

Initial Capital Contributions and Initial Capital Accounts

<u>Member</u>	<u>Initial Senior Preferred Capital Contribution</u>	<u>Initial Junior Preferred Capital Contribution</u>	<u>Initial Common Capital Contribution</u>	<u>Initial Capital Account</u>
BRG Member	\$ 0	\$ 0	\$31,099,728	\$31,099,728
Hanson Member	\$ 0	\$ 0	\$10,656,083	\$10,656,083
Starwood	\$66,000,000	\$ 0	\$35,755,811	\$101,755,811

Management Committee Representatives

Starwood:

Barry Sternlicht  
Jeffrey Dishner  
Dan Yih  
Edd Hendee

BRG:

Stephen Hanson  
Howard Muchnick  
Michael Jacobs  
Stacy Gilbert

### Definitions

For the purposes of this Agreement, the following terms shall have meanings set forth below.

“AAA” shall have the meaning provided in Section 15.2.

“Act” shall mean the Delaware Limited Liability Company Act (currently Chapter 18 of Title 6 of the Delaware Code), as amended from time to time.

“Additional Capital Contribution” shall have the meaning provided in Section 5.2(a).

“Adjusted EBITDA” shall have the meaning given to such term in the Master Restaurant Purchase Agreement.

“Advisor” shall mean any accountant, attorney or other advisor retained by a Member.

“Affiliate” shall mean, with respect to a specified Person, (i) any Person directly or indirectly owning, controlling or holding with power to vote 50% or more of the outstanding voting securities or other ownership interests of the specified Person, (ii) any Person 50% or more of whose outstanding voting securities or other ownership interests are directly or indirectly owned, controlled or held with power to vote by the specified Person, and (iii) any Person directly or indirectly controlling, controlled by, or under common control with the specified Person. In addition, “Affiliate” shall include as to any Person, any other Person related to such Person within the meaning of Code Sections 267(b) or 707(b)(1). Without limiting the foregoing, BRG Member, Hanson Member, the BRG Key Individual and each Person that is an Affiliate of any of such Persons shall each be deemed to be an Affiliate of the other. For purposes of this Agreement, the Company and the Investment Vehicles shall not be deemed Affiliates of Starwood, BRG or any of their respective Affiliates.

“Agreed Upon Value” shall mean the fair market value (net of any liability secured by such property that the Company assumes or takes subject to) agreed upon pursuant to a written agreement between the Members of property contributed by a Member to the capital of the Company, which shall for all purposes hereunder be deemed to be the amount of the Capital Contribution applicable to such property contributed. The Agreed Upon Value of the Initial Capital Contributions of Starwood, the BRG Member and the Hanson Member is set forth in Exhibit A.

“Agreement” shall mean this Limited Liability Company Agreement, as amended from time to time.

“Aggregate Acquisition Percentage” shall mean one hundred percent (100%).

“Aggregate Closing Purchase Price” shall have the meaning provided in the Master Restaurant Purchase Agreement.

“Alternate Shortfall Amount” shall mean the positive difference (if any) between (A) the Initial Restaurant Adjusted EBITDA Amount and (B) the Applicable Restaurant Value as of the Cut-Off Date.

“Annual Business Plan” shall have the meaning provided in Section 9.3.

“Applicable Debt Amount” shall mean an amount equal to \$60,000,000.

“Applicable Restaurant Value” shall mean an amount equal to the sum of (i) the Initial Restaurant Value (ii) the Stand Alone Restaurant EBITDA Amount and (iii) the amount of any reductions to the Initial Restaurant Value and/or the Stand Alone Restaurant EBITDA Amount, in each case resulting from Uncontrollable Events.

“Appraised Value” shall have the meaning provided in Exhibit I attached hereto.

“Asset Sale” shall have the meaning provided in Section 12.5.

“Assignees” shall have the meaning provided in Section 12.4(b).

“Bankruptcy Code” shall mean Title 11 of the United States Code, as amended or any other applicable bankruptcy or insolvency statute or similar law.

“Bankruptcy/Dissolution Event” shall mean, with respect to the affected party, (i) the entry of an Order for Relief under the Bankruptcy Code, (ii) the admission by such party of its inability to pay its debts generally as they mature, (iii) the making by it of an assignment for the benefit of creditors generally, (iv) the filing by it of a petition in bankruptcy or a petition for relief under the Bankruptcy Code or any other applicable Federal or state bankruptcy or insolvency statute or any similar law, (v) the expiration of ninety (90) days after the filing of an involuntary petition under the Bankruptcy Code without such petition being vacated, set aside or stayed during such period, (vi) an application by such party for the appointment of a receiver for the assets of such party, (vii) an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other Federal or state insolvency law, provided that the same shall not have been vacated, set aside or stayed within ninety (90) days after filing, (viii) the imposition of a judicial or statutory lien on all or a substantial part of its assets unless such lien is discharged or vacated or the enforcement thereof stayed within ninety (90) days after its effective date, (ix) an inability to meet its financial obligations generally as they accrue, or (x) a dissolution or liquidation.

“beneficial owner” shall have the meaning provided in Sections 5.7 and 12.3(b).

“Base Shortfall Amount” shall mean the positive difference (if any) between (A) the Initial Restaurant Adjusted EBITDA Amount and (B) the Applicable Restaurant Value as of the date of the Venture Termination Event.

“Brand” shall mean any name, brand, mark, trademark, service mark, trade name, symbol, logo, insignia, indicia of origin, slogan or design (whether registered or unregistered, whether used alone or in connection with any other words, trademarks, service marks, trade names, symbols, logos, insignias, indicia of origin, slogans and designs), or any programs,

processes, procedures or systems (including, without limitation, any philosophy that drives customer satisfaction, business management model, business strategy, or employee selection, training and career development approach), in each case, together with any goodwill associated therewith.

“BRG” shall have the meaning provided in the recitals.

“BRG Change of Control” shall mean, if at any time, other than as a result of the death or Disability of the BRG Key Individual, BRG Member ceases to be directly or indirectly (i) wholly-controlled by the BRG Key Individual and (ii) owned (legally, beneficially and economically) at least 75% by the BRG Key Individual.

“BRG Covered Party” shall have the meaning provided in Section 14.3(a).

“BRG Credit Event” shall mean any claim or potential claim under any Non-Recourse Carveout Credit Enhancement for which Starwood (or any of its Affiliates) may have liability and which claim or potential claim has arisen as a result of the actions or inactions of any BRG Covered Party in violation of the terms of such Non-Recourse Carveout Credit Enhancement and/or the financing extended to the Company or an Investment Vehicle in respect of which the Non-Recourse Carveout Credit Enhancement was provided.

“BRG Elected Amount” shall have the meaning provided in Section 5.2(a).

“BRG Excluded Investments” shall mean (i) any Company Asset acquired by BRG pursuant to a ROFO Sale, (ii) any investment constituting not more than five percent (5%) of the outstanding equity of any Person whose equity securities are publicly traded, and (iii) Avalon Restaurant Associates, ■■■.

“BRG Holdings Sub” shall have the meaning provided in the recitals.

“BRG Indirect Permitted Transferee” shall mean (i) any Family Member of the Key Individual, (ii) any trust created solely for the benefit of the BRG Key Individual and any Family Member of the BRG Key Individual which is wholly-controlled by the BRG Key Individual, or (iii) any partnership, limited liability company or corporation that at all times is and remains wholly-owned and wholly-controlled, directly or indirectly, by the BRG Key Individual.

“BRG Key Individual” shall mean Stephen P. Hanson.

“BRG Member” shall have the meaning provided in the first paragraph of this Agreement.

“BRG Parent Contribution Agreement” shall have the meaning provided in the recitals.

“BRG Permitted Transferee” shall mean any Person that is directly or indirectly (i) wholly-controlled by the BRG Key Individual, (ii) wholly-owned (legally, beneficially and economically) by the BRG Key Individual alone or together with one or more BRG Indirect

Permitted Transferees, and (iii) owned (legally, beneficially and economically) at least 75% by the BRG Key Individual.

“BRG Related Agreement” shall mean the Master Restaurant Purchase Agreement, the Contribution Agreement, the Hanson Employment Agreement, the Hanson Note and the DC3 Management Agreement, the New Projects Option Agreement and any other agreement entered into between the Company or any Investment Vehicle with BRG, BRG Member, Hanson Member or any of their Affiliates which are subject to the terms of 9.5(a) (including any provision of any agreement deemed to be a BRG Related Agreement in the proviso set forth in the definition of Starwood Related Agreement); provided, however, that to the extent performance is owed by Starwood or an Affiliate of Starwood to the Company, an Investment Vehicle, BRG, BRG Member, Hanson Member or any of their Affiliates under any provision of such agreement, such provision of the agreement to the extent of such performance shall be deemed to be a Starwood Related Agreement.

“BRG Representatives” shall have the meaning provided in Section 9.2(a).

“BRG Resignation Event” shall mean any termination by the BRG Key Individual of his employment with the Company at any time prior to the expiration of the initial term of the Hanson Employment Agreement other than for Good Reason that is not preceded by a BRG Trigger Event.

“BRG Restricted Period” shall mean the period commencing on February 23, 2007, and ending on the earliest to occur of (i) the liquidation and termination of the Company, (ii) a Company Sale, (iii) an Asset Sale involving a sale of all or substantially all of the Company Assets, (iv) the occurrence of a Starwood Trigger Event, (v) the date on which the Company terminates the BRG Key Individual’s employment with the Company without Cause and which termination is not preceded by a BRG Trigger Event, (vi) the date on which the BRG Key Individual terminates his employment with the Company for Good Reason and which termination is not preceded by a BRG Trigger Event, (vii) two (2) years following the later of (a) the date on which the Company terminates the BRG Key Individual’s employment with the Company for Cause and (b) the occurrence of a BRG Trigger Event and (viii) February 23, 2012.

“BRG Restricted Person” shall mean any of (i) BRG; (ii) the BRG Key Individual; (iii) any Family Member of the BRG Key Individual; (iv) any trust created for the benefit of any of the Persons referred to in the preceding clauses (i)-(iii); or (v) any Person directly or indirectly controlled or co-controlled by, or under common control with, any of the Persons referred to in the preceding clauses (i)-(iv), which shall not in any event be deemed to include any employee of the Company or any Company Portfolio Investment other than employees who fall within any of clauses (ii) and (iii) above.

“BRG Vegas” shall mean B.R. Guest Vegas, Inc. a Nevada corporation.

“BRG Trigger Event” shall mean the occurrence of any of the following events, in each case following the receipt of written notice of the occurrence of such event from Starwood and the Failure to Cure such event by BRG (except in the case of an event described in clauses (iii), (iv) or (v) below which shall be a non-curable event): (i) a final finding by a court of

competent jurisdiction of willful misconduct or act of fraud by, or criminal conviction constituting a felony of, BRG or any of its Affiliates, in connection with or relating to the Company, any Investment Vehicle or any Company Asset; (ii) the occurrence of a BRG Change of Control; (iii) the occurrence of a Bankruptcy/Dissolution Event with respect to BRG or the BRG Key Individual; (iv) the occurrence of a BRG Resignation Event or (v) the termination of the BRG Key Individual's employment with the Company for Cause.

"B.R. Guest Brands" shall mean each of the Brands listed in Exhibit K.

"BSS" shall mean Barry S. Sternlicht.

"BSS Controlled Party" shall mean any Person directly or indirectly controlled by BSS.

"Business Day" shall mean any day that is not Saturday, Sunday or a day on which banks are required or permitted to be closed in the State of New York.

"Capital Account" shall have the meaning provided in Section 5.6.

"Capital Contribution" shall mean, with respect to any Member, the aggregate amount of (i) cash, and (ii) the Agreed Upon Value of other property contributed (or as the context requires, to be contributed) by such Member to the capital of the Company.

"Capital Requirement Allocated Amount" shall have the meaning provided in Section 5.2(d).

"Cash Flow" shall mean, for any period for which Cash Flow is being calculated, gross cash receipts (including the proceeds of any Asset Sale or the financing or refinancing proceeds of any Company Assets) of the Company (but excluding Capital Contributions and Company Loans) plus any amounts released from reserves and not applied to the relevant obligation or liability for which such reserves were established or to other costs and expenses of the Company, less the following payments and expenditures (i) all payments of operating expenses of the Company, (ii) all payments of principal of, interest on and any other amounts due with respect to indebtedness, leases or other commitments or obligations of the Company (including DC3 Loans, Company Loans, Credit Enhancement Loans, other loans by Members to the Company and the Guaranty Fee), (iii) all sums expended by the Company for capital expenditures, (iv) all prepaid expenses of the Company, and (v) all sums expended by the Company which are otherwise capitalized.

"Cause" shall have the meaning provided in the Hanson Employment Agreement.

"Certificate of Formation" shall mean the Certificate of Formation of the Company, as amended from time to time.

"CFO" shall mean the chief financial officer of the Company.

"CFO Cause Event" shall mean (i) embezzlement, theft or misappropriation by the CFO of any property of the Company or any Investment Vehicles; (ii) any failure or refusal

by the CFO to perform any directive of the Management Committee or the President of the Company or the duties of his employment (including any reporting obligations) which continues for a period of thirty (30) days following written notice thereof by the Company or the President, as the case may be, to the CFO and the Management Committee; (iii) any act by the CFO constituting a felony or otherwise involving theft, fraud, dishonesty, misrepresentation or moral turpitude; (iv) indictment of, conviction of, or plea of *nolo contendere* (or a similar plea) to, any criminal offense; (v) gross negligence or willful misconduct on the part of the CFO in the performance of his duties as an employee, officer or director of the Company or any Investment Vehicle; (vi) any act or omission to act of the CFO intended to harm or damage the business, property, operations, financial condition or reputation of the Company or any Investment Vehicle; (vii) any chemical dependence of the CFO which adversely affects the performance of his duties and responsibilities to the Company or any Investment Vehicle; or (ix) the CFO's violation of the Company's or any Investment Vehicle's code of ethics, code of business conduct or similar policies applicable to the CFO.

"Claiming Party" shall have the meaning provided in Section 15.13.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, including the corresponding provisions of any successor law.

"Collateral Agreement" shall mean any agreement, instrument, document or covenant concurrently or hereafter made or entered into under, pursuant to, or in connection with this Agreement and any certifications made in connection therewith or amendment or amendments made at any time or times heretofore or hereafter to any of the same (including, without limitation, the Master Restaurant Purchase Agreement, the Contribution Agreement, the Hanson Employment Agreement, the Hanson Note, the New Projects Option Agreement, the Starwood Note and the DC3 Management Agreement).

"Common Capital Contribution" shall mean a Capital Contribution made by a Member to the Company in accordance with the terms of this Agreement which is not a Senior Preferred Capital Contribution or a Junior Preferred Capital Contribution.

"Company" shall mean B.R. Guest Parent Holdings, LLC, a limited liability company organized under the Act.

"Company Assets" shall mean all right, title and interest of the Company in and to all or any portion of the assets of the Company and any property of any type (whether real, personal, tangible or intangible) or estate or interest acquired in exchange therefor or in connection therewith, including, without limitation, the Company Portfolio Investments and the Company's interest in any Investment Vehicle.

"Company Loan" shall have the meaning provided in Section 5.2(d).

"Company Portfolio Investment" and "Company Portfolio Investments" shall mean any Portfolio Investment owned, leased or managed by the Company or any Investment Vehicle or in which the Company or any Investment Vehicle has a direct or indirect interest (including, without limitation, the Initial Restaurants, DC3 and the B.R. Guest Brands).

"Company Sale" shall have the meaning provided in Section 12.5.

"Confidential Information" shall have the meaning provided in Section 10(a).

"Contributing Member" shall have the meaning provided in Section 5.2(d).

"Contribution Agreement" shall mean that certain Contribution Agreement, dated as of November 29, 2006, among Starwood, Hanson Member, SPH Enterprises, Inc. (f/k/a B.R. Guest, Inc.), B.R. Guest Trademark Company, Inc., PH 2000, Inc. and BRG Holdings Sub, as the same may be amended, restated or supplemented from time to time.

"control", "controlled", "controls" or "controlling" shall mean in the case of any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting equity interests, by contract, or otherwise.

"Credit Enhancement" shall have the meaning provided in Section 9.13.

"Credit Enhancement Funding Percentage" shall mean, (i) in the case of any Credit Enhancement Loan other than a Non-Recourse Carveout Credit Enhancement Loan or an Initial Financing Credit Enhancement Loan, (x) fifty percent (50%) with respect to BRG and (y) fifty percent (50%) with respect to Starwood, (ii) in the case of a Non-Recourse Carveout Credit Enhancement Loan that is not made as a result of the actions or inactions of the Non-Credit Provider in violation of the terms of the Non-Recourse Carveout Credit Enhancement or the financing extended to the Company or Investment Vehicle in respect of which the Non-Recourse Carveout Credit Enhancement was provided, (x) fifty percent (50%) with respect to BRG and (y) fifty percent (50%) with respect to Starwood, (iii) in the case of a Non-Recourse Carveout Credit Enhancement Loan that is made as a result of the actions or inactions of the Non-Credit Provider in violation of the terms of the Non-Recourse Carveout Credit Enhancement or the financing extended to the Company or Investment Vehicle in respect of which the Non-Recourse Carveout Credit Enhancement was provided, (x) one hundred percent (100%) with respect to the Member who is the Non-Credit Provider and (y) zero percent (0%) with respect to the Member who is (or who is Affiliated with) the Credit Provider, (iv) in the case of an Initial Financing Credit Enhancement Loan or a Credit Enhancement Loan in respect of Credit Enhancement approved by the Management Committee pursuant to Section 9.13 subsequent to a BRG Trigger Event (x) one hundred percent (100%) with respect to Starwood and (y) zero percent (0%) with respect to BRG, and (v) in the case of a Credit Enhancement Loan in respect of Credit Enhancement approved by the Management Committee pursuant to Section 9.13 subsequent to a Starwood Trigger Event (x) one hundred percent (100%) with respect to BRG and (y) zero percent (0%) with respect to BRG.

"Credit Enhancement Loan" shall have the meaning provided in Section 9.13.

"Credit Provider" shall have the meaning provided in Section 9.13.

"Curative Contribution" shall have the meaning provided in Section 5.2(d).

"Cure Period" shall have the meaning provided in Section 5.2(d).

“Cut-Off Date” shall mean February 23, 2014.

“Damages” shall have the meaning provided in Section 14.2.

“DC3” shall mean the restaurant known as “Dos Caminos Third Avenue” located at 825 Third Avenue, New York, New York.

“DC3 Acquisition” shall have the meaning provided in the recitals.

“DC3 Acquisition Amendments” shall mean (i) that certain Assignment and Assumption of Limited Liability Company Interests and Amendment to the Master Restaurant Purchase Agreement, dated as of the date hereof, by and among Hanson Member, RDM Associates, LLC, a New York limited liability company, Donald Bernstein, Saul Victor, the Trusts and the Company, (ii) that certain Novation Agreement, dated the date hereof, by and among BRG Holdings Sub, the Company and Hanson Member, and (iii) that certain Assignment and Assumption Agreement, dated as of the date hereof, by and among BRG Holdings Sub, the Company and Hanson Member.

“DC3 LLC” shall have the meaning provided in the recitals.

“DC3 Loans” shall have the meaning provided in the recitals.

“DC3 Management Agreement” shall have the meaning provided in the Contribution Agreement.

“Default Amount” shall have the meaning provided in Section 5.2(d).

“Default Amount Allocated Amount” shall have the meaning provided in Section 5.2(d).

“Default Loan Rate” shall mean the per annum rate equal to the lower of (i) the LIBOR Rate plus 1000 basis points and (ii) the highest rate permitted by applicable laws.

“Deficient Amount” shall have the meaning provided in Section 6.1.

“Delaware UCC” shall mean the Uniform Commercial Code as in effect in the State of Delaware from time to time.

“Determination Date” shall mean, with respect to any Interest Period, the date which is two (2) Eurodollar Business Days before the commencement of such Interest Period.

“Disability” shall have the meaning provided in the Hanson Employment Agreement.

“Dissolution Event” shall have the meaning provided in Section 13.2.

“Distributable Funds” shall mean, with respect to any Fiscal Quarter or other period, as applicable, an amount equal to the Cash Flow of the Company for such Fiscal Quarter or other period, as applicable, as reduced by reserves for anticipated capital expenditures, future

working capital needs and operating expenses, contingent obligations and other purposes, the amounts of which shall be reasonably determined from time to time by the Management Committee.

“Distributions” shall mean the distributions payable (or deemed payable) to a Member (including, without limitation, its allocable portion of Distributable Funds).

“EBITDA” shall mean, with respect to any Stand Alone Restaurant, for any period, an amount equal to (i) operating income of such Stand Alone Restaurant for such period as set forth in the statement of operations contained in the applicable financial statements of such Stand Alone Restaurant plus (ii) depreciation and amortization expenses of such Stand Alone Restaurant for such period as set forth in the statement of cash flows in the applicable financial statements of such Stand Alone Restaurant.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Eurodollar Business Day” shall mean a Business Day on which banks in the City of London, England are open for interbank or foreign exchange transactions.

“Exempt Member” shall have the meaning provided in Section 5.2(e)

“Exigent Circumstances” shall mean any Capital Contribution called in order to do any of the following or, where the context so requires, shall mean the following circumstance(s) which were the basis for the calling of the Capital Contribution:

(i) to prevent a forfeiture or foreclosure with respect to (x) any material asset of the Company and the Investment Vehicles, within the next thirty (30) days, under any loan or indenture or as a result of the non payment of taxes or (y) any other asset of the Company and the Investment Vehicles, within the next thirty (30) days, if such forfeiture or foreclosure would constitute, or upon notice or passage of time would constitute, an event of default under any loan or indenture;

(ii) to pay for insurance required hereunder or approved by the Management Committee; or

(iii) to make any emergency repairs to any material asset of the Company or the Investment Vehicles;

in each case where the Management Committee or management of the Company has been or it appears reasonably likely will be unable or unwilling to obtain or expend the funds required for such action within the required time period.

For purposes of this definition “material” means material to the Company and the Investment Vehicles taken as a whole except in the case of an emergency repairs that relates to health or safety.

“Failure to Cure” shall mean, with respect to any Trigger Event, (i) in the case of an event described in clause (i) of the definition of BRG Trigger Event or Starwood Trigger Event (as applicable), the Person whose conduct is alleged to have resulted in the BRG Trigger Event or Starwood Trigger Event (as applicable) does not cease to have any direct or indirect interest in (economic or otherwise), rights, responsibilities or duties relating to, or employment, involvement or association with, the Company, each Investment Vehicle and the Company Assets, within thirty (30) days after receipt of written notice from BRG or Starwood (as applicable) of the occurrence of such event and (ii) in the case of an event described in clause (ii) of the definition of BRG Trigger Event or Starwood Trigger Event (as applicable), such Starwood Change of Control or BRG Change of Control (as applicable) is not cured within thirty (30) days after receipt of written notice from BRG or Starwood (as applicable) of the occurrence of such event.

“Family Member” shall mean, with respect to any individual, any spouse or lineal descendant or spouse of a lineal descendant, whether by adoption or marriage, of such individual.

“Fiscal Month” shall mean with respect to each Fiscal Quarter, each 4-week period occurring in such Fiscal Quarter commencing as of the first Monday of such Fiscal Quarter and ending on the Sunday of the 4th week of such Fiscal Quarter; provided, that the last Fiscal Month of each Fiscal Quarter shall be 5 weeks long and shall end on the Sunday of the 13th week of such Fiscal Quarter and provided, further, that, if there is a 53rd week in any Fiscal Year, the First Fiscal Month of the First Fiscal Quarter of such Fiscal Year shall consist of a 5-week period and shall end on the Sunday of the 5th week of such Fiscal Quarter.

“Fiscal Quarter” shall mean with respect to each Fiscal Year, each 13-week period occurring in such Fiscal Year commencing as of the first Monday of such Fiscal Year and ending on the Sunday of the 13th week of such Fiscal Year and every 13-week period thereafter; provided, however, that if there is a 53rd week in any Fiscal Year, the first Fiscal Quarter of such Fiscal Year shall end on the Sunday of the 14th week of such Fiscal Year.

“Fiscal Year” shall mean, each period commencing on the Monday following Sunday closest to December 31st, and ending on the Sunday closest to December 31st of the following year (for clarity, which such period shall be either 52-weeks or 53-weeks, depending on the calendar year).

“flow-through entity” shall have the meaning provided in Sections 5.7 and 12.3(b).

“Foreign Corrupt Practices Act” shall mean the Foreign Corrupt Practices Act of the United States, 15 U.S.C. Sections 78a, 78m, 78dd-1, 78dd-2, 78dd-3, and 78ff, as amended, if applicable, or any similar law of any jurisdiction where one or more properties owned or leased by the Company or an Investment Vehicle are located or where the Company or any of the Investment Vehicles transacts business or any other jurisdiction, if applicable.

“Gaming Approvals” shall mean all licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises, entitlements, waivers and exemptions issued by

any Gaming Authority necessary for or relating to the conduct of activities by any party hereto or any of its Affiliates, including, without limitation, the ownership, operation, management and development of any Gaming Entity.

"Gaming Authorities" shall mean those federal, state, local, or other governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation of gaming or gaming activities in any jurisdiction within the 50 states of the United States, the United Kingdom, Bahamas, Bermuda, Mexico, Canada, and any other sovereign nation which regulates gaming.

"Gaming Entity" shall mean Starwood, its Affiliates or any Person in which Starwood or any Affiliate of Starwood has any direct or indirect economic or other financial interest in a Person which conducts, or participates in, any gaming business or activities, as set forth on the list to be provided to BRG on the date of this Agreement or notified in writing by Starwood to BRG from time to time either voluntarily or promptly following a written request of BRG.

"Gaming Trigger Event" shall have the meaning provided in Section 9.10.

"Good Reason" shall have the meaning set forth in the Hanson Employment Agreement.

"Guaranty Fee" shall mean the fee payable to the Starwood VII Funds and the Starwood Hotel Funds pursuant to that certain letter agreement dated as of September 27, 2007 between B.R. Guest, LLC and the Starwood VII Funds and the Starwood Hotel Funds, as amended by that certain letter agreement dated as of the date hereof between B.R. Guest, LLC and the Starwood VII Funds and the Starwood Hotel Funds.

"Hanson Employment Agreement" shall mean that certain Employment Agreement, dated as of February 23, 2007, between BRG Holdings Sub and the BRG Key Individual, as novated by that certain Novation Agreement, dated the date hereof, by and among BRG Holdings Sub, the Company and Hanson Member.

"Hanson Loan" shall have the meaning provided in the recitals.

"Hanson Member" shall have the meaning provided in the first paragraph of this Agreement.

"Hanson Note" shall have the meaning given to such term in the Master Restaurant Purchase Agreement.

"Income" shall mean the gross income of the Company for any month, Fiscal Year or other period, as applicable, including gains realized on the sale, exchange or other disposition of the Company's assets.

"Indemnified Party" shall have the meaning provided in Section 14.4(a).

"Indemnifying Party" shall have the meaning provided in Section 14.4(a).

“Initial Capital Contributions” shall have the meaning provided in Section 5.1.

“Initial Financing” shall mean the financing obtained by the Company and the Investment Vehicles in connection with the acquisition of the Initial Restaurants and DC3, including, without limitation, the Starwood Bridge Financing, the Refinancable Starwood Preferred Capital or any refinancing thereof, which shall not exceed the Applicable Debt Amount (in the case of the initial financing) and the Maximum Refinancing Amount (in the case of the refinancing of such initial financing).

“Initial Financing Credit Enhancement Loan” shall mean a Credit Enhancement Loan made in respect of Credit Enhancement provided in respect of the Initial Financing (including any Credit Enhancement given by Starwood or any of its Affiliates to any Lender in connection with obtaining funds for the purpose of providing the Starwood Bridge Financing (if any) or any refinancing thereof).

“Initial LLC Agreement” shall have the meaning provided in the recitals.

“Initial Starwood Preferred Capital” shall have the meaning provided in the recitals.

“Initial Restaurant Adjusted EBITDA Amount” shall mean an amount equal to (i) nine (9) multiplied by (ii) the sum of (x) the sum of the Adjusted EBITDA for each of the Initial Restaurants (excluding BRG Vegas) used to determine the final Aggregate Closing Purchase Price pursuant to the Master Restaurant Purchase Agreement multiplied by the Aggregate Acquisition Percentage for such restaurant, (y) the Adjusted EBITDA for DC3 used to determine the DC3 Purchase Price (as defined in the Master Restaurant Purchase Agreement) multiplied by the Aggregate Acquisition Percentage for DC3 and (z) in the event the assets and liabilities of BRG Vegas were contributed pursuant to the Contribution Agreement, the Adjusted EBITDA of BRG Vegas as calculated pursuant to Section 2.1 of the Master Restaurant Purchase Agreement.

“Initial Restaurant Value” shall mean (i) if the Venture Termination Event occurs prior to the Cut-Off Date, an amount equal to the sum of (x) the total value ascribed to the Initial Restaurants still owned by the Company or any Investment Vehicle as of the date of the Venture Termination Event pursuant to a valuation opinion obtained from an Investment Bank at the time of the Venture Termination Event plus (y) the purchase price received by the Company or an Investment Vehicle in respect of the sale of any Initial Restaurant sold prior to the date of the Venture Termination Event, or (ii) if the Venture Termination Event occurs after the Cut-Off Date, an amount equal to the sum of (x) the total value ascribed to the Initial Restaurants still owned by the Company or any Investment Vehicle as of the Cut-Off Date pursuant to a valuation opinion obtained from an Investment Bank at the time of the Cut-Off Date plus (y) the purchase price received by the Company or an Investment Vehicle in respect of the sale of any Initial Restaurant sold prior to the Cut-Off Date. In connection with valuing any Initial Restaurant pursuant to this definition, the Investment Bank shall determine the price at which such Initial Restaurant would be sold in its as-is condition for cash by a willing seller, not compelled to sell, to a willing buyer, not compelled to buy, with each of the seller and buyer being apprised of all relevant facts, in an arm's length, negotiated transaction with an unaffiliated third party without

time constraints. Without limiting the foregoing, in valuing such Initial Restaurant, the Investment Bank shall take into account (1) the EBITDA of such Initial Restaurant and the potential for a decrease or increase thereof, (2) the occupancy arrangements of such Initial Restaurant, including, without limitation (i) the remaining term of any lease or management agreement and (ii) the likelihood that such lease or management agreement may be renewed, extended or replaced with another such agreement, (3) any consents or other approvals required to be obtained (or costs and expenses that might be incurred in order to obtain such consents or other approvals), whether pursuant to any leases, management agreements or otherwise, in order for the applicable Initial Restaurants (or direct or indirect interests therein) to be transferred and (4) any terminations of, or penalties, fees or other payments or premiums required to be paid under, any leases, management agreements or other agreements to which such Initial Restaurant is a party that would result from effectuating such Venture Termination Event. Any Investment Bank shall be chosen by the BRG Member from a list of three Investment Banks selected by Starwood.

"Initial Restaurants" shall mean each of the restaurants listed in Exhibit J; provided that (i) for purposes of the definition "Initial Restaurant Adjusted EBITDA Amount" the term Initial Restaurants as used in such definitions shall exclude BRG Vegas LLC and 359 Columbus Avenue, LLC and shall include RSVH, Inc., (ii) for purposes of the definition "Initial Financing" the term Initial Restaurants as used in such definition shall exclude BRG Vegas LLC and 359 Columbus Avenue, LLC and shall include B.R. Guest Vegas, Inc. and RSVH, Inc., and (iii) for purposes of the definitions "Initial Restaurant Value", "Stand Alone Restaurants" and "Venture Termination Event", the term Initial Restaurants as used in such definitions shall include DC3.

"Initial Starwood Contribution" shall have the meaning provided in Section 5.1.

"Institutional Lender" shall mean any one or more of the following entities: a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company subject to regulation by any governmental authority or body, a real estate investment trust, a union, governmental or secular employees' welfare, benefit, pension or retirement fund, a pension fund property unit trust (whether authorized or unauthorized), an investment company or trust, a merchant or investment bank or any other entity generally viewed as an institutional lender; *provided* that, any of the foregoing entities may be considered an Institutional Lender only if that entity, together with its Affiliates, has total assets of at least U.S. \$1,000,000,000 and stockholders' equity or net worth of at least U.S. \$250,000,000 (or, in either case, the equivalent thereof in a foreign currency) as of the date the entity makes a loan to the relevant Person. Any Person otherwise satisfying the foregoing definition will be considered an Institutional Lender whether (i) acting for itself or (ii) as trustee, as general partner of a partnership, in a fiduciary, management or advisory capacity or, in the case of a bank, as agent bank, for any number of lenders, so long as in the case of clause (ii) the day-to-day management decisions relating to the loan made by that Institutional Lender are either exercised by or recommended by that Institutional Lender and, during the life of the loan, the Institutional Lender may only be removed from its clause (ii) capacity if it is replaced by another Institutional Lender also acting in the manner specified in clause (ii).

“Interest” shall mean, with respect to each Member, the entire limited liability company interest of such Member in the Company, which includes, without limitation, any and all rights, powers and benefits accorded a Member under this Agreement and the duties and obligations of such Member hereunder. For the avoidance of doubt, an interest awarded pursuant to a Management Incentive Program as described in Section 6.3 shall not be considered an Interest for purposes of this Agreement.

“Interest Period” shall mean each period of time running from and including the first day of each calendar month to but excluding the first day of the next calendar month; provided that the first Interest Period for any loan shall commence on and include that date such loan was made and end on and include the last day of the calendar month in which the date such loan was made occurs.

“Interest Transfer” shall have the meaning provided in Section 12.5.

“Interim Budget” shall mean the budget attached hereto as Exhibit Q.

“Investment Bank” shall mean any of (i) the Goldman Sachs Group, Inc., JPMorgan Chase, Morgan Stanley, Citigroup and Bank of America and (ii) any other nationally recognized investment bank approved by the Members in writing.

“Investment Opportunity” shall have the meaning provided in Section 8.2(e).

“Investment Vehicle” shall mean (i) any Subsidiary or (ii) any other Person used for the purpose of pursuing, making or holding Portfolio Investments (including, but not limited to, a limited partnership, limited liability company or real estate investment trust) in which the Company has a direct or indirect interest.

“Junior Adjusted Capital Contribution” shall mean, with respect to each Member, such Member’s aggregate Junior Preferred Capital Contributions less any distributions previously made to that Member pursuant to Section 6.1(d).

“Junior Participation Percentage” shall mean, with respect to any Member at any time, the ratio of (i) the sum of the aggregate Junior Adjusted Capital Contributions made by such Member, to (ii) the sum of the aggregate Junior Adjusted Capital Contributions made by all the Members.

“Junior Preferred Capital Contribution” shall mean any Capital Contribution made by a Member pursuant to a capital call made under (i) Section 5.2(a) in the event BRG has contributed at least twenty percent (20%) of the aggregate capital called for pursuant to such capital call under Section 5.2(a) or (ii) Section 5.2(b) (unless deemed a Senior Preferred Capital Contribution pursuant to Section 5.2(d)).

“Junior Preferred Return” shall mean, with respect to each Member, as of any date, a ten percent (10%) cumulative, annual return, compounded monthly, on the weighted average of such Member’s Junior Adjusted Capital Contribution (calculated by taking into account the amount of such Member’s Junior Adjusted Capital Contributions from time to time)

from the dates such Member's Junior Adjusted Capital Contributions were contributed to the Company to the date as of which such calculation is being made.

"Lender" shall have the meaning provided in Section 9.13.

"LIBOR Rate" shall mean, with respect to any Interest Period, the average of the London Interbank Offered Rates (in U.S. dollar deposits) for a term of one month commencing on the Determination Date. On each Determination Date, the applicable lender will obtain the LIBOR Rate for one month U.S. dollar deposits which appears on Telerate Page 3750 or such other page as may replace such Page 3750, as of 11:00 [REDACTED] (London time). If the Telerate ceases publication or ceases to publish the LIBOR Rate, the applicable lender shall select a comparable publication to determine the LIBOR Rate and provide notice thereof to the Company and the Members.

"Lock-Out End Date" shall mean (x) with respect to BRG, the earliest of (i) February 23, 2010, (ii) the occurrence of a Starwood Trigger Event, (iii) the occurrence of a Gaming Trigger Event and (iv) the death or Disability of the BRG Key Individual, and (y) with respect to Starwood, the earliest of (i) February 23, 2010, (ii) the occurrence of a BRG Trigger Event (iii) the occurrence of a Gaming Trigger Event and (iv) the death or Disability of the BRG Key Individual.

"Loss" shall mean the aggregate of losses, deductions and expenses of the Company for any month, Fiscal Year or other period, as applicable, including losses realized on the sale, exchange or other disposition of the Company's assets.

"Major Decisions" shall mean those decisions listed on Exhibit F.

"Management Committee" shall have the meaning provided in Section 9.2(a).

"Management Incentive Program" shall have the meaning provided in Section 6.3.

"Management Vehicle" shall mean the Investment Vehicle that provides management services to the Company Portfolio Investments.

"Master Restaurant Purchase Agreement" shall mean that certain Master Restaurant Purchase Agreement, dated as of November 29, 2006, among BRG Holdings Sub, Hanson Member, Deana Hanson 2006 Management Trust, Deana DiBello Hanson, R.S.V.H., Inc. and the other sellers executing joinder agreements with respect thereto, as the same may be amended, restated or supplemented from time to time, as assigned by that certain Assignment and Assumption Agreement, dated as of the date hereof, by and among BRG Holdings Sub, the Company and Hanson Member.

"Maximum Refinancing Amount" shall mean an amount equal to \$70,000,000.

"Member" and "Members" shall mean Starwood, BRG Member, Hanson Member and any other Person admitted to the Company pursuant to this Agreement. For purposes of the

Act, the Members shall constitute a single class or group of members. For the avoidance of doubt, a Participant shall not be considered a Member for purposes of this Agreement.

“Member in Question” shall have the meaning provided in Section 15.12.

“Net Income” shall mean the amount, if any, by which Income for any period exceeds Loss for such period.

“Net Loss” shall mean the amount, if any, by which Loss for any period exceeds Income for such period.

“New Projects Option Agreement” shall have the meaning provided in the Contribution Agreement.

“New York UCC” shall have the meaning set forth in Section 15.17.

“Non-Claiming Party” shall have the meaning provided in Section 15.13.

“Non-Credit Provider” shall have the meaning provided in Section 9.13.

“Non-Exempt Member” shall have the meaning provided in Section 5.2(e).

“Non-Funding Member” shall have the meaning provided in Section 5.2(d).

“Non-Recourse Carveout Credit Enhancement” shall mean Credit Enhancement provided (i) in respect of environmental representations, covenants and indemnifications and/or (ii) in connection with non-recourse financing obtained by the Company or any Investment Vehicle covering certain customary “bad boy” acts, omissions, or occurrences (expressly excluding non-payment of indebtedness) for which the borrower or other specified parties shall be personally liable in respect of any loss, cost, liability, or expense incurred by the holder of such financing and/or by its participants or related parties as a consequence of such “bad boy” acts, omissions or occurrences.

“Non-Recourse Carveout Credit Enhancement Loan” shall mean a Credit Enhancement Loan made in respect of a Non-Recourse Carveout Credit Enhancement.

“NPV” shall mean, with respect to each Investment Opportunity, (i) the sum of the present values (using a discount rate of 20%) of the sum of the projected annual cash flows generated from such Investment Opportunity during its lifetime plus the terminal value of such Investment Opportunity minus (ii) the projected initial equity investment in such Investment Opportunity. The “terminal value” of any Investment Opportunity will be valued at (x) projected earnings before interest, taxes, depreciation and amortization of such Investment Opportunity in year 5 multiplied by eight (8) minus (y) any debt on such Investment Opportunity projected to be outstanding at the end of year 5.

“OC” shall have the meaning provided in Section 9.11.

“OC Affiliate” shall have the meaning provided in Section 9.11.

“OFAC” shall have the meaning provided in Section 9.12(c).

“Offered Settlement Amount” shall have the meaning provided in Section 15.13.

“Operating Expenses” shall have the meaning provided in Section 4(c).

“Organizational Documents” shall mean for any Person, (i) in the case of a corporation, that Person’s certificate of incorporation and by-laws, and any shareholder agreement, voting trust or similar arrangement applicable to any of that Person’s authorized shares of capital stock, (ii) in the case of a partnership, that Person’s certificate of limited partnership or partnership agreement, and any voting trusts or similar arrangements applicable to any of its partnership interests, (iii) in the case of a limited liability company, that Person’s certificate of formation, limited liability company agreement or other document affecting the rights of holders of limited liability company interests, or (iv) in the case of any other legal entity, that Person’s organizational documents and all other documents affecting the rights of holders of equity interests in that Person.

“Organizational Expenses” shall mean any fees, costs or expenses incurred by or on behalf of the Company or any Investment Vehicle to the extent attributable to the initial organization of the Company or such Investment Vehicle; provided, however, that, Organizational Expenses shall not include any costs and expenses and other professional fees incurred by either of the Members to the extent such costs and expenses relate to the negotiation of this Agreement, goods or services benefiting such Member in an individual capacity and not benefiting the Company or any Investment Vehicle generally, all of which costs and expenses shall be borne by the Member incurring them.

“Original Master Restaurant Purchase Agreement” shall have the meaning provided in the recitals.

“Overhead Expenses” shall mean, with respect to any Member, rent for such Member’s (or its Affiliate’s) place of business, salaries and benefits of personnel of such Member or its Affiliates who are also engaged in work for the benefit of the Company or any Investment Vehicle, office costs, such as office supplies, computer equipment and utilities, and general and administrative expenses.

“Participants” shall have the meaning provided in Section 6.3.

“Permitted Transferee” shall mean, (i) with respect to BRG, any BRG Permitted Transferee and (ii) with respect to Starwood, any Starwood Permitted Transferee.

“Person” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, limited liability company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other legal entity.

“Pledge Agreement” shall have the meaning provide in the recitals.

“Portfolio Investment” and “Portfolio Investments” shall have the meaning provided in Section 3.

“Prime Rate” shall mean the average of the prime rates of interest announced from time to time by each of the Reference Banks.

“Pro Rata Liquidation Value” shall mean, with respect to any Member, the cash amount that such Member would have received on account of its Interest as a liquidating distribution if (x) the Company sold all the Company Assets on the applicable valuation date for a sales price equal to the Appraised Value determined in accordance with the procedures set forth in Exhibit F attached hereto and (y) the Company applied the proceeds of such sale to satisfy all outstanding indebtedness and liabilities (other than contingent liabilities unless the Company has established reserves in respect of such contingent liabilities) of the Company, and (z) the Company then distributed the remaining sales proceeds pursuant to Section 13.3(d) on the applicable valuation date. The Management Committee (and, in the case of any calculation made for purposes of the last sentence of Section 12.5, the Company’s independent public accounting firm if the Management Committee cannot agree on such calculation) will calculate the amount of the liquidating distribution (which calculation will be conclusively presumed to be correct and accurate absent manifest error).

“Pursuit Costs” shall mean all costs and expenses incurred by or on behalf of the Company or any Investment Vehicle associated with a potential or actual acquisition, lease, license, franchise or disposition of a Portfolio Investment.

“Qualified Investment Opportunity” shall mean an Investment Opportunity (i) that is solely limited to an opportunity to invest in or acquire a restaurant (other than a restaurant located in a Starwood Hotel), (ii) the good faith and reasonable underwriting of which indicates that the required equity, directly or indirectly, from the Company for such Investment Opportunity does not and will not (over the life of the applicable investment) exceed \$10,000,000 and the NPV of such Investment Opportunity is greater than or equal to zero (0)%, (iii) that is not and has not been brought to a Starwood Restricted Person (or its Affiliates) by a Person other than the BRG Key Individual or the Company or an Investment Vehicle, (iv) that has been presented to a Starwood Restricted Person by the BRG Key Individual or the Company or an Investment Vehicle at least six (6) months prior to the end of the Starwood Restricted Period; provided that such Investment Opportunity presented to a Starwood Restricted Person shall cease to be a Qualified Investment Opportunity if such Investment Opportunity is not placed in the deal log pursuant to Section 8.2(e) within forty-five (45) days after such presentation to the Starwood Restricted Person and such Investment Opportunity is not presented to the Management Committee (together with such information as is customarily provided to the Management Committee in connection with the Management Committee’s evaluation of an Investment Opportunity) within ninety (90) days after such presentation to the Starwood Restricted Person, (v) that is not being pursued by a BRG Restricted Person (or its Affiliates), (vi) in respect of which the Company’s (or applicable Investment Vehicle’s) bid, if applicable, has been accepted in writing, (vii) which a majority of the BRG Representatives voted (or acted by written consent) in favor of pursuing and closing on and (viii) which no Starwood Restricted Person (or its Affiliates) was aware of prior to the presentation of such Investment Opportunity to the Management Committee or the Starwood Restricted Person, as the case may be.

“Redemption Option Notice” shall have the meaning provided in Section 12.6.

“Redemption Option Period” shall mean the period of ninety (90) days following the occurrence of (i) a BRG Trigger Event or (ii) the occurrence of the death or Disability of the BRG Key Individual provided such death or Disability occurs prior to February 23, 2010.

“Reference Banks” shall mean, collectively, (i) Citibank, [REDACTED], Bank of America, [REDACTED] or their successors or (ii) such other banks as shall be mutually agreed in writing between the Members.

“Refinancable Starwood Preferred Capital” shall mean sixty million dollars (\$60,000,000) of Senior Preferred Capital Contributions made (or deemed made) by Starwood to the Company.

“Regulations” shall mean the Treasury Regulations promulgated pursuant to the Code, as amended from time to time, including the corresponding provisions of any successor regulations.

“Representatives” shall have the meaning provided in Section 9.2(a).

“Restaurant Companies” shall mean the “Restaurant Companies” as defined in the Master Restaurant Purchase Agreement and BRG Vegas.

“SCG” shall mean Starwood Capital Group Global I, L.L.C. and its successors.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Senior Adjusted Capital Contribution” shall mean, with respect to each Member, such Member’s aggregate Senior Preferred Capital Contributions less by any distributions previously made to that Member pursuant to Section 6.1(b).

“Senior Participation Percentage” shall mean, with respect to any Member at any time, the ratio of (i) the sum of the aggregate Senior Adjusted Capital Contributions made by such Member, to (ii) the sum of the aggregate Senior Adjusted Capital Contributions made by all the Members.

“Senior Preferred Capital Contribution” shall mean, with respect to each Member, (a) the amount of such Member’s Senior Preferred Capital Contribution set forth opposite such Member’s name in Exhibit A under the heading Initial Senior Preferred Capital Contributions plus (b) any Capital Contribution made by such Member (i) pursuant to a capital call made under Section 5.2(a) in the event BRG has contributed less than twenty percent (20%) of the aggregate capital called for pursuant to such capital call under Section 5.2(a), (ii) pursuant to Section 9.13 and (iii) any Capital Contribution designated as a Senior Preferred Capital Contribution pursuant to Section 5.2(d) plus (c) in the case of Starwood only, any amounts paid by Starwood or any of its Affiliates under any Starwood Guaranties.

“Senior Preferred Return” shall mean, with respect to each Member, as of any date, a twelve percent (12%) cumulative, annual return, compounded monthly, on the weighted average of such Member’s Senior Adjusted Capital Contribution (calculated by taking into account the amount of such Member’s Senior Adjusted Capital Contributions from time to time)

from the dates such Member's Senior Adjusted Capital Contributions were contributed to the Company to the date as of which such calculation is being made.

"Shortfall Amount" shall mean (i) if the date of the Venture Termination Event occurs prior to the Cut-Off Date, an amount equal to (x) fifty percent (50%) multiplied by (y) the Base Shortfall Amount, and (ii) if the date of the Venture Termination Event occurs after the Cut-Off Date, an amount equal to fifty percent (50%) multiplied by the lesser of (x) the Base Shortfall Amount and (y) the Alternate Shortfall Amount.

"Stand Alone Restaurant EBITDA Amount" shall mean (i) if the Venture Termination Event occurs prior to the Cut-Off Date, an amount equal to (A) seventy five percent (75%) multiplied by (B) the sum of (x) nine (9) multiplied by the EBITDA for the twelve calendar months immediately preceding the date on which the Venture Termination Event occurs for the Stand Alone Restaurants still owned by the Company or any Investment Vehicle as of the date of the Venture Termination Event plus (y) the purchase price received by the Company or an Investment Vehicle in respect of the sale of any Stand Alone Restaurant prior to the date of the Venture Termination Event, or (ii) if such Venture Termination Event occurs after the Cut-Off Date, an amount equal to (A) seventy five percent (75%) multiplied by (B) the sum of (x) nine (9) multiplied by (y) the sum of (A) the EBITDA for the twelve calendar months immediately preceding the Cut-Off Date for the Stand Alone Restaurants still owned by the Company or any Investment Vehicle or from which the Company is otherwise entitled to receive a fee or other income as of the Cut-Off Date plus (B) the purchase price received by the Company or an Investment Vehicle in respect of the sale of any Stand Alone Restaurant (including the sale or assignment of any rights with respect to any Stand Alone Restaurant) prior to the Cut-Off Date.

"Stand Alone Restaurants" shall mean the restaurants (excluding the Initial Restaurants and any restaurant managed by the Company or any Investment Vehicle which is a BRG Excluded Investment pursuant to clauses (iii) or (iv) of such definition) owned, managed, franchised or operated by, or from which income is otherwise derived by the Company or any of the Investment Vehicles) to the extent such restaurants are not located in a Starwood Hotel.

"Starwood" shall have the meaning provided in the first paragraph of this Agreement.

"Starwood Affiliate Guaranties" shall have the meaning provided in the recitals.

"Starwood Bridge Financing" shall mean the Initial Financing, to the extent provided by Starwood Lender.

"Starwood Bridge Financing Documents" shall mean all of the documents entered into between the Company or any Investment Vehicle and the Starwood Lender in respect of the Starwood Bridge Financing.

"Starwood Change of Control" shall mean, if at any time, Starwood ceases to be directly or indirectly controlled or co-controlled by, or under common control with, SCG or any Successor Starwood Fund GP.

“Starwood Covered Party” shall have the meaning provided in Section 14.3(b).

“Starwood Credit Event” shall mean any claim or potential claim under any Non-Recourse Carveout Credit Enhancement for which BRG (or any of its Affiliates) may have liability and which claim or potential claim has arisen as a result of the actions or inactions of any Starwood Covered Party in violation of the terms of such Non-Recourse Carveout Credit Enhancement and/or the financing extended to the Company or an Investment Vehicle in respect of which the Non-Recourse Carveout Credit Enhancement was provided.

“Starwood Excluded Investments” shall mean (i) any Company Asset acquired by Starwood pursuant to a ROFO Sale, (ii) any investment by any Starwood Restricted Person constituting not more than five percent (5%) of the outstanding equity of any Person whose equity securities are publicly traded, (iii) any investment made by any fund or investment partnership in which a Starwood Restricted Person has a non-controlling interest, (iv) any investment or acquisition made by BSS or any BSS Controlled Party following the disability of BSS or following the date on which BSS no longer directly or indirectly controls SCG or any of the Starwood Funds that has an indirect economic interest in Starwood, (v) any investment opportunity presented to, or being pursued by, a Starwood Restricted Person or its Affiliates as of the date of execution of the Contribution Agreement, (vi) any acquisition of, or investment in, (either in one transaction or a series of related transactions), a portfolio of assets containing a Portfolio Investment which is the subject of an Investment Opportunity presented to the Management Committee (an “Identified Portfolio Investment”) if not more than eighty percent (80%) of the acquisition cost of such portfolio of assets is allocated to the Identified Portfolio Investment or not more than eighty percent (80%) of the EBITDA of such portfolio of assets is derived from the Identified Portfolio Investment, and (vii) any acquisition of, or investment in, any Person if not more than eighty percent (80%) of the EBITDA of such Person (measured at the time of the applicable investment) is derived from the ownership or management of the Identified Portfolio Investment.

“Starwood Fund” shall mean any Starwood Hotel Fund, any Starwood VII Fund and any investment partnership or fund sponsored by SCG or its Affiliates which are intended to be a successor or similar fund to the Starwood VII Funds or the Starwood Hotel Funds (or any Affiliated Fund).

“Starwood Guaranty” shall have the meaning provided in the recitals.

“Starwood Guaranties” shall have the meaning provided in the recitals.

“Starwood Hotel” shall mean any hotel or other real property used for lodging purposes which Starwood, any Starwood Fund or any of their Affiliates directly or indirectly owns, manages, leases or in which Starwood, any Starwood Fund or any of its Affiliates has a direct or indirect economic, legal or beneficial interest.

“Starwood Hotel Funds” shall mean, collectively, Starwood Capital Hospitality Fund I-1, L.P., a Delaware limited partnership, Starwood Capital Hospitality Fund I-2, L.P., a Delaware limited partnership, and Starwood Capital Hospitality Fund I-3, L.P., a partnership formed under the laws of England and Wales.

“Starwood Lender” shall mean an Affiliate of Starwood providing the Starwood Bridge Financing.

“Starwood Note” shall have the meaning given to such term in the Contribution Agreement.

“Starwood Permitted Transferee” shall mean any Person that is directly or indirectly controlled or co-controlled by, or under common control with, SCG or any Successor Starwood Fund GP.

“Starwood Related Agreement” shall mean the Starwood Note, the Starwood Bridge Financing Documents (if any) and any agreement entered into between the Company or any Investment Vehicle with Starwood or any of its Affiliates which are subject to Section 9.5(a) (including any provision of any agreement deemed to be a Starwood Related Agreement in the proviso set forth in the definition of BRG Related Agreement) provided, however, that to the extent performance is owed by BRG, BRG Member, Hanson Member or any of their Affiliates to the Company, any Investment Vehicle, Starwood or any of its Affiliates, under any provision of such agreement, such provision of the agreement to the extent of such performance shall be deemed to be a BRG Related Agreement.

“Starwood Representatives” shall have the meaning provided in Section 9.2(a).

“Starwood Restricted Period” shall mean the period commencing on February 23, 2007 and ending on the earliest to occur of (i) the liquidation and termination of the Company, (ii) a Company Sale, (iii) an Asset Sale involving a sale of all or substantially all of the Company Assets, (iv) the occurrence of a BRG Trigger Event, (v) the death or Disability of the BRG Key Individual, (vi) the date on which BRG Member and Hanson Member are no longer members of the Company, (vii) the date on which the BRG Key Individual is no longer employed by the Company and (viii) the date on which the BRG Restricted Period terminates.

“Starwood Restricted Person” shall mean (i) Starwood, (ii) SCG, (iii) BSS or (iv) any Person directly or indirectly controlled by SCG or BSS.

“Starwood Trigger Event” shall mean the occurrence of any of the following events, in each case following the receipt of written notice of the occurrence of such event from BRG and the Failure to Cure such event by Starwood (except in the case of an event described in clause (iii) below which shall be a non-curable event): (i) a final finding by a court of competent jurisdiction of willful misconduct or act of fraud by, or criminal conviction constituting a felony of, Starwood or any of its Affiliates, in connection with or relating to the Company, any Investment Vehicle or any Company Assets; (ii) the occurrence of a Starwood Change of Control; or (iii) the occurrence of a Bankruptcy/Dissolution Event with respect to Starwood.

“Starwood Trusts Guaranties” shall have the meaning provided in the recitals.

“Starwood VII Funds” shall mean, collectively, Starwood Global Opportunity Fund VII-A, L.P., a Delaware limited partnership, Starwood Global Opportunity Fund VII-B, L.P., a Delaware limited partnership, Starwood U.S. Opportunity Fund VII-D, L.P., a Delaware limited partnership, Starwood U.S. Opportunity Fund VII D-2, L.P., a Delaware limited

partnership, Starwood International Opportunity Fund VII-E, L.P., a partnership formed under the laws of England and Wales, and Starwood International Opportunity Fund VII-FE, L.P., a partnership formed under the laws of England and Wales.

“Subsidiary” shall mean any corporation, partnership, limited liability company or other entity of which fifty percent (50%) or more is owned by the Company.

“Successor Starwood Fund GP” shall mean any Person who is the successor to, or replacement of, a general partner of any Starwood Fund as of February 23, 2007 (or as of the date of formation of such Starwood Fund, if such Starwood Fund is not in existence as of February 23, 2007).

“Tax Distribution” shall mean with respect to any Member and any Fiscal Quarter within a Fiscal Year, the product of (x) 43% and (y) the excess of (A) such Member’s estimated net taxable income of the Company for such Fiscal Quarter resulting from such Member’s ownership of a limited liability company interest in the Company, determined in good faith by the Tax Matters Member, over (B) such Member’s estimated net tax losses of the Company for Fiscal Quarters within such Fiscal Year and net tax losses of the Company for prior Fiscal Years, to the extent such losses were not previously utilized in the calculation of prior Tax Distributions.

“Tax Distribution Cap” shall mean with respect to any Member and any Fiscal Quarter within a Fiscal Year, the product of (a) the total amount of Distributions made or available to be made in such Fiscal Quarter and (b) a fraction the numerator of which is equal to such Member’s Total Investment (minus any Distributions made to such Member under Sections 6.1(b) or 6.1(d)) as of such date and the denominator of which is equal to the Total Investment (minus any Distributions made to such Member under Sections 6.1(b) or 6.1(d)) of all Members as of such date.

“Tax Distribution Shortfall” shall mean with respect to any Member and any Fiscal Quarter within a Fiscal Year, the amount, if any, by which the aggregate Tax Distributions for such Member for all prior Fiscal Quarters exceed the aggregate Tax Distribution Caps for such Member for all prior Fiscal Quarters.

“Tax Matters Member” shall have the meaning provided in Section 8.3.

“Termination Trigger Event” shall mean (i) the termination of the BRG Key Individual’s employment by the Company for Cause or (ii) a BRG Resignation Event.

“Total Investment” shall mean the sum of the aggregate Capital Contributions made (or deemed made) by a Member.

“Transfer” means, as a noun, any transfer, sale, assignment, exchange, charge, pledge, gift, hypothecation, conveyance, encumbrance or other disposition, voluntary or involuntary, by operation of law or otherwise and, as a verb, voluntarily or involuntarily, by operation of law or otherwise, to transfer, sell, assign, exchange, charge, pledge, give, hypothecate, convey, encumber or otherwise dispose of.

“Trigger Event” shall mean, (i) with respect to BRG, a BRG Trigger Event, and (ii) with respect to Starwood, a Starwood Trigger Event.

“Trusts” shall have the meaning provided in the recitals.

“Trust Loans” shall have the meaning provided in the recitals.

“Uncontrollable Events” shall mean fire, earthquake, flood, explosion, war, terrorism, insurrection, riot, mob violence, sabotage, inability to procure labor, equipment, facilities, materials or supplies, strikes, walk-outs, action of labor unions, condemnation, or an increase of the Prime Rate above fifteen percent (15%) in each case only to the extent (i) written notice of such event or circumstance has been provided by BRG to Starwood as promptly as reasonably practicable after BRG or the BRG Key Individual becomes aware of the same, and (ii) such event or circumstance is not primarily the direct result of the breach by a BRG Restricted Person, of any of their obligations under this Agreement or any Collateral Agreement or primarily the fault or negligence of a BRG Restricted Person.

“VCOC Fund” shall have the meaning provided in Section 9.2(a).

“Venture Termination Event” shall mean (i) a Company Sale (whether directly or indirectly by way of an Interest Transfer together with a Drag-Along Sale (as defined in Exhibit G)), (ii) an Asset Sale involving a sale of all or substantially all of the Company Assets, (iii) the liquidation and termination of the Company, (iv) the acquisition by Starwood of BRG’s Interests pursuant to Exhibit G or Exhibit H or (v) the sale by the Company or an Investment Vehicle of an Initial Restaurant following which neither the Company nor an Investment Vehicle continues to own an interest in any Initial Restaurant. For purposes of this definition, a Venture Termination Event shall be deemed to occur pursuant to clauses (i) or (ii) above notwithstanding the fact that one or more Initial Restaurants (but not more than four (4) Initial Restaurants) were not transferred or sold in connection with such Company Sale or Asset Sale due to a failure to obtain one or more consents or other approvals that are required in order for such Initial Restaurant(s) to be transferred or sold in connection with such Company Sale or Asset Sale.

“Withdrawing Member” shall have the meaning provided in Section 12.4(b).

List of Monthly Reports

1. The Monthly Operations Performance Overview Report substantially in the form attached hereto.
2. Consolidated Trial Balance in Microsoft Excel format

Additional Reporting Requirements

Quarterly Reports

2. Consolidating Balance Sheet, Income statement and Statement of Cash Flows, prepared on an accrual basis for ownership entity, overhead company and all properties.
3. Statement of Members' Capital Accounts.
4. The statement of the cost of each Portfolio Investment acquired by the Company or any Investment Vehicle. (included in the quarterly updated business-plan).
5. The statement of all material liabilities (contingent or non-contingent) accrued with respect to such Portfolio Investment or otherwise paid by the Company or any Investment Vehicle.
6. A statement of all transactions with, or fees paid to, Affiliates of the Members.

**For all operating properties:**

1. Accrual basis prepared balance sheet and Income Statement
2. Actual to Budget Variance Analysis
3. Management Summary

Annual Reports

1. A full set of audited financial statements (including an audited balance of the Company and an audited statement of the Company's profits and loss) prepared in accordance with US-GAAP, together with a management letter, if provided.
2. A statement of the Members' Capital Accounts and changes therein for the applicable Fiscal Year.
3. A schedule and description of the real estate interests book value owned by the Company or any Investment Vehicle as of the end of such Fiscal Year, if any, and the schedule of the real estate interests acquired or disposed of by the Company or any Investment Vehicle during such Fiscal Year, if any.
4. A summary of any regulatory or legal proceedings against the Company or any Investment Vehicle, any criminal proceedings against any key executive, any regulatory or legal proceedings against any key executive, the subject matter which relates to the Company or any Investment Vehicle, and which has, or if successful may have, any material adverse effect on the business or operations of the Company, any Investment Vehicle or the Company Assets.

5. Such other reports, information and statements that may be reasonably requested from time to time by a Member or any VCOC Fund.

Annual Business Plan Information

1. a narrative description of any acquisitions or sales that are planned and any other activities proposed to be undertaken;
2. a projected annual income statement (accrual basis) on a quarter-by-quarter basis;
3. a projected balance sheet as of the end of the next Fiscal Year;
4. a schedule of projected operating cash flow (including itemized operating revenues, project costs and project expenses) for such Fiscal Year on a quarter-by-quarter basis, including a schedule of projected operating deficits, if any;
5. a marketing plan indicating the portions of the Company Portfolio Investments that the Management Committee recommends be made available for sale or lease and the proposed terms and conditions relating thereto;
6. a detailed budget reflecting on a line by line basis all projected operating expenses and any proposed construction and capital expenditures for the Company Portfolio Investments including projected dates for commencement and completion of the foregoing;
7. a description of the proposed investment of any funds of the Company or any Investment Vehicle which are (or are expected to become) available for investment;
8. a description, including the identity of the recipient (if known) and the amount and purpose, of all fees and other payments proposed, expected or projected to be paid for professional services and, if a fee or payment exceeds U.S. \$50,000, for other services rendered to or on behalf of the Company or any Investment Vehicle by third parties;
9. a projection of the amount of any anticipated Additional Capital Contributions which may be called for pursuant to Section 5.2 and the purposes for which such additional Capital Contributions may be used; and
10. such other information reasonably requested from time to time by any Member.

Major Decisions

- (i) any merger, conversion or consolidation involving the Company or any Investment Vehicle or except as permitted by the terms of Section 12, the sale, lease, transfer, exchange or other disposition of all or substantially all of the Company's assets or all of the Interests of the Members in the Company, in one or a series of related transactions;
- (ii) except as expressly provided in Sections 5 and 6.3 or permitted by the terms of Section 12, the admission or removal of any Member or the Company's issuance to any third party of any equity interest in the Company or any Investment Vehicle (including any interest, option, warrant or right to purchase or instrument convertible into, or exchangeable for, equity interests in the Company or any Investment Vehicle);
- (iii) any amendment of this Agreement or the Certificate of Formation;
- (iv) except as provided in Section 13, any liquidation, dissolution or termination of the Company or causing any voluntary Bankruptcy/Dissolution Event with respect to the Company or any Investment Vehicle;
- (v) entering into any employment contracts, consultancy agreements (or other similar agreements or arrangements), with respect to any director of operations, manager of more than one Company Portfolio Investment, chief financial officer or any other senior executive or any other person whose annual compensation (including salary and bonus but excluding the cost of participation in any employee benefit plan sponsored by the Company or any Investment Vehicle) is in excess of US \$150,000 or establishing or making any amendment to any bonus, stock, health, retirement or other employee benefit plan;
- (vi) the incurrence by the Company or any Investment Vehicle, of any indebtedness for borrowed money in an amount in excess of US \$25,000 or any capitalized lease obligation in an amount in excess of US \$200,000 in any single case or US \$500,000 in the aggregate in any calendar year, or the entry into of any agreement, commitment, assumption or guarantee with respect to any of the foregoing, which are not otherwise provided for in this Agreement or specifically provided for in a line-item of the Annual Business Plan
- (vii) expenditures or the establishment of any reserves by the Company or any Investment Vehicle, in an amount in excess of US \$25,000 in any single case or US \$200,000 in the aggregate in any calendar year, which are not otherwise provided for in this Agreement or specifically provided for in a line-item of the Annual Business Plan;
- (viii) entering into any material agreement, contract, license or lease that provides for payment or by its terms would impose an obligation or liability on the Company or any Investment Vehicle of in excess of \$200,000 in any single case or \$1 million in the aggregate in any calendar year, or the amendment, modification, termination or waiver of any term thereof;
- (ix) doing any act which would make it impossible or unreasonably burdensome to carry on the business of the Company;

(x) any material change in the strategic direction of the Company or any Investment Vehicle or any material expansion of the business of the Company or any Investment Vehicle, whether into new or existing lines of business or any change in the structure of the Company or any Investment Vehicle not specifically contemplated by the Annual Business Plan;

(xi) adoption of, and any supplement to, revision of, or deviation from the Annual Business Plan in any material respect;

(xii) giving or granting any options, rights of first refusal, deeds of trust, mortgages, pledges, ground leases, security or other interests encumbering any property or Company Portfolio Investment or any portion thereof;

(xiii) except as permitted by the terms of Section 12 or in the ordinary course of business (other than in the case of refinancing), selling, conveying, refinancing or effecting any other transfer of any property or other asset of the Company or any Investment Vehicle or any portion thereof or the entering into of any agreement, commitment or assumption with respect to any of the foregoing;

(xiv) confessing a judgment against the Company or any Investment Vehicle of in excess of \$5,000 in any instance, submitting a Company or any Investment Vehicle claim to arbitration or engaging, terminating and/or replacing counsel to defend or prosecute on behalf of the Company or any Investment Vehicle any action or proceeding, in each case other than in connection with ordinary course debt collection activities of the Company or any Investment Vehicle;

(xv) acquiring by purchase, ground lease or otherwise, any real property or Portfolio Investment or the entry into of any agreement, commitment or assumption or the making or posting of any deposit (refundable or non-refundable) with respect to any of the foregoing;

(xvi) making or taking any decision to acquire any Portfolio Investment;

(xvii) the amount of, whether and when to make, contributions to the Company (other than the contributions under Section 5.1(a) made contemporaneously with the execution of this Agreement, contributions under Sections 5.2(b) and (c) and 9.13);

(xviii) any approval or disapproval of the plans and specifications of a Company Portfolio Investment and any changes and modifications to such plans and specifications previously approved by the Management Committee;

(xix) purchasing or acquiring any stock, assets, obligations or securities of, or any other interest in, or making a capital contribution to, any other Person (other than purchases of inventory or equipment in the ordinary course of business and not in excess of US \$200,000 in any single case or US \$1 million in the aggregate in any calendar year);

(xx) entering into any partnership or joint venture with any Person;

(xxi) the guarantee by the Company or any Investment Vehicle of any obligations of any Person which is not a direct or indirect wholly-owned subsidiary of the Company;

(xxii) any repurchase, redemption or other acquisition of any equity interests or other securities of the Company or any Investment Vehicle;

(xxiii) the making of any non-cash distributions by the Company;

(xxiv) the determination of the amount of Distributable Funds for each applicable period and except as provided in this Agreement, the making and amount of any cash Distributions by the Company;

(xxv) the making of (or the entry into any agreement to make) any individual or aggregate items of capital expenditure not specifically contemplated by a specific line-item in the Annual Business Plan (whether in one or a series of related transactions) by the Company or any Investment Vehicle with a value of in excess of US \$1 million in any calendar year; and/or

(xxvi) without limiting any of the foregoing, any other matter determined from time to time by the Management Committee to require the approval of, or be subject to the modification by, the Management Committee (including, without limitation, the establishment of rules and procedures relating to the affairs and dealings of the Company and the Investment Vehicles).

Interest Transfers, Company Sale and Asset Sale Subject to Right of First Offer(a) ROFO Election/Tag-Along Election.

(i) Offer Notice. If, pursuant to and in accordance with Section 12.5, Starwood or BRG has the right to trigger or effectuate an Interest Transfer, an Asset Sale or a Company Sale, then Starwood or BRG, as applicable (the "Initiator"; it being agreed that in the case of an Asset Sale, the "Initiator" shall mean, as the context requires, the Company acting in accordance with the directions and instructions of the Initiator), shall have the right to pursue and effect the same provided the Initiator shall first give to the Member who is not the Initiator (the "Recipient") notice thereof (an "Offer Notice"), which Offer Notice need not state the cash price the Initiator would be willing to accept in respect of such Interest Transfer, Company Sale or Asset Sale (as applicable) but shall state whether or not the assets or interests intended to be sold will be sold on a debt free basis. Within forty-five (45) days from receipt of an Offer Notice (the "Exercise Period"), the Recipient shall have the right, (x) to offer to purchase, based upon the Offer Notice, all of the assets or interests (as applicable) proposed by the Initiator to be sold in the relevant Interest Transfer, Company Sale or Asset Sale (the "ROFO Sale"), by giving written notice of such election within the Exercise Period (the "ROFO Election"), stating the cash price that the Recipient is willing to pay in respect of such sale (the "ROFO Price"), which offer shall be irrevocable and may be accepted by the Initiator at any time for thirty (30) days after the receipt by the Initiator of the ROFO Election (even if the Initiator initially elects to proceed to initiate and consummate an Interest Transfer, Company Sale or Asset Sale and not to accept an offer made by the Recipient pursuant to a ROFO Election) and/or (y) in the case of an Interest Transfer, to elect to participate in such Interest Transfer all of the Recipient's Interests in the Company (a "Tag-Along Election") and, if a Tag-Along Election is made, the Recipient and the Recipient's appointed Representative shall be obligated to consent to any transfer arranged by the Initiator (a "Tag-Along Sale") on the terms set forth in clause (b) below. If each of the Members shall give the other an Offer Notice, the one given first (i.e., the one received earlier as determined by the date and time of receipt) shall be effective and the one given thereafter shall not be effective.

(ii) ROFO Election Made.

(1) Initiator Options. If the Recipient has timely and properly delivered the ROFO Election, the Initiator shall, within thirty (30) days thereafter (the "Initiation Exercise Period"), have the right to (x) accept such offer at the ROFO Price and, in such event, the Initiator and the Recipient (or its designee) shall consummate the ROFO Sale on an "as is" and "where is" basis with no representations or warranties (other than a representation from the Initiator, in the case of an Interest Transfer or Company Sale, that it owns the Interests being transferred free and clear of all liens and encumbrances other than liens and encumbrances securing indebtedness of the Company) within sixty (60) days after the date such Initiator's acceptance is received by the Recipient (or, in the event certain governmental consents or approvals shall be required in order to consummate the ROFO Sale, such longer period as shall be necessary to obtain

such governmental consents and approvals) (the "ROFO Closing Period"), or (y) pursue the Interest Transfer (and, at the Initiator's election, to cause all of the Recipient's Interests in the Company to be sold or transferred simultaneously with the Initiator's Interests in the Company being sold or transferred in connection with such Interest Transfer on the terms set forth in clause (b) below, a "Drag-Along Sale"), the Company Sale or the Asset Sale (as applicable) at a price that is not less than 101% of the ROFO Price and on such other terms determined by the Initiator in its sole discretion within two hundred ten (210) days after the expiration of the Exercise Period, or (z) stop pursuing the Interest Transfer, the Company Sale or the Asset Sale (as applicable). The Initiator shall, in all events, keep the Recipient reasonably apprised of its intentions and, subject to the next succeeding sentence, the progress of developments with respect to any sale process, including the identity of any prospective purchaser, and the principal terms of any proposed Interest Transfer, Company Sale or Asset Sale. The Recipient may, no later than the expiration of the Initiator Exercise Period, notify the Initiator of its intention to participate as a purchaser in the sale process initiated by the Initiator, in which event the Initiator shall include the Recipient in such process to the same extent as other prospective purchasers, and the Recipient shall only be entitled to such information as is provided to other prospective purchasers in the sale process.

(2) Recipient Failure to Close. If the Recipient has timely and properly delivered a ROFO Election, which is accepted in writing by the Initiator, but thereafter the sale contemplated thereby fails to close within the ROFO Closing Period as a result of a default of the Recipient (which default is not cured within 10 days following the occurrence thereof) or the Recipient does not timely deliver the Deposit to the Initiator in accordance with the terms hereof, then the Recipient shall be in material default hereunder and shall pay to the Initiator an amount equal to ten percent (10%) of the ROFO Price (as liquidated damages and not as a penalty, it being agreed that the actual damages would be difficult or impossible to calculate and such amount is a fair measure of the damages). Thereafter, the Initiator may pursue and consummate the ROFO Sale described in the Offer Notice (and, in the case of an Interest Transfer, any Drag-Along Sale, if the Initiator so elects) and/or any other sale to non-affiliated third parties for a cash price and such other terms and conditions as are determined by the Initiator in its sole discretion (without regard to the ROFO Price) for an unrestricted period. Further, the Recipient shall not thereafter under any circumstances be entitled to make a ROFO Election pursuant to this Exhibit and, without limiting the Initiator's rights to initiate a Drag-Along Sale (in the case of an Interest Transfer), the Recipient shall cease to have any rights to make a Tag-Along Election (in the case of an Interest Transfer) pursuant to this Exhibit.

(3) Initiator Failure to Close. If the Recipient has timely and properly delivered a ROFO Election, which is accepted in writing by the Initiator, but thereafter the sale contemplated thereby fails to close within the ROFO Closing Period as a result of a default of the Initiator (which default is not cured within 10 days following the occurrence thereof), then the Initiator shall be in

material default hereunder and the Recipient shall have the right to either (i) seek specific performance from the Initiator in respect of such sale or (ii) elect not to close, in which event the Initiator shall reimburse the Recipient for the reasonable third-party, out-of-pocket costs incurred and paid by the Recipient in connection with exercising the relevant ROFO Election, and the Initiator shall not thereafter under any circumstances be entitled to make a ROFO Election pursuant to this Exhibit and, without limiting the Recipient's rights to initiate a Drag-Along Sale (in the case of an Interest Transfer), the Initiator shall cease to have any rights to make a Tag-Along Election (in the case of an Interest Transfer) pursuant to this Exhibit.

(iii) ROFO Election/Tag-Along Election Not Made. If the Recipient does not timely or properly make a ROFO Election or, in the case of an Interest Transfer, a Tag-Along Election, (x) the Recipient shall be deemed to have elected not to offer to purchase the assets or interests (as applicable) proposed by the Initiator to be sold and, in the case of an Interest Transfer, the Recipient shall be deemed to have elected not to participate in the Interest Transfer arranged by the Initiator, but shall be subject to the Drag-Along Sale, and (y) the Initiator shall be free to initiate and consummate the Interest Transfer (and, in the case of an Interest Transfer, any Drag-Along Sale, if the Initiator so elects), the Company Sale or the Asset Sale (as applicable) within two hundred ten (210) days after the expiration of the Exercise Period at a price and on such other terms as is determined by the Initiator in its sole discretion.

(b) Tag-Along Sale/Drag-Along Sale in connection with an Interest Transfer.

(i) In the event the Recipient has elected to participate in a Tag-Along Sale pursuant to the terms hereof or the Initiator has elected a Drag-Along Sale pursuant to the terms hereof, the Recipient shall be obligated to sell all of its Interests in the Company, at a price (subject to any minimum price requirement applicable to the relevant Interest Transfer pursuant to the terms of this Exhibit) and on such other terms as the Initiator determines.

(ii) The sale of the Interests owned by the Recipient shall be on no less favorable terms and conditions as the sale by the Initiator of the Interests owned by the Initiator. The Initiator and the Recipient shall share *pro rata* (in proportion to the sales proceeds to be received by them in connection with such Interest Transfer) in (1) any indemnity liability to the proposed transferee, (2) any escrow established for the purpose of satisfying any such liability, (3) all expenses of investigating and consummating the transactions contemplated by this Exhibit (whether or not consummated), and (4) all other rights and obligations with respect to the sale.

(iii) The Initiator shall provide the Recipient with written notice not less than fifteen (15) days prior to the date of the Tag-Along Sale or Drag-Along Sale, as applicable. Such notice shall set forth (1) the name and address of the proposed transferee or transferees in the proposed sale, (2) the amount of consideration to be paid for the applicable Interests owned by the Recipient and the conditions of payment, and

(3) confirmation that the proposed transferee is willing to purchase the applicable Interests owned by the Recipient.

(iv) If the Recipient elects to participate in an Interest Transfer or the Recipient is the subject of a Drag-Along Sale, and such Interest Transfer or Drag-Along Sale fails to close as a result of a default of the Recipient (which default is not cured within 10 days following the occurrence thereof), the Initiator may pursue and consummate the Interest Transfer (and any Drag-Along Sale, if the Initiator so elects) and/or any other sale of the Interests owned by the Initiator to non-affiliated third parties for a cash price and such other terms and conditions as are determined by the Initiator in its sole discretion for an unrestricted period. Further, without limiting the Initiator's rights to initiate a Drag-Along Sale, the Recipient shall not thereafter under any circumstances be entitled to make a Tag-Along Election pursuant to this Exhibit and shall not be entitled to make a ROEO Election pursuant to this Exhibit.

Calendar for Fiscal Years 2007 through 2010

Intentionally Omitted

Takeout Financing Terms























