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LIMITED LIABILITY COMPANY AGREEMENT

OF

B.R. GUEST PARENT HOLDINGS, LLC

A DELAWARE LIMITED LIABILITY COMPANY

DATED AS OF DECEMBER \_\_, 2008

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## LIMITED LIABILITY COMPANY AGREEMENT

OF

### B.R. GUEST PARENT HOLDINGS, LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT of B.R. Guest Parent Holdings, LLC (this "Agreement") is made and entered into and is effective as of December \_\_, 2008, by and among (i) SPH Enterprises, Inc. (f/k/a B.R. Guest, Inc.), a New York corporation ("BRG Member"), (ii) Stephen P. Hanson, an individual residing in New York, New York ("Hanson Member"), and (iii) SOF U.S. Restaurant Co-Invest Holdings, L.L.C., a Delaware limited liability company ("Starwood").

#### WITNESSETH:

WHEREAS, the Company was formed on December 23, 2008, pursuant to the Act;

WHEREAS, on November 29, 2006, Starwood, Hanson Member, BRG Member, B.R. Guest Trademark Company, Inc., PH 2000, Inc., B.R. Guest Vegas, Inc., and B.R. Guest Holdings, LLC (f/k/a elevenseven Holdings, L.L.C.), a Delaware limited liability company ("BRG Holdings Sub"), entered into the Contribution Agreement pursuant to which, among other things, Starwood, on the one hand, and Hanson Member and BRG Member, on the other hand, each agreed to contribute certain assets to BRG Holdings Sub in exchange for a 50% membership interest in BRG Holdings;

WHEREAS, on November 29, 2006, Hanson Member, Deana Hanson 2006 Management Trust, Deana Dibello Hanson, R.S.V.H., Inc. and BRG Holdings Sub entered into the Master Restaurant Purchase Agreement (the "Original Master Restaurant Purchase Agreement"), pursuant to which, among other things, BRG Holdings Sub agreed to purchase the Initial Restaurants and all of the issued and outstanding limited liability company interests of Third & 50, LLC, a New York limited liability company ("DC3 LLC"), owned by Hanson Member and to offer to purchase from the other members of DC3 their membership interests in DC3 LLC on the terms described therein (the "DC3 Acquisition");

WHEREAS on February 23, 2007, Starwood, Hanson Member, and BRG Member made contributions to BRG Holdings Sub as more fully described in the Contribution Agreement and that certain Amended and Restated Limited Liability Company Agreement of BRG Holdings Sub, dated as of February 23, 2007 (the "Initial LLC Agreement") by and among Starwood, Hanson Member and BRG Member and, in respect thereof, Hanson Member had an initial capital account in BRG Holdings Sub equal to \$10,898,042, BRG Member had an initial capital account in BRG Holdings Sub equal to \$31,805,885, and Starwood had an initial capital account in BRG Holdings Sub equal to \$42,703,927;

WHEREAS, on February 23, 2007, pursuant to Section 6.6 of the Initial LLC Agreement, a Top-Up Amount (as defined in the Contribution Agreement) equal to \$538,288 was distributed to Starwood, a Top-Up Amount equal to \$137,371 was distributed to Hanson Member and a Top-Up Amount equal to \$400,917 was distributed to BRG Member;

WHEREAS, on February 23, 2007, BRG Holdings Sub acquired the Initial Restaurants;

WHEREAS, on April 1, 2008, the Members and BRG Holdings Sub entered into that certain letter agreement, pursuant to which Starwood made Senior Preferred Capital Contributions to BRG Holdings Sub in the aggregate amount of \$60,000,000 (the "Initial Starwood Preferred Capital"), which Initial Starwood Preferred Capital was used to repay the Starwood Bridge Financing;

WHEREAS, on the date hereof, BRG Holdings Sub assigned each of the following to the Company: (i) the Starwood Note and its rights thereunder, (ii) BRG Holdings Sub's rights and obligations under the Master Purchase Restaurant Agreement as it relates to the DC3 Acquisition and (iii) BRG Holdings Sub's rights and obligations under the Hanson Employment Agreement;

WHEREAS, on the date hereof, each of Starwood, Hanson Member, BRG Member, BRG Holdings Sub and the Company entered into that certain Contribution Agreement (the "BRG Parent Contribution Agreement") pursuant to which Starwood, Hanson Member, and BRG Member, contributed their respective membership interests in BRG Holdings Sub to the Company in exchange for their Interests in the Company;

WHEREAS, immediately after the contribution described in the preceding recital, BRG Holdings Sub will be a disregarded entity owned by the Company for US federal income tax purposes and the contribution will be disregarded for US federal income tax purposes (i.e., the Company will be a continuation of BRG Holdings Sub under a new name);

WHEREAS, Hanson Member has transferred to each of the Brynn Beatrice Hanson Generation Skipping Trust and the Leah Elizabeth Hanson Generation Skipping Trust (together, the "Trusts") an economic interest in the limited liability company interests of DC3 owned by Hanson Member equal to sixteen and one-half percent (16.5%) of the membership interests in DC3 LLC;

WHEREAS, on the date hereof the parties to the Original Master Restaurant Purchase Agreement (other than BRG Holdings Sub) and certain other parties entered into that certain Assignment and Assumption of Limited Liability Company Interests and Amendment to the Master Restaurant Purchase Agreement pursuant to which, among other things, the Original Master Restaurant Purchase Agreement was amended to permit the members of DC3 to elect to receive a note in lieu of cash consideration in connection with their sale of their limited liability company interests of DC3;

WHEREAS, to facilitate the DC3 Acquisition, Hanson Member, as a member of DC3, has elected to receive, pursuant to Section 1.10(c) of the Master Restaurant Purchase Agreement, in lieu of the cash consideration which Hanson Member is entitled to receive in accordance with the terms and conditions of the Master Restaurant Purchase Agreement in connection with the sale of all the limited liability company interests of DC3 owned by Hanson Member, and in repayment of a five hundred thousand dollar (\$500,000) advance to DC3 by the Hanson Member, the following: (a) a promissory note issued by the Company on the date hereof

to Hanson Member in the principal amount of US\$6,049,095 (the "Hanson Loan"), and guaranteed by Starwood (the "Starwood Guaranty") and (b) promissory notes issued by the Company on the date hereof to each of the Trusts in the aggregate principal amount of US\$3,298,770 (\$1,649,385 to each Trust) (the "Trusts Loans", and together with the Hanson Loan, the "DC3 Loans"), and guaranteed by Starwood (the "Starwood Trusts Guaranties") and certain affiliates of Starwood (the "Starwood Affiliates Guaranties", and together with the Starwood Guaranty and the Starwood Trusts Guaranties, the "Starwood Guaranties");

WHEREAS, on the date hereof, (a) the DC3 Creditors issued the DC3 Loans to the Company, (b) Hanson Member (and the Trusts) agreed that such issuance of the DC3 Loans constituted payment and discharge in full of all amounts payable to Hanson Member (as a member of DC3) under the Master Restaurant Purchase Agreement to consummate the DC3 Acquisition, and (c) the Company paid Hanson Member and Hanson Member has made the necessary payments to each of the other members of DC3 under the Master Restaurant Purchase Agreement to consummate the DC3 Acquisition (in the case of clauses (b) and (c), including, without limitation, Sections 1.10 and 5.3(b) of the Master Restaurant Purchase Agreement) and (d) DC3 LLC became a wholly-owned subsidiary of the Company;

WHEREAS, as security for Starwood's obligations under the Starwood Guaranty and the Starwood Trust Guaranties, on the date hereof Starwood has agreed to pledge all of its Interests pursuant to a pledge agreement dated the date hereof by and among Starwood, Hanson Member and each of the Trusts (the "Pledge Agreement");

WHEREAS, BRG Member and Hanson Member are collectively referred to herein as "BRG", and all decisions, and the granting (or withholding) of all consents, authorizations, waivers, approvals and other actions by BRG Member, Hanson Member and/or BRG hereunder or in respect hereof or of the Company or any Investment Vehicle shall be made by BRG Member acting on behalf of BRG Member, Hanson Member and BRG, as further described in Section 9.1(d); and

WHEREAS, the Members desire to participate in the Company for the purposes described herein.

NOW, THEREFORE, in consideration of the agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions. Capitalized terms used herein shall have the meanings ascribed to such terms in this Agreement (including, without limitation, Exhibit B and the other Exhibits attached hereto).

Section 2. Organization of the Company.

2.1. Name. The name of the Company shall be "B.R. Guest Parent Holdings, LLC". The business and affairs of the Company shall be conducted under such name or such other name as the Management Committee deems necessary or appropriate to comply with the requirements of law in any jurisdiction in which the Company may elect to do business.

2.2. Place of Registered Office; Registered Agent. The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The name and address of the registered agent for service of process on the Company in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The Management Committee may, at any time on five (5) days prior notice to all Members, change the location of the Company's registered office or change the registered agent.

2.3. Principal Office. The principal address of the Company shall be 206 Spring Street, New York, New York 10012, or at such other place or places as may be determined by the Management Committee from time to time.

2.4. Filings. On or before execution of this Agreement, an authorized person within the meaning of the Act shall have duly filed or caused to be filed the Certificate of Formation of the Company with the office of the Secretary of State of the State of Delaware, as provided in Section 18-201 of the Act, and the Members hereby ratify such filing. The Members shall use their respective commercially reasonable efforts to take such actions as may be reasonably necessary to perfect and maintain the status of the Company as a limited liability company under the laws of the State of Delaware. Notwithstanding anything contained herein to the contrary, the Company shall not do business in any jurisdiction that would jeopardize the limitation on liability afforded to the Members under the Act or this Agreement.

2.5. Term. The Company shall continue in existence from the date hereof in perpetuity until the Company is dissolved as provided in Section 13.

2.6. Admission of Members. Upon execution of this Agreement, each of Starwood, BRG Member and Hanson Member shall be admitted to the Company as members.

2.7. No Partnership. The Members intend that the Company shall not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be an agent, partner or joint venture of any other Member for any purposes other than U.S. Federal, state and local tax purposes, and this Agreement shall not be construed to suggest otherwise.

2.8. Investment Vehicles. The business and affairs of the Company shall be conducted through the Company or, at the direction of the Management Committee, one or more Investment Vehicles. The Organizational Documents of each Investment Vehicle shall be subject to the approval of the Management Committee. Any Investment Vehicle shall be structured in a tax efficient manner and shall take into account the tax, ERISA, regulatory and other ownership requirements of BRG and Starwood. Exhibit L sets out an organizational structure chart of the Company and the Investment Vehicles as of the date of this Agreement.

Section 3. Purpose. The purpose of the Company, subject in each case to the terms hereof, shall be to engage directly or indirectly through one or more Investment Vehicles, (a) in all business and activities of any nature relating to or involving the ownership, operation, leasing, licensing, franchising, management, development, performance of consulting services in

respect of, expansion and disposition of the Initial Restaurants, DC3 and the B.R. Guest Brands, and any other restaurants, nightclubs, restaurant Brands, nightclub Brands and restaurant and nightclub concepts and operations (each such owned, operated, leased, licensed or franchised restaurant, nightclub, restaurant Brand, nightclub Brand, restaurant concept, nightclub concept and related investments, a "Portfolio Investment" and, collectively, the "Portfolio Investments"), (b) in all business activities of any nature relating to or involving a Portfolio Investment including, without limitation, acquiring, owning, operating, developing, renovating, repositioning, managing, selling, leasing, licensing, franchising, financing and refinancing all, or any portion of a Portfolio Investment, and (c) in all other activities related or incidental to the foregoing.

#### Section 4. Expenses.

(a) General. Except as otherwise specifically provided in this Agreement or determined by the Management Committee, each of the Company and each Member shall bear its own costs and expenses in connection with entering into this Agreement and the consummation of the transactions and performance of its obligations contemplated hereby.

(b) Organizational Expenses. The Organizational Expenses of the Company or any Investment Vehicle shall be borne by the Company or such Investment Vehicle, as applicable. The Company or applicable Investment Vehicle shall reimburse the Members and their Affiliates for all out-of-pocket Organizational Expenses incurred on behalf of the Company or any Investment Vehicle to the extent such Organizational Expenses are set forth in an Annual Business Plan or have been approved by the Management Committee.

(c) Operating Expenses. The Company or applicable Investment Vehicle shall, to the extent set forth in an Annual Business Plan or approved by the Management Committee, pay for the reasonable expenses (including, but not limited to, costs of accounting, and legal fees and disbursements, transfer agent fees and disbursements, duplicating, travel, telephone, appraisal, engineering and environmental expenses, property management fees and real estate commissions) relating to the acquisition, development, financing, management, licensing, expansion, franchising, operation and disposition of the Company's assets or the Company's direct or indirect investment in any Portfolio Investment or Investment Vehicle (or negotiations related thereto), including, without limitation, Pursuit Costs, as well as all other expenses incurred by or on behalf of the Company or any Investment Vehicle in connection with the business of the Company or any Investment Vehicle (collectively, "Operating Expenses"); provided, however, that in no event shall the Company or any Investment Vehicle pay any Overhead Expenses of any Member or its Affiliates, all of which are intended to be paid by such Member or Affiliate. The Company or applicable Investment Vehicle shall reimburse the Members and their Affiliates for any costs and expenses advanced by such Member or its Affiliates on behalf of the Company or any Investment Vehicle in respect of Operating Expenses to the extent such costs and expenses are set forth in an Annual Business Plan or have been approved by the Management Committee.

(d) Allocation of Expenses. The Overhead Expenses and Operating Expenses of the Management Vehicle shall be allocated among the Company Portfolio Investments based on their proportion of the sales revenues of all Company Portfolio Investments or as otherwise

determined by the Management Committee, and the EBITDA of any Company Portfolio Investment shall be calculated taking into account the Overhead Expenses and Operating Expenses of the Management Vehicle allocated to such Company Portfolio Investment.

#### Section 5. Capital Contributions and Capital Accounts.

5.1. Initial Capital Contributions. Upon execution of this Agreement Starwood shall make a Senior Preferred Capital Contribution to the Company in cash in the aggregate amount of \$6,000,000 (the "Initial Starwood Contribution"). Upon execution of this Agreement, the contribution by Starwood of the Initial Starwood Contribution, the consummation of the transactions contemplated under the BRG Parent Contribution Agreement and the distributions made on the date hereof under Sections 6.6 and 6.7, each of BRG Member, Hanson Member and Starwood shall have made (or be deemed to have made) an initial Senior Preferred Capital Contribution, initial Junior Preferred Capital Contribution and initial Common Capital Contribution to the Company in the amounts set forth opposite its name in Exhibit A attached hereto under the respective headings Initial Senior Preferred Capital Contribution, Initial Junior Preferred Capital Contribution and Initial Common Capital Contribution (the "Initial Capital Contributions").

5.2. Additional Capital Contributions. (a) Additional capital (each, an "Additional Capital Contribution") may be called for from the Members by the Management Committee by written notice to the Members from time to time as and to the extent capital is necessary to effect an investment or expenditures approved by the Management Committee, and/or as otherwise may be required by the Management Committee (including in respect of Exigent Circumstances). Except as otherwise agreed in writing by BRG and Starwood, such Additional Capital Contributions shall be in an amount for each Member as follows: (x) BRG shall have the right (but not the obligation) to elect to contribute (by delivering written notice thereof to Starwood at least five (5) Business Days prior to the date the applicable Additional Capital Contribution is required) up to an amount (the "BRG Elected Amount") equal to the product of the aggregate capital called for multiplied by twenty percent (20%) and (y) Starwood shall have (i) the obligation to contribute an amount equal to the product of the aggregate capital called for multiplied by eighty percent (80%) and (ii) the right (but not the obligation) to contribute an amount equal to the aggregate capital called for less the sum of (A) the amounts required to be contributed by Starwood pursuant to clause (y)(i) and (B) the amounts contributed by BRG pursuant to the immediately preceding clause (x). Such Additional Capital Contributions shall be payable by the Members to the Company upon the earlier of (i) twenty (20) days after written request from the Management Committee, or (ii) the date when such Additional Capital Contributions are required, as set forth in a written request from the Management Committee.

(b) Additional Capital Contributions may be called for from the Members by Starwood or BRG unilaterally, in the case of an Exigent Circumstance, by written notice to the other Members from time to time. Except as otherwise agreed in writing by BRG and Starwood, such Additional Capital Contributions in respect of Exigent Circumstances shall be in an amount for each Member equal to the aggregate capital called for multiplied by ten percent (10%), in the case of BRG, and the aggregate capital called for multiplied by ninety percent (90%), in the case of Starwood. Such Additional Capital Contributions shall be payable by the Members to the

Company upon the earlier of (i) twenty (20) days after written request from the Member making such call for capital or (ii) the date when such Additional Capital Contributions are required, as set forth in a written request from Starwood or BRG, as the case may be. For the avoidance of doubt, in the event the Management Committee calls capital in respect of an Exigent Circumstance the provisions of Section 5.2(a) shall govern such capital call.

(c) Intentionally Omitted.

(d) If a Member (a "Non-Funding Member") fails to make an Additional Capital Contribution that is required as provided in Section 5.2(b) or Section 9.13 within the time frame required therein (the amount of the failed Additional Capital Contribution shall be the "Default Amount"), each other Member, provided that it has made the Additional Capital Contribution required to be made by it, shall have as its sole and exclusive remedy with respect to such failure to fund by the Non-Funding Member (such Member exercising such remedy is hereinafter referred to as a "Contributing Member"):

(1) to treat its portion of such Capital Contribution as a loan to the Company (rather than a Capital Contribution) and to advance to the Company as a loan to the Company an amount equal to the Default Amount (such loans, each a "Company Loan"). At the election of the Contributing Member, the Company Loan shall be evidenced by a promissory note in form reasonably satisfactory to the Contributing Member. Each Company Loan shall bear interest at the Default Loan Rate, and (ii) subject to the last sentence of this paragraph, be payable on a first priority basis by the Company from available Cash Flow and prior to any Distributions made to the Non-Funding Member. Interest on a Company Loan, to the extent unpaid, shall accrue and compound on a daily basis. All payments made in respect of any Company Loan shall be applied first to payment of any interest due under such Company Loan and then to principal until all amounts due thereunder are paid in full. Any advance to the Company pursuant to this paragraph shall not be treated as a Capital Contribution made by the Contributing Member or Non-Funding Member and the Capital Account of the Contributing Member and Non-Funding Member shall not be credited with the amount of such Company Loan or any portion thereof. All outstanding Company Loans and Credit Enhancement Loans shall be subordinate in all respects to the Initial Financing and any third party financing obtained by the Company and shall be repaid (in accordance with the terms hereof) on a *pari passu, pro rata* basis in proportion to the outstanding balances of such Company Loans and Credit Enhancement Loans at the time of payment to the extent permitted by the terms of any financing to which the Company is subject; or

(2) in lieu of the remedy set forth in subparagraph (1) above, such Contributing Member may revoke its portion of such Additional Capital Contribution, whereupon the portion of such Additional Capital Contribution made by the Contributing Member (together with interest computed at the Default Loan Rate) shall be returned by the Company to such Contributing Member within ten (10) days after such Contributing Member elects to revoke its Additional Capital Contribution pursuant to this paragraph.

For purposes of this Section, each Company Loan made by a Contributing Member shall comprise two parts: (A) the amount of the Default Amount advanced by such Contributing

Member (the "Default Amount Allocated Amount"), and all accrued and unpaid interest thereon, and (B) the amount of the Additional Capital Contribution required to have been funded by such Contributing Member in connection with the applicable capital call (the "Capital Requirement Allocated Amount"), and all accrued and unpaid interest thereon. Any payments made by the Company on such Company Loan in accordance with paragraph (d)(1) above shall be applied to the Default Amount Allocated Amount (and accrued and unpaid interest thereon) and the Capital Requirement Allocated Amount (and accrued and unpaid interest thereon) *pro rata* in proportion to the outstanding principal balance of the Default Amount Allocated Amount and the Capital Requirement Allocated Amount at the time such payments are made.

At any time prior to the ninetieth (90th) day following the date on which a Contributing Member has made a Company Loan to the Company (the "Cure Period"), the Non-Funding Member may make a contribution of capital to the Company in an amount equal to (but not less than) the outstanding principal amount of the Default Amount Allocated Amount, together with all accrued and unpaid interest thereon, as of the date that such additional contribution of capital is made (a "Curative Contribution"). If a Non-Funding Member shall make a Curative Contribution pursuant to this paragraph, (A) the portion of such Curative Contribution which is equal to the excess of (1) the amount of such Curative Contribution, over (2) the amount of the accrued and unpaid interest in respect of the Default Amount Allocated Amount as of the date that such Curative Contribution is made, shall be treated as a Senior Preferred Capital Contribution by such Non-Funding Member and shall be credited to the Capital Account of such Non-Funding Member (but such Non-Funding Member shall receive no Capital Account credit for (and shall not be deemed to have made a Capital Contribution in the amount of) the portion of such Curative Contribution that corresponds to or is applied to pay accrued and unpaid interest on the Default Amount Allocated Amount), (B) the aggregate amount of such Curative Contribution shall immediately be paid to the Contributing Member and not as a distribution to such Contributing Member, and (C) on the date that such Curative Contribution is made, the outstanding balance of the Capital Requirement Allocated Amount, and all accrued and unpaid interest thereon as of such date, shall automatically be converted to, and be deemed to be, a Senior Preferred Capital Contribution by the Contributing Member to the Company as of such date, at which point such Company Loan shall cease to be a loan by such Contributing Member to the Company and shall automatically be deemed to have been satisfied in full.

(e) Notwithstanding the foregoing provisions of this Section, no Additional Capital Contributions shall be required from a Member under Sections 5.2(a) or (b) (such Member, an "Exempt Member" and such other Member, a "Non-Exempt Member") and the Exempt Member may elect not to make such Additional Capital Contribution at any time prior to the date such Additional Capital Contribution is required to be made if as of the time such Additional Capital Contribution is required to be made pursuant to Sections 5.2(a) or (b), (i) the Company or any other Person shall be in default (or with notice or the passage of time or both, would be in default) in any material respect under any loan, indenture, mortgage, lease of real property, or other material agreement or instrument to which the Company or any Investment Vehicle is a party or by which the Company (or any Investment Vehicle) or any of its properties or assets is or may be bound, (ii) the Company or any Investment Vehicle (or the Non-Exempt Member) shall be insolvent or bankrupt or in the process of liquidation, termination or dissolution, (iii) there has been a material adverse change in (including, but not limited to, the financial condition of) the Non-Exempt Member which, in the Exempt Member's reasonable

judgment, prevents the Non-Exempt Member from performing, or substantially interferes with its ability to perform, its obligations hereunder, or (iv) a Trigger Event has occurred with respect to the Non-Exempt Member. If, pursuant to this Section, the Exempt Member elects not to make an Additional Capital Contribution prior to the date such Additional Capital Contribution is required to be made but after it has already funded such Additional Capital Contribution, then the Company shall return the Additional Capital Contributions made by the Exempt Member in connection with the applicable call for capital.

5.3. Intentionally Omitted.

5.4. Return of Capital Contribution. Except as approved by the Management Committee in writing, no Member shall have any right to withdraw or make a demand for withdrawal of the balance reflected in such Member's Capital Account (as determined under Section 5.6) until the full and complete winding up and liquidation of the business of the Company.

5.5. No Interest on Capital. Interest earned on Company funds shall inure solely to the benefit of the Company, and no interest shall be paid upon any Capital Contributions nor upon any undistributed or reinvested income or profits of the Company.

5.6. Capital Accounts. A separate capital account (the "Capital Account") shall be maintained for each Member in accordance with Section 1.704-1(b)(2)(iv) of the Regulations. Immediately following the funding by the Members of the Initial Capital Contributions required pursuant to Section 5.1, each Member's Capital Account initially will be equal to the amount set forth opposite such Member's name in Exhibit A under the heading Initial Capital Account. Without limiting the foregoing, the Capital Account of each Member shall be increased by (i) the amount of any Capital Contributions made by such Member and (ii) the amount of Income allocated to such Member. The Capital Account of each Member shall be reduced by (i) the amount of any cash and the fair market value of any property distributed to the Member by the Company (net of liabilities secured by such distributed property that the Member is considered to assume or take subject to) and (ii) the amount of Loss allocated to the Member. The Capital Accounts of the Members shall not be increased or decreased pursuant to Regulations Section 1.704-1(b)(2)(iv)(f) to reflect a revaluation of the Company's assets on the Company's books in connection with any contribution of money or other property to the Company pursuant to Section 5.2 by existing Members. If any property other than cash is distributed to a Member, the Capital Accounts of the Members shall be adjusted as if such property had instead been sold by the Company for a price equal to its fair market value, the gain or loss allocated pursuant to Section 7, and the proceeds distributed. No Member shall be obligated to restore any negative balance in its Capital Account. No Member shall be compensated for any positive balance in its Capital Account except as otherwise expressly provided herein. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with the provisions of Regulations Section 1.704-1(b)(2) and shall be interpreted and applied in a manner consistent with such Regulations.

5.7. New Members. The Company, at the written direction of the Management Committee, may issue additional Interests and thereby admit a new member or members, as the

case may be, to the Company, only if such new member (i) has funded to the Company the Capital Contribution required to be made by such new member as determined by the Management Committee, (ii) has agreed in writing to be bound by the terms of this Agreement by becoming a party hereto, and (iii) has delivered such additional documentation as the Management Committee shall require to so admit such new member to the Company. A new member may not be admitted to the Company if the Company would, or may, have in the aggregate more than one hundred (100) members. For purposes of determining the number of members under this Section, a Person (the "beneficial owner") indirectly owning an interest in the Company through a partnership, grantor trust or S corporation (as such terms are used in the Code) (the "flow-through entity") shall be considered a member, but only if (i) substantially all of the value of the beneficial owner's interest in the flow-through entity is attributable to the flow-through entity's interest (direct or indirect) in the Company and (ii) in the sole discretion of the Management Committee, a principal purpose of the use of the flow-through entity is to permit the Company to satisfy the 100-member limitation.

5.8. BRG Funds. The Capital Contributions (other than the Initial Capital Contribution) to be made by BRG under this Agreement (and any Company Loans made by BRG under this Agreement) shall be contributed or advanced, as the case may be, in cash by BRG from its own sources (and shall not be borrowed or constitute proceeds from a Transfer of a direct or indirect interest in BRG or the Interest of BRG). For the avoidance of doubt, but without limiting any obligation of BRG, BRG Member or Hanson Member hereunder, any such Capital Contribution required to be made by BRG may be made by either BRG Member, Hanson Member or both, and BRG Member shall have sole discretion to determine the allocation between them of any such Capital Contribution required to be made by BRG.

#### Section 6. Distributions.

6.1. Distribution of Distributable Funds. The Management Committee shall calculate and determine the amount of Distributable Funds for each applicable period based upon (but without being bound by) the reports prepared pursuant to Section 8.2(a). Except as otherwise agreed by the Management Committee, no distribution of Distributable Funds shall be made to the Members prior to the end of Fiscal Year 2009, except for distributions of financing or refinancing proceeds (which shall be made within thirty (30) days after receipt thereof by the Company (unless the Management Committee determines otherwise)) or distributions made pursuant to Sections 6.5, 6.6 or 6.7. Following the end of Fiscal Year 2009, except as provided in Sections 6.2, 6.3, 6.5, 6.6, 6.7, 9.13, 12.5 or 13.3 or otherwise provided hereunder or determined by the Management Committee, Distributable Funds, if any, shall be distributed to the Members on a Fiscal Quarter basis. Except as provided in Sections 6.2, 6.3, 6.5, 6.6, 6.7, 9.13, 12.5 or 13.3 or as otherwise provided hereunder, such Distributable Funds shall be distributed in the following order and priority:

(a) First, 100% of such Distributable Funds shall be distributed to the Members on a *pari passu* basis, *pro rata* in proportion to the excess for each Member of (x) such Member's Senior Preferred Return as of such date of distribution over (y) all amounts previously distributed to such Member pursuant to this Section 6.1(a), until the Members have received aggregate distributions pursuant to this Section 6.1(a) equal to the Members' Senior Preferred Return as of the date of such distribution;

(b) Second, 100% of the balance, if any, of such Distributable Funds remaining after distribution pursuant to Section 6.1(a) shall be distributed to the Members on a *pari passu* basis, *pro rata* in accordance with each Member's Senior Participation Percentage until each such Member's Senior Adjusted Capital Contribution has been reduced to zero;

(c) Third, 100% of the balance, if any, of such Distributable Funds remaining after distribution pursuant to Sections 6.1(a) and 6.1(b) shall be distributed to the Members on a *pari passu* basis, *pro rata* in proportion to the excess for each Member of (x) such Member's Junior Preferred Return as of such date of distribution over (y) all amounts previously distributed to such Member pursuant to this Section 6.1(c), until the Members have received aggregate distributions pursuant to this Section 6.1(c) equal to the Members' Junior Preferred Return as of the date of such distribution;

(d) Fourth, 100% of the balance, if any, of such Distributable Funds remaining after distribution pursuant to Sections 6.1(a) through 6.1(c) shall be distributed to the Members on a *pari passu* basis, *pro rata* in accordance with each Member's Junior Participation Percentage until each such Member's Junior Adjusted Capital Contribution has been reduced to zero;

(e) Fifth, 100% of the balance, if any, of such Distributable Funds remaining after distribution pursuant to Sections 6.1(a) through 6.1(d) shall be distributed on a *pari passu* basis as follows: (x) an amount equal to 50% of such Distributable Funds shall be distributed to BRG (which shall be allocated between BRG Member and Hanson Member *pro rata* in proportion to the Capital Contributions made by them) and (y) an amount equal to 50% of such Distributable Funds shall be distributed to Starwood, until each of Starwood and BRG have received aggregate distributions pursuant to this Section 6.1(e) equal to US\$35,755,811;

(f) Sixth, 100% of the balance, if any, of such Distributable Funds remaining after distribution pursuant to Sections 6.1(a) through 6.1(e) shall be distributed to BRG (which shall be allocated between BRG Member and Hanson Member *pro rata* in proportion to the Capital Contributions made by them), until BRG has received aggregate distributions pursuant to this Section 6.1(f) equal to \$6,000,000; and

(g) Thereafter, the balance, if any, of such Distributable Funds remaining after distributions pursuant to Sections 6.1(a) through 6.1(f) shall be distributed on a *pari passu* basis as follows: (x) an amount equal to 50% of such Distributable Funds shall be distributed to BRG (which shall be allocated between BRG Member and Hanson Member *pro rata* in proportion to the Capital Contributions made by them) and (y) an amount equal to 50% of such Distributable Funds shall be distributed to Starwood.

Notwithstanding the foregoing or any other provision contained herein, amounts distributable to BRG pursuant to this Section (including by way of Section 12.5 or 13.3(d)) or payable to BRG pursuant to Exhibit G or Exhibit H in connection with or resulting from a Venture Termination Event shall be reduced by the Shortfall Amount and the Shortfall Amount shall instead be distributed to Starwood. In the event the amounts distributable to BRG pursuant to this Section (including by way of Section 12.5 or 13.3(d)) or payable to BRG pursuant to Exhibit G or Exhibit H in connection with or resulting from a Venture Termination Event shall be less than

the Shortfall Amount (such amount the “Deficient Amount”), BRG shall pay to Starwood, within five (5) Business Days following such Venture Termination Date, an amount equal to the Deficient Amount; provided, however, that in no event shall such payment of the Deficient Amount exceed the sum of all distributions received (or deemed received) by BRG from the Company and payments received by BRG pursuant to Exhibit G or Exhibit H, less the maximum amount of Tax Distributions that were made or that could have been made to BRG (assuming the Company had sufficient funds therefor and did not make any other distributions to BRG) and less distributions received pursuant to Section 6.6. Any distributions received by Starwood or BRG from BRG Holdings Sub under a section or clause of the Initial LLC Agreement shall be treated as having been distributed to Starwood or BRG, as the case may be, under the corresponding section or clause of this Agreement.

6.2. Distribution Priority for Indemnities. Any distributions or other amounts (including amounts payable in respect of Company Loans and Credit Enhancement Loans) otherwise payable to a Member under this Agreement shall be applied first to satisfy amounts due and payable on account of the indemnity and/or contribution obligations and/or any other obligations of such Member (or its Affiliates) under this Agreement and/or any other agreement delivered by such Member (or its Affiliates) to the Company (including, for the avoidance of doubt, the Hanson Note) or any other Member (or its Affiliates) but shall be deemed distributed or paid, as the case may be, to such Member for purposes of this Agreement.

6.3. Management Incentive Program. The Management Committee shall establish a program under which certain employees of the Company or the Investment Vehicles, as approved by the Management Committee (each, a “Participant”), shall be given a share of the increase in the value of the Company on the terms and conditions set forth herein and in Exhibit Q (as such program may be amended, restated and supplemented from time to time by the Management Committee, the “Management Incentive Program”) and such other terms and conditions as may be required by the Management Committee from time to time. The Management Incentive Program shall comply with all applicable laws and regulations (including, without limitation, securities laws). The Management Incentive Program (and the terms and conditions thereof) may only be amended by the Management Committee. Payments under the Management Incentive Program shall reduce the amounts otherwise distributable to Starwood and BRG under Section 6.1(g) on a 50/50 *pro rata, pari passu* basis. The amounts distributable under the Management Incentive Program represent the net appreciation in the value of the Company after the Closing, (as defined in the Master Restaurant Purchase Agreement), as determined by the Management Committee in its sole discretion. In no event shall payments under the Management Incentive Program pursuant to this Section 6.3 exceed, in the aggregate, six percent (6%) of the net appreciation in the value of the Company after the Closing, as determined by the Management Committee in its sole discretion.

Notwithstanding anything in this Agreement to the contrary, no Participant shall (i) be deemed a Member for any purpose of this Agreement, (ii) have any voting rights whatsoever with respect to any action or decision taken or made (or to be taken or made) by the Company or any Investment Vehicle or the Management Committee, (iii) have any right whatsoever to appoint Representatives to the Management Committee, (v) have any appraisal rights or any preemption rights whatsoever, (vi) have any economic interest in the Company or any Investment Vehicle except to the extent expressly provided by the terms and conditions of

the definitive Management Incentive Program, or (vii) directly or indirectly Transfer its participation in the Management Incentive Program to any Person without the prior consent of the Management Committee.

6.4. Distributions in Kind. In the discretion of the Management Committee, Distributable Funds may be distributed to the Members in cash, or in kind distributions may be made to the Members, and the Members may be compelled to accept a distribution of any asset in kind even if the percentage of that asset distributed to it exceeds a percentage of that asset that is equal to the percentage in which such Member shares in distributions from the Company. In the case of all assets to be distributed in kind, the amount of the distribution shall equal the net fair market value of the asset distributed as determined by the Management Committee. In the case of any distribution of publicly traded property, the net fair market value of such property shall be deemed to be the average closing price for such property for the thirty (30) day period immediately prior to the distribution, or if such property has not yet been publicly traded for thirty (30) days, the average closing price of such property for the period prior to the distribution in which the property has been publicly traded.

6.5. Tax Distributions. (a) Except as provided in Sections 6.5(b) and (c) below, the Company shall distribute to each Member in cash, with respect to each Fiscal Quarter within a Fiscal Year, either during such Fiscal Quarter or within 15 days thereafter, an amount equal to the lesser of (1) the sum of the Tax Distribution for such Fiscal Quarter and the Tax Distribution Shortfall as of such Fiscal Quarter and (2) the Tax Distribution Cap for such Fiscal Quarter.

(b) The aggregate amount of Tax Distributions with respect to any Fiscal Year may be reduced, on a pro rata basis, or not made if and to the extent the Management Committee determines in its sole discretion that funds are not legally available for distribution, or that issuance of such a Tax Distribution would violate the terms of any loan or other agreement to which the Company is a party, render the Company insolvent or reduce the Company's available funds with the result that the Company could not operate in the ordinary course of business or meet its obligations as they come due in the ordinary course of business. In addition to the foregoing, in no event shall any Member be required to contribute capital to the Company for the purpose of enabling the Company to make Tax Distributions.

(c) Distributions made to a Member under this Section 6.5 shall be taken into account as if such distributions had been made to such Member pursuant to Section 6.1 and shall reduce dollar for dollar the amount of future distributions pursuant to Section 6.1. Distributions made to any Member in cash pursuant to Section 6.1 shall reduce dollar for dollar the aggregate amount of distributions to which such Member otherwise would be entitled under this Section 6.5.

6.6. Equalizing Distribution Amounts. In full and final settlement of the Members' dispute over the amount of the Top-Up Amount (as defined in the Contribution Agreement) and the Excess Top-Up Amount (as defined in the Contribution Agreement) that is distributable under Section 2.6 of the Contribution Agreement (as defined in the LLC Agreement) and Section 6.6 of the Initial LLC Agreement, notwithstanding anything to the contrary contained in this Agreement to the contrary, the Members hereby agree that on the date

hereof (a) the Company shall make a distribution to each of Starwood and BRG (which shall be allocated between BRG Member and Hanson Member *pro rata* in proportion to the Capital Contributions made by them) an amount in cash equal to US\$409,828, and (b) in accordance with the terms and conditions of the Starwood Note, Starwood shall cause the issuers of the Starwood Note to pay on the date hereof to the Company an amount in cash equal to US\$409,828 in full satisfaction of their obligations under Section 1(c) the Starwood Note.

6.7. Distribution of Starwood Notes. Notwithstanding anything in this Agreement to the contrary (including Section 6.4), the Members hereby agree that on the date hereof, after full satisfaction of the Starwood Note issuers' obligations under Section 1(c) of the Starwood Note, the Company shall distribute the Starwood Note to Starwood. The Members agree that (i) the distribution of the Starwood Note pursuant to this Section 6.7 shall not be deemed to be a distribution under Section 6.1 for any purpose thereunder and (ii) following the distribution of the Starwood Note to Starwood, neither the Company nor any Investment Vehicle nor any Member (excluding Starwood) shall have any right to call for any amounts under the Starwood Note from the issuers of the Starwood Note.

#### Section 7. Allocations.

##### 7.1. Allocation of Net Income and Net Losses Other than in Liquidation.

Except as otherwise provided in this Agreement, Net Income and Net Losses of the Company for each Fiscal Year shall be allocated among the Members in a manner such that, as of the end of such Fiscal Year and taking into account all prior allocations of Net Income and Net Losses of the Company and all distributions made by the Company through such date, the Capital Account of each Member is, as nearly as possible, equal to the distributions that would be made to such Member pursuant to Section 6 if the Company were dissolved, its affairs wound up and assets sold for cash equal to their book value, all Company liabilities were satisfied, and the net assets of the Company were distributed in accordance with Section 6 immediately after such allocation.

7.2. Allocation of Net Income and Net Losses in Liquidation. Net Income and Net Losses realized by the Company in connection with the liquidation of the Company pursuant to Section 13 shall be allocated among the Members in a manner such that, taking into account all prior allocations of Net Income and Net Losses of the Company and all distributions made by the Company through such date, the Capital Account of each Member is, as nearly as possible, equal to the amount which such Member is entitled to receive pursuant to Section 13.3(d)(iii).

7.3. Other Allocations Rules. (a) Items of Company Income, Etc. Subject to Section 704(c) of the Code, for U.S. Federal and state income tax purposes, all items of Company income, gain, loss, deduction and credit shall be allocated among the Members in the same manner as the corresponding item of income, gain, loss, deduction or credit was allocated pursuant to the preceding paragraphs of this Section 7.

(b) Code Section 704(c). In accordance with Code Section 704(c) and the Treasury regulations promulgated thereunder, income and loss with respect to any property contributed to the capital of the Company shall, solely for U.S. Federal income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for U.S. Federal income tax purposes and its Agreed Upon

Value at the time of contribution. Such allocation shall be made in accordance with the traditional method set forth in Regulations Section 1.704-3(b).

Any elections or other decisions relating to such allocations (or any allocations required by this Agreement) shall be made by the Management Committee in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 7.3 are solely for purposes of U.S. Federal, state and local income taxes and shall not affect, or in any way be taken into account in computing, any Member's share of Net Income, Net Losses, other items or distributions pursuant to any provisions of this Agreement.

#### Section 8. Books, Records, Tax Matters and Bank Accounts.

8.1. Books and Records. The books and records of account of the Company shall be maintained in accordance with generally accepted accounting principles in the United States, consistently applied and shall be reconciled to comply with the methods followed by the Company for U.S. Federal income tax purposes, consistently applied. The books and records shall be maintained at the Company's principal office or at a location designated by the Management Committee, and all such books and records (and the dealings and other affairs of the Company and the Investment Vehicles) shall be available to any Member and to each VCOC Fund at such location for review, investigation, audit and copying, at such Member's sole cost and expense, during normal business hours on at least twenty-four (24) hours prior notice. In connection with such review, investigation or audit, such Member and each VCOC Fund (and its representatives and agents) shall have the unfettered right to meet and consult with any and all employees and officers of the Company or any of the Investment Vehicles and to attend meetings and independently meet and consult with any and all third parties (including, without limitation, governmental agencies and/or lenders) having dealings or any other relationship with the Company or any of the Investment Vehicles.

8.2. Reports and Financial Statements. (a) Within twenty (20) days after the end of each Fiscal Month of each Fiscal Year, the Management Committee shall cause each Member and each VCOC Fund to be furnished with the reports described in Exhibit C attached hereto (as such exhibit may be modified from time to time by mutual agreement in writing of the Members) and such other reports reasonably requested by any Member or any VCOC Fund, computed as of the last day of the applicable period, calculated for such period and for the Fiscal Year to date. Attached hereto as Exhibit P is a calendar for each of the Fiscal Years 2007 through 2010 which calendars also identify each Fiscal Quarter and Fiscal Month of such Fiscal Years.

(b) In addition to the reports described in Section 8.2(a), within twenty (20) days of the end of each Fiscal Quarter of each Fiscal Year, the Management Committee shall cause each Member and each VCOC Fund to be furnished with the information and statements described under the heading Quarterly Reports in Exhibit D attached hereto (as such exhibit may be modified from time to time by mutual agreement in writing of the Members) computed as of the last day of the Fiscal Quarter.

(c) In addition to the reports described in Sections 8.2(a) and (b), within sixty (60) days (in draft form) and seventy-five (75) days (in final form) of the end of each Fiscal

Year, the Management Committee shall cause each Member and each VCOC Fund to be furnished with two sets of the information and statements described under the heading Annual Reports in Exhibit D (as such exhibit may be modified from time to time by mutual agreement in writing of the Members) computed as of the last day of the Fiscal Year.

The annual reports required by this Section shall be prepared in accordance with generally accepted accounting principles in the United States, consistently applied and shall be reconciled to comply with the methods followed by the Company for U.S. Federal income tax purposes, consistently applied.

(d) All reports and financial statements required by this Section 8.2 shall be in form and substance satisfactory to the Management Committee (or, as reasonable, the Member or the VCOC Fund requesting the same) and shall adhere to the reasonable reporting requirements of the Members and VCOC Funds and the reasonable timetables required by the Members and VCOC Funds for the delivery thereof. Any reports or financial statements required to be audited shall be audited by PriceWaterhouseCoopers LLP or such other firm of independent certified public accountants approved by the Management Committee.

(e) On a monthly basis, BRG shall cause the Management Committee to be furnished with a log of all opportunities to invest in, acquire, manage, lease, license, franchise, or finance Portfolio Investments (each, an "Investment Opportunity") which have received material attention from the Company, any Investment Vehicle, BRG or any BRG Restricted Person.

8.3. Tax Matters Member. Starwood is hereby designated as the "tax matters partner", as defined in Section 6231(a)(7) of the Code (the "Tax Matters Member"), of the Company and the Subsidiaries. All elections required or permitted to be made by the Company and the Subsidiaries under the Code or state tax law shall be determined and made by the Tax Matters Member; provided that no such election may be made without the consent of BRG to the extent any such election relates to a Pre-Closing Tax Period (as defined in the Contribution Agreement or Master Restaurant Purchase Agreement, as the case may be) of the BRG Companies (as defined in the Contribution Agreement), an Initial Restaurant or DC3. The Members intend that the Company be treated as a partnership for U.S. Federal, state and local tax purposes, and the Members will not elect or authorize any person to elect to change the status of the Company from that of a partnership for U.S. Federal, state and local income tax purposes. The Tax Matters Member agrees to consult with BRG with respect to any written notice of any material tax elections and any material inquiries, claims, assessments, audits, controversies or similar events received from any taxing authority. The Tax Matters Member shall not, without first consulting with and obtaining the approval of BRG, (i) extend the statute of limitations, enter into any settlement with any taxing authority on behalf of the Company or the Members, or choose a venue other than the United States Tax Court to litigate a federal tax issue, (ii) make any election that will or can reasonably be expected to have a material adverse affect on BRG or (iii) take any action or make any determination with respect to any matter affecting any Initial Restaurant or DC3 arising prior to the date of the consummation of the transactions contemplated by the Master Restaurant Purchase Agreement. The Tax Matters Member shall take such action as may be reasonably necessary to constitute each other Member a "notice partner" within the meaning of Code Section 6231(a)(8). The Company hereby indemnifies and holds harmless the Tax Matters Member (and its direct and indirect Affiliates) from and against any Damages

resulting from its acting or its failure to take any action as the “tax matters partner” of the Company and the Subsidiaries, provided that any such action or failure to act does not constitute gross negligence or willful misconduct.

8.4. Bank Accounts. All funds of the Company are to be deposited in the Company’s name in such bank account or accounts as may be designated by the Management Committee and shall be withdrawn on the signature of such Person or Persons as the Management Committee may authorize.

8.5. Tax Returns. The Management Committee shall prepare or cause to be prepared (in consultation with the Members) all income and other tax returns of the Company and the Investment Vehicles required by applicable law. The Management Committee shall submit such returns to the Members for their review, comment and approval (provided that in the case of tax returns which relate to a Pre-Closing Tax Period (as defined in the Contribution Agreement or Master Restaurant Purchase Agreement, as the case may be) of the BRG Companies (as defined in the Contribution Agreement) or an Initial Restaurant in respect of which Starwood and the Company are indemnified pursuant to the terms of the Contribution Agreement and Master Restaurant Purchase Agreement, Starwood’s approval shall not be unreasonably withheld) at least thirty (30) days prior to the due date thereof (but in no event later than March 15 of each year for the prior Fiscal Year) and shall thereafter cause the same to be filed in a timely manner (including extensions). No later than June 1 of each year with respect to the preceding Fiscal Year, the Management Committee shall deliver or cause to be delivered to each Member a copy of the tax returns for the Company and each Investment Vehicle with respect to such Fiscal Year, together with such information with respect to the Company and such Investment Vehicles as shall be necessary for the preparation by each Member of its U.S. Federal and state income or other tax and information returns.

8.6. Background Checks. The Company shall, if so directed by a Member or any VCOC Fund, do background checks on third parties transacting business of a material nature with the Company and shall not knowingly allow any third party to transact business with the Company who, because of their bad character, criminal conduct or criminal associations or status on any “restricted” or “prohibited” list, could cause the Company, a Member or its Affiliates (or any entities in which a Member or its Affiliates maintain an investment) regulatory issues with respect to and/or under OFAC, the Foreign Corrupt Practices Act, gaming, liquor, anti-money laundering, anti-terrorism or other such regulations.

8.7. Rights of VCOC Funds. In addition to any other rights contained in this Agreement, each VCOC Fund shall have the right upon reasonable notice to consult with representatives of the Company for the purposes of consulting with, advising and influencing management, obtaining information regarding the business and prospects of the Company and expressing its views on such matters. The Company agrees to give consideration to the advice given and any proposals made by each VCOC Fund.

## Section 9. Management and Operations.

9.1. Management. (a) Subject to the terms of this Agreement, the business operations and affairs of the Company shall be managed exclusively by the Management

Committee, which shall have the authority to exercise all of the powers and privileges granted to a "manager" by the Act, any other law or this Agreement, together with any powers incidental thereto, and to take any other action not prohibited under the Act or other applicable law, so far as such powers or actions are necessary or convenient or related to the conduct, promotion or attainment of the business, purposes or activities of the Company and do not conflict with the terms of this Agreement. Without limiting the foregoing, no act shall be taken, sum expended, decision made or obligation incurred by the Company (and the Company shall not permit any act to be taken, sum expended, decision made or obligation incurred by any Investment Vehicle) which constitutes a Major Decision without the express approval of the Management Committee and all Major Decisions shall be made solely by the Management Committee.

(b) Notwithstanding clause (a) above, the Members hereby agree that:

(i) Starwood shall have the sole authority and unilateral right (without needing the consent of Hanson Member, BRG Member, BRG or any BRG Representative) to make all decisions, grant (or withhold) all consents, authorizations, waivers and approvals, respond to all communications and take all other actions required or permitted to be made or taken by the Company or any Investment Vehicle (A) under or with respect to any BRG Related Agreement; provided that, for so long as no BRG Trigger Event shall have occurred, the vote (or consent) of the Management Committee (acting with the BRG Representatives) shall be required for the Company to (x) terminate the BRG Key Individual's employment with the Company without Cause or (y) deliver a notice to the BRG Key Individual that the term of the Hanson Employment Agreement will not be extended pursuant to section 3 of the Hanson Employment Agreement and (B) with respect to the refinancing of the Refinancable Starwood Preferred Capital (including the decision of whether to refinance the Refinancable Starwood Preferred Capital and the timing of such refinancing), provided, that, BRG's written consent (such consent not to be unreasonably withheld, conditioned or delayed except with respect to the amount of such refinancing to the extent it exceeds the Maximum Refinancing Amount in which case such consent may be exercised in BRG's sole discretion) shall be required to the extent the terms of such refinancing of the Refinancable Starwood Preferred Capital are materially less favorable than the terms set forth in Exhibit R; provided further, that, BRG and the BRG Representatives shall be entitled to review all documentation in connection with such refinancing and to participate in negotiations or be kept reasonably apprised thereof, and their comments on such documentation and in connection with such negotiations shall be considered in good faith by Starwood; and

(ii) BRG shall have the sole authority and unilateral right (without needing the consent of Starwood or any Starwood Representative) to make all decisions, grant (or withhold) all consents, authorizations, waivers and approvals, respond to all communications and take all other actions required or permitted to be made or taken by the Company or any Investment Vehicle under or with respect to any Starwood Related Agreement.

(c) The Management Committee may appoint any Person to act on behalf of the Company or any Investment Vehicle with such titles and authority as determined from time to time by the Management Committee. Each of such individuals shall hold office until his or her death, resignation or removal by a vote of the Management Committee. The Management Committee shall have the right, at any time in its sole discretion, upon written notice to such

Person, to reduce, eliminate or modify such authority granted to such Person or to relieve such Person of such authority and exercise such authority itself or assist or grant such authority to another Person. Notwithstanding the foregoing, (i) for so long as no BRG Trigger Event shall have occurred, the BRG Key Individual shall serve as the President of the Company (which shall be the highest ranking officer of the Company), for the period established under, and have the duties and responsibilities set forth in, the Hanson Employment Agreement, (ii) for so long as no Starwood Trigger Event shall have occurred, Starwood shall have the unilateral right to hire the CFO and any replacement of such CFO (subject to the consent of BRG, not to be unreasonably withheld or delayed for so long as no BRG Trigger Event shall have occurred) and to fire the CFO at any time for any reason or no reason and (iii) for so long as no BRG Trigger Event shall have occurred, BRG shall have the right to fire the CFO following the occurrence of a CFO Cause Event. The existence or non-existence of CFO Cause Event shall be determined in good faith by the Management Committee.

(d) (i) Hanson Member hereby irrevocably appoints BRG Member as its attorney-in-fact, coupled with an interest, to make all decisions, grant (or withhold) all consents, authorizations, waivers and approvals, respond to all communications and take all other actions required or permitted to be made or taken by Hanson Member and/or BRG hereunder, which appointment shall be binding on Hanson Member as to Starwood, the Company, the Investment Vehicles and all third parties. BRG Member shall have the right and obligation to exercise all of the powers, duties and responsibilities of Hanson Member and BRG hereunder. Hanson Member shall not have the right to make any decisions, grant (or withhold) any consents, authorizations, waivers or approvals or respond to any communications or take any other action required or permitted to be made or taken by Hanson Member and/or BRG hereunder. Each of Hanson Member and BRG Member shall be absolutely and unconditionally bound by any and all decisions, and the granting (or withholding) of all consents, authorizations, waivers, approvals and other actions or omissions of BRG Member hereunder. Any decision, grant, consent, authorization, waiver, approval or other action taken by BRG Member in respect of its Interest shall be deemed taken by Hanson Member in respect of its Interest. Nothing contained in this Section 9.1(d) shall limit, relieve, waive or modify any of the obligations of Hanson Member hereunder (including, without limitation, in respect of Capital Contribution obligations and obligations under Sections 12 and 13). Without limiting the foregoing, for purposes of Section 5.2, (x) if either of BRG Member or Hanson Member shall be a Non-Funding Member, both of BRG Member and Hanson Member shall be deemed to be Non-Funding Members and (y) if Starwood is the Non-Funding Member, either BRG Member, or Hanson Member, shall have the right to be a Contributing Member. If both BRG Member and Hanson Member elect to be Contributing Members, then each of their funding obligations under Section 5.2(d) shall be funded by BRG Member and Hanson Member in such manner as BRG Member shall have determined in accordance with Section 5.8.

(ii) Notwithstanding any instructions, contrary or otherwise, or objection received from Hanson Member, Starwood, the Company and each Investment Vehicle shall have the absolute and unconditional right to rely (without any further investigation or inquiry) upon any decision, consent, authorization, waiver, approval (or withholding thereof), response to any communication, or other action or omission of BRG Member with respect to the rights and obligations of Hanson Member and/or BRG hereunder. Without limiting the authority granted hereunder, upon the request of Starwood (or the Company or any Investment Vehicle) or any

third party, each of Hanson Member and BRG Member agrees to confirm, in a writing in form and substance acceptable to Starwood, such appointment, authority, decision, consent, authorization, waiver, approval or other action taken (including, without limitation, with respect to any specific action taken) promptly upon the request of Starwood (or the Company or any Investment Vehicle) or such third party.

(iii) Each of Hanson Member and BRG Member hereby indemnifies, holds harmless and defends the Company, each Investment Vehicle, Starwood and each of their Affiliates, subsidiaries and their agents, officers, directors, members, partners, shareholders and employees from and against all Damages incurred as a result, or arising out, of any actions taken by such Person or proposed to be taken under by such Person, or the reliance upon, the provisions contained in this Section 9.1(d).

(iv) This Section shall be binding upon the respective successors and assigns of BRG Member and Hanson Member permitted hereunder and shall benefit Starwood, the Company, each Investment Vehicle and their respective successors and assigns.

(e) The provisions of this Agreement regarding the management and governance of the Company shall, to the fullest extent legally permissible, apply as well to the management and governance of the Investment Vehicles, whether such Investment Vehicles are managed or controlled directly or indirectly by the Company as a member, partner, stockholder or otherwise. Any action to be taken by any Investment Vehicle shall be construed as an action taken by the Company and shall be subject to the same rights and limitations granted and imposed on the Members under this Agreement. In furtherance of the foregoing, each Member shall take, and each of its respective Representatives shall agree to take, to the fullest extent legally permissible, all actions necessary and appropriate to ensure that at all times, the constituents (and their respective relative powers) of the board of directors (or similar governing body) of each of the Investment Vehicles and committees thereof, if any, are the same as those of the constituents of the Management Committee. The Members agree that the manner in which to best replicate the representation of the Management Committee (and the respective relative powers of its constituents) on the boards of directors (or similar governing bodies) of the Investment Vehicles as set forth in the immediately preceding sentence, shall be subject to agreement of the Management Committee. The Company and each Member shall take, and shall cause each of its respective Representatives to take, all actions necessary and appropriate to ensure that any Investment Vehicle and any directors or officers of any direct or indirect Investment Vehicle act, to the fullest extent legally permissible, in a manner consistent with the terms and conditions of this Agreement.

9.2. Management Committee. (a) The Members hereby establish a management committee (the "Management Committee"). The Management Committee shall consist of eight (8) individuals (the "Representatives") as follows: (i) Starwood shall be entitled to designate four (4) Representatives to represent Starwood (the "Starwood Representatives"), with each of Starwood Global Opportunity Fund VII-A, L.P., Starwood Global Opportunity Fund VII-D, L.P., Starwood Capital Hospitality Fund I-1, L.P. (each, a "VCOC Fund") and Starwood Capital Hospitality Fund I-2, L.P. having the right to designate one such Starwood Representative on behalf of Starwood, and (ii) BRG Member shall be entitled to designate four (4) Representatives to represent BRG (the "BRG Representatives"). Hanson Member shall not

be entitled to designate any Representatives. The initial members of the Management Committee are set forth on Exhibit A.

(b) Each Representative on the Management Committee shall hold office until his or her death, resignation or removal at the pleasure of the Member that appointed him or her. If a vacancy occurs on the Management Committee, the Person with the right to appoint and remove such vacating Representative shall appoint his or her successor. A Member shall lose its right to have Representatives on the Management Committee, and its Representatives on the Management Committee shall be deemed to be automatically removed, as of the date on which such Member ceases to be a Member. In addition to the foregoing, (i) BRG Member shall lose its right to have Representatives on the Management Committee, and the BRG Representatives on the Management Committee shall be deemed to be automatically removed, as of the date on which a BRG Trigger Event shall have occurred and (ii) Starwood shall lose its right to have Representatives on the Management Committee, and the Starwood Representatives on the Management Committee shall be deemed to be automatically removed, as of the date on which a Starwood Trigger Event shall have occurred. From and after the date on which a Member shall lose its right to have Representatives on the Management Committee, all of the provisions of this Agreement referring to Representatives and the Management Committee shall be read as if such Member's Representatives do not exist and all quorum requirements and decisions of the Management Committee shall be satisfied and made, as applicable, solely by the Representatives of the Member whose Representatives are still on the Management Committee.

(c) The Management Committee shall meet once every quarter (unless waived by mutual agreement of the Members) and at such other times as may be necessary for the conduct of the Company's business on at least five (5) days prior written notice of the time and place of such meeting given by any Representative to all of the other Representatives. Notice of regular meetings of the Management Committee are not required. Representatives may waive in writing the requirements for notice before, at or after a special meeting, and attendance at such a meeting without objection by a Representative shall be deemed a waiver of such notice requirement.

(d) The Management Committee shall have the right, but not the obligation, to elect one of the Representatives or another person to serve as Secretary of the Management Committee. Such person shall hold office until his or her death, resignation or removal by a vote of the Management Committee. The Secretary or a person designated by him or her shall take written minutes of the proceedings of the meetings of the Management Committee, and such minutes shall be filed with the records of the Company.

(e) At least one (1) Starwood Representative and one (1) BRG Representative shall be required to constitute a quorum for a meeting of the Management Committee. Each of the Starwood Representatives shall be entitled to cast one (1) vote on any matter that comes before the Management Committee and each of the BRG Representatives shall be entitled to cast one (1) vote on any matter that comes before the Management Committee. Unless revoked in writing by Starwood, each Starwood Representative shall be given by proxy the vote of the other Starwood Representatives such that the Starwood Representatives shall always cast four (4) votes at any meeting (or action taken without a meeting) even if one or more other Starwood Representatives are not in attendance, or such meeting or not available to take such action

without a meeting. Unless revolved in writing by BRG, each BRG Representative is hereby given by proxy the vote of the other BRG Representatives such that the BRG Representatives shall always cast four (4) votes at any meeting (or action taken without a meeting) even if one or more other BRG Representatives are not in attendance for such meeting or not available to take such action without a meeting. Except as provided in Section 9.5 or otherwise specifically set forth herein, approval by the Management Committee of any matter shall require the affirmative vote (including votes cast by proxy) of at least a majority of the Starwood Representatives and a majority of the BRG Representatives votes entitled to be cast by the Representatives then in office voting at a duly held meeting of the Management Committee at which a quorum is present.

(f) Any meeting of the Management Committee may be held by conference telephone call, video conference or through similar communications equipment by means of which all persons participating in the meeting can communicate with each other. Participation in a telephonic and/or video conference meeting held pursuant to this Section shall constitute presence in person at such meeting.

(g) Any action required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the Representatives having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Representatives entitled to vote thereon were present and voted. All consents shall be filed with the minutes of the proceedings of the Management Committee.

(h) Except as otherwise expressly provided in this Agreement, none of the Representatives (in their capacities as members of the Management Committee only) or the Members shall have any duties or liabilities to the Company or any other Member (including any fiduciary duties), whether or not such duties or liabilities arise or exist at law or in equity, and each Member hereby expressly waives any such duties or liabilities. This Section shall not eliminate or limit the liability of such Representatives or the Members (A) for acts or omissions that involve fraud, intentional misconduct or a knowing and culpable violation of law, or (B) for any transaction not permitted or authorized under or pursuant to this Agreement from which such Representative or Member derived a personal benefit unless approved in accordance with this Agreement (including, without limitation, Section 9.5). Notwithstanding any duty (including any fiduciary duty) that might otherwise exist at law or in equity, (i) none of the Representatives (in their capacities as members of the Management Committee only) or the Members may permit or authorize a transaction under or pursuant to this Agreement from which such Representative or Member derived a personal benefit unless approved in accordance with this Agreement (including, without limitation, Section 9.5), and (ii) if such approval is obtained, such Representative's or Member's duty (including any fiduciary duty) shall be completely satisfied with respect to such transaction. Notwithstanding any duty (including any fiduciary duty) that might otherwise exist at law or in equity, the duty of care of each of such Representatives (in their capacities as members of the Management Committee only) and the Members is to act in good faith and to not act with fraud, intentional misconduct or a knowing and culpable violation of law. Except as provided in this Agreement, notwithstanding any duty (including any fiduciary duty) that might otherwise exist at law or in equity, whenever in this Agreement a Representative

of a Member and/or a Member is permitted or required to make a decision affecting or involving the Company, any Member or any other Person, such Representative and/or such Member shall be entitled to consider only such interests and factors as he, she or it desires, including a particular Member's interests, and shall, to the fullest extent permitted by applicable law, have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any Member. Without limiting the forgoing, each Member acknowledges that the exercise of the rights of any Member under this Agreement and the taking of action on behalf of the Company or with respect to the Company Assets (including, without limitation, with respect to the sale or other disposition of all or any portion of the Company Assets) may arise at a time when current market conditions and other factors may be materially disadvantageous to the Company or any other Member.

9.3. Annual Business Plan. No later than thirty (30) days prior to the end of the then current Fiscal Year, the Management Committee shall adopt the Annual Business Plan for the next Fiscal Year. The Annual Business Plan shall be updated on a quarterly basis or at such other times as may be determined by the Management Committee. Any such updates shall require the approval of the Management Committee. No material changes or departures from any item in an Annual Business Plan approved by the Management Committee shall be made without the prior approval of the Management Committee. Each Annual Business Plan shall include the information set forth in Exhibit E (as such exhibit may be modified from time to time by mutual agreement in writing of the Members). The initial Annual Business Plan and any other annual business plan approved by the Management Committee is referred to herein as the "Annual Business Plan".

9.4. Intentionally Omitted.

9.5. Affiliate Transactions. (a) Except as provided in Section 9.5(b) below, no agreement or transaction shall be entered into by the Company or any Investment Vehicle with a Member or any Affiliate of a Member and no decision shall be made in respect of any such agreement or transaction (including, without limitation, the entering into or the enforcement or termination thereof) or any other matter relating to any dealings between the Company or any Investment Vehicle and such Member or Affiliate unless such agreement, transaction or decision shall have been approved in writing by the Management Committee acting without the Representative or Representatives appointed by the Member which has (or whose Affiliate of such Member has) such interest in such agreement, transaction or other matter and, for the avoidance of doubt, the Representatives appointed by the Member which has such interest shall recuse themselves in connection with any decision to be made by the Management Committee governed by this Section 9.5. Without limiting the foregoing, but subject to Section 9.5(b) below, any such agreement, transaction or other matter shall be on terms and conditions at least as favorable to the Company or such Investment Vehicle, as applicable, as the terms and conditions which would be available in an arm's length transaction with a Person which is not an Affiliate, and the terms and conditions of such agreement, transaction or other matter shall be fully disclosed by the interested Member and the Company to all of the Representatives and the Management Committee prior to the execution, delivery and/or consummation thereof and vote by the Management Committee thereon in accordance with the terms of this paragraph.

(b) The Members hereby irrevocably consent to the Company and the applicable Investment Vehicles entering into or having entered into the Master Restaurant Purchase Agreement, the Contribution Agreement, the Hanson Employment Agreement, the DC3 Management Agreement, the Hanson Note, the Starwood Bridge Financing Documents, the Starwood Note, the DC3 Loans and the DC3 Acquisition Amendments and all other agreements required to be entered into in connection with the consummation of the transactions contemplated under the Contribution Agreement and the Master Restaurant Purchase Agreement and the performance by the Company of its obligations under each such agreement in accordance with its terms; provided that any amendments or modifications to the foregoing agreements following the date hereof shall be subject to the provisions of this Section 9.5.

(c) The parties agree that, to the extent practicable, and unless otherwise agreed in writing by the Members, (i) all disputes under BRG Related Agreements and Starwood Related Agreements shall be settled in accordance with confidential, binding arbitration and (ii) such BRG Related Agreements and Starwood Related Agreements shall contain an arbitration provision substantially similar to the one contained in Section 15.2 herein.

9.6. Other Activities. Except as provided in Section 9.7, neither the Company nor any Member (or any Affiliate of any Member) shall have any right by virtue of this Agreement either to participate in or to share in any other now existing or future ventures, activities or opportunities of any of the other Members or their Affiliates, or in the income or proceeds derived from such ventures, activities or opportunities.

9.7. Exclusivity; Non-Competition.

(a) BRG Exclusivity. BRG agrees that during the BRG Restricted Period, (i) each BRG Restricted Person shall deal exclusively through the Company or one or more Investment Vehicles in connection with investing in, pursuing, developing, expanding, acquiring, leasing, licensing, franchising, financing, managing or otherwise dealing with Portfolio Investments or any debt or equity interests therein and (ii) no BRG Restricted Person will, directly or indirectly, other than through the Company or one or more Investment Vehicles (A) acquire, lease, license or franchise any Portfolio Investment or any interest therein or any interest in any owner of any Portfolio Investment, (B) solicit, make, accept, negotiate, entertain or otherwise pursue any capital source (including offers for equity and/or debt financing) in respect of the acquisition, leasing, licensing or franchising of any Portfolio Investment or any interest therein or any interest in any owner of a Portfolio Investment and/or any other transaction relating to the acquisition, leasing, licensing, franchising, ownership, expansion, management and/or development of a Portfolio Investment and/or equity and/or debt financing therefor, (C) provide management, administrative or other services to any owner of any Portfolio Investment, (D) acquire any interest in any Person that provides management, administrative, or other services to any owner of any Portfolio Investment or (E) enter into any joint venture or partnership, in each case, relating to any of the foregoing. The provisions of this Section 9.7(a), 9.7(b) and 9.7(c) shall not apply to BRG Excluded Investments.

(b) Non-Competition. BRG agrees that during the BRG Restricted Period no BRG Restricted Person shall, within any jurisdiction or marketing area in which the Company or any Investment Vehicle is doing business, directly or indirectly, own, manage, operate, control,

be employed by or participate in the ownership, management, operation or control of, any business of the type and character engaged in or competitive with the Company Business. For purposes of this Agreement, the "Company Business" shall mean (i) at any time during the BRG Restricted Period, the business in which the Company and the Investment Vehicles are engaged at such time; or (ii) at any time following the BRG Restricted Period, the business in which the Company and the Investment Vehicle was engaged during the BRG Restricted Period, *provided* it shall not include any such business that the Company or an Investment Vehicle ceases to engage in following the end of the BRG Restricted Period. Notwithstanding the foregoing, a BRG Restricted Person's ownership of securities of two percent (2%) or less of any class of securities of a public company shall not, by itself, be considered to be competition with the Company or any of the Investment Vehicles.

(c) Time Devoted to the Company. Without limiting any of the other obligations set forth in this Section 9.7, during the BRG Restricted Period, BRG Member shall devote all of its business time and attention to the conduct of the Company's and the Investment Vehicles' business and affairs (and will not engage in any other activities whatsoever).

(d) Non-Solicitation. Except as may be expressly permitted by the Management Committee, during the BRG Restricted Period (in the case of a BRG Restricted Person) and the Starwood Restricted Period (in the case of a Starwood Restricted Person) no BRG Restricted Person or Starwood Restricted Person shall, directly or indirectly, (i) employ, solicit for employment or otherwise contract for the services of any individual who is an employee of the Company or any of the Investment Vehicles; or (ii) otherwise induce or attempt to induce any employee of the Company or any of the Investment Vehicles to leave the employ of the Company or such Investment Vehicle, or in any way knowingly interfere with the relationship between the Company or any such Investment Vehicle and any employee respectively thereof.

(e) No Starwood Exclusivity. Neither Starwood nor any of its Affiliates shall have any exclusivity obligations to any of the Company, any Investment Vehicle, the BRG Key Individual, BRG or the Affiliates of any of the foregoing, and nothing contained in this Agreement shall obligate Starwood or any of its Affiliates to present any opportunity (including any Investment Opportunity) to any of the Company, any Investment Vehicle, the BRG Key Individual, BRG or the Affiliates of any of the foregoing or limit or restrict the pursuit of any opportunity (including any Investment Opportunity) by Starwood or any of its Affiliates without any of the Company, any Investment Vehicle, the BRG Key Individual, BRG or the Affiliates of any of the foregoing. Notwithstanding the foregoing provisions of this Section 9.7(e), during the Starwood Restricted Period, no Starwood Restricted Person may, without the consent of the Management Committee (such consent not to be unreasonably withheld), acquire a controlling equity interest in any Qualified Investment Opportunity presented to the Management Committee by the BRG Key Individual other than through the Company or an Investment Vehicle. The immediately preceding sentence shall not apply to Starwood Excluded Investments.

(f) Hanson Member Indemnification. Hanson Member hereby indemnifies, defends and holds harmless the Company, each Investment Vehicle, Starwood and each of their direct or indirect Affiliates and their and their Affiliates' agents, officers, directors, members,

partners, shareholders and employees from and against all Damages as a result of or arising out of any breach of the provisions of this Section 9.7 by any BRG Restricted Person.

9.8. Limitation on Actions of Members; Binding Authority. No Member shall, without the prior written consent of the Management Committee, take any action on behalf of, or in the name of, or otherwise bind the Company or any Investment Vehicle, or enter into any contract, agreement, commitment or obligation binding upon the Company or any Investment Vehicle, or, in its capacity as a Member, perform any act in any way relating to the Company or any Investment Vehicle or the Company's or an Investment Vehicle's assets, except in a manner and to the extent specifically authorized by the provisions of this Agreement. No Participant shall have any right or authority, by virtue of being a Participant, to take any action on behalf of, or in the name of, or otherwise bind the Company or any Investment Vehicle, or enter into any contract, agreement, commitment or obligation binding upon the Company or any Investment Vehicle, or, in its capacity as a Participant, perform any act in any way relating to the Company or any Investment Vehicle or the Company's or an Investment Vehicle's assets.

9.9. Organization of Members. (a) BRG Member hereby represents, warrants and covenants that (A) other than as a result of the death or Disability of the BRG Key Individual, (i) BRG Member is, and shall at all times be, directly or indirectly, owned (legally, beneficially and economically) at least 75% by the BRG Key Individual; (ii) BRG Member is, and shall at all times be, directly or indirectly, controlled by the BRG Key Individual; (iii) the BRG Key Individual shall be the only Person having the right (as and to the extent set forth herein) on behalf of BRG Member to make decisions affecting the Company or the Investment Vehicles or the Company Assets; and (iv) the BRG Key Individual shall remain actively involved in the day to day management of BRG Member and engaged in the decision making process of BRG Member; (B) as of the date hereof, the owners of the legal, beneficial and economic interests in BRG Member are set forth in Exhibit M attached hereto; (C) the sole purpose of BRG Member is to be a member of the Company; (D) the sole asset and business of BRG Member is and shall be its Interest in the Company and no other business or activities shall be conducted or participated in by BRG Member, and (E) it will maintain its existence separate and apart from any other Person, it will not commingle its assets with any other Person, and it will not incur any liabilities or undertake any obligations unrelated to its Interest in the Company.

(b) Starwood hereby represents, warrants and covenants that (i) Starwood is, and shall at all times be, directly or indirectly, controlled by, or under common control with, SCG or a Successor Starwood Fund GP and (ii) as of the date hereof, the owners of the controlling interests in Starwood are set forth in Exhibit N attached hereto.

9.10. Gaming Activities. (a) The Members acknowledge and agree that Starwood has advised BRG that: (i) Starwood is affiliated with one or more Gaming Entities, (ii) such Gaming Entities are generally subject to pervasive regulations under the laws, rules and regulations of each of the jurisdictions in which said entities are operated, (iii) while the regulatory requirements may vary from jurisdiction to jurisdiction, these jurisdictions require licenses, permits, findings of suitability, documentation of qualification, including evidence of financial stability and/or other required approvals for companies, owners or partners involved in gaming, as well as the individual suitability of officers, directors, major stock holders, partners,

key employees and associates and (iv) the Company, an Investment Vehicle, BRG, or individuals or entities associated with such Persons may be requested to provide information to Gaming Authorities or to take other actions in order to satisfy such requirements on behalf of Starwood or its Affiliates.

(b) BRG agrees to use commercially reasonable efforts, with the assistance of Starwood, to (i) file for and obtain, as expeditiously as practicable, such Gaming Approvals, (ii) satisfy any request for information as required or imposed by any Gaming Authority and (iii) cooperate in connection with any investigation by any Gaming Authority, in each case as may be requested by Starwood in connection with the preservation or renewal of any Gaming Approval of a Gaming Entity or otherwise to satisfy the requirements of any Gaming Authority with respect to the continued operation of a Gaming Entity, provided that neither BRG, its Affiliates or the Company shall in any event be required in connection with the foregoing to take any action, undertake any divestiture or restrict their conduct other than to provide responsive and materially accurate information required to make any submission or application to any Gaming Authority. Each party shall keep the other reasonably informed of the status of the progress of obtaining such Gaming Approvals. Any costs or expenses of BRG or any of its Affiliates in connection with its obligations pursuant to this Section 9.10 shall be borne by the Company.

(c) If any Gaming Authority requires any action on the part of the Company, any Investment Vehicle, BRG, Starwood, or any individual or entity associated with BRG or Starwood, the Members agree to explore mutually acceptable alternatives to restructure their investment in the Company and their governance rights hereunder and to use all reasonable efforts to avoid or limit through negotiation with any Gaming Authority, or through appropriate legal process, any actions required by any Gaming Authority in connection with a Gaming Entity preserving or obtaining any Gaming Approval (other than as provided in Section 9.10(b)). If notwithstanding such efforts a Gaming Approval cannot be obtained or preserved without such actions and Starwood notifies BRG in writing that in its good faith judgment the failure to preserve or obtain such Gaming Approval jeopardizes the continued operation of a Gaming Entity by Starwood or its Affiliates, a "Gaming Trigger Event" shall be deemed to have occurred.

9.11. Operation in Accordance with VCOC. The Members acknowledge that Starwood or one or more of its Affiliates (an "OC Affiliate") intends to qualify as a "venture capital operating company" within the meaning of U.S. Department of Labor Regulation 29 C.F.R. §2510.3-101 (an "OC"), and agree that the Company and the Investment Vehicles shall be operated in a manner that will enable Starwood and such OC Affiliate and the Company to so qualify. The Members acknowledge and agree that Starwood may assign any or all of its rights or powers under this Agreement to designate committee representatives, to provide consents and approvals, or any other rights or powers to one or more of its OC Affiliates as it deems appropriate, and the exercise of any such rights or powers by an OC Affiliate shall have full force and effect under this Agreement without the need for any further consent or approval. BRG shall not fund any Capital Contribution or Company Loan "with the 'plan assets' of any 'employee benefit plan' within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended or any 'plan' as defined by Section 4975 of the Internal Revenue Code of 1986, as amended.

9.12. FCPA/OFAC. (a) In compliance with the Foreign Corrupt Practices Act, each Member will not, and will ensure that its officers, directors, employees, shareholders, members, agents and Affiliates, acting on its behalf or on the behalf of the Company or any Investment Vehicle or Affiliates of the foregoing do not, for a corrupt purpose, offer, directly or indirectly, promise to pay, pay, promise to give, give or authorize the paying or giving of anything of value to any official representative or employee of any government agency or instrumentality, any political party or officer thereof or any candidate for office in any jurisdiction, except for any facilitating or expediting payments to government officials, political parties or political party officials the purpose of which is to expedite or secure the performance of a routine governmental action by such government officials or political parties or party officials. The term "routine governmental action" for purposes of this provision shall mean an action which is ordinarily and commonly performed by the applicable government official in (i) obtaining permits, licenses, or other such official documents which such Person is otherwise legally entitled to; (ii) processing governmental papers; (iii) providing police protection, mail pick-up and delivery or scheduling inspections associated with contract performance or inspections related to transit of goods across country; (iv) providing phone service, power and water supply, loading and unloading of cargo, or protecting perishable products or commodities from deterioration; or (v) actions of a similar nature. The term routine governmental action does not include any decision by a government official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by an official involved in the decision making process to encourage a decision to award new business to or continue business with a particular party.

(b) Each Member agrees to notify immediately the other Member of any request that such Member or any of its officers, directors, employees, shareholders, members, agents or Affiliates, acting on its behalf, receives to take any action that may constitute a violation of the Foreign Corrupt Practices Act.

(c) None of the Members or any of their Affiliates, nor any of their respective members, and none of their respective officers or directors is, nor during the term of this Agreement while such Member is a Member, will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Blocked Persons List) or under any U.S. statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) or other governmental action and is not engaged and, during the term of this Agreement, will not, engage in any dealings or transactions with or be otherwise associated with such persons or entities.

9.13. Credit Enhancement. Neither the Company nor the Members shall be obligated to issue any guaranties or indemnities in connection with any financing relating to any of the assets of the Company or any Investment Vehicle, or the acquisition of any such asset. Notwithstanding the foregoing, any Member or an Affiliate of such Member (each such Person, as applicable, a "Credit Provider" and each Member (together with its Affiliates) that is not (or is not Affiliated with) the Credit Provider, the "Non-Credit Provider") may, on a case by case basis and in its sole judgment, but subject to obtaining the prior written approval of the Management Committee, elect to provide credit enhancement for any loan, other indebtedness or other

obligations obtained or incurred by the Company or any Investment Vehicle in the form of guaranties, indemnifications, pledges of collateral or letters of credit to the provider of such loan or financing or other benefit (a "Lender"), in each case to secure certain obligations of the Company or any Investment Vehicle (any such approved credit enhancement shall be collectively referred to as "Credit Enhancement"). Any Credit Enhancement shall be in form and substance acceptable to the Management Committee. If at any time, a Credit Provider has provided such Credit Enhancement and (i) in the case of a guaranty or indemnification, funds are paid to a Lender thereunder or costs are incurred in connection with the enforcement thereof, (ii) in the case of a pledge of collateral, such collateral is applied by a Lender or costs are incurred in connection with the enforcement thereof, or (iii) in the case of a letter of credit, such letter of credit is drawn upon or costs are incurred in connection with the enforcement thereof, and in each of the cases set forth in subclauses (i) through (iii) above, the funds paid, costs incurred or losses suffered by the Credit Provider, as the case may be, did not arise as a result of any actions or inactions of such Credit Provider or its Affiliates in violation of the terms of the Credit Enhancement or the financing extended to the Company or Investment Vehicle by such Lender in respect of which the Credit Enhancement was provided, such Credit Provider shall be deemed to have made a loan to the Company in the amount of such payment, application or draw (any such loan, a "Credit Enhancement Loan"), which Credit Enhancement Loan shall be evidenced by a promissory note in form reasonably satisfactory to the Credit Provider if the Credit Provider so desires, shall bear interest at the Default Loan Rate, and shall, subject to the last sentence of this Section, be payable on a first priority basis by the Company from available Cash Flow and prior to any Distributions to the Members. Interest on a Credit Enhancement Loan, to the extent unpaid, shall accrue and compound on a daily basis. All payments made in respect of any Credit Enhancement Loan shall be applied first to payment of any interest due under such Credit Enhancement Loan and then to principal until all amounts due thereunder are paid in full. If any Credit Enhancement Loan is made under this Section, the Credit Provider making such Credit Enhancement Loan or any Member of which the Credit Provider is an Affiliate shall have the unilateral right to issue a funding notice to the Members to repay such Credit Enhancement Loan and, within twenty (20) days after receipt of such notice, each Member shall make a Capital Contribution, equal to the Credit Enhancement Loan (plus interest accrued thereon) multiplied by such Member's Credit Enhancement Funding Percentage, the proceeds of which shall be utilized to immediately repay the Credit Enhancement Loan, together with all accrued and unpaid interest thereon. In addition, if a Credit Provider has provided Credit Enhancement and the Company and/or the applicable obligor defaults on any obligation secured by such Credit Enhancement and it is likely that such Credit Provider will have to make or incur a Credit Enhancement Loan, then, provided the Credit Provider or its Affiliates did not cause the default which will result in the Credit Provider having to make or incur a Credit Enhancement Loan, the Credit Provider who has provided such Credit Enhancement or any other Member of which the Credit Provider is an Affiliate shall have the unilateral right to issue a funding notice to raise such funds as it deems reasonably necessary to cure such default, up to the maximum contingent liability of the Credit Provider who provided such Credit Enhancement and, within twenty (20) days after receipt of such notice, each Member shall make a Capital Contribution equal to the aggregate amount due under the funding notice multiplied by such Member's Credit Enhancement Funding Percentage, the proceeds of which shall be utilized to immediately cure such default and avoid the incurrence of such Credit Enhancement Loan. All outstanding Company Loans and Credit Enhancement Loans shall be subordinate in all respects to the Initial

Financing and any third party financing obtained by the Company and shall be repaid (in accordance with the terms hereof) on a *pari passu, pro rata* basis in proportion to the outstanding balances of the Company Loans and Credit Enhancement Loans at the time of payment to the extent permitted under the provisions of any financing to which the Company is subject.

9.14. Insurance. During the term of this Agreement, the Management Committee, on behalf of the Company or applicable Investment Vehicle, shall procure and maintain insurance as is determined to be appropriate by the Management Committee (in form and with endorsements, waivers and deductibles and with insurance companies, designated or approved by the Management Committee) naming the Company, the applicable Investment Vehicle, Starwood and BRG as insureds thereunder.

Section 10. Confidentiality. (a) Any information relating to the business, operation or finances of a Member or the Company which are proprietary to, or considered proprietary by, such Member or the Company is hereinafter referred to as "Confidential Information". All information in tangible form (plans, writings (including, without limitation, customer lists and marketing materials), drawings, computer software and programs, etc.) or provided to or conveyed orally or visually to a receiving Member (including, without limitation, any marketing techniques), shall be presumed to be Confidential Information at the time of delivery to the receiving Member. Each Member agrees: (i) not to disclose such Confidential Information to any Person except to those of its employees or representatives who need to know such Confidential Information in connection with the conduct of the business of the Company and who have agreed to maintain the confidentiality of such Confidential Information and (ii) neither it nor any of its employees or representatives will use the Confidential Information for any purpose other than in connection with the conduct of the business of the Company; provided that nothing herein shall prevent any Member from disclosing any portion of such Confidential Information (1) to the Company and allowing the Company to use such Confidential Information in connection with the Company's business, (2) pursuant to judicial order or in response to a governmental inquiry, by subpoena or other legal process, but only to the extent required by such order, inquiry, subpoena or process, and only after reasonable notice to the original divulging Member, (3) as necessary or appropriate in connection with, or to prevent the audit by, a governmental agency of the accounts of any of the Members, (4) in order to initiate, defend or otherwise pursue legal proceedings between the parties regarding this Agreement, (5) as necessary in connection with a Transfer of an Interest permitted hereunder, (6) to a Member's respective attorneys or accountants or other representatives, (7) as, and solely to the extent, required by applicable laws or applicable rules and regulations of a stock exchange, (8) which is or hereafter becomes public, other than by breach of this Agreement, (9) which was already in the receiving Member's possession prior to any disclosure of the Confidential Information to the receiving Member by the divulging Member, (10) which has been or is hereafter obtained by the receiving Member from a third party not bound by any confidentiality obligation with respect to the Confidential Information, or (11) to any existing and prospective, direct or indirect, investors, lenders and other capital sources; provided, further, that prior to such disclosures (i) in the case of any disclosures pursuant to clauses (2), (3), (5) and (7), notice of such disclosure is first given to the Management Committee and the Members (unless in the case of clauses (2) and (3) such notice is prohibited by applicable laws or regulations or the terms of such order) and (ii) in the case of any disclosures pursuant to clauses (5), (6) and (11), the Person

to whom disclosure is to be made with respect to the Confidential Information has agreed to maintain the confidentiality of the Confidential Information.

(b) All Confidential Information shall be protected by the receiving Member and the Company from disclosure with the same degree of care with which the receiving Member protects its own Confidential Information from disclosure. The Company, the Members and their Affiliates shall each act to safeguard the secrecy and confidentiality of, and any proprietary rights to, the Confidential Information of the Company and the Members, except to the extent such information may be disclosed pursuant to Section 10(a) above or such disclosure is reasonably necessary in order to carry out the business of the Company. Each Member and the Company may, from time to time, provide the other Members written notice of any Confidential Information which is subject to this Section.

(c) References in this Section to the Company shall include any Investment Vehicle of the Company.

(d) No Participant shall disclose any Confidential Information to any Person without the consent of the Management Committee except as may be required in connection with such Participant's employment with the Company or any Investment Vehicle.

#### Section 11. Representations and Warranties.

11.1. In General. As of the date hereof, each of the Members hereby makes each of the representations and warranties applicable to such Member as set forth in Section 11.2. Such representations and warranties shall survive the execution of this Agreement.

11.2. Representations and Warranties. Each Member hereby represents and warrants that:

(a) Due Incorporation or Formation; Authorization of Agreement. Such Member (other than Hanson Member) is a corporation duly organized or a partnership or limited liability company duly formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation and has the corporate, partnership or company power and authority to own its property and carry on its business as owned and carried on at the date hereof and as contemplated hereby. Such Member (other than Hanson Member) is duly licensed or qualified to do business and in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder. Such Member (other than Hanson Member) has the corporate, partnership or company power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate, partnership or company action. This Agreement constitutes the legal, valid and binding obligation of such Member.

(b) No Conflict with Restrictions; No Default. Neither the execution, delivery or performance of this Agreement nor the consummation by such Member (or any of its Affiliates) of the transactions contemplated hereby (i) conflicts or will conflict with, violate or result in a breach of (or has conflicted with, violated or resulted in a breach of) any of the terms,

conditions or provisions of any law, regulation, order, writ, injunction, decree, determination or award of any court, any governmental department, board, agency or instrumentality, domestic or foreign, or any arbitrator, applicable to such Member or any of its Affiliates, (ii) conflicts or will conflict with, violate, result in a breach of or constitute a default under (or has conflicted with, violated, resulted in a breach of or constituted a default under) any of the terms, conditions or provisions of the articles of incorporation, bylaws, partnership agreement or operating agreement of such Member or any of its Affiliates or of any material agreement or instrument to which such Member or any of its Affiliates is a party or by which such Member or any of its Affiliates is or may be bound or to which any of its properties or assets is subject, (iii) conflicts or will conflict with, violate, result in (or has conflicted with, violated or resulted in) a breach of, constitute (or has constituted) a default under (whether with notice or lapse of time or both), accelerate or permit the acceleration of (or has accelerated) the performance required by, give (or has given) to others any material interests or rights or require any consent, authorization or approval under any indenture, mortgage, lease, agreement or instrument to which such Member or any of its Affiliates is a party or by which such Member or any of its Affiliates or any of their properties or assets is or may be bound or (iv) results or will result (or has resulted) in the creation or imposition of any lien upon any of the properties or assets of such Member or any of its Affiliates.

(c) Governmental Authorizations. Any registration, declaration or filing with, or consent, approval, license, permit or other authorization or order by, or exemption or other action of, any governmental, administrative or regulatory authority, domestic or foreign, that was or is required in connection with the valid execution, delivery, acceptance and performance by such Member under this Agreement or consummation by such Member (or any of its Affiliates) of any transaction contemplated hereby has been completed, made or obtained on or before the date hereof.

(d) Litigation. There are no actions, suits, proceedings or investigations pending, or, to the knowledge of such Member or any of its Affiliates, threatened against or affecting such Member or any of its Affiliates or any of their properties, assets or businesses in any court or before or by any governmental department, board, agency or instrumentality, domestic or foreign, or any arbitrator which could, if adversely determined (or, in the case of an investigation could lead to any action, suit or proceeding which if adversely determined could) reasonably be expected to materially impair such Member's ability to perform its obligations under this Agreement or to have a material adverse effect on the consolidated financial condition of such Member; such Member or any of its Affiliates has not received any currently effective notice of any default, and such Member or any of its Affiliates is not in default, under any applicable order, writ, injunction, decree, permit, determination or award of any court, any governmental department, board, agency or instrumentality, domestic or foreign, or any arbitrator which could reasonably be expected to materially impair such Member's (or any of its Affiliate's) ability to perform its obligations under this Agreement or to have a material adverse effect on the consolidated financial condition of such Member.

(e) Investigation. Such Member is acquiring its Interest based upon its own investigation, and the exercise by such Member of its rights and the performance of its obligations under this Agreement will be based upon its own investigation, analysis and expertise. Such Member is a sophisticated investor possessing an expertise in analyzing the

benefits and risks associated with acquiring investments that are similar to the acquisition of its Interest.

(f) Broker. No broker, agent or other person acting as such on behalf of such Member was instrumental in consummating this transaction and no conversations or prior negotiations were had by such party with any broker, agent or other such person concerning the transaction that is the subject of this Agreement.

(g) Investment Company Act. Neither such Member nor any of its Affiliates is, nor will the Company as a result of such Member holding an interest therein be, an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

(h) Securities Matters. (i) None of the Interests are registered under the Securities Act or any state securities laws. Such Member understands that the offering, issuance and sale of the Interests are intended to be exempt from registration under the Securities Act, based, in part, upon the representations, warranties and agreements contained in this Agreement. Such Member is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act.

(ii) Neither the Securities and Exchange Commission nor any state securities commission has approved the Interests or passed upon or endorsed the merits of the offer or sale of the Interests. Such Member is acquiring the Interests solely for such Member's own account for investment and not with a view to resale or distribution thereof in violation of the Securities Act.

(iii) Such Member is unaware of, and in no way relying on, any form of general solicitation or general advertising in connection with the offer and sale of the Interests, and no Member has taken any action which could give rise to any claim by any person for brokerage commissions, finders' fees (without regard to any finders' fees payable by the Company directly) or the like relating to the transactions contemplated hereby.

(iv) Such Member is not relying on the Company or any of its officers, directors, employees, advisors or representatives with regard to the tax and other economic considerations of an investment in the Interests, and such Member has relied on the advice of only such Member's Advisors.

(v) Such Member understands that the Interests may not be sold, hypothecated or otherwise disposed of unless subsequently registered under the Securities Act and applicable state securities laws, or an exemption from registration is available. Such Member agrees that it will not attempt to Transfer all or any portion of the Interests in violation of this Agreement.

(vi) Such Member has adequate means for providing for its current financial needs and anticipated future needs and possible contingencies and emergencies and has no need for liquidity in the investment in the Interests.

(vii) Such Member, or its direct or indirect members, partners or shareholders, as applicable, has significant prior investment experience, including investment in non-listed and

non-registered securities. Such Member is knowledgeable about investment considerations and has a sufficient net worth to sustain a loss of such Member's entire investment in the Company in the event such a loss should occur. Such Member's overall commitment to investments which are not readily marketable is not excessive in view of such Member's net worth and financial circumstances and the purchase of the Interests will not cause such commitment to become excessive. The investment in the Interests is suitable for such Member.

(viii) Such Member represents to the Company that the information contained in this subparagraph (h) and in all other writings, if any, furnished to the Company with regard to such Member (to the extent such writings relate to its exemption from registration under the Securities Act) is complete and accurate and may be relied upon by the Company in determining the availability of an exemption from registration under Federal and state securities laws in connection with the sale of the Interests.

## Section 12. Sale, Assignment, Transfer or other Disposition.

12.1. Prohibited Transfers. Except as otherwise provided in this Section 12 (including Exhibit G and Exhibit H), (i) no Member shall Transfer, directly or indirectly, all or any part of its Interest (whether legal or beneficial) in the Company or (ii) permit any Transfer, directly or indirectly of all or any part of any interest in such Member, and any attempt to so Transfer such Interest or such interest in a Member (and such Transfer) shall be null and void and of no effect.

### 12.2. Permitted Transfers.

#### (a) Starwood Permitted Transfers.

(i) Starwood may Transfer all (but not less than all) of its Interests in the Company at any time to any Starwood Permitted Transferee provided such Person remains a Starwood Permitted Transferee at all times while such Person holds such Interests. If any such Person subsequently ceases to be a Starwood Permitted Transferee while such Person holds such Interests, such Person shall, before ceasing to be a Starwood Permitted Transferee, Transfer such Interests to Starwood or a Starwood Permitted Transferee. Any failure to comply with the immediately preceding sentence will result in such cessation being a non-permitted Transfer.

(ii) Nothing in this Agreement shall restrict (or require any prior notification thereof to BRG of) (x) any direct or indirect Transfers of interests in Starwood so long as following such Transfer no Starwood Change of Control shall have occurred, (y) any direct or indirect Transfer of interests by any limited partner in any investment partnership or fund sponsored by Starwood or any of its Affiliates or (z) Starwood (or any Person having a direct or indirect interest in Starwood) from having the right at any time to pledge to an Institutional Lender or any trust or security agent acting on such Institutional Lender's behalf, directly or indirectly, all or any part of its Interests in the Company (or all or any part of the applicable interests owned by such other Person) for such purposes as Starwood (or such other Person) deems necessary in the ordinary course of its business and operations. Notwithstanding the foregoing, Starwood shall notify BRG in writing prior to pledging any of its direct Interest in the

Company and the date on which the existing general partner of a Starwood Fund which has an indirect ownership interest in Starwood ceases to be a general partner of such Starwood Fund.

(b) BRG Permitted Transfers.

(i) BRG may Transfer all (but not less than all) of its Interests in the Company at any time to any BRG Permitted Transferee provided such Person remains a BRG Permitted Transferee at all times while such Person holds such Interests. If any such Person subsequently ceases to be a BRG Permitted Transferee while such Person holds such Interests, such Person shall, before ceasing to be a BRG Permitted Transferee, Transfer such Interests to BRG or a BRG Permitted Transferee. Any failure to comply with the immediately preceding sentence will result in such cessation being a non-permitted Transfer.

(ii) BRG may permit transfers of direct or indirect interests in BRG to a BRG Indirect Permitted Transferee provided (x) such Person remains a BRG Indirect Permitted Transferee at all times while such Person holds such interests and (y) no BRG Change of Control shall occur as a result of such transfer. If any such Person subsequently ceases to be a BRG Indirect Permitted Transferee while such Person holds such interests, such Person shall, before ceasing to be a BRG Indirect Permitted Transferee, transfer such interests to BRG or a BRG Indirect Permitted Transferee. Any failure to comply with the immediately preceding sentence will result in such cessation being a non-permitted Transfer. BRG shall notify Starwood in writing prior to the occurrence of any direct or indirect transfers of interests in BRG permitted by the terms herein.

(c) Pledge Agreement Transfers. Nothing in this Agreement shall restrict (or require prior notification of) the Transfer of Starwood's Interests to Hanson Member and the Trusts pursuant to, and in accordance with, the Pledge Agreement or any subsequent Transfer of such Interests effected by or on behalf of Hanson Member or the Trusts to any third party in connection with their exercise of remedies pursuant to, and in accordance with, the Pledge Agreement.

12.3. Admission of Transferee. (a) Notwithstanding anything in this Section to the contrary, no Transfer of Interests in the Company (other than pledges permitted pursuant to the terms of Section 12.2(a)(ii)(z)) shall be permitted unless the potential transferee is admitted as a Member under this Section. If a Member Transfers all or any portion of its Interest in the Company in accordance with the terms of this Agreement, such transferee may become a Member if (i) such transferee executes and agrees to be bound by this Agreement, (ii) the transferor and/or transferee pays all reasonable legal and other fees and expenses incurred by the Company in connection with such assignment and substitution and (iii) the transferor and transferee execute such documents and deliver such certificates to the Company and the remaining Members as may be required by applicable law or otherwise advisable by the Management Committee. Without limiting the foregoing, unless a transferee of a Member's Interest is admitted as a Member under this Section, it shall have none of the powers of a Member hereunder and shall only have such rights of an assignee under the Act as are consistent with the other terms and provisions of this Agreement. If a transferee of a Member's Interest is not admitted as a Member under this Section, the transferor shall retain all non-economic rights of a Member, including, without limitation, the power to vote such Member's Interest on all matters coming before the Member's for a vote. Upon the Transfer of its entire Interest in the

Company and the admission of such Member's transferee(s) pursuant to this Section, a Member shall be deemed to have withdrawn from the Company as a Member.

(b) Notwithstanding the foregoing, any Transfer or purported Transfer of any Interest, whether to another Member or to a third party, shall be of no effect, and such transferee shall not become a Member, if either Member determines (acting reasonably) that:

(i) the Transfer would require registration of any Interest under, or result in a violation of, any Federal or state securities laws;

(ii) as a result of such Transfer the Company would be required to register as an investment company under the Investment Company Act of 1940, as amended, or any rules or regulations promulgated thereunder;

(iii) if as a result of such Transfer the assets of the Company could be deemed to be "plan assets" for purposes of ERISA; or

(iv) as a result of such Transfer, the Company would or may have in the aggregate more than one hundred (100) members and material adverse Federal income tax consequences would result to a Member. For purposes of determining the number of members under this Section, a Person (the "beneficial owner") indirectly owning an interest in the Company through a partnership, grantor trust or S corporation (as such terms are used in the Code) (the "flow-through entity") shall be considered a member, but only if (i) substantially all of the value of the beneficial owner's interest in the flow-through entity is attributable to the flow-through entity's interest (direct or indirect) in the Company and (ii) in the sole discretion of the Management Committee, a principal purpose of the use of the flow-through entity is to permit the Company to satisfy the 100-member limitation.

A Member may require the provision of a certificate as to the legal nature and composition of a proposed transferee of an Interest of a Member and from any Member as to its legal nature and composition and shall be entitled to rely on any such certificate in making such determinations under this Section.

12.4. Withdrawals and Withdrawing Members. (a) Each of the Members does hereby covenant and agree that it will not withdraw, resign, retire or disassociate from the Company, except as a result of a Transfer of its entire Interest in the Company permitted under the terms of this Agreement and that it will carry out its duties and responsibilities hereunder until the Company is terminated, liquidated and dissolved under Section 13. No Member shall be entitled to receive any distribution or otherwise receive the fair market value of its interest in the Company in compensation for any purported resignation or withdrawal not in accordance with the terms of this Agreement.

(b) Upon the death, disability, winding-up and termination (in the case of a Member that is a partnership or a limited liability company), dissolution and termination (in the case of a Member that is a corporation), or withdrawal in contravention of Section 12.4(a) of a Member (the "Withdrawing Member"), the Withdrawing Member shall cease to be a member of the Company and the Management Committee shall, subject to this Section, have the right to

treat such successor(s)-in-interest as assignees of the Interest in the Company of the Withdrawing Member, with only such rights of an assignee of a limited liability company interest under the Act as are consistent with the other terms and provisions of this Agreement and with no other rights under this Agreement. Without limiting the generality of the foregoing, the successor(s)-in-interest of the Withdrawing Member shall only have the rights to distributions provided in Sections 6 and 13.3(d), unless otherwise waived by the Management Committee in its sole discretion. For purposes of this Section, if the Withdrawing Member's Interest in the Company is held by more than one Person (for purposes of this subparagraph, the "Assignees"), the Assignees shall appoint one Person with full authority to accept notices and distributions with respect to such Interest in the Company on behalf of the Assignees and to bind them with respect to all matters in connection with the Company or this Agreement.

12.5. Interest Transfers, Company Sale and Asset Sale Subject to Right of First Offer. Without limiting any of the rights of Starwood and BRG under the terms of this Agreement, at any time after the Lock-Out End Date, each of Starwood and BRG, to the extent the Lock-Out End Date has occurred with respect to such Person, shall have the right to (i) sell all (but not less than all) of its Interests in the Company (and, in the case of BRG, all of the Interests of BRG Member and Hanson Member together and subject to the provisions set forth in Section 9.1(d)) to a Person that is not a Permitted Transferee (an "Interest Transfer"), (ii) to cause a sale of all of the limited liability company interests in the Company (a "Company Sale"), and/or (iii) to cause a sale of (x) one or more assets of the Company or any Investment Vehicle (including the Company Portfolio Investments or any portion thereof), (y) all or substantially all of the assets of the Company and the Investment Vehicles and/or (z) all of the interests of one or more direct or indirect Investment Vehicles (clause (iii), an "Asset Sale"), in each case on an arms length basis to a Person that is not one of its Affiliates and subject to, and in accordance with, the terms, conditions and procedures set forth in Exhibit G. Notwithstanding anything in this Agreement to the contrary, from and after the occurrence of a Termination Trigger Event, all amounts (or other consideration) received by BRG in connection with an Interest Transfer, Asset Sale(s) or Company Sale in excess of an amount equal to the lesser of (x) 50% of the Pro Rata Liquidation Value of BRG's Interest and (y) the Total Investment made by BRG minus any Distributions made to BRG hereunder, shall be paid over to Starwood. Notwithstanding anything in this Agreement to the contrary, BRG shall not have the right to deliver an Offer Notice (as defined in Exhibit G) (i) for a period of thirty (30) days following the end of the Lock-Out End Date, if such Lock-Out End Date occurs as a result of the occurrence of the death or Disability of the BRG Key Individual or (ii) following the date on which Starwood has delivered a Redemption Option Notice unless such notice is withdrawn or the redemption of BRG's Interests does not occur on the Closing Date (as defined in Exhibit H) as a result of the default of the Company. For the avoidance of doubt, any Transfer permitted pursuant to Section 12.2 shall not be subject to this Section 12.5.

12.6. Redemption Option. Starwood shall have the right (exercisable in Starwood's sole and absolute discretion) at any time during the Redemption Option Period, by providing written notice to BRG (such notice, a "Redemption Option Notice"), to cause the Company to redeem all (but not less than all) of the Interests of BRG, in which case the provisions of Exhibit H will apply. From and after the redemption of BRG's Interests pursuant to the terms herein, neither BRG Member nor Hanson Member shall have any further rights whatsoever under this Agreement and/or in respect of the Company or any Investment Vehicle

and each of BRG Member and Hanson Member shall be deemed to have withdrawn as a member of the Company. Notwithstanding anything in this Agreement to the contrary (including Sections 5, 9 and 12) Starwood shall have the unilateral right to make a Capital Contribution or loan to the Company in order for the Company to have sufficient funds to consummate a redemption of the Interests of BRG pursuant to this Section 12.6, so long as such proceeds are used for such purpose.

Section 13. Dissolution.

13.1. Limitations. The Company may be dissolved, liquidated and terminated only pursuant to the provisions of this Section, and, to the fullest extent permitted by law but subject to the terms of this Agreement, the parties hereto do hereby irrevocably waive any and all other rights they may have to cause a dissolution of the Company or a sale or partition of any or all of the Company's assets.

13.2. Exclusive Events Requiring Dissolution. The Company shall be dissolved only upon the earliest to occur of the following events (a "Dissolution Event"):

- (a) the expiration of the specific term, if any, set forth in Section 2.5;
- (b) at any time at the election of the Management Committee in writing;
- (c) at any time there are no Members (unless otherwise continued in accordance with the Act); and
- (d) the entry of a decree of judicial dissolution pursuant to Section 18-802 of the Act.

13.3. Liquidation. Upon the occurrence of a Dissolution Event, the business of the Company shall be continued to the extent necessary to allow an orderly winding up of its affairs, including the liquidation of the assets of the Company pursuant to the provisions of this Section, as promptly as practicable thereafter, and each of the following shall be accomplished:

- (a) The Management Committee shall cause to be prepared a statement setting forth the assets and liabilities of the Company as of the date of dissolution, a copy of which statement shall be furnished to all of the Members.
- (b) The property and assets of the Company shall be liquidated or distributed in kind under the supervision of the Management Committee as promptly as possible, but in an orderly, businesslike and commercially reasonable manner.
- (c) Any gain or loss realized by the Company upon the sale of its property shall be deemed recognized and allocated to the Members in the manner set forth in Section 7.2. To the extent that an asset is to be distributed in kind, such asset shall be deemed to have been sold at its fair market value on the date of distribution, the gain or loss deemed realized upon such deemed sale shall be allocated in accordance with Section 7.2 and the amount of the distribution shall be considered to be such fair market value of the asset.

(d) The proceeds of sale and all other assets of the Company shall be applied and distributed as follows and in the following order of priority:

- (i) to the satisfaction of the debts and liabilities of the Company (contingent or otherwise), including the DC3 Loans and the expenses of liquidation or distribution (whether by payment or reasonable provision for payment), other than liabilities to Members or former Members for distributions;
- (ii) to the satisfaction of loans made by Members to the Company pursuant to the terms herein in proportion to the outstanding balances of such loans at the time of payment; and
- (iii) the balance, if any, to the Members in accordance with Sections 6.1 to 6.4.

13.4. Continuation of the Company. Notwithstanding anything to the contrary contained herein, the death, retirement, resignation, expulsion, bankruptcy, dissolution or removal of a Member shall not in and of itself cause the dissolution of the Company, and the Members are expressly authorized to continue the business of the Company in such event, without any further action on the part of the Members.

#### Section 14. Indemnification.

14.1. Exculpation of Members. No Member, Representative or officer of the Company (or their respective agents, officers, directors, members, managers, partners, shareholders or employees) shall be liable to the Company or to the other Members for Damages or otherwise with respect to any actions or failures to act taken or not taken relating to the Company, except in the case of a Member only, to the extent any such Damage results from acts which are indemnified against by such Member under Sections 14.3 and 14.4, but subject in all cases to the provisions of Section 15.12.

14.2. Indemnification by Company. The Company hereby indemnifies, holds harmless and defends the Members, the Representatives, the officers of the Company and each of their respective agents, officers, directors, members, partners, shareholders and employees from and against any loss, cost, expense, damage, claim, liability or injury (including but not limited to any judgment, award, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim) (collectively, "Damages") suffered or sustained by them by reason of or arising out of (i) their activities on behalf of the Company or in furtherance of the interests of the Company, including, without limitation, the provision of Credit Enhancement (but specifically excluding from such indemnity by the Company any Damages incurred by a Person under Non-Recourse Carveout Credit Enhancements which result from the actions or inactions of such Person (or its Affiliates) in violation of the terms of the applicable Non-Recourse Carveout Credit Enhancement or the financing extended to the Company or any Investment Vehicle in respect of which the Non-Recourse Carveout Credit Enhancement was provided), (ii) their status as Members, representatives, employees or officers of the Company or any Investment Vehicle (or their status as the respective agents, officers, directors, members, managers, partners, shareholders or employees of such Persons), or (iii) the Company's assets, property, business or affairs

(including, without limitation, the actions of any officer, director, member or employee of the Company or any Investment Vehicle), if the acts or omissions were not performed or omitted fraudulently or as a result of gross negligence or willful or wanton misconduct by the indemnified party or as a result of the willful breach of any obligation under this Agreement by the indemnified party. For the purposes of this Section, officers, directors, agents, members, partners, employees and other representatives of Affiliates of a Member who are functioning as representatives of such Member in connection with this Agreement shall be considered representatives of such Member. Reasonable expenses incurred by the indemnified party in connection with any such proceeding relating to the foregoing matters shall be paid or reimbursed by the Company in advance of the final disposition of such proceeding upon receipt by the Company of (x) written affirmation by the Person requesting indemnification of its good faith belief that it has met the standard of conduct necessary for indemnification by the Company and (y) a written undertaking by or on behalf of such Person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that such Person has not met such standard of conduct, which undertaking shall be an unlimited general obligation of the indemnified party but need not be secured. The indemnification from the Company contained in this paragraph does not extend to any Member (or any of its Affiliates, agents, officers, directors, members, managers, partners, shareholders, employees or representatives) in connection with any negotiated transaction between the Company or any Investment Vehicle, on the one hand, and such Member (or any of its Affiliates, agents, officers, directors, members, managers, partners, shareholders, employees or representatives), on the other hand, to the extent such transaction was entered into by such Member (or any of its Affiliates, agents, officers, directors, members, managers, partners, shareholders, employees or representatives) in a capacity other than as a member of the Company (or as an Affiliate, agent, officer, director, member, manager, partner, shareholder, employee or representative of a Member acting in a capacity other than as a member of the Company).

14.3. Indemnification by Members for Misconduct. (a) BRG hereby indemnifies, defends and holds harmless the Company, the Investment Vehicles and Starwood (and its Affiliates) and their agents, officers, directors, members (other than the Participants), partners, shareholders and employees from and against all Damages as a result of or arising out of (i) any fraud, gross negligence or willful or wanton misconduct on the part of, or by, BRG, any BRG Representative (or any other representative appointed by BRG), or any officer, director, member, partner, shareholder or employee of BRG or Affiliate of BRG (each a "BRG Covered Party"), (ii) a BRG Credit Event, and/or (iii) any failure by Hanson Member to perform any obligations or covenants under Articles 9, 24 and 42 of the Restaurant Management Agreement, effective as of February 27, 2003, as amended by the First Amendment, dated as of May 28, 2003, between MGM Grand Hotel, LLC, a Nevada limited liability company, and BRG Vegas, LLC, a Nevada limited liability company (as assignee of B.R. Guest Vegas, Inc., a Nevada corporation).

(b) Starwood hereby indemnifies, defends and holds harmless the Company, the Investment Vehicles and BRG (and its Affiliates) and their agents, officers, directors, members (other than the Participants), partners, shareholders and employees from and against all Damages as a result of or arising out of (i) any fraud, gross negligence or willful or wanton misconduct on the part of, or by, Starwood, any Starwood Representative (or any other representative appointed by Starwood), or any officer, director, member, partner, shareholder or

employee of Starwood or Affiliate of Starwood (each a "Starwood Covered Party") or (ii) a Starwood Credit Event.

14.4. General Indemnification by the Members. (a) Notwithstanding any other provision contained herein, each Member (the "Indemnifying Party") hereby indemnifies and holds harmless the other Members, the Company and each of their Affiliates and their agents, officers, directors, members (other than the Participants), managers, partners, shareholders, representatives and employees (each, an "Indemnified Party") from and against all Damages as a result of or arising out of (i) any breach of any obligation of the Indemnifying Party under this Agreement, or (ii) any breach of any obligation by or any inaccuracy in or breach of any representation or warranty made by the Indemnifying Party (or any Affiliate of the Indemnifying Party), whether in this Agreement or in any Collateral Agreement.

(b) Except as otherwise provided herein or in any other written agreement between and/or among the Company and the Members, in addition to the limitations provided in Section 15.12, recourse for the indemnity obligation of the Members under this Section 14.4 shall be limited to such Indemnifying Party's Interest in the Company; provided, however, that recourse against an Indemnifying Party under its indemnity obligations under this Agreement or otherwise shall be further limited to the Pro Rata Liquidation Value of the other Member's Interest, in the event the Pro Rata Liquidation Value of the other Member's Interest is less than the Pro Rata Liquidation Value of the Indemnifying Party's Interest.

(c) The indemnities, contributions and other obligations under this Agreement shall be in addition to any rights that any Indemnified Party may have at law, in equity or otherwise. The terms of this Section 14 shall survive termination of this Agreement.

#### Section 15. Miscellaneous.

15.1. Notices. (a) All notices, requests, approvals, authorizations, consents and other communications required or permitted under this Agreement shall be in writing (whether or not expressly stated as to be in writing hereunder) and shall be (as elected by the Person giving such notice) hand delivered by messenger or overnight courier service, mailed (airmail, if international) by registered or certified mail (postage prepaid), return receipt requested, or sent via facsimile (provided such facsimile is immediately followed by the delivery of an original copy of same via one of the other foregoing delivery methods) addressed to:

If to Starwood:

c/o Starwood Capital Group Global, L.L.C.  
591 W. Putnam Avenue  
Greenwich, Connecticut 06830  
Attention: Jeffrey Dishner  
Facsimile: [REDACTED]

with a copy to:

c/o Rinaldi, Finkelstein & Franklin  
591 W. Putnam Avenue

Greenwich, Connecticut 06830  
Attention: Ellis Rinaldi, Esq.  
Facsimile: [REDACTED]

and to:

White & Case LLP  
1155 Avenue of the Americas  
New York, New York 10036  
Attention: Scott A. Berger, Esq.  
Facsimile: [REDACTED]

If to BRG:

Stephen Hanson  
President & CEO  
206 Spring Street  
New York, New York 10012  
Attention: Stephen P. Hanson  
Facsimile: [REDACTED]

with a copy to:

Muchnick, Golieb & Golieb, P.C.  
Attorneys at Law  
200 Park Avenue South  
Suite 1700  
New York, New York 10003  
Attention: Howard M. Muchnick, Esq.  
Facsimile: [REDACTED]

and to:

Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022  
Attention: Andrew L. Sommer  
Facsimile: [REDACTED]

(b) Each such notice shall be deemed delivered (i) on the date delivered if by hand delivery or overnight courier service or facsimile, and (ii) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed (provided, however, if such actual delivery occurs after 5:00 p.m. (local time where received), then such notice or demand shall be deemed delivered on the immediately following Business Day after the actual day of delivery).

(c) By giving to the other parties at least fifteen (15) days written notice thereof, the parties hereto and their respective successors and assigns shall have the right from

time to time and at any time during the term of this Agreement to change their respective addresses.

15.2. Governing Law; Arbitration. (a) This Agreement and the rights of the Members hereunder shall be governed by, and interpreted in accordance with, the laws of the State of Delaware.

(b) Any dispute arising out of or in connection with this Agreement, including the breach, termination or validity thereof, shall be referred to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the arbitration, except as those Rules are modified herein or by mutual agreement of the parties. The place of arbitration shall be New York, New York.

(c) The arbitration shall be conducted by three arbitrators. The claimant(s) shall appoint an arbitrator in the notice of arbitration. The respondent(s) shall appoint an arbitrator within 15 days of the receipt of the notice of arbitration. The two arbitrators appointed in accordance with the preceding sentences shall appoint the third arbitrator within 15 days after the appointment of the second arbitrator. The third arbitrator shall act as chair of the tribunal. If any of the three arbitrators is not appointed within the times prescribed above, then the American Arbitration Association ("AAA") shall appoint that arbitrator.

(d) Each party has the right to apply to any court of competent jurisdiction for provisional measures, including pre-arbitral attachments or injunctions, provided however that, after the arbitrators are appointed, the arbitrators shall have sole jurisdiction to consider applications for provisional measures, and any provisional measures ordered by the arbitrators may be specifically enforced by any court of competent jurisdiction.

(e) Unless the parties expressly agree in writing to the contrary, the arbitration shall be kept confidential and that the existence of the proceedings and all materials related to the proceedings (including but not limited to pleadings, briefs, documents submitted or exchanged, testimony or oral submissions and transcripts thereof, and awards) shall not be disclosed without the prior consent of the other party, beyond disclosure to the tribunal, the AAA, the parties, their counsel, accountants and auditors, insurers and re-insurers, and any person necessary to the conduct of the proceedings. The confidentiality obligations shall not apply (i) if disclosure is required by law, or in judicial or administrative proceedings, or (ii) as far as disclosure is necessary to enforce the rights arising out of the award.

(f) In order to facilitate the comprehensive resolution of related disputes, and upon request of any party to the arbitration proceedings, the arbitration tribunal may consolidate the arbitration proceedings initiated under this Agreement with any other arbitration proceeding involving any of the parties hereto relating to this Agreement or to the Contribution Agreement or the Master Restaurant Purchase Agreement or any related agreement contemplated hereby or thereby. The arbitration tribunal shall consolidate such arbitrations unless it determines that (i) there are not issues of fact or law common to the two proceedings so that a consolidated proceeding would be more efficient than separate proceedings, or (ii) a party would be prejudiced as a result of such consolidation through undue delay or otherwise. In the event of different rulings on this question by the arbitration tribunal constituted hereunder and the tribunal

constituted under the Contribution Agreement, Master Restaurant Purchase Agreement, or such other agreement, the ruling of the first-constituted arbitration tribunal shall control.

(g) The arbitration award shall be final and binding on the parties. Judgment upon the award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant party or its assets.

15.3. Successors. This Agreement shall be binding upon, and inure to the benefit of, the parties and their successors and permitted assigns. Except as otherwise provided herein, any Member who Transfers its entire Interest as permitted by the terms of this Agreement shall have no further liability or obligation hereunder, except with respect to claims arising prior to such Transfer.

15.4. Pronouns. Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter.

15.5. Table of Contents and Captions Not Part of Agreement. The table of contents and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provisions hereof.

15.6. Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable in any jurisdiction or in any respect, then the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, and the Members shall use their best efforts to amend or substitute such invalid, illegal or unenforceable provision with enforceable and valid provisions which would produce as nearly as possible the rights and obligations previously intended by the Members without renegotiation of any material terms and conditions stipulated herein.

15.7. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

15.8. Entire Agreement and Amendment. This Agreement and the other written agreements described herein between the parties hereto entered into as of the date hereof, constitute the entire agreement between the Members relating to the subject matter hereof and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof. No amendment or waiver of this Agreement (or provision hereof) shall be enforceable against any Member unless it is in writing and duly executed by such Member. No amendment of this Agreement (or any provision hereof) shall require the consent of any Participant.

15.9. Further Assurances. Each Member agrees to execute and deliver any and all additional instruments and documents and do any and all acts and things as may be necessary or expedient to effectuate more fully this Agreement or any provisions hereof or to carry on the business contemplated hereunder.

15.10. No Third Party Rights. The provisions of this Agreement are for the exclusive benefit of the Members and the Company, and no other party (including, without limitation, any creditor of the Company) shall have any right or claim against any Member by reason of those provisions or be entitled to enforce any of those provisions against any Member.

15.11. Incorporation by Reference. Every Exhibit, Schedule, and Annex attached to this Agreement is incorporated in this Agreement by reference. Unless otherwise expressly provided herein, all references to "Articles", "Sections", "subsections" or "paragraphs" are to Articles, Sections, subsections and paragraphs of this Agreement and all references to "Exhibits", "Annexes" and "Schedules" are to the exhibits, annexes and schedules attached hereto.

15.12. Limitation on Liability. The Members shall not be bound by, or be personally liable for, by reason of being a Member, a judgment, decree or order of a court or in any other manner, for the expenses, liabilities or obligations of the Company, and the liability of each Member in respect thereof shall be limited solely to the amount of its Capital Contributions and Company Loans as provided under Section 5. Except with respect to the terms of Section 9.7, any claim against any Member (the "Member in Question") which may arise under this Agreement shall be made only against, and shall be limited to, the Interest of such Member in Question, the proceeds of the sale by the Member in Question of such Interest or the undivided interest in the assets of the Company distributed to the Member in Question pursuant to Section 13.3(d) hereof. Except with respect to the terms of Section 9.7, any right to proceed against (i) any other assets of the Member in Question or (ii) the BRG Key Individual, any agent, officer, director, member, manager, partner, shareholder or employee of the Member in Question or the assets of any such Person, as a result of such a claim against the Member in Question arising under this Agreement or otherwise, is hereby irrevocably and unconditionally waived.

15.13. Remedies Cumulative; Dispute Costs. Subject to Section 15.2(b), the rights and remedies given in this Agreement and by law to a Member shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a Member under the provisions of this Agreement or given to a Member by law. In the event of any dispute between the parties hereto, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees and costs incurred in connection therewith (including, without limitation, any costs and expenses incurred in connection with any arbitration proceedings pursuant to Section 15.2). In the event one party hereto (a "Claiming Party") makes a claim against another party hereto (a "Non-Claiming Party") for a specified sum of money and (i) after such claim is made, but prior to commencement of arbitration proceedings with respect to such claim, the Non-Claiming Party provides the Claiming Party with a written offer to settle such claim for a lesser sum of money than that set forth in the claim (the "Offered Settlement Amount"), and (ii) the Claiming Party does not accept the Offered Settlement Amount but proceeds to arbitration, then, if the arbitration panel rules in favor of the Claiming Party in an amount that is less than the Offered Settlement Amount, the Non-Claiming Party shall be deemed the "prevailing party" for purposes of this Section 15.13.

15.14. No Waiver. One or more waivers of the breach of any provision of this Agreement by any Member shall not be construed as a waiver of a subsequent breach of the

same or any other provision, nor shall any delay or omission by a Member to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a Member by reason of such breach be deemed a waiver by a Member of its remedies and rights with respect to such breach.

15.15. Limitation On Use of Names. Notwithstanding anything contained in this Agreement or otherwise to the contrary, each of Starwood and BRG as to itself agrees that neither it nor any of its Affiliates, agents, or representatives is granted a license to use or shall use the name of the other under any circumstances whatsoever, except such name may be used in furtherance of the business of the Company but only as and to the extent approved in writing by the Member whose name is to be used.

15.16. Publicly Traded Partnership Provision. Each Member hereby severally covenants and agrees with the other Members for the benefit of such Members, that (i) it is not currently making a market in Interests in the Company and will not in the future make such a market and (ii) it will not Transfer its Interest on an established securities market, a secondary market or an over-the-counter market or the substantial equivalent thereof within the meaning of Code Section 7704 and the Regulations, rulings and other pronouncements of the U.S. Internal Revenue Service or the Department of the Treasury thereunder, unless such Transfer complies with one of the safe harbors of the Code Section 7704 Regulations. Each Member further agrees that it will not Transfer any Interest in the Company to any transferee unless such transferee agrees to be bound by this Section and to Transfer such Interest only to such Persons who agree to be similarly bound.

15.17. Uniform Commercial Code. The interest of each Member in the Company shall be an "uncertificated security" governed by Article 8 of the Delaware UCC and the UCC as enacted in the State of New York (the "New York UCC"), including, without limitation, (i) for purposes of the definition of a "security" thereunder, the interest of each Member in the Company shall be a security governed by Article 8 of the Delaware UCC and the New York UCC and (ii) for purposes of the definition of an "uncertificated security" thereunder.

15.18. Public Announcements. Neither Member nor any of its Affiliates shall, without the prior written approval of the other Member, issue any press releases or otherwise make any public statements with respect to the Company or any Investment Vehicle or the transactions contemplated by this Agreement.

15.19. No Construction Against Drafter. This Agreement has been negotiated and prepared by Starwood and BRG and their respective attorneys and, should any provision of this Agreement require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

15.20. BRG Member and Hanson Member Liability. The obligations and liabilities of BRG Member and Hanson Member under this Agreement shall be joint and several.

[Signatures on Next Page]

IN WITNESS WHEREOF, this Agreement is executed by the Members effective as of the date first set forth above.

**MEMBERS:**

SOF U.S. Restaurant Co-Invest Holdings, L.L.C.

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

Name:

Title:

SPH ENTERPRISES, INC.

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

Name:

Title:

\_\_\_\_\_  
Stephen P. Hanson, individually