) a unanimous vote by the Board of Directors to dissolve the Company;

(c) the occurrence of any Liquidation/Sale Event;

(d) the entry of a decree of judicial dissolution pursuant to Section 18-802 of the Act; or

(e) any time there are no Members of the Company, unless the Company is continued without dissolution pursuant to the Act.

Section 9.2 Manner of Liquidation . If the Company is dissolved for any reason, the Board of Directors shall commence to wind up the affairs of the Company and to liquidate and sell its assets (in such capacity, the "Liquidator"). The liquidation of the Company shall be conducted in accordance with the Liquidation/Sale Procedure.

Section 9.3 Judicial Winding Up . If the Company is dissolved for any reason and if within 90 days following the date of dissolution the Liquidator has failed to commence such actions as provided in Section 9.2 , any Member, Director or any of their respective Affiliates shall have the right to seek judicial supervision of the winding up of the Company as may be contemplated in the Act.

Section 9.4 [Intentionally Omitted].

Section 9.5 Distributions . Upon the winding up of the Company, its assets (other than cash) shall be sold (except that the common stock of the REIT Subsidiary may be distributed in kind) and its assets or the proceeds thereof shall be distributed as follows: (i) first, to creditors of the Company, including Members who are creditors, in satisfaction of all liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof); and (ii) thereafter, among the Members in accordance with Section 7.3 hereof.

Section 9.6 Source of Distributions . Each holder of an Interest in the Company shall look solely to the assets of the Company for the return of its or his Capital Contribution and its or his share of Profits and Losses and shall have no recourse upon dissolution or otherwise against the Company, the Members or the Liquidator. No holder of an interest in the Company shall have any right to demand or receive property other than cash upon dissolution and termination of the Company. All of the Company's properties shall be sold upon liquidation of the Company and no Company property shall be distributed in kind to the Members either during the term of the Company or upon the dissolution and termination thereof unless in each case otherwise unanimously agreed by the Board of Directors.

Section 9.7 Termination . Upon the completion of the winding up of the Company and the distribution of all Company funds, the Liquidator shall execute a certificate of cancellation of the Certificate and record all other documents required to effectuate the dissolution and termination of the Company and the cancellation of the Certificate.

ARTICLE X
ADDITIONAL COVENANTS AND AGREEMENTS

Section 10.1 Financial and Other Information . The Company shall deliver to each Member the following:

(a) as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year, an audited consolidated balance sheet as of the fiscal year end and audited statements of operations, cash flows, and shareholders' equity for the fiscal year;

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three fiscal quarters, an unaudited consolidated balance sheet of the Company as of the end of such fiscal quarter and unaudited consolidated statements of operations, cash flows and shareholders' equity for such fiscal quarter and fiscal year to date;

(c) as soon as practicable after receipt from Hotel Manager, the monthly reporting package or other monthly financial statements provided by the Hotel Manager;

(d) as soon as practicable after completion, an annual budget and business plan for the forthcoming fiscal year together with any update of such plan as it is prepared; and

(e) such other information relating to the financial condition, business, prospects or corporate affairs of the Company as such Shareholder may from time to time reasonably request.

Section 10.2 Tax Information . The Company shall cause to be delivered to each Person who was a Member at any time during a Fiscal Year (and will use its commercially reasonable efforts to do so within 180 days after the end of such Fiscal Year) a Form K-1 and such other information, if any, with respect to the Company as may be necessary for the preparation of such Member's federal, state and local income tax returns, including a statement showing such Member's share of income, gain or loss, expense and credits for such Fiscal Year for federal income tax purposes.

Section 10.3 REIT Opinion . Each of SHR and RECO shall have the right to require, not more than one (1) time every other fiscal year, by providing written notice to the Company, that the Company cause the delivery of an opinion of counsel from a nationally recognized law firm selected by the Company addressed to RECO and SHR (and any other applicable party) with respect to the qualification of the REIT Subsidiary as a real estate investment trust under the Code.

Section 10.4 Acquisition of Certain Indebtedness by SHR . SHR or one of its Affiliates (the "SHR Lender") may, in its sole discretion and without any approval from RECO or the Board of Directors, acquire from a third party lender any indebtedness secured by the Hotel or payable directly or indirectly out of the revenues of the Hotel (the "Hotel Debt"). If the SHR Lender acquires any Hotel Debt, it shall have all of the same rights and remedies of the lender who initially funded such indebtedness (the "Assignor Lender"), including without limitation with respect to priority of payment, affirmative and negative covenants, events of default and any other terms and conditions set forth in the applicable loan agreement, pledge agreement, deed of trust, mortgage or other agreement or instrument securing such loan or relating thereto (the "Third Party Loan Documents"). Notwithstanding the preceding sentence, for so long as the SHR Lender owns such Hotel Debt and no Designated Event has occurred, the SHR Lender will

refrain from initiating foreclosure proceedings with respect to the Hotel or any other collateral securing the Hotel Debt, it being understood that the SHR Lender shall retain all other rights and remedies with respect to such Hotel Debt in accordance with the Third Party Loan Documents. Any of the following events or circumstances with respect to the Company or any Subsidiary shall be considered a "Designated Event" for purposes of the SHR Lender's ability to exercise its foreclosure rights: (1) making an assignment for the benefit of creditors or filing a petition under federal bankruptcy law or any state insolvency law; (2) a sale or Transfer by either SHR or RECO of all or a material portion of its Interests; (3) if SHR no longer has a right to appoint a majority of the Board of Directors; or (4) if any other Person (other than SHR or its Affiliates) who holds Hotel Debt initiates foreclosure proceedings with respect to the Hotel or any other collateral securing such Hotel Debt. For the avoidance of doubt, the foregoing restrictions on the SHR Lender's ability to initiate foreclosure proceedings shall only apply to an SHR Lender and not to any other Person to whom the SHR Lender assigns or transfers such Hotel Debt or who otherwise owns any Hotel Debt, and the restrictions, limitations and other conditions set forth herein or required hereby on the rights and remedies of the holder of any Hotel Debt shall immediately be terminated and of no further force and effect upon such assignment or transfer.

Section 10.5 Confidentiality Agreement .

(a) Each Member, and any successor or assign of such Member, who receives from the Company or its agents, directly or indirectly, any information that the Company has not made generally available to the public, pursuant to the preparation and execution of this Agreement or the Purchase Agreement or disclosure in connection therewith or otherwise pursuant to the provisions of this Agreement or the Purchase Agreement or as a Member: (i) acknowledges and agrees that such information is confidential and for its use only in connection with its investment in the Company; and (ii) agrees that it will not disseminate such information to any person other than its accountant, investment advisor, limited partners, attorney, advisor, Affiliates and any financing sources.

(b) The obligation to hold in confidence and not to disclose confidential information pursuant to this Section 10.5 shall not apply to any such information that (i) is or becomes generally available to the public other than as a result of a direct or indirect disclosure by a Member in violation of this Agreement, (ii) is disclosed to the Member on a non confidential basis by a third party provided that such third party is not, to the knowledge of the Member, bound by a confidentiality agreement with the Company, (iii) is independently discovered, derived or developed by the Shareholder without access to the confidential information, or (iv) is required to be disclosed by applicable law or regulation, regulatory body, stock exchange, court or administrative order, or any listing or trading agreement with such regulatory body or stock exchange concerning such Member or the Company.

(c) SHR shall keep confidential the identity of RECO as a Member of the Company and shall not disclose the investment of RECO in the Company without the prior consent of RECO except as is required to be disclosed by applicable law or regulation, regulatory body, stock exchange, court or administrative order, or any listing or trading agreement with such regulatory body or stock exchange and only after prior notice to such Shareholder of the intent or requirement to disclose such information.

Section 10.6 Issuance of Certain Shares of the REIT Subsidiary . The Company shall use commercially reasonable efforts to cause the REIT Subsidiary to issue Class A Preferred Stock (as defined in the Certificate of Incorporation of the REIT Subsidiary) to at least 101 Persons by January 8, 2008.

Section 10.7 Indemnification Regarding Certain Transfer Taxes . SHR shall indemnify the Company against any and all losses, claims or liabilities that the Company incurs directly, or indirectly through the Company's indirect interest in the owner of the Hotel, in connection with the notice received by SHC Michigan Avenue, LLC from the Chicago Department of Revenue dated June 25, 2007, relating to transfer tax alleged to be due in connection with an April 1, 2005, transfer.

ARTICLE XI
BOOKS AND RECORDS

Section 11.1 Books and Records . The books and records of the Company shall, at the cost and expense of the Company, be kept or caused to be kept by the Company at the principal place of business of the Company or as otherwise determined by the Board of Directors. The books of account shall be kept in a manner that allows for the preparation of the Company's financial statements in accordance with GAAP. Each Member and its duly authorized representatives, upon five days notice, shall be permitted for any purpose reasonably related to such Member's interest as a member of the Company to inspect the books and records of the Company at any reasonable time during normal business hours. However, the Board of Directors shall have the right in its discretion to keep confidential from the Members, for such period of time as the Board of Directors deems appropriate, any information which the Board of Directors reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Board of Directors in good faith believes is not in the best interest of the Company or the business or that the Company (or any Subsidiary) is required by law or agreement with a third party to keep confidential.

ARTICLE XII
GENERAL PROVISIONS

Section 12.1 Notices . Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, and other communications (each a "Notice", collectively "Notices") required or permitted to be given under this Agreement, or which are to be given with respect to this Agreement, shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by overnight express courier, postage prepaid, or by telefacsimile or e-mail addressed to the party to be so notified as follows:

If to the Company or SHR:

CIMS Limited Partnership
c/o Strategic Hotels & Resorts, Inc.
77 West Wacker Drive
Suite 4600
Chicago, Illinois 60601
Attention: Chief Financial Officer and General Counsel
Telephone: (312) 658-5000
Fax: (312) 658-5799

After September 7, 2007:

Strategic Hotel Funding, L.L.C.
c/o Strategic Hotels & Resorts, Inc.
200 W. Madison
Suite 1700
Chicago, Illinois 60606
Attention: Chief Financial Officer and General Counsel
Telephone: (312) 658-5000
Fax: (312) 658-5799

with a copy to:

Perkins Coie LLP
131 South Dearborn Avenue, Suite 1700
Chicago, Illinois 60603
Attention: Phillip Gordon
Telephone: (312) 324-8600
Fax: (312) 324-9600

If to RECO:

DND Hotel JV Pte Ltd
168 Robinson Road #37-01
Capital Tower,
Singapore 068912
Attention: The Company Secretary
Telephone: (65) 6889-8888
Telecopy: (65) 6889-6878

With copies to:

DND Hotel JV Pte Ltd
c/o GIC Real Estate, Inc.
156 West 56th Street, Suite 1900
New York, New York 10019

Attention: Mr. Ryan Roberts
Telephone: (212) 468-1922
Telecopy: (212) 468-1940

and:

Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Drive
Chicago, Illinois 60606
Attention: Nancy M. Olson
Telephone: (312) 407-0532
Telecopy: (312) 407-8584
e-Mail: nolson@skadden.com

Notice mailed by registered or certified mail shall be deemed received by the addressee three (3) days after mailing thereof. Notice personally delivered shall be deemed received when delivered. Notice mailed by overnight express courier shall be deemed received by the addressee on the next business day after mailing thereof. Notice delivered by e-mail or by telefacsimile transmission shall be effective as of the date of automatic confirmation of receipt thereof by the sending party, properly addressed and sent as provided above provided that any notice by e-mail or telefacsimile transmission shall be accompanied by a copy of such notice to be sent by overnight express courier. Either party may at any time change the address for notice to such party by mailing a Notice as aforesaid. Any notice given by the attorney for a party shall be deemed to have been given by such party.

Section 12.2 Survival of Rights . This Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legatees, legal representatives, successors and assigns.

Section 12.3 Amendment . An affirmative vote or approval of each Class A Member shall be required to approve any amendment, modification or change to this Agreement; provided that this Agreement may be amended by SHR without the consent of any other Member as is necessary or appropriate to provide for the issuance of any New Securities as contemplated by, and pursuant to the terms of, Section 6.1(b) hereof.

Section 12.4 Headings . The captions of the articles and sections of this Agreement are for convenience only and shall not be deemed part of the text of this Agreement.

Section 12.5 Governing Law . This Agreement shall be governed, construed and enforced according to the laws of the State of Delaware, without giving effect to principles of conflicts of laws.

Section 12.6 Additional Documents . Each Member, upon the request of the others or the Members, agrees to perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

Section 12.7 Validity . Should any portion of this Agreement be declared invalid and unenforceable, then such portion shall be deemed to be severable from this Agreement and shall not affect the remainder hereof, unless the remaining provisions are so eviscerated by such declaration that they do not reflect the intent of the parties in entering into this Agreement.

Section 12.8 Construction . All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, entity or entities may require. As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.” All references to any agreement shall be a reference to such agreement as amended from time to time in accordance with its terms and the terms hereof.

Section 12.9 Counterparts . This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all such counterparts taken together will constitute one and the same Agreement. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission will be effective as delivery of a manually signed counterpart hereof.

Section 12.10 Interpretation of Agreement . Each of the Members has read this Agreement and has been advised and represented by independent legal counsel in the negotiation and preparation of this Agreement. The Members agree that this Agreement will be construed as jointly drafted. Accordingly, this Agreement will be construed according to the fair meaning of its language, and the rule of construction that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

Section 12.11 Entire Agreement . This Agreement and the agreements specifically referenced herein constitute the entire agreement among the parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties hereto with respect to the subject matter hereof.

Section 12.12 No Third Party Beneficiaries . This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other Person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise and none of the provisions of this Agreement shall be construed as existing for the benefit of any creditor of any of the Members or of the Company; provided, however, that nothing in this Section 12.12 shall be deemed to limit the rights of any Indemnified Party under Section 3.10 .

Section 12.13 Judicial Proceedings . In any judicial proceeding involving any dispute, controversy or claim arising out of or relating to this Agreement or the Company or its operations, each of the Members unconditionally accepts the non-exclusive jurisdiction and venue of any United States District Court located in the State of Delaware, or of the Court of Chancery of the State of Delaware, and the appellate courts to which orders and judgments thereof may be appealed. In any such judicial proceeding, the Members agree that in addition to any method for the service of process permitted or required by such courts, to the fullest extent

permitted by law, service of process may be made by prepaid certified mail with a proof of mailing receipt validated by the U.S. Postal Service constituting evidence of valid service. Each of the Members hereby waives trial by jury in any judicial proceeding involving any dispute, controversy or claim arising out of or relating to this Agreement or relating to the Company or its operations.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK .]

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement as of the date first written above.

CIMS LIMITED PARTNERSHIP

By:_____
Ryan M. Bowie
Vice President & Treasurer

DND HOTEL JV PTE LTD

By:_____
Peter Stanford
Authorized Signatory

By:_____
Michael Carp
Authorized Signatory

EXHIBIT A

PLANNED RENOVATION

1. The Phase I construction, remodeling, renovations, equipping and furnishing of the Starbuck's space in the Hotel, not to exceed $2,500,000 in the aggregate.

2. The Phase II construction, remodeling, redesign and concept change of the three meal restaurant (Zest), lounge and lobby area, not to exceed $3,000,000 in the aggregate.

3. The garage repairs and dedicated roof anchorages described in Attachment 1 to this Exhibit A .

4. Future expenditures for architects/consultants and attorneys for the continued planning of approximately 475,000 square feet of additional FAR, not to exceed $500,000 in aggregate.

EXHIBIT B

LIST OF OFFICERS

Officer	Title
Laurence S. Geller	President & Chief Executive Officer
James E. Mead	Executive Vice President & Chief Financial Officer
Richard J. Moreau	Executive Vice President, Asset Management
Jayson C. Cyr	Senior Vice President, Chief Accounting Officer
John F. Gray	Senior Vice President, Capital Projects
Paula C. Maggio	Senior Vice President, Secretary & General Counsel
Robert T. McAllister	Senior Vice President, Tax
Patricia A. Needham	Senior Vice President, Assistant Secretary
John K.T. Barrett	Vice President, Asset Management
Ryan M. Bowie	Vice President & Treasurer
Stephen M. Briggs	Vice President, Controller
D. Robert Britt	Vice President, Asset Management
Michael A. Dalton	Vice President, Design
Thomas G. Healy	Vice President, Asset Management
David R. Hogin, Jr.	Vice President, Asset Management
Michael E. Nelson	Vice President, Asset Management
Janice J. Peterson	Vice President, Human Capital
Timothy J. Taylor	Vice President, Capital Projects

EXHIBIT C

FORM OF REGISTER

Class A Member	Initial Capital Contribution	Additional Capital Contribution (Amount and Date)	Percentage Interest
CIMS Limited Partnership c/o Strategic Hotels & Resorts, Inc. 77 West Wacker Drive Suite 4600 Chicago, Illinois 60601	51% of Allocated Equity Value*		
DND Hotel JV Pte Ltd 168 Robinson Road #37-01 Capital Tower, Singapore 068912	49% of Allocated Equity Value*		

Class B Member	Initial Capital Contribution	Additional Capital Contribution (Amount and Date)	Percentage Interest
CIMS Limited Partnership c/o Strategic Hotels & Resorts, Inc. 77 West Wacker Drive Suite 4600 Chicago, Illinois 60601	N/A	N/A	

* Allocated Equity Value has the meaning set forth in the Purchase Agreement.

EXHIBIT D

SAMPLE CALCULATIONS FOR CAPITAL EVENT DISTRIBUTIONS

See attached

Exhibit D: Asset Management Fees & Capital Event Distribution Calculation **TOTAL VENTURE**
Assumes 7.1% EBITDA CAGR and 8.5% Terminal Cap Rate
Hurdle for Fee: 10.0% 10%

Leveraged Fee Calculation

	Aug-07	4 Months 2007	2008	2009	2010	2011	Total
Days	-	122	366	365	365	365	
Asset Management Fee Calculation (Hotel by Hotel)							
ICC Asset Management Fee		$ 305	$ 924	$ 993	$ 1,053	$ 0	$ 3,275
HRLJ Asset Management Fee		142	467	503	538	554	2,203
Total Asset Management Fee		**$ 447**	**$ 1,391**	**$ 1,496**	**$ 1,591**	**$ 554**	**$ 5,478**
Project Management Fee							
Capital Expenditure		$(2,500)	$ 0	$ 0	$ 0	$ 0	$ (2,500)
3.0% of CapEx		(75)	0	0	0	0	(75)
Project Management Fee		**$ 75**	**$ 0**	**$ 0**	**$ 0**	**$ 0**	**$ 75**
Asset Management Operating Incentive Fee Calculation							
ICC Net Equity Investment	$ (96,250)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$ (98,750)
HRLJ Net Equity Investment	(61,250)	0	0	0	0	0	(61,250)
Total Net Equity Investment	$(157,500)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$(160,000)
ICC Cummulative Cash on Investment		$ 3,451	$14,050	$26,314	$ 40,011	$ 40,011	$ 40,011
HRLJ Cummulative Cash on Investment		447	3,911	8,302	13,517	19,110	19,110
Total Cummulative Cash		$ 3,898	$17,961	$34,616	$ 53,528	$ 59,121	$ 59,121
ICC Cummulative Hurdle		$ 3,301	$13,203	$23,078	$ 32,953	$ 32,953	$ 32,953
HRLJ Cummulative Hurdle		2,047	8,189	14,314	20,439	26,564	26,564
Total Cummulative Hurdle		$ 5,348	$21,392	$37,392	$ 53,392	$ 59,517	$ 59,517
Cash over Cummulative Hurdle		$ 0	$ 0	$ 0	$ 136	$ 0	$ 136
AMOIF (20.0% of							

Cash Available over Cummulative Hurdle)			**$ 0**	**$ 0**	**$ 0**	**$ 27**	**$ 0**	**$ 27**
Class B Shareholder Distribution (20% over 10% IRR)								
Net Equity Investment		$(157,500)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$(160,000)
Cash Available for Distribution (pre AMOIF)			3,898	14,063	16,655	18,912	5,593	59,121
ICC Terminal Value						319,390	0	319,390
HRLJ Terminal Value						0	164,003	164,003
Retirement of Debt						(178,750)	(113,750)	(292,500)
Net Operating Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,552	$ 55,846	$ 90,014
Less: AMOIF		0	0	0	0	(27)	0	(27)
								0
Total Venture Cash Flow After AMOIF		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 55,846	$ 89,987
IRR	14.6%							
Cash Flow to Yield 10.0% IRR								
Net Equity Investment		$(157,500)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$(160,000)
Cash Available for Distribution (post AMOIF)		0	3,898	14,063	16,655	18,885	5,593	59,094
ICC Terminal Value		0	0	0	0	319,390	0	319,390
HRLJ Terminal Value		0	0	0	0	0	164,003	164,003
Retirement of Debt		0	0	0	0	(178,750)	(113,750)	(292,500)
Sub-Total Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 55,846	$ 89,987
Implied Distribution of Terminal Value							$ (34,119)	$ (34,119)
Net Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 21,727	$ 55,868
IRR	10.0%							
Cash Available for Distribution		$ 0	$ 0	$ 0	$ 0	$ 0	$ 34,119	$ 34,119
Maximum Payment of Distribution (20.0% of Cash Available)	0	0	0	0	0	6,824	6,824	
Cash Flow to Yield 12.5% IRR								
Cash Flow to Yield								

10.0% IRR		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 21,727	$ 55,868
Additional Distribution Necessary to Yield 12.5% IRR							$ 17,964	$ 17,964
Net Cash Flow IRR	12.5%	$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 39,692	$ 73,832
Additional Distribution Necessary to Yield 12.5% IRR							$ 17,964	$ 17,964
100% of Cash Flow to Yield 12.5% IRR							22,456	22,456 0
Gross Distribution (20.0% of Cash Available)							$ 4,491	$ 4,491
Less: AMOIF Paid to Date							(27)	(27)
Class B Shareholder Distribution (20% over 10% IRR)							**$ 4,464**	**$ 4,464**

Exhibit D: Asset Management Fees & Capital Event Distribution Calculation **TOTAL VENTURE**
Assumes 7.1% EBITDA CAGR and 8.5% Terminal Cap Rate
Hurdle for Fee: 10.0% 10%

Leveraged Fee Calculation

		Aug-07	4 Months 2007	2008	2009	2010	2011	Total
Days		-	122	366	365	365	365	
Class B Shareholder Distribution (100% over 12.5% IRR)								
Total Equity Investment		$(157,500)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$(160,000)
Cash Available for Distribution (pre AMOIF)		0	3,898	14,063	16,655	18,912	5,593	59,121
Asset Manager Operating Incentive Fee		0	0	0	0	(27)	0	(27)
ICC Terminal Value						319,390	0	319,390
HRLJ Terminal Value						0	164,003	164,003
Retirement of Debt						(178,750)	(113,750)	(292,500)
Class B Shareholder Distribution (20% over 10% IRR)							(4,464)	(4,464)
Total Venture Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 51,382	$ 85,523
IRR	14.0%							
Cash Flow to Yield 12.5% IRR								
Net Equity Investment		$(157,500)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$(160,000)
Cash Available for Distribution (pre AMOIF)		0	3,898	14,063	16,655	18,912	5,593	59,121
Asset Manager Operating Incentive Fee		0	0	0	0	(27)	0	(27)
ICC Terminal Value		0	0	0	0	319,390	0	319,390
HRLJ Terminal Value		0	0	0	0	0	164,003	164,003
Retirement of Debt		0	0	0	0	(178,750)	(113,750)	(292,500)
Class B Shareholder Distribution (20% over 10% IRR)		0	0	0	0	0	(4,464)	(4,464)
Sub-Total Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 51,382	$ 85,523
Implied Distribution								

of Terminal Value							$ (11,690)	$ (11,690)
Net Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 39,692	$ 73,832
IRR	12.5%							
Distributions Available for Earn-Up							$ 11,690	$ 11,690
Maximum Earn-Up Distribution							46,034	46,034
Class B Shareholder Distribution (100% over 12.5% IRR)							**$ 11,690**	**$ 11,690**
Distributions Available over Distribution							$ 0	$ 0
Distributions to Venture							0	0
Distributions to Class B Shareholder (20.0% of Cash Available over previous distribution)							0	0
Class B Shareholder Distribution (20% over 10% IRR)							**$ 0**	**$ 0**
Total Earned Class B Shareholder Distribution							**$ 16,154**	**$ 16,154**
Total Venture Cash Flow & Distribution Allocation								
Implied Venture Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 39,692	$ 73,832
IRR	12.5%							
Implied Distribution to Class A Shareholders		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 39,692	$ 73,832
Less: Acual Distribution to Class B Shareholders		0	0	0	0	(26,726)	0	(26,726)
Actual Distribution to Class A Shareholders		$(157,500)	$ 1,398	$14,063	$16,655	$ 132,799	$ 39,692	$ 47,107
IRR	8.3%							
IRR to Class A Shareholders to Make Whole	12.5%							
Additional								

Distributions to Make Whole							$ 30,066	$ 30,066
Total Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 132,799	$ 69,758	$ 77,173
IRR	12.5%							
Additional Distributions to Make Whole							$ 30,066	$ 30,066
Total Earned Class B Shareholder Distribution							$ (16,154)	$ (16,154)
Total Distributions for Reallocation							**$ 13,912**	**$ 13,912**
Summary of Distributions								
Net Equity Investment		$(157,500)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$(160,000)
Cash Available for Distribution (pre AMOIF)		0	3,898	14,063	16,655	18,912	5,593	59,121
Asset Manager Operating Incentive Fee		0	0	0	0	(27)	0	(27)
Asset Terminal Values		0	0	0	0	319,390	164,003	483,393
Retirement of Debt		0	0	0	0	(178,750)	(113,750)	(292,500)
Class B Shareholder Distribution		0	0	0	0	(26,726)	0	(26,726)
Class B Shareholder Reallocation		0	0	0	0	0	13,912	13,912
	12.5%	$(157,500)	$ 1,398	$14,063	$16,655	$ 132,799	$ 69,758	$ 77,173
Distribution to GIC (49% Class A Shareholder)		$ (77,175)	$ 685	$ 6,891	$ 8,161	$ 65,072	$ 34,181	$ 37,815
Distribution to SHR (51% Class A and 100% Class B Shareholder)		(80,325)	713	7,172	8,494	94,453	21,664	52,172

Exhibit D: Asset Management Fees & Capital Event Distribution Calculation **ICC ONLY**
Assumes 7.1% EBITDA CAGR and 8.5% Terminal Cap Rate

Leveraged Fee Calculation

		Aug-07	4 Months 2007	2008	2009	2010	2011
Days		-	122	366	365	365	-
Asset Management Fee Calculation							
Total Revenues			$26,556	$ 81,422	$ 85,493	$ 88,912	$ 0
EBITDA			8,727	26,396	28,376	30,078	0
1.0% of Total Revenue			$ 266	$ 814	$ 855	$ 889	$ 0
3.5% of EBITDA			305	924	993	1,053	0
Asset Management Fee (maximum of above)			**$ 305**	**$ 924**	**$ 993**	**$ 1,053**	**$ 0**
Project Management Fee							
Capital Expenditure			$ (2,500)	$ 0	$ 0	$ 0	$ 0
3.0% of CapEx			(75)	0	0	0	0
Project Management Fee			**$ 75**	**$ 0**	**$ 0**	**$ 0**	**$ 0**
Asset Management Operating Incentive Fee Calculation							
Total Capital Investment		$(275,000)	$ (2,500)	$ 0	$ 0	$ 0	$ 0
Debt		178,750	0	0	0	0	0
Net Equity Investment		(96,250)	(2,500)	0	0	0	0
NOI			$ 7,701	$ 23,131	$ 24,866	$ 26,357	$ 0
Debt Service			(3,869)	(11,608)	(11,608)	(11,608)	0
Asset Management Fee			(305)	(924)	(993)	(1,053)	0
Project Management Fee			(75)	0	0	0	0
Cash on Investment			$ 3,451	$ 10,599	$ 12,264	$ 13,697	$ 0
Cummulative Cash on Investment			$ 3,451	$ 14,050	$ 26,314	$ 40,011	$40,011
Cummulative Hurdle			3,301	13,203	23,078	32,953	32,953
Cash over Cummulative Hurdle			150	847	3,236	7,058	7,058
POTENTIAL AMOIF (20.0% of Cash Available over Cummulative Hurdle)			$ 30	$ 139	$ 478	$ 764	$ 0
Allocation of Actual AMOIF (Calculated on Total Venture)			**$ 0**	**$ 0**	**$ 0**	**$ 27**	**$ 0**
Class B Shareholder Distribution (20% over 10% IRR)							
Net Equity Investment		$ (96,250)	$ (2,500)	$ 0	$ 0	$ 0	$ 0
Cash Available for Distribution (pre AMOIF)			3,451	10,599	12,264	13,697	0
Terminal Value						319,390	0
Retirement of Debt						(178,750)	0
Net Operating Cash Flow		$ (96,250)	$ 951	$ 10,599	$ 12,264	$ 154,337	$ 0
Less: AMOIF		0	0	0	0	(27)	0
Total Venture Cash Flow After AMOIF		$ (96,250)	$ 951	$ 10,599	$ 12,264	$ 154,310	$ 0
IRR	22.0%						
Cash Flow to Yield 10.0%							

IRR							
Net Equity Investment		$ (96,250)	$ (2,500)	$ 0	$ 0	$ 0	$ 0
Cash Available for Distribution (post AMOIF)		0	3,451	10,599	12,264	13,669	0
Retirement of Debt		0	0	0	0	(178,750)	0
Sub-Total Cash Flow		$ (96,250)	$ 951	$ 10,599	$ 12,264	$(165,081)	$ 0
Implied Distribution of Terminal Value						$ 269,790	$ 0
Net Cash Flow		$ (96,250)	$ 951	$ 10,599	$ 12,264	$ 104,709	$ 0
IRR	10.0%						
Cash Available for Distribution		$ 0	$ 0	$ 0	$ 0	$ 49,601	$ 0
Maximum Payment of Distribution (20.0% of Cash Available)		0	0	0	0	9,920	0
Cash Flow to Yield 12.5% IRR							
Cash Flow to Yield 10.0% IRR		$ (96,250)	$ 951	$ 10,599	$ 12,264	$ 104,709	$ 0
Additional Distribution Necessary to Yield 12.5% IRR						$ 9,318	$ 0
Net Cash Flow		$ (96,250)	$ 951	$ 10,599	$ 12,264	$ 114,027	$ 0
IRR	12.5%						
Additional Distribution Necessary to Yield 12.5% IRR						$ 9,318	$ 0
100% of Cash Flow to Yield 12.5% IRR						11,647	0
Gross Distribution (20.0% of Cash Available)						$ 2,329	$ 0
Less: AMOIF Paid to Date						(27)	0
Class B Shareholder Distribution (20% over 10% IRR)						**$ 2,302**	**$ 0**

Exhibit D: Asset Management Fees & Capital Event Distribution Calculation **ICC ONLY**
Assumes 7.1% EBITDA CAGR and 8.5% Terminal Cap Rate

Leveraged Fee Calculation

		Aug-07	4 Months 2007	2008	2009	2010	2011
Days		-	122	366	365	365	-
Class B Shareholder Distribution (100% over 12.5% IRR)							
Total Equity Investment		$(96,250)	$(2,500)	$ 0	$ 0	$ 0	$ 0
Cash Available for Distribution (pre AMOIF)		0	3,451	10,599	12,264	13,697	0
Asset Manager Operating Incentive Fee		0	0	0	0	(27)	0
Terminal Value						319,390	0
Retirement of Debt						(178,750)	0
Class B Shareholder Distribution (20% over 10% IRR)						(2,302)	0
Total Venture Cash Flow		$(96,250)	$ 951	$10,599	$12,264	$ 152,008	$ 0
IRR	21.5%						
Cash Flow to Yield 12.5% IRR							
Net Equity Investment		$(96,250)	$(2,500)	$ 0	$ 0	$ 0	$ 0
Cash Available for Distribution (pre AMOIF)		0	3,451	10,599	12,264	13,697	0
Asset Manager Operating Incentive Fee		0	0	0	0	(27)	0
Retirement of Debt		0	0	0	0	(178,750)	0
Class B Shareholder Distribution (20% over 10% IRR)		0	0	0	0	(2,302)	0
Sub-Total Cash Flow		$(96,250)	$ 951	$10,599	$12,264	$(167,383)	$ 0
Implied Distribution of Terminal Value						$ 281,409	$ 0
Net Cash Flow		$(96,250)	$ 951	$10,599	$12,264	$ 114,027	$ 0
IRR	12.5%						
Distributions Available						$ 37,981	$ 0
Maximum Distribution						21,034	0
Class B Shareholder Distribution (100% over 12.5% IRR)					**$21,034**	**$ 0**	
Distributions Available over Distribution						$ 16,947	$ 0
Distributions to Venture						13,558	0
Distributions to Class B Shareholder (20.0% of Cash Available over previous distribution)						3,389	0
Class B Shareholder Distribution (20% over 10% IRR)						**$ 3,389**	**$ 0**

Exhibit 10.102

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

SHC AVENTINE II, L.L.C.

Dated as of August 31, 2007

THE UNITS EVIDENCED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATE OR FOREIGN JURISDICTION. SUCH UNITS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE OR FOREIGN SECURITIES LAWS, PURSUANT TO REGISTRATION THEREUNDER OR EXEMPTION THEREFROM. IN ADDITION, TRANSFER OR OTHER DISPOSITION OF SUCH UNITS IS FURTHER RESTRICTED AS PROVIDED IN THIS AGREEMENT. PURCHASERS OF UNITS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME

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AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
SHC AVENTINE II, L.L.C.

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (as amended from time to time in accordance with the terms hereof, this "Agreement") dated as of August___ , 2007 (the "Effective Date") of SHC Aventine II, L.L.C., a Delaware limited liability company (the "Company "), is made by and among DND Hotel JV Pte Ltd, a Singapore company ("RECO "), and Strategic Hotel Funding, L.L.C., a Delaware limited liability company ("SHR"). Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in Article I hereof.

RECITALS

WHEREAS, prior to the Effective Date, SHR was the sole member of the Company pursuant to that certain Amended and Restated Limited Liability Company Agreement dated as of January 29, 2003 (the "Original Agreement").

WHEREAS, in connection with the transactions contemplated by the Purchase Agreement, SHR desires to admit RECO as a Member of the Company and to amend and restate the Original Agreement as set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
GENERAL

Section 1.1 Formation of Limited Liability Company . The Company was formed under and pursuant to the Act on March 14, 2001 by the execution and filing of a certificate of formation of the Company (the " Certificate") with the Secretary of State of the State of Delaware.

Section 1.2 Amendment and Restatement of Original Agreement . The original agreement is hereby amended and restated in its entirety as set forth in this Agreement.

Section 1.3 Name . The name of the Company is "SHC Aventine II, L.L.C." or such other name or names as the Board of Directors may from time to time designate; provided that the name shall always contain the words "Limited Liability Company," "LLC" or "L.L.C.

Section 1.4 Purpose . The business and purpose of the Company is to (i) engage, either directly or through one or more Subsidiaries, in any lawful act or activity for which limited liability companies may be organized under the Act and (ii) do all things as may be necessary, appropriate, proper, advisable, convenient or incidental to or for the furtherance of the foregoing purpose and that is not prohibited by the Act or the law of any jurisdictions in which the Company engages in business.

Section 1.5 Term . The term of the Company commenced on the date that the Certificate was filed with the Secretary of State of the State of Delaware and shall continue until the date on which the Company is dissolved pursuant to Article IX .

Section 1.6 Place of Business . The principal place of business of the Company is 77 West Wacker Drive, Suite 4600, Chicago, Illinois 60601, or such other place or places as may be determined from time to time by the Board of Directors; provided , however , that as of September 7, 2007 the principal place of business of the Company shall be 200 W. Madison, Suite 1700, Chicago, Illinois 60606. The Company may also maintain additional offices in such other places as may be determined from time to time by the Board of Directors.

Section 1.7 Registered Office and Registered Agent . The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware 19808. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware 19808.

Section 1.8 Qualification . The Board of Directors shall cause the Company to continue to be qualified and existing as a limited liability company under the Act and shall cause it to be qualified and registered as such in other jurisdictions if the Board of Directors shall determine that it is appropriate for the Company to be so qualified or to be so registered.

Section 1.9 No State-Law Partnership . The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and, if applicable, state or other tax purposes, and neither this Agreement nor any other document entered into by the Company or any Member shall be construed to suggest otherwise. The Members intend that the Company shall be treated as a partnership for federal and, if applicable, state and other income tax purposes, and that each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment.

ARTICLE II
DEFINITIONS

Section 2.1 Definitions . As used in this Agreement, the following terms shall have the following meanings:

"Act" means the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101, et seq. , as amended from time to time, and any successor to that act.

"Actions" has the meaning set forth in Section 3.10 .

"Adjusted Capital Account" means, with respect to any Member, the balance, if any, in such Member's Capital Account as of the end of the relevant Company taxable year, after giving effect to a credit, if any, to such Capital Account of any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5).

"Affiliate" means, with respect to a Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes hereof, the Company and its Subsidiaries shall not be deemed an Affiliate of any Member.

"Agreement" has the meaning set forth in the Preamble.

"Asset Manager" means SHC DTRS, Inc., a Delaware corporation.

"Asset Management Agreement" means the asset management agreement, dated as of the Effective Date, between the REIT Subsidiary and the Asset Manager, as amended from time to time.

"Bad Act" means, with respect to a Member, the commission or occurrence of any of the following: (i) such Member is the subject of a criminal indictment or an equivalent criminal proceeding before any court or tribunal for a felony or for a crime involving moral turpitude or dishonesty (or an attempt of dishonesty) or for criminal activity that is punishable by imprisonment; (ii) such Member (or one of the officers of the Company) engages in any activity with respect to the Hotel, its operations, the Company or any of its Subsidiaries (a) that is committed in bad faith or in a manner that constitutes gross negligence, fraud or willful misconduct, or (b) that constitutes a felony and such party intentionally engaged in such activity knowing that the activity was unlawful at such time; (iii) such Member (or one of the officers of the Company) commits an intentional breach of this Agreement or the Asset Management Agreement; or (iv) upon the voluntary or involuntary bankruptcy, dissolution or insolvency of such Member.

"Board of Directors" or "Board" has the meaning set forth in Section 3.1 .

"Capital Account" means, with respect to any Member, the capital account maintained for such Member in accordance with the following provisions:

(a) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 7.6 or 7.7 hereof with respect to such Member's Interests, and the amount of any Company liabilities which are assumed by such Member or which are secured by any Company property distributed to such Member with respect to its Interests.

(b) To each Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company property distributed to such Member pursuant to any provision of this Agreement with respect to such Member's Interests, such Member's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 7.6 or 7.7 hereof with respect to its Interests, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company with respect to its Interests.

(c) In the event all or a portion of an interest in the Company which arises from Interests is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(d) In determining the amount of any liability for purposes of clauses (a) and (b) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations. Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), including syndication expenses as described in Regulations Section 1.709-2(b), shall be allocated among the Members in proportion to their respective Capital Contributions. Such expenditures shall be taken into account under this Agreement at the time they would be taken into account under the Company's method of accounting if they were deductible expenditures. In the event the Board of Directors shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or the Members), are computed in order to comply with such Regulations, the Board of Directors may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Article IX hereof upon the dissolution of the Company. The Board of Directors also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, to the extent provided in and consistent with Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Sections 1.704-1(b) and 1.704-2.

"Capital Contribution " means, with respect to any Class A Member, the amount of cash and the fair market value of any property, determined without regard to the provisions of Code Section 7701(g), contributed (or deemed to be contributed) to the Company with respect to the Class A Interests, as set forth on the Register.

"Capital Event" has the meaning set forth in Section 7.3 .

"Capital Event Distribution" has the meaning set forth in Section 7.3 .

"Certificate" has the meaning set forth in Section 1.1 .

"Change of Control Notice" has the meaning set forth in Section 8.2 .

"Class A Interests" means the Interests held by the Class A Members having such rights and preferences as are set forth herein.

"Class A Member" means any holder of Class A Interests. The initial Class A Members are SHR and RECO.

"Class B Interest" means the Interests held by the Class B Member having such rights and preferences as are set forth herein.

"Class B Member" means the holder of Class B Interests, which shall initially be SHR.

"Class B Preference Amount" means $21,034,000, but subject in all respects to a combined calculation under certain circumstances as contemplated in Section 7.4 hereof.

"Code" the Internal Revenue Code of 1986, as amended from time to time.

"Company" has the meaning set forth in the Preamble.

"Company Minimum Gain " has the meaning attributed to partnership minimum gain" as set forth in Treasury Regulations §§ 1.704-2(b)(2) and 1.704-2(d).

"Deadlock" shall be deemed to occur on the date following any thirty (30) day period during which the Board of Directors has attempted in good faith to resolve its inability to agree on one of the Major Decisions identified in Sections 3.3 (a) through 3.3(j) hereof (assuming such matter has not been resolved as of such date), which thirty (30) day period commenced upon written notice by SHR or RECO to the other party declaring a Deadlock or upon the date of the Board of Directors meeting in which the matter was placed on the agenda and considered, but no decision was reached.

"Director" shall have the meaning set forth in Section 3.1 . Each Director shall be considered a "manager" for purposes of the Act.

"Disposition" means a Capital Event with respect to the Company, other than a Capital Event that arises solely from a refinancing transaction.

"Distribution" means a distribution of cash by the Company to a Member pursuant to this Agreement.

"Effective Date" has the meaning set forth in the Preamble.

"Emergency Costs" means all costs and expenses required to (a) correct a condition that if not corrected would endanger imminently the preservation or safety of the Hotel or the safety of tenants, guests or other persons lawfully on or using the Hotel, (b) avoid the imminent suspension of any necessary service in or to the Hotel, (c) prevent any of the Members or their Affiliates from being subjected imminently to criminal or substantial civil penalties or damages resulting from the failure of the Hotel, the Company or any of its Subsidiaries to comply with applicable law, or (d) to avoid a material breach of the Hotel Management Agreement for failure to meet "first-class hotel standards" (as defined in the Hotel Management Agreement) or a material breach of any other agreement to which the Company or any of its Subsidiaries is a party.

"Fiscal Quarter" means each calendar quarter in each Fiscal Year.

"Fiscal Year" means (a) the 12-month period commencing on January 1 and ending on December 31, (b) any portion of the period described in clause (a) for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss or deduction or (c) such other period as may be required pursuant to Section 706 of the Code and the Regulations thereunder.

"GAAP" means United States generally accepted accounting principles, consistently applied.

"RECO" has the meaning set forth in the Preamble.

"Gross Asset Value" means, for any asset, such asset's adjusted basis for federal income tax purposes, as adjusted from time to time to reflect the adjustments that are required or permitted by, or are consistent with, Regulations Section 1.704-1 (b)(2)(iv)(d) through (g), (i) through (n) and (p) through (r); provided , however , that:

(a) the initial fair market value of any asset contributed by a Member to the Company shall be its fair market value as determined by the Board of Directors; and

(b) the Capital Account adjustments permitted pursuant to an event described in Regulations Sections 1.704-1(b)(2)(iv)(f) and (m) shall be made unless the Company reasonably determines that such adjustments would not reflect the relative economic interests of the Members in the Company.

"Hotel" means the hotel located at 3777 La Jolla Village Drive, San Diego, California and commonly known as the Hyatt Regency La Jolla at Aventine, including all land, improvements, fixtures, and appurtenances owned by the Company or any of its Subsidiaries.

"Hotel Management Agreement" means that certain Management Agreement to manage the Hotel, by and among the TRS Lessee and the Hotel Manager, as amended from time to time.

"Hotel Manager" means the Manager of the Hotel, as defined in the Hotel Management Agreement.

"Indemnified Costs" has the meaning set forth in Section 3.10 .

"Indemnified Party" has the meaning set forth in Section 3.10 .

"Initial Capital Contributions" has the meaning set forth in Section 6.1(a) .

"Initial Percentage Interest" means, with respect to each Class A Member, its Percentage Interest determined based on Initial Capital Contributions.

"Interests" means a limited liability company interest in the Company with such rights, preferences and obligations as are set forth herein.

"Internal Rate of Return " or "IRR" means the cash-on-cash internal rate of return, determined in good faith by the Board of Directors in accordance with standard financial practice.

"Lender" has the meaning set forth in Section 8.1(c) .

"Liquidation Date" means the date which is the earlier of (a) the date upon which the Company is considered "terminated" under Code Section 708(b)(1)(A) or (b) the date upon which the Company ceases to be a going concern (even though it may continue in existence for the purpose of winding up its affairs, paying its debts and distributing any remaining balance to its Members).

"Liquidation Period" has the meaning set forth in Section 9.4 .

"Liquidation/Sale Event " has the meaning set forth in Section 8.4(b) .

"Liquidation/Sale Procedure" has the meaning set forth in Section 8.4(b) .

"Liquidator" has the meaning set forth in Section 9.2 .

"Member" means any holder of Interests from time to time admitted as a member of the Company.

"Necessary Expenditures " means, with respect to the Company or any of its direct or indirect Subsidiaries to the extent then due or coming due, (a) all expenditures required to fund any Planned Renovation, (b) all Emergency Costs, (c) all fees, expenses and reimbursements owed under the Asset Management Agreement, (d) expenditures and amounts due under the Hotel Management Agreement, (e) insurance payments, real estate tax payments, principal, interest or other payments with respect to indebtedness, utility costs, costs of repairs and maintenance, costs required for compliance with federal, state and local laws, codes, rules or regulations (including without limitation filing tax return and obtaining and/or renewing permits or licenses), and (f) any other operating expenses or capital expenses set forth in any budget approved by the Board of Directors in accordance with Section 3.3 hereof.

"Net Financing Proceeds" means the net proceeds actually received by the Company (directly or through distributions from its Subsidiaries) from any financing, refinancing or borrowing, after deducting (A) any expenses incurred in connection therewith, (B) any amounts applied towards the payment of any existing indebtedness or of other obligations or expenses of the Company or its Subsidiaries and (C) any reserves deemed necessary by the Board of Directors.

"Net Sales Proceeds" means the net proceeds actually received by the Company (directly or through distributions from its Subsidiaries) from (i) a Sale of all or any material portion of the Hotel, or (ii) or Sale of a material portion of the Interests or other equity securities of the Company or any of its Subsidiaries or a liquidation of the Company or any of its Subsidiaries, after deducting (A) any fees, expenses or commissions incurred in connection therewith, (B) any amounts payable under the Asset Management Agreement in connection with such transaction, (C) any amounts applied towards the payment of any indebtedness or other obligations or expenses of the Company or its Subsidiaries, and (D) any reserves reasonably deemed necessary by the Board of Directors.

"Operating Cash Flow " means, other than Net Financing Proceeds, Net Sales Proceeds and Capital Contributions and other proceeds from issuances of Interests, an amount equal to all cash proceeds actually received by the Company from any source (directly or through distributions from its Subsidiaries), reduced by the sum of (A) cash expenditures by the Company and its Subsidiaries for costs and expenses in connection with the Company's and its Subsidiaries' businesses, including without limitation asset management fees, taxes, and interest paid with respect to indebtedness, (B) all cash expenditures by the Company and its Subsidiaries during such period for capital improvements and/or replacements in accordance with the terms and conditions hereof and (C) such reserves as are established in good faith by the Board of Directors.

"Operating Distributions " has the meaning set forth in Section 7.2 .

"Other Asset Management Agreement" means the Asset Management Agreement, as defined in the Other Holding LLC Agreement.

"Other Disposition" means a Capital Event under the Other Holding LLC Agreement, other than a Capital Event that arises solely from a refinancing transaction.

"Other Holding LLC" means SHC Michigan Avenue Mezzanine II, LLC, a Delaware limited liability company.

"Other Holding LLC Agreement" means the amended and restated limited liability company agreement of the Other Holding LLC, as amended from time to time.

"Other Hotel" shall mean the InterContinental Hotel – Chicago located in Chicago, Illinois.

"Other REIT Subsidiary " means SHC Michigan Avenue Mezzanine I, Inc., a Delaware corporation.

"Percentage Interest " means, with respect to each Class A Member, the quotient, expressed as a percentage, equal to (x) the aggregate Capital Contributions made by such Class A Member divided by (y) the aggregate Capital Contributions made by all Class A Members.

"Person" means any individual, partnership, corporation, trust, limited liability company, association, joint venture, estate, governmental entity or other legal person.

"Planned Renovation" means the agreed upon renovation of the Hotel described on **Exhibit A** hereto.

"Profits" and " Losses" means any reference to any item of income, gain, loss or deduction thereof mean, for each Company taxable year, an amount equal to the Company's taxable income or loss for such Company taxable year, determined in accordance with Code Section 703(a) (but including in taxable income or loss, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 702(a)), with the following adjustments:

(a) any income of the Company exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as expenditures described in Code Section 705(a)(2)(B) pursuant to Regulations Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be subtracted from such taxable income or loss;

(c) in the event the Gross Asset Value of any Company asset is adjusted in accordance with the definition of "Gross Asset Value" above, the amount of such adjustment shall, except to the extent subject to special allocation pursuant to Section 7.6 or Section 7.7(c), be taken into account as an item of income, gain, loss or deduction from the disposition of such asset for purposes of computing Profits or Losses; and

(d) notwithstanding any other provisions of this definition of "Profits" and "Losses" amounts specially allocated pursuant to Section 7.6 or Section 7.7(c) shall not be included in the computation of Profits and Losses for the year for purposes of the allocations set forth in Section 7.5 .

"Purchase Agreement" means that certain Agreement for Sale and Purchase of Membership Interests dated as of May 29, 2007 between SHR and RECO, as amended from time to time.

"Register" means the register of Interests and Members maintained by the Board of Directors, as further described in Section 6.2 .

"Regulatory Allocations " has the meaning set forth in Section 7.6(b) .

"REIT Subsidiary" means New Aventine Mezzanine I, Inc., a Delaware corporation.

"Sale" means the sale, exchange, transfer or other disposition.

"Securities Act" means the Securities Act of 1933, as amended.

"SHR" has the meaning set forth in the Preamble.

"SHR Change in Control " shall mean a "Change of Control" with respect to Strategic Hotels & Resorts, Inc., as defined in that certain Strategic Hotel Capital, Inc. 2004 Incentive Plan (excluding the definition that may be included in any Award Agreement as defined in such 2004 Incentive Plan).

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of

any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of the Person or a combination thereof or (b) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing director or general partner of such limited liability company, partnership, association or other business entity.

"Tax Matters Member" has the meaning set forth in Section 7.9 .

"Terminable Event" means, with respect to any Member, any of the following: (a) the failure by the other Member to make a Mandatory Contribution when due in accordance with this Agreement (provided that if RECO has failed to make a Mandatory Contribution due to the application of the RECO Capital Limit, any corresponding failure of SHR to make such Mandatory Contribution shall not constitute a Terminable Event); (c) the occurrence or commission of a Bad Act with respect to the other Member; (d) upon receipt by such Member of a Foreclosure Notice as contemplated in Section 8.1(c) ; or (e) with respect to RECO, the occurrence of a SHR Change in Control within eighteen (18) months after the Effective Date.

"Transfer" means any sale, transfer, assignment, pledge, mortgage, exchange, hypothecation, grant of a security interest or other direct or indirect disposition or encumbrance of an interest (including by operation of law) or the acts thereof. The terms "Transferee," "Transferred," and other forms of the word "Transfer" shall have correlative meanings.

"Treasury Regulations " or "Regulations" means the applicable provisions of the federal income tax final or temporary regulations promulgated under the Code, as amended from time to time, including the corresponding provisions of any succeeding regulations.

"TRS Lessee" means New DTRS La Jolla, L.L.C., a Delaware limited liability company.

"Wholly-Owned Affiliate" shall mean, with respect to SHR, any entity wholly owned, directly or indirectly, by Strategic Hotels & Resorts, Inc. or, with respect to RECO, any entity wholly owned, directly or indirectly, by the Minister for Finance (Inc.) Singapore, as the case may be.

ARTICLE III
MANAGEMENT

Section 3.1 General . The business and affairs of the Company shall be managed exclusively by a board of one or more directors designated by the Members as set forth herein (each, a "Director" and collectively, the "Board of Directors" or the "Board") and by such officers of the Company, if any, as may be appointed from time to time by the Board of Directors in accordance with this Agreement. Except where the approval of the Members is expressly required by this Agreement or by non-waivable provisions of the Delaware Act, the Board of Directors shall have full and complete authority, power and discretion to direct, manage and control the business, affairs and properties of the Company.

Section 3.2 Composition of Board of Directors .

(a) The Board of Directors shall at all times consist of three (3) Directors to be designated by the Class A Members as follows: (i) two (2) Directors designated by SHR, who shall initially be Robert T. McAllister and Paula C. Maggio; and (ii) one (1) Director designated by RECO, who shall initially be Adam Gallistel. The Director designated by RECO is referred to as the "RECO Director".

(b) Each Director shall serve until the earlier of his resignation, replacement, removal or death. Any member of the Board of Directors may resign at any time by giving written notice to the Company. Any Director(s) may be removed at any time, with or without cause, but only by the Member entitled to designate such Director(s) in accordance with Section 3.2(a) above. If a vacancy occurs for any reason in the office of the Board of Directors, the Member that designated the departing Director shall promptly elect a replacement for such Director.

Section 3.3 Major Decisions . Except as otherwise expressly set forth in this Agreement, none of the following decisions or actions involving the conduct of the business and affairs of the Company or any of its Subsidiaries (the "Major Decisions") shall be made or taken without the unanimous approval of the Board of Directors.

(a) (1) a Sale of all or substantially all of the assets of the Company or its Subsidiaries or of all or substantially all of the real and personal property constituting the Hotel, (2) a Sale (whether by merger, consolidation, reorganization, recapitalization or otherwise) of at least a majority of the then outstanding voting securities of the Company or its Subsidiaries to any Person, except as expressly contemplated by Article VIII hereof and (3) any determination of the sales price and other material terms of the transactions described in items (1) and (2) above (including whether to accept consideration in a form other than cash). For the avoidance of doubt, an SHR Change in Control shall not constitute a Major Decision subject to unanimous approval of the Board of Directors.

(b) (1) acquiring a business or entity (whether by merger, recapitalization, consolidation, acquisition of assets or securities, or other otherwise); (2) entering into any joint venture, joint operating or similar arrangement; or (3) forming a Subsidiary;

(c) except with respect to Necessary Expenditures, any expansion of the Hotel or other capital expenditures that exceed the Reserve for FF&E (as defined in the Hotel Management Agreement) by an amount greater than $500,000 in the aggregate with respect to the Hotel in any Fiscal Year;

(d) incurrence, issuance, refinancing or guarantee of indebtedness by the Company or any of its Subsidiaries, or amending or modifying any material terms of such indebtedness, other than (1) draws under any working capital line of credit or similar credit facility in an amount not in excess of the amount of working capital required for the operation of the Hotel in accordance with the Management Agreement or (2) to the extent no such line of credit or other credit facility is in place, indebtedness not in excess of $500,000.

(e) (1) any material amendment to the Hotel Management Agreement or any amendment to the Asset Management Agreement, (2) termination of the Hotel Management Agreement or the Asset Management Agreement in accordance with their respective terms or otherwise with the consent of the other party thereto and the selection of a new hotel manager or asset manager in connection with any termination or (3) approval of any assignment by the Hotel Manager or the Asset Manager, as applicable, of its rights and/or obligations under the Hotel Management Agreement or the Asset Management Agreement;

(f) any material and fundamental change with respect to the operation of the Hotel or the nature of the Hotel's business;

(g) issuing Interests or other equity interests of the Company to any Person or requiring any additional Capital Contributions from the Members, except in each case with respect to Necessary Expenditures as contemplated in this Agreement;

(h) taking any action that could reasonably be expected to cause the REIT Subsidiary to lose its status as a REIT;

(i) filing any petition or consenting to the filing of any petition, or taking any action that would cause the Company or any of its Subsidiaries to be subject to any bankruptcy or similar proceedings;

(j) causing a liquidation or dissolution of the Company or any of its Subsidiaries;

(k) (1) approval of the operating and capital budget for the Company, if any (excluding the operating and capital budget for the Hotel, which is subject to review or approval in accordance with item (2) of this subsection), and (2) approval of the annual capital budget for the Hotel (it being understood that each of the Members shall be entitled to review and comment on any operating budgets, but the approval of such operating budgets shall not be a Major Decision);

(l) purchasing directors and officers insurance or other insurance for the benefit of the Indemnified Parties;

(m) entering into or amending any agreements or arrangements between or among the Company or any of its Subsidiaries and any of their respective Members, officers, directors or, Affiliates, or any of their respective Affiliates (each, a "Related Party "), or the payment of any fees or other compensation to any Related Party, except in each case as expressly contemplated by this Agreement, the Purchase Agreement, the Asset Management Agreement, the Hotel Management Agreement or any other written agreement entered into on the Effective Date and executed or otherwise approved by each of the Class A Members;

(n) the settlement or compromise of any claim by or against third parties in excess of $500,000 with respect to the Hotel;

(o) selection of the accountants and independent auditors for the Company or its Subsidiaries;

(p) entering into any loan agreement or other material agreement outside the ordinary course of business;

(q) notwithstanding Section 7.8(b) , making any tax election that would reasonably be expected to have a material adverse affect on RECO's United States federal income tax liability; or

(r) entering into any agreement or commitment to take any of the foregoing actions.

Section 3.4 Meeting of the Board of Directors . The Board of Directors may hold meetings, both regular and special, within or outside the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by any Director on not less than 10 days' notice to each Director by telephone, facsimile, mail, e-mail, telegram or any other means of communication.

Section 3.5 Quorum: Acts of the Board . At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business and, except as otherwise required by any other provision of this Agreement, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Any action permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if the Directors having the requisite voting power to approve such action consent thereto in writing.

Section 3.6 Electronic Communications . Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in meetings of the Board of Directors, or any committee, by means of telephone conference or similar communications equipment that allows all individuals participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 3.7 Committees of Directors .

(a) The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of one or more of the Directors of the Company. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

(b) Subject to the terms of Section 3.3, any such committee, to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Company. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 3.8 Outside Activities . Each Director, officer, Member and any Person who is an Affiliate of any of the foregoing may engage or hold interests in other business ventures of every kind and description for his, her or its own account, whether or not such business ventures are in direct or indirect competition with the business of the Company and whether or not the Company has any interest therein. Neither the Company nor any of the Members shall have any rights by virtue of this Agreement in such independent business ventures or to the income or profits derived therefrom.

Section 3.9 Exculpation .

(a) No Director, officer, Tax Matters Member or Liquidator nor any of their respective agents, partners, members, employees, directors, managers, owners, counsel or Affiliates, in their respective capacity as such, shall have any duty to the Company or any Member except as set forth herein or in other written agreements executed in connection herewith. No Director, Tax Matters Member or Liquidator nor any of their respective agents, partners, members, employees, directors, managers, owners, counsel or Affiliates, acting as such, shall (i) be personally liable for the debts, obligations, or liabilities of the Company, including any such debts, obligations, or liabilities arising under a judgment decree or order of a court or arbitrator; (ii) be obligated to restore any deficit Capital Account; (iii) be required to return all or any portion of any Capital Contribution returned pursuant to Article VII ; or (iv) be required to lend any funds to the Company.

(b) No Director, officer, Tax Matters Member, Liquidator nor any of their respective agents, partners, members, employees, directors, managers, owners, counsel or Affiliates shall be liable, responsible, or accountable in damages or otherwise to the Company or any Member for any action taken or failure to act (even if such action or failure to act constituted negligence on such Person's part) on behalf of the Company within the scope of the authority conferred on such Person by this Agreement or by law, unless such act or failure to act constituted gross negligence or willful misconduct.

Section 3.10 Indemnification . The Company shall indemnify and hold harmless, to the fullest extent permitted by law, (i) each Member, in its capacity as such, (ii) each current or former Director or officer of the Company, in his, her or its capacity as such, (iii) the Tax Matters Member, in his, her or its capacity as such, (v) a Liquidator acting pursuant to Section 9.2 , in its capacity as such, and (v) each director, officer, agent, partner, member, employee, owner or consultant of each Member, Director, Tax Matters Member or Liquidator, in each case in its capacity as such (individually, an "Indemnified Party"), as follows:

(a) The Company shall indemnify and hold harmless, to the fullest extent permitted by law, any Indemnified Party from and against any and all losses, claims, damages, liabilities, expenses (including legal fees and other professional fees and expenses), judgments, fines, surcharges, tax penalties, settlements, and other amounts ("Indemnified Costs") arising from all claims, demands, actions, suits, or proceedings ("Actions"), whether civil, criminal, administrative, or investigative, in which the Indemnified Party may be involved, or threatened to be involved, as a party or otherwise in any way related to or arising out of this Agreement, the Company or the management or administration of the Company or in connection with the business or affairs of the Company or the activities of such Indemnified Party on behalf of the Company; provided, however, that no such Person shall be indemnified hereunder for any Indemnified Costs that proximately result from such Person's gross negligence or willful misconduct.

(b) The Company shall pay or reimburse, to the fullest extent allowed by law and consistent with Section 3.10(a) , in advance of the final disposition of the proceeding, Indemnified Costs incurred by the Indemnified Party in connection with any Action that is the subject of Section 3.10(a) ; provided, however, that the Indemnified Party shall provide to the Company written confirmation that the Indemnified Party will return any amounts so advanced by the Company to the extent that it is subsequently determined that the Indemnified Party was not entitled to receive such amounts advanced. It shall not be a condition of any such undertaking that it be secured, and the financial capacity of the Indemnified Party shall not be considered in connection with this Section 3.10(b) .

(c) Notwithstanding any other provision of this Section 3.10 , the Company shall pay or reimburse actual out-of-pocket Indemnified Costs incurred by an Indemnified Party in connection with such Person's appearance as a witness or other participation in a proceeding or investigation involving or affecting the Company at a time when the Indemnified Party is not a named defendant or respondent in the proceeding.

(d) Subject to Section 3.3 , the Board of Directors may cause the Company to purchase and maintain insurance or other arrangements on behalf of the Indemnified Parties against any liability asserted against any Indemnified Party and incurred by any Indemnified Party in that capacity or arising out of the Indemnified Party's status in that capacity, regardless of whether the Company would have the power to indemnify the Indemnified Party against that liability under this Section 3.10 . The indemnification provided by this Section 3.10 shall be in addition to any other rights to which the Indemnified Parties may be entitled under any agreement, vote of the Members, as a matter of law, or otherwise, and shall inure to the benefit of the heirs, successors, assigns, and administrators of the Indemnified Party.

(e) An Indemnified Party shall not be denied indemnification in whole or in part under this Section 3.10 because the Indemnified Party had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(f) The indemnification provided by this Section 3.10 shall be recoverable only out of the assets of the Company, and no Member shall have any obligation to make any Capital Contributions therefor or otherwise have personal liability on account thereof.

(g) The amount of any indemnification payable under this Section 3.10 shall be calculated so as to account for (i) any associated tax benefits and burdens to the Indemnified Party resulting from the matter (including those resulting from any such indemnity) and (ii) the receipt of insurance proceeds or other proceeds paid by Persons not affiliated with the Indemnified Party to the extent that such proceeds are paid without reservation, are actually received and specifically relate to the claim otherwise covered by the indemnity provisions herein. The parties agree to respond within a reasonable time to any inquiry by the Company as to the status of any such insurance or other third-party payment. Each party hereto who is an Indemnified Party agrees to act in good faith to pursue diligently any bona fide potential payer of insurance or, in the absence of a valid business reason, any bona fide potential third-party payer. The Company shall be subrogated to any claims or rights of any Indemnified Party as against any other Person(s) with respect to any Indemnified Costs paid by the Company. Each Indemnified Party shall cooperate with the Company to a reasonable extent, at the Company's expense, in the assertion by the Company of any such claim against such other Persons.

(h) Each Member hereby acknowledges and agrees that, in accordance with Section 18-1101 of the Delaware Act, no Director (in his or her capacity as such) shall have any liability to the Company or any other Director or any Member for breach of fiduciary duties; provided that this sentence shall not be construed to limit or eliminate liability for any act or omission that constitutes a bad faith or intentional violation of the implied contractual covenant of good faith and fair dealing.

Section 3.11 Appointment of Officers; Authority of Officers .

(a) Election of Officers . The Board of Directors hereby appoints the individuals set forth on **Exhibit B** hereto to serve as the officers of the Company, subject to removal and/or replacement by the Board of Directors in accordance with this Agreement. Any removal or replacement of the foregoing individuals shall not require an amendment to this Agreement.

(b) Authority of Officers . Subject in all cases to the ultimate authority of the Board of Directors and/or the rights and responsibilities granted to the Asset Manager, the officers shall manage the day-to-day business and affairs of the Company in the ordinary course of its business, in each case, unless the Board of Directors shall have previously restricted (specifically or generally) such powers. For the avoidance of doubt and without limiting the extent of any rights and/or powers vested in the Board of Directors hereunder, (i) at no time shall actions or decisions relating to Major Decisions be deemed to have been delegated to the officers, (ii) all decisions, determinations, actions, approvals and/or consents relating to Major Decisions shall require the approval of the Board of Directors in accordance with Section 3.3 , and (iii) no officers of the Company shall have power or authority with respect to any Major Decisions in the

absence of such approval of the Board of Directors. Subject to and without express or implied limitation of the foregoing, the officers of the Company shall have the following powers and responsibilities, it being understood that the Board of Directors may revoke, alter and/or diminish any of the following powers and responsibilities without amending this Agreement:

(i) President . The President, if any, shall be the chief executive officer of the Company, shall preside at all meetings of the Board, shall be responsible for the general and active management of the business of the Company and shall see that all orders and resolutions of the Board are carried into effect. The President or any other Officer authorized by the President or the Board shall execute all bonds, mortgages and other contracts, except: (i) where required or permitted by law or this Agreement to be otherwise signed and executed; or (ii) where signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Company.

(ii) Vice President . In the absence of the President or in the event of the President's inability to act, the Vice President, if any (or in the event there be more than one Vice President, the Vice Presidents), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents, if any, shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

(iii) Secretary and Assistant Secretary . The Secretary, if any, shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall attend all meetings of the Board and record all the proceedings of the meetings of the Company and of the Board in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or shall cause to be given, notice of all meetings of the Member, if any, and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Secretary shall serve. The Assistant Secretary, or if there be more than one, the Assistant Secretaries, shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

(iv) Treasurer and Assistant Treasurer . The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Company as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and to the Board of Directors, at its regular

meetings or when the Board of Directors so requires, an account of all of the Treasurer's transactions and of the financial condition of the Company. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers, shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

(c) Officers as Agents . The officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Board of Directors not inconsistent with this Agreement or the Asset Management Agreement, are agents of the Company for the purpose of the Company's business and, the actions of the officers taken in accordance with such powers shall bind the Company.

Section 3.12 Tax Covenants . Notwithstanding anything to the contrary contained herein or in any other agreement between the parties hereto:

(a) The Company shall not engage in commercial activity as such term is defined in Section 892 of the Code.

(b) The Company shall take all actions necessary to ensure that the REIT Subsidiary does not pay dividends in 2007 or in 2008 in a manner that would result in the shareholders being treated as receiving such dividend in 2007 pursuant to Section 857(b)(9) of the Code; rather, the Company shall cause the REIT Subsidiary to declare and pay dividends after April 30, 2008 pursuant to Section 858 of the Code with respect to the 2007 taxable year.

(c) The Company will not incur any "effectively connected income" within the meaning of Section 864 of the Code.

(d) If the Company receives a properly executed Internal Revenue Service Form W-8EXP and for as long as such form is valid, the Company will not withhold any tax pursuant to Chapter 3 of the Code on any amounts accrued or payable to RECO, including with respect to capital gain dividends paid by the REIT Subsidiary.

(e) The Company acknowledges that the REIT Subsidiary is intended to qualify at all times as a "real estate investment trust" within the meaning of Section 856 of the Code. Accordingly, the Company shall use its commercially reasonable efforts to conduct the operations and otherwise administer the REIT Subsidiary at all times in a manner that will enable it to satisfy all the requirements for real estate investment trust status under Sections 856 through 860 of the Code, and to avoid, to the extent possible, the imposition of any entity-level federal or state income or excise taxes (other than income taxes imposed on any "taxable REIT subsidiary" of any REIT and other than excise tax pursuant to Section 858 of the Code on the dividend referred to in Section 3.12(b)). In particular, the Company shall use commercially reasonable efforts to administer the REIT Subsidiary in accordance with the following limitations: (i) in no event shall any shareholder of the REIT Subsidiary be required to contribute funds to the

REIT Subsidiary in order to permit the REIT Subsidiary to satisfy the foregoing distribution requirement; and (ii) the SHR shall use commercially reasonable efforts to cause the REIT Subsidiary not to engage in any "prohibited transactions" within the meaning of Section 857(b)(6)(B)(iii) of the Code. If the REIT Subsidiary's available funds are insufficient to meet the foregoing distribution requirement, the Company may cause the REIT Subsidiary to make a "consent dividend" within the meaning of Section 565 of the Code. In no event shall the Company be required to contribute funds to the REIT Subsidiary in order to permit the REIT Subsidiary to satisfy the foregoing requirements.

(f) SHR shall have the sole responsibility and obligation to oversee, implement and enforce the policies and decisions of the Board of Directors with respect to the covenants and agreements expressly set forth in this Section 3.12 . SHR shall discharge its duties expressly set forth in this Section 3.12 in good faith and in accordance with good industry practice, all applicable laws and this Agreement. SHR may delegate some or all of the duties set forth in this Section 3.12 to the Asset Manager, provided that such delegation shall not discharge SHR's responsibilities or obligations hereunder. Any Person not Affiliated with SHR that deals with SHR in connection with the performance of its duties under this Section 3.12 may rely absolutely on any action, failure to act, or execution and delivery of any instrument by SHR on behalf of the Company as having been authorized by requisite action of the Company.

ARTICLE IV
RIGHTS AND OBLIGATIONS OF THE MEMBERS

Section 4.1 Limitation of Liability . Except as otherwise required by applicable law and as expressly set forth in this Agreement, no Member shall have any personal liability whatever in such Member's capacity as a Member, whether to the Company, to any other Members, to the creditors of the Company, or to any third party, for the debts, liabilities, commitments or other obligations of the Company or for any losses of the Company. Each Member shall only be liable to make any payments expressly set forth herein.

Section 4.2 Rights and Duties . The Members (in their capacity as such) shall not participate in the management or control of the Company's business, transact any business for the Company or have the power to act for or bind the Company. A Member may not resign from the Company prior to the dissolution and winding up of the Company, except upon a Transfer of all of its Interests expressly permitted under this Agreement. Upon any such resignation, the Member shall not be entitled to receive the fair value of the Member's Interests under Section 18-604 of the Delaware Act.

ARTICLE V
MEETINGS AND VOTING OF MEMBERS

Section 5.1 Meetings . There shall be no mandatory regular meetings of the Members.

Section 5.2 Special Meetings . Special meetings of the Class A Members, for any purpose or purposes, may be called by any Director or any Class A Member.

Section 5.3 Time and Place, Notice, Etc. Special meetings of the Class A Members may be held at the principal office of the Company, or at such other place as shall be determined by the Persons calling the meeting pursuant to Section 5.2 . Notice of any special meeting shall set forth the time of the meeting and shall be sent to each Class A Member as set forth in Section 12.1 at least 10 days before the day on which the meeting is to be held, or if sent by fax or delivered personally or by telephone, not later than 5 days before the day on which the meeting is to be held.

Section 5.4 Quorum . At each meeting of the Class A Members, the holders of at least two-thirds of the outstanding Class A Interests, present in person or by proxy, shall constitute a quorum for the transaction of any business which may be taken at such a meeting.

Section 5.5 Voting . Except as otherwise expressly provided herein or as expressly required by law, all decisions to be made by the Class A Members shall require the affirmative vote of the holders of at least two-thirds of the outstanding Class A Interests. Other than the Class A Members, no Member shall have any voting rights.

Section 5.6 Meeting Through Use of Communications Equipment . Members shall have the right to participate in meetings by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participants shall constitute presence in person at the meeting.

Section 5.7 Proxies . At any meeting of the Class A Members, a Class A Member may vote by proxy executed in writing by such Class A Member or by its duly authorized representative.

Section 5.8 Written Consent . Any action permitted to be taken at any meeting of the Class A Members may be taken without a meeting if Class A Members having the requisite voting power to approve such action consent thereto in writing.

ARTICLE VI
CONTRIBUTIONS, UNITS AND CAPITAL ACCOUNTS

Section 6.1 Contributions and Commitments .

(a) Initial Capital Contributions . In consideration of the issuance by the Company of Interests according to the relative ownership percentages as set forth in on the Register, each of the Members has contributed or shall be deemed to have contributed (in the form of cash or such other form of consideration acceptable to the Company) an initial Capital Contribution to the Company ("Initial Capital Contribution ") equal to the amount set forth opposite such Member's name on the Register. Except as set forth in Section 6.1(b) , no Member shall be required to make any additional Capital Contributions.

(b) Mandatory Capital Contributions . If the Board of Directors determines that additional capital is required to fund any Necessary Expenditures, then the Board of Directors shall deliver a notice (a "Mandatory Capital Notice") to each Class A Member describing the Necessary Expenditures and setting forth each Class A Member's

mandatory Capital Contribution for such Necessary Expenditures, which in all cases shall be pro rata in accordance with Initial Percentage Interests (a "Mandatory Contribution"). Each Member shall make its respective Mandatory Contribution to the Company within the 15 days after receipt of the Mandatory Capital Notice. Mandatory Contributions shall be made by certified or cashier's check or by wire transfer of immediately available funds to an account designated in writing in the Mandatory Capital Notice or otherwise by the Board of Directors. Upon a failure by any Member to make a Mandatory Contribution when due, the Company and/or the other Members shall have all available remedies at law, in equity or otherwise set forth in this Agreement (including without limitation the exercise of Liquidity Rights and the issuance of any New Securities as contemplated below). In the event that the sum of (1) the Initial Capital Contributions and all Mandatory Capital Contributions made by RECO to the Company plus (2) the Initial Capital Contributions and all Mandatory Capital Contributions (each as defined in the Other Holding LLC Agreement) made by RECO to the Other Holding LLC exceeds $88,000,000 in the aggregate (the "RECO Capital Limit"), then RECO may, but shall not be obligated to, fund its Mandatory Contributions in excess of the RECO Capital Limit; provided that in the event of any failure by RECO to fund its pro rata portion of Mandatory Contributions in excess of the RECO Capital Limit, SHR may, in addition to any rights or remedies set forth in Section 8.3 hereof and without any approval of RECO or the RECO Director but subject to the participation rights set forth in the next sentence, cause the Board of Directors (excluding the RECO Director) to cause the Company to fund all capital requirements in excess of the RECO Capital Limit (including SHR's Mandatory Contribution called at the same time as RECO's Mandatory Contribution in excess of the RECO Capital Limit) by issuing any form of debt or equity securities of the Company, the REIT Subsidiary or any of its direct or indirect Subsidiaries that are treated as a corporation for U.S. federal income tax purposes (the "New Securities") to SHR, any of its Affiliates or to any third party. The New Securities shall have such rights, preferences, priorities, interest, dividend rates and/or other terms and conditions as determined by SHR in its sole and absolute discretion. Notwithstanding the foregoing, not later than simultaneous with or promptly after issuance of any New Securities, SHR shall offer to RECO (by written notice) the right to purchase its pro rata portion of such New Securities based on its Percentage Interest. Within 10 days after receipt of such notice from SHR, RECO may elect, by written notice to SHR, to purchase all (but not less than all) of such New Securities offered by SHR in accordance with the preceding sentence. If RECO fails to timely deliver such election notice, it shall have no right to participate in the offering of any such New Securities. For the avoidance of doubt, the determination as to whether to deliver a Mandatory Capital Notice (and the delivery thereof) and/or to issue New Securities as set forth herein (or to establish the terms thereof) shall not constitute a Major Decision.

Section 6.2 Register of Interests . The Board of Directors shall maintain the Register setting forth the name and address of each Member, the aggregate Capital Contributions and Percentage Interest of each Member, the type of Interests owned by the Members and such other information as deemed appropriate by the Board of Directors. The initial form of Register is attached hereto as **Exhibit C** . The Board of Directors may update the Register from time to time as necessary to accurately reflect the information therein, including the payment of any additional Capital Contributions. Any reference in the Agreement to the Register shall be deemed a reference to the Register as in effect from time to time. No action of any Member shall be required to amend or update the Register.

Section 6.3 Capital Account Maintenance . An individual Capital Account shall be maintained for each Member.

Section 6.4 No Obligation of Members to Restore Deficit . The Members shall have no liability to the Company, to any other Member, or to the creditors of the Company on account of any deficit balance in such Member's Capital Account. Subject to Section 3.3 hereof, any Member, with the approval of the Board of Directors, may make loans to the Company and any such loan shall not be considered a Capital Contribution.

Section 6.5 No Interest on Capital Contributions . No interest shall be paid to the Members with respect to their contributions to the capital of the Company.

Section 6.6 Company Funds and Property . All funds received by the Company will be utilized for Company purposes. Title to all property contributed to the Company or acquired by the Company shall be held in the name of the Company. No Member shall have any ownership interest in such property in its individual right, and each Member's interest in the Company shall be personal property for all purposes. Until required for the Company's business, all Company funds shall be deposited and maintained in such accounts in such financial institutions as shall be selected by the Board of Directors from time to time. Company funds shall not be commingled with the funds of any other Person.

ARTICLE VII
DISTRIBUTIONS; ALLOCATIONS

Section 7.1 Distributions Generally . All Operating Distributions and Capital Event Distributions shall be distributed as set in this Article VII . The Board of Directors shall in all cases, in its good faith discretion, determine whether and to what extent any Distributions shall be made to the Members, out of funds legally available therefor, but in each case subject to the rights and preferences of each class of Interests set forth herein. Operating Distributions, if any, shall be made to the Members on a quarterly basis, and Capital Event Distributions, if any, shall be made to the Members promptly after actual receipt of the proceeds of the corresponding Capital Event, provided, in no event shall any distributions be made hereunder to any Member until after April 30, 2008. The determination of whether amounts to be distributed are classified as Operating Cash Flow, Net Financing Proceeds or Net Sales Proceeds shall be made by the Board of Directors in its good faith discretion.

Section 7.2 Operating Distributions . All distributions of Operating Cash Flow (such distributions being referred to herein as " Operating Distributions"), as determined by the Board of Directors shall be made to the holders of Class A Interests, pro rata based upon their respective Percentage Interests.

Section 7.3 Capital Event Distributions . Subject to Section 7.4 , all distributions of Net Financing Proceeds and Net Sales Proceeds (such distributions being referred to herein as "Capital Event Distributions", and each transaction giving rise to such distributions, including without limitation any Liquidation/Sale Event, being referred to herein as a "Capital Event"), as determined by the Board of Directors, out of legally available funds, shall be made to the holders of Interests in the following order of priority:

(i) First, 100% to the holders of Class A Interests, pro rata in accordance with their respective Percentage Interests, until each such holder has been distributed under Section 7.2 and this Section 7.3(i) an aggregate amount equal to its Capital Contributions plus a 10% Internal Rate of Return thereon;

(ii) Second, (A) 20% to the holder of Class B Interests; and (B) 80% to the holders of Class A Interests, pro rata in accordance with their respective Percentage Interests, until each such holder of Class A Interests has been distributed under Section 7.2 , Section 7.3(i) and this Section 7.3(ii)(B) an aggregate amount equal to its Capital Contributions plus a 12.5% Internal Rate of Return thereon;

(iii) Third, 100% to the holder of Class B Interests until such holder has received, in the aggregate under this Section 7.3(iii) , an amount equal to the Class B Preference Amount; and

(iv) Fourth, (A) 20% to the holder of Class B Interests; and (B) 80% to the holders of Class A Interests, pro rata in accordance with their respective Percentage Interests.

The amount otherwise payable under Section 7.3(ii)(A) as a result of any Capital Event shall be adjusted by deducting therefrom the aggregate amount previously paid as Operating Incentive Fees (as defined in the Asset Management Agreement) with respect to the Hotel. The calculation and priority of Capital Event Distributions is illustrated in further detail in the sample calculations attached hereto as **Exhibit D** .

Notwithstanding anything to the contrary herein, if a Disposition has occurred hereunder prior to any Other Disposition, and Capital Event Distributions are payable to the holder of Class B Interests pursuant to this Section 7.3 as a result of such Disposition, then such Capital Event Distribution shall not be distributed to the Class B Member unless and until the Class B Member provides an affiliate guaranty, a letter of credit or similar assurance in a form reasonably acceptable to the Members in favor of RECO or the Other Holding LLC (with RECO as a third party beneficiary with unilateral enforcement rights) to secure payment of any potential Class B Overpayment that may arise under the Other Holding LLC Agreement.

Section 7.4 Effect of Certain Other Dispositions . Upon a Disposition hereunder, if an Other Disposition has occurred prior to, or is occurring simultaneous with, such Disposition, then, notwithstanding anything to the contrary herein, the amounts distributable to the holders of Class A Interests and Class B Interests hereunder from the Net Sales Proceeds related to such Disposition (the "Final Distributions") shall be determined in accordance with the following:

(a) The Final Distributions shall be calculated and distributed by the Board of Directors on a combined basis with distributions under the Other Holding LLC Agreement, such that the Final Distributions take into account all amounts paid or payable hereunder and under the Other Holding LLC Agreement (including without

limitation proceeds from sales of Interests hereunder or thereunder) as if all such amounts were paid or payable hereunder, with the Capital Contributions for each holder being equal to the sum of its Capital Contributions (as defined herein), plus its Capital Contributions (as defined in the Other Holding LLC Agreement) and the Class B Preference Amount being equal to $46,034,000.

(b) If, after giving effect to the calculation described in subsection (a) above, the holder of Class B Interests or the holder of Class B Interests of the Other Holding LLC have received distributions but the maximum amount payable to the Class A Interest holders under Section 7.3(ii)(B) has not been paid, there shall be deemed to be a "Class B Overpayment ." In such event, the Class B Member shall pay to the Company (for distribution to the holders(s) of Class A Interests pro rata based on their Percentage Interests), or shall have deducted from distributions otherwise payable to the Class B Member in respect of its Class A Interests, an amount up to the amount of the Class B Overpayment in order to provide for the combined distributions hereunder and under the Other Holding LLC Agreement as contemplated herein. The application of this combined calculation and distribution shall be as determined by the Board of Directors in good faith and is illustrated in further detail in the sample calculations attached hereto as **Exhibit D** .

Section 7.5 Allocation of Profits and Losses . Subject to the allocation rules set forth in Section 7.6 and Section 7.7 , Profits and Losses shall be allocated among the Members for each Company taxable year or period as follows :

(a) Profits .

(i) First, to the Members, to the extent of, in proportion to, and in the reverse order of cumulative Losses previously allocated to each such Member in past tax years or periods under Section 7.5(b)(iii) hereof (but only to the extent incurred after the Effective Date) in excess of cumulative Profits previously allocated under this Section 7.5(a)(i) ;

(ii) Second, to the Members, to the extent of, in proportion to, and in the reverse order of cumulative Losses previously allocated to each such Member in past tax years or periods under Section 7.5(b)(ii) hereof (but only to the extent incurred after the Effective Date) in excess of cumulative Profits previously allocated under this Section 7.5(a)(ii) ;

(iii) Third, to the Members, to the extent of any amounts distributed to such Members during the relevant tax year or period pursuant to Sections 7.2 and 7.3 ; and

(iv) Finally, any remaining Profits shall be allocated to the Members, in proportion to the number of Class A Interests held by each Member.

(b) Losses .

(i) First, to the Members, to the extent of, in proportion to, and in the reverse order of cumulative Profits allocated to them pursuant to Section 7.5(a)(iii) above, in excess of cumulative Losses previously allocated under this to Section 7.5(b)(i) , provided, that no Member shall be allocated Loss pursuant to this Section 7.5(b)(i) to the extent such allocation would create a negative Adjusted Capital Account balance;

(ii) Second, to the Members, to the extent of, and in proportion to, their relative positive Adjusted Capital Account balances after taking into account the allocation rules set forth in Section 7.6 and Section 7.7 and allocations pursuant Section 7.5(b)(i) above; and

(iii) Finally, the balance (if any) of Loss shall be allocated to the Members, in proportion to the number of Class A Interests held by each Member.

Section 7.6 Special Allocations . The following special allocations shall be made in the following order and priority:

(a) The provisions of this Agreement relating to the allocations of items of income, gain, loss and deduction are intended to comply with Regulations Sections 1.704-1 and 1.704-2. In the event that subsequent events (including a loan by a Member to the Company) cause the allocations set forth in Section 7.5 not to be in accordance with the Regulations, then notwithstanding any other provision of this Agreement, the Company may make such modifications to this Agreement (including the addition of special allocation provisions specified by Regulations Section 1.704-2) that are necessary to cause such allocations to have substantial economic effect within the meaning of Regulations Section 1.704-1(b)(2) or to be deemed to be in accordance with the Members' interests in the Company under Regulations Section 1.704-1. Without limiting the foregoing, this Section 7.6(a) is intended to cause the Company to have a "qualified income offset" in compliance with Regulations Section 1.704-1(b)(2)(ii)(d) and shall be applied and interpreted in accordance with such Regulation; provided that an allocation pursuant to the qualified income offset shall be made only after all other allocations provided for in this Section 7.6 have been tentatively made as if such qualified income offset were not in this Agreement. Consistent with this Section 7.6(a) , "nonrecourse deductions," as defined in Regulations Section 1.704-2(b), shall be allocated to the Members, pro rata, in accordance with such Treasury Regulations.

(b) The allocations set forth in Section 7.6(a) (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding any other provisions of this Article VII (other than the Regulatory Allocations), all Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the greatest extent possible, the net amount of all allocations pursuant to this Article VII to each Member shall be equal to the net amount that would have been allocated to each such Member in each Company taxable year or period if the Regulatory Allocations had not occurred. Allocations pursuant to this Section 7.6(b) shall only be made with respect to Regulatory Allocations to the extent the Company determines that such allocations are consistent with the overall economic sharing arrangement among the Members, as reflected in this Agreement.

Section 7.7 Other Allocation Rules .

(a) In the event Members are admitted to the Company pursuant to this Agreement on different dates, the Company items of income, gain, loss, deduction and credit allocated to the Members for each Company taxable year or period during which Members are so admitted shall be allocated among the Members for such Company taxable year using any convention permitted by Code Section 706 and selected by the Tax Matters Member.

(b) In the event a Member transfers its Interest during a Company taxable year, the allocation of Company items of income, gain, loss, deduction and credit allocated to such Member and its Transferee for such Company taxable year shall be made between such Member and its Transferee in accordance with Code Section 706 using any convention permitted by Code Section 706 and selected by the Tax Matters Member.

(c) In the event the Gross Asset Value of any Company asset is adjusted in accordance with subsection (b) of the definition of "Gross Asset Value" above, the amount of such adjustment shall be taken into account as an item of income, gain, loss or deduction from the disposition of such asset and specially allocated Member by Member so that, to the greatest extent possible, the Capital Account attributable to each Member as a percentage of the total of all Capital Accounts is equal to the same percentage as the number of Interests held by such Member represents of the total number of Interests outstanding.

Section 7.8 Tax Allocations; Code 704(c) Allocations . Except as otherwise provided in this Section 7.8 , all items of Company income, gain, loss, deduction and credit for federal and applicable state and local income tax purposes shall be allocated among the Members in as nearly the same manner as they share correlative Profits, Losses or Company items of income, gain, loss or deduction, as the case may be, for the Company taxable year. Allocations pursuant to this Section 7.8 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses or other items or distributions pursuant to any provision of this Agreement.

(a) In accordance with Code Section 704(c) and the Regulations thereunder, but solely for income tax purposes, income, gain, loss and deduction with respect to any asset contributed to the capital of the Company (including income, gain, loss and deduction determined with respect to the alternative minimum tax) shall be allocated among the Members so as to take account of any variation between the adjusted basis of such asset to the Company for federal income tax purposes (including such adjusted basis for alternative minimum tax purposes) and its initial Gross Asset Value, including special allocations to a contributing Member that are required under Code Section 704(c) to be made upon distribution of such asset to any of the non-contributing Members; provided , however , that if any Member contributed assets with an adjusted tax basis in excess of the

initial Gross Asset Value for such assets, the Company shall take into account such variation only in determining the amount of items allocated to the contributing Member, and except as provided in the Regulations, in determining the amount of items allocated to the non-contributing Member, the tax basis of the contributed assets in the hands of the Company shall be treated as being equal to its initial Gross Asset Value. Further, in the event the Gross Asset Value of any Company asset is adjusted pursuant to paragraph (b) of the definition of "Gross Asset Value" contained herein, such that "reverse section 704(c) allocations" are required under Regulations Section 1.704-3(a)(6), then, solely for federal income tax purposes, subsequent allocations of income, gain, loss and deduction with respect to such asset (including income, gain, loss and deduction determined with respect to the alternative minimum tax) shall take account of any variation between the adjusted basis of such asset (including such adjusted basis for alternative minimum tax purposes) and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(b) Any elections or other decisions relating to allocations under this Section 7.8 , including the selection of any allocation method permitted under Regulations Section 1.704-3, shall be made as approved by the Tax Matters Member.

(c) If any taxable item of income or gain is computed differently from the taxable item of income or gain which results for purposes of the alternative minimum tax, then, to the extent possible, without changing the overall allocations of items for purposes of either the Members' Capital Accounts or the regular income tax, (i) each Member shall be allocated items of taxable income or gain for alternative minimum tax purposes taking into account the prior allocations of originating tax preferences or alternative minimum tax adjustments to such Member (and its predecessors) and (ii) other Company items of income or gain for alternative minimum tax purposes of the same character that would have been recognized, but for the originating tax preferences or alternative minimum tax adjustments, shall be allocated away from those Members that are allocated amounts pursuant to clause (i) so that, to the extent possible, the other Members are allocated the same amount, and type, of alternative minimum tax income and gain that would have been allocated to them had the originating tax preferences or alternative minimum tax adjustments not occurred.

Section 7.9 Tax Matters Member; Tax Elections . SHR shall be the "tax matters partner" of the Company as defined in Code Section 6231(a)(7) (the "Tax Matters Member") and has and shall have all the powers and obligations of a tax matters partner pursuant to the Code. All elections, filings and determinations required or permitted to be made by the Company under the tax laws of the United States, the several States or any other relevant jurisdiction shall be timely determined and made by the Tax Matters Member. The Tax Matters Member shall provide each Member with prompt notice with respect to any administrative or judicial actions taken with respect to any tax matters and with respect to any material decisions or actions taken by the Tax Matters Member pursuant to this Section 7.9 .

Section 7.10 Tax Withholding . Subject to Section 3.12(d) , the Company may take any and all actions that it determines to be necessary or appropriate to insure that the Company satisfies any and all withholding and tax payment obligations under Section 1441, 1445, 1446 or

any other provision of the Code, applicable state law or other applicable law. Without limiting the generality of the foregoing, subject to Section 3.12(d) , the Company may withhold any amount of taxes that it determines is required to be withheld from amounts otherwise distributable to any Member pursuant to this Article VII; provided, however, that such amount shall be deemed to have been distributed to such Member for purposes of applying this Agreement. In the event that the Company withholds or pays tax in respect of any Member for any period in excess of the amount of cash otherwise distributable to such Member for such period (or there is a determination by any taxing authority that the Company should have withheld or paid any tax for any period in excess of the tax, if any, that the Company actually withheld or paid for such period), then at the sole election of the Board of Directors, either (i) the Member shall make a cash payment to the Company equal to the full amount of such excess (and the amount paid shall be added to the Member's Capital Account but shall not be deemed to be a Capital Contribution hereunder) or (ii) the Company shall reduce subsequent distributions that would otherwise be made to such Member until the Company has recovered the amount of such excess, provided that the amount of such reduction shall be deemed to have been distributed for all purposes of this Agreement, but such deemed distribution shall not further reduce the Member's Capital Account.

Section 7.11 Tax Elections . The Company may, in the reasonable discretion of the Board of Directors, elect pursuant to Section 754 of the Code, and similar provisions of applicable state income tax laws, to adjust the basis of the Company property as allowed by Sections 734(b) and 743(b) of the Code (or such similar state law provisions). The election, if made, will be filed with the Company information income tax return for the first taxable year to which the election applies. The Company may also, in the reasonable discretion of the Board of Directors, make elections pursuant to Sections 179 (concerning expensing of certain assets), 709(b) (concerning amortization of organization fees), and any other provision of the Code.

ARTICLE VIII
SALE AND TRANSFER OF INTERESTS; LIQUIDITY RIGHTS

Section 8.1 Restrictions on Transfer .

(a) General . Except as expressly permitted in Section 8.1(b) or 8.1(c) , no Member may Transfer all or any portion of its Interests without the unanimous written consent of the Board of Directors. Any attempted Transfer in contravention of the provisions of this Article II shall be null and void *ab initio* , such that the purported transferor shall continue to be the holder of the subject Interests for all purposes and the purported transferee shall not be deemed the holder thereof as a result of such purported Transfer, and the Company shall not give effect to such Transfer or otherwise recognize any rights of such purported transferee. For the avoidance of doubt, an SHR Change in Control shall not constitute a Transfer for purposes of this Agreement, and shall not require any consent or approval from RECO or the Board of Directors.

(b) Permitted Transfers . Notwithstanding the general restriction on Transfer set forth in Section 8.1(a) , a Member may transfer any or all of its Interests to a Wholly-Owned Affiliate; provided that (i) no Transfer shall be made by any Member to any

Wholly-Owned Affiliate that would constitute a Prohibited Assignment (as defined in the Hotel Management Agreement); (ii) such Wholly-Owned Affiliate must agree in an instrument reasonably satisfactory to the other Member to be bound by this Agreement; and (iii) such Transfer is made in compliance with all applicable securities laws.

(c) Pledges . Notwithstanding anything to the contrary set forth in this Agreement, SHR or RECO may pledge (such Member granting the pledge, the "Pledging Member" and the other Member, the "Non-Pledging Member") its respective direct or indirect equity interests in the Company to a lender or financing source. Notwithstanding the foregoing, no such pledge shall be permitted (i) to the extent that such pledge (or the exercise by such lender or financing source of its rights under the pledge) would constitute a Prohibited Assignment under the Hotel Management Agreement or (ii) unless the Lender (as hereinafter defined) agrees to provide to the Non-Pledging Member at the same time a copy of any default or foreclosure notice delivered by such Lender to the Pledging Member. Notwithstanding anything to the contrary contained in this Agreement, if any Member has pledged its Interests in the Company to a lender or financing source (a "Lender") and such Lender has delivered a notice of foreclosure with respect to such Interests (the "Foreclosure Notice"), the Non-Pledging Member shall be entitled to Transfer its Interests without the consent of the Pledging Member, unless the foreclosure action initiated by the Lender has been withdrawn prior to the execution by the Non-Pledging Member of a letter of intent or agreement providing for a Transfer of its Interest to a qualified purchaser with access to sufficient capital to consummate the proposed purchase.

Section 8.2 Change of Control . If an SHR Change in Control occurs within the period beginning on the Effective Date and ending on the date that is eighteen (18) months after the Effective Date, SHR shall provide notice of such SHR Change in Control within thirty (30) days after the occurrence thereof (such notice being a " Change of Control Notice"). For the purposes hereof, an SHR Change in Control shall be deemed to have occurred upon the execution by the parties thereto of any definitive purchase agreement, merger agreement or similar definitive agreement, which upon consummation of the transactions contemplated thereby, will result in an SHR Change in Control.

Section 8.3 Liquidity Rights .

(a) Each Member shall have the right (the "Liquidity Right"): (i) from and after the fourth anniversary of the Effective Date; (ii) upon the occurrence of a Deadlock; and (iii) upon the occurrence of a Terminable Event with respect to such Member, exercisable by written notice (the "Liquidity Notice") to the other Member (the "Notice Member"), to require the Company and/or the Notice Member to purchase all (but not less than all) of its Interests. In the case of a Liquidity Right that is triggered as a result of the occurrence or existence of a Deadlock or a Terminable Event, then the Member giving the Liquidity Notice (the "Electing Member") must exercise such Liquidity Right within 180 days after the occurrence of such Deadlock or Terminable Event. The Liquidity Notice shall set forth the Electing Member's minimum acceptable sale price for the Hotel on an unencumbered basis (the "Floor Value"). Upon receipt of such Liquidity Notice, the Company shall conduct a market test to determine the actual fair market value of the Hotel (the "Actual Value ") in accordance with Section 8.6 hereof.

(b) If the Actual Value, as determined in accordance with Section 8.6 , is less than the Floor Value, then the Electing Member may withdraw its request to exercise its Liquidity Right. After any such withdrawal, the Electing Member who made the withdrawal may not exercise any Liquidity Rights under this Section 8.3 until one full calendar year has elapsed after the determination of the Actual Value unless a separate and distinct Deadlock or Terminable Event occurs during such one year period. If the Actual Value, as determined in accordance with Section 8.6 , is equal to or greater than the Floor Value (or is less than the Floor Value but the Electing Member has not withdrawn its request to exercise its Liquidity Right), then either: (i) the Notice Member may elect in its sole discretion to acquire all of the Interests of the Electing Member at the Buyout Price (as defined below), and the Electing Member shall thereafter be bound to consummate such sale at the Buyout Price; or (ii) the Notice Member may elect to proceed with a Sale of the Hotel or a Sale of the Company and/or its Subsidiaries in accordance with the sale procedures set forth in Section 8.4 (either such Sale transaction described in this item (ii) being referred to as a "Forced Sale").

(c) If the Notice Member elects to acquire the Interests of the Electing Member as contemplated in subsection (b)(i) above, then the closing of such purchase and sale shall occur within 90 days following the date that the Buyout Price is established in accordance with Section 8.6 . If the Notice Member elects to consummate a Forced Sale as contemplated in subsection (b)(ii) above, then such Forced Sale shall be conducted in accordance with the sale procedures set forth in Section 8.4 below.

Section 8.4 Sale Procedures .

(a) If the Notice Member elects to proceed with a Forced Sale in accordance with Section 8.3 or the Members otherwise mutually agree to consummate a Sale of the Hotel or a Sale of the Company and/or its Subsidiaries in accordance with Section 3.3 (as applicable, an "Approved Sale"), such transaction shall be conducted by SHR in accordance with customary procedures for the sale of a luxury hotel. SHR shall have the sole right to approve the terms and conditions of any such Approved Sale and to control the sale process; provided that: (i) in the case of a Forced Sale, RECO shall have the right to approve any alterations to the sale consideration or other material economic terms, which approval shall not be unreasonably withheld or delayed; and (ii) in the case of any Approved Sale other than a Forced Sale, such transaction and certain terms thereof shall be subject to Board approval as a Major Decision in accordance with Section 3.3(a) hereof. Further, in the event of any Approved Sale or Forced Sale, RECO shall, as reasonably required in connection with the consummation of such transaction, take all actions required of it in order to consummate such transaction including without limitation, as applicable, (i) executing any documents or instruments reasonably requested by the proposed purchaser; (ii) providing the same or substantially similar representations, warranties, covenants, releases and indemnities as SHR or its Affiliates are providing in such transaction; (iii) agreeing to any escrows, holdback amounts or deposits required by the purchaser on a pro rata basis, but otherwise on the same or

substantially similar terms as SHR or its Affiliates; (iv) at the closing of such transaction, conveying good title to its Interests, free and clear of all claims and encumbrances created by, through or under such holder or on its behalf (other than any contemplated by this Agreement and any restrictions on transfer applicable under state and/or federal securities laws), against delivery to such holder of the consideration for the Interests of such holder being sold; and (v) approving, at a Members' meeting or by written consent, the transaction as a Member and waiving, if applicable, any dissenters and/or appraisal rights.

(b) Notwithstanding anything to the contrary herein, in the event of any Sale of the Hotel, Sale of the Company (in each case whether in an Approved Sale or a Forced Sale) or other Liquidity Right contemplated by this Agreement, as well as any dissolution or liquidation of the Company as contemplated in Article IX (each, a " Liquidation/Sale Event"), such transaction or proceeding shall in all cases be structured as follows: (i) first, the Company shall be dissolved and liquidated and the common stock of the REIT Subsidiary shall be distributed to the Members (together with the other assets of the Company, if any) in accordance with the rights and preferences set forth in Section 7.3 , and (ii) second, the common stock of the REIT Subsidiary then owned by the selling Member shall be redeemed by the REIT Subsidiary or transferred to the acquiring Member, an Affiliate thereof or a third party (in each case at the applicable price set forth in this Agreement) (collectively, the " Liquidation/Sale Procedure"). Any and all additional administrative fees and expenses (including without limitation fees and expenses of accountants, attorneys and other professionals) incurred by SHR and/or the Company to accommodate the Liquidation/Sale Procedure shall be borne solely by RECO. Upon the consummation of any Liquidation/Sale Event, the selling Member shall provide customary representations, warranties and indemnities with respect to its transfer of Common Stock of the REIT Subsidiary.

Section 8.5 Sale Proceeds . In any Approved Sale or Forced Sale, the aggregate consideration received by the Members shall be distributed among the Members as if such consideration were received by the Company, the debts and obligations of the Company paid in full (including without limitation any prepayment penalties with respect to outstanding indebtedness and all asset management fees payable to the Asset Manager under the Asset Management Agreement), and the proceeds distributed pursuant to Section 7.3 hereof.

Section 8.6 Market Test Procedures and Determination of Buyout Price .

(a) The Actual Value of the Hotel shall be established as follows. SHR and RECO shall attempt to agree upon a broker or investment banking firm (the "Broker") to conduct the sale process. If SHR and RECO are unable to agree to the appointment of the Broker within a reasonable period of time, but not to exceed 30 days, then SHR shall promptly provide RECO with a list of 3 reputable, nationally recognized Brokers and RECO shall promptly select the Broker from such list. The Broker shall implement a bona fide, competitive auction or other sale process to secure indications of interest from qualified purchasers for the purchase of the entire Hotel on a debt-free basis (the "Auction"). Such sale process shall be conducted within a specified period of time reasonably determined by the Broker, but not to exceed 6 months. Upon completion of

the Auction and the receipt of final indications of interests from qualified purchasers with access to sufficient capital to consummate the proposed purchase, the parties shall determine the average of the 3 highest final bids received in the Auction (or if less than 3 bids were received, the average of all final bids received). Such average amount shall be the "Actual Value"; provided that any such final bids that are less than 90% of the highest final bid shall be excluded for purposes of calculating such average. Each of SHR and RECO shall cooperate as necessary to ensure that the Broker and the bidders have access to such information and documentation as is reasonably necessary for conducting the Auction.

(b) The "Buyout Price " shall be determined by calculating the amount that would be distributed to the Electing Member if the Hotel were sold for the Actual Value determined as set forth above, the other assets of the Company (if any) were sold at their book values, and the proceeds were applied, paid or distributed to the Members as provided in Section 7.3 hereof, after payment in full of all indebtedness and liabilities of the Company (including without limitation any break-up or other fees payable to any bidder or to the Broker in connection with the Auction, any prepayment penalties with respect to outstanding indebtedness, a reasonable estimate of all transaction fees and transfer taxes that would have been payable if the Hotel were actually sold to a third party purchaser, and all asset management fees payable to the Asset Manager).

(c) To the extent that any action or transaction listed as a Major Decision in Section 3.3 is necessary or appropriate to satisfy the Liquidity Right of an Electing Member, including any debt or equity financing in connection therewith, then: (i) such action or transaction shall not be deemed a Major Decision and shall not be subject to unanimous approval of the Board of Directors; and (ii) any reasonable costs or expenses incurred in connection with such transaction (including without limitation any financing fees, attorneys fees, accounting fees and other professional fees and expenses) shall be borne by the Company or its Subsidiaries and taken into account in determining the Buyout Price.

ARTICLE IX
DISSOLUTION, LIQUIDATION AND TERMINATION

Section 9.1 Events of Dissolution . The Company shall be dissolved, and wound up pursuant to Section 9.2 , upon the earlier to occur of (it being understood that the following events are the only events that can cause the dissolution and liquidation of the Company):

(a) the tenth (10th) anniversary of the Effective Date;

(b) a unanimous vote by the Board of Directors to dissolve the Company;

(c) the occurrence of any Liquidation/Sale Event;

(d) the entry of a decree of judicial dissolution pursuant to Section 18-802 of the Act; or

(e) any time there are no Members of the Company, unless the Company is continued without dissolution pursuant to the Act.

Section 9.2 Manner of Liquidation . If the Company is dissolved for any reason, the Board of Directors shall commence to wind up the affairs of the Company and to liquidate and sell its assets (in such capacity, the "Liquidator"). The liquidation of the Company shall be conducted in accordance with the Liquidation/Sale Procedure.

Section 9.3 Judicial Winding Up . If the Company is dissolved for any reason and if within 90 days following the date of dissolution the Liquidator has failed to commence such actions as provided in Section 9.2 , any Member, Director or any of their respective Affiliates shall have the right to seek judicial supervision of the winding up of the Company as may be contemplated in the Act.

Section 9.4 [Intentionally Omitted].

Section 9.5 Distributions . Upon the winding up of the Company, its assets (other than cash) shall be sold (except that the common stock of the REIT Subsidiary may be distributed in kind) and its assets or the proceeds thereof shall be distributed as follows: (i) first, to creditors of the Company, including Members who are creditors, in satisfaction of all liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof); and (ii) thereafter, among the Members in accordance with Section 7.3 hereof.

Section 9.6 Source of Distributions . Each holder of an Interest in the Company shall look solely to the assets of the Company for the return of its or his Capital Contribution and its or his share of Profits and Losses and shall have no recourse upon dissolution or otherwise against the Company, the Members or the Liquidator. No holder of an interest in the Company shall have any right to demand or receive property other than cash upon dissolution and termination of the Company. All of the Company's properties shall be sold upon liquidation of the Company and no Company property shall be distributed in kind to the Members either during the term of the Company or upon the dissolution and termination thereof unless in each case otherwise unanimously agreed by the Board of Directors.

Section 9.7 Termination . Upon the completion of the winding up of the Company and the distribution of all Company funds, the Liquidator shall execute a certificate of cancellation of the Certificate and record all other documents required to effectuate the dissolution and termination of the Company and the cancellation of the Certificate.

ARTICLE X
ADDITIONAL COVENANTS AND AGREEMENTS

Section 10.1 Financial and Other Information . The Company shall deliver to each Member the following:

(a) as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year, an audited consolidated balance sheet as of the fiscal year end and audited statements of operations, cash flows, and shareholders' equity for the fiscal year;

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three fiscal quarters, an unaudited consolidated balance sheet of the Company as of the end of such fiscal quarter and unaudited consolidated statements of operations, cash flows and shareholders' equity for such fiscal quarter and fiscal year to date;

(c) as soon as practicable after receipt from Hotel Manager, the monthly reporting package or other monthly financial statements provided by the Hotel Manager;

(d) as soon as practicable after completion, an annual budget and business plan for the forthcoming fiscal year together with any update of such plan as it is prepared; and

(e) such other information relating to the financial condition, business, prospects or corporate affairs of the Company as such Shareholder may from time to time reasonably request.

Section 10.2 Tax Information . The Company shall cause to be delivered to each Person who was a Member at any time during a Fiscal Year (and will use its commercially reasonable efforts to do so within 180 days after the end of such Fiscal Year) a Form K-1 and such other information, if any, with respect to the Company as may be necessary for the preparation of such Member's federal, state and local income tax returns, including a statement showing such Member's share of income, gain or loss, expense and credits for such Fiscal Year for federal income tax purposes.

Section 10.3 REIT Opinion . Each of SHR and RECO shall have the right to require, not more than one (1) time every other fiscal year, by providing written notice to the Company, that the Company cause the delivery of an opinion of counsel from a nationally recognized law firm selected by the Company addressed to RECO and SHR (and any other applicable party) with respect to the qualification of the REIT Subsidiary as a real estate investment trust under the Code.

Section 10.4 Acquisition of Certain Indebtedness by SHR . SHR or one of its Affiliates (the "SHR Lender") may, in its sole discretion and without any approval from RECO or the Board of Directors, acquire from a third party lender any indebtedness secured by the Hotel or payable directly or indirectly out of the revenues of the Hotel (the "Hotel Debt"). If the SHR Lender acquires any Hotel Debt, it shall have all of the same rights and remedies of the lender who initially funded such indebtedness (the "Assignor Lender"), including without limitation with respect to priority of payment, affirmative and negative covenants, events of default and any other terms and conditions set forth in the applicable loan agreement, pledge agreement, deed of trust, mortgage or other agreement or instrument securing such loan or relating thereto (the "Third Party Loan Documents"). Notwithstanding the preceding sentence, for so long as the SHR Lender owns such Hotel Debt and no Designated Event has occurred, the SHR Lender will refrain from initiating foreclosure proceedings with respect to the Hotel or any other collateral securing the Hotel Debt, it being understood that the SHR Lender shall retain all other rights and remedies with respect to such Hotel Debt in accordance with the Third Party Loan Documents. Any of the following events or circumstances with respect to the Company or any Subsidiary

shall be considered a "Designated Event" for purposes of the SHR Lender's ability to exercise its foreclosure rights: (1) making an assignment for the benefit of creditors or filing a petition under federal bankruptcy law or any state insolvency law; (2) a sale or Transfer by either SHR or RECO of all or a material portion of its Interests; (3) if SHR no longer has a right to appoint a majority of the Board of Directors; or (4) if any other Person (other than SHR or its Affiliates) who holds Hotel Debt initiates foreclosure proceedings with respect to the Hotel or any other collateral securing such Hotel Debt. For the avoidance of doubt, the foregoing restrictions on the SHR Lender's ability to initiate foreclosure proceedings shall only apply to an SHR Lender and not to any other Person to whom the SHR Lender assigns or transfers such Hotel Debt or who otherwise owns any Hotel Debt, and the restrictions, limitations and other conditions set forth herein or required hereby on the rights and remedies of the holder of any Hotel Debt shall immediately be terminated and of no further force and effect upon such assignment or transfer.

Section 10.5 Confidentiality Agreement .

(a) Each Member, and any successor or assign of such Member, who receives from the Company or its agents, directly or indirectly, any information that the Company has not made generally available to the public, pursuant to the preparation and execution of this Agreement or the Purchase Agreement or disclosure in connection therewith or otherwise pursuant to the provisions of this Agreement or the Purchase Agreement or as a Member: (i) acknowledges and agrees that such information is confidential and for its use only in connection with its investment in the Company; and (ii) agrees that it will not disseminate such information to any person other than its accountant, investment advisor, limited partners, attorney, advisor, Affiliates and any financing sources.

(b) The obligation to hold in confidence and not to disclose confidential information pursuant to this Section 10.5 shall not apply to any such information that (i) is or becomes generally available to the public other than as a result of a direct or indirect disclosure by a Member in violation of this Agreement, (ii) is disclosed to the Member on a non confidential basis by a third party provided that such third party is not, to the knowledge of the Member, bound by a confidentiality agreement with the Company, (iii) is independently discovered, derived or developed by the Shareholder without access to the confidential information, or (iv) is required to be disclosed by applicable law or regulation, regulatory body, stock exchange, court or administrative order, or any listing or trading agreement with such regulatory body or stock exchange concerning such Member or the Company.

(c) SHR shall keep confidential the identity of RECO as a Member of the Company and shall not disclose the investment of RECO in the Company without the prior consent of RECO except as is required to be disclosed by applicable law or regulation, regulatory body, stock exchange, court or administrative order, or any listing or trading agreement with such regulatory body or stock exchange and only after prior notice to such Shareholder of the intent or requirement to disclose such information.

Section 10.6 Issuance of Certain Shares of the REIT Subsidiary . The Company shall use commercially reasonable efforts to cause the REIT Subsidiary to issue Class A Preferred Stock (as defined in the Certificate of Incorporation of the REIT Subsidiary) to at least 101 Persons by January 8, 2008.

ARTICLE XI
BOOKS AND RECORDS

Section 11.1 Books and Records . The books and records of the Company shall, at the cost and expense of the Company, be kept or caused to be kept by the Company at the principal place of business of the Company or as otherwise determined by the Board of Directors. The books of account shall be kept in a manner that allows for the preparation of the Company's financial statements in accordance with GAAP. Each Member and its duly authorized representatives, upon five days notice, shall be permitted for any purpose reasonably related to such Member's interest as a member of the Company to inspect the books and records of the Company at any reasonable time during normal business hours. However, the Board of Directors shall have the right in its discretion to keep confidential from the Members, for such period of time as the Board of Directors deems appropriate, any information which the Board of Directors reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Board of Directors in good faith believes is not in the best interest of the Company or the business or that the Company (or any Subsidiary) is required by law or agreement with a third party to keep confidential.

ARTICLE XII
GENERAL PROVISIONS

Section 12.1 Notices . Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, and other communications (each a " Notice", collectively "Notices") required or permitted to be given under this Agreement, or which are to be given with respect to this Agreement, shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by overnight express courier, postage prepaid, or by telefacsimile or e-mail addressed to the party to be so notified as follows:

If to the Company or SHR:

Strategic Hotel Funding, L.L.C.
c/o Strategic Hotels & Resorts, Inc.
77 West Wacker Drive
Suite 4600
Chicago, Illinois 60601
Attention: Chief Financial Officer and General Counsel
Telephone: (312) 658-5000
Fax: (312) 658-5799

After September 7, 2007:

Strategic Hotel Funding, L.L.C.
c/o Strategic Hotels & Resorts, Inc.

200 W. Madison
Suite 1700
Chicago, Illinois 60606
Attention: Chief Financial Officer and General Counsel
Telephone: (312) 658-5000
Fax: (312) 658-5799

with a copy to:

Perkins Coie LLP
131 South Dearborn Avenue, Suite 1700
Chicago, Illinois 60603
Attention: Phillip Gordon
Telephone: (312) 324-8600
Fax: (312) 324-9600

If to RECO:

DND Hotel JV Pte Ltd
168 Robinson Road #37-01
Capital Tower,
Singapore 068912
Attention: The Company Secretary
Telephone: (65) 6889-8888
Telecopy: (65) 6889-6878

With copies to:

DND Hotel JV Pte Ltd
c/o GIC Real Estate, Inc.
156 West 56th Street, Suite 1900
New York, New York 10019
Attention: Mr. Ryan Roberts
Telephone: (212) 468-1922
Telecopy: (212) 468-1940

and:

Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Drive
Chicago, Illinois 60606
Attention: Nancy M. Olson
Telephone: (312) 407-0532
Telecopy: (312) 407-8584
e-Mail: nolson@skadden.com

Notice mailed by registered or certified mail shall be deemed received by the addressee three (3) days after mailing thereof. Notice personally delivered shall be deemed received when delivered. Notice mailed by overnight express courier shall be deemed received by the addressee on the next business day after mailing thereof. Notice delivered by e-mail or by telefacsimile transmission shall be effective as of the date of automatic confirmation of receipt thereof by the sending party, properly addressed and sent as provided above provided that any notice by e-mail or telefacsimile transmission shall be accompanied by a copy of such notice to be sent by overnight express courier. Either party may at any time change the address for notice to such party by mailing a Notice as aforesaid. Any notice given by the attorney for a party shall be deemed to have been given by such party.

Section 12.2 Survival of Rights . This Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legatees, legal representatives, successors and assigns.

Section 12.3 Amendment . An affirmative vote or approval of each Class A Member shall be required to approve any amendment, modification or change to this Agreement; provided that this Agreement may be amended by SHR without the consent of any other Member as is necessary or appropriate to provide for the issuance of any New Securities as contemplated by, and pursuant to the terms of, Section 6.1(b) hereof.

Section 12.4 Headings . The captions of the articles and sections of this Agreement are for convenience only and shall not be deemed part of the text of this Agreement.

Section 12.5 Governing Law . This Agreement shall be governed, construed and enforced according to the laws of the State of Delaware, without giving effect to principles of conflicts of laws.

Section 12.6 Additional Documents . Each Member, upon the request of the others or the Members, agrees to perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

Section 12.7 Validity . Should any portion of this Agreement be declared invalid and unenforceable, then such portion shall be deemed to be severable from this Agreement and shall not affect the remainder hereof, unless the remaining provisions are so eviscerated by such declaration that they do not reflect the intent of the parties in entering into this Agreement.

Section 12.8 Construction . All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, entity or entities may require. As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.” All references to any agreement shall be a reference to such agreement as amended from time to time in accordance with its terms and the terms hereof.

Section 12.9 Counterparts . This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all such counterparts taken together will constitute one and the same Agreement. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission will be effective as delivery of a manually signed counterpart hereof.

Section 12.10 Interpretation of Agreement . Each of the Members has read this Agreement and has been advised and represented by independent legal counsel in the negotiation and preparation of this Agreement. The Members agree that this Agreement will be construed as jointly drafted. Accordingly, this Agreement will be construed according to the fair meaning of its language, and the rule of construction that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

Section 12.11 Entire Agreement . This Agreement and the agreements specifically referenced herein constitute the entire agreement among the parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties hereto with respect to the subject matter hereof.

Section 12.12 No Third Party Beneficiaries . This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other Person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise and none of the provisions of this Agreement shall be construed as existing for the benefit of any creditor of any of the Members or of the Company; provided, however, that nothing in this Section 12.12 shall be deemed to limit the rights of any Indemnified Party under Section 3.10 .

Section 12.13 Judicial Proceedings . In any judicial proceeding involving any dispute, controversy or claim arising out of or relating to this Agreement or the Company or its operations, each of the Members unconditionally accepts the non-exclusive jurisdiction and venue of any United States District Court located in the State of Delaware, or of the Court of Chancery of the State of Delaware, and the appellate courts to which orders and judgments thereof may be appealed. In any such judicial proceeding, the Members agree that in addition to any method for the service of process permitted or required by such courts, to the fullest extent permitted by law, service of process may be made by prepaid certified mail with a proof of mailing receipt validated by the U.S. Postal Service constituting evidence of valid service. Each of the Members hereby waives trial by jury in any judicial proceeding involving any dispute, controversy or claim arising out of or relating to this Agreement or relating to the Company or its operations.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK .]

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement as of the date first written above.

STRATEGIC HOTEL FUNDING, L.L.C.

By:_____
Ryan M. Bowie
Vice President & Treasurer

DND HOTEL JV PTE LTD

By:_____
Peter Stanford
Authorized Signatory

By:_____
Michael Carp
Authorized Signatory

EXHIBIT A

PLANNED RENOVATION

Reserved

EXHIBIT B

LIST OF OFFICERS

Officer	Title
Laurence S. Geller	President & Chief Executive Officer
James E. Mead	Executive Vice President & Chief Financial Officer
Richard J. Moreau	Executive Vice President, Asset Management
Jayson C. Cyr	Senior Vice President, Chief Accounting Officer
John F. Gray	Senior Vice President, Capital Projects
Paula C. Maggio	Senior Vice President, Secretary & General Counsel
Robert T. McAllister	Senior Vice President, Tax
Patricia A. Needham	Senior Vice President, Assistant Secretary
John K.T. Barrett	Vice President, Asset Management
Ryan M. Bowie	Vice President & Treasurer
Stephen M. Briggs	Vice President, Controller
D. Robert Britt	Vice President, Asset Management
Michael A. Dalton	Vice President, Design
Thomas G. Healy	Vice President, Asset Management
David R. Hogin, Jr.	Vice President, Asset Management
Michael E. Nelson	Vice President, Asset Management
Janice J. Peterson	Vice President, Human Capital
Timothy J. Taylor	Vice President, Capital Projects

EXHIBIT C

FORM OF REGISTER

Class A Member	Initial Capital Contribution	Additional Capital Contribution (Amount and Date)	Percentage Interest
Strategic Hotel Funding, L.L.C., c/o Strategic Hotels & Resorts, Inc. 77 West Wacker Drive Suite 4600 Chicago, Illinois 60601	51% of Allocated Equity Value*		
DND Hotel JV Pte Ltd 168 Robinson Road #37-01 Capital Tower, Singapore 068912	49% of Allocated Equity Value*		

Class B Member	Initial Capital Contribution	Additional Capital Contribution (Amount and Date)	Percentage Interest
Strategic Hotel Funding, L.L.C., c/o Strategic Hotels & Resorts, Inc. 77 West Wacker Drive Suite 4600 Chicago, Illinois 60601	N/A	N/A	

* Allocated Equity Value has the meaning set forth in the Purchase Agreement.

EXHIBIT D

SAMPLE CALCULATIONS FOR CAPITAL EVENT DISTRIBUTIONS

See attached

Exhibit D: Asset Management Fees & Capital Event Distribution Calculation **TOTAL VENTURE**
Assumes 7.1% EBITDA CAGR and 8.5% Terminal Cap Rate
Hurdle for Fee: 10.0% 10%

Leveraged Fee Calculation

	Aug-07	4 Months 2007	2008	2009	2010	2011	Total
Days	-	122	366	365	365	365	
Asset Management Fee Calculation (Hotel by Hotel)							
ICC Asset Management Fee		$ 305	$ 924	$ 993	$ 1,053	$ 0	$ 3,275
HRLJ Asset Management Fee		142	467	503	538	554	2,203
Total Asset Management Fee		**$ 447**	**$ 1,391**	**$ 1,496**	**$ 1,591**	**$ 554**	**$ 5,478**
Project Management Fee							
Capital Expenditure		$(2,500)	$ 0	$ 0	$ 0	$ 0	$ (2,500)
3.0% of CapEx		(75)	0	0	0	0	(75)
Project Management Fee		**$ 75**	**$ 0**	**$ 0**	**$ 0**	**$ 0**	**$ 75**
Asset Management Operating Incentive Fee Calculation							
ICC Net Equity Investment	$ (96,250)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$ (98,750)
HRLJ Net Equity Investment	(61,250)	0	0	0	0	0	(61,250)
Total Net Equity Investment	$(157,500)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$(160,000)
ICC Cummulative Cash on Investment		$ 3,451	$14,050	$26,314	$ 40,011	$ 40,011	$ 40,011
HRLJ Cummulative Cash on Investment		447	3,911	8,302	13,517	19,110	19,110
Total Cummulative Cash		$ 3,898	$17,961	$34,616	$ 53,528	$ 59,121	$ 59,121
ICC Cummulative Hurdle		$ 3,301	$13,203	$23,078	$ 32,953	$ 32,953	$ 32,953
HRLJ Cummulative Hurdle		2,047	8,189	14,314	20,439	26,564	26,564
Total Cummulative Hurdle		$ 5,348	$21,392	$37,392	$ 53,392	$ 59,517	$ 59,517
Cash over Cummulative Hurdle		$ 0	$ 0	$ 0	$ 136	$ 0	$ 136
AMOIF (20.0% of							

Cash Available over Cummulative Hurdle)			**$ 0**	**$ 0**	**$ 0**	**$ 27**	**$ 0**	**$ 27**
Class B Shareholder Distribution (20% over 10% IRR)								
Net Equity Investment		$(157,500)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$(160,000)
Cash Available for Distribution (pre AMOIF)			3,898	14,063	16,655	18,912	5,593	59,121
ICC Terminal Value						319,390	0	319,390
HRLJ Terminal Value						0	164,003	164,003
Retirement of Debt						(178,750)	(113,750)	(292,500)
Net Operating Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,552	$ 55,846	$ 90,014
Less: AMOIF		0	0	0	0	(27)	0	(27)
								0
Total Venture Cash Flow After AMOIF		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 55,846	$ 89,987
IRR	14.6%							
Cash Flow to Yield 10.0% IRR								
Net Equity Investment		$(157,500)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$(160,000)
Cash Available for Distribution (post AMOIF)		0	3,898	14,063	16,655	18,885	5,593	59,094
ICC Terminal Value		0	0	0	0	319,390	0	319,390
HRLJ Terminal Value		0	0	0	0	0	164,003	164,003
Retirement of Debt		0	0	0	0	(178,750)	(113,750)	(292,500)
Sub-Total Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 55,846	$ 89,987
Implied Distribution of Terminal Value							$ (34,119)	$ (34,119)
Net Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 21,727	$ 55,868
IRR	10.0%							
Cash Available for Distribution		$ 0	$ 0	$ 0	$ 0	$ 0	$ 34,119	$ 34,119
Maximum Payment of Distribution (20.0% of Cash Available)	0	0	0	0	0	6,824	6,824	
Cash Flow to Yield 12.5% IRR								
Cash Flow to Yield								

10.0% IRR		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 21,727	$ 55,868
Additional Distribution Necessary to Yield 12.5% IRR							$ 17,964	$ 17,964
Net Cash Flow IRR	12.5%	$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 39,692	$ 73,832
Additional Distribution Necessary to Yield 12.5% IRR							$ 17,964	$ 17,964
100% of Cash Flow to Yield 12.5% IRR							22,456	22,456 0
Gross Distribution (20.0% of Cash Available)							$ 4,491	$ 4,491
Less: AMOIF Paid to Date							(27)	(27)
Class B Shareholder Distribution (20% over 10% IRR)							**$ 4,464**	**$ 4,464**

Exhibit D: Asset Management Fees & Capital Event Distribution Calculation **TOTAL VENTURE**
Assumes 7.1% EBITDA CAGR and 8.5% Terminal Cap Rate
Hurdle for Fee: 10.0% 10%

Leveraged Fee Calculation

		Aug-07	4 Months 2007	2008	2009	2010	2011	Total
Days		-	122	366	365	365	365	
Class B Shareholder Distribution (100% over 12.5% IRR)								
Total Equity Investment		$(157,500)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$(160,000)
Cash Available for Distribution (pre AMOIF)		0	3,898	14,063	16,655	18,912	5,593	59,121
Asset Manager Operating Incentive Fee		0	0	0	0	(27)	0	(27)
ICC Terminal Value						319,390	0	319,390
HRLJ Terminal Value						0	164,003	164,003
Retirement of Debt						(178,750)	(113,750)	(292,500)
Class B Shareholder Distribution (20% over 10% IRR)							(4,464)	(4,464)
Total Venture Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 51,382	$ 85,523
IRR	14.0%							
Cash Flow to Yield 12.5% IRR								
Net Equity Investment		$(157,500)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$(160,000)
Cash Available for Distribution (pre AMOIF)		0	3,898	14,063	16,655	18,912	5,593	59,121
Asset Manager Operating Incentive Fee		0	0	0	0	(27)	0	(27)
ICC Terminal Value		0	0	0	0	319,390	0	319,390
HRLJ Terminal Value		0	0	0	0	0	164,003	164,003
Retirement of Debt		0	0	0	0	(178,750)	(113,750)	(292,500)
Class B Shareholder Distribution (20% over 10% IRR)		0	0	0	0	0	(4,464)	(4,464)
Sub-Total Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 51,382	$ 85,523
Implied Distribution								

of Terminal Value							$ (11,690)	$ (11,690)
Net Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 39,692	$ 73,832
IRR	12.5%							
Distributions Available for Earn-Up							$ 11,690	$ 11,690
Maximum Earn-Up Distribution							46,034	46,034
Class B Shareholder Distribution (100% over 12.5% IRR)							**$ 11,690**	**$ 11,690**
Distributions Available over Distribution							$ 0	$ 0
Distributions to Venture							0	0
Distributions to Class B Shareholder (20.0% of Cash Available over previous distribution)							0	0
Class B Shareholder Distribution (20% over 10% IRR)							**$ 0**	**$ 0**
Total Earned Class B Shareholder Distribution							**$ 16,154**	**$ 16,154**
Total Venture Cash Flow & Distribution Allocation								
Implied Venture Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 39,692	$ 73,832
IRR	12.5%							
Implied Distribution to Class A Shareholders		$(157,500)	$ 1,398	$14,063	$16,655	$ 159,525	$ 39,692	$ 73,832
Less: Acual Distribution to Class B Shareholders		0	0	0	0	(26,726)	0	(26,726)
Actual Distribution to Class A Shareholders		$(157,500)	$ 1,398	$14,063	$16,655	$ 132,799	$ 39,692	$ 47,107
IRR	8.3%							
IRR to Class A Shareholders to Make Whole	12.5%							
Additional								

Distributions to Make Whole							$ 30,066	$ 30,066
Total Cash Flow		$(157,500)	$ 1,398	$14,063	$16,655	$ 132,799	$ 69,758	$ 77,173
IRR	12.5%							
Additional Distributions to Make Whole							$ 30,066	$ 30,066
Total Earned Class B Shareholder Distribution							$ (16,154)	$ (16,154)
Total Distributions for Reallocation							**$ 13,912**	**$ 13,912**
Summary of Distributions								
Net Equity Investment		$(157,500)	$(2,500)	$ 0	$ 0	$ 0	$ 0	$(160,000)
Cash Available for Distribution (pre AMOIF)		0	3,898	14,063	16,655	18,912	5,593	59,121
Asset Manager Operating Incentive Fee		0	0	0	0	(27)	0	(27)
Asset Terminal Values		0	0	0	0	319,390	164,003	483,393
Retirement of Debt		0	0	0	0	(178,750)	(113,750)	(292,500)
Class B Shareholder Distribution		0	0	0	0	(26,726)	0	(26,726)
Class B Shareholder Reallocation		0	0	0	0	0	13,912	13,912
	12.5%	$(157,500)	$ 1,398	$14,063	$16,655	$ 132,799	$ 69,758	$ 77,173
Distribution to GIC (49% Class A Shareholder)		$ (77,175)	$ 685	$ 6,891	$ 8,161	$ 65,072	$ 34,181	$ 37,815
Distribution to SHR (51% Class A and 100% Class B Shareholder)		(80,325)	713	7,172	8,494	94,453	21,664	52,172

Exhibit D: Asset Management Fees & Capital Event Distribution Calculation **ICC ONLY**
Assumes 7.1% EBITDA CAGR and 8.5% Terminal Cap Rate

Leveraged Fee Calculation

		Aug-07	4 Months 2007	2008	2009	2010	2011
Days		-	122	366	365	365	-
Asset Management Fee Calculation							
Total Revenues			$26,556	$ 81,422	$ 85,493	$ 88,912	$ 0
EBITDA			8,727	26,396	28,376	30,078	0
1.0% of Total Revenue			$ 266	$ 814	$ 855	$ 889	$ 0
3.5% of EBITDA			305	924	993	1,053	0
Asset Management Fee (maximum of above)			**$ 305**	**$ 924**	**$ 993**	**$ 1,053**	**$ 0**
Project Management Fee							
Capital Expenditure			$ (2,500)	$ 0	$ 0	$ 0	$ 0
3.0% of CapEx			(75)	0	0	0	0
Project Management Fee			**$ 75**	**$ 0**	**$ 0**	**$ 0**	**$ 0**
Asset Management Operating Incentive Fee Calculation							
Total Capital Investment		$(275,000)	$ (2,500)	$ 0	$ 0	$ 0	$ 0
Debt		178,750	0	0	0	0	0
Net Equity Investment		(96,250)	(2,500)	0	0	0	0
NOI			$ 7,701	$ 23,131	$ 24,866	$ 26,357	$ 0
Debt Service			(3,869)	(11,608)	(11,608)	(11,608)	0
Asset Management Fee			(305)	(924)	(993)	(1,053)	0
Project Management Fee			(75)	0	0	0	0
Cash on Investment			$ 3,451	$ 10,599	$ 12,264	$ 13,697	$ 0
Cummulative Cash on Investment			$ 3,451	$ 14,050	$ 26,314	$ 40,011	$40,011
Cummulative Hurdle			3,301	13,203	23,078	32,953	32,953
Cash over Cummulative Hurdle			150	847	3,236	7,058	7,058
POTENTIAL AMOIF (20.0% of Cash Available over Cummulative Hurdle)			$ 30	$ 139	$ 478	$ 764	$ 0
Allocation of Actual AMOIF (Calculated on Total Venture)			**$ 0**	**$ 0**	**$ 0**	**$ 27**	**$ 0**
Class B Shareholder Distribution (20% over 10% IRR)							
Net Equity Investment		$ (96,250)	$ (2,500)	$ 0	$ 0	$ 0	$ 0
Cash Available for Distribution (pre AMOIF)			3,451	10,599	12,264	13,697	0
Terminal Value						319,390	0
Retirement of Debt						(178,750)	0
Net Operating Cash Flow		$ (96,250)	$ 951	$ 10,599	$ 12,264	$ 154,337	$ 0
Less: AMOIF		0	0	0	0	(27)	0
Total Venture Cash Flow After AMOIF		$ (96,250)	$ 951	$ 10,599	$ 12,264	$ 154,310	$ 0
IRR	22.0%						
Cash Flow to Yield 10.0%							

IRR							
Net Equity Investment		$ (96,250)	$ (2,500)	$ 0	$ 0	$ 0	$ 0
Cash Available for Distribution (post AMOIF)		0	3,451	10,599	12,264	13,669	0
Retirement of Debt		0	0	0	0	(178,750)	0
Sub-Total Cash Flow		$ (96,250)	$ 951	$ 10,599	$ 12,264	$(165,081)	$ 0
Implied Distribution of Terminal Value						$ 269,790	$ 0
Net Cash Flow		$ (96,250)	$ 951	$ 10,599	$ 12,264	$ 104,709	$ 0
IRR	10.0%						
Cash Available for Distribution		$ 0	$ 0	$ 0	$ 0	$ 49,601	$ 0
Maximum Payment of Distribution (20.0% of Cash Available)		0	0	0	0	9,920	0
Cash Flow to Yield 12.5% IRR							
Cash Flow to Yield 10.0% IRR		$ (96,250)	$ 951	$ 10,599	$ 12,264	$ 104,709	$ 0
Additional Distribution Necessary to Yield 12.5% IRR						$ 9,318	$ 0
Net Cash Flow		$ (96,250)	$ 951	$ 10,599	$ 12,264	$ 114,027	$ 0
IRR	12.5%						
Additional Distribution Necessary to Yield 12.5% IRR						$ 9,318	$ 0
100% of Cash Flow to Yield 12.5% IRR						11,647	0
Gross Distribution (20.0% of Cash Available)						$ 2,329	$ 0
Less: AMOIF Paid to Date						(27)	0
Class B Shareholder Distribution (20% over 10% IRR)						**$ 2,302**	**$ 0**

Exhibit D: Asset Management Fees & Capital Event Distribution Calculation **ICC ONLY**
Assumes 7.1% EBITDA CAGR and 8.5% Terminal Cap Rate

Leveraged Fee Calculation

		4 Months					
		Aug-07	2007	2008	2009	2010	2011
Days		-	122	366	365	365	-
Class B Shareholder Distribution (100% over 12.5% IRR)							
Total Equity Investment		$(96,250)	$(2,500)	$ 0	$ 0	$ 0	$ 0
Cash Available for Distribution (pre AMOIF)		0	3,451	10,599	12,264	13,697	0
Asset Manager Operating Incentive Fee		0	0	0	0	(27)	0
Terminal Value						319,390	0
Retirement of Debt						(178,750)	0
Class B Shareholder Distribution (20% over 10% IRR)						(2,302)	0
Total Venture Cash Flow		$(96,250)	$ 951	$10,599	$12,264	$ 152,008	$ 0
IRR	21.5%						
Cash Flow to Yield 12.5% IRR							
Net Equity Investment		$(96,250)	$(2,500)	$ 0	$ 0	$ 0	$ 0
Cash Available for Distribution (pre AMOIF)		0	3,451	10,599	12,264	13,697	0
Asset Manager Operating Incentive Fee		0	0	0	0	(27)	0
Retirement of Debt		0	0	0	0	(178,750)	0
Class B Shareholder Distribution (20% over 10% IRR)		0	0	0	0	(2,302)	0
Sub-Total Cash Flow		$(96,250)	$ 951	$10,599	$12,264	$(167,383)	$ 0
Implied Distribution of Terminal Value						$ 281,409	$ 0
Net Cash Flow		$(96,250)	$ 951	$10,599	$12,264	$ 114,027	$ 0
IRR	12.5%						
Distributions Available						$ 37,981	$ 0
Maximum Distribution						21,034	0
Class B Shareholder Distribution (100% over 12.5% IRR)					**$21,034**	**$ 0**	
Distributions Available over Distribution						$ 16,947	$ 0
Distributions to Venture						13,558	0
Distributions to Class B Shareholder (20.0% of Cash Available over previous distribution)						3,389	0
Class B Shareholder Distribution (20% over 10% IRR)						**$ 3,389**	**$ 0**

Exhibit 10.120

THIRD AMENDMENT TO CREDIT AGREEMENT

Dated February 25, 2009

By and Among

STRATEGIC HOTEL FUNDING, L.L.C.,

as Borrower,

VARIOUS FINANCIAL INSTITUTIONS,

as Lenders,

and

DEUTSCHE BANK TRUST COMPANY AMERICAS, *as Administrative Agent*

THIRD AMENDMENT TO CREDIT AGREEMENT

THIS THIRD AMENDMENT TO CREDIT AGREEMENT , dated as of February 25, 2009 (this "Third Amendment"), by and among STRATEGIC HOTEL FUNDING, L.L.C., a Delaware limited liability company ("Borrower"), DEUTSCHE BANK TRUST COMPANY AMERICAS ("DBTCA"), as the administrative agent (in such capacity, " Administrative Agent"), and the various financial institutions as are or may become parties hereto (together with DBTCA, collectively "Lenders" and individually, a "Lender").

RECITALS

WHEREAS , Borrower, Administrative Agent and Lenders are parties to that certain Credit Agreement, dated as of March 9, 2007, as amended by (i) that certain First Amendment to Credit Agreement, dated as of March 27, 2007 and (ii) that certain Second Amendment to Credit Agreement, dated as of April 18, 2007 (the "Original Agreement"), pursuant to which Lenders made available to Borrower the credit facility provided for therein in the amount of FIVE HUNDRED MILLION DOLLARS ($500,000,000); and

WHEREAS , Borrower, Administrative Agent and Lenders have agreed to amend the Original Agreement and the other Loan Documents (as defined in the Original Agreement and amended herein) to, among other things, reduce the credit facility provided thereunder to the amount of FOUR HUNDRED MILLION DOLLARS ($400,000,000) and to grant to Administrative Agent on behalf of Lenders first lien mortgages on the Initial Borrowing Base Properties, as hereinafter set forth, effective from and after the date hereof.

NOW THEREFORE , in consideration of the foregoing and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

I. AMENDMENTS TO THE AGREEMENT

Section 1.1 Definitions Amended .

1.1.1 The definition of "Acceptable Appraisal" is hereby deleted and the following is hereby inserted in lieu thereof:

" *"Acceptable Appraisal" means (i) in the case of a Borrowing Base Property, a FIRREA compliant MAI appraisal, in compliance with the Uniform Standards of Professional Appraisal Practice, acceptable to Administrative Agent as to form, substance and appraisal date, prepared by a professional appraiser that is engaged by Administrative Agent, and (ii) in the case of a non-Borrowing Base Property, an MAI appraisal, in compliance with the Uniform Standards of Professional Appraisal Practice, reasonably acceptable to Administrative Agent as to form, substance and appraisal date, prepared by a professional appraiser that is reasonably acceptable to Administrative Agent.*

"Account Control Agreement" means that certain Agreement Re: Pledged Accounts, dated as of the Third Amendment Closing Date, by and between the applicable Borrowing Base Entity, Administrative Agent and The PrivateBank and Trust Company.

"Accounts" means the accounts described on Schedule XIX attached hereto.".

1.1.2 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of " Administrative Agent" therein:

" *"Advance Rate" means fifty percent (50%), as such percentage may be adjusted pursuant to the terms of Section 7.1.22(f) or Section 7.2.4(a) of this Agreement .*".

1.1.3 The definition of "Aggregate Commitment" is hereby deleted and the following is hereby inserted in lieu thereof:

" *"Aggregate Commitment" means, as of any date, the aggregate of the then-current Commitments of all Lenders, which is, as of the Third Amendment Closing Date an amount equal to FOUR HUNDRED MILLION DOLLARS ($400,000,000), and shall not exceed such amount .*".

1.1.4 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Aggregate Outstanding Balance " therein:

" *"Alteration" has the meaning set forth in Section 13.2 of this Agreement .*".

1.1.5 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Alternate Base Rate" therein:

" *"Alternative Capex/Investments Basket" has the meaning set forth in Section 7.2.4(d) of this Agreement .*

"Amended and Restated Note" means an Amended and Restated Revolving Note.

"Amended and Restated Revolving Note" means a promissory note, if any, executed by the Borrower and payable to any Lender, in the form of Exhibit K hereto (as such promissory note may be amended, endorsed or otherwise modified from time to time), evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from outstanding Revolving Loans, and also means all other promissory notes accepted from time to time in substitution therefor or renewal thereof. ".

1.1.6 The definition of "Applicable Margin" is hereby deleted and the following is hereby inserted in lieu thereof:

" *"Applicable Margin " means 3.75% in the case of each LIBO Rate Loan and 2.75% in the case of each Base Rate Loan.*".

1.1.7 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Appraised Value" therein:

" *"Approved Bank" means Administrative Agent or any affiliate thereof or any other financial institution reasonably approved by Administrative Agent.*".

1.1.8 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of " Approved Fund" therein:

" *"Approved Luxury Manager" means those certain managers classified as Approved Luxury Managers as set forth on Schedule IV attached hereto.*".

1.1.9 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Approved Manager" therein:

" *"Appurtenances" has the meaning set forth in the First Lien Mortgages.*".

1.1.10 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Arrangers" therein:

" *"Assignment of Agreements" means that Assignment of Agreements, dated as of the Third Amendment Closing Date, by and between each Borrowing Base Entity and Administrative Agent on behalf of Lenders.*

" *"Assignments of Leases and Rents"*means each Assignment of Leases and Rents, Hotel Revenues and Security Deposits, dated as of the Third Amendment Closing Date, by each Borrowing Base Entity in favor of Administrative Agent on behalf of Lenders.".

1.1.11 The definition of "Available Commitment" is hereby deleted and the following is hereby inserted in lieu thereof:

" *"Available Commitment" means, as of any date, the lesser of (i) the product of (x) the Advance Rate times (y) the aggregate Appraised Value of all Borrowing Base Properties, less the Deemed Net Termination Value as of such date, and (ii) an amount which, if it were the Aggregate Outstanding Balance, would produce a Pro Forma Borrowing Base Coverage Ratio of 1.30:1.0 .*".

1.1.12 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Borrowing" therein:

" *"Borrowing Base Entities " means, collectively, each Property Owner and Operating Lessee of a Borrowing Base Property."*.

1.1.13 The definition of "Borrowing Base Intercompany Indebtedness" is hereby amended to insert the following at the end thereof:

"*and any additional intercompany Indebtedness relating to a Borrowing Base Property or Borrowing Base Property Owner incurred in accordance with Section 7.1.11 . ".*

1.1.14 The definition of "Borrowing Base Property" is hereby deleted and the following is hereby inserted in lieu thereof:

" *"Borrowing Base Property" means, each of the Marriott Lincolnshire, the Ritz Carlton Laguna Niguel, the Four Seasons Punta Mita, the Four Seasons Mexico City and the Four Seasons Washington, D.C., including any other Property which Borrower may add as a Borrowing Base Property pursuant to Section 7.1.22 of this Agreement and excluding any Borrowing Base Release Property* .".

1.1.15 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of " Borrowing Base Property Owner" therein:

" *"Borrowing Base Property Release" has the meaning set forth in Section 7.1.22(e) of this Agreement.*

"Borrowing Base Release Property" has the meaning set forth in Section 7.1.22(e) of this Agreement.".

1.1.16 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Borrowing Request" therein:

" *"Building Equipment" has the meaning set forth in the First Lien Mortgages* .".

1.1.17 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of " Business Day" therein:

" *"Capex/Investments Basket" has the meaning set forth in Section 7.2.4(d) of this Agreement.*".

1.1.18 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Cash Equivalents" therein:

" *"Casualty Amount" means ten percent (10%) of the value of the applicable Borrowing Base Property as set forth in the most recently completed Acceptable Appraisal with respect to such Borrowing Base Property.*

"Catch-Up Amounts" shall have the meaning set forth in Section 7.2.6(a) of this Agreement .".

1.1.19 The definition of "Collateral" is hereby deleted and the following is hereby inserted in lieu thereof:

" *"Collateral" means, collectively, all Pledge Agreement Collateral, all Guarantor Pledge Agreement Collateral and all First Lien Mortgage Collateral, as required to be granted from time to time pursuant to the terms hereof and subject to the provisions of release thereof as provided herein or in the other Loan Documents."*.

1.1.20 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Commitment Termination Event" therein:

" *"Common Elements" means those portions of the Improvements and other rights relating to the Condominium that are designated as "Common Elements" under the Condominium Documents.*".

1.1.21 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Compliance Certificate" therein:

" *"Condominium" means the sub-condominium known as Sub-Condominium Unit RC-1 of the Punta Mita Master Condominium Regime.*

"Condominium Board" means the board of managers or like administrative body of the Condominium established pursuant to the Condominium Documents.

"Condominium Documents" means collectively, the Declaration of Sub-Condominium Unit RC-1 of the Punta Mita Master Condominium Regime, Unilateral Declaration of Condominium Regime for RC-1, and any other similar written agreements among or otherwise binding upon any unit owners of the Condominium in their capacity as such and that govern or otherwise relate to the establishment, continuance, maintenance or operation of the Condominium, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.".

1.1.22 The definition of "Consolidated EBITDA" is hereby amended to delete the words "(excluding Real Property) in the ordinary course of business" and the following is hereby inserted in lieu thereof:

"*(excluding real property) in the ordinary course of business and foreign currency exchange gain or loss applicable to third party and intercompany Indebtedness and certain balance sheet items held by foreign Subsidiaries of Borrower.*".

1.1.23 The definition of "Consolidated Tangible Net Worth" is hereby deleted and the following is hereby inserted in lieu thereof:

" *" Consolidated Tangible Net Worth" means, at any time, the tangible net worth of the Consolidated Group determined in accordance with GAAP, calculated based on (a) the shareholder book equity of Guarantor's common Capital Stock, plus (b) accumulated depreciation and amortization of the Consolidated Group, plus (c) to the extent not included in clause (a), the amount properly attributable to the minority interests, if any, shown on the Guarantor's balance sheet, in each case determined without duplication and in accordance with GAAP, and excluding (d) any goodwill and any currency translation adjustment.".*

1.1.24 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Credit Hedging Agreements" therein:

" *"Cut-Off Date" shall have the meaning set forth in the definition of "Major Casualty/Condemnation Event".*".

1.1.25 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "DBTCA" therein:

" *"D.C. Loan Pledge" means that certain Pledge and Security Agreement, dated as of March 9, 2007, by Borrower in favor of Administrative Agent.*

"D.C. Loan Subordination" means that certain Subordination Agreement, dated as of the Third Amendment Closing Date, by SHC Washington, L.L.C. and Borrower in favor of Administrative Agent.".

1.1.26 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Defaulting Lender" therein:

" *"Deficiency" shall have the meaning set forth in Section 12.4.2(b) of this Agreement.*".

1.1.27 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Exchange Act" therein:

" *"Excusable Delay" means a delay solely due to acts of god, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Borrower or the applicable Borrowing Base Entity, but Borrower's or such Borrowing Base Entity's lack of funds in and of itself shall not be deemed a cause beyond the control of Borrower or such Borrowing Base Entity .*

"Exercise Period" shall have the meaning set forth in Section 14.3 of this Agreement.".

1.1.28 The definition of "Facility" is hereby deleted and the following is hereby inserted in lieu thereof:

" *"Facility" means the $400,000,000 revolving credit facility evidenced by this Agreement, as the same may be amended, supplemented, amended and restated or otherwise modified from time to time and in effect on such date.*".

1.1.29 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Fee Letters" therein:

" *"Fee Owner" means the lessor under a Ground Lease including, but not limited to, Indian Creek Investors, Inc.*".

1.1.30 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "FF&E" therein:

" *"First American" means First American Title Insurance Company .*

"First Lien Mortgage Collateral" means the Initial Borrowing Base Properties pledged or mortgaged under those certain First Lien Mortgages and any other Properties which may be pledged or mortgaged pursuant to Section 7.1.22(c) .

"First Lien Mortgages" means (i) the first priority Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated as of the Third Amendment Closing Date, executed and delivered by the applicable Borrowing Base Entities to Administrative Agent on behalf of Lenders and encumbering the Ritz Carlton Laguna Niguel, (ii) the first priority Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases, Rents, Hotel Revenue and Security Deposits or Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated as of the Third Amendment Closing Date, executed and delivered by the applicable Borrowing Base Entities to Administrative Agent on behalf of Lenders and encumbering the Four Seasons Washington, D.C., (iii) the first priority Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, Hotel Revenue and Security Deposits or Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated as of the Third Amendment Closing Date, executed and delivered by the applicable Borrowing Base Entities to Administrative Agent on behalf of Lenders and encumbering the Marriott Lincolnshire, and (iv) the Irrevocable Administration and Security Trust Agreement with Reversion Rights, dated the Third Amendment Closing Date, executed and delivered by the applicable Borrowing Base Entities to the Trustee and encumbering the Initial Borrowing Base Properties located in Mexico, as any such instrument may be amended, restated, replaced, supplemented or otherwise modified from time to time.".

1.1.31 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Fiscal Year End" therein:

" *"Four Seasons Mexico City" means that certain Property currently referred to as the Four Seasons Mexico City and located at Paseo de la Reforma #500, Colonia Juarez, Mexico City, Mexico.*

"Four Seasons Punta Mita" means that certain Property currently referred to as the Four Seasons Punta Mita and located at Bahia de Banderas, Nayarit, Mexico.

"Four Seasons Washington, D.C." means that certain Property currently referred to as the Four Seasons Washington, D.C. and located at 2800 Pennsylvania Avenue NW, Washington, D.C.".

1.1.32 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "F.R.S. Board" therein:

" *"FSHL" has the meaning set forth in the definition of Manager herein.*

"FSHR" has the meaning set forth in the definition of Manager herein.".

1.1.33 The definition of "Gross Asset Value" is hereby deleted and the following is hereby inserted in lieu thereof:

" *"Gross Asset Value" means, (1) for any Borrowing Base Property and for any Consolidated Group Property other than New Acquisitions and Development Properties, its Appraised Value and (2) for any other Property:*

(a) for each Consolidated Group Property that is a New Acquisition, an amount equal to the Acquisition Cost with respect thereto;

(b) for each Consolidated Group Property that is a Development Property, an amount equal to the Development Cost of such Property; and

(c) at any time and for any Property that is not a Consolidated Group Property, an amount equal to Borrower's share, based on its Share of the Unconsolidated Subsidiary that is the Property Owner of such Property, of the Gross Asset Value that would have been attributable to such Property pursuant to clause (1), (2)(a) or (2)(b) of this definition if such Property were a Consolidated Group Property; provided , however , that the Gross Asset Value of any Property that is subjected to a condominium regime or similar structure for the purpose of timeshare, condominium hotel, or fractional interest or similar development will be (i) for the portion of the Property to be retained by Borrower (or its Subsidiary) to be operated as a traditional hotel, as set forth in a new Acceptable Appraisal satisfactory to the Administrative Agent for the first year of operation and, thereafter, pursuant to clause (b) above, and (ii) for the portion of the Property to be held for sale, the undepreciated "book value" of such portion of the Property.".

1.1.34 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Gross Hotel Revenue" therein:

" *"Ground Lease" means any long-term Lease of Land in which Borrower or any of its Affiliates is the tenant of a Borrowing Base Property and is allowed to improve the land and use it for the term of the Lease, including the Lincolnshire Ground Lease.*

"Ground Lessee" means the Tenant under any Ground Lease, including, but not limited to, the Lincolnshire Ground Lessee.".

1.1.35 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "herein ," "hereof ," "hereto ," "hereunder" therein:

" *"Hotel del Coronado" means that certain Property currently referred to as the Hotel del Coronado and located at 1500 Orange Avenue, Coronado, California.*

"Hotel Revenue" means all revenues, income, rents, issues, profits, termination or surrender fees, penalties and other amounts arising from the use or enjoyment of all or any portion of a Borrowing Base Property, including, without limitation, the rental or surrender of any office space, retail space, parking space, halls, stores, and offices of every kind, the rental or licensing of signs, sign space or advertising space and all rentals, revenues, receipts, income, accounts, accounts receivable, cancellation fees, penalties, credit card receipts and other receivables relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, conference and banquet rooms, food and beverage facilities, health clubs, vending machines, parking facilities, telephone and television systems, guest laundry, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System.".

1.1.36 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Impermissible Qualification " therein:

" *"Impositions " means all taxes (including all ad valorem, sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible transaction, privilege or license or similar taxes), governmental assessments (including all assessments for public improvements or benefits, whether or not commenced or completed prior to the Third Amendment Closing Date and whether or not commenced or completed within the term of this Agreement), water, sewer or other rents and charges, excises, levies, fees (including license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Borrowing Base Properties and/or any Rents and Hotel Revenue (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a Lien upon (a) Borrower (including all income, franchise, single business or other taxes imposed on Borrower for the privilege of doing business in the jurisdiction in which the applicable Borrowing Base Property is located), (b) a Borrowing Base Property, or any other Collateral delivered or pledged to Administrative Agent in connection with the Loan, or any part thereof, or any Rents or Hotel Revenue therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Borrowing Base Properties or the leasing or use of all or any*

part thereof. Nothing contained in this Agreement shall be construed to require Borrower, any Borrowing Base Entity or any Subsidiary to pay any tax, assessment, levy or charge imposed on (i) any tenant occupying any portion of a Borrowing Base Property, (ii) any third party manager of the Borrowing Base Properties, including any Manager, or (iii) Administrative Agent or any Lender in the nature of a capital levy, estate, inheritance, succession, income or net revenue tax.

"Improvements" has the meaning set forth in the First Lien Mortgages.".

1.1.37 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Indebtedness" therein:

" *"Independent" means, when used with respect to any Person, a Person who: (i) does not have any direct financial interest or any material indirect financial interest in Borrower or in any Affiliate of Borrower, (ii) is not connected with any Borrower or any Affiliate of Borrower as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director, supplier, customer or person performing similar functions and (iii) is not a member of the immediate family of a Person defined in (i) or (ii) above.*

"Independent Architect" means an architect, engineer or construction consultant selected by Borrower which is Independent, licensed to practice in the jurisdiction and has at least five (5) years of architectural experience and which is reasonably acceptable to Administrative Agent.".

1.1.38 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Initial Borrowing Base" therein:

" *"Initial Borrowing Base Properties" means, collectively, the Four Seasons Punta Mita, the Four Seasons Mexico City, the Four Seasons Washington, D.C., the Ritz Carlton Laguna Niguel and the Marriott Lincolnshire.".*

1.1.39 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Insurance Policies" therein:

" *"Insurance Requirements" means all of the terms of any insurance policy required pursuant to this Agreement, including, without limitation, the terms set forth on Schedule XVIII attached hereto.*".

1.1.40 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Joint Venture" therein:

" *"Land" has the meaning set forth in the First Lien Mortgages.*

"Lease" means any lease, sublease or sub-sublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Tenant is granted by Borrower a possessory interest in, or

right to use or occupy all or any portion of any space in any Borrowing Base Properties, and every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"Leasing Threshold" shall have the meaning set forth in Section 7.1.32 of this Agreement. ".

1.1.41 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "LIBO Rate Loan" therein:

" *"Licenses" shall have the meaning set forth in Section 4.1.12 of the Third Amendment.*".

1.1.42 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Lien" therein:

" *"Lincolnshire Fee Owner" means Indian Creek Investors, Inc. or the then Landlord under the Lincolnshire Ground Lease .*

"Lincolnshire Ground Lease" means those documents described on Schedule VII attached to this Agreement.

"Lincolnshire Ground Lessee" means the Tenant under the Lincolnshire Ground Lease .

"Lincolnshire Leasehold Estate" means the estate in the Marriott Lincolnshire created by the Lincolnshire Ground Lease .

"Lincolnshire Zoning Documents" shall have the meaning set for in Section 4.1.12 of the Third Amendment.".

1.1.43 The definition of "Loan Documents" is hereby amended to insert the following after the words "Fee Letters":

"*First Lien Mortgages, Mexico Pledge Agreement, Reaffirmation of Guaranty, Reaffirmation of Subsidiary Guaranty, Reaffirmation of Guarantor Pledge Agreement, Reaffirmation of Subsidiary Pledge Agreement, Reaffirmation of D.C. Loan Pledge, D.C. Loan Subordination, each Assignment of Leases and Rents, each Assignment of Agreements and the Post Closing Letter*".

1.1.44 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Loans" therein:

" *"Low DSCR Fee" has the meaning set forth in Section 3.4.4 of this Agreement.*

"Low Fixed Charge Covenant Period" has the meaning set forth in Section 7.2.4(a) of this Agreement.

"Major Casualty/Condemnation Event" means any casualty or Taking occurring with respect to any Borrowing Base Property where any of the following shall be true: (i) the Proceeds shall equal or exceed the Appraised Value of the applicable Borrowing Base Property; (ii) an Event of Default shall have occurred and be continuing; (iii) a Total Loss with respect to a Borrowing Base Property shall have occurred; (iv) the Work is not capable of being completed before the earlier to occur of (x) the date that is six (6) months prior to the Maturity Date and (y) the date on which the business interruption insurance carried by Borrower with respect to the applicable Borrowing Base Property shall expire (the "Cut-Off Date"), unless on or prior to the Cut-Off Date Borrower shall deliver to Administrative Agent and there shall remain in effect a binding written offer, subject only to customary conditions, of an Approved Bank duly authorized to originate loans secured by real property located in the jurisdiction for a loan from such Approved Bank to Borrower or applicable Borrowing Base Entity in a principal amount of not less than the Appraised Value of the applicable Borrowing Base Property (net of any Proceeds available to the applicable Borrowing Base Entity on account of the applicable casualty or Taking) and which shall, in Administrative Agent's reasonable judgment, enable Borrower or the applicable Borrowing Base Entity to refinance such allocated amount prior to the Maturity Date; (v) such Borrowing Base Property is not capable of being restored substantially to its condition prior to such casualty or Taking and such incapacity shall have a Material Adverse Effect; or (vi) Administrative Agent determines that, upon the completion of the restoration, the gross cash flow and the net cash flow of such Borrowing Base Property will not be restored to a level sufficient to cover all carrying costs and operating expenses of such Borrowing Base Property at a coverage ratio of at least 2.0:1.0 (excluding any debt service), which coverage ratio shall be determined by Administrative Agent in its sole and absolute discretion.".

"Management Agreement " means the management agreements with respect to each Borrowing Base Property as set forth on Schedule VIII attached to this Agreement pursuant to which the Manager is to provide management and other services with respect to the applicable Borrowing Base Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"Manager" means (i) with respect to the Four Seasons Mexico City, collectively the Four Seasons Hotel Limited, a corporation incorporated under the laws of the Province of Ontario, Canada ("FSHL"), Four Seasons Hotels and Resorts B.V., a corporation incorporated under the laws of the Netherlands ("FSHR"), and Four Seasons Hotels (Mexico), S.A. DE C.V., a corporation incorporated under the laws of the United Mexican States; (ii) with respect to the Four Seasons Punta Mita, collectively FSHL, FSHR, and Four Seasons Punta Mita, S.A. DE C.V., a

corporation incorporated under the laws of the United Mexican States; (iii) with respect to Four Seasons Washington, D.C., FSHL; (iv) with respect to Marriott Lincolnshire, Marriott Hotel Services, Inc., a Delaware corporation; and (v) with respect to Ritz Carlton Laguna Niguel, The Ritz-Carlton Hotel Company, L.L.C., a Delaware limited liability company, together with, in each instance, any successor management company permitted hereunder or, subject to Section 7.2.14 , under the applicable Management Agreement.".

1.1.45 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Mandatory Borrowing" therein:

" *"Marriott Lincolnshire" means that certain Property currently referred to as Lincolnshire Marriott and located at Ten Marriott Drive, Lincolnshire, Illinois.* ".

1.1.46 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Material Agreements" therein:

" *"Material Alteration" means any Alteration which, when aggregated with all related Alterations (other than decorative work such as painting, wall papering and carpeting and the replacement of fixtures, furnishings and equipment to the extent being of a routine and recurring nature and performed in the ordinary course of business) constituting a single project, involves an estimated cost exceeding five percent (5%) of the Appraised Value with respect to such Alteration or related Alterations (including the Alteration in question) then being undertaken at such Borrowing Base Property.*".

1.1.47 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Maturity Date" therein:

" *"Mexico Pledge Agreement" means that certain Non-Possessory Pledge Agreement, dated as of the Third Amendment Closing Date, by Punta Mita Resort, S. de R.L. de C.V., Inmobiliaria Nacional Mexicana, S. de R.L. de C.V. and Punta Mita TRS, S. de R.L. de C.V.*

"Mexico Taxes" shall have the meaning set forth in Section 4.6(a) of this Agreement.".

1.1.48 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "New Acquisitions" therein:

" *"New Lease" has the meaning set forth in Section 7.1.32 of this Agreement.*".

1.1.49 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "New Acquisitions" therein:

" *" Non-Borrowing Base Property Subsidiary" means a Subsidiary that does not, directly or indirectly, own a Borrowing Base Property or any interest therein and (x) that is a non-Domestic Subsidiary or (y) the only material assets of which consist of the Capital Stock of a non-Domestic Subsidiary.".*

1.1.50 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Non-Defaulting Lender" therein:

" *"Non-Disturbance Agreement" has the meaning set forth in Section 7.1.32 of this Agreement.*".

1.1.51 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Organic Document" therein:

" *"Other Charges" means maintenance charges, impositions other than Impositions, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining a Borrowing Base Property, now or hereafter levied or assessed or imposed against such Borrowing Base Property or any part thereof by any Governmental Authority, other than those required to be paid by a tenant or Manager pursuant to its respective Lease or Management Agreement.*".

1.1.52 The definition of "Permitted Borrowing Base Liens" is hereby amended to insert the following after the final clause thereof:

"*(i) Liens and security interests created or permitted by the Loan Documents; and*

(j) with respect to the Borrowing Base Properties, all Liens, encumbrances and other matters disclosed in the applicable Title Policy.".

1.1.53 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Pledge Agreement Collateral " therein:

" *"Post Closing Letter" means that certain Letter from Borrower to Administrative Agent, dated as of the Third Amendment Closing Date, setting forth certain obligations of Borrower and Administrative Agent from and after the Post Closing Date.*".

1.1.54 The definition of "Pro Forma Interest Expense" is hereby deleted and the following is hereby inserted in lieu thereof:

" *"Pro Forma Interest Expense" means, as of any date of determination, the interest expense that would be payable under the Facility for a twelve (12) month period, assuming: (1) an interest rate equal to the greater of (i) the lesser of (x) the sum of the Base Rate plus the Applicable Margin and (y) the sum of the LIBO Rate plus the Applicable Margin, each as of such date of determination and (ii) 8.0%; and (2) an outstanding principal balance equal to the Aggregate Outstanding Balance as of such date of determination, after giving effect to the requested Borrowing/Letter of Credit.*".

1.1.55 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Pro Forma Interest Expense" therein:

" *"Proceeds" has the meaning set forth in Section 12.2 of this Agreement.*".

1.1.56 The definition of "Property Owner" is hereby amended to insert the following at the end thereof:

"*and the Lincolnshire Ground Lessee.*"

1.1.57 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Property Owner" therein:

" *"Property Release Notice" shall have the meaning set forth in Section 7.1.22(e) of this Agreement.*".

1.1.58 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Quarterly Payment Date" therein:

" *"REAs" means, collectively, as the same may be amended, restated, supplemented or otherwise modified from time to time, those certain agreements more specifically described on Schedule XIV attached to this Agreement.*

"Reaffirmation of D.C. Loan Pledge" means that certain Reaffirmation of D.C. Loan Pledge, dated as of the Third Amendment Closing Date, by Borrower in favor of Administrative Agent on behalf of the Lenders.

"Reaffirmation of Guarantor Pledge Agreement" means that certain Reaffirmation of Guarantor Pledge Agreement, dated as of the Third Amendment Closing Date, by Guarantor in favor of Administrative Agent on behalf of the Lenders.

"Reaffirmation of Guaranty" means that certain Reaffirmation of Guaranty, dated as of the Third Amendment Closing Date, by Guarantor in favor of Administrative Agent on behalf of the Lenders.

"Reaffirmation of Subsidiary Guaranty" means that certain Reaffirmation of Subsidiary Guaranty, dated as of the Third Amendment Closing Date, by each Subsidiary Guarantor in favor of Administrative Agent on behalf of the Lenders.

"Reaffirmation of Subsidiary Pledge Agreement" means that certain Reaffirmation of Subsidiary Pledge Agreement, dated as of the Third Amendment Closing Date, by each Subsidiary party to the Pledge Agreement in favor of Administrative Agent on behalf of the Lenders.".

1.1.59 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Real Estate" therein:

" *"Real Property" means, collectively, the Land, the Improvements and the Appurtenances.*".

1.1.60 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "REIT" therein:

" *"Release Date" has the meaning set forth in Section 7.1.22(e) of this Agreement.*

"Release Instruments" has the meaning set forth in Section 7.1.22(e) of this Agreement.

"Released Matters" has the meaning set forth in Section 5.1 of the Third Amendment.

"Released Parties" has the meaning set forth in Section 5.1 of the Third Amendment.

"Releasing Parties" has the meaning set forth in Section 5.1 of the Third Amendment.

"Rents" means all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of a Borrowing Base Entity from any and all sources arising from or attributable to a Borrowing Base Property and Proceeds, if any, from business interruption or other loss of income insurance.".

1.1.61 The definition of "Revolving Loan Commitment Amount " is hereby deleted and the following is hereby inserted in lieu thereof:

" *"Revolving Loan Commitment Amount" means FOUR HUNDRED MILLION DOLLARS ($400,000,000), as such amount may be reduced from time to time pursuant to Section 2.2 .*".

1.1.62 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Revolving Note" therein:

" *"Ritz Carlton Laguna Niguel" means that certain Property currently referred to as the Ritz Carlton Laguna Niguel and located at One Ritz-Carlton Drive, Dana Point, California.*".

1.1.63 Clause (v) of the definition of "Security Documents" is hereby deleted and the following is hereby inserted in lieu thereof:

"*(v) the First Lien Mortgages;*".

1.1.64 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Share Repurchase" therein:

" *"Specified Borrowing Base Properties" means the Borrowing Base Properties other than the Marriott Lincolnshire.*".

1.1.65 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Stated Expiry Date" therein:

" *"Stewart-Mexico" means Stewart Title Guaranty de Mexico, S.A. de C.V.*

"Stewart-U.S." means Stewart Title Insurance Company.".

1.1.66 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Subsidiary Guaranty" therein:

" *"Survey" means a survey of a Borrowing Base Property described on Schedule XVI .* ".

1.1.67 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Swingline Loan" therein:

" *"Taking" means a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of a Borrowing Base Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting such Borrowing Base Property or any part thereof.* ".

1.1.68 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Telerate Page 3750" therein:

" *"Tenant" means any Person leasing, subleasing or otherwise occupying any portion of a Borrowing Base Property pursuant to a Lease, other than a Manager, an Operating Lessee or their respective employees, agents and assigns.*".

1.1.69 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Test Period" therein:

" *"Third Amendment" means that certain Third Amendment to Credit Agreement, dated as of February 25, 2009, by and among Borrower, Administrative Agent, and the Lenders.*

"Third Amendment Closing Date" means the date of the Third Amendment.

"Third Amendment Fee Letter" means that certain confidential letter, dated as of the Third Amendment Closing Date between Borrower and Administrative Agent.

"Third Amendment Transaction" means the entering into of the Third Amendment and all other documents described in Sections 3.1.1 through 3.1.15 and Sections 3.1.21 through 3.1.23 of the Third Amendment .

"Threshold Amount " means an amount equal to 10% of the most recent Acceptable Appraisal with respect to the applicable Property.

"Title Company" means First American, Stewart-Mexico and/or Stewart-U.S., as applicable.

"Title Policies" means an ALTA mortgagee title insurance policy in form and substance reasonably acceptable to Administrative Agent (or, if a Borrowing Base Property is in a state or country which does not permit the issuance of such ALTA policy, such form as shall be permitted in such state or country and reasonably acceptable to Administrative Agent) issued by one or more of First American, Stewart-Mexico and/or Stewart-U.S. as set forth in Section 3.1.24 of the Third Amendment with respect to each Borrowing Base Property, and insuring the lien of the First Lien Mortgages.".

1.1.70 The definition of "Total Fixed Charge Coverage Ratio" is hereby deleted and the following is hereby inserted in lieu thereof:

" "Total Fixed Charge Coverage Ratio"*means, as of the close of any Fiscal Quarter, the ratio computed for the period consisting of such Fiscal Quarter and each of the three immediately prior Fiscal Quarters, of (a) Consolidated EBITDA for such period (computed without duplication to include the EBITDA from the pro rata share of ownership in the Hotel del Coronado) to (b) the sum, on a consolidated basis, of (i) Total Interest Expense for such period; plus (ii) the scheduled principal amount of all amortization payments (but not final balloon payments at maturity) for such period on all Indebtedness of the Consolidated Group; plus (iii) distributions on preferred partnership units payable by Borrower for the latest Fiscal Quarter and distributions made by the Borrower for the latest Fiscal Quarter for the purpose of paying Dividends on preferred shares in Guarantor multiplied by four (4) (notwithstanding anything herein to the contrary, distributions for the purpose of paying Catch Up Amounts shall not be included in such calculation); plus (iv) an amount equal to the aggregate Deemed FF&E Reserves for the Consolidated Group Properties for such period; plus (v) amounts paid by or on behalf of the Consolidated Group into cash reserves as required pursuant to the terms of other Indebtedness; plus (vi) without duplication, Borrower's pro rata share of the amounts described in clauses (i) – (v) above that relate to the Hotel del Coronado. Any Low DSCR Fees paid by Borrower will not be included in the Total Fixed Charge Coverage Ratio.*".

1.1.71 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Total Leverage Ratio" therein:

" *"Total Loss " means (i) a casualty, damage or destruction of a Borrowing Base Property which, in the reasonable judgment of Administrative Agent, involves an actual or constructive loss of more than thirty percent (30%) of the value of such Borrowing Base Property as set forth in the most recent Acceptable Appraisal, (ii) a permanent Taking which, in the reasonable judgment of Administrative Agent, involves an actual or constructive loss of more than thirty percent (30%) of the value of such Borrowing Base Property as set forth in the most recent Acceptable Appraisal, or (iii) a casualty, damage, destruction or Taking that affects so much of such Borrowing Base Property such that it would be impracticable, in Administrative Agent's reasonable discretion, even after restoration, to operate such Borrowing Base Property as an economically viable whole.*".

1.1.72 Section 1.1 of the Original Agreement is hereby amended to insert the following definitions after the definition of "Transaction" therein:

" *"Transfer" means to, directly or indirectly, sell, assign, convey, mortgage, transfer, pledge, hypothecate, encumber, grant a security interest in, exchange or otherwise dispose of any beneficial interest or grant any option or warrant with respect to, or where used as a noun, a direct or indirect sale, assignment, conveyance, transfer, pledge or other disposition of any beneficial interest by any means whatsoever whether voluntary, involuntary, by operation of law or otherwise.*"; and

" *"Trustee" means The Bank of New York Mellon, S.A., Institución de Banca Múltiple.*".

1.1.73 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "Unfunded Pension Liability" therein:

" *"Uniform System" means the Uniform System of Accounts for Hotels, 9th Edition, International Association of Hospitality Accountants (1996), as from time to time amended.*".

1.1.74 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "United States" therein:

" *"Units" shall have the meaning set forth in Section 11.2.3 of the Third Amendment.*".

1.1.75 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "U.S. Lender" therein:

" *"Village Documents" shall have the meaning set forth in Section 4.1.12 of the Third Amendment.*".

1.1.76 Section 1.1 of the Original Agreement is hereby amended to insert the following definition after the definition of "wholly-owned" therein:

" *"Work" has the meaning set forth in Section 12.4.1 of this Agreement.*".

Section 1.2 Article II Amendments . Clause (ii) of Section 2.9(a) of the Original Agreement is hereby amended by deleting the word "*Credit* " therein.

Section 1.3 Article III Amendments .

1.3.1 Section 3.1(b) of the Original Agreement is hereby amended by inserting the following as clause (iv) thereof:

"*(iv) notwithstanding Borrower's election of the Low Fixed Charge Covenant Period, the Total Fixed Charge Coverage Ratio calculated as of December 31, 2010 shall be no less than 1.15:1.0.*".

1.3.2 The first (1 st) sentence of Section 3.4.1 of the Original Agreement is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

"*Borrower agrees to pay to Administrative Agent each Fiscal Quarter for the account of each Lender, for the period (including any portion thereof when any of its Commitments are suspended by reason of Borrower's inability to satisfy any condition of Article V of this Agreement) commencing on the Third Amendment Closing Date and continuing through the Revolving Loan Commitment Termination Date, an unused fee at a rate per annum equal to 0.50% multiplied by the average daily unused portion of the Aggregate Commitment in each case on such Lender's Percentage (net of Letter of Credit Outstandings but without giving effect to Swingline Loans made during such Fiscal Quarter).*".

1.3.3 The following Section 3.4.4 is hereby inserted:

"*3.4.4 Low DSCR Fee . During the Low Fixed Charge Covenant Period, Borrower shall pay Lenders a fee (the "Low DCSR Fee") quarterly in arrears with respect to each Fiscal Quarter occurring during the Low Fixed Charge Covenant Period in an amount equal to 0.25% multiplied by the average amount of the Aggregate Outstanding Balance during such Fiscal Quarter. Such Low DSCR Fee shall be payable on the fifth (5 th) Business Day following the end of such Fiscal Quarter.*".

1.3.4 Section 4.6(a) of the Original Agreement is hereby amended to insert the following after the last sentence thereof:

"*Notwithstanding anything herein to the contrary, Borrower shall cause the Borrowing Base Entities organized under the laws of Mexico to make all payments required of such entities hereunder or under any Loan Document free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, or any liabilities with respect thereto, including those arising after the Third Amendment Closing Date as a result of the adoption of or any change in law, treaty, rule, regulation, guideline or determination of a Mexican Governmental Authority or any change in the interpretation or application thereof by a Mexican*

Governmental Authority (all such taxes, levies, imposts, deduction, charges, withholdings and liabilities with respect thereto which a Administrative Agent determines to be applicable to this Agreement and the other Loan Documents being hereinafter referred to as "Mexico Taxes"). If, with respect to Mexico Taxes, the Borrower Base Entities organized under the laws of Mexico shall be required by law to deduct any Mexico Taxes from or in respect of any sum payable hereunder or under any other Loan Document to Administrative Agent or a Lender, Borrower shall cause such Borrowing Base Entity to (A) increase the sum payable as may be necessary so that after making all required deductions Administrative Agent or such Lender, as applicable, receive an amount equal to the sum it would have received had no such deductions been made, and (B) pay the full amount deducted to the relevant Mexican Governmental Authority in accordance with applicable law.".

1.3.5 Section 5.2.1(a) of the Original Agreement is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

"*(a) the representations and warranties set forth in Article VI and in each other Loan Document and in Article IV of the Third Amendment shall, in each case, be true and correct in all material respects with the same effect as if then made (unless stated to relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date);*".

Section 1.4 Article VII Amendments .

1.4.1 Section 7.1.1(d) of the Original Agreement is hereby amended by inserting the following at the end of clause (ii) thereof:

"*(provided , however , with respect to each Borrowing Base Property, Borrower shall deliver such statement within twenty five (25) Business Days after the end of each calendar month)*".

1.4.2 Section 7.1.6 of the Original Agreement is hereby amended by inserting the following as the penultimate sentence thereof:

"*Notwithstanding the foregoing, Borrower will, and will cause the Borrowing Base Entities to, comply with all Insurance Requirements and not bring or keep or permit to be brought or kept any article upon any of the Borrowing Base Properties or cause or permit any condition to exist thereon that would be prohibited by any Insurance Requirement, or would invalidate insurance coverage required hereunder to be maintained by Borrower or the Borrowing Base Entities on or with respect to any part of the Borrowing Base Properties pursuant to this Section 7.1.6 or Schedule XVIII attached to this Agreement.*".

1.4.3 Section 7.1.7 of the Original Agreement is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

"*Section 7.1.7 Appraisals.*

(a) Administrative Agent may obtain an updated or replacement Acceptable Appraisal for each Borrowing Base Property and Borrower shall reimburse Administrative Agent the costs thereof within thirty (30) days after receipt by Borrower of an invoice therefor; provided , that, subject to Section 7.2.14 , Borrower shall only be obligated to reimburse Administrative Agent for the costs of one Acceptable Appraisal per calendar year with respect to each Borrowing Base Property. Borrower shall obtain, at its own expense, (at least once each calendar year) an updated or replacement Acceptable Appraisal for each Property that is not a Borrowing Base Property and shall deliver same to Administrative Agent within five (5) Business Days after Borrower receives same. Such annual appraisals will be completed by December 31 of each year beginning with calendar year 2009, and shall be effective as of such date for determining whether (i) a Property complies with Section 7.1.22(a) and (ii) Borrower has satisfied the financial covenants set forth in Section 7.2.4 . The Required Lenders may instruct Administrative Agent to re-appraise any of the Borrowing Base Properties at any time, provided that, subject to Section 7.2.14 , Borrower will only be required to pay such appraisal expense once per calendar year for each Borrowing Base Property as provided above. Administrative Agent will provide Borrower with a notice promptly after any appraisal is deemed an Acceptable Appraisal.

(b) For purposes of determining the Available Commitment on any date, such calculation shall be based upon the latest Acceptable Appraisals (for the avoidance of doubt, if an appraisal is completed and becomes an Acceptable Appraisal on any Available Commitment calculation date, then such calculation shall incorporate such appraisal).

(c) For purposes of determining Gross Asset Value as of any date, such calculation shall be based upon the Acceptable Appraisals in effect as of (i) the Third Amendment Closing Date or (ii) thereafter, the last day of the most recently completed Fiscal Quarter.".

1.4.4 Section 7.1.10 of the Original Agreement is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

"*Section 7.1.10 Intercompany Indebtedness . Provided no Event of Default has occurred and is continuing, Borrower and its Subsidiaries shall be permitted to amend, restate, cancel and otherwise modify the terms and conditions of intercompany Indebtedness so long as the provisions of such amendments, restatements and other modifications are consistent with Section 7.1.11 and, if such Indebtedness is pledged to the Administrative Agent as Loan Pledge Collateral pursuant to the Loan Pledge Agreement, the amended, restated or modified instrument is delivered to Administrative Agent pursuant to the Loan Pledge Agreement.*".

1.4.5 Section 7.1.11 of the Original Agreement is hereby amended to insert the following at the end thereof:

"*Any amounts paid by Borrower, Guarantor or any Subsidiary that is not a Non-Borrowing Base Property Subsidiary to reduce the interest rate under any Indebtedness of a Non-Borrowing Base Property Subsidiary or to cure or prevent an event of default from occurring under the loan documents evidencing such Indebtedness of a Non-Borrowing Base Property Subsidiary, other than the payment of any portion of the principal amount owed thereunder, shall not exceed Ten Million Dollars ($10,000,000) in the aggregate.*".

1.4.6 Section 7.1.16 of the Original Agreement is hereby amended by (A) deleting clause (ii) thereof in its entirety and inserting the following in lieu thereof: "*(ii) remain a publicly traded company with common stock listed on any major national or regional stock exchange.*"; and (B) inserting the following as the last sentence thereof:

"*Notwithstanding the provisions of Section 7.2.6 , subject to the reasonable approval of Administrative Agent, which shall be provided within five (5) Business Days after Administrative Agent's receipt of a written request therefor from Borrower, Guarantor shall be permitted to issue a reverse stock split with respect to its Capital Stock in order to comply with the covenant set forth in clause (ii) of the previous sentence.*".

1.4.7 Section 7.1.22(a) of the Original Agreement is hereby renumbered as Section 7.1.22(b) , and Section 7.1.22 (b) of the Original Agreement is hereby deleted.

1.4.8 Section 7.1.22 of the Original Agreement is hereby amended by inserting the following as clause (a) thereof:

"*(a) Each Borrowing Base Property shall satisfy the following criteria: (i) Borrower or a wholly-owned Subsidiary of the Borrower holds good title (by fee or pursuant to a Qualified Ground Lease) to such Property, free and clear of all Liens (except for the Liens permitted under Section 7.2.3); (ii) such Property is leased to an Operating Lessee; (iii) such Property is designated a full-service property (in accordance with industry standard, as reasonably determined by Administrative Agent); (iv) the Specified Borrowing Base Properties shall at all times be luxury or better quality hotels, and Marriott Lincolnshire shall at all times be an upper-upscale, luxury or better quality hotel, as designated by Smith Travel Research (or a similar successor company designated by Administrative Agent); (v) such Property is operated under a nationally recognized brand (A) in the case of Marriott Lincolnshire, by an Approved Manager (as set forth on Schedule IV) and (B) in the case of the Specified Borrowing Base Properties, by an Approved Luxury Manager; (vi) such Property is either (x) fully operating, open to the public and not under development or redevelopment (except for routine, ordinary course renovation, maintenance and repair that does not result in the closure of more than fifteen percent (15%) of the rooms at such hotel); provided , however , that temporary closure due to force majeure*

events, not to exceed fifteen (15) Business Days, shall be permitted or (y) being restored in compliance with the provisions of Article XII of this Agreement with respect to any Taking or casualty or other damage or injury suffered at such Property; (vii) such Property is not subject to or encumbered by any Indebtedness other than Permitted Borrowing Base Debt; (viii) such Property is free of material structural defects or material environmental issues; (ix) neither such Property nor the Property Owner thereof is encumbered with Permitted Borrowing Base Debt or any other Material Agreement that by its terms precludes the grant of the Collateral or the exercise by or on behalf of the Secured Creditors of remedies with respect to the Collateral; and (x) the Property Owner of such Property is Borrower or a Subsidiary Guarantor.".

1.4.9 Section 7.1.22(c) of the Original Agreement is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

"*(c) Borrower may propose to include additional Properties (whether New Acquisitions or former Development Properties, or Properties that were once Borrowing Base Properties and that no longer qualify as such by sending written proposals for inclusion to Administrative Agent. Administrative Agent may reasonably request any diligence materials and documentation it deems necessary to evaluate such Property, including, without limitation, certifications, appraisals and title documentation. Administrative Agent will make such request and materials available to the Lenders, and the inclusion of any such Property as a Borrowing Base Property shall be subject to the prior written consent of the Required Lenders.".*

1.4.10 Section 7.1.22(d) of the Original Agreement is hereby amended by deleting the second (2nd) and third (3rd) sentences thereof in their entirety.

1.4.11 Sections 7.1.22 of the Original Agreement is hereby amended by inserting the following at the end thereof:

"*(e) Subject to satisfaction of each of the conditions set forth below with respect to any Borrowing Base Property, Borrower shall be entitled to release and/or dispose of the Marriott Lincolnshire and, in Borrower's discretion, not more than one (1) Specified Borrowing Base Property (the "Borrowing Base Release Property") from the Lien of the applicable First Lien Mortgage and related Loan Documents (each release under this Section 7.1.22(e) , a " Borrowing Base Property Release"):*

(i) Borrower delivers a written notice (a "Property Release Notice") to Administrative Agent of its desire to effect such Borrowing Base Property Release no later than thirty (30) days prior to the date of such desired Borrowing Base Property Release, and setting forth the Business Day (the "Release Date") on which Borrower desires that Administrative Agent release its interest in such Borrowing Base Release Property;

(ii) Borrower shall submit to Administrative Agent not less than ten (10) Business Days prior to the Release Date (which must be a Business Day) a release of Liens (and related Loan Documents) for the applicable Borrowing Base Release Property (for execution by Administrative Agent) in a form appropriate in the applicable state and otherwise satisfactory to Administrative Agent in its reasonable discretion and all other documentation Administrative Agent reasonably requires to be delivered by Borrower in connection with such Borrowing Base Property Release (collectively, "Release Instruments") for each applicable Borrowing Base Release Property together with an Officer's Certificate certifying that (A) the Release Instruments are in compliance with all Legal Requirements, (B) the release to be effected will not violate the terms of this Agreement, (C) the release to be effected will not impair or otherwise adversely affect the Liens, security interests and other rights of Lenders under the Loan Documents not being released (or as to the Borrowing Base Properties subject to the Loan Documents not being released) and (D) the condition described in paragraph (iii) below is satisfied in connection with such Borrowing Base Property Release (together with calculations and supporting documentation demonstrating the same in reasonable detail);

(iii) With respect to any Borrowing Base Property Release, after giving effect to such Borrowing Base Property Release, (A) Borrower shall be in pro forma compliance with the financial covenants set forth in Section 7.2.4 and (B) the Aggregate Outstanding Balance shall not exceed the Available Commitment calculated on a pro forma basis;

(iv) No Event of Default shall have occurred and then be continuing on the date on which Borrower delivers the Property Release Notice and on the Release Date, unless all outstanding Events of Default are cured as a result of the Borrowing Base Property Release;

(v) After giving effect to such Borrowing Base Property Release, no Event of Default shall occur as a result of the Borrowing Base Property Release; and

(vi) Borrower shall pay for any and all reasonable out-of-pocket costs and expenses incurred in connection with any proposed Borrowing Base Property Release, including, without limitation, Administrative Agent's reasonable attorneys' fees and disbursements and all title insurance premiums for any endorsements to any existing Title Policies reasonably required by Administrative Agent in connection with such proposed release.

(f) In the event that Borrower, pursuant to the terms of Section 7.1.22(e) above, has released and/or disposed of any Specified Borrowing Base Property, then (i) the Advance Rate shall be deemed to be reduced by five (5) percentage points (or ten (10) percentage points if the released Specified Borrowing Base Property is the Ritz Carlton Laguna Niguel) and (ii) Borrower shall not be permitted to release and/or dispose of any other Specified Borrowing Base Properties from the Lien of the applicable First Lien Mortgage and the related Loan Documents without the prior written approval of the Required Lenders.".

1.4.12 Section 7.1 of the Original Agreement is hereby amended by inserting the following at the end thereof:

"*Section 7.1.23 Access to Property . Borrower shall, and shall cause each Borrowing Base Entity to, permit agents, representatives and employees of Administrative Agent to inspect the Borrowing Base Properties or any part thereof during normal business hours on Business Days upon reasonable advance notice.*".

Section 7.1.24 Mortgage Taxes . Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Administrative Agent or Lenders.

Section 7.1.25 Operation . With respect to each Borrowing Base Property, Borrower shall, and shall cause each Borrowing Base Entity and Manager to, (i) promptly perform and/or observe in all material respects all of the covenants and agreements required to be performed and observed by it under the applicable Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Administrative Agent of any "event of default" under the applicable Management Agreement of which it is aware and (iii) enforce in a commercially reasonable manner the performance and observance of all of the covenants and agreements required to be performed and/or observed by the Manager under the applicable Management Agreement.

Section 7.1.26 Business and Operations . Borrower shall, and shall cause each Borrowing Base Entity to, continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Borrowing Base Properties. Borrower shall, and shall cause each Borrowing Base Entity to, qualify to do business and shall remain in good standing under the laws of the jurisdiction in which the applicable Borrowing Base Property is located, as and to the extent required for the ownership, maintenance, management and operation of the applicable Borrowing Base Property.

Section 7.1.27 Title to Property . Borrower shall, and shall cause each Borrowing Base Entity to, warrant and defend (a) the title to the Borrowing Base Properties and every part thereof, subject only to Liens and other encumbrances permitted hereunder (including Permitted Borrowing Base Liens) and (b) the validity and priority of the Liens of the First Lien Mortgages and the other Loan Documents on the Borrowing Base Properties, subject

only to Liens and other encumbrances permitted hereunder (including Permitted Borrowing Base Liens), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Administrative Agent for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Administrative Agent if an interest in a Borrowing Base Property is claimed by another Person, other than as permitted hereunder.

Section 7.1.28 Title Insurance . Borrower shall, and shall cause each Borrowing Base Entity to, maintain coverage under each Title Policy in an amount equal to at least sixty percent (60%) of the Appraised Value for each Borrowing Base Property as shown on the most recent Acceptable Appraisal with respect to such Borrowing Base Property; provided , however , Borrower and the Borrowing Base Entity shall not be required to increase the amount of coverage under any Title Policy if such increase would cause the aggregate amount of coverage for all Borrowing Base Properties to exceed an amount equal to Four Hundred Ninety Five Million Dollars ($495,000,000); provided , further , that Borrower shall not be required to increase the amount of coverage more than twice in any calendar year. Within fifteen (15) Business Days after Borrower's receipt of an Acceptable Appraisal that requires an increase in coverage, Borrower shall, or shall cause the applicable Borrowing Base Entity to, deliver to Administrative Agent (i) a title continuation letter, showing all matters recorded on title since the later of the issuance of the Title Policy and the most recent title continuation letter and (ii) evidence of a fully-paid endorsement to the Title Policy in an amount so increasing such coverage. Borrower shall not, and shall not permit a Borrowing Base Entity to, reduce the coverage under each Title Policy.

"Section 7.1.29 Costs of Enforcement . In the event (a) that this Agreement or the First Lien Mortgages are foreclosed upon in whole or in part or that this Agreement or the First Lien Mortgages are put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any security agreement prior to or subsequent to this Agreement in which proceeding Administrative Agent is made a party, or a mortgage prior to or subsequent to the First Lien Mortgages in which proceeding Administrative Agent is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower, any Borrowing Base Entity or any of their constituent Persons or an assignment by Borrower, any Borrowing Base Entity or any of its constituent Persons for the benefit of its creditors, then Borrower, its successors or assigns, shall, and shall cause such Borrowing Base Entity, its successors and assigns, to be chargeable with and agrees to pay all costs of collection and defense, including reasonable attorneys' fees and costs, incurred by Administrative Agent, the Lenders, Borrower or such Borrowing Base Entity in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

Section 7.1.30 Notices; Leases and REAs . Borrower shall, and shall cause each Borrowing Base Entity to, promptly after receipt thereof, deliver to Administrative Agent a copy of any notice received with respect to the REAs and the Leases claiming that Borrower or such Borrowing Base Entity is in default in the performance or observance of any of the material terms, covenants or conditions of any of the REAs or the Leases.

Section 7.1.31 Taxes . Borrower shall, or shall cause the applicable Borrowing Base Entity to, pay all Impositions now or hereafter levied or assessed or imposed against a Borrowing Base Property or any part thereof prior to the imposition of any interest, charges or expenses for the non-payment thereof and shall pay all Other Charges on or before the date they are due. Nothing contained herein shall be deemed to require Borrower to pay, or cause to be paid, any Imposition or to satisfy any Lien, or to comply with any legal requirement, so long as Borrower is in good faith, and by proper legal proceedings, where appropriate, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding, (i) no monetary Event of Default shall exist and be continuing hereunder, (ii) Borrower shall keep Administrative Agent informed of the status of such contest at reasonable intervals, (iii) adequate reserves with respect thereto are maintained on Borrower's books in accordance with GAAP, (iv) either such contest operates to suspend collection or enforcement as the case may be, of the contested Imposition, Lien or legal requirement and such contest is maintained and prosecuted continuously and with diligence or the Imposition or Lien is bonded, and (v) in the case of any Insurance Requirement, the failure of Borrower to comply therewith shall not impair the validity of any insurance required to be maintained by Borrower under the Loan Documents or the right to full payment of any claims thereunder. Notwithstanding the foregoing, the creation of any such reserves or the furnishing of any bond, Borrower promptly shall comply with any contested legal requirement or Insurance Requirement or shall pay any contested Imposition or Lien, and compliance therewith or payment thereof shall not be deferred, if, at any time the Property or any portion thereof shall be, in Administrative Agent's reasonable judgment, in imminent danger of being forfeited or lost or Administrative Agent or Lenders are likely to be subject to civil or criminal damages as a result thereof. If such action or proceeding is terminated or discontinued adversely to Borrower, Borrower shall deliver to Administrative Agent reasonable evidence of Borrower's compliance with such contested Imposition, Lien, legal requirements or Insurance Requirements, as the case may be.

Section 7.1.32 Leases .

(a) Except as otherwise provided in this Section 7.1.32 , Borrower shall not, and shall cause the Borrowing Base Entities not to, enter into any Lease with a Tenant (a "New Lease") or, to the extent the same would cause a Material Adverse Effect, consent to the assignment of, modify or terminate any Lease, without the prior written consent of Administrative Agent which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing sentence, provided no Event of Default shall have occurred, Borrower and a Borrowing Base Entity may, in the ordinary course of business, enter into a New Lease, without Administrative Agent's prior written consent, that satisfies each of the following conditions: (i) such New Lease contains material economic terms that are at least equal to the then prevailing market rate for similar properties in such location for the entire term of such New Lease and (ii) with respect to each Borrowing Base Property, after giving effect to any New Lease, the amount of aggregate leased square footage at such Borrowing Base Property shall not exceed the

amount of aggregate leased square footage at such Borrowing Base Property as of the Third Amendment Closing Date, as such amount is set forth on Schedule XV (such limitation for each Borrowing Base Property, the "Leasing Threshold");provided , however , with respect solely to the Four Seasons Washington, D.C., Borrower, or the Borrowing Base Entities of the Four Seasons Washington, D.C. may exceed the Leasing Threshold applicable thereto by up to eleven thousand (11,000) square feet by entering into a New Lease, but only with the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld, delayed or conditioned, unless such New Lease (A) is on customary terms as leases for similar tenancies demising space in similar hotel properties located in the same neighborhood as such Borrowing Base Property and (B) provides that the demised premises thereunder shall only be used for retail purposes or services ancillary to the operation of the Four Seasons Washington, D.C.

(b) Upon the execution of any New Lease Borrower shall deliver to Administrative Agent an executed copy of the New Lease.

(c) Borrower shall, and shall cause each Borrowing Base Entity to, (i) promptly perform and observe all of the material terms, covenants and conditions required to be performed and observed by Borrower and such Borrowing Base Entities under the Leases and the REAs, if the failure to perform or observe the same would have a Material Adverse Effect and (ii) exercise, within ten (10) Business Days after a written request by Administrative Agent, any right to request from the Tenant under any Lease, or the party to any REAs a certificate with respect to the status thereof.

(d) All New Leases entered into by Borrower and any Borrowing Base Entities after the Third Amendment Closing Date shall by their express terms be subject and subordinate to this Agreement and the First Lien Mortgages (through a subordination provision contained in such Lease or otherwise) and shall provide that if Administrative Agent agrees to a Non-Disturbance Agreement pursuant to Section 7.1.32(f) , the Person holding any rights thereunder shall attorn to Administrative Agent or any other Person succeeding to the interests of Administrative Agent upon the exercise of its remedies hereunder or any transfer in lieu thereof on the terms set forth in this Section 7.1.32 .

(e) Each New Lease entered into from and after the Third Amendment Closing Date shall provide that in the event of the enforcement by Administrative Agent of any remedy under this Agreement or the First Lien Mortgages, if Administrative Agent agrees to a Non-Disturbance Agreement pursuant to Section 7.1.32(f) , the Tenant under such Lease shall, at the option of Administrative Agent or of any other Person succeeding to the interest of Administrative Agent as a result of such enforcement, attorn to Administrative Agent or to such Person and shall recognize Administrative Agent or such successor in the interest as lessor under such Lease without

change in the provisions thereof; provided , however , Administrative Agent or such successor in interest shall not be liable for or bound by (i) any payment of an installment of rent or additional rent made more than thirty (30) days before the due date of such installment, (ii) any act or omission of or default by Borrower or the applicable Borrowing Base Entity under any such Lease (but the Administrative Agent, or such successor, shall be subject to the continuing obligations of the landlord to the extent arising from and after such succession to the extent of Administrative Agent's, or such successor's, interest in the Borrowing Base Property), (iii) any credits, claims, setoffs or defenses which any Tenant may have against Borrower or the applicable Borrowing Base Entity, (iv) any obligation under such Lease to maintain a fitness facility at the Borrowing Base Property, (v) any obligation on Borrower's or the applicable Borrowing Base Entity's part, pursuant to such Lease, to perform any tenant improvement work or (vi) any obligation on Borrower's or the applicable Borrowing Base Entity's part, pursuant to such Lease, to pay any sum of money to any Tenant. Each such New Lease shall also provide that, upon the reasonable request by Administrative Agent or such successor in interest, the Tenant shall execute and deliver an instrument or instruments confirming such attornment.

(f) Administrative Agent on behalf of the Lenders shall enter into, and, if required by applicable law to provide constructive notice or requested by a Tenant, record in the county where the subject Property is located, a subordination, attornment and non-disturbance agreement, substance substantially similar to the form attached to this Agreement as Exhibit L (a "Non-Disturbance Agreement"), with any Tenant (other than an Affiliate of Borrower or a Borrowing Base Entity) entering into a Lease permitted hereunder or otherwise consented to by Lender within ten (10) Business Days after written request therefor by Borrower, provided that such request is accompanied by an officer's certificate stating that such Lease complies in all material respects with this Section 7.1.32 . All reasonable third party costs and expenses incurred by Administrative Agent in connection with the negotiation, preparation, execution and delivery of any Non-Disturbance Agreement, including, without limitation, reasonable attorneys' fees and disbursements, shall be paid by Borrower (in advance, if requested by Lender).

Section 7.1.33 Account Pledges . On the Third Amendment Closing Date, Borrower shall cause the Operating Lessees of each Borrowing Base Property to grant to Administrative Agent a valid, first lien security interest in (i) the Accounts and all cash, checks, drafts, securities entitlements, certificates, instruments and other property, including, without limitation, all deposits and/or wire transfers from time to time deposited or held in, credited to or made to Accounts, (ii) all interest, dividends, cash, instruments, securities entitlements and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing or purchased with funds from the Accounts and (iii) to the extent not covered by clauses (i) or (ii) above, all proceeds (it being agreed that solely with respect to the Borrowing Base Properties

located in the United States, the term "proceeds" shall have the meaning set forth in the Uniform Commercial Code of the State in which the applicable Borrowing Base Property is located) of any or all of the foregoing. Without Administrative Agent's written consent, which consent shall not be unreasonably withheld, conditioned or delayed, Borrower shall not, and shall not permit the Borrowing Base Entities to, close any of the Accounts, nor take any action or omit to take any action that would result in the monies payable to the Accounts being deposited in accounts other than the Accounts.".

Section 7.1.34 Certificate of Occupancy . Borrower has informed Administrative Agent and the Lenders that (i) no certificate of occupancy has been obtained or is required with respect to the Four Seasons Mexico City and (ii) that a certificate of occupancy has been lost or misplaced, as set forth in Section 4.1.12(a) , with respect to the Marriott Lincolnshire. Borrower hereby agrees that if at any time any applicable Governmental Authority requires such a certificate of occupancy to be obtained, then Borrower shall cause such certificate to be obtained as and to the extent so required and shall promptly deliver a copy of same to Administrative Agent.

1.4.13 Section 7.2.2(b) of the Original Agreement is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

"*(b) Unsecured Indebtedness incurred in connection with Permitted Construction Indebtedness, subject to compliance with the covenants set forth in Section 7.2.9 , not to exceed Fifty Million Dollars ($50,000,000) in aggregate principal amount at any time; provided , however , that unless and until Borrower elects the Alternative Capex/Investments Basket, Borrower will not, and will not permit Guarantor or any of Borrower's or Guarantor's respective Subsidiaries to, create, incur, assume or suffer to exist or otherwise become liable for any additional Indebtedness under this Section 7.2.2(b) ;* ".

1.4.14 Section 7.2.3 of the Original Agreement is hereby amended to insert the following after the words "Borrowing Base Properties" in the last line of the first paragraph thereof:

",*Permitted Borrowing Base Liens and*"

1.4.15 Sections 7.2.4(a) through (c) of the Original Agreement are hereby deleted in their entirety and the following is hereby inserted in lieu thereof:

"*(a) Minimum Total Fixed Charge Coverage Ratio .*

(i) Borrower will not permit the Total Fixed Charge Coverage Ratio, as of the end of any Fiscal Quarter, to be less than 1.0:1.0; provided , however , that, subject to clauses (ii) and (iii) below, for up to four (4) consecutive Fiscal Quarters, Borrower may elect once and only once, upon not less than ten (10) Business Days' prior written notice to Administrative Agent, to reduce such ratio to 0.90:1.0 (the "Low Fixed Charge Covenant Period"). From and after Borrower's election to implement a Low Fixed Charge Covenant

Period, the Advance Rate will be permanently reduced by five (5) percentage points from its then current percentage (subject to further reduction pursuant to Section 7.1.22(f)). During the Low Fixed Charge Coverage Period, neither Borrower nor Guarantor may authorize, declare, or pay any amount of preferred Dividends in cash or in kind, except to the extent permitted pursuant to Section 7.2.6(c) . From and after the expiration of the Low Fixed Charge Covenant Period, Borrower will not permit the Total Fixed Charge Coverage Ratio, as of the end of any Fiscal Quarter, to be less than 1.0:1.0.

(ii) Notwithstanding anything to the contrary contained herein, from and after the earliest of (A) the first (1st) day of the Extension Term, (B) the date on which Borrower elects the Alternative Capex/Investments Basket, or (C) except to the extent paid pursuant to Section 7.2.6(c) , the date on which Borrower resumes payment of any common Dividends in cash or in kind, (1) Borrower will not permit the Total Fixed Charge Coverage Ratio, as of the end of any Fiscal Quarter, to be less than 1.15:1.0 and (2) the Low Fixed Charge Covenant Period will no longer be available.

(iii) Notwithstanding anything to the contrary contained herein, in the event that the Initial Maturity Date occurs during the Low Fixed Charge Covenant Period, the Low Fixed Charge Covenant Period shall be deemed to have expired as of the Initial Maturity Date, regardless of whether the Initial Maturity Date occurs prior to the end of the fourth (4th) Fiscal Quarter of the Low Fixed Charge Covenant Period.

(iv) Notwithstanding anything to the contrary contained herein, from and after payment of any Catch-Up Amounts, Borrower will not permit the Total Fixed Charge Coverage Ratio, as of the end of any Fiscal Quarter, to be less than 1.10:1.00.

(b) Borrower will not permit the Total Leverage Ratio to be greater than .80 to 1.0.

(c) Borrower will not permit, as of any date, Consolidated Tangible Net Worth to be less than an amount equal to Six Hundred Million Dollars ($600,000,000) plus seventy-five percent (75%) of the net proceeds to Guarantor of any new issuances of common Capital Stock but excluding therefrom (x) the proceeds of any common Capital Stock of Guarantor or Borrower used in a transaction or a series of transactions to redeem all or any portion of an outstanding issue of Capital Stock (including payment in connection therewith of any accrued Dividends in accordance herewith) or (y) Capital Stock of Guarantor or Borrower issued to discharge Indebtedness.".

1.4.16 Section 7.2.4(d) of the Original Agreement is hereby amended by inserting the following after the last sentence thereof:

"*Notwithstanding anything to the contrary contained herein other than as set forth in the immediately succeeding sentence, Borrower shall not incur, or permit to be incurred after the Third Amendment Closing Date, any Construction Costs of the Consolidated Group (other than Construction Costs relating to projects in progress as set forth on Schedule XI , which for the avoidance of doubt excludes any projects that are currently in design or pre-development stage, such as the La Solana project) once such Construction Costs are equal to, in the aggregate, Fifty Million Dollars ($50,000,000) (the "Capex/Investments Basket"). Notwithstanding the foregoing, provided that (A) no Default has occurred and is continuing and (B) the Total Fixed Charge Coverage Ratio is not less than 1.15:1.0 calculated as of the previous Fiscal Quarter, Borrower may, upon not less than ten (10) days' prior written notice to Administrative Agent (which notice shall contain an officer's certificate certifying as to Borrower's compliance with clauses (A) and (B) above), incur Construction Costs after the Third Amendment Closing Date that shall not exceed, as of any date, ten percent (10%) of Gross Asset Value (the "Alternative Capex/Investments Basket"). The election by Borrower to so utilize the Alternative Capex/Investments Basket shall be deemed to be permanent, and the Capex/Investments Basket will then no longer be available. Any payments made by Borrower, Guarantor or any Subsidiary that is not a Non-Borrowing Base Subsidiary to reduce the principal amount of any Indebtedness owed by any Non-Borrowing Base Property Subsidiary shall reduce the Capex/Investments Basket or Alternative Capex/Investments Basket, as applicable.* ".

1.4.17 Section 7.2.6 of the Original Agreement is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

"*Section 7.2.6 Restricted Payments, etc.*

(a) Borrower will not, nor will Borrower permit Guarantor or any of Borrower's or Guarantor's respective Subsidiaries to, authorize, declare or pay any Dividends, except that:

(i) any Subsidiary of Borrower may authorize, declare and pay Dividends to Borrower or to any Subsidiary of Borrower;

(ii) except as provided in clause (a)(i) above or clause (c) below, Guarantor and Borrower may not authorize, declare or pay any amount of Dividends payable to holders of common Capital Stock or operating partnership stock in cash or in kind until the Total Fixed Charge Coverage Ratio exceeds 1.3:1.0. Once the Total Fixed Charge Coverage Ratio exceeds 1.3:1.0, Guarantor, Borrower

and any of their respective Subsidiaries may authorize, declare or pay Dividends payable to holders of common Capital Stock or operating partnership stock from time to time (in addition to those permitted pursuant to the preceding clause (a)(i)), so long as (A) no Event of Default exists at the time of the respective authorization, declaration or payment or would exist immediately after giving effect thereto, and (B) calculations are made by Borrower establishing compliance with the financial covenants contained in Section 7.2.4 for the Test Period, on a pro forma basis (giving effect to the payment of the applicable Dividend);

(iii) except as provided in clause (a)(i) above or clause (c) below, Guarantor and Borrower may not authorize, declare or pay any amounts to holders of preferred Capital Stock in excess of the amounts owed thereto which accrued with respect to the most recent Fiscal Quarter ("Catch-Up Amounts") for prior Fiscal Quarters until the Total Fixed Charge Coverage Ratio exceeds 1.15:1.00 for the prior two (2) consecutive Fiscal Quarters (such ratio shall be calculated for both quarters using a dividend amount paid to holders of preferred Capital Stock equal to the greater of (a) distributions on preferred partnership units payable by Borrower for the latest Fiscal Quarter multiplied by four (4) and (b) distributions on preferred partnership units payable by Borrower for the latest Fiscal Quarter plus any Catch Up Amounts being paid at such time); provided , however , that any transaction or series of transactions in which the common or preferred Capital Stock of Guarantor or Borrower is exchanged for additional common or preferred Capital Stock of Guarantor or Borrower shall not be deemed the payment of a Catch-Up Amount for the purposes of this Section 7.2.6(a)(iii) or Section 7.2.4(a)(iv) ;

(iv) provided no Event of Default exists at the time of the respective authorization, declaration or payment or would exist immediately after giving effect thereto and subject to clause (iii) above, Guarantor, Borrower and their respective Subsidiaries may authorize, declare or pay any amount of preferred Dividends;

(v) For the avoidance of doubt, nothing in this Agreement shall be interpreted as prohibiting Dividends from Subsidiaries to holders of Capital Stock in Joint Ventures; and

(vi) Guarantor and Borrower may purchase and exercise Capped Call Options.

(b) No redemption, retirement, purchase or other acquisition or similar transaction, of any class of Borrower's or Guarantor's outstanding Capital Stock (each, a "Share Repurchase") shall be permitted without the

consent of the Required Lenders, and (in any event) if any Event of Default shall have occurred and be continuing. The foregoing restriction shall not be deemed to apply to (i) the purchase or exercise of Capped Call Options by Borrower or Guarantor, (ii) a reverse stock split pursuant to the terms of Section 7.1.16 or (iii) a transaction or series of transactions in which an outstanding issue of the Capital Stock of Guarantor or Borrower is replaced, redeemed, or exchanged with a new issue of Capital Stock or the proceeds thereof, as applicable (or in each case portions thereof).

(c) No Dividend in cash or in kind may be paid or made by Borrower or Guarantor under this Section 7.2.6 at any time that an Event of Default shall have occurred and be continuing or would result from any such Dividend or other payment; provided , however , that notwithstanding the restrictions of Section 7.2.6(a) or the first part of this sentence, for so long as Guarantor qualifies, or has taken all other actions necessary to qualify, as a "real estate investment trust" under the Code during any Fiscal Year of Guarantor, Borrower may authorize, declare and pay quarterly cash Dividends (which may be based on estimates) to Guarantor when and to the extent necessary for Guarantor to distribute, and Guarantor may so distribute, cash Dividends to its shareholders generally in an aggregate amount not to exceed the minimum amount necessary for Guarantor to maintain its tax status as a real estate investment trust, unless Borrower receives notice from Administrative Agent of any monetary Event of Default or other material Event of Default.

(d) For avoidance of doubt, a Dividend paid or satisfied with the issuance of Capital Stock shall not be deemed to be a Dividend "in kind".".

1.4.18 Section 7.2 of the Original Agreement is hereby amended by inserting the following at the end thereof:

"*Section 7.2.11 Borrowing Base Entity Organic Documents . Borrower shall not, and shall not permit any Borrowing Base Entity to, amend or modify any of its Organic Documents without Administrative Agent's consent, other than to reflect any change in capital accounts, contributions, distributions or allocations or to make other changes that do not have a Material Adverse Effect.*

Section 7.2.12 Partition . Borrower shall not, and shall not permit any Borrowing Base Entity to, partition any Borrowing Base Property.

Section 7.2.13 Transfer Assets . Borrower shall not, and shall not permit any Borrowing Base Entity to, Transfer any personal property unless (i) such Transfer is in the ordinary course of business, (ii) such personal property is replaced with property of reasonably equivalent value (iii) is required pursuant to the terms of the applicable Management Agreement or (iv) such Transfer is permitted by another provision of this Agreement.

Section 7.2.14 Manager .

(a) With respect to each Borrowing Base Property, Borrower shall not, and shall not permit any Borrowing Base Entity to, without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld or delayed, (i) materially modify, change, supplement, alter or amend any Management Agreement or waive or release any of its right and remedies under a Management Agreement that would have a Material Adverse Effect or would otherwise modify, supplement or alter the provisions relating to casualty, condemnation or the disposition of insurance proceeds or (ii) replace the Manager with any Person other than an Approved Manager or Approved Luxury Manager, as applicable. Administrative Agent shall be obligated to provide its written consent to any proposed amendment, modification or supplement to a Management Agreement, provided that (A) Administrative Agent is obligated to provide such consent pursuant to the provisions of the applicable Manager's Consent to Assignment and Estoppel Certificate, dated as of the Third Amendment Closing Date and (B) such amendment, modification or supplement is permitted to be made by Borrower pursuant to the provisions of this Section 7.2.14(a) .

(b) In the event that Borrower or any Borrowing Base Entity desires to retain a new Manager, then (i) such new Manager shall be an Approved Manager or Approved Luxury Manager, (ii) Borrower shall deliver to Administrative Agent an updated or replacement Acceptable Appraisal for such Borrowing Base Property and, notwithstanding the provisions of Section 7.1.7 , Borrower shall reimburse Administrative Agent the costs thereof within thirty (30) days after receipt by Borrower of an invoice therefor and (iii) the Management Agreement with such Approved Manager or Approved Luxury Manager shall either be (x) on terms that in the aggregate (i.e ., taken as a whole) are no less favorable to the Borrowing Base Entity than customary market terms or (y) approved by the Required Lenders, such approval not to be unreasonably withheld or delayed .".

Section 7.2.15 Zoning Reclassification . Without the prior written consent of Administrative Agent, Borrower shall not, and shall not permit a Borrowing Base Entity to (a) initiate or consent to any zoning reclassification of any portion of a Borrowing Base Property that could reasonably be expected to have a material adverse effect on such Property, (b) seek any variance under any existing zoning ordinance that could result in the use of a Borrowing Base Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, or (c) allow any portion of a Borrowing Base Property to be used in any manner that could result in the use of such Borrowing Base Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation.".

Section 1.5 Article VIII Amendments .

1.5.1 Section 8.1.3 of the Original Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

"*Section 8.1.3 Non-Performance of Certain Covenants and Obligations . Borrower or any Borrowing Base Entity shall (a) default in the due performance and observance of any of its obligations under Section 7.1.1(f) , Section 7.1.2 (but only to the extent arising from the failure of Guarantor or Borrower to preserve and keep in full force and effect its existence), Section 7.1.16 , Section 7.1.22(b) , or Section 7.2 hereof, (b) default in the due performance and observance of any of its obligations under Section 7.1.1(g) , (k) or (m) , Section 7.1.6 , Section 7.1.14 , or Section 7.1.22(c) hereof or (c) default in the due performance and observance of any of its obligations under Section 3(d), Section 4 or Section 8 of the First Lien Mortgages and such default shall continue unremedied for a period of ten (10) days (provided , however , solely in the case of a default under Section 7.1.6 hereof, Administrative Agent may, in its sole discretion, extend such ten (10) day period, but in no event by more than twenty (20) days)*.".

1.5.2 Section 8.1.4 of the Original Agreement is hereby amended to insert the following after the words "The Borrower" at the beginning of the first sentence thereof:

"*or any Borrowing Base Entity*".

1.5.3 Section 8.1.5 of the Original Agreement is hereby amended to insert the following after the words "Section 8.1.1" in the second parenthetical therein:

"*or Indebtedness with respect to Non-Borrowing Base Property Subsidiaries*".

1.5.4 Section 8.1.6 of the Original Agreement is hereby amended to insert the following after "respective Subsidiaries" in the first sentence therein:

"*(excluding Non-Borrowing Base Property Subsidiaries)*".

1.5.5 Section 8.1.8 of the Original Agreement is hereby amended to insert the following at the end thereof:

"*(other* than *with respect to Non-Borrowing Base Property Subsidiaries)*.".

1.5.6 Section 8.1.9 of the Original Agreement is hereby amended to insert the following after the words "except for" in the first parenthetical thereof:

"*Non-Borrowing Base Property Subsidiaries or*".

1.5.7 Section 8.1 of the Original Agreement is hereby amended by inserting the following at the end thereof:

"*Section 8.1.17 Enforceability . If any Lien granted by the First Lien Mortgages, in whole or in part, shall terminate or shall cease to be effective or shall cease to be a perfected first priority Lien, subject to the Permitted Borrowing Base Liens (except in any of the foregoing cases in accordance with the terms hereof or under any other Loan Document or by reason of any affirmative act of Lender).*

Section 8.1.18 Management Agreement . If the Management Agreement is terminated and an Approved Manager or Approved Luxury Manager is not appointed as a replacement manager pursuant to the provisions of Section 7.2.14 within sixty (60) days after such termination.

Section 8.1.19 Easements . Except as expressly permitted pursuant to the Loan Documents, if Borrower or any other Person grants any easement, covenant or restriction (other than the Permitted Borrowing Base Liens) over a Borrowing Base Property or if Borrower or any Borrowing Base Entity shall default beyond the expiration of any applicable cure period under any existing easement, covenant or restriction which affects a Borrowing Base Property, the default of which shall have a Material Adverse Effect.

Section 8.1.20 Ground Leases . If (A) a Property subject to a Ground Lease is a Borrowing Base Property and (B) there shall occur any default by the applicable Property Owner, as lessee under a Ground Lease, in the observance or performance of any term, covenant or condition of a Ground Lease on the part of such Property Owner to be observed or performed, and said default (i) would permit the Fee Owner to terminate such Ground Lease and (ii) is not cured or such Borrowing Base Property is not released pursuant to the provisions of Section 7.1.22 prior to the expiration of any applicable grace or cure period therein provided.".

1.5.8 Section 8.3 of the Original Agreement is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

"*Section 8.3 Action if Other Event of Default .*

(a) If any Event of Default (other than any Event of Default described in clauses (a) through (e) of Section 8.1.9 with respect to the Borrower) shall occur for any reason, whether voluntary or involuntary, and be continuing, Administrative Agent, upon the direction or with the consent of the Required Lenders, shall take such action that Administrative Agent deems advisable to protect and enforce the rights of the Lenders against Borrower and in the Borrowing Base Properties, including, without limitation, (i) by written notice to the Borrower declare all of the outstanding principal amount of the Loans and other Obligations (including Reimbursement Obligations) to be due and payable and/or the Revolving Loan Commitments (if not theretofore terminated) to be terminated, whereupon the full unpaid amount of the Loans and other Obligations shall be and become immediately due and payable, without further notice, demand or presentment, and the Commitments shall terminate and Borrower shall automatically and immediately be obligated to deposit with Administrative Agent cash collateral in an amount equal to all Letter of Credit Outstandings and (ii) enforcing or availing itself of any or all rights or remedies as set forth in the Loan Documents against Borrower and the Borrowing Base Properties, including, without limitation, all rights or remedies available at law or in equity.

(b) Unless waived in writing by Administrative Agent, and subject in all events to the express provisions of each Loan Document, upon the occurrence and during the continuance of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to

Administrative Agent against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Administrative Agent at any time and from time to time, whether or not all or any of the Indebtedness shall be declared due and payable, and whether or not Administrative Agent shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Borrowing Base Properties. Any such actions taken by Administrative Agent shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Administrative Agent may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Administrative Agent permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) neither Administrative Agent nor the Lenders shall be subject to any one action or election of remedies law or rule and (ii) all liens and other rights, remedies or privileges provided to Administrative Agent and the Lenders shall remain in full force and effect until Administrative Agent and the Lenders have exhausted all of its remedies against the Borrowing Base Properties and the First Lien Mortgages have been foreclosed, sold and/or otherwise realized upon in satisfaction of the Indebtedness or the Indebtedness has been paid in full.

(c) With respect to Borrower and the Collateral, nothing contained herein or in any other Loan Document shall be construed as requiring Administrative Agent or the Lenders to resort to the Borrowing Base Properties for the satisfaction of any of the Indebtedness, and Administrative Agent may seek satisfaction out of the Borrowing Base Properties or any part thereof, in its absolute discretion in respect of the Indebtedness. In addition, Administrative Agent shall have the right from time to time to partially foreclose this Agreement and the First Lien Mortgages in any manner and for any amounts secured by this Agreement or the First Lien Mortgages then due and payable as determined by Administrative Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal or interest, Administrative Agent may foreclose this Agreement and the First Lien Mortgages to recover such delinquent payments, or (ii) in the event Administrative Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Administrative Agent may foreclose this Agreement and the First Lien Mortgages to recover so much of the principal balance of the Loans as Administrative Agent may accelerate and such other sums secured by this Agreement or the First Lien Mortgages as Administrative Agent may elect. Notwithstanding one or more partial foreclosures, the Borrowing Base Properties shall remain subject to this Agreement and the First Lien Mortgages to secure payment of sums secured by this Agreement and the First Lien Mortgages and not previously recovered.".

Section 1.6 Article XI Amendment

1.6.1 The Original Agreement is hereby amended by inserting the following at the end thereof:

"ARTICLE XI

CONDOMINIUM

Section 11.1 Covenants .

11.1.1 Borrower shall, and shall cause the Punta Mita Borrowing Base Entities to, cause the Condominium Board to deliver to Administrative Agent within sixty (60) days after written request, an estoppel certificate from the Condominium Board in the form required under the Condominium Documents (or if no form is required under the Condominium Documents, in a form reasonably acceptable to Administrative Agent); provided , however , that for so long as Borrower or the Borrowing Base Entities are diligently proceeding in good faith to obtain such estoppel certificate, Borrower's failure to obtain such estoppel certificate shall not be deemed a Default.

11.1.2 Borrower shall, and shall cause the Punta Mita Borrowing Base Entities to, observe and perform each and every material term to be observed or performed by Punta Mita Borrowing Base Entities pursuant to the terms of the Condominium Documents.

11.1.3 Borrower shall promptly deliver to Lender a true and full copy of all notices of default received by Borrower or the Punta Mita Borrowing Base Entities with respect to any obligation or duty of the Punta Mita Borrowing Base Entities under the Condominium Documents. Without the prior written consent of Administrative Agent (which approval shall not be unreasonably withheld, conditioned or delayed), Borrower shall not, and shall not permit the Punta Mita Borrowing Base Entities to, approve or otherwise agree or consent to (by affirmative action or inaction on its part) any decisions that require the concurrence or vote of the Punta Mita Borrowing Base Entities pursuant to the Condominium Documents that could reasonably be expected to have a material adverse effect on the Units or the Common Elements.

11.1.4 Without the prior written consent of Administrative Agent, Borrower shall not, and shall not permit the Punta Mita Borrowing Base Entities to (i) institute any action or proceeding for partition of the Units, under the Condominium Documents that could reasonably be expected to have a material adverse effect on the Units, (ii) vote for or consent to any modification of, amendment to or relaxation in the enforcement of the

Condominium Documents that could reasonably be expected to have a material adverse effect on the Units or the Common Elements (taken as a whole) or (iii) in the event of damage to or destruction of the Units, the Common Elements, vote in opposition to a motion to repair, restore or rebuild the same contrary to the provisions of Article XII hereof.

11.1.5 Without the prior written consent of Administrative Agent, Borrower shall not, and shall not permit the Punta Mita Borrowing Base Entities to, vote for, agree to or acquiesce in any termination of the Condominium Documents that could reasonably be expected to have a material adverse effect on the Units or the Common Elements (taken as a whole). Any agreement to which Borrower or the Punta Mita Borrowing Base Entities is a party whereby any of the Condominium Documents is terminated or the Units are withdrawn therefrom (and replacement Condominium Documents reasonably approved by Administrative Agent are not simultaneously recorded) shall constitute a Transfer prohibited under this Agreement.

Section 11.2 Representations . Borrower hereby represents and warrants as follows:

11.2.1 To Borrower's knowledge, the Condominium Documents are in full force and effect and there is no default, breach or violation existing thereunder by any party thereto and, to Borrower's knowledge, no event has occurred, that, with the passage of time or the giving of notice, or both, would constitute a default, breach or violation by any party thereunder. The Punta Mita Borrowing Base Entities are not party to any other agreements or understandings other than the Condominium Documents with respect to the Units.

11.2.2 Neither the Third Amendment Transaction nor the exercise of any remedies by Administrative Agent permitted thereunder, will adversely affect Borrower's or the Punta Mita Borrowing Base Entities' rights under the Condominium Documents.

11.2.3 A Punta Mita Borrowing Base Entity owns fee simple title to the Sub-Condominium Unit RC-1/A of Sub-Condominium RC-1 of Punta Mita Condominium, Sub-Condominium Unit RC-1/B of Sub-Condominium RC-1 of Punta Mita Condominium, Sub-Condominium Unit RC-1/G of Sub-Condominium RC-1 of Punta Mita Condominium (collectively, the "Units ").

11.2.4 There have been no common charges, common expenses, unit expenses nor special levies assessed or levied against the Units by the Condominium Board except for annual maintenance fees. The annual maintenance fee for calendar year 2008 was $3,514,691.26 MXP plus VAT for a total of $4,041,894.95 MXP. The 2009 annual fees have yet to be billed.

11.2.5 To the extent required under the Condominium Documents, the Condominium Board has received notice from the Punta Mita Borrowing Base Entities that the Units have been encumbered with the applicable First Lien Mortgage. Administrative Agent is permitted under the Condominium Documents as a mortgagee of the Units, and the recordation of the applicable First Lien Mortgage is permitted under the Condominium Documents.

11.2.6 All obligations required to be performed by the Punta Mita Borrowing Base Entities prior to the date hereof in connection with the maintenance, repair and replacement of any portion of the Units have been satisfied.

11.2.7 To Borrower's knowledge, all obligations and conditions under the Condominium Documents to be performed to date by either the Condominium Board or the Punta Mita Borrowing Base Entities with respect to the Units have been satisfied.

11.2.8 To Borrower's knowledge, there is no proposed amendment of the Condominium Documents.

11.2.9 To Borrower's knowledge, there is no proposed termination of condominium status or transfer of any part of the Common Elements.

11.2.10 To Borrower's knowledge, (i) no portion of the Condominium has been the subject of a Taking and (ii) there is no proposed Taking that affects any portion of the Units or the Condominium.

ARTICLE XII

CONDEMNATION AND INSURANCE PROCEEDS

Section 12.1 Notification . Borrower shall promptly notify Administrative Agent in writing upon obtaining knowledge (provided that knowledge of a Borrowing Base Entity shall be deemed to be imputed to Borrower) of (i) the institution of any proceedings relating to any Taking (whether material or immaterial) of, or (ii) the occurrence of any casualty, damage or injury to, a Borrowing Base Property or any portion thereof, the restoration of which is estimated by Borrower in good faith to cost more than the Casualty Amount. In addition, each such notice shall set forth such good faith estimate of the cost of repairing or restoring such casualty, damage, injury or Taking in reasonable detail if the same is then available and, if not, as soon thereafter as it can reasonably be provided.

Section 12.2 Proceeds . In the event of any Taking of or any casualty or other damage or injury to a Borrowing Base Property, (A) Borrower's and any Borrowing Base Entity's right, title and interest in and to all compensation, awards, proceeds, damages, claims, insurance recoveries, causes and rights of action (whether accrued prior to or after the Third Amendment Closing Date), and (B) payments which Borrower or a Borrowing Base Entity may receive or to which Borrower may become entitled with respect to a

Borrowing Base Property or any part thereof other than payments received in connection with any liability or loss of rental value or business interruption insurance (collectively, "Proceeds"), in connection with any such Taking of, or casualty or other damage or injury to, a Borrowing Base Property or any part thereof are hereby assigned by Borrower and, in the case of such Borrowing Base Entity's interest in the Proceeds, shall be caused by Borrower to be assigned to Administrative Agent and, except as otherwise herein provided, shall be paid to Administrative Agent. Borrower shall and shall cause the applicable Borrowing Base Entity to, in good faith and in a commercially reasonable manner, file and prosecute the adjustment, compromise or settlement of any claim for Proceeds and, subject to Borrower's, the applicable Manager's or such Borrowing Base Entity's right to receive the direct payment of any Proceeds as herein provided, will cause the same to be held and applied in accordance with the provisions of this Agreement. Except upon the occurrence and during the continuance of an Event of Default, Borrower or the applicable Borrowing Base Entity may settle any insurance claim with respect to Proceeds which does not exceed the Casualty Amount. Whether or not an Event of Default shall have occurred and be continuing, Administrative Agent shall have the right to approve, such approval not to be unreasonably withheld, any settlement which might result in any Proceeds in excess of the Casualty Amount, and Borrower or the applicable Borrowing Base Entity shall deliver or cause to be delivered to Administrative Agent all instruments reasonably requested by Administrative Agent to permit such approval. Borrower shall pay all reasonable out-of-pocket costs, fees and expenses reasonably incurred by Administrative Agent (including all reasonable attorneys' fees and expenses, the reasonable fees of insurance experts and adjusters and reasonable costs incurred in any litigation or arbitration), and interest thereon at a rate equal to the Alternate Base Rate then in effect for Base Rate Loans plus the Applicable Margin for Base Rate Loans plus two percent (2%) to the extent not paid within ten (10) Business Days after delivery of a request for reimbursement by Administrative Agent, in connection with the settlement of any claim for Proceeds and seeking and obtaining of any payment on account thereof in accordance with the foregoing provisions. If any Proceeds are received by Borrower or the applicable Borrowing Base Entity and may be retained by Borrower or such Borrowing Base Entity pursuant to this Section 12.2 , such Proceeds shall, until the completion of the related Work, be held in trust for Administrative Agent (but shall not required to be segregated from other funds of Borrower or such Borrowing Base Entity) to be used to pay for the cost of the Work in accordance with the terms hereof, and in the event such Proceeds exceed the Casualty Amount, such Proceeds shall be forthwith paid directly to and held by Administrative Agent in a Proceeds reserve account in trust for Borrower, in each case to be applied or disbursed in accordance with this Section 12.2 . If an Event of Default shall have occurred and be continuing, or if Borrower or the applicable Borrowing Base Entity fails to file and/or prosecute any insurance claim for a period of fifteen (15) Business Days following Borrower's receipt of written notice from Administrative Agent, Borrower hereby irrevocably empowers, and shall cause the applicable Borrowing Base Entity to irrevocably empower, Administrative Agent, in the name of Borrower or such Borrowing Base Entity, as applicable, as its true and lawful attorney-in-fact, to file and prosecute such claim (including settlement thereof) with counsel satisfactory to Administrative Agent and to collect and to make receipt for any such payment, all at Borrower's expense (including payment of and interest thereon at a rate equal to the Alternate Base Rate then in effect for Base Rate Loans plus the Applicable

Margin for Base Rate Loans plus two percent (2%) for any amounts advanced by Administrative Agent pursuant to this Section 12.2). Notwithstanding anything contained in the Loan Documents, including this Article XII, to the contrary, all rights, restrictions and provisions relating to Takings or casualties shall be subject to the rights of Managers and the obligations of Properties Owners and Operating Lessees under the applicable Management Agreements.

Section 12.3 Major Casualty/Condemnation Events . If a Major Casualty/Condemnation Event occurs, then Borrower shall (A) promptly deliver to Administrative Agent an updated or replacement Acceptable Appraisal reflecting the casualty or Taking at such Borrowing Base Property and, notwithstanding the provisions of Section 7.1.7 , Borrower shall reimburse Administrative Agent the costs thereof within thirty (30) days after receipt by Borrower of an invoice therefor, (B) as soon as practicable after the occurrence of such Major Casualty/Condemnation Event, but in no event later than thirty (30) days after the occurrence of such Major Casualty/Condemnation Event, either (x) release such Borrowing Base Property from the lien of the applicable First Lien Mortgage pursuant to Section 7.1.22 (other than Section 7.1.22(f)(ii)) of this Agreement if Borrower is entitled to release such Borrowing Base Property under Section 7.1.22 (other than Section 7.1.22(f)(ii)) or (y) if such release is not permitted hereunder pursuant to Section 7.1.22 (other than Section 7.1.22 (f)(ii)), restore the applicable Borrowing Base Property pursuant to Section 12.4 , provided that such restoration obligations set forth therein shall be subject to the casualty and condemnation provisions set forth in the applicable Management Agreement.

Section 12.4 Borrower or Borrowing Base Entity to Restore .

12.4.1 Provided Borrower has not released the applicable Borrowing Base Property pursuant to Section 12.3 , promptly after the occurrence of any damage or destruction to all or any portion of a Borrowing Base Property or a Taking of a portion of such Borrowing Base Property, Borrower shall commence and diligently prosecute, or cause the applicable Borrowing Base Entity to commence and diligently prosecute, to completion, subject to Excusable Delays, the repair, restoration and rebuilding of such Borrowing Base Property (in the case of a partial Taking, to the extent it is capable of being restored) so damaged, destroyed or remaining after such Taking in full compliance with all material Legal Requirements and free and clear of any and all Liens except Permitted Borrowing Base Liens (such repair, restoration and rebuilding are sometimes hereinafter collectively referred to as the "Work"). The plans and specifications shall require that the Work be done in a first-class workmanlike manner at least equivalent to the quality and character prior to the damage or destruction (provided , however , that in the case of a partial Taking, the applicable Borrowing Base Property restoration shall be done to the extent reasonably practicable after taking into account the consequences of such partial Taking), so that upon completion thereof, such Borrowing Base Property shall be at least equal in general utility to the applicable Borrowing Base Entities prior to the damage or destruction; it being

understood, however, that Borrower and the applicable Borrowing Base Entity shall not be obligated to restore such Borrowing Base Property to the precise condition of such Borrowing Base Property prior to any partial Taking of, or casualty or other damage or injury to, such Borrowing Base Property. Subject to Borrower's right to elect to release the applicable Borrowing Base Property pursuant to Section 12.3.1 , Borrower shall be obligated to restore the Borrowing Base Property suffering a casualty or which has been subject to a partial Taking in accordance with the provisions of this Article XII at Borrower's sole cost and expense whether or not the Proceeds shall be sufficient, provided that, if applicable, the Proceeds shall be made available to Borrower by Administrative Agent in accordance with this Agreement.

12.4.2 Administrative Agent shall make the Proceeds that it is holding pursuant to the terms hereof (after payment of any reasonable out-of-pocket expenses actually incurred by Administrative Agent in connection with the collection thereof plus interest thereon at a rate equal to the Alternate Base Rate then in effect for Base Rate Loans plus the Applicable Margin for Base Rate Loans plus two percent (2%) (from the date advanced through the date of reimbursement) to the extent the same are not paid within ten (10) Business Days after request for reimbursement by Administrative Agent) available to Borrower for payment of or reimbursement of Borrower's expenses incurred with respect to the Work, upon the terms and subject to the conditions set forth in paragraphs (a) through (d) below and in Section 12.5 :

(a) at the time of loss or damage or at any time thereafter while Borrower or the applicable Borrowing Base Entity is holding any portion of the Proceeds, there shall be no continuing Event of Default;

(b) if, at any time, the estimated cost of the Work (as estimated by Borrower or the Independent Architect referred to in clause (c) below, if applicable) shall exceed the Proceeds (a "Deficiency") and for so long as a Deficiency shall exist, Administrative Agent shall not be required to make any Proceeds disbursement to Borrower unless Borrower (within a reasonable period of time after receipt of such estimate), at its election, either deposits with or delivers to Administrative Agent (A) cash and Cash Equivalents in an amount equal to the estimated cost of the Work less the Proceeds, or (B) such other evidence of Borrower's ability to meet such excess costs and which is reasonably satisfactory to Administrative Agent;

(c) Each of Administrative Agent and the Independent Architect shall have reasonably approved the plans and specifications for the Work reasonably estimated to exceed five percent (5%) of the Appraised Value of such Borrowing Base Property immediately prior to such casualty or Taking and any change orders in connection with such plans and specifications; and

(d) Administrative Agent shall, within a reasonable period of time prior to request for initial disbursement, be furnished with an estimate of the cost of the Work accompanied, to the extent such estimate shall exceed five percent (5%) of the Appraised Value of such Borrowing Base Property immediately prior to such casualty or Taking, by an Independent Architect's certification as to such costs and appropriate plans and specifications for the Work. Borrower shall restore, or shall cause to be restored, all Improvements such that when they are fully restored and/or repaired, such Improvements and their contemplated use fully comply with all applicable Legal Requirements including zoning, environmental and building laws, codes, ordinances and regulations.

Section 12.5 Disbursement of Proceeds .

12.5.1 Disbursements of the Proceeds in cash and Cash Equivalents to Borrower hereunder shall be made from time to time (but not more frequently than once in any month) by Administrative Agent but only for so long as no Event of Default shall have occurred and be continuing, as the Work progresses upon receipt by Administrative Agent of (i) an Officer's Certificate dated not more than ten (10) Business Days prior to the application for such payment, requesting such payment or reimbursement and describing the Work performed that is the subject of such request, the parties that performed such Work and the actual cost thereof, and also certifying that such Work and materials are or, upon disbursement of the payment requested to the parties entitled thereto, will be free and clear of Liens other than Permitted Borrowing Base Liens, (ii) evidence reasonably satisfactory to Administrative Agent that (A) all materials installed and work and labor performed in connection with such Work have been paid for in full and (B) there exists no notices of pendency, stop orders, mechanic's liens or notices of intention to file same (unless the same is required by state law as a condition to the payment of a contractor) or any liens or encumbrances of any nature whatsoever on the applicable Borrowing Base Property arising out of the Work which have not been either fully bonded to the satisfaction of Administrative Agent or discharged of record or in the alternative, fully insured to the satisfaction of Administrative Agent by the Title Company that issued the Title Policy or otherwise contested in accordance with Section 7.1.31 and (iii) an Independent Architect's certificate certifying performance of the Work together with an estimate of the cost to complete the Work. No payment made prior to the final completion of the Work, as certified by the Independent Architect, except for payment made to contractors whose Work shall have been fully completed and from which final lien waivers have been received, shall exceed ninety percent (90%) of the value of the Work performed and materials furnished and incorporated into the Improvements

from time to time, and at all times the undisbursed balance of said Proceeds together with all amounts deposited, bonded, guaranteed or otherwise provided for pursuant to Section 12.4.2 above, shall be at least sufficient to pay for the estimated cost of completion of the Work; final payment of all Proceeds remaining with Administrative Agent shall be made upon receipt by Administrative Agent of a certification by an Independent Architect, as to the completion of the Work substantially in accordance with the submitted plans and specifications, final lien releases, and the filing of a notice of completion and the expiration of the period provided under the law of the state for the filing of mechanics' and materialmens' liens which are entitled to priority as to other creditors, encumbrances and purchasers, as certified pursuant to an Officer's Certificate, and delivery of a certificate of occupancy with respect to the Work, or, if not applicable, an Officer's Certificate to the effect that a certificate of occupancy is not required.

12.5.2 If, after the Work is completed in accordance with the provisions hereof and Administrative Agent receives evidence that all costs of completion have been paid, there are any excess Proceeds, such excess Proceeds shall be paid over to Borrower.

ARTICLE XIII

MAINTENANCE OF PROPERTY

Section 13.1 Maintenance of Property . Borrower shall keep and maintain, and cause the applicable Borrowing Base Entities to keep and maintain, the Borrowing Base Properties and every part thereof in good condition and repair, subject to ordinary wear and tear, and, subject to Excusable Delays and the provisions of this Agreement with respect to damage or destruction caused by casualty events or Takings, shall not permit or commit any waste, impairment, or deterioration of any portion of the Borrowing Base Properties in any material respect. Borrower further covenants to do, and to cause the applicable Borrowing Base Entities to do, all other acts which from the character or use of the Borrowing Base Properties may be reasonably necessary to protect the security hereof, the specific enumerations herein not excluding the general. Borrower shall not remove or demolish, or permit the applicable Borrowing Base Entities to remove or demolish, any Improvement on the Borrowing Base Properties except as the same may be necessary in connection with an Alteration or a restoration in connection with a Taking or casualty, or as otherwise permitted herein, in each case in accordance with the terms and conditions hereof.

Section 13.2 Conditions to Alterations . Provided that no Event of Default shall have occurred and be continuing hereunder, Borrower shall have the right, without Administrative Agent's consent, to undertake any alteration, improvement, demolition or removal of a Borrowing Base Property or any portion thereof (any such alteration, improvement, demolition or removal, an "Alteration") so long as (i) Borrower provides Administrative Agent with prior written notice of any Material Alteration, and (ii) such Alteration is undertaken in accordance with the applicable provisions of this Agreement and

the other Loan Documents, is not prohibited by any relevant REAs and the Leases and shall not, upon completion (giving credit to rent and other charges attributable to Leases executed upon such completion), have a Material Adverse Effect on the value, use or operation of the applicable Borrowing Base Property taken as a whole or otherwise. Borrower shall deliver to Administrative Agent, for information purposes only and not for approval by Administrative Agent, detailed plans and specifications and cost estimates therefor, for any Material Alterations. Such plans and specifications may be revised at any time and from time to time by Borrower; provided that material revisions of such plans and specifications are filed with Administrative Agent, for information purposes only. All work done in connection with any Alteration shall be performed with due diligence in a good and workmanlike manner, all materials used in connection with any Alteration shall not be less than the standard of quality of the materials currently used at the applicable Borrowing Base Property and all materials used shall be in accordance with all applicable material Legal Requirements and Insurance Requirements. Notwithstanding anything in this Article XIII to the contrary, the restrictions contained herein are subject to the rights of a Manager under any applicable Management Agreement to undertake Alterations or cause Borrower or any Subsidiary to undertake Alterations, subject, in each case, to the provisions of Section 7.2.14 of this Agreement

Section 13.3 Costs of Alterations . Notwithstanding anything to the contrary contained in this Article XIII , no Material Alteration or Alteration which when aggregated with all other related Alterations (other than Material Alterations) then being undertaken by Borrower or the applicable Borrowing Base Entities exceeds the Threshold Amount, shall be performed by or on behalf of Borrower or the applicable Borrowing Base Entities unless Borrower shall have delivered to Administrative Agent cash and Cash Equivalents as security in an amount not less than the estimated cost of the Material Alteration or the Alterations minus the Threshold Amount. In addition to payment or reimbursement from time to time of Borrower's or the applicable Borrowing Base Entities' expenses incurred in connection with any Material Alteration or any such Alteration, the amount of such security shall be reduced on any given date to the written estimate of the cost to complete the Material Alteration or the Alterations (including any retainages), free and clear of Liens, other than Permitted Borrowing Base Liens. Costs which are subject to retainage (which in no event shall be less than five percent (5%) in the aggregate) shall be treated as due and payable and unpaid from the date they would be due and payable but for their characterization as subject to retainage. In the event that any Material Alteration or Alteration shall be made in conjunction with any restoration with respect to which Borrower shall be entitled to withdraw Proceeds pursuant to Article XII , the amount of the cash and Cash Equivalents to be furnished pursuant hereto need not exceed the aggregate cost of such restoration and such Material Alteration or Alteration, less the sum of the amount of any Proceeds which Borrower may be entitled to withdraw pursuant to Article XII and which are held by Administrative Agent in accordance with Article XII . Payment or reimbursement of Borrower's or the applicable Borrowing Base Entity's expenses incurred with respect to any Material Alteration or any such Alteration shall be accomplished upon the terms and conditions specified in Article XII .

At any time after substantial completion of any Material Alteration or any such Alteration in respect of which cash and Cash Equivalents is deposited pursuant hereto,

the whole balance of any cash and Cash Equivalents so deposited by Borrower with Administrative Agent and then remaining on deposit (together with earnings thereon), as well as all retainages, may be withdrawn by Borrower and shall be paid by Administrative Agent to Borrower, and any other cash and Cash Equivalents so deposited or delivered shall, to the extent it has not been called upon, reduced or theretofore released, be released to Borrower, within ten (10) days after receipt by Administrative Agent of an application for such withdrawal and/or release together with an Officer's Certificate, setting forth in substance as follows:

13.3.1 that the Material Alteration or Alteration in respect of which such cash and Cash Equivalents was deposited has been substantially completed in all material respects substantially in accordance with any plans and specifications therefor previously filed with Administrative Agent under Section 13.2 and that, if applicable, a certificate of occupancy has been issued with respect to such Material Alteration or Alteration by the relevant Governmental Authority(ies) or, if not applicable, that a certificate of occupancy is not required; and

13.3.2 that to the knowledge of the certifying Person all amounts which Borrower or the applicable Borrowing Base Entity is or may become liable to pay in respect of such Material Alteration or Alteration through the date of the certification have been paid in full or adequately provided for or are being contested in good faith and that lien waivers have been obtained from the general contractor and major subcontractors performing such Material Alterations or Alterations (or such waivers are not customary and reasonably obtainable by prudent managers in the area where the applicable Borrowing Base Property is located).

Notwithstanding anything in the Loan Documents, including this Article XIII , to the contrary, all rights, restrictions and provisions relating to maintenance and Alterations shall be subject to the rights of the Manager and obligations of the Property Owner and Operating Lessees under the applicable Management Agreements.

ARTICLE XIV

GROUND LEASE

Section 14.1 Leasehold Representations, Warranties . Borrower hereby represents and warrants as follows:

14.1.1 the Lincolnshire Ground Lease is in full force and effect, unmodified by any writing or otherwise, and Borrower has not waived, canceled or surrendered any of its rights thereunder;

14.1.2 all rent, additional rent and/or other charges reserved in or payable under the Lincolnshire Ground Lease have been paid to the extent that they are payable to the Third Amendment Closing Date;

14.1.3 the Lincolnshire Ground Lessee enjoys the quiet and peaceful possession of the Lincolnshire Leasehold Estate;

14.1.4 the Lincolnshire Ground Lessee has not delivered or received any notices of default under the Lincolnshire Ground Lease and to the best of Borrower's knowledge the Lincolnshire Ground Lessee is not in default under any of the terms of the Lincolnshire Ground Lease, and there are no circumstances which, with the passage of time or the giving of notice, or both, would constitute a default under the Lincolnshire Ground Lease;

14.1.5 To the best knowledge of Borrower, Lincolnshire Fee Owner is not in default under any of the terms of the Lincolnshire Ground Lease on its part to be observed and performed;

14.1.6 Borrower has delivered to Administrative Agent a true, accurate and complete copy of the Lincolnshire Ground Lease; and

14.1.7 Borrower knows of no adverse claim to the title or possession of the Lincolnshire Ground Lessee or the Lincolnshire Fee Owner.

Section 14.2 Cure by Administrative Agent . In the event of a default by a Ground Lessee in the performance of any of its obligations under a Ground Lease, (i) which default would permit the Fee Owner to terminate such Ground Lease and (ii) Borrower or the applicable Borrowing Base Entities are not diligently prosecuting the cure thereof, then, in each and every such case, Borrower shall cause the Ground Lessee to (A) permit Administrative Agent to, at its option, cause the default or defaults to be remedied and (B) otherwise exercise any and all rights of the Ground Lessee thereunder in the name of and on behalf of the Ground Lessee. Borrower shall cause the Ground Lessee to, on demand, reimburse Administrative Agent for all advances made and expenses incurred by Administrative Agent in curing any such default (including, without limitation, reasonable attorneys' fees and disbursements), together with interest thereon at a rate equal to the Alternate Base Rate then in effect for Base Rate Loans plus the Applicable Margin for Base Rate Loans plus two percent (2%) from the date that such advance is made to and including the date the same is paid to Administrative Agent.

Section 14.3 Option to Renew or Extend a Ground Lease . Borrower shall cause each Ground Lessee to give Administrative Agent written notice of its intention to exercise each and every option, if any, to renew or extend the term of a Ground Lease, at least thirty (30) days prior to the expiration of the time to exercise such option under the terms thereof (the "Exercise Period"). If required by Administrative Agent, Borrower shall cause such Ground Lessee to duly exercise during the Exercise Period any renewal or extension option with respect to such Ground Lease if Administrative Agent reasonably determines that the exercise of such option is necessary to protect the Collateral. If such Ground Lessee intends to renew or extend the term of such Ground Lease, Borrower shall deliver to Administrative Agent, with the notice of such decision, a copy of the notice of renewal or extension delivered to the Fee Owner, together with the terms and conditions of such renewal or

extension. If such Ground Lessee does not renew or extend before or during the Exercise Period the term of such Ground Lease, Administrative Agent may, at its option (if Administrative Agent reasonably determines that the exercise of such option is necessary to protect the Collateral), exercise during the Exercise Period the option to renew or extend, subject to the terms thereof, in the name of and on behalf of such Ground Lessee. Borrower shall cause (and with respect to the Lincolnshire Ground Lessee does cause) each Ground Lessee to irrevocably appoint Administrative Agent as its attorney-in-fact, coupled with an interest, to execute and deliver, for and in the name of such Ground Lessee, all instruments and agreements necessary under the Lincolnshire Ground Lease or otherwise to cause (if Administrative Agent reasonably determines that the exercise of such option is necessary to protect the Collateral) any renewal or extension of the Ground Lease during the Exercise Period.

Section 14.4 Ground Lease Covenants .

14.4.1 Waiver of Interest in New Ground Lease . In the event a Ground Lease shall be terminated by reason of a default thereunder by the Ground Lessee and Administrative Agent shall require from Fee Owner a new ground lease, Borrower hereby waives and shall cause such Ground Lessee to waive any right, title and interest in and to such new Ground Lease or the leasehold estate created thereby, waiving all rights of redemption now or hereafter operable under any law.

14.4.2 No Election to Terminate . Borrower shall not permit a Ground Lessee to elect to treat a Ground Lease as terminated, canceled or surrendered pursuant to the applicable provisions of the Bankruptcy Code (including, without limitation, Section 365(h)(1) thereof) without Administrative Agent's prior written consent in the event of Fee Owner's bankruptcy. In addition, Borrower shall, in the event of Fee Owner's bankruptcy, cause the applicable Ground Lessee to reaffirm and ratify the legality, validity, binding effect and enforceability of the applicable Ground Lease and to remain in possession of the Leasehold Estate and any Improvements, notwithstanding any rejection thereof by Fee Owner or any trustee, custodian or receiver.

14.4.3 Notice Prior to Rejection . Borrower shall give Administrative Agent not less than thirty (30) days prior written notice of the date on which a Ground Lessee shall apply to any court or other governmental authority for authority and permission to reject a Ground Lease in the event that there shall be filed by or against the Borrower or Ground Lessee any petition, action or proceeding under the Bankruptcy Code or under any other similar federal or state law now or hereafter in effect and if a Ground Lessee determines to reject the applicable Ground Lease. Administrative Agent shall have the right, but not the obligation, to serve upon Borrower within such thirty (30) day period a notice stating that (i) Administrative Agent demands that Borrower cause such Ground Lessee to assume and assign such Ground Lease to Administrative Agent subject to

and in accordance with the Bankruptcy Code, and (ii) Administrative Agent covenants to cure or provide reasonably adequate assurance thereof with respect to all defaults reasonably susceptible of being cured by Administrative Agent and of future performance under such Ground Lease. If Administrative Agent serves upon Borrower the notice described above, Borrower shall not permit such Ground Lessee to seek to reject such Ground Lease and shall comply with the demand provided for clause (i) above within fifteen (15) days after the notice shall have been given by Administrative Agent.

14.4.4 Administrative Agent Right to Perform . During the continuance of an Event of Default, Borrower shall cause each Ground Lessee to permit Administrative Agent to have the right, but not the obligation, (i) to perform and comply with all obligations of a Ground Lessee under the applicable Ground Lease without relying on any grace period provided therein, (ii) to do and take, without any obligation to do so, such actions as Administrative Agent deems necessary or desirable to prevent or cure any default by a Ground Lessee under the applicable Ground Lease, including, without limitation, any act, deed, matter or thing whatsoever that a Ground Lessee may do in order to cure a default under the applicable Ground Lease and (iii) to enter in and upon the subject Property or any part thereof to such extent and as often as Administrative Agent deems necessary or desirable in order to prevent or cure any default of a Ground Lessee under the applicable Ground Lease. Borrower shall, within five (5) Business Days after written request is made therefor by Administrative Agent, execute and deliver, or cause the applicable Ground Lessee to execute and deliver, to Administrative Agent or to any party designated by Administrative Agent, such further instruments, agreements, powers, assignments, conveyances or the like as may be reasonably necessary to complete or perfect the interest, rights or powers of Administrative Agent pursuant to this Section 14.4.4 or as may otherwise be required by Administrative Agent.

14.4.5 Administrative Agent Attorney in Fact . In the event of any arbitration under or pursuant to a Ground Lease in which Administrative Agent elects to participate, Borrower shall cause the applicable Ground Lessee to irrevocably appoint Administrative Agent as its true and lawful attorney-in-fact (which appointment shall be deemed coupled with an interest) to exercise, during the continuance of an Event of Default, all right, title and interest of such Ground Lessee in connection with such arbitration, including, without limitation, the right to appoint arbitrators and to conduct arbitration proceedings on behalf of Borrower, such Ground Lessee and Administrative Agent. All costs and expenses incurred by Administrative Agent in connection with such arbitration and the settlement thereof shall be borne solely by Borrower, including, without limitation, attorneys' fees and disbursements. Nothing contained in this Section 14.4.5 shall obligate Administrative Agent to participate in any such arbitration.

14.4.6 Payment of Rent . Borrower shall cause each Ground Lessee to promptly pay the rent and all other sums and charges mentioned in, and payable under, the applicable Ground Lease.

14.4.7 Performance of Covenants . Borrower shall cause each Ground Lessee to promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by the lessee under the applicable Ground Lease, the breach of which could permit any party to such Ground Lease validly to terminate such Ground Lease (including, without limitation, all payment obligations), shall do all things necessary to preserve and to keep unimpaired its rights under such Ground Lease, shall not waive, excuse or discharge any of the material obligations of Fee Owner without Administrative Agent's prior written consent in each instance, and shall diligently and continuously enforce the obligations of the Fee Owner.

14.4.8 No Defaults . Borrower shall cause each Ground Lessee not to do, permit or suffer any event or omission as a result of which there could occur a default by a Ground Lessee under a Ground Lease or any event which, with the giving of notice or the passage of time, or both, would constitute a default by a Ground Lessee under a Ground Lease which, in any of the foregoing events, could permit any party to a Ground Lease validly to terminate the Ground Lease (including, without limitation, a default in any payment obligation), and Borrower shall cause each Ground Lessee to obtain the consent or approval of Fee Owner to the extent required pursuant to the terms of a Ground Lease.

14.4.9 No Modification . Borrower shall not permit a Ground Lessee to cancel, terminate, surrender, modify or amend or in any way alter, surrender all or any portion of the subject Property, permit the alteration of any of the provisions of a Ground Lease or agree to any termination, amendment, modification or surrender of a Ground Lease without Administrative Agent's prior written consent in each instance, which consent shall not be unreasonably withheld, provided such amendment or modification does not increase a Ground Lessee's obligations thereunder or shorten the term thereof.

14.4.10 Notices of Default . Borrower shall deliver and shall cause each Ground Lessee to deliver to Administrative Agent copies of any notice of default by any party under the applicable Ground Lease, or of any notice from Fee Owner of its intention to terminate a Ground Lease or to re-enter and take possession of any portion of the subject Property, immediately upon delivery or receipt of such notice, as the case may be.

14.4.11 Delivery of Information . Borrower shall cause each Ground Lessee to promptly furnish to Administrative Agent copies of such information and evidence as Administrative Agent may reasonably request concerning such Ground Lessee's due observance, performance and compliance with the terms, covenants and conditions of the applicable Ground Lease.

14.4.12 No Subordination . Borrower shall not permit a Ground Lessee to consent to the subordination of a Ground Lease to any mortgage or other lease of the fee interest in any portion of the subject Property except as may be required by such Ground Lease.

14.4.13 Further Assurances . Borrower, at its sole cost and expense, shall cause each Ground Lessee to execute and deliver to Administrative Agent, within five (5) Business Days after request, such documents, instruments or agreements as may be reasonably required to permit Administrative Agent to cure any default under the applicable Ground Lease.

14.4.14 Estoppel Certificates . Borrower shall cause each Ground Lessee to use its reasonable efforts to obtain and deliver to Administrative Agent within twenty (20) days after written demand by Administrative Agent, an estoppel certificate from the applicable Fee Owner setting forth (i) the name of the lessee and the lessor thereunder, (ii) that the applicable Ground Lease is in full force and effect and has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (iii) the date to which all rental charges have been paid by the lessee under the applicable Ground Lease, (iv) whether there are any alleged defaults of the lessee under the applicable Ground Lease and, if there are, setting forth the nature thereof in reasonable detail, (v) if the lessee under the applicable Ground Lease shall be in default, the default and (vi) such other matters as Administrative Agent shall reasonably request.

14.4.15 Administrative Agent Right to Participate . Borrower acknowledges and shall cause each Ground Lessee to acknowledge that Administrative Agent shall have the right, but not the obligation, to proceed in respect of any claim, suit, action or proceeding relating to the rejection of a Ground Lease by the applicable Fee Owner as a result of such Fee Owner's bankruptcy, including, without limitation, the right to file and prosecute any and all proofs of claims, complaints, notices and other documents in any case in respect of such Fee Owner under and pursuant to the Bankruptcy Code.

14.4.16 No Liability . Administrative Agent shall have no liability or obligation under any Ground Lease by reason of its acceptance of the First Lien Mortgages, this Agreement and the other Loan Documents. Administrative Agent shall be liable for the obligations of a Ground Lessee arising under a Ground Lease for only that period of time during which Administrative Agent is in possession of the portion of the subject Property covered by said lease or has acquired, by foreclosure or otherwise, and is holding all of Borrower's right, title and interest therein.".

Section 1.7 Amendments to Schedules, Exhibits and References Thereto .

1.7.1 All Schedules to the Original Agreement are hereby deleted in their entirety and replaced with Schedules I through XIX as set forth on Exhibit A to this Third Amendment. From and after the Third Amendment Closing Date, any representation made after such date as to the accuracy or completeness of any Schedule as of the Closing Date shall be deemed to be amended so as to refer to the amended and restated Schedules attached hereto as of the Third Amendment Closing Date. The Original Agreement is hereby amended by inserting Exhibits K and L (as set forth on Exhibit B to this Third Amendment) following Exhibit J of the Original Agreement.

II. AMENDMENTS TO OTHER LOAN DOCUMENTS

Section 2.1 Omnibus Amendment to All Loan Documents .

2.1.1 As of the date hereof, each reference to the defined terms that have been modified pursuant to this Third Amendment shall be deemed to be a reference to such defined term as so modified.

III. CONDITIONS TO EFFECTIVENESS OF THIS THIRD AMENDMENT

Section 3.1 Conditions Precedent to this Third Amendment . The obligations of Lenders to make any Loans and the obligations of the Issuer to issue any Letter of Credit shall be subject to the prior or concurrent satisfaction or waiver (which shall be waived if Administrative Agent executes and delivers this Third Amendment without requiring satisfaction at such time, subject to any post-closing conditions agreement) of each of the conditions precedent set forth in this Section 3.1 and in Section 6.3 on or before the Third Amendment Closing Date.

3.1.1 Execution of Third Amendment . On or prior to the Third Amendment Closing Date, there shall have been delivered to Administrative Agent for the account of each Lender duly executed copies of this Third Amendment.

3.1.2 Amended and Restated Revolving Notes . On or prior to the Third Amendment Closing Date, there shall have been delivered to Administrative Agent for the account of each Lender duly executed copies of the Amended and Restated Revolving Notes.

3.1.3 Reaffirmation of Guaranty . The Guarantor shall have duly authorized, executed and delivered to Administrative Agent the Reaffirmation of Guaranty.

3.1.4 Reaffirmation of Subsidiary Guaranty . The Subsidiary Guarantors shall have duly authorized, executed and delivered to Administrative Agent the Reaffirmation of Subsidiary Guaranty, and each Borrowing Base Entity of a Borrowing Base Property that is not a party to the Subsidiary Guaranty shall execute a signature page acknowledging its liability as a Subsidiary Guarantor.

3.1.5 Reaffirmation of Guarantor Pledge Agreement . The Guarantor shall have duly authorized, executed and delivered to Administrative Agent the Reaffirmation of Guarantor Pledge Agreement.

3.1.6 Reaffirmation of Subsidiary Pledge Agreement . The Subsidiary Guarantors shall have duly authorized, executed and delivered to Administrative Agent the Reaffirmation of Subsidiary Pledge Agreement.

3.1.7 D.C. Loan Subordination . Borrower and SHC Washington, L.L.C shall have duly authorized, executed and delivered to Administrative Agent the D.C. Loan Subordination.

3.1.8 Reaffirmation of D.C. Loan Pledge . The pledgor under the D.C. Loan Pledge shall have duly authorized, executed and delivered to Administrative Agent the Reaffirmation of D.C. Loan Pledge.

3.1.9 Third Amendment Fee Letter . Borrower shall have duly authorized, executed and delivered to Administrative Agent the Third Amendment Fee Letter.

3.1.10 Closing Date Certificate . Administrative Agent shall have received, with counterparts for each Lender, a closing date certificate in the form of Exhibit N attached hereto, dated the Third Amendment Closing Date and duly executed and delivered by an Authorized Officer of Borrower.

3.1.11 Projections; Solvency Certificate . On or prior to the Third Amendment Closing Date, there shall have been delivered to Administrative Agent:

projected financial and cash flow statements for the Consolidated Group for the period from the Closing Date to and including at least December 31, 2010 (the "Projections "), which Projections shall reflect the forecasted financial condition, income and expenses and cash flows of the Consolidated Group after giving effect to the Transaction; and

a solvency certificate as to Borrower and its Subsidiaries, taken as a whole, from an Authorized Financial Officer, substantially in the form of Exhibit M attached hereto, addressed to Administrative Agent and the Lenders and dated the Third Amendment Closing Date.

3.1.12 First Lien Mortgages and Assignment of Leases and Rents . Administrative Agent shall have received evidence that original counterparts of the First Lien Mortgages and Assignment of Leases and Rents, in proper form for recordation, have been delivered to the Title Company for recording, so as effectively to create, in the reasonable judgment of Administrative Agent, upon such recording valid and enforceable first priority Liens upon the Borrowing Base Properties, in favor of Administrative Agent (or such other trustee as may be required or desired under local law), subject only to Permitted Borrowing Base Liens and such other Liens as are permitted pursuant to the Loan Documents.

3.1.13 Mexico Pledge Agreement . The Operating Lessees and the Property Owners of the Four Seasons Punta Mita and the Four Seasons Mexico City shall have duly authorized, executed and delivered to Administrative Agent the Mexico Pledge Agreement.

3.1.14 UCC Financing Statements . Administrative Agent shall have received evidence that the UCC financing statements relating to the First Lien Mortgages and the Agreement have been delivered to the Title Company for filing in the applicable jurisdictions.

3.1.15 Account Control Agreements . Each applicable Borrowing Base Entity that is the holder of an Account and The PrivateBank and Trust Company shall have duly authorized, executed and delivered to Administrative Agent an Account Control Agreement in form and substance reasonably acceptable to Administrative Agent with respect to such Account.

3.1.16 Lenders' Fees . Borrower shall have paid to each Lender that executes this Third Amendment on or before the Third Amendment Closing Date a fee in an amount equal to the product of (x) 0.75 times (y) the sum of such approving Lender's Revolving Loan Commitment and Letter of Credit Commitment.

3.1.17 Survey . Administrative Agent shall have received copies of the Surveys listed on Schedule XVI attached to the Agreement.

3.1.18 Zoning . Administrative Agent shall have received (i) letters or other evidence with respect to each Borrowing Base Property from the appropriate municipal authorities (or other Persons) concerning applicable zoning and building laws reasonably acceptable to Administrative Agent or (ii) an ALTA 3.1 zoning endorsement for the Title Policy.

3.1.19 Tax Lot . Administrative Agent shall have received evidence that each Borrowing Base Property constitutes one (1) or more separate tax lots, which evidence shall be reasonably satisfactory in form and substance to Administrative Agent.

3.1.20 Management Agreement . Administrative Agent shall have received a certified copy of each Management Agreement.

3.1.21 Assignment of Agreements . Each Borrowing Base Entity shall have duly authorized, executed and delivered to Administrative Agent the Assignment of Agreements with respect to the applicable Borrowing Base Property.

3.1.22 Operating Lease Subordination Agreement . Each Operating Lessee of a Borrowing Base Property located in the United States shall have duly authorized, executed and delivered to Administrative Agent a Operating Lease Subordination Agreement with respect to the applicable Borrowing Base Property.

3.1.23 Opinions of Counsel . Administrative Agent shall have received opinions, each dated the Third Amendment Closing Date and addressed to Administrative Agent, each Lender and the Issuer, (A) from Perkins Coie LLP, as special counsel to Borrower and Guarantor, (B) from local counsel in the jurisdiction of the Borrowing Base Properties and (C) from Maryland counsel as counsel to Guarantor.

3.1.24 Title Policies . Administrative Agent shall have received (i) a Title Policy issued by First American (as to 50% of the coverage) and dated as of the Third Amendment Closing Date, with co-insurance in the form of "Me-Too" and other applicable co-insurance endorsements from Stewart-U.S. (and in jurisdictions where available, tie-in endorsements from each Title Company with respect to such coverage) as well as direct access agreements acceptable to Administrative Agent with respect to the Borrowing Base Properties located in the United States and (ii) a Title Policy issued by Stewart-Mexico and dated as of the Third Amendment Closing Date, with re-insurance from First American (as to 50% of the coverage) and Stewart-U.S. (as to 50% of the coverage), and in jurisdictions where available, tie-in endorsements from each Title Company with respect to such coverage as well as direct access agreements acceptable to Administrative Agent with respect to the Borrowing Base Properties located in Mexico. Each Title Policy, whether attributable to a Borrowing Base Property in the

United States or Mexico, shall (A) provide coverage with respect to each Borrowing Base Property in the initial amounts set forth on Schedule IX attached hereto, (B) insure Administrative Agent that the applicable First Lien Mortgage creates a valid, first priority Lien on the applicable Borrowing Base Property, free and clear of all exceptions from coverage other than Permitted Borrowing Base Liens and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (C) contain the endorsements and affirmative coverages set forth on Schedule X attached hereto and such additional endorsements and affirmative coverages as Administrative Agent may reasonably request, and (D) name Administrative Agent on behalf of the Lenders as the insured. The Title Policy shall be assignable. Administrative Agent also shall have received evidence that all premiums in respect of such Title Policy have been paid.

3.1.25 Searches . Administrative Agent shall have received searches with respect to (i) each of Borrower, Guarantor and each Borrowing Base Entity for liens, federal tax liens, state tax liens, bankruptcies and judgments and (ii) each Borrowing Base Property for judgment, tax liens, building violations, mechanics liens and water and sewer charges, satisfactory to Administrative Agent.

3.1.26 Certificate of Occupancy; Licenses . To Borrower's knowledge, all certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of each Borrowing Base Property as a hotel (collectively, the "Licenses"), have been obtained and are in full force and effect, other than the certificate of occupancy with respect to the Four Seasons Mexico City and the Marriott Lincolnshire. Borrower shall keep and maintain or shall cause the applicable Borrowing Base Entity to keep and maintain, all Licenses necessary for the operation of each Borrowing Base Property as a hotel. The use being made of each Borrowing Base Property is in conformity with the certificate of occupancy, to the extent available, issued for such Borrowing Base Property.

3.1.27 Insurance Certificates . Administrative Agent shall have received certificates of insurance complying with the terms of the Agreement.

3.1.28 Environmental Reports . Administrative Agent shall have received Phase I Environmental Reports with respect to each Borrowing Base Property in form and substance reasonably satisfactory to Administrative Agent.

3.1.29 Appraisal . Administrative Agent shall have received Acceptable Appraisals with respect to each Borrowing Base Property complying with the terms of the Agreement.

3.1.30 Lincolnshire Ground Lease Estoppel . Fee Owner shall have duly authorized, executed and delivered to Administrative Agent a Ground Lessor Estoppel with respect to the Marriott Lincolnshire in form and substance reasonably satisfactory to Administrative Agent.

3.1.31 Manager Estoppel . The Manager at each Borrowing Base Property shall have duly authorized, executed and delivered to Administrative Agent a Manager's Consent to Assignment and Estoppel Certificate in form and substance reasonably satisfactory to Administrative Agent.

3.1.32 Manager SNDA . The Manager at each Borrowing Base Property shall have duly authorized, executed and delivered to Administrative Agent a Property Manager Subordination, Non-Disturbance and Attornment Agreement in form and substance reasonably satisfactory to Administrative Agent.

3.1.33 Resolutions, etc . Administrative Agent shall have received from Borrower, Guarantor and each Borrowing Base Entity, as applicable, (i) good standing certificates for each such Person from the Secretary of State (or similar applicable Governmental Authority) of such Person's state of incorporation and each state where Borrower or such other Person, as the case may be, is qualified to do business as a foreign corporation as of a recent date, together with a bring-down certificate by facsimile, dated a date reasonably close to the Third Amendment Closing Date (provided , however , Borrower and Guarantor shall only be required to provide such certificates with respect to Delaware, California, Illinois, Washington, D.C. and Mexico, if qualified in such jurisdictions), (ii) a chart depicting the ownership structure for Borrower, Guarantor, each Subsidiary Guarantor and their Subsidiaries and (iii) a certificate, dated the Third Amendment Closing Date and with counterparts for each Lender, duly executed and delivered by such Person's Secretary or Assistant Secretary, as to:

resolutions of each such Person's Board of Directors then in full force and effect authorizing, to the extent relevant, the execution, delivery and performance of this Third Amendment, the Amended and Restated Notes, each other Loan Document to be executed by such Person and the transactions contemplated hereby and thereby;

the incumbency and signatures of those of its officers authorized to act with respect to this Third Amendment, the Notes and each other Loan Document to be executed by such Person; and

each Organic Document of such Person,

upon which certificates Administrative Agent and each Lender may conclusively rely until it shall have received a further certificate of the Secretary or Assistant Secretary of any such Person canceling or amending the prior certificate of such Person.

Financial Information, etc. Administrative Agent shall have received evidence of pro forma financial covenant compliance with the covenants set forth in Section 7.2.4 in the form as set forth on Annex I to Exhibit N attached hereto.

3.1.34 Litigation . There shall exist no pending or threatened action, suit, investigation, litigation or proceeding in any court or before any arbitrator or governmental instrumentality which (x) purports to affect the consummation of the Third Amendment Transaction or the legality or validity of this Third Amendment or any other Loan Document or (y) could reasonably be expected to have a Material Adverse Effect.

3.1.35 No Material Adverse Effect . On or prior to the Third Amendment Closing Date, in the determination of Administrative Agent, no Material Adverse Effect shall have occurred, and neither Administrative Agent nor Lenders shall have become aware of any facts, conditions or other information not previously known to it which could reasonably be expected to have a Material Adverse Effect.

3.1.36 Approvals . All governmental and third-party approvals necessary in connection with the Third Amendment Transaction and the continuing operations of Borrower and its Subsidiaries shall have been obtained and shall be in full force and effect except as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and all applicable waiting periods, if any, shall have expired without any action being taken or threatened by any competent authority which could restrain, prevent or otherwise impose materially adverse conditions on the Third Amendment Transaction hereby.

Closing Fees, Expenses, etc. Administrative Agent shall have received evidence of payment by Borrower of (or a draw request with respect to) all accrued and unpaid fees, costs and expenses to the extent then due and payable under this Third Amendment on the Third Amendment Closing Date, together with all reasonable legal costs and expenses of Administrative Agent to the extent invoiced prior to or on the Third Amendment Closing Date, including any such fees, costs and expenses arising under this Third Amendment.

Diligence. Administrative Agent shall have received the due diligence materials with respect to Borrower and Guarantor and their respective Subsidiaries and the Borrowing Base Properties that it has reasonably requested.

IV. REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations and Warranties . As of the Third Amendment Closing Date, Borrower represents and warrants unto Administrative Agent, the Issuer and each Lender:

4.1.1 Original Agreement . Each of the representations and warranties made by Borrower in the Original Agreement and in the other Loan Documents is true and correct in all material respects as if made as of the Third Amendment Closing Date (unless stated to relate to an earlier date in which case such representations and warranties shall be true in all material respects as of such earlier date).

4.1.2 Title . Each Property Owner of a Borrowing Base Property, other than the Lincolnshire Ground Lessee, has good, marketable and insurable fee simple title with respect to each Borrowing Base Property to the Land and the Improvements (except in the case of the Lincolnshire Ground Lessee leasehold title to the Land and the Improvements), free and clear of all Liens whatsoever except the Permitted Borrowing Base Liens, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Each Property Owner of a Borrowing Base Property has good and marketable title to the remainder of the applicable Borrowing Base Property, free and clear of all Liens whatsoever except the Permitted Borrowing Base Liens. The First Lien Mortgages and Assignments of Leases and Rents, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first mortgage lien on the Land and the Improvements, subject only to Permitted Borrowing Base Liens and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Borrowing Base Liens. There are no claims for payment for work, labor or materials affecting a Borrowing Base Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents except as permitted by the Loan Documents. Each Property Owner of a Borrowing

Base Property represents and warrants that none of the Permitted Borrowing Base Liens will materially and adversely affect (i) the ability of such Property Owner to pay any of its obligations to any Person as and when due, (ii) the fair market value of the applicable Borrowing Base Property, (iii) the marketability of title to the applicable Borrowing Base Property, or (iv) the use or operation of the applicable Borrowing Base Property as of the Third Amendment Closing Date and thereafter. Each Property Owner of a Borrowing Base Property shall, subject to the provisions of the Loan Documents, preserve its right, title and interest in and to the applicable Borrowing Base Property for so long as the Facility remains outstanding and will warrant and defend same and the validity and priority of the Lien hereof from and against any and all claims whatsoever other than the Permitted Borrowing Base Liens.

4.1.3 Compliance . Borrower, each Borrowing Base Entity, and the Borrowing Base Properties and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. To the best knowledge of Borrower, Borrower is not in default or in violation of any order, writ, injunction, decree or demand of any Governmental Authority. To the best knowledge of each Borrowing Base Entity, such Borrowing Base Entity is not in default or in violation of any order, writ, injunction, decree or demand of any Governmental Authority. To the best knowledge of Borrower and each Borrowing Base Entity, there has not been committed by Borrower or such Borrowing Base Entity any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Borrowing Base Properties or any part thereof or any monies paid in performance of Borrower's or such Borrowing Base Entity's obligations under any of the Loan Documents.

4.1.4 Condemnation . No Condemnation has been commenced or, to Borrower's knowledge, is contemplated with respect to all or any portion of any Borrowing Base Property or for the relocation of roadways providing access to any Borrowing Base Property.

4.1.5 Utilities and Access . Each Borrowing Base Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service each Borrowing Base Property for its intended uses. To Borrower's knowledge, all utilities necessary to the existing use of each Borrowing Base Property are located either in the public right-of-way abutting the Borrowing Base Property (which are connected so as to serve the Borrowing Base Property without passing over other property) or in recorded easements serving the Borrowing Base Property and such easements are set forth in and insured by the Title Policy. All roads necessary for the use of each Borrowing Base Property for its current purposes have been completed and, if necessary, dedicated to public use.

4.1.6 Separate Lots . Each Borrowing Base Property is comprised of one (1) or more contiguous parcels which constitute a separate tax lot or lots and does not constitute or include a portion of any other tax lot not a part of such Borrowing Base Property.

4.1.7 Assessments . To the best of Borrower's knowledge, there are no pending or proposed special or other assessments for public improvements or otherwise affecting any Borrowing Base Property, nor are there any contemplated improvements to any Borrowing Base Property that may result in such special or other assessments.

4.1.8 Enforceability . The Loan Documents are not subject to any existing right of rescission, set-off, counterclaim or defense by Borrower, including, without limitation, the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the

exercise of any right thereunder, render the Loan Documents unenforceable (subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law)), and Borrower has not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.9 No Prior Assignment . There are no prior sales, transfers or assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding, other than those being terminated or assigned to Administrative Agent concurrently herewith or permitted under the Loan Documents.

4.1.10 Insurance . Borrower has obtained and has delivered to Adminsitrative Agent certified copies or originals of all insurance policies required under the Agreement, reflecting the insurance coverages, amounts and other requirements set forth in the Agreement. Borrower has not, and to the best of Borrower's knowledge no Person has, done by act or omission anything which would impair the coverage of any such policy. Borrower is in compliance as of the Third Amendment Closing Date with the Insurance Requirements.

4.1.11 Use of Borrowing Base Properties . Each Borrowing Base Property is used exclusively for hotel purposes and other appurtenant and related uses.

4.1.12 Certificate of Occupancy; Licenses . To Borrower's knowledge, all certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of each Borrowing Base Property as a hotel (collectively, the "Licenses"), have been obtained and are in full force and effect, other than the certificate of occupancy with respect to the Four Seasons Mexico City and the Marriott Lincolnshire. Borrower shall keep and maintain or shall cause the applicable Borrowing Base Entity to keep and maintain, all Licenses necessary for the operation of each Borrowing Base Property as a hotel. The use being made of each Borrowing Base Property is in conformity with the certificate of occupancy, to the extent available, issued for such Borrowing Base Property.

Borrower has informed Administrative Agent and the Lenders that with respect to the Marriott Lincolnshire, based solely upon (i) the letter dated February 9, 2009 from the Village of Lincolnshire to Kathleen Mitchell (the "Village Letter "), (ii) the letter from Michael Jesse, Building Inspector, to Kathleen Mitchell as referenced in the Village Letter, and (iii) the email dated February 6, 2009 from The Village of Lincolnshire Code Enforcement Inspector to Kathleen Mitchell (such documents are herein collectively referred to as the "Lincolnshire Zoning Documents"), the Village of Lincolnshire has been unable to locate a certificate of occupancy for the Marriott Lincolnshire. Based solely upon the Lincolnshire Zoning Documents (A) the Village of Lincolnshire has evidence in their records that a certificate of occupancy was issued and subsequently lost or misplaced (B) the absence of a certificate of occupancy for the Marriott Lincolnshire will not give rise to any enforcement action affecting the Marriott Lincolnshire, and (C) a certificate of occupancy for the Marriott Lincolnshire will only be required to the extent of any construction activity, restoring, renovating or expanding the Marriott Lincolnshire or any part thereof.

A certificate of occupancy is not required to use, occupy and operate The Four Seasons Mexico City as it is currently being used, occupied and operated.

4.1.13 Flood Zone . None of the improvements or fixtures on any Borrowing Base Property is located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards except for those Borrowing Base Properties for which Borrower has purchased, or has caused the applicable Borrowing Base Entities to purchase, flood insurance in form and substance reasonably acceptable to Administrative Agent, other than the outbuildings relating to the golf course at Marriott Lincolnshire.

4.1.14 Physical Condition . To the best of Borrower's knowledge and as except as disclosed in reports delivered to Administrative Agent, each Borrowing Base Property, including, without limitation, all buildings, Improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects; to the best of Borrower's knowledge and except as disclosed in reports delivered to Administrative Agent, there exists no structural or other material defects or damages in or to any Borrowing Base Property, whether latent or otherwise, and Borrower has not received any written notice from any insurance company or bonding company of any defects or inadequacies in any Borrowing Base Property, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

4.1.15 Boundaries . To the best of Borrower's knowledge and except as disclosed by the Surveys, all of the Improvements at each Borrowing Base Property lie wholly within the boundaries and building restriction lines of the Real Property, and no Improvements on adjoining properties encroach upon the Real Property, and no easements or other encumbrances upon the Real Property encroach upon any of the Improvements, so as to have a material adverse affect on the value or marketability of the Real Property except those for which affirmative insurance set forth in the Title Policy acceptable to Administrative Agent shall have been obtained.

4.1.16 Leases . No Borrowing Base Property is subject to any Leases, other than the Leases described in the certified rent roll delivered to Administrative Agent and attached hereto as Schedule XV . Such certified rent roll is true, complete and correct in all material respects as of the date set forth therein. Such rent roll contains a true correct and complete list of all security deposits and the amounts thereof, currently in Borrower's or Borrowing Base Entity's possession. No Person other than Managers, Operating Lessees and certain invitees in the ordinary course of business, has any possessory interest in any Borrowing Base Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and to the best of Borrower's knowledge, there are no material defaults thereunder by either party (other than as expressly disclosed on the certified rent roll delivered to Administrative Agent) and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute material defaults thereunder. No rent has been paid more than one (1) month in advance of its due date. There has been no prior sale, transfer or assignment, hypothecation or pledge by Borrower of any Lease or of the rents received therein, which will be outstanding following the funding of the Facility, other than those being assigned to Administrative Agent concurrently herewith. No tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the property of which the leased premises are a part.

4.1.17 Filing and Recording Taxes . All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the First Lien Mortgages, have been paid, and, under current Legal Requirements, each First Lien Mortgage is enforceable against the applicable Borrowing Base Entity in accordance with its terms by Administrative Agent (or any subsequent holder thereof) subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.18 Labor . No organized work stoppage or labor strike is pending or to Borrower's knowledge threatened by employees and other laborers at any Borrowing Base Property. To Borrower's knowledge, neither a Borrowing Base Entity nor the Manager of such Borrowing Base Property (i) is involved in or threatened with any material labor dispute, grievance or litigation relating to material labor matters involving any employees and other laborers at the Borrowing Base Property, including, without limitation, violation of any federal, state or local labor, safety or employment laws (domestic or foreign) and/or charges of unfair labor practices or discrimination complaints, (ii) has engaged in any unfair labor practices within the meaning of the National Labor Relations Act or the Railway Labor Act or (iii) is a party to, or bound by, any collective bargaining agreement or union contract with respect to employees and other laborers at any Borrowing Base Property and no such agreement or contract is currently being negotiated by Borrower, Manager or any Borrowing Base Entity.

4.1.19 Brokers . Borrower has not dealt with any broker or finder with respect to the transactions contemplated by the Loan Documents has not done any acts, had any negotiations or conversations, or made any agreements or promises which will in any way create or give rise to any obligation or liability for the payment of any brokerage fee, charge, commission or other compensation to any Person with respect to the transactions contemplated by this Third Amendment. Administrative Agent has not dealt with any broker or finder with respect to the transactions contemplated by the Loan Documents has not done any acts, had any negotiations or conversations, or made any agreements or promises which will in any way create or give rise to any obligation or liability for the payment of any brokerage fee, charge, commission or other compensation to any Person with respect to the transactions contemplated by this Third Amendment. Borrower and Administrative Agent shall each indemnify and hold harmless the other from and against any loss, liability, cost or expense, including any judgments, attorneys' fees, or costs of appeal, incurred by the other party and arising out of or relating to any breach or default by the indemnifying party of its representations, warranties and/or agreements set forth in this Section 4.1.19 . The provisions of this Section 4.1.19 shall survive the expiration and termination of the Agreement and the payment of the Indebtedness.

4.1.20 Taxpayer Identification Number . Borrower's Federal taxpayer identification number is 36-4200430. The Federal taxpayer number for each Property Owner of a Borrowing Base Property located in the United States of America is 36-4312527 (with respect to SHC Laguna Niguel I LLC), 36-4312523 (with respect to SHC Lincolnshire LLC) and 20-4135050 (with respect to SHC Washington, L.L.C.). The Federal taxpayer number for each

Operating Lessee of a Borrowing Base Property located in the United States of America is 20-4707064 (with respect to DTRS Laguna, L.L.C.), 20-1232041 (with respect to DTRS Lincolnshire, L.L.C.) and 20-4135120 (with respect to DTRS Washington, L.L.C.).

4.1.21 Solvency/Fraudulent Conveyance . Borrower and the Borrowing Base Entities (a) have not entered into the transaction contemplated by the Agreement or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) have received reasonably equivalent value in exchange for their obligations under the Loan Documents. After giving effect to the Facility and the provisions of the Loan Documents, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Facility, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. After giving effect to the Facility and the provisions of the Loan Documents, the fair saleable value of the assets of each Borrowing Base Entity exceeds and will, immediately following the execution and delivery of this Third Amendment, exceed the total liabilities of such Borrowing Base Entity, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the execution and delivery of this Third Amendment, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its Indebtedness as such Indebtedness become absolute and matured. The fair saleable value of the assets of each Borrowing Base Entity is and will, immediately following the execution and delivery of this Third Amendment, be greater than the probable liabilities of such Borrowing Base Entity, including the maximum amount of its contingent liabilities on its Indebtedness as such Indebtedness becomes absolute and matured. The assets of Borrower and each Borrowing Base Entity do not and, immediately following the execution and delivery of this Third Amendment will not, constitute unreasonably small capital to carry out each party's business as conducted or as proposed to be conducted. Each of Borrower and each Borrowing Base Entity does not intend to, and does not believe that it will, incur Indebtedness and liabilities (including contingent liabilities and other commitments) beyond their ability to pay such Indebtedness and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower or such Borrowing Base Entity and the amounts to be payable on or in respect of obligations of Borrower or such Borrowing Base Entity).

4.1.22 Leases and REAs . Borrower represents that it has heretofore delivered, or caused the applicable Borrowing Base Entity to deliver, to Administrative Agent true and complete copies of all Leases and REAs and any and all amendments or modifications thereof. To Borrower's knowledge, no events or circumstances exist which with or without the giving of notice, the passage of time or both, may constitute a material default on the part of Borrower or such Borrowing Base Entity under any Leases or REAs except as disclosed on Schedule XVII . To Borrower's knowledge, Borrower or its predecessors and each Borrowing Base Entity of a Borrowing Base Property or its predecessors have complied with and performed all of its or their material construction, improvement and alteration obligations with respect to each Borrowing Base Property required as of the date hereof and any other obligations under the other REAs or the Leases that are required as of the date hereof have either been complied with or the failure to comply with the same does not and could not reasonably be expected to have a Material Adverse Effect.

4.1.23 Borrowing Base Property . Each Borrowing Base Property satisfies the following criteria: (i) such Borrowing Base Property is leased to an Operating Lessee; (ii) such

Borrowing Base Property is designated a full-service property (in accordance with industry standard, as reasonably determined by Administrative Agent); (iii) the Specified Borrowing Base Properties shall at all times be luxury or better quality hotels, and Marriott Lincolnshire shall at all times be an upper-upscale, luxury or better quality hotel, as designated by Smith Travel Research (or a similar successor company designated by Administrative Agent); (iv) such Property is operated under a nationally recognized brand (a) in the case of Marriott Lincolnshire, by an Approved Manager (as set forth on Schedule IV of the Original Agreement) and (b) in the case of the Specified Borrowing Base Properties, by an Approved Luxury Manager; (v) such Borrowing Base Property is fully operating, open to the public and not under development or redevelopment (except for routine, ordinary course renovation, maintenance and repair that does not result in the closure of more than fifteen percent (15%) of the rooms at such hotel); provided , however , that temporary closure due to force majeure events, not to exceed five (5) Business Days, shall be permitted; (vi) such Borrowing Base Property is not subject to or encumbered by any Indebtedness other than Permitted Borrowing Base Debt; (vii) such Borrowing Base Property is free of material structural defects or material environmental issues; (viii) neither such Borrowing Base Property nor the Property Owner thereof is encumbered with Permitted Borrowing Base Debt or any other Material Agreement that by its terms precludes the grant of the Collateral or the exercise by or on behalf of the Secured Creditors of remedies with respect to the Collateral; and (ix) the Property Owner of such Borrowing Base Property is Borrower or a Subsidiary Guarantor.

4.1.24 Mexico Insurance . The insurance policies listed and described on Annex A to the Irrevocable Administration and Security Trust Agreement with Reversion Rights, dated the Third Amendment Closing Date, with respect to the real estate and the equipment used to operate the Four Seasons Mexico City and the Four Seasons Punta Mita which are the Company's responsibility, are valid and effective as of the date hereof.

V. RELEASE OF ADMINISTRATIVE AGENT AND THE LENDERS

Section 5.1 Borrower, on its own behalf and on behalf of Guarantor and all Subsidiaries (the "Releasing Parties"), hereby releases, remises, acquits and forever discharges each of Administrative Agent and the Lenders, and their respective employees, agents, representatives, consultants, attorneys, fiduciaries, servants, officers, directors, partners, predecessors, successors and assigns, subsidiaries, parents and affiliates (all of the foregoing hereinafter called the "Released Parties"), from any and all actions and causes of action, judgments, executions, suits, debts, claims, demands, liabilities, obligations, damages and expenses of any and every character, including legal fees, known or unknown, direct and/or indirect, at law or in equity, of whatsoever kind or nature, whether heretofore or hereafter arising, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties prior to and including the date of this Third Amendment that, in any way directly or indirectly, arise out of or in any way are connected to or related to the Original Agreement, the Facility or the Loan Documents, including but not limited to, claims relating to any settlement negotiations (all of the foregoing hereinafter called the "Released Matters"). Each of the Released Parties acknowledges that the agreements in this Article V are intended to be in full satisfaction of all or any alleged injuries or damages arising in connection with the Released Matters. Each of the Releasing Parties hereby represents and warrants to Released Parties that it has not purported to transfer, assign or otherwise convey any of its right, title or interest in any Released Matter to any other Person and that the foregoing constitutes a full and complete release of all Released Matters.".

VI. MISCELLANEOUS PROVISIONS

Section 6.1 Defined Terms . Except with respect to terms that are defined in this Third Amendment or terms used in the Original Agreement that are redefined in this Third Amendment, capitalized terms used in this Third Amendment shall have the meaning given such terms in the Original Agreement.

Section 6.2 Use of Defined Terms . All references in this Third Amendment or in the Loan Documents to the Loan Documents or the Original Agreement shall mean the Loan Documents and the Original Agreement as hereby modified.

Section 6.3 Counterparts . This Third Amendment may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. This Third Amendment shall become effective when counterparts hereof executed on behalf of the Borrower, the Administrative Agent and each of the Lenders (or notice thereof satisfactory to the Administrative Agent) shall have been received by the Administrative Agent and notice thereof shall have been given by the Administrative Agent to the Borrower and each Lender.

Section 6.4 Successors and Assigns Bound . This Third Amendment shall be binding upon and inure to the benefit of the parties and their respective legal representatives, permitted successors and permitted assigns.

Section 6.5 Governing Law .

6.5.1 THIS AMENDMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AMENDMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AMENDMENT AND THE NOTE, AND THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

6.5.2 ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AMENDMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

CORPORATION SERVICE COMPANY
80 STATE STREET
ALBANY, NEW YORK 12207-2543

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

6.5.3 THE FIRST LIEN MORTGAGES SHALL BE GOVERNED BY THE LAWS OF THE APPLICABLE JURISDICTION IN WHICH THE BORROWING BASE PROPERTIES ARE LOCATED.

6.5.4 Further Modifications . No modification, amendment, extension, discharge, termination or waiver of any provision of this Third Amendment or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such modification, amendment, extension, discharge, termination, waiver or consent shall be effective only in the specific instance, and for the purpose, for which given.

6.5.5 Ratification . As amended by this Third Amendment, all terms, covenants and provisions of the Original Agreement, the Pledge Agreement, the Guarantor Pledge Agreement, the Guaranty and the Subsidiary Guaranty, and each of the other Loan Documents, are ratified and confirmed and shall be and remain in full force and effect as first written.

6.5.6 No Implied Extension of Loan . No term or provision in any of the Loan Documents, as amended hereby, shall constitute the express or implied consent of Administrative

Agent or any Lender to, or the express or implied satisfaction of any conditions or terms with respect to, any exercise by Borrower of any Extension Option or any other request for the extension of the Loan, and each such request shall be subject to each term and condition applicable thereto under the Loan Documents.

6.5.7 Severability . In case any provision of this Third Amendment shall be invalid, illegal, or unenforceable, such provision shall be deemed to have been modified to the extent necessary to make it valid, legal, and enforceable. The validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

6.5.8 Entire Agreement . The Agreement and the other Loan Documents contain the entire agreement of the parties hereto in respect of the transactions contemplated hereby, and all prior communications or agreements among or between such parties, whether oral or written, with respect to the subject matter hereof, are superseded by the terms of the Agreement and the other Loan Documents.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF , the parties hereto have caused this Third Amendment to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:
STRATEGIC HOTEL FUNDING, L.L.C.
a Delaware limited liability company

By: /S/ RYAN M. BOWIE
Name: Ryan Bowie
Title: Vice President and Treasurer

Address: 200 West Madison Street
Suite 1700
Chicago, Illinois 60606

Telephone No.: (312) 658-5000
Facsimile No.: (312) 658-5799
Attention: General Counsel

With a copy to:

Strategic Hotel Funding, L.L.C.
200 West Madison Street
Suite 1700
Chicago, Illinois 60606

Telephone No.: (312) 658-5000
Facsimile No.: (312) 658-5799
Attention: Treasurer

DEUTSCHE BANK TRUST COMPANY AMERICAS, a New York banking corporation

By: /s/ G EORGE R. R EYNOLDS
Name: George R. Reynolds
Title: Director

By: /s/ J AMES R OLISON
Name: James Rolison
Title: Managing Director

Address: 60 Wall Street
New York, New York 10005

Telephone No.: (212) 250-3352
Facsimile No.: (212) 797-4496
Attention: James Rolison

With a copy to:

Deutsche Bank Securities Inc.
Crescent Court
Suite 550
Dallas, Texas 75201

Telephone No.: (214) 740-7900
Facsimile No.: (214) 740-7910
Attention: Linda Davis

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

CITICORP NORTH AMERICA, INC.

By: /s/ David Bouton
Name: David Bouton
Title: Vice President

Address: 2 Penns Way, 1st Floor
New Castle, Delaware 19720

Telephone No.: 302-894-6052
Facsimile No.: 212-994-0849
Attention: Jessica Zimmers, Loan Specialist

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

BANK OF AMERICA, N.A.

By: /s/ S TEVEN P. R ENWICK
Name: Steven P. Renwick
Title: Senior Vice President

Address: 901 Main Street, 64th Floor
Dallas, Texas 75202

Telephone No.: 214-209-1867
Facsimile No.: 214-209-0085
Attention: Steven Renwick

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

JPMORGAN CHASE BANK, N.A.

By: /s/ MARC E. CONSTANTINO
Name: Marc E. Costantino
Title: Executive Director

Address: 383 Madison Avenue
40th Floor
New York, New York 10179

Telephone No.: 212-622-8167
Facsimile No.: 646-328-3037
Attention: Marc E. Costantino

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

WACHOVIA BANK, NATIONAL ASSOCIATION

By: /s/ A MIT V. K HIMJI
Name: Amit V. Khimji
Title: Vice President

Address: 301 S. College Street
NC 0172
Charlotte, NC 28288-0172

Telephone No.: (704) 715-1347
Facsimile No.: (704) 383-6205
Attention: Amit V. Khimji

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

CREDIT SUISSE, Cayman Islands Branch

By: /s/ M IKHAIL F AYBUSOVICH
Name: Mikhail Faybusovich
Title: Vice President

By: /s/ K ARIM B LASETTI
Name: Karim Blasetti
Title: Vice President

Address: Eleven Madison Avenue
New York, New York 10005

Facsimile No.: (646) 935-8518
Telephone No.: (212) 325-5714
Attention: Mikhail Faybusovich

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

BARCLAYS CAPITAL REAL ESTATE INC.

By: /s/ L ORI A NN R UNG
Name: Lori Ann Rung
Title: Vice President

Address: 200 Park Avenue, 5th Floor
New York, NY 10166

Facsimile No.: (212) 412-1664
Telephone No.: (212) 412-3026
Attention: David Proctor

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

RAYMOND JAMES BANK, FSB

By: /s/ THOMAS G. SCOTT
Name: Thomas G. Scott
Title: Senior Vice President

Address: 710 Carillon Parkway
PO Box 11628
St. Petersburg, FL 33733

Telephone No.: (727) 567-4196
Facsimile No.: (727) 567-8830
Attention: Thomas Scott

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

E. SUN COMMERCIAL BANK LTD.,
LOS ANGELES BRANCH

By: /s/ B ENJAMIN L IN
Name: Benjamin Lin
Title: EVP & General Manager

Address: 17700 Castleton St., Suite 500
City of Industry, CA 91748

Telephone No.: 626-839-5531
Facsimile No.: 626-810-2400
Attention: Edward Chen

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

AAREAL CAPITAL CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

Address: 250 Park Avenue
Suite 820
New York, New York 10017

Telephone No.: 646-205-4503
Facsimile No.: 917-322-0290
Attention: Juan Vives

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

HUA NAN COMMERCIAL BANK,
LOS ANGELES BRANCH

By: /s/ O LIVER C.H. H SU
Name: Oliver C.H. Hsu
Title: VP & General Manager

Address: 707 Wilshire Blvd., #3100
Los Angeles, CA 90017

Telephone No.: (213) 362-6666 ext.233
Facsimile No.: (213) 362-6617
Attention: Howard Hung/ Senior Manager

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

SUMITOMO MITSUI BANKING CORPORATION

By: /s/ D AVID A. B UCK
Name: David A. Buck
Title: Senior Vice President

Address: 277 Park Avenue
New York, NY 10172

Telephone No.: 212-224-4147
Facsimile No.: 212-224-4391
Attention: David Wasserman

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

METLIFE INSURANCE COMPANY OF CONNECTICUT, a Connecticut corporation

By: /s/ L OUIS K RUK

Name: Louis Kruk
Title: Director

Address: 10 Park Avenue
Morristown, NJ 07960

Telephone No.: 973-355-4474
Facsimile No.: 973-355-4420
Attention: Louis Kruk

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

EUROHYPO AG, NEW YORK BRANCH

By: /s/ MARK A. FISHER
Name: Mark A. Fisher
Title: Executive Director

By: /s/ JOHN HAYES
Name: John Hayes
Title: Vice President

Address: Eurohypo AG, New York Branch
1114 Avenue of the Americas
29th Floor
New York, New York 10036

Telephone No.:
Facsimile No.: 866-267-7680
Attention: Legal Director

With a copy to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036

Telephone No.:
Facsimile No.: 866-267-7680
Attention: Head of Portfolio Operations

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

EUROPE ARAB BANK PLC

By: /s/ SJ Kemp
SJ Kemp
Director Structured Trade Finance

By: /s/ Rowan Austin
Name: Rowan Austin
Title: Head of Commodities & Trade Finance

Address: 13-15 Moorgate,
London
EC2R 6AD

Telephone No.: 0207 315 8500
Facsimile No.: 0207 796 3994
Telephone No.: 07703 751546
Attention: Rod Taylor

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

ROYAL BANK OF CANADA

By: _____
Name: Dan LePage
Title: Attorney-in-Fact
Telephone No.: (212)428-6459 Facsimile No.: (212) 428-6605 Attention: Dan LePage

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

Address: One Liberty Plaza, 4th Floor
165 Broadway
New York, NY 10006-1404

MEGA INTERNATIONAL COMMERCIAL BANK CO., LTD. NEW YORK BRANCH

By: /s/ T SANG -P EI H SU
Name: Tsang-Pei Hsu
Title: VP & Deputy General Manager

Address: 65 Liberty Street
New York, NY 10005

Telephone No.: (212) 815-9135
Facsimile No.: (212) 608-4888
Attention: Mabel Chiang

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

TAIPEI FUBON COMMERCIAL BANK CO., LTD., Los Angeles Branch

By: /s/ S OPHIA J ING
Name: Sophia Jing
Title: First Vice President/General Manager

Address: 700 S. Flower Street, Suite 3300
Los Angeles, CA 90017

Telephone No.: (213) 236-9151
Facsimile No.: (213) 236-9155
Attention: Loan Department

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

NORDDEUTSCHE LANDESBANK
GIROZENTRALE, NEW YORK BRANCH

By: /s/ J OSEPH B ASSIL
Name: Joseph Bassil
Title: Managing Director

By: /s/ D IRK Z IEMER
Name: Dirk Ziemer
Title: Director – Head Underwriter

Lending Office and
Address for Notices:

c/o Norddeutsche Landesbank
Girozentrale, New York Branch
1114 Avenue of the Americas
New York, New York 10036

Facsimile No.: (212) 812-6860
Telephone No.: (212) 812-6809
Attention: Arcadio Diaz

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

FIRST COMMERCIAL BANK NEW YORK AGENCY

By: /s/ M AY H SIAO
Name: May Hsiao
Title: Assistant General Manager

Address: 750 Third Avenue, 34 th Floor
New York, New York 10017

Telephone No.: (212) 599-6868
Facsimile No.: (212) 599-6133
Attention: May Hsiao

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

THE BANK OF EAST ASIA, LIMITED,
NEW YORK BRANCH

By: /s/ K ENNETH P ETTIS
Name: Kenneth Pettis
Title: Senior Vice President

By: /s/ K ITTY S IN
Name: Kitty Sin
Title: Senior Vice President

Address: 202 Canal Street
New York, New York 10013

Telephone No.: 212-238-8393
Facsimile No.: 212-219-3211
Attention: Ken Pettis

Signature Page to Strategic Hotel Funding, L.L.C. Agreement

Exhibit A

Schedules I through XIX to the Agreement

Exhibit A

Schedule I

Disclosure Schedule

ITEM NUMBER	DISCLOSURE (IF APPLICABLE)
Item 6.5(c)	**None**
Item 6.8	**1. SHC DTRS, Inc.** **2. SHC New Orleans LLC** **3. SHC Aventine II, L.L.C.** **4. New Aventine, L.L.C.** **5. SHC Phoenix III, L.L.C.** **6. SHC Lincolnshire LLC** **7. SHCI Santa Monica Beach Hotel, L.L.C.** **8. SHC Santa Monica Beach Hotel III, L.L.C.** **9. New Santa Monica Beach Hotel, L.L.C.** **10. Ocean Front Walk Infill, L.L.C.** **11. DTRS New Orleans, L.L.C.** **12. DTRS Phoenix, L.L.C.** **13. DTRS Lincolnshire, L.L.C.** **14. DTRS Santa Monica, L.L.C.** **15. SHC Holdings L.L.C.** **16. Punta Mita Resort S. de R.L. de C.V.** **17. SHC Mexico Holdings, L.L.C.** **18. Inmobiliaria Nacional Mexicana, S. de R.L. de C.V.** **19. SHC Asset Management, L.L.C.** **20. SHC Residence Club, L.L.C.** **21. SHC Residence Club II, L.L.C.** **22. SHC Residence Club S. de R.L. de C.V.** **23. SHC Europe, L.L.C.** **24. SHR Prague Praha, L.L.C.** **25. SHC Finance (Champs Elysees), L.L.C.** **26. Strategic Paris Sarl** **27. SHC Champs Elysees SAS** **28. Hotel Paris Champs Elysees SNC** **29. Strategic Holding SNC** **30. CIMS Limited Partnership** **31. DTRS Columbus Drive, LLC** **32. DTRS Half Moon Bay, LLC**

	33. DTRS Michigan Avenue/Chopin Plaza LP **34. DTRS Michigan Avenue/Chopin Plaza Sub, LLC** **35. DTRS Michigan Avenue/Chopin Plaza, LLC** **36. Helcont. spol. s.r.o.** **37. Intercontinental Florida Limited Partnership** **38. ITM Praha** **39. Punta Mita TRS S. de R.L. de C.V.** **40. SHC Chopin Plaza Holdings, LLC** **41. SHC Chopin Plaza Mezzanine I, LLC** **42. SHC Chopin Plaza Mezzanine II, LLC** **43. SHC Chopin Plaza, LLC** **44. SHC Columbus Drive, LLC** **45. SHC Half Moon Bay Mezzanine, LLC** **46. SHC Half Moon Bay, LLC** **47. SHC Mexico Lender, LLC** **48. SHC Michigan Avenue Holdings, LLC** **49. SHC Michigan Avenue Mezzanine I, Inc.** **50. SHC Michigan Avenue Mezzanine II, LLC** **51. SHC Michigan Avenue, LLC** **52. SHC Prague (Gibraltar) Limited** **53. SHR Prague Praha B.V.** **54. SHC Prague TRS, a.s. (f/k/a Masala, a.s.)** **55. SHC Property Acquisition, L.L.C.** **56. SHC Property Prague, s.r.o.** **57. Strategic Hotel Capital Prague, a.s.** **58. Stredisko Praktickeho Vyucovani hotelu InterContinental s.r.o.** **59. SHC del LP, LLC** **60. SHC del GP, LLC** **61. SHC del Coronado, LLC** **62. DTRS North Beach del Coronado, LLC**

	63. SHC Washington, LLC **64. DTRS Washington, LLC** **65. DTRS Columbus Drive II, LLC** **66. SHC St. Francis, L.L.C.** **67. SHR St. Francis, L.L.C.** **68. DTRS St. Francis, L.L.C.** **69. SHC Laguna, L.L.C.** **70. SHC Laguna Niguel I, L.L.C.** **71. DTRS Laguna, L.L.C.** **72. SHR Scottsale L.L.C.** **73. DTRS Scottsdale, L.L.C.** **74. SHR Scottsdale Z, L.L.C.** **75. SHR Grosvenor Square LLC** **76. SHR Grosvenor Square S.a.r.l.** **77. Lomar Holding UK Ltd** **78. Lomar Hotel Company Limited** **79. Santa Barbara US LP** **80. SBA Villas, LLC** **81. SB Villas, S. de R.L. de C.V.** **82. SHC Santa Fe, S. de R.L. de C.V.** **83. SHC Solana Mexico, S. de R.L. de C.V.** **84. Santa Barbara Punta Mita Desarrollos, S. de R.L. de C.V.** **85. SB Hotel S. de R.L. de C.V.** **86. Bohus Verwaltung BV** **87. DTRS Intercontinental Miami, LLC** **88. Banian Finance, S.a.r.l.** **89. C.T.U. Holdings, S.a.r.l.** **90. GAMMA Finance S.a.r.l.** **91. Pingleton Holding, S.a.r.l.** **92. SHR Retail, L.L.C.** **93. SHR Finance, L.L.C.** **94. DTRS Spa Columbus Drive, LLC** **95. SHR Aqua, LLC** **96. SHR Scottsdale Mezzanine, L.L.C.** **97. SHC Chopin Plaza Holdings Sub, LLC** **98. SHC Michigan Avenue Holdings Sub, LLC** **99. SHC Michigan Avenue Mezzanine, LLC** **100. Hotel del Tenant Corp.**

	101. New DTRS Michigan Avenue, LLC **102. New Aventine Mezzanine I, Inc.** **103. New Aventine Mezzanine, LLC** **104. New DTRS LaJolla, LLC** **105. SHC Residences Nayarit, S de RL de CV** **106. SHC Hotel Nayarit, S de RL de CV** **107. Financiere Le Pare SAS** **108. SAS Le Pare** **109. SanMon Paris SAS** **110. SHR Leisure, LLC** **111. SHR Buy Efficient, L.L.C.** **112. Resort Club Punta Mita S. de R.L. de C.V.**
Item 7.1.11	**1. $60 million loan made by Strategic Hotel Funding, L.L.C. to SHCI Santa Monica Beach Hotel, L.L.C. evidenced by a Promissory Note, dated March 4, 1998 (balance as of February 24, 2009)** **2. €9,569,829 loan from Strategic Hotel Funding, L.L.C. to SHC Champs Elysees SAS (balance as of February 24, 2009)** **3. €5,536,232 loan from Strategic Hotel Funding, L.L.C. to Bohus Verwaltung BV (balance as of February 24, 2009)** **4. £10 million loan made by Banian Finance, S.a.r.l. to SHR Grosvenor Square, LLC (balance as of February 24, 2009)** **5. £31,390,732 loan made by SHR Grosvenor Square, LLC to SHR Grosvenor Square S.a.r.l (balance as of February 24, 2009)** **6. €22,546,250 million loan made by SHC Europe, LLC to GAMMA Finance S.a.r.l. (balance as of February 24, 2009)** **7. €3,939,000 loan made by SHC Europe, LLC to GAMMA Finance S.a.r.l. (balance as of February 24, 2009)**

	8. €299,985 loan made by Strategic Hotel Funding, LLC to San Mon Paris SAS (balance as of February 24, 2009) **9. €52,528,291 loan made by Strategic Hotel Funding, LLC to SAS Le Parc (balance as of February 24, 2009)** **10. €3,088,025 loan made by Strategic Hotel Funding, LLC to SAS Le Parc (balance as of February 24, 2009)** **11. €7,810,000 loan made by SHR Prague Praha B.V. to SHR Finance, LLC (balance as of February 24, 2009)** **12. €48,387,886 loan made by SHR Prague Praha B.V. to SHC Prague TRS, a.s. (balance as of February 24, 2009)** **13. $110 million loan made by SHR Gibralter Ltd. to SHR Prague Praha B.V. (balance as of February 24, 2009)**
Item 7.2.5	**1. 31% interest in Resort Club Punta Mita S. de R.L. de C.V. (which is developing and selling time shares)** **2. Ocean Front Walk Infill, L.L.C. owns an additional parcel of land located adjacent to the Loews Santa Monica** **3. SB Hotel S de RL de CV owns a parcel of land located adjacent to the Four Seasons Resort Punta Mita.** **4. SB Villas, S de RL de CV owns a parcel of land located adjacent to the Four Seasons Resort Punta Mita** **5. SHR Scottsdale Z, L.L.C. owns a 10-acre parcel adjacent to the Fairmont Scottsdale Princess** **6. SHC Hotel Nayarit, S de RL de CV and SHC Residences Nayarit, S de RL de CV own land and condos at Lot H-5, a 16-acre parcel near Resort Punta Mita**

	7. Santa Barbara Punta Mita Desarrollos S de RL de CV owns land at La Solana near Resort Punta Mita **8. Contract to purchase a portion of a to-be-constructed high rise building in Mexico City which the Borrower intends to utilize as a hotel upon completion**

Schedule II

Initial Borrowing Base Property List

Four Seasons Mexico City

Four Seasons Punta Mita

Four Seasons Washington D.C.

Ritz Carlton Laguna Niguel

Marriott Lincolnshire

Schedule III

Properties

1. Hyatt Regency La Jolla at Aventine, La Jolla, CA
2. Loews Santa Monica Beach Hotel, Santa Monica, CA
3. Marriott Lincolnshire Resort, Lincolnshire, IL
4. Ritz Carlton Half Moon Bay, Half Moon Bay, CA
5. InterContinental, Chicago, IL
6. InterContinental, Miami, FL
7. Fairmont Chicago, Chicago IL
8. Four Seasons Hotel, Mexico City, Mexico
9. Four Seasons Resort Punta Mita, Mexico
10. Intercontinental, Praha, Prague Czech Republic
11. Hotel Del Coronado, San Diego, CA
12. The Westin St. Francis, San Francisco, CA
13. Four Seasons Hotel, District of Columbia
14. Ritz Carlton, Laguna Niguel, CA
15. Marriott Champs Elysees Hotel, Paris, France
16. Marriott Hamburg, Hamburg, Germany
17. Marriott Grosvenor Square, London, England
18. Fairmont Scottsdale Princess, Scottsdale, AZ
19. Renaissance Paris Hotel Le Parc Trocodero, Paris, France

Schedule IV

Approved Managers, Luxury Managers and Brands

Approved Managers:

Fairmont Hotels
FelCor Hotels
Four Seasons Ltd.
Hilton Hotels Corporation
Hyatt Hotel Corporation
InterContinental Hotel Group
KSL Partners
Loews Hotel
Mandarin Oriental
Marriott International
The Peninsula Group
Shangri-La
Starwood Hotels & Resorts
Windsor Hospitality
Montage Hotels & Resorts
Elysian Hotels & Resorts
Taj Hotels
Jumeirah Group
Starwood Capital

Approved Luxury Managers:

Fairmont Hotels
Four Seasons Ltd.
Hilton Hotels Corporation
Hyatt Hotel Corporation
KSL Partners
Loews Hotel
Mandarin Oriental
Marriott International
The Peninsula Group
Shangri-La
Montage Hotels & Resorts
Elysian Hotels & Resorts
Taj Hotels
Jumeirah Group
Starwood Capital

Acceptable Brands:

Crowne Plaza
Embassy Suites
Fairmont
Four Seasons
Hilton
Hyatt, Grand Hyatt, Hyatt Regency, Park Hyatt
Inter-Continental
KSL Resorts
Loews
Mandarin Oriental
Marriott, JW Marriott, Marriott Suites
Peninsula
Raffles
Renaissance
Ritz-Carlton
Shangri-La
Sheraton
St Regis
Swiss Hotel
Westin
W Hotel
Montage
Elysian
Crillon
Waldorf-Astoria
Bulgari
Conrad
Taj
Jumeirah

Schedule V

Borrowing Base Intercompany Indebtedness

Washington, D.C. Intercompany Indebtedness

Loan in the amount of $128,000,000 (the "D.C. Loan") made by the Borrower to SHC Washington, L.L.C. ("SHC Washington"), pursuant to the Loan and Security Agreement dated March 1, 2006 between the Borrower and SHC Washington, and evidenced by a Note of SHC Washington dated March 1, 2006 and a Note Supplement between the Borrower and SHC Washington dated March 1, 2006. The D.C. Loan is secured by a Deed of Trust between SHC Washington and Lawyers Title Realty Services, Inc. for the benefit of the Borrower dated March 1, 2006 and is subject to a Subordination, Non- Disturbance and Attornment Agreement between the Borrower, SHC Washington, DTRS Washington, L.L.C. and Four Seasons Hotels Limited dated March 1, 2006.

Schedule VI

Reserved

Schedule VII

Lincolnshire Ground Lease

A. Description of Ground Lease:

1. Land Lease Agreement dated December 18, 1970 between Rivershire, Inc., American National Bank and Trust Company, as Trustee under Trust Agreement dated August 22, 1966 and known as Trust No. 23830 and as Trustee under Trust Agreement dated August 23, 1966 and known as Trust No. 23831 and Marriott Hotels, Inc., a memorandum of such lease was recorded on May 31, 1972 as Document No. 1559989 in the Office of the Recorder of Deeds in Lake County, Illinois.

2. Letter Agreement dated December 18, 1970 between Rivershire, Inc. and Marriott Hotels, Inc. (re: obligations).

3. Letter Agreement dated December 18, 1970 between Rivershire, Inc. and Marriott Hotels, Inc. (re: advisory services)

4. Amendment to Lease Agreement dated August 29, 1975 between American National Bank and Trust Company of Chicago, as Trustee under that certain Trust Agreement dated August 23, 1966 and known as Trust 23831 and under that certain Trust Agreement dated August 22, 1966 and known as Trust 23830, and Indian Creek Investors, Inc., formerly known as Rivershire, Inc., collectively as Landlord, and Marriott Corporation, successor by merger with Marriott Hotels, Inc., a memorandum of which was recorded on September 18, 1975 as Document No. 1729391 in the Office of the Recorder of Deeds in Lake County, Illinois.

5. Assignment of Land Lease and Assumption of Obligations dated August 29, 1975 between Marriott Corporation, successor by merger with Marriott Hotels, Inc., and The Prudential Insurance Company of America, which was recorded in the Office of the Recorder of Deeds, Lake County, Illinois as Document No. 1729392.

6. Second Amendment to Land Lease Agreement dated April 29, 1980 between American National Bank and Trust Company of Chicago, as Trustee under that certain Trust Agreement dated August 23, 1966 and known as Trust 23831 and under that certain Trust Agreement dated

August 22, 1966 and known as Trust 23830, and Indian Creek Investors, Inc., formerly known as Rivershire, Inc., collectively as Landlord, and The Prudential Insurance company of America, as Tenant.

7. Ground Lease Assignment dated September 30, 1997 by and between The Prudential Insurance Company of America and Strategic Hotel Capital Limited Partnership, which was recorded as Document No. 4026946 on October 1, 1997 in the Office of the Recorder of Deeds in Lake County, Illinois.

8. Third Amendment to Land Lease Agreement dated August 24, 1999 between Indian Creek Investors, Inc. and Strategic Hotel Capital Limited Partnership.

9. Ground Lease Assignment between Strategic Hotel Capital Limited Partnership and SHC Lincolnshire LLC recorded on September 20, 1999 as Document No. 4422066.

Schedule VIII

Management Agreements

Four Seasons Mexico City

1. Hotel Management Agreement, dated March 14, 1994 between Inmobiliaria Nacional Mexicana, S.A. de C.V. and Four Seasons Hotels (Mexico), S.A. DE C.V. (as amended from time to time).
2. License Agreement, dated March 14, 1994 between Inmobiliaria Nacional Mexicana, S.A. de C.V. and Four Seasons Hotels and Resorts B.V.
3. Capital Refurbishing Services Agreement, dated March 14, 1994 between Inmobiliaria Nacional Mexicana, S.A. de C.V. and Four Seasons Hotel Limited.
4. Marketing Services Agreement, dated March 14, 1994 between Inmobiliaria Nacional Mexicana, S.A. de C.V. and Four Seasons Hotel Limited.
5. Assignment and Assumption of Leases, Contracts, Licenses and Permits, dated June 29, 2004 between Inmobiliaria Nacional Mexicana, S.A. de C.V. and Punta Mita TRS, S. DE RL. DE C.V.
6. Hotel Management Agreement Amending Agreement dated October 20, 1994 between Inmobiliaria Nacional Mexicana, S.A. de C.V. and Four Seasons Hotels (Mexico), S.A. DE C.V.
7. Acknowledgement and Confirmation dated March 14, 1996 between Inmobiliaria Nacional Mexicana, S.A. de C.V. and Four Seasons Hotels (Mexico), S.A. DE C.V.
8. Amendment to Hotel Management Agreement and Hotel License Agreement dated November 13, 2007 between Four Seasons Hotels (Mexico), S.A. DE C.V., Four Seasons Hotels and Resorts B.V., Four Seasons Hotels Limited, punta Mita Resort TRS, S. DE R.L. DE C.V and Inmobiliaria Nacional Mexicana, S. DE R.L. DE C.V. (formerly known as Inmobiliaria Nacional Mexicana, S.A. de C.V.).
9. Omnibus Amendment to Operating Agreements dated November 20, 2007 between Four Seasons Hotels (Mexico), S.A. DE C.V., Four Seasons Hotels and Resorts B.V., Four Seasons Hotels Limited, Punta Mita Resort TRS, S. DE R.L. DE C.V and Inmobiliaria Nacional Mexicana, S. DE R.L. DE C.V. (formerly known as Inmobiliaria Nacional Mexicana, S.A. de C.V.).
10. Side Letter dated as of January 1, 2009 re: Finance Issues.

Four Seasons Punta Mita

1. Hotel Management Agreement, dated as of July 18, 1997 between Four Seasons Hotels (Mexico), S.A. DE C.V. and Punta Mita Resort, S.A. DE C.V. (as amended from time to time).
2. Hotel Advisory Agreement, dated as of July 18, 1997 between Four Seasons Hotel Limited and Punta Mita Resort, S.A. DE C.V. (as amended from time to time).
3. Hotel Services Agreement, dated as of July 18, 1997 between Four Seasons Hotel Limited and Punta Mita Resort, S.A. DE C.V. (as amended from time to time).
4. Hotel License Agreement dated as of July 18, 1997 Four Seasons Hotels and Resorts B.V and Punta Mita Resort, S.A. DE C.V. (as amended from time to time).
5. Assignment and Assumption Agreement, dated as of November 30, 1998 between Four Seasons Hotels (Mexico), S.A. DE C.V. and Four Seasons (Punta Mita) S.A. DE C.V.
6. Letter Agreement dated September 25, 2000 re: Radius Restrictions.
7. First Amendment to Hotel Agreements and Golf Club Agreements dated February 22, 2001 between Four Seasons Hotels Limited, Punta Mita Resort, S.A. DE C.V., Four Seasons (Punta Mita), S.A. DE C.V., Four Seasons Hotels and Resorts B.V., and Club De Golf Punta Mita, S.A. DE C.V.
8. Assignment and Assumption of Leases, Contracts, Licenses and Permits, dated as of June 29, 2004 between Punta Mita Resort, S.A. DE C.V. and Punta Mita TRS, S. DE C.V. DE R.L.
9. Second Amendment to Hotel Agreements dated June 30, 2006 between Four Seasons Hotels Limited, Four Seasons Punta Mita, S.A. DE C.V., Four Seasons Hotels and Resorts B.V., and Punta Mita Resort TRS, S. DE R.L. DE C.V.
10. Third Amendment to Hotel Agreements dated November 18, 2008 between Four Seasons Hotels Limited, Four Seasons Punta Mita, S.A. DE C.V., Four Seasons Hotels and Resorts B.V., and Punta Mita Resort TRS, S. DE R.L. DE C.V.
11. Fourth Amendment to Hotel Agreements dated December 10, 2008 between Four Seasons Hotels Limited, Four Seasons Punta Mita, S.A. DE C.V., Four Seasons Hotels and Resorts B.V., and Punta Mita TRS, S. DE R.L. DE C.V.
12. Side Letter dated as of January 1, 2009 re: Finance Issues.

Four Seasons Washington D.C.

1. Second Amended and Restated Hotel Management Agreement dated January 1, 1997 between Four Seasons Hotels Limited and Georgetown Plaza Associates.
2. Letter dated February 10, 2005 re: Renovation.
3. Assignment and Assumption of Hotel Management Agreement dated as of March 1, 2006 by and among LD Georgetown Plaza Associates LLC, successor by conversion to Georgetown Plaza Associates, DTRS Washington, L.L.C., SHC Washington, L.L.C., and Four Seasons Hotels Limited.
4. Amendment to Second Amended and Restated Hotel Management Agreement dated October 17, 2008 between Four Seasons Hotels Limited and DTRS Washington, L.L.C.
5. Second Amendment to Second Amended and Restated Hotel Management Agreement dated December 18, 2008 between Four Seasons Hotels Limited and DTRS Washington, L.L.C.
6. Consent to Amendment of Management Agreement dated December 18, 2008 between SHC Washington, L.L.C., Strategic Hotel Funding, L.L.C., Four Seasons Hotels Limited, and DTRS Washington, L.L.C.
7. Side Letter dated December 18, 2008 re: Finance Issues.
8. Side Letter dated December 18, 2008 re: Service Charges and Accounting.
9. Restaurant Management Agreement dated October 17, 2008 among the Mina Group, Four Seasons Hotels Limited and DTRS Washington, L.L.C.
10. First Amendment to Restaurant Management Agreement dated October 17, 2008 among the Mina Group, Four Seasons Hotels Limited and DTRS Washington, L.L.C.

Marriott Lincolnshire

1. Management Agreement, dated as of December 31, 1983 between The Prudential Insurance Company of America and Marriott Corporation (as amended from time to time).
2. Assignment and Assumption of Agreements dated as of June 19, 1993 between Marriott Corporation and Marriott Hotel Services, Inc.
3. Assignment and Assumption of Management Agreement dated as of September 30, 1997 between The Prudential Insurance Company of America and Strategic Hotel Capital Limited Partnership.
4. Assignment and Assumption of Leases, Contracts, Licenses, Warranties and Permits, dated as of September, 1999 between Strategic Hotel Capital Limited Partnership and SHC Lincolnshire, LLC.
5. First Amendment to Management Agreement dated January 1, 2000 between SHC Lincolnshire, LLC and Marriott Hotel Services, Inc.

6. Amendment to Management Agreement dated June 29, 2004 between SHC Lincolnshire, LLC and Marriott Hotel Services, Inc.
7. Letter Agreement dated June 29, 2004 between SHC Lincolnshire, LLC and Marriott Hotel Services, Inc. re: Cash Flow.
8. Assignment and Assumption of Leases, Contracts, Licenses and Permits, dated as of June 29, 2004 between SHC Lincolnshire LLC and DTRS Lincolnshire, L.L.C.

Ritz-Carlton Laguna Niguel

1. Amended and Restated Operating Agreement dated January 1, 2000 between SHC Laguna Niguel I LLC and The Ritz-Carlton Hotel Company, L.L.C.
2. Amendment to Amended and Restated Operating Agreement dated June 29, 2004 between SHC Laguna Niguel I LLC and The Ritz-Carlton Hotel Company, L.L.C.
3. Letter dated October 27, 2004 re: MVCI notification to SHC Laguna Niguel I L.L.C.
4. Letter dated October 27, 2004 re: MVCI notification to The Ritz-Carlton, Laguna Niguel.
5. Letter Agreement dated August 12, 2005 re: Terrance Restaurant Project.
6. Assignment and Assumption of Management Agreement dated as of July 7, 2006 between SHC Laguna Niguel I LLC, DTRS Laguna, L.L.C. and joined for limited purposes SHC Laguna Niguel Mezzanine LLC.
7. Owner Agreement dated July 7, 2006 between SHC Laguna Niguel I LLC, DTRS Laguna, L.L.C., and The Ritz-Carlton Hotel Company, L.L.C.
8. Amendment to Amended and Restated Operating Agreement dated May 30, 2007 between SHC Laguna Niguel I LLC, DTRS Laguna, L.L.C., and The Ritz-Carlton Hotel Company, L.L.C.
9. Letter dated May 30, 2007 re: Profitability Review Process.
10. Letter dated May 30, 2007 re: Agreed Upon Accounting Procedures.
11. Letter dated May 30, 2007 re: Capital Expenditure Program.
12. Letter dated August 27, 2007 re: Change of Notice Address.

Schedule IX

Title Policy Coverage Amounts

Initial Borrowing Base Property	Initial Title Insurance Amounts
Four Seasons Mexico City	$ 52,080,000
Four Seasons Punta Mita	$ 153,600,000
Four Seasons Washington D.C.	$ 109,800,000
Ritz Carlton Laguna Niguel	$ 156,000,000
Marriott Lincolnshire	$ 23,220,000

Schedule X

Title Endorsements and Affirmative Coverage

TITLE INSURANCE REQUIREMENTS, ENDORSEMENTS
AND AFFIRMATIVE COVERAGES

A. Properties located in the United States

1. General . Borrower and/or its counsel is responsible for ordering or updating any title insurance work. Administrative Agent requires a lender's title insurance policy insuring "Deutsche Bank Trust Company Americas, as administrative agent on behalf of the lenders party to that certain Credit Agreement, dated as of March 9, 2007, as amended, and their successor and assigns." The approved title underwriters, type and amount of insurance and required endorsements are described below. The list of endorsements is subject to review by Administrative Agent's counsel, local counsel and additional specific coverages may be required after review of the related title commitment.

2. Title Insurer . The Title Company or Title Companies must be approved by Administrative Agent. First American Title Insurance Company and Stewart Title Insurance Company have been pre-approved by Administrative Agent as Title Company. First American Title Insurance Company will issue the Title Policy for each Borrowing Base Property located in the United States (as to 50% of the coverage) with co-insurance in the form of "Me-Too" from Stewart Title Insurance Company (and in jurisdictions where available, tie-in endorsements from each Title Company with respect to such coverage).

3. Title Agent . Unless Administrative Agent otherwise agrees, all title work shall be ordered and coordinated, and the closing of the Credit Agreement shall be conducted through First American Title Insurance Company contact Jim McIntosh Tel: 312-917-7220. The contact information for Stewart Title Insurance Company is Gelsomina Gambaradella-Terrasi Tel: 212- 758-0500, ext 215.

4. Primary Title Insurance Requirements .

(a) Amount of Coverage . See Schedule IX attached to the Third Amendment.

(b) Effective Date . The later of the date of recording of the Security Instrument or the date of funding of the execution of the Third Amendment. Borrower shall be required to provide a customary "gap" indemnity in order to enable the Title Company to provide "gap" coverage.

(c) Insured . "Deutsche Bank Trust Company Americas, as administrative agent on behalf of the lenders party to that certain Credit Agreement, dated as of March 9, 2007, as amended, and their successor and assigns.".

(d) Legal Description . Metes and bounds description to be provided which must conform to that shown on the Survey, the Security Instrument and any other Loan Documents that require a legal description of the Borrowing Base Properties. A lot and block description shall be acceptable in place of a metes and bounds description in exceptional cases.

(e) Policy Form . An ALTA Loan Policy in form and substance acceptable to Administrative Agent. Without limiting Administrative Agent's right to require specific coverages, endorsements or other title work, the Title Policy shall (i) be in the 2006 ALTA Loan Policy (6-17-2006) or, if not available, ALTA 1992 form (deleting arbitration and providing the ALTA 21 Creditor's Rights Endorsements) or, if not available, the form acceptable to Administrative Agent, (ii) to the extent available, include the "extended coverage" provisions described in paragraph 5 below, (iii) include all applicable endorsements described in paragraph 6 below, and (iv) include Schedule B exceptions in a form and to the extent acceptable to Administrative Agent's counsel.

5. Extended Coverage Requirements . The Title Policy shall:

(a) not contain any exception for filed or unfilled mechanic, materialmen or similar liens;

(b) limit any general exception for real estate taxes and other charges to real estate or other similar taxes or assessments that are not yet due and payable or delinquent and are not a current lien on the Borrowing Base Properties;

(c) limit any general exception for the rights of persons in possession to the rights of specified tenants, as tenants only with no right or option to purchase, set forth on the rent roll for the Borrowing Base Properties and attached to the Title Policy; and

(d) not contain any general exception as to matters that an accurate Survey of the Borrowing Base Properties would disclose, but may contain specific exceptions to matters disclosed on the Survey to be delivered on the date of execution of the Third Amendment, subject to review by Administrative Agent's counsel.

6. Required Endorsements . The following endorsements are required, to the extent available in the jurisdiction in which the Borrowing Base Properties are located:

- Restrictions, Encroachments, Minerals Endorsement ALTA Form 9 or equivalent.
- (If not available, the Title Policy must insure by way of affirmative coverage statements that there are no encroachments by any of the improvements onto easements, rights of way or other exceptions to streets or adjacent property, or insure against loss or damage resulting therefrom.)
- ALTA 21 Creditor's Rights Endorsements.
- Environmental Protection Lien Endorsement.
- (The Title Policy may make an exception only for specific state statutes that provide for potential subsequent liens that could take priority over the lien securing the Loans.)

- Direct Access to Public Road Endorsement;
- Usury Endorsement.
- Land Same As Survey/Legal Description Endorsement.
- Zoning Endorsement - ALTA 3.1 with coverage for number/type of parking spaces.
- "Me-Too" endorsement with respect to the Borrowing Base Properties located in the United States.

In lieu of an ALTA 3.1 zoning endorsement, Administrative Agent may accept an unambiguous, clean letter from the appropriate zoning authority which satisfies the following :

Zoning District . Confirms the applicable zoning district for the Borrowing Base Properties under the laws or ordinances of the applicable jurisdiction and that such zoning is the proper zoning for the improvements located on the Borrowing Base Properties.

Use Restrictions . Confirms that the current use of the Borrowing Base Properties are permitted under the zoning ordinance and that the Borrowing Base Properties are not a non-conforming use.

Dimensional Requirements . Confirms that the Borrowing Base Properties are in compliance with all dimensional requirements of the zoning code, including minimum lot area, maximum building height, maximum floor area ratio and setback or buffer requirements.

Parking Requirements . Confirms that the Borrowing Base Properties are in compliance with all parking and loading requirements, including the number of spaces and dimensional requirements for the parking spaces.

Rebuildability . If Borrowing Base Properties involve legal non-conforming use, confirms that, in the event of casualty, the Borrowing Base Properties may be rebuilt substantially in its current form (i.e., no loss of square footage, same building footprint) upon satisfaction of stated conditions and/or limitations.

- Subdivision Endorsement.
- Doing Business Endorsement.
- Deletion of Arbitration Endorsement.
- Separate Tax Lot Endorsement.
- Street Address Endorsement

- Contiguity Endorsement.
- Variable Rate Endorsement.
- Mortgage Recording Tax Endorsement.
- Any of the following endorsements customary in the state in which the Borrowing Base Properties are located or as required by the nature of the transaction:

Tie-In Endorsement for Multiple Policies (including the policies for the other Borrowing Base Properties)
Mortgage Assignment Endorsement
First Loss Endorsement
Blanket Un-located Easements Endorsement

B. Properties located in Mexico .

1. General . Borrower and/or its counsel is responsible for ordering or updating any title insurance work. Administrative Agent requires a lender's title insurance policy insuring "Deutsche Bank Trust Company Americas, as administrative agent on behalf of the lenders party to that certain Credit Agreement, dated as of March 9, 2007, as amended, and their successor and assigns." The approved title underwriters, type and amount of insurance and required endorsements are described below. The list of endorsements is subject to review by Administrative Agent's counsel, local counsel and additional specific coverages may be required after review of the related title commitment.

2. Title Insurer . The Title Company or Title Companies must be approved by Administrative Agent. Stewart Title Guaranty de Mexico, S.A. de CV has been pre-approved by Administrative Agent as Title Company. Stewart Title Guaranty de Mexico, S.A. de CV will issue the Title Policy; First American Title Insurance Company will reinsure each Title Policy (as to 50% of the coverage) and Stewart Title Insurance Company will reinsure each Title Policy (as to 50% of the coverage) (and in jurisdictions where available, tie-in endorsements from each Title Company with respect to such coverage).

3. Title Agent . Unless Administrative Agent otherwise agrees, all title work shall be ordered and coordinated, and the closing of the Credit Agreement shall be conducted through Stewart Title Guaranty de Mexico, S.A. de CV contact Mitch Creekmore Tel: 800 729-1900, ext. 4104 and Stewart Title Insurance Company contact Gelsomina Gambaradella-Terrasi Tel: 212-758-0500, ext 215. The contact information for First American Title Insurance Company is Jim McIntosh Tel: 312-917-7220.

4. Primary Title Insurance Requirements .

(a) Amount of Coverage . See Schedule IX attached to the Third Amendment.

(b) Effective Date . The later of the date of recording of the Security Instrument or the date of funding of the execution of the Third Amendment. Borrower shall be required to provide a customary "gap" indemnity in order to enable the Title Company to provide "gap" coverage.

(c) Insured . "Deutsche Bank Trust Company Americas, as administrative agent on behalf of the lenders party to that certain Credit Agreement, dated as of March 9, 2007, as amended, and their successor and assigns.".

(d) Legal Description . Metes and bounds description to be provided which must conform to that shown on the Survey, the Security Instrument and any other Loan Documents that require a legal description of the Borrowing Base Properties. A lot and block description shall be acceptable in place of a metes and bounds description in exceptional cases.

(e) Policy Form . An ALTA Loan Policy in form and substance acceptable to Administrative Agent. Without limiting Administrative Agent's right to require specific coverages, endorsements or other title work, the Title Policy shall (i) be in the 2006 ALTA Loan Policy (6-17-2006) or, if not available, ALTA 1992 form (deleting arbitration and providing the ALTA 21 Creditor's Rights Endorsements) or, if not available, the form acceptable to Administrative Agent, (ii) to the extent available, include the "extended coverage" provisions described in paragraph 5 below, (iii) include all applicable endorsements described in paragraph 6 below, and (iv) include Schedule B exceptions in a form and to the extent acceptable to Administrative Agent's counsel.

5. Extended Coverage Requirements . The Title Policy shall:

(a) not contain any exception for filed or unfilled mechanic, materialmen or similar liens;

(b) limit any general exception for real estate taxes and other charges to real estate or other similar taxes or assessments that are not yet due and payable or delinquent and are not a current lien on the Borrowing Base Properties;

(c) limit any general exception for the rights of persons in possession to the rights of specified tenants, as tenants only with no right or option to purchase, set forth on the rent roll for the Borrowing Base Properties and attached to the Title Policy; and

(d) not contain any general exception as to matters that an accurate Survey of the Borrowing Base Properties would disclose, but may contain specific exceptions to matters disclosed on the Survey to be delivered on the date of execution of the Third Amendment, subject to review by Administrative Agent's counsel.

6. Required Endorsements . The following endorsements are required, to the extent available in the jurisdiction in which the Borrowing Base Properties are located:

- Restrictions, Encroachments, Minerals Endorsement ALTA Form 9 or equivalent.
- (If not available, the Title Policy must insure by way of affirmative coverage statements that there are no encroachments by any of the improvements onto easements, rights of way or other exceptions to streets or adjacent property, or insure against loss or damage resulting therefrom.)

- Environmental Protection Lien Endorsement.
- (The Title Policy may make an exception only for specific state statutes that provide for potential subsequent liens that could take priority over the lien securing the Loans.)
- Direct Access to Public Road Endorsement;
- Usury Endorsement.
- Land Same As Survey/Legal Description Endorsement.
- Zoning Endorsement - ALTA 3.1 with coverage for number/type of parking spaces.

In lieu of an ALTA 3.1 zoning endorsement, Administrative Agent may accept an unambiguous, clean letter from the appropriate zoning authority which satisfies the following :

Zoning District . Confirms the applicable zoning district for the Borrowing Base Properties under the laws or ordinances of the applicable jurisdiction and that such zoning is the proper zoning for the improvements located on the Borrowing Base Properties.

Use Restrictions . Confirms that the current use of the Borrowing Base Properties are permitted under the zoning ordinance and that the Borrowing Base Properties are not a non-conforming use.

Dimensional Requirements . Confirms that the Borrowing Base Properties are in compliance with all dimensional requirements of the zoning code, including minimum lot area, maximum building height, maximum floor area ratio and setback or buffer requirements.

Parking Requirements . Confirms that the Borrowing Base Properties are in compliance with all parking and loading requirements, including the number of spaces and dimensional requirements for the parking spaces.

Rebuildability . If Borrowing Base Properties involve legal non-conforming use, confirms that, in the event of casualty, the Borrowing Base Properties may be rebuilt substantially in its current form (i.e., no loss of square footage, same building footprint) upon satisfaction of stated conditions and/or limitations.

- Subdivision Endorsement.
- Separate Tax Lot Endorsement.

- Contiguity Endorsement.
- Variable Rate Endorsement.
- Any of the following endorsements customary in the jurisdiction in which the Borrowing Base Properties are located or as required by the nature of the transaction:

Tie-In Endorsement for Multiple Policies (to the extent available)
Mortgage Assignment Endorsement
First Loss Endorsement

Schedule XI

Projects in Progress

Projects in Progress at Year End 2008	
Construction Projects:	**Description:**
Four Seasons D.C.	Addition of Bourbon Steak Restaurant, 11- guestroom expansion, renovation of 66 guestrooms and lobby renovation. Completed in January 2009.
Fairmont Scottsdale Princess	Renovation of 460 guestrooms, substantially completed at year end 2008.
Marriott Grosvenor Square	Partial Guestroom Renovation, to be completed in 2009.
Westin St. Francis	Guestroom renovation of Historic Tower, to be completed in 2009.
Fairmont Chicago	Suite renovations as part of overall room renovation completed earlier in 2008. Suites to be completed in 2009.
Intercontinental Chicago	Parking Garage and Roof Anchor work to be completed in 2009.

Schedule XII

Reserved

XII - 1

Schedule XIII

Reserved

XIII - 1

Schedule XIV

REAs

None.

Schedule XV

Rent Roll of Leases

[See Attached]

XV - 1

Strategic Hotel Capital
Commercial & Retail Leases / Rent Roll – Updated 12/31/08 Indicates updated for Q4-08

Name of Tenant	Start Date	End Date	Annual Base rent	Percentage Rate Other Comments	Type Of Business	Amt of Space (Sq Ft)	Security Deposit
Four Seasons Washington D.C.							
SNP, Inc.	04/01/01	month-to-month	$ 21,958	Additional Rent to compensate for increases in RE Tax	Ladies Clothing Store	700.00	NA
SNH Designs Corp	04/01/01	month-to-month	$ 23,048		Mens Clothing Store	722.00	NA
George's	03/01/06	08/31/15	$ 88,176		Hairdressing/Cutting Salon	2,261.00	NA
Four Seasons Mexico City							
Soltano 16	Jan.01.08	Dec.31.09	$ 6,144	1	Showcase		
Luz Maria Carrera (Tierra Latina)	Jun.01.08	May.30.09	$ 3,000	1	Showcase		
Tane	Apr.01.08	Apr.01.09	$ 12,000	1	Showcase		10,600
Operadora Aeroboutiques (Boutique)	June.01.08	May.30.09	$ 83,772	1	Outlet	1,217.40	
Operadora Aeroboutiques (Selecciones)	July.15.08	July.15.09	$113,355	1	Outlet	406.88	
Operadora Aeroboutiques (Showcase – 1)	July.15.08	July.15.09	$ 6,603	1	Showcase		63,125
Operadora Aeroboutiques (Showcase – 4)	Mar.01.08	Feb.28.09	$ 12,583	1	Showcase		
La Sartoria (Store – 1)	Aug.01.08	Aug.01.09	$ 52,828	1	Outlet	326.58	
La Sartoria (Showcase – 4)	Aug.01.08	Aug.01.09	$ 33,804	1	Showcase		
La Sartoria (Showcase – 1)	Apr.01.08	Apr.01.09	$ 12,583	1	Showcase		1,160.87
La Sartoria (Showcase – 1)	Jan.01.08	Dec.31.09	$ 6,300	1	Showcase		
(*) Operadora Unefon	Nov.01.08	Nov.01.09	$ 14,353	100% (mexpesos = 200,055)	Antenna		12,000
(*) Pagaso	Apr.15.08	Apr.15.09	$ 15,797	100% (mexpesos = 220,168)	Antenna		
(*) Galeria Kin (Maria Liobert)	Jan.01.09	Dec.31.09	$ 4,477	100% (mexpesos = 62,400.00)	Pictures (Garden & Rest Floors 3rd-8th)		11,960
(*) Nextel	July.01.08	July.01.09	$ 16,385	100% (mxp=225,364)	Antenna		
(*) contracts in MXPesos to UDS Exchange Rate $13.9382 as of January 20, 2009							
Four Seasons Punta							

Mita							
Juan Leonardo Clemente	11/01/08	10/31/09	$ 6,260	10% based on sales (since November)/Monthly payments/Beach Space	Beach Space	29.52	NA
Teoilio Chavez Toribio	06/01/08	05/31/09	$ 8,659	20% based on sales/Monthly payments/Beach Space	Beach Space	29.52	NA
Alicia Bueno Ziauntz	06/18/08	06/17/09	$ 2,721	Fixed Rent/Monthly payments/Beach Space	Beach Space	29.52	NA
(*) contracts in MXPesos to UDS Exchange Rate $11.2							
Marriott Lincolnshire							
Cluster Revenue Management Shared	01/01/09	12/31/13	$ 3,497	Flat amount of $269 per period	Shared Service	360	NA
Ritz Carlton Laguna Niguel							
Pamela Simpson Salon	04/16/08	04/16/09	$ 60,000	$5,000 per month plus 15% on gross receipts over $50,000 per month.	Salon	852	7,500

Schedule XVI

Borrowing Base Property Survey

Washington D.C.:

ALTA/ACSM Land Title Survey
Lots 30 & 31 Square 1195
Recorded in the Surveyor's Office of the District of Columbia in Book 165 Page 142 and Assessment Lots 815, Instrument 21906 Northwest, Washington D.C.
Prepared by: Fowler Associates, Inc., 255 North Washington Street, Suite 300, Rockville, MD 20850 (301) 762-2377
Dated: January 17, 2006

Mexico City:

ALTA/ACSM Land Title Survey for Four Seasons, Mexico City
Prepared by: Bock & Clark's National Surveyors Network, 537 N. Cleveland - Massillon Road, Akron, Ohio 44333, (800) SURVEYS
Date of Survey: August 18, 2003
Date of Last Revision: September 25, 2003
Date of this Revision March 22, 2004

Laguna Niguel:

ALTA/ACSM Land Title Survey for SHC Laguna, LLC a Delaware Limited Liability Company of The Ritz-Carlton Laguna Niguel
Prepared by: Hayes Surveying, 12 Sembrado, Rancho Santa Margarita, CA 92688, (949) 459-8989
Dated: May 12, 2006

Punta Mita:

ALTA/ACSM Land Title Survey prepared for: Unidades H3-A, H3-B, RC1-A, RCl-B, RC1-G of Punta Mita, Nayarit, Mexico
Prepared by: Bock & Clark's National Surveyors Network, 537 N. Cleveland - Massillon Road, Akron, Ohio, (800) SURVEYS
Project No. 20040312-1
Dated: April 24, 2004

Lincolnshire:

ALTA/A.C.S.M. Land Title Survey
Prepared by: Landmark Engineering Corporation, 7808 West 103rd Street, Palos Hills, Illinois 60645-1529, (708) 599-3737
Survey No. 04-03-250-R
Dated: June 10, 2004

Schedule XVII

Lease and REA Defaults

None.

Schedule XVIII

Insurance

1.1 Insurance Requirements Property Insurance . Insurance against loss customarily included under so called "All Risk" policies including flood, earthquake (in an amount sufficient to fully insure the expected probable maximum loss ("PML") for a 500-year event, with a PML study delivered by Borrower as of the Third Amendment Closing Date, addressing all of the properties located in an area susceptible to significant earthquake damage (which the parties agree are the Ritz Carlton, Laguna Niguel, the Four Seasons Punta Mita and Four Seasons Mexico City) should the insurance program be provided under a blanket policy), windstorm including named storm, vandalism, and malicious mischief, and such other insurable hazards as, under good insurance practices, from time to time are insured against for other property and buildings similar to the Improvements and Building Equipment in nature, use, location, height, and type of construction. Such insurance policy shall also insure the additional expense of demolition and if any of the Improvements or the use of the Borrowing Base Property shall at any time constitute legal non-conforming structures or uses, provide coverage for contingent liability from "Operation of Building Laws," "Demolition Costs" and "Increased Cost of Construction Endorsements" and containing an "Ordinance or Law Coverage" or "Enforcement" endorsement providing no less than $50,000,000 of coverage. The amount of such "All Risk" insurance shall be not less than one hundred percent (100%) of the replacement cost value of the Improvements and the Building Equipment. Each such insurance policy shall contain an agreed amount (coinsurance waiver) and replacement cost value endorsement and shall cover, without limitation, any and all tenant improvements and betterments which Borrower or a Borrowing Base Entity is required to insure in accordance with any Lease. If the insurance required under this paragraph is not obtained by blanket insurance policies, the insurance policy shall be endorsed to also provide guaranteed building replacement cost. Administrative Agent shall be named "Loss Payee" on a "Standard Mortgagee Endorsement" and be provided not less than thirty (30) days advance notice of change in coverage, cancellation or non-renewal.

1.1.2 Liability Insurance . "General Public Liability" insurance, including, without limitation, "Commercial General Liability" insurance; "Owned" (if any), "Hired" and "Non Owned Auto Liability"; and "Umbrella Liability" coverage for "Personal Injury", "Bodily Injury", "Death, Accident and Property Damage", providing in combination no less than $1,000,000 per occurrence and $2,000,000 in the annual aggregate, and, in addition thereto, not less than $50,000,000 excess and/or umbrella liability insurance shall be maintained for any and all claims. The policies described in this paragraph shall cover, without limitation: elevators, escalators, independent contractors (to the extent such independent contractors are typically covered by a standard ISO Commercial General Liability policy), "Contractual Liability" (covering, to the maximum extent permitted by law, Borrower's or a Borrowing Base Entity's obligation to indemnify Administrative Agent as required under the Agreement and "Products and Completed Operations Liability" coverage). All public liability insurance shall name Administrative Agent as "Additional Insured" either on a specific endorsement or under a blanket endorsement satisfactory to Administrative Agent.

1.1.3 Workers' Compensation Insurance . Workers compensation and disability insurance as required by law.

1.1.4 Commercial Rents Insurance . "Commercial rents" insurance in an amount equal to eighteen (18) months actual rental loss and with a limit of liability sufficient to avoid any co-insurance penalty and to provide proceeds which will cover the actual loss of profits and rents sustained during the period of at least eighteen (18) months following the date of casualty. Such policies of insurance shall be subject only to exclusions that are acceptable to Administrative Agent; provided, however, that such exclusions are reasonably consistent with those required for facilities similar to the Facility provided herein. Such insurance shall be deemed to include "loss of rental value" insurance where applicable. The term "rental value" means the sum of (A) the total then ascertainable Rents payable under the Leases and (B) the total ascertainable amount of all other amounts to be received by Borrower or a Borrowing Base Entity from third parties which are the legal obligation of Tenants, reduced to the extent such amounts would not be received because of operating expenses not incurred during a period of non-occupancy of that portion of such Borrowing Base Property then not being occupied.

1.1.5 Builder's All-Risk Insurance . During any period of repair or restoration, builder's "All-Risk" insurance in an amount equal to not less than the full insurable value of the Borrowing Base Property against such risks (including so called "All Risk" perils coverage and collapse of the Improvements to agreed limits as Administrative Agent may reasonably request, in form and substance reasonably acceptable to Administrative Agent).

1.1.6 Boiler and Machinery Insurance . Comprehensive boiler and machinery insurance (without exclusion for explosion) covering all mechanical and electrical equipment against physical damage, rent loss and improvements loss and covering, without limitation, all tenant improvements and betterments that Borrower or a Borrowing Base Entity is required to insure pursuant to any Lease on a replacement cost basis. The minimum amount of limits to be provided shall be $50,000,000 per accident.

1.1.7 Flood Insurance . If any portion of the Improvements on any Borrowing Base Property is located within an area designated as "flood prone" or a "special flood hazard area" (as defined under the regulations adopted under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973), flood insurance shall be provided, in an amount not less than the maximum limit of coverage available under the Federal Flood Insurance plan with respect to the Property. Unless a higher amount is required by FEMA or other law, the maximum deductible clause under such an NFIA policy shall be no greater than $50,000 per building for a Property located in a "special flood hazard area". Nonetheless, Administrative Agent reserves the right to require flood insurance for each Borrowing Base Property in an amount and with a deductible clause reasonably satisfactory to Administrative Agent. Borrower shall deliver to Administrative Agent a FEMA Elevation Certification prepared by a surveyor if any portion of the Improvements on any Borrowing Base Property is located in flood zones A, AR, or V. \

1.1.8 Earthquake Insurance

Borrower shall maintain earthquake insurance in any area susceptible to significant earthquake damage in an amount sufficient to fully insure the expected probable maximum loss for a 500-year event, with a PML study delivered by Borrower as of the Third Amendment Closing Date, addressing all of the properties located in an area susceptible to significant

earthquake damage should the insurance program be provided under a blanket policy. Administrative Agent agrees that earthquake insurance for California and Mexican properties in the amount of One Hundred Million Dollars ($100,000,000) is sufficient, given the current properties covered by Borrower's blanket insurance policy.

1.1.9 Terrorism Insurance .

(a) So long as the Terrorism Risk Insurance Program Reauthorization Act of 2007 ("TRIPRA") or a subsequent statute, extension, reauthorization or substantially similar statute is in effect, Borrower shall be required, and shall require the Borrowing Base Entities, to carry insurance covering foreign and domestic acts of certified sabotage and terrorism and acts by terrorist groups or individuals (collectively, "Terrorism Insurance"), with such coverage provided by the All Risk carriers or through a stand-alone policy. Coverage must be included in the General Public Liability policies. For each Borrowing Base Property, coverage must be in an amount (the "Terrorism Insurance Amount") equal to the sum of the following:

(i) the lesser of (A) the amount set forth on the most recent Acceptable Appraisal and (B) the full replacement cost of such Borrowing Base Property; plus

(ii) rental loss or business interruption insurance in an amount equal to estimated Rents from the operations of the Borrowing Base Property for the succeeding eighteen (18) month period.

(b) If TRIPRA or a substantially similar statute is not in effect, then provided that Terrorism Insurance is commercially available, Borrower shall be required to carry Terrorism Insurance throughout the term of the Loan in an amount not less than the amount of coverage that can be purchased for an amount equal to the product of (x) the cost of stand alone terrorism insurance allocated for the Borrowing Base Properties as of the Third Amendment Closing Date and (y) two. In no event shall Borrower be required to purchase coverage exceeding the Terrorism Insurance Amount. Borrower agrees that if Terrorism Insurance is required pursuant to this Schedule XVIII and any property insurance policy covering the applicable Borrowing Base Property provides for any exclusions of coverage for acts of terrorism, then a separate terrorism insurance policy in the coverage amount required under this Schedule XVIII and in form and substance reasonably acceptable to Administrative Agent will be obtained by the Borrower or a Borrowing Base Entity for the applicable Borrowing Base Property. Administrative Agent agrees that Terrorism Insurance coverage may be provided under a blanket policy that satisfies the applicable provisions of the Agreement, including this Schedule XVIII .

1.1.10 Other Insurance . At Administrative Agent's reasonable request, such other insurance with respect to the Borrowing Base Property against loss or damage of the kinds from time to time customarily insured against and in such amounts as are generally required by institutional lenders on loans of similar amounts and secured by properties comparable to the applicable Borrowing Base Property.

1.1.11 Ratings of Insurers . Borrower shall, and shall cause the Borrowing Base Entities to, maintain the insurance coverage described in Section 1.1.1 through Section 1.1.8 of

this Schedule XVIII above, in all cases, with one or more domestic primary insurers reasonably acceptable to Administrative Agent, having (x) claims-paying-ability and financial strength ratings by S&P of not less than "A-. All insurers providing insurance required by this Agreement shall be authorized to issue insurance in the applicable jurisdiction, provided, however, if the insurance provided pursuant to Sections 1.1.1 and 1.1.4 of this Schedule XVIII is procured by a syndication of more then five (5) insurers then the foregoing requirements shall not be violated if such insurance is provided (a) under a blanket policy and at least sixty percent (60%) of the overall limits of insurance in place on the date hereof and thereafter is with carriers having a claims paying ability rating of "A-" or better, with the primary layer provided by a carrier rated "A-" or better, and the other carriers having a claims paying ability rating of "BBB" or better by S&P and its equivalent by one other Rating Agency; Administrative Agent may allow up to 10% of the overall limits of insurance, except for the primary layer, to be unrated or rated below "BBB" provided it is rated at least "A-" or better by AM Best Company with a financial size category of not less than "VIII".

1.1.12 Form of Insurance Policies; Endorsements . All insurance policies shall be in such form and with such endorsements as are reasonably satisfactory to Administrative Agent (and Administrative Agent shall have the right to approve amounts, form, risk coverage, deductibles, loss payees and insureds) in its reasonable discretion. A certificate of insurance with respect to all of the above-mentioned insurance policies has been delivered to Administrative Agent and originals or certified copies of all such policies shall be delivered to Administrative Agent when the same are available (but no later than thirty (30) days after the Third Amendment Closing Date) and shall be held by Administrative Agent. All policies shall name Administrative Agent as an additional insured or mortgagee, shall provide that all Proceeds (except with respect to Proceeds of general liability and workers' compensation insurance) be payable to Administrative Agent as and to the extent set forth in Article XII , and shall contain: (i) a standard "non-contributory mortgagee" endorsement or its equivalent relating, inter alia , to recovery by Administrative Agent notwithstanding the negligent or willful acts or omissions of Borrower or any Borrowing Base Entity; (ii) a waiver of subrogation endorsement in favor of Administrative Agent; (iii) an endorsement providing that no policy shall be impaired or invalidated by virtue of any act, failure to act, negligence of, or violation of declarations, warranties or conditions contained in such policy by Borrower or any Borrowing Base Entity, Administrative Agent or any other named insured, additional insured or loss payee, except for the willful misconduct of Administrative Agent knowingly in violation of the conditions of such policy; (iv) an endorsement providing for a deductible per loss of an amount not more than that which is customarily maintained by prudent owners of properties with a standard of operation and maintenance comparable to and in the general vicinity of the applicable Borrowing Base Property, but in no event in excess of an amount reasonably acceptable to Administrative Agent; and (v) a provision that such policies shall not be canceled, terminated or expire without at least thirty (30) days' prior written notice to Administrative Agent, in each instance. Each insurance policy shall contain a provision whereby the insurer: (i) agrees that such policy shall not be canceled or terminated, the coverage, deductible, and limits of such policy shall not be modified, other provisions of such policy shall not be modified if such policy, after giving effect to such modification, would not satisfy the requirements of the Agreement, and such policy shall not be canceled or fail to be renewed, without in each case, at least thirty (30) days prior written notice to Administrative Agent, (ii) waives any right to claim any premiums and commissions against Administrative Agent, provided that the policy need not waive the requirement that the premium

be paid in order for a claim to be paid to the insured, and (iii) provides that Administrative Agent at its option, shall be permitted to make payments to effect the continuation of such policy upon notice of cancellation due to non-payment of premiums. In the event any insurance policy (except for general public and other liability and workers compensation insurance) shall contain breach of warranty provisions, such policy shall provide that with respect to the interest of Administrative Agent, such insurance policy shall not be invalidated by and shall insure Administrative Agent regardless of (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured, (B) the occupancy or use of the Borrowing Base Property for purposes more hazardous than permitted by the terms thereof, or (C) any foreclosure or other action or proceeding taken by Administrative Agent pursuant to any provision of the Agreement.

1.1.13 Certificates . Borrower shall, and shall cause the Borrowing Base Entities to, deliver to Administrative Agent annually, concurrently with the renewal of the insurance policies required hereunder, a certificate from Borrower's insurance agent setting forth a schedule describing all premiums required to be paid by Borrower or a Borrowing Base Entity to maintain the policies of insurance required under this Schedule XVIII , and stating that Borrower or a Borrowing Base Entity has arranged to pay such premiums timely. Certificates of insurance with respect to all replacement policies shall be delivered to Administrative Agent prior to the expiration date of any of the insurance policies required to be maintained hereunder. Upon the request of Administrative Agent, Borrower shall deliver to Administrative Agent originals (or certified copies) of such replacement insurance policies as soon as practicable after Borrower's receipt of such request. If Borrower, or the Borrowing Base Entities, fails to maintain and deliver to Administrative Agent the certificates of insurance required by this Schedule XVIII , upon three (3) Business Days' prior written notice to Borrower, Administrative Agent may procure such insurance, and Borrower shall reimburse Administrative Agent all costs thereof, including interest thereon at the Alternate Base Rate then in effect for Base Rate Loans plus the Applicable Margin for Base Rate Loans plus two percent (2%). Administrative Agent shall not, by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and Borrower hereby expressly assumes full responsibility therefor and all liability, if any, with respect.

1.1.14 Separate Insurance . Borrower shall, and shall cause the Borrowing Base Entities not to, take out separate insurance contributing in the event of loss with that required to be maintained pursuant to this Schedule XVIII unless such insurance complies with this Schedule XVIII .

1.1.15 Blanket Policies . The insurance coverage required under this Schedule XVIII may be effected under a blanket policy or policies covering the Borrowing Base Properties and other properties and assets not constituting a part of the Borrowing Base Properties, which amounts shall not be less than the amounts required pursuant to this Schedule XVIII and which shall in any case comply in all other respects with the requirements of this Schedule XVIII . Upon Administrative Agent' request, Borrower shall deliver to Administrative Agent an Officer's Certificate setting forth (i) the number of properties covered by such policy, (ii) the location by city (if available, otherwise, county) and state of the properties, (iii) the average square footage

of the properties (or the aggregate square footage), (iv) a brief description of the typical construction type included in the blanket policy and (v) such other information as Administrative Agent may reasonably request.

Schedule XIX

Accounts

1. DTRS Washington, L.L.C. (Four Seasons Washington D.C.) – The PrivateBank, Account #2197439
2. DTRS Lincolnshire, L.L.C. (Marriott Lincolnshire) – The PrivateBank, Account #2197447
3. DTRS Laguna, L.L.C. (Ritz-Carlton Laguna Niguel) – The PrivateBank, Account #2197421
4. Punta Mita TRS, S. de R.L. de C.V. (Four Seasons Mexico City and Four Seasons Punta Mita) – those accounts identified in Schedule D to the Mexico Pledge Agreement

Exhibit B

Exhibits K, L, M and N

Exhibit B

Exhibit K

Form of Amended and Restated Revolving Note

AMENDED AND RESTATED REVOLVING NOTE

$[_____] [_____], 2009

FOR VALUE RECEIVED, the undersigned, STRATEGIC HOTEL FUNDING, L.L.C., a Delaware limited liability company (the "Borrower"), promises to pay to the order of [_____] (the "Lender") on the Maturity Date (as defined in the Credit Agreement referred to below) the principal sum of [_____] ($[_____] or, if less, the aggregate unpaid principal amount of all Revolving Loans (as defined in the Credit Agreement) made by the Lender pursuant to that certain Credit Agreement, dated as of March 9, 2007, as amended by that certain (i) First Amendment to Credit Agreement, dated as of March 29, 2007, (ii) Second Amendment to Credit Agreement, dated as of April 18, 2007 and (iii) Third Amendment to Credit Agreement, dated as of [_____], 2009, among the Borrower, the various financial institutions as are or may become parties thereto (including the Lender), and Deutsche Bank Trust Company Americas, as Administrative Agent (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"). Unless otherwise defined herein or the context otherwise requires, capitalized terms used herein shall have the meanings provided in the Credit Agreement.

The Borrower also promises to pay interest on the unpaid principal amount hereof from time to time outstanding from the date hereof until maturity (whether by acceleration or otherwise) and, after maturity, until paid at the rates per annum and on the dates specified in the Credit Agreement.

Payments of both principal and interest are to be made in lawful money of the United States of America in same day or immediately available funds to the account designated by the Administrative Agent pursuant to the Credit Agreement.

This Note is one of the Revolving Notes referred to in, and evidences Indebtedness incurred under, the Credit Agreement, to which reference is made for a description of the security for this Note and for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments and repayments of principal of the Indebtedness evidenced by this Note and on which such Indebtedness may be declared to be immediately due and payable.

All parties hereto, whether as makers, endorsers, or otherwise, severally waive presentment for payment, demand, protest and notice of dishonor.

THIS NOTE HAS BEEN DELIVERED IN NEW YORK, NEW YORK AND SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

STRATEGIC HOTEL FUNDING, L.L.C.,

a Delaware limited liability company

By: _____

Name:
Title:

REVOLVING LOANS AND PRINCIPAL PAYMENTS

Date	Amount of Revolving Loan Made	Interest Period (If Applicable)	Amount of Principal Repaid	Unpaid Principal Balance	Total	Notation Made By
		Base Rate				
		LIBO Rate				
		Base Rate				
		LIBO Rate				
		Base Rate				
		LIBO Rate				

Exhibit L

Form of Non-Disturbance Agreement

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made as of this____ day of_____, 200___ , between DEUTSCHE BANK TRUST COMPANY AMERICAS, having an address at 60 Wall Street, New York, New York 10005, (" Administrative Agent") not in its individual capacity but solely as administrative agent for the lenders party to the Credit Agreement (as hereinafter defined), and_____, a_____, having an address at_____(hereinafter called "Tenant").

RECITALS:

WHEREAS, pursuant to that certain Credit Agreement dated as of March 9, 2007, as amended by that certain (i) First Amendment to Credit Agreement, dated as of March 29, 2007, (ii) Second Amendment to Credit Agreement, dated as of April 18, 2007 and (iii) Third Amendment to Credit Agreement, dated as of [_____], 2009, by and among Strategic Hotel Funding, L.L.C. ("Borrower"), the various the financial institutions as are or may become parties thereto (the "Lenders") and Administrative Agent (collectively, as the same may be modified, amended, restated or supplemented from time to time, the "Credit Agreement"), the Lenders agreed to provide a $400,000,000 resolving credit facility to Borrower;

WHEREAS, pursuant to that certain Subsidiary Guaranty, dated as of March 9, 2007 (as the same may be modified, amended, restated, reaffirmed or supplemented from time to time, the ("Subsidiary Guaranty") made by certain subsidiaries of Borrower including Landlord (as hereinafter defined), Landlord, amongst others guaranteed all of the obligations of Borrower under the Facility;

WHEREAS, the Subsidiary Guaranty is secured by, amongst other things, that certain Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, Hotel Revenue and Security Deposits, dated as of February [___], 2009 (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the "Security Instrument"), from Landlord to Administrative Agent, encumbering the Property (as hereinafter defined);

WHEREAS, by a lease (the "Original Lease") dated_____, 200___ between_____(hereinafter called "Landlord"), as landlord, and Tenant, as tenant, as amended by lease amendment[s] dated_____, 200___ , [_____, 200___ and_____, 200___] (the Original Lease, as so amended, is hereinafter the "Lease"), a memorandum of which Lease was dated_____ and was recorded in_____in Reel_____ , Page___ , [add recording data for memoranda of amendments, if applicable], Landlord leased to Tenant certain premises located in_____(the "Premises") on the property described in Schedule "A" annexed hereto and made a part hereof (the "Property"); and

WHEREAS, Administrative Agent and Tenant desire to confirm their understanding and agreement with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Administrative Agent and Tenant hereby agree and covenant as follows:

1. The Lease, and all of the terms, covenants, provisions and conditions thereof (including, without limitation, any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Property, or any portion thereof) is, shall be and shall at all times remain and continue to be subject and subordinate in all respects to the lien, terms, covenants, provisions and conditions of the Security Instrument and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Tenant shall execute and deliver any additional instruments which Administrative Agent may reasonably require to effect such subordination.

2. So long as (i) Tenant is not in default (beyond any period given in the Lease to Tenant to cure such default) in the payment of rent, percentage rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this Agreement and (iii) the Lease is in full force and effect: (a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Administrative Agent, and Tenant's occupancy of the Premises shall not be disturbed by Administrative Agent for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Administrative Agent will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Administrative Agent under the Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease (except to the extent required so that Tenant's right to receive or set-off any monies or obligations owed or to be performed by any of Administrative Agent's predecessors-in-interest shall not be enforceable thereafter against Administrative Agent or any of Administrative Agent's successors-in-interest). Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Administrative Agent not to name or join Tenant as a party in a foreclosure proceeding with respect to the Security Instrument, Administrative Agent may so name or join Tenant without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

3. (A) After notice is given by Administrative Agent that the Security Instrument is in default and that the rentals under the Lease should be paid to Administrative Agent, Tenant will attorn to Administrative Agent and pay to Administrative Agent, or pay in accordance with the directions of Administrative Agent, all rentals and other monies due and to become due to Landlord under the Lease or otherwise in respect of the Premises. Such payments shall be made regardless of any right of set-off, counterclaim or other defense which Tenant may have against Landlord, whether as the tenant under the Lease or otherwise.

(B) In addition, if Administrative Agent (or its nominee or designee) shall succeed to the rights of Landlord under the Lease through possession or foreclosure action, delivery of a deed or otherwise, or another person purchases the Property or the portion thereof containing the Premises upon or following foreclosure of the Security Instrument or in connection with any bankruptcy case commenced by or against Landlord, then at the request of Administrative Agent (or its nominee or designee) or such purchaser (Administrative Agent, its nominees and designees, and such purchaser, and their respective successors and assigns, each being a " Successor-Landlord"), Tenant shall attorn to and recognize Successor-Landlord as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument that Successor-Landlord may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor-Landlord and Tenant upon all terms, conditions and covenants as are set forth in the Lease. If the Lease shall have terminated by operation of law or otherwise as a result of or in connection with a bankruptcy case commenced by or against Landlord or a foreclosure action or proceeding or delivery of a deed in lieu, upon request of Successor-Landlord, Tenant shall promptly execute and deliver a direct lease with Successor-Landlord which direct lease shall be on substantially the same terms and conditions as the Lease (subject, however, to the provisions of clauses (i)-(v) of this paragraph 3(B)) and shall be effective as of the day the Lease shall have terminated as aforesaid. Notwithstanding the continuation of the Lease, the attornment of Tenant thereunder or the execution of a direct lease between Successor-Landlord and Tenant as aforesaid, Successor-Landlord shall not:

(i) be liable for any previous act or omission of Landlord under the Lease;

(ii) be subject to any off-set, defense or counterclaim which shall have theretofore accrued to Tenant against Landlord;

(iii) be bound by any modification of the Lease or by any previous prepayment of rent or additional rent made more than one (1) month prior to the date same was due which Tenant might have paid to Landlord, unless such modification or prepayment shall have been expressly approved in writing by Administrative Agent;

(iv) be liable for any security deposited under the Lease unless such security has been physically delivered to Administrative Agent or Successor-Landlord; and

(v) be liable or obligated to comply with or fulfill any of the obligations of the Landlord under the Lease or any agreement relating thereto with respect to the construction of, or payment for, improvements on or above the Premises (or any portion thereof), leasehold improvements, tenant work letters and/or similar items.

4. Tenant agrees that without the prior written consent of Administrative Agent, if such consent is required by the Credit Agreement, it shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, (b) tender a surrender of the Lease, (c) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (d) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such required consent shall be void as against the holder of the Security Instrument.

5. (A) Tenant shall promptly notify Administrative Agent of any default by Landlord under the Lease and of any act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction.

(B) In the event of a default by Landlord under the Lease which would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or to claim a partial or total eviction, or in the event of any other act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease, Tenant shall not exercise such right (i) until Tenant has given written notice of such default, act or omission to Administrative Agent and (ii) unless Administrative Agent has failed, within sixty (60) days after Administrative Agent receives such notice, to cure or remedy the default, act or omission or, if such default, act or omission shall be one which is not reasonably capable of being remedied by Administrative Agent within such sixty (60) day period, until a reasonable period for remedying such default, act or omission shall have elapsed following the giving of such notice and following the time when Administrative Agent shall have become entitled under the Security Instrument to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under the Lease or otherwise, after similar notice, to effect such remedy), provided that Administrative Agent shall with due diligence give Tenant written notice of its intention to and shall commence and continue to, remedy such default, act or omission. If Administrative Agent cannot reasonably remedy a default, act or omission of Landlord until after Administrative Agent obtains possession of the Premises, Tenant may not terminate or cancel the Lease or claim a partial or total eviction by reason of such default, act or omission until the expiration of a reasonable period necessary for the remedy after Administrative Agent secures possession of the Premises. To the extent Administrative Agent incurs any expenses or other costs in curing or remedying such default, act or omission, including, without limitation, attorneys' fees and disbursements, Administrative Agent shall be subrogated to Tenant's rights against Landlord.

(C) Notwithstanding the foregoing, Administrative Agent shall have no obligation hereunder to remedy such default, act or omission.

6. To the extent that the Lease shall entitle Tenant to notice of the existence of any mortgage and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Administrative Agent.

7. Upon and after the occurrence of (i) a monetary Event of Default (as defined in the Credit Agreement) or an Event of Default pursuant to Sections 8.1.9 or 8.1.10 of the Credit Agreement or (ii) any other Event of Default and Acceleration (as defined in the Credit Agreement), Administrative Agent shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges and remedies of Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Administrative Agent were named therein as Landlord.

8. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor-Landlord shall acquire title to the Property or the portion thereof containing the Premises, Successor-Landlord shall have no obligation, nor incur any liability, beyond Successor-Landlord's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor-Landlord in the Property for the payment and discharge of any obligations imposed upon Successor-Landlord hereunder or under the Lease, and Successor-Landlord is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgment which may be obtained or secured by Tenant against Successor-Landlord, Tenant shall look solely to the estate or interest owned by Successor-Landlord in the Property, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Successor-Landlord.

9. Notwithstanding anything to the contrary in the Lease, Tenant agrees for the benefit of Landlord and Administrative Agent that, except as permitted by, and fully in accordance with, applicable law, Tenant shall not generate, store, handle, discharge or maintain in, on or about any portion of the Property, any asbestos, polychlorinated biphenyls, or any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such (including, but not limited to, pesticides and petroleum products if they are defined, determined or identified as such) in any federal, state or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of any thereof, including any judicial or administrative interpretation of any thereof, including any judicial or administrative orders or judgments.

10. If the Lease provides that Tenant is entitled to expansion space, Successor-Landlord shall have no obligation nor any liability for failure to provide such expansion space if a prior landlord (including, without limitation, Landlord), by reason of a lease or leases entered into by such prior landlord with other tenants of the Property, has precluded the availability of such expansion space.

11. Except as specifically provided in this Agreement, Administrative Agent shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Administrative Agent may be a party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.

12. (A) Tenant acknowledges and agrees that this Agreement satisfies and complies in all respects with the provisions of Article___ of the Lease and that this Agreement supersedes (but only to the extent inconsistent with) the provisions of such Article and any other provision of the Lease relating to the priority or subordination of the Lease and the interests or estates created thereby to the Security Instrument.

(B) Tenant agrees to enter into a subordination, non-disturbance and attornment agreement with any Administrative Agent which shall succeed Administrative Agent as Administrative Agent with respect to the Property, or any portion thereof, provided such agreement is substantially and in all material respects similar to this Agreement. Tenant does herewith irrevocably appoint and constitute Administrative Agent as its true and lawful attorney-in-fact in its name, place and stead to execute such subordination, non-disturbance and attornment agreement, without any obligation on the part of Administrative Agent to do so. This power, being coupled with an interest, shall be irrevocable as long as the Indebtedness secured by the Security Instrument remains unpaid. Administrative Agent agrees not to exercise its rights under the preceding two sentences if Tenant promptly enters into the subordination, non-disturbance and attornment agreement as required pursuant to the first sentence of this subparagraph (B).

13. (A) Any notice required or permitted to be given by Tenant to Landlord shall be simultaneously given also to Administrative Agent, and any right to Tenant dependent upon notice shall take effect only after notice is so given. Performance by Administrative Agent shall satisfy any conditions of the Lease requiring performance by Landlord, and Administrative Agent shall have a reasonable time to complete such performance as provided in Paragraph 5 hereof.

(B) All notices or other communications required or permitted to be given to Tenant or to Administrative Agent pursuant to the provisions of this Agreement shall be in writing and shall be deemed given only if mailed by United States registered mail, postage prepaid, or if sent by nationally recognized overnight delivery service (such as Federal Express or United States Postal Service Express Mail), addressed as follows: to Tenant, at the address first set forth above, Attention: _____; to Administrative Agent, at the address first set forth above, Attention: George Reynolds and General Counsel, with a copy to Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036, Attention: Harvey R. Uris, Esq.; or to such other address or number as such party may hereafter designate by notice delivered in accordance herewith. All such notices shall be deemed given three (3) business days after delivery to the United States Post office registry clerk if given by registered mail, or on the next business day after delivery to an overnight delivery courier.

14. This Agreement may be modified only by an agreement in writing signed by the parties hereto, or their respective successors-in-interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The term “Administrative Agent” shall mean the then holder of the Security Instrument. The term “Landlord” shall mean the then holder of the landlord’s interest in the Lease. The term “person” shall mean an individual, joint venture, corporation, partnership, trust, limited liability company, unincorporated association or other entity. All references herein to the Lease shall mean the Lease as modified by this Agreement and to any amendments or modifications to the Lease which are consented to in writing by Administrative Agent. Any inconsistency between the Lease and the provisions of this Agreement shall be resolved, to the extent of such inconsistency, in favor of this Agreement.

15. Tenant hereby represents to Administrative Agent as follows:

(a) The Lease is in full force and effect and has not been further amended.

(b) There has been no assignment of the Lease or subletting of any portion of the premises demised under the Lease.

(c) There are no oral or written agreements or understandings between Landlord and Tenant relating to the premises demised under the Lease or the Lease transaction except as set forth in the Lease.

(d) The execution of the Lease was duly authorized and the Lease is in full force and effect and to the best of Tenant's knowledge there exists no default (beyond any applicable grace period) on the part of either Tenant or Landlord under the Lease.

(e) There has not been filed by or against nor to the best of the knowledge and belief of Tenant is there threatened against Tenant, any petition under the bankruptcy laws of the United States.

(f) To the best of Tenant's knowledge, there is no present assignment, hypothecation or pledge of the Lease or rents accruing under the Lease by Landlord, other than pursuant to the Security Instrument.

16. Whenever, from time to time, reasonably requested by Administrative Agent (but not more than three (3) times during any calendar year), Tenant shall execute and deliver to or at the direction of Administrative Agent, and without charge to Administrative Agent, one or more written certifications, in a form acceptable to Tenant, of all of the matters set forth in Paragraph 15 above, and any other information the Administrative Agent may reasonably require to confirm the current status of the Lease.

17. BOTH TENANT AND ADMINISTRATIVE AGENT HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

18. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

DEUTSCHE BANK TRUST COMPANY AMERICAS,

By: _____
Name:
Title:

By: _____
Name:
Title:

[TENANT]

By: _____
Name:
Title:

AGREED AND CONSENTED TO:

LANDLORD:

[_____]

By: _____
Name:
Title:

STATE OF NEW YORK)

) ss.

COUNTY OF NEW YORK)

On the____ day of_____in the year 200__ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____

Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)

) ss.

COUNTY OF NEW YORK)

On the____ day of_____in the year 200__ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____

Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)

) ss.

COUNTY OF NEW YORK)

On the____ day of_____in the year 200__ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____

Notary Public

[Notary Seal] My commission expires:

STATE OF NEW YORK)

) ss.

COUNTY OF NEW YORK)

On the____ day of_____in the year 200__ before me, the undersigned, a notary public in and for said state, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____

Notary Public

[Notary Seal] My commission expires:

SCHEDULE A

Legal Description of Property

L - 11

Exhibit M

Form of Solvency Certificate

OFFICER'S COVENANT COMPLIANCE AND SOLVENCY CERTIFICATE

I, the undersigned, the Vice President and Treasurer of Strategic Hotel Funding, L.L.C., a limited liability company existing under the laws of the State of Delaware (the "Borrower"), do hereby certify this February __ , 2009 that:

5. This Certificate is furnished to the Lenders pursuant to Section 3.1.12 of the Third Amendment to Credit Agreement, dated as of the date hereof (the "Third Amendment"), amending that certain Credit Agreement, dated as of March 9, 2007, among the Borrower, the various financial institutions as are or may become parties thereto and Deutsche Bank Trust Company Americas, as Administrative Agent (as amended, supplemented or otherwise modified from time to time, including, without limitation, by the Third Amendment, the "Credit Agreement"). Unless otherwise defined herein, capitalized terms used in this Certificate shall have the meanings set forth in the Credit Agreement.

6. For purposes of this Certificate, I have performed the following procedures:

   (a) I have reviewed the financial statements used to provide evidence of pro forma financial covenant compliance; and

   (b) I have knowledge and have reviewed to my satisfaction the Loan Documents and all the other respective documents relating thereto, and the respective schedules and exhibits thereto:

7. Based on and subject to the foregoing, I hereby certify on behalf of the Borrower that, after giving effect to the Third Amendment, it is my opinion that each of:

   (i) the Total Fixed Charge Coverage Ratio as of the end of the Fiscal Quarter ended December 31, 2008 is not less than 1.0:1.0;

   (ii) the Total Leverage Coverage Ratio is less than 0.80:l.0;

   (iii) the Consolidated Tangible Net Worth is greater than $600,000,000;

   (iv) Borrower's Share of the aggregate Net Asset Value of Properties held in Unconsolidated Subsidiaries is less than 25% of the aggregate Gross Asset Value in respect of all Properties;

(v) the sum of the Construction Costs described in Section 7.2.4(d) of the Credit Agreement and Borrower's Share of the aggregate Net Asset Value of Properties held in Unconsolidated Subsidiaries is less than 35% of the aggregate Gross Asset Value in respect of all Properties;

(vi) Guarantor has no liabilities other than the amounts currently outstanding under the Credit Agreement and those liabilities reflected in the financial statements of Guarantor previously delivered to the Administrative Agent (as such liabilities have been reduced in the ordinary course or paid off with the proceeds of the Loan), and liabilities incurred in the ordinary course and not materially different than the ones reflected on the most recent of such financial statements; and

(vi) Borrower has no liabilities other than the amounts currently outstanding under the Credit Agreement and those liabilities reflected in the financial statements of Borrower previously delivered to the Administrative Agent (as such liabilities have been reduced in the ordinary course or paid off with the proceeds of the Loan), and liabilities incurred in the ordinary course and not materially different than the ones reflected on the most recent of such financial statements, and as disclosed in Schedule I to the Credit Agreement.

8. Each of Borrower and Guarantor (taken as a whole), after giving effect to the Third Amendment and the consummation of the transactions contemplated by the Credit Agreement, is a going concern and does not lack sufficient capital for its needs and currently anticipated needs, without substantial unplanned disposition of assets outside the ordinary course of business, restructuring of debt, externally forced revisions of its operations or other similar actions.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, I have hereto set my hand as of the date first above written.

STRATEGIC HOTEL FUNDING, L.L.C.,
a Delaware limited liability company

By: _____

Name: Ryan M. Bowie
Title: Vice President and Treasurer

Exhibit N

CLOSING DATE CERTIFICATE

STRATEGIC HOTEL FUNDING, L.L.C.

This certificate dated February ___ , 2009 is delivered pursuant to Section 3.1.11 of the Third Amendment to Credit Agreement, dated as of the date hereof (the "Third Amendment"), amending that certain Credit Agreement, dated as of March 9, 2007, among STRATEGIC HOTEL FUNDING, L.L.C., a Delaware limited liability company (the "Borrower"), the various financial institutions as are or may become parties thereto and Deutsche Bank Trust Company Americas, as Administrative Agent (as amended, supplemented or otherwise modified from time to time, including, without limitation, by the Third Amendment, the "Credit Agreement"). Unless otherwise defined herein or the context otherwise requires, capitalized terms used herein shall have the meanings provided in the Credit Agreement.

The undersigned hereby certifies, represents and warrants that, as of the date hereof:

1. Warranties, No Default, etc. The statements made in Article VI of the Credit Agreement are true and correct in all material respects with the same effect as if then made (unless stated to relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date), and no Default has occurred and is continuing.
2. Financial Information, etc. Evidence of pro forma covenant compliance with the covenants set forth in Section 7.2.4 of the Credit Agreement is attached hereto as Annex I .
3. No Material Adverse Effect . No Material Adverse Effect has occurred prior to the date hereof.
4. Material Agreements . A true and complete copy of each Material Agreement of the Borrower and Guarantor is attached hereto as Annex II .
5. Borrowing Base Properties . The representations and warranties made in Section 4.1.23 of the Third Amendment are true and correct in all material respects.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be executed and delivered, and the certification, representations and warranties contained herein to be made, by its duly Authorized Officer as of the date first above written.

STRATEGIC HOTEL FUNDING, L.L.C.,
a Delaware limited liability company

By: _____

Name: Ryan M. Bowie
Title: Vice President and Treasurer

FINANCIAL INFORMATION
(See Attached)

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MATERIAL AGREEMENTS

None.

Exhibit 21.1

Subsidiaries of Strategic Hotels & Resorts Inc.

Name of Subsidiary	Jurisdiction of Formation/ Incorporation
Banian Finance S.a.r.l.	Luxembourg
Bohus Verwaltung, BV	Netherlands
CIMS Limited Partnership	Illinois
DTRS Columbus Drive, L.L.C.	Delaware
DTRS Columbus Drive II, LLC	Delaware
DTRS Half Moon Bay, LLC	Delaware
DTRS Intercontinental Miami, LLC	Delaware
DTRS Laguna, LLC	Delaware
DTRS Lincolnshire, LLC	Delaware
DTRS Michigan Avenue/Chopin Plaza L.P.	Delaware
DTRS Michigan Avenue/Chopin Plaza Sub, LLC	Delaware
DTRS Michigan Avenue/Chopin Plaza, LLC	Delaware
DTRS New Orleans, LLC	Delaware
DTRS North Beach Del Coronado, LLC	Delaware
DTRS Santa Monica, LLC	Delaware
DTRS Scottsdale, LLC	Delaware
DTRS Spa Columbus Drive, LLC	Delaware
DTRS St. Francis, LLC	Delaware
DTRS Washington, LLC	Delaware
GAMMA Finance S.a.r.l.	Luxembourg
Golden Prague Limousine, s.r.o	Czech Republic
HdC DC Corporation	Delaware
HdC Mezz 5 GP, LLC	Delaware
HdC Mezz 5 Partners, LP	Delaware
HdC Mezz 4 GP, LLC	Delaware
HdC Mezz 4 Partners, LP	Delaware
HdC Mezz 3 GP, LLC	Delaware
HdC Mezz 3 Partners, LP	Delaware
HdC Mezz 2 GP, LLC	Delaware

Name of Subsidiary	Jurisdiction of Formation/ Incorporation
HdC Mezz 2 Partners, LP	Delaware
HdC Mezz 1 GP, LLC	Delaware
HdC Mezz 1 Partners, LP	Delaware
HdC North Beach Development, LLLP	Delaware
HdC North Beach Real Estate Company	Delaware
HdC Revolver GP, LLC	Delaware
HdC Revolver Partners, LP	Delaware
Hotel del Coronado, LP	Delaware
Hotel del Partners GP, LLC	Delaware
Hotel del Partners, LP	Delaware
Hotel del Tenant Corp.	Delaware
Hotel Paris Champs Elysees SNC	France
Intercontinental Florida Limited Partnership	Delaware
ITM Praha	Czech Republic
Lomar Hotel Company Limited	United Kingdom
Lomar Holding UK, Ltd.	United Kingdom
New Aventine, LLC	Delaware
New Aventine Mezzanine I, Inc.	Delaware
New Aventine Mezzanine, LLC	Delaware
New DTRS La Jolla, LLC	Delaware
New DTRS Michigan Avenue LLC	Delaware
New Santa Monica Beach Hotel, LLC	Delaware
Ocean Front Walk Infill, LLC	Delaware
Punta Mita Resort, S. de R.L. de C.V.	Mexico
Punta Mita TRS, S. de R. L. de C.V.	Mexico
Resort Club Punta Mita S. de R.L. C.V.	Mexico
Santa Barbara Punta Mita Desarrollos, S. de R.L. de C.V.	Mexico
Santa Barbara US, LP	Delaware
SB Hotel, S. de R.L. de C.V.	Mexico
SB Villas S. de R.L. de C.V.	Mexico
SBA Villas, LLC	Delaware
SHC Asset Management, LLC	Delaware
SHC Aventine II, LLC	Delaware
SHC Champs Elysees SAS	France

Name of Subsidiary	Jurisdiction of Formation/ Incorporation
SHC Chopin Plaza, LLC	Delaware
SHC Chopin Plaza Holdings, LLC	Delaware
SHC Chopin Plaza Holdings Sub, LLC	Delaware
SHC Chopin Plaza Mezzanine I, LLC	Delaware
SHC Chopin Plaza Mezzanine II, LLC	Delaware
SHC Columbus Drive, L.L.C.	Delaware
SHC del Coronado, LLC	Delaware
SHC del LP, LLC	Delaware
SHC del GP, LLC	Delaware
SHC DTRS, Inc.	Delaware
SHC Europe, LLC	Delaware
SHC Finance (Champs Elysees), LLC	Delaware
SHC Half Moon Bay Mezzanine, LLC	Delaware
SHC Half Moon Bay, LLC	Delaware
SHC Holdings, LLC	Delaware
SHC Hotel Nayarit, S. de R.L. de C.V.	Mexico
SHC KSL Partners, LP	Delaware
SHC Laguna, LLC	Delaware
SHC Laguna Niguel I, LLC	Delaware
SHC Lincolnshire, LLC	Delaware
SHC Mexico Holdings, LLC	Delaware
SHC Mexico Lender, LLC	Delaware
SHC Michigan Avenue Holdings, LLC	Delaware
SHC Michigan Avenue Holdings Sub, LLC	Delaware
SHC Michigan Avenue Mezzanine, LLC	Delaware
SHC Michigan Avenue Mezzanine I, Inc.	Delaware
SHC Michigan Avenue Mezzanine II, LLC	Delaware
SHC Michigan Avenue, LLC	Delaware
SHC New Orleans, LLC	Delaware
SHC Phoenix III, LLC	Delaware
SHC Prague (Gibraltar) Limited	Gibraltar
SHC Prague TRS, a.s.	Czech Republic
SHC Property Acquisition, LLC	Delaware
SHC Residence Club II, LLC	Delaware
SHC Residence Club S. de R.L. de C.V.	Mexico
SHC Residence Club, LLC	Delaware
SHC Residences Nayarit, S. de R.L. de C.V.	Delaware

Name of Subsidiary	Jurisdiction of Formation/ Incorporation
SHC Santa Monica Beach Hotel III, LLC	Delaware
SHC Solana Mexico S. de R.L. de C.V.	Mexico
SHC St. Francis, LLC	Delaware
SHC Washington, LLC	Delaware
SHCI Santa Monica Beach Hotel, LLC	Delaware
SHR Advisory, LLC	Delaware
SHR Buy Efficient, LLC	Delaware
SHR Grosvenor Square, LLC	Delaware
SHR Grosvenor Square S.a.r.l.	Luxembourg
SHR Marketing, LLC	Delaware
SHR Prague Holding, LLC	Delaware
SHR Prague Praha, B.V.	Netherlands
SHR Prague Praha, L.L.C.	Delaware
SHR Retail, LLC	Delaware
SHR Scottsdale, LLC	Delaware
SHR Scottsdale Z, LLC	Delaware
SHR Scottsdale Mezzanine, LLC	Delaware
SHR St. Francis, LLC	Delaware
Strategic Hotel Capital Prague, a.s.	Czech Republic
Strategic Hotel Funding, LLC	Delaware
Stredisko Praktickeho Vyucovani hotelu Inter.Continental s.r.o.	Czech Republic

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-153229 and 333-116837 on Form S-8 and 333-126312, 333-126573, 333-127464, 333-157694 and 333-157702 on Form S-3 of our reports dated February 25, 2010, relating to the consolidated financial statements and financial statement schedule of Strategic Hotels & Resorts, Inc. (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the change in accounting for noncontrolling interests and convertible debt instruments for which the consolidated financial statements were retrospectively adjusted) and the effectiveness of Strategic Hotels & Resorts, Inc.'s internal control over financial reporting, appearing in this Annual Report on Form 10-K of Strategic Hotels & Resorts, Inc. for the year ended December 31, 2009.

/s/ DELOITTE & TOUCHE LLP

Chicago, Illinois
February 25, 2010

Exhibit 31.1

CHIEF EXECUTIVE OFFICER CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Laurence S. Geller, certify that:

1. I have reviewed this report on Form 10-K of Strategic Hotels & Resorts, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 24, 2010

/ S / L AURENCE S. G ELLER

Laurence S. Geller
Chief Executive Officer

Exhibit 31.2

PRINCIPAL FINANCIAL OFFICER CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, James E. Mead, certify that:

1. I have reviewed this report on Form 10-K of Strategic Hotels & Resorts, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 24, 2010

/s/ James E. Mead

James E. Mead
Chief Financial Officer

Exhibit 32.1

SECTION 906 CERTIFICATION OF CHIEF EXECUTIVE OFFICER

In connection with the Annual Report of Strategic Hotels & Resorts, Inc. (the "Company") on Form 10-K for the period ending December 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Laurence S. Geller, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 24, 2010

/s/ Laurence S. Geller

Laurence S. Geller
Chief Executive Officer

Exhibit 32.2

SECTION 906 CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

In connection with the Annual Report of Strategic Hotels & Resorts, Inc. (the "Company") on Form 10-K for the period ending December 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James E. Mead, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 24, 2010

/s/ James E. Mead

James E. Mead
Chief Financial Officer